

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014 – 01062

Between

Belford Williams

Claimant

And

Kuo Aguilera

Kim Boxie

Margaret Aguilera

Defendants

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Prakash Maharaj for the Claimant

Mr Roger Ramoutar for the Defendant

Date: 21 June 2016

Judgment

1. This claim concerns a property consisting of a house and land located at 31 Quest Crescent, Harmony Hall, Gasparillo.
2. Belford Williams had a common law relationship with Margaret Aguilera. A deed of lease for the property was made in June 1996 for the land. A Deed of Mortgage was secured for the land in August 1997. The lease and mortgage were put in both their names.
3. Margaret left Trinidad in February 1998 and has never come back. The claimant says he built the house on it and paid for the land.
4. Margaret's son from a previous relationship is Kuo. Kuo and Kim were in a common law relationship, but in August 2015 Kuo got married to Kim. Kuo and Kim lived in the house, left at one stage, and were later invited back. The claim is for possession against Kuo and Kim.
5. Margaret and the claimant's relationship ended. There is some dispute about when this occurred. However, the claimant married one Heidi Thomas in June 2010. Before this, the claimant brought another woman, Ria Carter, and her child to reside with him on the property around 2000.
6. Margaret formed another relationship with a man in the USA shortly after she left. According to the claimant, within 3 months after she had left, she had called the claimant and told him she found someone else. She also had a child with this man in the USA by the next year.

7. The claimant says he alone paid for the land even though it was put in both their names and he alone built the house. Kuo in his evidence disputes this.
8. The claim against Margaret is that her title in the land has been extinguished and for a declaration that Belford is the sole owner of the property.
9. Margaret has counterclaimed for the partition of the property so that her share of the property can be realised. Kuo and Kim counterclaimed saying they had an equitable interest in the property.
10. The witnesses who were called to give evidence were the claimant, and for the defendant, Kuo Aguilera and Camloutie Boxill, the mother of Kim. Witness statements were filed for Kim, Margaret and one Rodell Solomon, a friend of Kuo, but they did not give evidence. Margaret did not attend the trial and no application was made before for her to give evidence before the trial by video conference. The other witnesses did not attend and Counsel for the defendant did without them.
11. The critical issues to be determined are whether Margaret's title has been extinguished by the claimant's adverse possession against her; whether Kuo and Kim have acquired an equitable interest in the property; whether a licence was given for Kim and Kuo to reside on the property and by whom, whether Margaret or the claimant.

Evidence

12. The claimant gave evidence that he is a retired foreman from the San Fernando City Corporation. He lived in a common law relationship with Margaret until February 1998 when she went away. He was married to one Pamela Thomas and they had a daughter, Sherrion Williams. They were separated in 1984, but got officially divorced only in 2008. Around 1985 he started a relationship with Margaret. They lived in rented premises. Margaret was never employed. He negotiated for the lease for the land and he alone paid the premium for the land with bonds he got from the Corporation. He took a loan to build the house. He paid the loan entirely. Before 1998, Margaret told him she wanted to go to America. He put her name on the lease and the mortgage which was to assist her to get her US visa. He alone built the house. When Margaret left, Kuo was living with relatives in Palmyra. Belford was not responsible for him. Margaret called him shortly after she left saying she had formed a new relationship. In 1999 he learnt she had gotten pregnant. He too moved on and got involved with Ria Carter who came to live with him in 2000.

13. He said since Margaret left he has had sole possession of the property. It has been for his sole benefit. Margaret has had no input in the property since then. He did not know of her whereabouts until he had to serve this claim on her.

14. He said Kuo came to him in 1999 and begged him to stay with him because Kim had gotten pregnant and they had nowhere to live. Because of their position he allowed them to come and stay in his house. In 2003-2004 he put them out because of their conduct.

15. By 2009 he and Kuo and Kim were back on speaking terms and Kuo came back and begged him to stay with him for a short while as he now had 2 children and they were renting accommodation which they could no longer afford.

16. By this time the claimant's granddaughter was living with him. She unfortunately got pregnant at age 14. He started having more problems with Kuo and Kim because of their behaviour, accusations they made about his granddaughter, and their treatment of her. They were also becoming abusive to him.

17. He terminated their licence to stay on the property in 2013. In 2011 he had wrongly served them a notice to quit. They were not tenants. They refused to leave.

18. They became more aggressive to him. He left the property in 2014 to stay with his brother who had gotten cancer and needed his care.

19. He never maintained a household with Kuo and Kim and they did not contribute to the property.

20. A letter by Margaret purportedly giving Kuo and Kim permission to live in the property in 2011, he says, he does not know about. He learnt of that letter after the claim was filed.

21. He said his present wife left the property because of the behaviour of Kuo and Kim. He has also brought his own daughter Sherrion to live in the property. The only thing Kuo

and Kim have done is to pay the electricity bill since he left the property. Margaret has neither occupied nor has she had any control of the property since she left Trinidad.

22. Kuo was the main witness for the defendants. He said he has always acknowledged the claimant as his father. His mother rented where they lived. She contributed to the purchase price for the land. The claimant and Margaret told him this was his home. They took out the mortgage jointly and his mother contributed to this. Even after his mother left she maintained a relationship with the claimant. His mother would send barrels of clothes and foodstuff for them including the claimant. They voluntarily moved out of the house in 2002. Around 2006 to 2007 the claimant asked them to come back to live there even though he was renting comfortably elsewhere.

23. He said Kim and he would pay bills for the home. He helped with the construction. His mother sent money by Western Union to the claimant. The claimant threatened them to leave. He and his wife and mother contributed to the property.

24. Camloutie's evidence was that she had good relations with the claimant and Margaret. They both allowed her daughter and her son in law Kuo to live on the property. The claimant assured her that Kuo and Kim could live on the property.

25. These witnesses were cross-examined. The claimant said the relationship with Margaret ended about 2 to 3 months after she left when she called and said she had met someone else. She had originally had plans to come back home to Trinidad because her visa was for only 3 months. The house was for both of them but she left to go away and then ended the relationship. He said after she left all they have ever had was one or

two conversations. She left a couch. He never accepted anything she sent which was sent to Kuo in a barrel. She never sent any letter to him.

26. Camloutie said she did not read her witness statement in detail. She told her daughter what to write and her daughter wrote it. Basically she signed what her daughter wrote. She noted her daughter did not have money to contribute to the house when she went to live there. This witness did not impress me at all. I found, from her cross-examination, that her approach was less than serious, almost casual.

27. Kuo was cross-examined. He said the house was built in 1995/96. It was built while he was going to school. He had savings. He bought a load of gravel. He was working in 1996, even though he had just left school, at the rate of pay of \$1,700.00 per week. He said his first child was born in "2001/02". He accepted his mother had a new relationship and child but he was unable to say hold old his half sister was. He had made a report of stealing against the claimant's granddaughter. He said he did renovations to the house.

28. Now I note that when the defence was filed, the first and second claimants had not made a counterclaim for an equitable interest.

29. The claim was filed against the first and second defendants only in March 2014. A defence and counterclaim saying they were entitled to occupy the property was by reason of a licence given to them by Margaret was filed in May 2014. No equitable interest was claimed.

30. On 23 May 2014, at a case management conference, the claimant's attorney indicated that having regard to the defence filed by Kuo and Kim that they were required to join Margaret. An amended claim was filed in July 2014. Following this an amended defence was filed in November 2014. This case history is important.

31. The claim against Margaret only began in July 2014. And Margaret only made a counterclaim in November 2014.

32. If the claimant's evidence is accepted that the relationship with Margaret ended when she left in February 1998 or at latest three months after, by May 1998, and he assumed complete control over the house from then, then the time for the purposes of adverse possession would have run past 16 years by the time the amended claim was filed bringing in Margaret. And Margaret had asserted her counterclaim 16 years after the claimant had begun his adverse possession: **Ramnarace v Lutchman, PC Appeal No. 8 of 2000**, delivered 21 May 2001. As Lord Millett noted at paragraph 20:

“Service of the notices to quit by the respondent thereafter without more was insufficient to stop time running in favour of the appellant, and accordingly the respondent's title was extinguished after a further 16 years in July 1991, that is to say **before the respondent brought his action (by counterclaim) to recover the land.**” *(Emphasis supplied)*

33. The first thing to be noted is that there is no evidence from Margaret. She filed a witness statement but did not make herself available to adopt it at the trial and to be cross-examined on it. Given the sharp contest on the facts, I could not have regard to her witness statement and I paid no attention to it. It was only Kuo who could contradict the claimant.

34. I found Kuo to be a most unconvincing witness. First, he provided no support by way of receipts or bills as to his contribution to the property. Second, he was vague on dates and details. Third, his assertion that the claimant and Margaret continued a relationship is incredible especially since Margaret never returned, she formed a new relationship shortly after, she bore a child out of that relationship, and the claimant also formed a new relationship. Fourth, Kuo was suspiciously vague about when his step sister was born. The claimant says he learnt Margaret was pregnant by 1999. Fifth, he made assertions about his mother's contributions, but there is no supporting evidence of this. Sixth, it would be strange that she would form a new relationship, have a child out of this relationship and still continue to contribute to the house that she has never returned to. This is especially so in the context that the claimant also moved on, brought in a new person to move in to the house, and later married another person who came to live in the house.

35. Kuo also accepted that he was not living in the property when his mother left. He came there afterwards. This makes implausible any suggestion that the house was purchased to give him any interest.

36. The claimant's evidence to me seemed clear, believable and plausible. He said how he paid for the land and house; he built it; he occupied it; he maintained it. He brought in his daughter from his first marriage to live there with her daughter. He brought in Ria Carter and her daughter. He also got married to Heidi Thomas who came to live there.

37. I accepted his evidence also about how Kuo and Kim came to live on the property which was by his invitation. It is plausible that Kim, having gotten pregnant, would have needed a place to stay. Kuo was not in a financial position to do better. I also accepted

his evidence that they abused his generosity and he put them out. I also accepted that after time passed he invited them back, but he again had cause to ask them to leave.

38. I preferred the claimant's demeanour while he gave evidence to that of Kuo. Even the drafting of Kuo's witness statement raised suspicions. It read at times like a pleading where he was describing himself and Kim as "the first and second defendants". The style of this witness statement read like a draft pleading which he signed on too. His contributions to the property mentioned in his witness statement were vague.

Findings

39. The claimant bought the land, paid for it and built the house. I find he did so solely. I accept his evidence that his relationship with Margaret ended when she left for the United States or at latest three months after when she told him she was not returning.

40. The claimant occupied the property and dealt with it as his own. He was in possession of it and intended to possess it and deal with it as his own.

41. Margaret exercised no control over the property. She herself got into another relationship within 3 months of going to the United States. She had a child by 2000 for someone there. The claimant also moved on. He brought in someone else to live with him in 1999. She subsequently got married to a different person later on. Only the claimant exercised control over who was allowed onto the property.

42. It is clear that from the time Margaret left, the claimant exercised complete control over the property.

43. Sufficient time had passed between May 1998 and November 2014 for any legal entitlement to the property by Margaret to be extinguished.

44. Anyone who came there was on the claimant's invitation. I do not accept that Kuo was there on the invitation of or to represent Margaret's interest. It is clear that the claimant asked him to leave, which he did. There was no intervention by Margaret because there could be none. She had ceased to have anything to do with the claimant and the property.

45. I find that Kuo has not proved that he made any contribution to the property that gives him any equity in it. Any contribution he made was on the basis of his own convenience in the enjoyment of a property that he had without paying any rent for over the years.

46. On a balance of probabilities I accepted the case for the claimant.

47. The purported letter of Margaret bears some comment. It is a letter "TO WHOM IT MAY CONCERN" saying she gave and is giving my son Kuo... and his family... permission to stay at the house located at 31 Quest Crescent... without hesitation". It noted she could be reached at a phone number. It was stamped by Bienvenido E. Rosario, Notary Public, State of New York.

48. This letter was a hearsay document as Margaret, the purported maker, gave no evidence. Even by accepting it in evidence I could give little or no weight to it in the absence of any explanation about how it came about.

49. Further, what is of critical importance is not her intention to not part with possession, but rather the intention of the claimant as an adverse possessor to possess the property. Second, this letter, even if accepted, does not to my mind exercise sufficient control over the property in her own right. She had long since left the property and it is very doubtful that she could continue to exercise any control over it after all the water that had flowed under the bridge between her and Belford.

50. In any event, I accepted the evidence of the claimant that he knew nothing of this letter until after the defence was filed. It is odd to me that it would be addressed in this way to state "I hope this is enough information to resolve this issue", and it is dated 23 August 2011 when the claimant had not served a notice to quit until 18 November 2011. The letter has the hallmark of being an after-the-fact fabrication to justify the continued occupation of the first and second defendants.

51. The case of **Myra Wills v Elma Roselina Wills [2003] UKPC 84** is relevant to this case. In that case it was determined that a co-owner could adversely possess against a co-owner. They were husband and wife. The wife had left Jamaica and gone to reside in the United States. It also showed that even where the wife came unto the property and stayed there for a period of time and left her possessions, a wedding ring in particular, that the circumstances still made out the husband's adverse possession against her given what had transpired. That case shows some significant parallels to this case and is directly applicable to the facts of this case.

Order

52. There is judgment for the claimant against the defendants. The first and second defendants are to deliver up vacant possession of the subject premises at No. 31 Quest Crescent, Harmony Hall, Gasparillo on or before 31 July 2016. An injunction is granted against the first and second defendants and their servants or agents from interfering with the claimant's quiet enjoyment of the premises.

53. As against the third defendant, it is declared that the claimant after 16 years in sole occupation of the said property to the exclusion of the third defendant became and is the absolute owner of it by virtue of sections 3, 14 and 22 of the **Real Property Limitation Act, Chap 56:03**.

54. It is also declared that the claimant is entitled to sole possession of the said dwelling house. An injunction is issued against the third defendant restraining the third defendant from dealing with, purporting to deal with, selling, transferring or assigning any interest in the property.

55. The counterclaims of all of the defendants are dismissed.

56. The defendants must pay the claimant his costs of the claim in the sum of \$14,000.00 and his costs of the counterclaim in the sum of \$14,000.00.

Ronnie Boodoosingh
Judge