

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012 – 01249

BETWEEN

JOHN MILLETTE

CLAIMANT

AND

LENOR NORAY FRANCIS

RICHARDO BAGGOO

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANTS

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr B. Charles and Ms S. Charles for the Claimant

Mr F. Peterson for the first Defendant

Dated: 15 October 2015

REASONS (Edited Version of Oral Decision)

1. This is a claim for adverse possession of a piece of land measuring 200 feet in length and 158 feet wide approximately, known as 3 Aqui Street, Cumuto. The first defendant is the owner of the land. The second defendant was her authorised agent in removing the claimant. The claim against the third defendant was withdrawn.

2. The claimant began renting a small house on the land from 1976. He eventually built a brick house on the land and he planted up the surrounding areas. He stopped paying rent shortly after the landlord died.

3. On 16 March 2012 the second defendant, acting on the authorisation of the first defendant, about 5.20 am began to break down the house, brick by brick.

4. Since then the claimant has had to find alternative accommodation and pay rent.

5. The first defendant says she is the owner of the land. She said she met with the claimant in 1995 and gave him permission to continue to occupy the land as the watchman and caretaker of the premises and gave him notice in September 2006 to vacate the premises. She says he is a licence holder whose license has ended.

6. The claimant is a 70 year old man. He said he moved into the premises. It was a one room structure. He made renovations over time. He fixed the outside walls, changed the roof, and installed doors and steel windows with glass. Since 1976 he began cultivating the surrounding land with fruits and market crops.

7. His landlord died in 1986 and the last time he paid rent was in 1987. He said up to 2006 no one made claims on the land, until the first defendant began to do so in 2006. He said he knew the defendant from when she was a little girl. He denied her contention that he was served a letter dated 18 May 1995 from the first defendant's lawyer and denied she gave him permission to occupy the land.

8. He said between 2006 and 2012 police officers from the Cumuto Police Station came to try to evict him for non-payment of rent.

9. He got an electricity connection in 2005. He denied he had told TTEC he was on State land. Even if he had told an untruth in relation to TTEC to get electricity (that it was State lands), this in my view did not affect his claim against the first defendant.

10. The first defendant said she was aware the claimant was a tenant of her step grandfather, Donald Salandy. She said she caused her attorney to prepare and send a letter in 1995 to have his tenancy regularised.

11. In cross examination, the first defendant stated she had brought proceedings in the Magistrates' Court to have the claimant evicted.

12. She accepted, however, that she had given evidence in the Magistrates' Court that the claimant was a tenant. In this court she said he was never a tenant of hers. The question therefore arises why she would write to him to regularise the tenancy.

13. She accepted she hired the second defendant.

14. It is clear the claimant was in possession of the land. This is not in dispute. The issue is whether he was there with the permission of the first defendant.

15. I find on the evidence that he was not. I accepted his version that his landlord was Donald Salandy. When he died, the claimant stopped paying rent. I preferred the evidence of the claimant to the defendant. His evidence was clear and categorical. I found the first defendant to be materially inconsistent in her evidence. I reject her evidence that he was there with her permission. Her statements in the Magistrates' Court are materially inconsistent with her case here.

16. Even if the first defendant's letter was sent in 1995 the only evidence is that the claimant ignored it. This shows an intention to continue in possession adverse to the first defendant's interest.

17. I find therefore that the claimant was in possession of the premises which was undisturbed and adverse to the interest of the first defendant for over 16 years.

18. The next question is the trespass. It is clear that he was in possession. It is also clear his house was broken down.

19. A valuation for the house was given in evidence stating the value to be \$113,000.00. A claimant must prove loss. The report did not set out how this figure was arrived at. The photographs do however show the destruction of the home. The claimant is entitled to nominal damages. This must somehow reflect what was lost, even if assessed conservatively. The claimant would have lost his belongings and no doubt was traumatised by these events. Considering all of the evidence, I would award the sum of \$35,000.00 as nominal damages.

20. He has also had to pay rent since the removal. He has produced receipts to show he has been paying \$1,000.00 per month. I will award the further sum of \$1,000.00 from April 2012 to June 2014.

21. I also accepted that he cultivated the surrounding land and used the produce from the land to supplement his upkeep.

22. The order is as follows. It is declared that the first defendant's title to the land described in the claim form and statement of case has been extinguished. The claimant is entitled to possession of the subject lands. An injunction is to issue to restrain the first defendant, her servants or agents from interfering with the occupation of the claimant of the subject land. The first defendant must pay damages for trespass and for the claimant's payment of rent in the total sum of \$67,000.00.

23. The defendant must pay the claimant prescribed costs in the sum of \$14,000.00. The defendant must also pay costs of the injunction proceedings in the sum of \$14,000.00. The counterclaim is dismissed with no order as to costs. There is a stay of execution of 28 days. The claims against the second and third defendants are dismissed with no order as to costs.

Ronnie Boodoosingh

Judge