

**THE REPUBLIC OF TRINIDAD AND TOBAGO  
IN THE HIGH COURT OF JUSTICE**

**CV 2013-04948**

**BETWEEN**

**CLARENCE ASHBY**

**Claimant**

**AND**

**STEPHEN MOSES**

**(As Legal Personal Representative of Ruth Burke (deceased))**

**First Defendant**

**EUTRICE BURKE**

**Second Defendant**

**VISHNU SOOKNANAN**

**Third Defendant**

Before the Honourable Mr. Justice Boodoosingh

**Appearances:**

Mr Martin George and Ms Keisha Peters for the Claimant

Mr Ronnie Bissessar and Mr Varun Gopaul-Gosine for the Defendants

**Dated: 8 January 2015**

## ORAL JUDGMENT (Edited Transcript)

- (1) This claim concerns a lot of land (Lot 23) at Chase Village, Chaguanas. Clarence Ashby had been in occupation of the land for many years. His house on the land and that of his son had been demolished in April 2007.
  
- (2) There were previous proceedings - CV 2007-01224 - involving this Claimant, his sons and the first and second Defendants. That was a claim for trespass. I gave judgment in that matter. The Defendants were ordered to pay compensation for trespass to the Claimant's property. I found there was trespass. The Claimants in that matter had not sought orders or declarations that they were either in adverse possession of the lands nor that they were statutory tenants within the meaning of the **Land Tenants (Security of Tenure) Act, Chap. 59:54**.
  
- (3) The first and second Defendants sold the land in question to the third Defendant here. The third Defendant attempted to take possession of the Lot 23.
  
- (4) This has given rise to this claim. The essential issues for determination are:
  - (1) Whether the Claimant was a statutory tenant of Lot 23;
  - (2) Whether he renewed the tenancy in accordance with the Act;
  - (3) Alternatively, whether the Claimant is in adverse possession of Lot 23; and
  - (4) What is the entitlement, if any, of the third Defendant.

- (5) In the previous proceedings there was no specific finding of whether the Claimant was a statutory tenant or an adverse possessor. The claim was one of trespass. I had determined that the claim of trespass had been made out given that the Claimant was not himself a trespasser at the time – he would have been on the evidence either a statutory tenant or an adverse possessor.
- (6) The first issue therefore to be decided here is whether the Claimant was a statutory tenant.
- (7) The evidence of the Claimant is clear. He had bought a house on the lot in 1966. He used to pay rent to Stanley Burke. He died in about 1975. The claimant stopped paying rent. The Land Tenants Act came into effect in 1981.
- (8) On the date of its commencement, the Claimant had to have been a statutory tenant. Sufficient time had not passed for him to be an adverse possessor as of that date. His tenancy was converted by operation of law into a statutory tenancy under the Act. It did not matter that the Claimant had been in arrears of rent. This continued thereafter.
- (9) This evidence that the Claimant was a tenant of Burke is essentially unchallenged. The Defendants can give no proper admissible contradictory evidence.
- (10) I find on a balance of probabilities that the Claimant was a statutory tenant of Stanley Burke, and after his death, of his estate.

- (11) Statutory tenancies were to come to an end on 31 May, 2011 unless they were renewed in accordance with the Act. Section 4(3), 4(4) and 14(1) of the Act prescribe the process for renewal. One way is to serve notice of renewal by registered post at the last known address of the landlord.
- (12) At paragraph 23 of his witness statement the Claimant says that on 27 May, 2011 he sent a notice by registered post seeking renewal of the statutory tenancy. Such renewal is not to be unreasonably refused. He has produced a receipt of TT Post dated 27 May, 2011 – a registered mail receipt – showing communication was sent to Stephen Moses, Carlsenfield Road, No. 2, Old Southern Main Road, Chase Village. He says the renewal notice form was enclosed. He said he got it from the government office, “the land tenant people” and he filled it out. He says it was a renewal on the prescribed form. He did not keep a copy of it. He said he learnt about the renewal from notice in the newspaper.
- (13) The Defendants dispute the notice was sent. The first and second Defendants say it was never received. The Claimant says he never got it back. It was not returned.
- (14) I find as a fact that the Claimant sent the renewal notice. First, the copy of the TT Post receipt shows that a registered document was sent. Second, the timing was a few days before the time for renewal was due. Third, it was sent to the first Defendant. Fourth, the Claimant was in court with him in the previous proceedings. Fifth, the Claimant would reasonably have believed him to be the landlord. Sixth, in any event, the address is one of the second Defendant to whom the property had been transferred. Seventh, the Claimant would have had a strong interest to send such a notice – he was obviously pursuing a claim that

he was illegally trespassed upon and that he had some entitlement to possession of Lot 23. He would therefore have had every reason to want to renew the tenancy.

(15) It also follows that even though the Claimant produced no copy of what he sent, his evidence is clear that it was a renewal notice on a prescribed form which he had obtained from the government office. It is plausible that this would have been a renewal form.

(16) The next issue is whether there was proper service within the meaning of section 4 and 14 of the Act before the expiration of the tenancy.

(17) Section 14 provides that the letter would be deemed to be served at the time when the registered letter would be delivered in the ordinary course of post.

(18) Before dealing with this, an issue was taken about the address used. In cross-examination of the first and second Defendants it was shown that he has used various descriptions of his address. He lives in Canada. It is clear however that he maintained an address at his mother's residence.

(19) The address, in my view, is sufficiently clear given that the first and second Defendants have described their address in similar terms. It must also satisfy the requirement of being the last known address of the landlord as known by the Claimant.

(20) In my view the address to which the letter was sent is more than adequate for the purpose of the Act.

(21) The Act simply specifies that service is allowed at the time it would be delivered in the course of ordinary post. No specific evidence has been led as to when exactly it was received. No evidence has also been led as to what is the usual time for delivery of registered letters. The question is, how is the Court to construe this for the purposes of the Act?

(22) The real issue is whether the court forms the view that sufficient time had passed for the registered letter to be delivered. It was posted on 27 May 2011. There were four (4) clear days until the 31 May. I am of the view that in the absence of evidence to the contrary, the court is entitled to conclude that the letter would have been delivered in the course of ordinary post within four days.

(23) The fact that the Act provides that it shall be deemed to be served at the time when it would be delivered in the ordinary course of post simply means that a reasonable time had to be given for service. It would be wholly unjust and burdensome for a Claimant to have to prove the specific day when the letter was received.

(24) Such evidence would be outside of his knowledge. It would also be burdensome to expect records of the postal service to have to be produced. Given that this was a thirty year lease, that the renewal is for a further thirty years, and considering the overall object and purpose of the Act, it is reasonable to conclude that the critical issue is whether the letter was in fact posted within the time for so doing, giving a reasonable time for service.

(25) I have considered the authorities on service submitted by the Defendant attorneys. These cases underscore the need for service of a written notice of renewal by the prescribed time on the landlord. In all of the circumstances, the Claimant has satisfied these requirements.

(26) In **CV 2011-00647 Maharaj –v- Joseph and Another**, there was no evidence of the renewal of the statutory lease. In this case there is evidence that a notice of renewal was posted to the first Defendant at the second Defendant's residence and his residence on 27 May, 2011.

(27) An issue was raised as to whether at the material time the first Defendant was the landlord. The evidence is that the land was transferred to the first Defendant's mother, the second Defendant.

(28) There is no evidence that this was ever communicated to the Claimant even though court proceedings were underway. The Claimant last knew Stanley Burke as the landlord. It was reasonable, given the litigation then before the Court, that the Claimant would in fact have served the first Defendant. In any event the address would also describe the second Defendant's address. They were clearly in this transaction together. In all the circumstances, it is more than reasonable to conclude, that the landlord (as known to the Claimant) was in fact served in accordance with the Act.

(29) Finally, the evidence is that the land has now been sold to the third Defendant. He is represented by the Attorney for the first and second Defendants. He must know and have been advised about the litigation. His purchase must therefore be subject to the existing statutory tenancy. What has

simply now happened is that the landlord has changed. The Claimant remains a statutory tenant now of the new landlord, the third Defendant.

(30) In the absence of fraud pleaded and proved there is no basis for impugning the transaction between the second Defendant and third Defendant in this matter.

(31) The third Defendant's evidence is that he purchased the land on 27 June, 2011. At that time he was not aware that the statutory tenancy had been renewed. As far as he knew the statutory tenancy would have been determined on 1 June, 2011. He had also not seen the Claimant on the land. His first information about the Claimant's occupation of the land was the erection of two gates on 28 and 30 October, 2013. He says the Claimant's gate is available for collection.

(32) I accepted his evidence that he was told that the tenancy had ended and that he went along with the purchase on that basis. However, that does not change the fact that it had been renewed by the service of the renewal notice as I have found.

(33) Accordingly I order as follows:

(1) The Claimant is declared a statutory tenant in respect of Lot 23 more particularly described in paragraph 1 of the Fixed Date Claim Form, filed 3 December, 2013.

(2) The claim against the first and second Defendants is dismissed, they not being the owners at this time.



- (3) The statutory tenancy was validly renewed on or before 31 May, 2011.
- (4) The Claimant is entitled to possession and occupation of the said Lot 23 as a statutory tenant.
- (5) An injunction is granted against the third Defendant, his servants or agents from obstructing or denying the Claimant, his servants or agents the use and enjoyment of Lot 23.
- (6) After discussion with the attorneys for the parties each party to bear his/her own costs.
- (7) There is a stay of execution of twenty eight (28) days.

**Ronnie Boodoosingh**  
**Judge**