

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2013-03144**

**BETWEEN**

**PETA MARY BAIN**

**AND**

**GEOFFREY IAN WHARTON-LAKE**

**(suing in the capacity of the representatives of the  
Estate of Josephine Myra Attale pursuant to the order of  
The Honourable Mr. Justice Rampersad made on 15<sup>th</sup> April, 2013**  
**Claimants**

**AND**

**BRIAN HAMILTON MARCELIN**

**Defendant**

**Before The Hon. Madam Justice C. Gobin**

**Appearances:**

**Mr. Heffes-Doon instructed by Mr. S. Salandy for the Claimants**

**Mr. Dons Waithe instructed by Ms. A. Maharaj for the Defendant**

**RULING ON PRELIMINARY POINTS**

1. This is a claim by representatives of the estate of Josephine Attale for possession of two parcels of land known as 13 and 15 Lord Street, San Fernando against Brian Marceline (Brian). In earlier proceedings HCA 3269 of 1977 Josephine Attale had sought possession of the same premises against Hamilton Marcelin (Brian's father).

2. Those earlier proceedings were determined by the Honourable Madam Justice Sealey who delivered judgment on the 19<sup>th</sup> August 1997. The judge dismissed the claim for possession and declared Hamilton Marcelin to be a tenant

of the said premises – the lands. There was no dispute that the house had been built and remained in possession of the Marcelins throughout.

3. In the course of managing the instant proceedings the parties were asked to assist me on the effect of the judgment of Justice Sealey, on the limitation period, if it were applicable. The relevance of it to this case arose as follows:

4. By paragraphs 4 to 8 of the statement of case filed on the 31<sup>st</sup> July 2013, the claimants pleaded in this case, inter alia that the judge found Hamilton Marcelin to be entitled to the protection of the Rent Restriction Act because his mother Margaret, became the tenant by virtue of a lease dated 25<sup>th</sup> February 1935. That after the expiration of the term of 20 years she remained in occupation until her death in 1976. The learned judge found that Hamilton lived with his mother for a period of at least six months before her death and held him to be a tenant within S. 2 (1) of the Act.

5. The claimants' claim continued: Hamilton Marcelin died in June 2010. His tenancy could not have been transmitted upon his death to Brian whose status is that of a trespasser with no interest in the land. In those circumstances, the claimant sought possession as well as a declaration that the estate of Josephine Attale has title to the premises.

6. The defence raised several issues including two which are relevant to the issues I identified could be determined at this stage. The first is the basic matter of the claimants and their predecessor's title to the property. In respect of this the defendant says the claimants have failed to show a good root of title. The second was that a claim for possession was barred by the statute of limitations.

7. In so far as the issue of title is concerned, I consider it to be significant for present purposes that in the supplemental submissions of the claimants' filed on May 2, 2014 this is what was stated by counsel:

*“The fact that the claimants commenced their possession under a paper title (albeit one of insufficient antiquity to amount to a good root in the law of conveyancing) is relevant in weighing the relative strength of the possessory title”.*

This, I consider to be a concession of the part of counsel that the paper title that the claimants' sought to set up to oust the defendant who is in possession they claim as a trespasser, is not good enough. This spares the court having to determine that issue.

8. As a consequence of what I consider to be a concession as to the inadequacy of the paper title on the strength of which this claim was brought against Brian as a trespasser, the claimants' case had to be re-examined. The claim was not that they or their predecessors had been in actual possession. They were relying on Justice Sealey's finding that Hamilton through whom Brian claimed, was a tenant.

9. Put another way the claimants' case came down to this. If Justice Sealey declared Hamilton to be a tenant and if Brian claims through Hamilton, then since a tenant cannot deny his landlord's title, the issue of the root of title or the adequacy of the paper title becomes irrelevant. So long as Hamilton remained in possession, for the duration of that period, the landlord was in occupation through him. It followed from that upon Hamilton's death, (Brian) who was claiming through him, could not deny their title at least up until the date of his death in June 2010. This was the date from which time would run in Brian's favour, if it did at all, and there was no question of the claim being barred.

10. At first blush, the claimants' case on this point did seem attractive but having considered the submissions of the defendant and in particular the decision in the case of **Moses v Lovegrove 1952 1 All WER 1279 CA** which was considered applicable by our Court of Appeal in **PCA No. 10 of 2002 Bickram Ramdial v Trevor Kerry**, I find that the claimants' submission that time began to run against this defendant only upon the death of Hamilton, must fail.

11. In the light of the undisputed fact that Hamilton remained and continued in occupation since the death of his mother in 1976 paying no rent since 1968, it seems to me that on the authority of **Moses v Lovegrove**, the declaration of Sealey J that he was a tenant under the Act, was (to use the words of Evershed MR in that case) "entirely beside the point". The effect of the judgment was to clothe him with the status of tenant retrospectively from the date of death of his mother in

1976. In my opinion the claimants' title, if there were ever such, extinguished at earliest 16 years after the death of his mother and well before the case before Justice Sealey was decided.

12. Justice Sealey did not declare Hamilton to be a contractual tenant, neither did she declare him to be a trespasser. The effect of the judgment was to confer the status of irremovability since 1976, by virtue of his having lived with his mother Margaret. But that did not affect his obligation to pay land rent and to observe all other covenants. It was clear from the proceedings even on pleadings that rent had not been paid or accepted.

13. The issue of the statute of limitations was not raised in the matter before Justice Sealey and therefore she did not address it. But following from her finding that since 1976 upon the death of his mother that Hamilton became a tenant by virtue of his having resided with his mother the contractual tenant, and his having paid no rent since then, the claimant's title would have extinguished by 1995 at latest in the absence of any other acknowledgement of the claimants' title.

14. There is on the pleadings no allegation of any other such acknowledgement other than the matter which I should address, and that is the letter of 28<sup>th</sup> December 2005 written by Mr. Marcelin to Mr. Lalla in which he said:

“However I informed them I was not the owner of the land and asked them to contact you as you are legal adviser for the owner”.

The law is now established that the *animus* that is required is not to own the land, but to possess it, so the letter by itself, even in the absence of other evidence does not substantially change the defendant's position. If this were to be relied upon as an acknowledgement of the claimants' title, it is made well after the expiration of the paper which came about in 1995 or thereabouts. The claimants would then have a further difficulty. A subsequent acknowledgement, as I understand it could not revive an extinguished title.

15. But this letter which appears to be all that may be left, against the background of my findings above does not constitute sufficient ground for keeping the matter on the list. In the particular circumstances of this case, the house having always been the property of the Marcelins and it having been throughout occupied by them as a family home and housing a medical practice, it seems to me that the absence of the necessary *animus* could hardly be established.

16. I find that the claimants' case discloses no ground for bringing the claim and it should be struck out pursuant to Part 26.2 1(c).

### **Addendum**

17. I have considered the learning which was sent only yesterday on adverse possession. It seems to me that the claimants, having conceded that their paper title is defective, are now attempting to shift somewhat to rely on an unregistered title acquired by their own alleged adverse possession. The claimants, as I have said before, have alleged no acts of possession other than those of their

predecessors in title through Mr. Hamilton Marcelin's status of a protected tenant which was declared in the judgment of Justice Sealey. For the reasons I have stated above however, and on the authority Moses v Lovegrove, such a plea, that is, one of a title based on possession is not now open to the claimants. In the absence of a proper paper title their claim against Brian as a trespasser, would also be unsustainable.

18. I think it fair to the claimants counsel that I should add that in the course of my oral delivery of this ruling Mr. Heffes Doon indicated to me that there was no intention to concede that the title was not good. On the last occasion that the matter was called before I adjourned for decision, I noted that the issue of the absence of title as raised on the defence had not been addressed in the claimants' submissions and counsel sought leave to deal with the issue by way of a further submission. Having regard to what was stated in the submission (para. 7 above) and in the absence of any other argument in response to the issues raised as to title, I interpret it to be a concession that the defendant's arguments could not be met.

**Dated this 4<sup>th</sup> day of June 2014**

**CAROL GOBIN  
JUDGE**