

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2009-03002

HYACINTH SEATON

Claimant

AND

MAYOR, ALDERMEN COUNCILLORS & ELECTORS OF PT. FORTIN

First Defendant

RAY FERMIN

Second Defendant

BEFORE THE HONOURABLE JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Dinesh Rambally leads Mr. Shastri Parsad
Instructed by Shastri Parsad & Associates

For the Defendant: Mr. Ronnie Bissessar
Instructed by Mr. Varun Gopaul-Gosine

Date of Delivery: 16th March 2018

JUDGMENT

THE CLAIMANT

- [1] The Claimant by Amended Fixed Date Claim Form sought the following declarations:
- a) that she is a the lawful occupant of two rooms situate at #1 Techier Main Road, Point Fortin, (the said premises);
 - b) that the said premises is serviced by a toilet and bath obliquely opposite the rear of the said premises;
 - c) that she is the owner and occupier of the stationary food caravan standing in front of the said premises (the food caravan);
 - d) that the said premises and toilet and bath are structurally sound and fit for use and occupation by the Claimant.
- [2] The Claimant also sought injunctions restraining the Defendant from:
- a) demolishing/removing the said premises including the toilet and both and food caravan;
 - b) preventing the Claimant entering/remaining/occupying/enjoying the peaceful use and occupation of the said premises toilet and bath and food caravan.
- [3] It is the Claimant's case that her mother, Anita Horne, rented the said premises from one James Chang at a rent of \$35.00 a month. In March 1982, Ms. Horne registered the tenancy of the premises pursuant to the **Rent Restriction (Dwelling-Houses) Act No 45 of 1981 Cap 59:50**; she thereby became a statutory tenant. Her mother operated a parlour in front of the said premises which formed the residence of the said Anita Horne

and her children including the Claimant. In 1985 the Claimant built a small mobile parlour next to the said premises.

- [4] In June 1986 Anita Horne died; the Claimant asserted that she was at the time of Anita's death a member of her mother's household having lived there since 1965 and for a period not less than six months before her death. The Claimant averred that she became a tenant of the said premises by virtue of the definition of 'tenant' under **Section 2** of the **Rent Restriction (Dwelling-Houses) Act (RRDHA)**.
- [5] The said premises is annexed to a large concrete two storey building which stands on approximately two lots of land 'the said land', and is currently owned by the Second Defendant who became the owner by Deed of Conveyance dated 29th March 1993 and registered as No 5303 of 1993.
- [6] In 1994 the Second Defendant demolished another building on the said land used by the Claimant. She later used galvanize sheets to fence off a portion of land in which the said premises was situate. Her husband and son also occupy the said premises with her and they use a toilet and bath obliquely opposite to the said premises.
- [7] The Claimant pleaded that in 1993 the Second Defendant entered into an oral agreement with her for the rental of the said premises paying therefor the sum of \$600.00 a month. She paid \$300.00 in November 1993 which was later refunded by the Second Defendant.
- [8] It was averred that the Second Defendant made several attempts to eject the Claimant from the said premises over the years:
- a) Ejectment proceedings in the Point Fortin Magistrates Court which were withdrawn in 1995;

b) HCA No S1357 of 2000 – Summary proceedings for possession, however, these proceedings were struck out pursuant to Order 3 Rule 6 of the RSC.

[9] The Claimant asserted that the above attempts to remove her having failed, the Second Defendant unlawfully conspired to circumvent the provisions of the **Real Property Limitation Act** which prohibited the Second Defendant from making an entry for distress or recovery of the said premises, the limitation period having expired by:

a) Serving her with a Notice dated 6th November 2008 issued by the First Defendant which gave the Second Defendant 28 days' notice to demolish the main building;

b) Serving her with letter dated 9th July 2009 advising of the demolition of the said premises within 14 days.

[10] The Claimant also sought damages for conspiracy between the First and Second Defendant for wrongfully using the provision of the **Municipal Corporations Act** to issue the said notices in order to assist the Second Defendant to unlawfully recover possession of the said premises.

DEFENCE & COUNTERCLAIM OF THE SECOND DEFENDANT

[11] The Second Defendant pleaded that he purchased property on the 29th March 1993 from RBTT Bank who sold as mortgagee pursuant to its power of sale under the said mortgage, paying therefor the sum of \$200,000.00. He, in turn, obtained a mortgage from the Co-operation Development Bank in order to secure the sum of \$180,000.00 by way of mortgage dated 6th April 1993 and registered as No 5304 of 1993. He repaid said mortgage in

full in 2010 and his Deed of Discharge was registered as DE201000328723D001.

[12] Prior to the purchase of the said property in 1993, the Second Defendant, his wife and his parents lived in the main building from 1975 to 1985. His parents continued in occupation from 1985 until 2010 during which time the Second Defendant visited them regularly.

[13] The property comprises three buildings:

a) the main building on the eastern portion of the land;

b) a western annex built of concrete and wood about 20 feet by 20 feet enclosed with a fence, with its own private entrance to the north west of the said lands;

c) an eastern annex to the east of the main building also measuring 20 feet by 20 feet. The toilet and bathroom is situate on the eastern portion of the said lands where the main building stands.

[14] In order to access the said toilet and bathroom, the original tenant of the said premises, Anita Horne, the Claimant's mother, had to pass through a gate to get to it on the eastern portion of the lands.

[15] The Second Defendant pleaded that Anita Horne was a tenant of the said premises up to 1975 and lived there with her children including the Claimant. However, in 1985 all Ms. Horne's children, including the Claimant, left the said premises and Anita Horne was its sole occupant up until her death in 1986. Anita Horne employed one Netta to care for her from 1975 up until her death.

[16] It was averred that Anita operated a parlour from the front room of the western annex which was taken over by her son Steve until 1989 after which he locked the front room with a padlock.

[17] The Second Defendant pleaded further that after the death of Anita, the Claimant returned to said premises and began occupying the back room in 1986; later that year she began operating a food caravan on wheels on the North West portion of the lands. When the Second Defendant purchased the property in 1993 he met the Claimant in occupation of the back room and operating the said food caravan. The Second Defendant relied on the valuation report prepared by Lindon Scott and Associates in 1992 in support of this contention.

[18] He admitted that when he became owner her offered to rent to the Claimant the front and back room subject to the condition that:

- a) she would pay rent in the sum of \$600.00 a month for both rooms (\$300.00 a month for each room) on the last working day of each month;
- b) the Claimant would remove the food caravan from the said property;
- c) the Claimant would be permitted to operate a parlour out of the front room of the western annex;
- d) the Claimant's tenancy would be for a period of two years after which the buildings would be demolished and a single new structure built;
- e) upon the single structure being rebuilt the Claimant would be permitted to occupy part of the new structure as a tenant under a new tenancy arrangement.

- [19] The Claimant indicated that she would consider the offer, however, she did not respond. Thereafter the Second Defendant served her with a Notice to Quit dated 3rd June 1993.
- [20] The Claimant subsequently agreed to accept the Second Defendant's offer of a tenancy in November 1993 and paid him \$300.00 representing one half of the rent, with a promise to pay the balance at the end of the month. Upon receipt of the \$300.00 the Claimant removed the padlock front the front room and allowed the Claimant access to same.
- [21] In breach of the agreement the Claimant's husband began operating a barbershop in the front room instead of the parlour. The Claimant also continued to operate the parlour from the caravan on the road reserve.
- [22] Upon complaint to the Claimant of her breeches of the agreement aforesaid, she demanded a refund of her \$300.00 on the basis that the said agreement would be terminated and she would vacate the premises. The Second Defendant refunded the \$300.00 however, the Claimant refused to vacate or pay the rent of \$600.00 a month. The Claimant's husband began threatening the Second Defendant and broke into the other annex on the property.
- [23] The Second Defendant obtained advice and thereafter in 1994 demolished this annex. The Claimant then removed galvanize from this annex and fenced off the North West portion of the property.
- [24] The Second Defendant pleaded that the Claimant admitted¹ that she paid to the Second Defendant \$300.00 on account of rent and that she

¹ HCA s1357 of 2000

demanded a refund because she believed that she was a registered tenant² in earlier proceedings between the parties (the said proceedings).

- [25] In her defence and counterclaim filed on 8th September 2007 in the said proceedings the Claimant averred that she was the statutory tenant of the Second Defendant. The Second Defendant pleaded that this averment is inconsistent with her plea in the instant case that she is owner of the said land by virtue of the provisions of the **Real Property Limitation Act**. The effect of this plea is that she does not have the *animus possidendi* to maintain her claim for Adverse Possession.
- [26] The Second Defendant denied that the Claimant lived on the said premises continually from 1965 up to the time of her mother's death; she was therefore not a tenant pursuant to **Section 2** of the **Rent Restriction (Dwelling-Houses) Act Cap 59:55**.
- [27] In support of this plea, the Second Defendant related that the Claimant's son was born in 1989 and lived with his paternal grandmother in Egypt Village for approximately 10 years. The Claimant often left the said premises for extended periods during this time to stay with her son.
- [28] The toilet and bath were shared by all occupants of the property.
- [29] The Claimant admitted the legal title of the Second Defendant since the Magistrates Court proceedings in 1995 and in the 2000 HCA action.
- [30] He denied that he invited/requested the First Defendant to demolish the said premises.

² Para 34

[31] It was also denied that the Claimant's husband occupies any part of the subject property.

[32] He also averred that the Claimant is the owner of a two bedroom house in Hubertstown which she is currently renting.

[33] The Second Defendant counterclaimed for sole possession of the property and sought an Order that the Claimant is a trespasser and damages for such trespass.

[34] For the purposes of the judgment I adopt the issues as framed by the Defendant:

*A. Whether the Claimant is a protected tenant for the purposes of the **Rent Restriction (Dwelling House) Act** and therefore entitled to possession of the western annex;*

B. Assuming the Claimant is or is not a protected tenant, whether she is entitled to remain in possession of the western annex;

C. Whether the Claimant is an adverse possessor of the western annex

Issue (A)

Whether the Claimant is a protected tenant for the purposes of the Rent Restriction (Dwelling House) Act (RRDHA) and therefore entitled to possession of the western annex

[35] **Section 2(b)** of **RRDHA** defines a tenant as including a member of the tenant's household who resided with the tenant for a period of not less than six months immediately before the death of the tenant.

[36] The Claimant must demonstrate, on a balance of probabilities that she lived with Anita for a period of not less than six (6) months immediately before Anita's death on the 20th June 1986 if she is to be considered a protected tenant for the purposes of the **RRDHA**.

[37] The Claimant in her witness statement testified that in 1985 she completed high school and attended Trinzuela College; having failed to obtain employment, she decided to construct a small mobile parlour next to the western annex and sell fruit and preservatives.

[38] In respect of 1986, this is what the Claimant said in her witness statement³:

“At the time of Anita’s death (20th June 1986) my siblings Hubert, Norma, Steve and I were still living with Anita and we all looked after her well-being and not Netta whose only chores were to wash and iron.”

[39] However, in cross-examination the Claimant gave several contradictory answers on the issue of who lived with Anita at the time of her death. At first she stated that at the time of her mother's death her brothers Hubert and Steve were the only siblings who lived with her mother on the subject premises⁴. When confronted with the fact that she had stated in her witness statement that Norma also lived with her mother at the time of the latter's death, she responded by saying that Norma “used to come and go”⁵. I also took note of the fact that in previous proceedings between the parties the Claimant deposed in an affidavit⁶ that it was only her brother Hubert and herself occupying the subject premises at the time of her

³ Para 31 of the Claimant's witness stated filed on 28th May 2013

⁴ Notes of Evidence 6th May 2016, pg. 23 lines 42-48

⁵ Notes of Evidence 6th May 2016, pg. 24 line 26

⁶ Affidavit of the 24th August 2009 para 22 and pg. 26 lines 21-25

mother's death. When confronted with this evidence the Claimant gave no explanation for the discrepancy. Still later on in her cross-examination, the Claimant asserted that the siblings did not live with her mother on the subject premises but in another building situate on the said lands⁷. Ms. Seaton also stated that she lived in that free standing building with her siblings. When it was pointed out to her that she did not give this evidence in her witness statement, her response was that she answered questions as they were asked when she gave her witness statement⁸.

[40] It was always the Claimant's case that the subject premises, otherwise described as the 'western annex', comprised two rooms – a front room measuring 10 feet by 10 feet and a back room also measuring 10 feet by 10 feet⁹. Astonishingly, the Claimant asserted for the first time anywhere that the free standing building situate on the premises, previously occupied by herself and her siblings were also part of the subject premises thereby contradicting her pleadings and all her testimony given in previous proceedings between the parties as well as in this case. Ms. Seaton elaborated on this evidence by boldly claiming for the first time that in addition to the western annex, her mother's tenancy included the free standing building for which she paid \$35.00 a month in rent¹⁰.

[41] From the above it is clear that the Claimant is neither a reliable nor creditworthy witness. On the crucial issue of whether she occupied the subject premises six months prior to her mother's death, she gave varying answers. My assessment of her on the whole was that she was not believable. I could find no credible basis for the inconsistencies in her evidence nor did she proffer one. Additionally, I took into account the fact that the Claimant said that Hubert lived with his mother at the time of her

⁷ Notes of Evidence 6th May 2016, pg. 31 lines 38-43

⁸ Notes of Evidence 6th May 2016 pg. 38, lines 7-22

⁹ Notes of Evidence 6th May 2016 pg. 6 lines 40-49, pg. 7 lines 1-9

¹⁰ Notes of Evidence 6th May 2016 pg. 38 lines 25-31

death; however, the uncontradicted evidence before me is that Hubert was married to one Zorina and they lived in another building on the premises. He lived with his wife and children up to two weeks after the death of their mother Anita, when he left his wife and children and went to live elsewhere. Zorina was a witness in this case and gave that evidence which went unchallenged by the Claimant. I accepted Zorina's evidence that the Claimant did not live with Anita for six months before her death; that Anita had put out the Claimant in 1985 and the latter only returned to the subject premises two weeks before Anita's death.

[42] Irma James, who was an employee of the Second Defendant's father, and who came to the premises every day during the course of her employment from 1980 to 1996, also testified that the Claimant left the subject premises in 1985 and only returned about two weeks before her mother's death. She also stated that Hubert and his wife Zorina occupied a free standing building on the lands until Hubert left Zorina and their children. She also gave evidence that after Anita died the Claimant's brother Steve put the Claimant out of the subject premises and locked the door but another brother Errol allowed her to return. I found this witness to be credible and accepted her evidence notwithstanding the Claimant's assertion that her long standing relationship with the Defendant and his family rendered her evidence untrustworthy.

[43] Significantly, the Claimant's brother Hubert Horne attended court on the day that Zorina was being cross-examined. It is clear that he was available to give direct evidence on the issue as to whether he, the Claimant and/or any other siblings lived with Anita during the six months prior to her death. The fact that the Claimant failed to call him as a witness caused me to draw an adverse inference – that if called he would not support her testimony that she lived with her mother for six months prior to her death.

In the circumstances I hold that the Claimant was not a protected tenant pursuant to **Section 2** of **RRDHA**.

Issue (B)

Assuming the Claimant is or is not a protected tenant, whether she is entitled to remain in possession of the western annex

[44] I have already found that the Claimant is not a protected tenant pursuant to **Section 2** of **RRDHA**. In any event, the Claimant failed to register as a tenant in 1986 when she began occupying the subject premises neither did she pay rent to the then owner. The only period in respect of which the Claimant paid rent was November to December 1993. After November she again refused to pay rent to the owner, the Second Defendant and lived rent free in the subject premises until she brought these proceedings against him. The Second Defendant served a Notice to Quit on the Claimant and has maintained in these proceedings that the main building is in a state of disrepair and is required for the purpose of being repaired and/or rebuilt pursuant to **Section 14(1)(i)** of the **Rent Restriction Act** which was incorporated into the **RRDHA**¹¹.

[45] Further, if the Claimant intended to avail herself of the protection of the **RRDHA** then she was required to register her tenancy no later than 28th February 1982¹². Where a tenant fails to register pursuant to **Section 11(2)** it is expressly provided that that tenant cannot avail himself of the protection of the Act¹³. The Claimant having failed to register under the Act as aforesaid, she could not object to the increased rent for the subject premises demanded by the Second Defendant. Having failed to pay rent,

¹¹ Section 15(1) of the RRDHA

¹² Section 11 (2) of the RRDHA

¹³ Section 12(1) of the RRDHA; *Aldwyn Francis v W. Gobin* HCA 2440 of 1984

the Second Defendant was also entitled to recover the subject premises on that ground¹⁴.

[46] In the circumstances, I hold further that the Claimant is not entitled to possession of the subject premises as a tenant or in any other capacity.

Issue (C)

Whether the Claimant is an adverse possessor of the western annex

[47] Anita had occupied the western annex since 1965 and was a tenant of Fermin's predecessor James Chang Yu paying a monthly rent of \$35.00 for the western annex until her death on 20th June 1986.

[48] On the 20th June 1986, upon Anita's death, the Claimant moved into the subject premises but paid no rent until November 1993 when she paid rent to the Second Defendant in the sum of \$300.00 which said sum represented one half of the rent that the Second Defendant charged for the subject premises¹⁵. This sum was refunded to her by the Second Defendant in or about November 1993. In the agreed statement of facts filed on 16th April 2013, the Claimant agreed that pursuant to an oral agreement, she agreed to rent the subject premises for the sum of \$600.00 a month. However, she only paid \$300.00 of that sum pursuant to the said agreement¹⁶. Since that payment the Claimant has never paid any further rent to the Defendant.

[49] The Claimant also acknowledged that she was the Second Defendant's tenant since 2007 by her Defence filed in HCA S-1357 of 2000 where she

¹⁴ Section 15(1) of the RRDHA

¹⁵ Para 19 Statement of Case, para 17 of Claimant's Witness Statement filed 28th May 2013

¹⁶ Paras 5-6 of the Agreed Statement of Facts filed on the 16th April 2013

pleaded *inter alia*¹⁷, that she was a tenant by reason of the payment of rent in 1993.

[50] I have already held that the Claimant was not a protected tenant pursuant to **Section 2** of **RRDHA**. The present proceedings were filed by the Claimant on the 2nd September 2009, some 15 years and 10 months after the last payment of rent. In order for the Claimant to succeed in her claim for Adverse Possession of the subject premises, she would have to establish that she was in exclusive occupation of the said premises for an uninterrupted period of 16 years without the permission of the owner and in the absence of a tenancy.

[51] In my view, for the reasons stated above, the Claimant does not satisfy the requirements of either **Section 3** of the **Real Property Limitation Act**¹⁸ or **Section 22**¹⁹ of the said Act, in that these proceedings were brought before 16 years had elapsed since the last occasion that she paid rent thereby acknowledging the Second Defendant as her landlord. Having expressly acknowledged the title of the owner by the payment of rent in November 1993, time started to run afresh against the owner after November 1993²⁰.

¹⁷ Para 12, 21 of Defence and Counterclaim filed on behalf of the Claimant in HCA S-1357 of 2000

¹⁸ **Real Property Limitation Act Chap 56:03 (3)** *No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.*

¹⁹ **Real Property Limitation Act Chap 56:03(22)** *At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.*

²⁰ **Sanders v Sanders** 1881 19 ChD 373

[52] I therefore hold that the Claimant has not extinguished the title of the owner, the Second Defendant, by being in Adverse Possession of the subject premises for 16 years in accordance with **Section 3** of the **RPLA**.

[53] The Claimant, in her submissions, contended that the Defendant was in breach of **Civil Proceedings Rules 10.5** in that he failed to set out his case. Having examined each of the matters complained, of I do not accept that the Second Defendant's plea in each case amounts to an admission of those paragraphs of the Statement of Case. The Defence, viewed as a whole, answers each plea raised by the Claimant in support of her case. The style and the construction of the Defence and Counterclaim is a matter for Counsel but in my view there was no admission of the Claimant's case which ran counter to that of the Second Defendant's, neither was there a failure on the part of the Second Defendant to properly set out his case. With respect to the defect in the Second Defendant's Certificate of Truth, I do not consider that to be fatal to his case, the Second Defendant having given a witness statement and testified on oath before this Court.

CONCLUSION

[54] In the circumstances I make the following Orders:

- i. The Claimant's case is dismissed;
- ii. Judgment for the Second Defendant on his counterclaim filed on the 17th December 2012;
- iii. The Second Defendant is hereby granted possession of the subject premises (the western annex, a wood and concrete structure comprising two rooms);
- iv. The Claimant to remove the food caravan from the subject premises forthwith;
- v. Damages for trespass in the sum of \$15,000.00;

- vi. Claimant to pay the Second Defendant's costs to be assessed by a Registrar in default of agreement.
- vii. Stay of execution 28 days

Joan Charles

Judge