

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-04982

BETWEEN

STEPHEN COLLINS

Claimant

AND

MOLLY DHANASAR

First Defendant

SIMON DHANASAR

Second Defendant

DAVID DHANASAR

Third Defendant

BEFORE THE HONOURABLE JUSTICE JOAN CHARLES

Appearances

For the Claimant: Mr. H. Bhola

For the Defendants: Mr. A. Mohammed

Date of Delivery: 24th March 2016

JUDGMENT

THE CLAIM

- [1] This is a claim for possession of a house and a parcel of land situate at 89 Siparia Erin Road, Debe (the subject premises). The Claimant, who is the step brother of the First Defendant pleaded that he and his parents before him were occupants of the said land for over 100 years. His mother, Doris Goorahsingh became a tenant of the subject land when one Joyce Legal, the previous tenant, transferred the tenancy to her. The Claimant pleaded further that his father built a house on the said land measuring 20 feet by 20 feet. He, in turn, executed works on the said house which enlarged its measurement to 20 feet by 30 feet. The house having fallen into disrepair, the Claimant now seeks to renovate same.
- [2] The Claimant's parents, Doris Goorahsingh, and Moto Collins both died in 1985 on the lands. He pleaded that "in the early 1980's¹" the landlord Sanjeevan Mathura indicated that he wanted to sell the land and stopped taking rent from the Claimant's parents.
- [3] The Claimant averred that after the death of his parents, he remained in exclusive occupation and undisturbed possession of the premises from 1985 to 2011². In the year 2000 he migrated to the United States and put into possession of the said premises his sister in law, one Vigantie Sonny. One year later the First Named Defendant chased Vigantie out of the said premises and began using it as a warehouse for storing goods and toys.

¹ Paragraph 7 of Statement of Case

² Paragraph 11 of Statement of Case

- [4] The Claimant returned to Trinidad in 2011 to permanently reside on the subject premises. On 16th November 2011, the Second Named Defendant, Simon Dhanasar, informed the Claimant who was living on the premises that he had to leave since he, Simon, was the owner by virtue of a Deed. The Claimant ignored him and began preparatory work for his renovation of the premises. On the said day, all three Defendants entered the premises and damaged the batter board and steel work which the Claimant had erected.
- [5] On the 21st November 2011, the Claimant erected a fence on the southern boundary of the premises which was broken down the same day by Michael and David Dhanasar. On the 25th November 2011, while the Claimant and his son Stephen were on the premises, the Defendants and Michael and Jimmy Dhanasar began nailing up the doors of the house and demanded that the Claimant and his son leave forthwith. They also threatened them saying that they could enlist the assistance of the Debe Police to support their actions. The Claimant reported the Defendants and their relatives to the Police by letter dated 30th November 2011.
- [6] The Claimant returned to the United States briefly on 9th December 2011. His son was unable to stay on the premises during this brief absence due to harassment by the Defendants. On the 17th December 2011 the Defendants erected a galvanize fence along the southern boundary of the said premises.
- [7] The Claimant sought a declaration that he had acquired the subject property by Adverse Possession of same for over 100 years by himself and

his predecessors in title. He also sought Injunctive Relief against the Defendants, restraining them from entering, remaining and/ or harassing him on the subject premises or elsewhere. The Claimant sought *mesne* profits for loss and occupation of the premises from 1st January 2006 to 31st December 2011 at the rate of \$1,000.00 a month totalling \$72,000.00, as well as the sum of \$7,110.00 as Special Damages for loss of his building material and damages for trespass and nuisance.

THE DEFENCE

[8] The Defendants pleaded that they were the legal owners and entitled to possession of the subject land by virtue of Memorandum of Transfer dated 5th May 2010 and registered in Volume 5286 Folio 165.

[9] They averred that the First Defendant was born on the subject premises and lived there all her life. At the time of her birth, her mother Doris Goorahsingh rented the premises from one Sanjeevan Ramkissoon also called Sanjeevan Ramkissoon Mathura. In 1981 Doris Goorahsingh transferred the tenancy to the First Defendant verbally in the presence of the landlord. Immediately thereafter the First Defendant began paying rent to Mr. Mathura aforesaid. The Defendants averred further that the First Defendant allowed the Claimant who is her brother, to live on the subject property since he had nowhere else to go. From Doris Goorahsingh's death in 1989, the Claimant continued living on the subject premises with the consent of the First Defendant. He paid no rent for his use and occupation of the house which he shared with the First Defendant.

- [10] It was pleaded by the Defendants that the Claimant migrated to the United States of America in 1999 and lived there until 2011 when he returned. The First Defendant and her sons David and Simon began using the house on the property to store goods which they sold in their business.
- [11] On the 5th May 2010 Mr. Sanjeevan Ramkissoon Mathura sold the Defendants the premises by Memorandum of Transfer No 26 registered in Certificate of Title Volume 5286 Folio 165.
- [12] When the Claimant returned to Trinidad in 2011 he broke down a fence that the Defendants had erected around the subject premises and attempted to move into the house. The Defendants alleged that the Claimant damaged their goods stored in the house while attempting to occupy it. They claimed that he also damaged the shed attached to the house, the garden, crops and trees. They also claimed damage to the house.
- [13] The Defendants alleged that the Claimant was asked to leave the house but he refused to do so. They stated that he sometimes left the front door open, exposing their goods to thieves and stray animals. They also claimed that the Claimant used their construction material to put up batter boards. They denied the Claimant's case, in particular:
- a) that he built or assisted in building the house on the subject premises,
 - b) that he was ever in exclusive occupation of the subject lands or ever enjoyed exclusive possession thereof,

- c) that he and his parents were ever in sole occupation of the subject premises,
- d) that he had left his sister in law Vigantie Sonny in the house when he migrated from Trinidad in 1999,
- e) that he migrated in the year 2000.

THE EVIDENCE

The Claimant

[14] The evidence in his Witness Statement mirrored the facts pleaded in his statement of case so I will not repeat it here.

[15] In answer to Counsel, the Claimant first asserted as he did in his Statement of Case that he migrated to the United States of America in 2000. When confronted with his Witness Statement in which he had testified that he left Trinidad in 1999, he then stated that he left around “2000 – 1999 to 2000”.

[16] During cross-examination the Claimant stated for the first time that he was present when the landlord Sanjeevan Mathura told his mother that he would no longer accept rent from her because he wanted to sell the subject premises to her. He insisted that he had said so in his Witness Statement even though this evidence was not included therein. Significantly, he did not give the year when this very important event took place.

[17] At first the Claimant testified that his mother died on the 10th April 1985. When Counsel for the Defendant suggested to him that she in fact died in 1989, he replied that it was “somewhere around there” and later on admitted that he was not sure in what year his mother died. He revealed that he did not know that his mother had transferred the tenancy of the subject premises to the First Defendant in 1981, and that he had seen no documents in support of this alleged transfer.

[18] The Claimant further testified for the first time that after the First Defendant had chased his sister in law Vigantie out of the subject premises in 2001, his wife occupied the house thereon until she died. When confronted with the fact that he had not said this in his Witness Statement, the Claimant remained silent. It was his testimony also for the first time that Vigantie paid rent to his mother in law for her use and occupation of the subject premises. He explained that this arrangement was made by his wife and mother in law with Vigantie; as such, he could not say what was the amount of the rent agreed among them. He insisted that this new information formed part of his pleadings and was included in his Witness Statement even though that was not the case. Counsel put to him that his wife never lived on the subject premises; the Claimant replied that she lived and died there. I note that this information was neither pleaded in the Statement of Case nor included in the Claimant’s Witness Statement.

[19] The Claimant’s evidence on the date of his wife’s death was also contradictory. At first he asserted that she died in 2010 to 2012 on the subject premises, but later he amended this and stated that his wife died in 2005. In further answer to Counsel for the Defendants the Claimant

testified that after he and his family migrated to the United States of America his wife travelled regularly between the United States and Trinidad, and she stayed on the subject premises during her visits home. He also insisted to Counsel that he had stated this in his Witness Statement but in fact he had not done so.

- [20] The Claimant was also cross examined on "SC 4" a letter dated 30th November 2011 written on his behalf by his attorney at law and addressed to the Defendants. The letter stated that he had put Vigantie in his house in 2003. The Claimant, however, asserted that that information was wrong and that in fact Vigantie had gone to live in the house in 2001.

Lutchmin Daniel

- [21] This witness who was the aunt of both the Claimant and First Defendant gave evidence on behalf of the Claimant. She is great aunt of the Second and Third Defendants. Although she was 93 years old I found her to be sharp and clear headed. The contents of her Witness Statement are not reproduced because it is largely consistent with the Claimant's case as pleaded.

- [22] In cross-examination, Lutchmin testified that her sister Doris Goorahsingh began a common law relationship with one Moto Collins sometime in the 1950's and that the Claimant was a child of that union. She testified further that at the time this relationship began, Moto Collins and Doris Goorahsingh both lived on the subject parcel of land in a one bedroom wooden house with a blacksmith shop. Lutchmin Daniel asserted that her

mother had had a relationship from which she bore two children – Joyce and Irene Legal. It was her testimony that Honest Legal, the father of these children, was the original tenant of the subject parcel of land. Upon Honest’s death the tenancy of the subject premises was transferred to his daughter Joyce Legal who lived there until the 1950’s. She in turn transferred the said tenancy to Doris Goorahsingh, the Claimant’s mother, who began paying rent therefor. Joyce ‘placed’ Doris and her husband Moto on the said lot.

[23] This witness asserted that the house which Doris and Moto occupied was inherited from Honest Legal aforesaid and Biptee Goorahsingh. She stated that the Claimant was born in that house as were his four children. Lutchmin confirmed that he grew up in the said house and stated that the landlord had stopped collecting rent by the time Doris, the Claimant’s mother, died in 1985. She testified that the Claimant migrated to the United States in 1999 and that his wife and children followed him one year later in 2000. She also testified that she knew when the Claimant gave permission to one Viganti Sonny, his sister in law to occupy the subject premises in 2003 and her eviction therefrom by the Defendants in 2004. She indicated that the Defendants began using the house to store their goods from that time.

[24] This witness, like the Claimant, asserted that the First Defendant never grew up with her mother on the subject premises. She lived with her grandmother (Lutchmin’s mother) Biptee whose house was next door to Lutchmin’s. She spent one year with her mother Doris and Moto Collins

her stepfather, but her mother put her out of the house; from there she stayed at her father's home.

[25] In cross examination, Lutchmin reiterated that her mother and two younger sisters took care of Molly and her children, all of whom were born in Lutchmin's mother's house which was next door.

[26] Lutchmin Daniel knew Lalkisoon Mathura, the former owner of the subject lands, his son and wife. She also testified that when Moto and Doris went onto the lands they broke down the 'cocoa house' and built a small house comprising one room, a kitchen and gallery. She recalled that her brother Ramsingh helped them to construct the house.

[27] This witness insisted that Honest Legal was the original tenant and that the tenancy was transferred to his daughter Joyce Legal then to Doris, the Claimant's mother. She also made it clear that the First Defendant and her brother grew up in Biptee Goorahsingh's house - Molly's grandmother. At one time Molly went to stay with her mother Doris but disrespected Moto Collins, the Claimant's father and was asked to leave. Lutchmin accompanied Molly to her father's house. At the time the First Defendant was approximately 12 to 15 years old.

[28] This witness could not say whether Molly bought the subject land, however, she insisted that the only persons she knew to have lived on the land were Moto, Doris, the Claimant and his four children. She knew that the Claimant's sister in law lived in the house after the Claimant migrated but could not remember her name. I note that at no time did Lutchmin

ever state that the Claimant's wife lived on the subject premises. Indeed it was her evidence that when the Claimant's wife Rajdaye returned to Trinidad she was very ill and went to her father's house. She stated very clearly that Rajdaye did not return to the subject premises before her death.

Molly Dhanasar

[29] The First Defendant's evidence in her Witness Statement in large part was consistent with the defence in this matter.

[30] In answer to Counsel for the Claimant, Molly Dhanasar denied having a poor relationship with her mother and stepfather Moto. She denied that her mother sent her away a short while after she came to live with her and Moto Collins.

[31] She could not remember the year that Doris transferred the tenancy to her although she insisted that she paid rent for the subject premises. She also could not recall when she first paid rent, for how long or exactly how much was the rent. She claimed to have received receipts for the rent but could not produce any. She also could not recall the last year that her mother paid rent, or the length of time between her becoming a tenant and purchasing the subject land. This witness stated in cross examination that she could not say when her mother died. She denied that the Claimant installed Vigantie Sonny in the house while he was abroad and indeed stated that she did not know any such person.

[32] She asserted that Mr. Mathura, the owner of the land, asked her to buy it. She stated that he is currently abroad with his children by way of explanation for his absence. The First Defendant testified that up till 2011 she and the Claimant got along.

Simon Dhanasar

[33] In cross-examination the Second Defendant asserted that his mother and her brothers - Ganga and Krishna Dhanasar - were tenants of the subject land. He acknowledged that Honest Legal was the first tenant of the subject lands but could not say who became tenant after his death. He could not deny that Joyce Legal was the tenant after Honest Legal, nor could he say who was the tenant after Joyce nor how his mother became tenant, nor indeed when her tenancy began.

[34] This witness could not say whether Doris was the tenant from the 1950s to 1981 or that the land had been offered her for sale. He admitted that the house has been the same way since he knew it. He didn't know who actually built it. He, however, denied that only the Claimant and his parents lived there and that later from 1985 to 1999 the Claimant, his wife and his children occupied the house. In further answer to Counsel, he confirmed that the electricity account is in the Claimant's name. He acknowledged that "some of Lutchmin's evidence" was true, however, he did not elaborate as to which parts of her evidence were truthful.

ANALYSIS

[35] The premises in dispute in this case are subject to the provisions of the **Real Property Act Chap 56:02 (the RPA)**. The parties accept that the Defendants purchased the subject premises from the landowner Sanjeevan Ramkissoon Mathura and by Memorandum of Transfer dated 5th May 2010 registered in Certificate of Title Volume 5286 Folio 165 the subject premises were transferred to them.

[36] The first issue that arises is whether title to land governed by the **RPA** can be extinguished by the adverse possession of a trespasser. **Section 45** of the **RPA** provides,

“45. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such mortgages, encumbrances, estates or interests as may be notified on the leaf of the Register Book constituted by the grant or certificate of title of such land; but absolutely free from all other encumbrances, liens, estates or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title registered under the provisions of this Act, and any rights subsisting under any adverse possession of such land;

and also, when the possession is not adverse, the rights of any tenant of such land holding under a tenancy for any term not exceeding three years and except as regards the omission of misdescription of any right of way or other easement created in or existing upon such land, and except so far as regards any portion of land that may, by wrong description of parcels or boundaries, included in the grant, certificate of title, lease or other instrument evidencing the title of such proprietor, not being a purchaser or mortgagee thereof for value, or deriving title from or through a purchaser or mortgagee thereof for value.”

[37] In *Republic Bank Limited v Manichand Seepersad, Raymond Chance, Zorena Ghany Chance*³ Mendonça JA, referring to **Section 45** of the RPA opined⁴:

“The rights subsisting under adverse possession when acquired, rank as if they were registered encumbrances. This I think is clear from the language of Section 45, which states that the registered proprietor holds the land subject to such encumbrances etc. noted on the register but otherwise free from “all other encumbrances” except inter alia, “any rights subsisting under any adverse possession of such land.” The Section appears to me to regard those rights as if they were registered encumbrances to which the lands are subject. It is relevant here to note that encumbrances include interests,

³ Civ App No S268 of 2014

⁴ Paragraph 33

*rights and demands which can or may be had, made or set up in or upon or in respect of the land (see S 2(1) of the RPA). As rights in possession are to regarded as if they were registered encumbrances, it cannot be that anyone dealing with the registered proprietor can take free from those encumbrances. As was noted in **Chisholm v Hall**⁵ the rights would be binding not only upon the proprietor but cannot be displaced by any subsequent transfer or transmission.”*

[38] This case is authority for the proposition that rights acquired by adverse possession rank as if they were registered encumbrances. A purchaser or registered land such as the Defendants in this case, would take subject to any such rights if the Claimant can establish on a balance of probabilities that he was in adverse possession of the subject premises for 16 years.

[39] The main issue for determination in this case is whether the Claimant has extinguished the title of the landowner Sanjeevan Ramkissoon Mathura by reason of his adverse possession of the subject lands for a period of 16 years.

[40] **Section 3 of the Real Property Limitation Act Chap 56:03** provides:

“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

⁵ 1959 AC 719 (PC)

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."

[41] **Section 22 of the Real Property Limitation Act Chap 56:03** provides:

"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."

[42] The net effect of these two Sections is that Adverse Possession for 16 years prevents the ouster of the adverse possessor from the land by the owner. It creates in effect a right of possession. It is important to note that nothing in the legislation grants or creates a title to the adverse possessor. In *Margaret Jack-Roberts v The Attorney General and Satnarine Maraj*⁶ Hamel-Smith JA in delivering the judgment of the Court of Appeal opined⁷:

"While the effect of Section 22 of the [RPLA] is that the true owner's right and title to the said lands are extinguished after the stated period [16 years] that circumstance does not

⁶ Civ App No 2 of 2006

⁷ Page 3

automatically vest the legal title in the person claiming to have possessory title."

[43] In order to establish adverse possession the Claimant must prove on a balance of probabilities:

- i. a sufficient degree of physical custody and control of the subject lands and,
- ii. an intention to exercise such control on one's own behalf and for one's own benefit⁸.

[44] The owner for the purposes of this claim was the Defendants' predecessor in title Sanjeevan Ramkissoon also called Sanjeevan Ramkissoon Mathura. He is not a party to these proceedings nor was he called as a witness by either party. The Defendants filed a Hearsay Notice in relation Mr. Mathura; however, I consider that this witness's evidence was critical to the determination of this case. Further, in fairness to the Claimant he needed to be made available for cross examination. The Defendants' failure to produce him or to proffer any reasonable explanation in a timely manner for his unavailability was unsatisfactory. In the circumstances I give little or no weight to his evidence contained in that Hearsay Notice. It was essential that this witness be made available since his evidence was critical to the fair adjudication of this case.

[45] I should say at the outset that I preferred the Claimant's and Lutchmin's account of his occupation of the subject premises prior to 1999. It was not disputed that he was the son of Moto Collins and Doris Gorahsingh and

⁸ Civ App No 43 of 2008 *Manzoor Ali v Tobago House of Assembly* per Kangaloo JA

much younger than the First Defendant, his sister. I accepted the evidence of Lutchmin that Moto and Doris lived on the subject premises until they died and that Doris was tenant until sometime prior to her death in the 1980's. I also accepted their evidence that the Claimant was born on these premises and grew up in the house built thereon by his father. I did not accept the First Defendant's evidence that she was a tenant of the subject premises or indeed that her mother transferred the tenancy to her. Her failure to produce even one rent receipt despite the fact that, according to her, she paid rent from 1981 until she and the other Defendants bought the subject premises in 2010, raised doubts as to the veracity of her claim that she was the tenant of the subject premises. I also took into account the fact that the First Defendant could not say how much was the rent, when she first paid that rent, or indeed for how long she paid such rent. His evidence, in my view, was not believable and I did not consider her to be a credible witness. I noted that the only fact relating to her tenancy that she could recall was that the said tenancy was transferred to her in 1981. I am of the view that the First Defendant thereby sought to avail herself of the benefit of the provisions of the **Land Tenants Security of Tenure Act Chap 59:54** which would confer on her the status of a Statutory Tenant.

- [46] The Claimant, however, needed to establish that he was in possession of the premises for 16 years and that he exercised a sufficient degree of physical custody and control coupled with an intention to exercise such custody and control of the subject premises on his own behalf and for his own benefit.

[47] The Claimant's evidence, as a whole, was inconsistent and contradictory in many respects, particularly on the issues of:

- i. when his mother's tenancy ended,
- ii. when his mother died,
- iii. when Vigantie Sonny was put in occupation the of the subject premises.

[48] It was mandatory that the Claimant established 16 years of adverse possession of the subject premises on a balance of probabilities in order to extinguish the landowner's title. If Mr. Mathura's title was extinguished then there could be no valid transfer of the subject property to the Defendants.

[49] The Claimant pleaded that his mother paid rent for the subject lands until "the early 1980's"⁹. He also pleaded that his father Moto died in 1985. However, in his Witness Statement he testified that Doris, his mother, was a tenant at the time of her death¹⁰. Further, in cross examination he first asserted that his mother died on 10th April 1985 but later admitted that he was not sure about that and accepted that it was possible that she died in 1989.

[50] If Doris paid rent after 1981, then by virtue of the **Land Tenant Security of Tenure Act** she became a Statutory Tenant. If she was a tenant at the time of her death in 1985 or 1989 then time would not run against the landowner. If she died intestate then her children would all be entitled to

⁹ Paragraph 7 Statement of Case

¹⁰ Paragraph 4 Witness Statement of Claimant

the benefit of the statutory tenancy of the subject lands. If Doris had stopped paying rent before her death, then the Claimant needed to establish in what year she did so in order to determine when the tenancy ended and time began to run against the landlord. No rent receipts were produced by the Claimant for any period of the tenancy despite the fact that he had lived in a house with his parents all his life, for most of which period Doris was a tenant. I also note that although the Claimant asserted that he was present when the landlord told his mother that he would no longer accept rent from her, he could not assist the Court by indicating when this happened.

[51] Additionally, the Claimant's evidence with respect to the year of his departure from Trinidad was also inconsistent. As outlined above he vacillated between 1999 and 2000.

[52] I also noted that there was a discrepancy in the evidence of the Claimant and his witness Lutchmin on the issue of when he put Vigantie in occupation of the house on the subject premises. The Claimant had pleaded that he put her in possession in the year 2000 but that the Defendants chased her away in 2001. However, Lutchmin stated in both her Witness Statement and during cross examination that Vigantie went into possession in 2003 and was chased off by the Defendants in 2004. The evidence about Vigantie's occupation is important to the Claimant's case since if he put her into possession in 2000 when he migrated, he would thereby extend the period of his possession of the premises in order to establish his claim. I found this evidence, however, to be unreliable as well by reason of the discrepancy noted above. The evidence on this issue was

further weakened by the Claimant's testimony during cross examination, that Vigantie paid rent for the use and occupation of the premises. The Claimant had not pleaded this fact nor was it included in his Witness Statement. In my view this information, if true, was important and should have been pleaded and included in his Witness Statement. The failure to do so cast doubt on the veracity of his evidence.

[53] The Claimant's credibility was further undermined by evidence given for the first time during his cross examination:

- i. that his wife, after the family had migrated to the United States made several trips to Trinidad during which she stayed in the subject premises,
- ii. that when his wife fell ill and returned to Trinidad she stayed in the subject premises until her death in 2005,
- iii. that his wife and mother in law collected rent from Vigantie.

[54] The evidence above was neither pleaded nor contained in his Witness Statement. Despite this, on several occasions he insisted that this testimony was included in his Witness Statement. In my view this evidence was given by the Claimant in order to buttress his claim for possession of the subject premises. He produced no evidence in support of any of these claims. I also took into account the fact that Lutchmin flatly contradicted his evidence that his wife returned to the subject premises on several occasions after the family had migrated, and on the last occasion before her death. Lutchmin swore that Rajdaye only returned when she was very ill; she went to her father's home, spent a short time in hospital and then died. She made it clear that Rajdaye did not return to the subject premises.

[55] The failure of the Claimant to call Vigantie is a factor I take into account in assessing his case. No explanation was offered for his failure to call this important witness – he simply stated in cross examination that he did not think it important. However, this witness’s testimony about the occupation of the subject premises, the date when the Claimant and his family migrated, when, if at all, she was put into the subject premises by the Claimant and the duration of any such stay was critical to the determination of several issues in his case. In the absence of an explanation for her absence, I drew the inference that her evidence would not have supported the Claimant’s case.

[56] In light of the state of the evidence of the Claimant I was unable to determine on a balance of probabilities:

- i. when, if at all, Doris’ tenancy ended,
- ii. when, if at all, the Claimant was ever in adverse possession to the landowner and the period of such adverse possession.

[57] I therefore hold that the Claimant has not established on a balance of probabilities that he was in adverse possession of the subject lands for 16 years such as to extinguish the title of the landowner.

CONCLUSION

[58] I therefore Order that:

- i. the Claimant's claim is dismissed,
- ii. the Claimant to pay the Defendants' costs in the sum of \$14,000.00

Joan Charles

Judge