

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2014-02189**

**BETWEEN**

**MOLLY SAMUEL**

**Claimant**

**AND**

**GESSEL DANIEL**

**Defendant**

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

**Appearances:**

**Mr. R. Boodoosingh for the Claimant**

**Ms. K. Nanhu for the Defendant**

**REASONS**

1. On the 15<sup>th</sup> April 2015 at a CMC I struck out the defendant's defence and counterclaim on the grounds that they disclosed no ground for defending the claimant's claim or bringing a counterclaim (Part 26.2 (1) (c)). There was no appeal against that order.

2. Because the claimant sought declaration relief I ordered the filing of witness statements to proceed to an ex parte trial on the claimant's case. The order that is now appealed is the order I made at the trial, exactly one month after the striking out.

3. The claimant was some 92 years old when she filed this action seeking a declaration that she was entitled to possession and occupation of a lot of land known as No. 4 Reid Lane, Belmont, on which her home of over sixty years stands. She claimed that the property had been given to her by the previous owner, a Mrs. Benoit who died in or about 1952. Since that time she continued in undisturbed possession. She was never a tenant of anyone, and never paid for her occupation. Her children (all now over the age of sixty years) grew up at the premises.

4. The defendant is a gentleman who recently purchased the property under a deed of coveyance dated 30<sup>th</sup> January 2009 from one Brian Carlyle James. The defendant traced his title to Mrs. Benoit. He claimed that after the death of Mrs. Benoit, the property passed to one Adina Dedier who began to rent to the claimant. Over the years the claimant's tenancy continued with Mrs. Dedier's successor collecting rent which had by 1995 risen to \$100.00 per month.

5. The defendant pleaded that the claimant only stopped paying rent in 1995. Notice to quit was served on the 24<sup>th</sup> April 2009 and the 9<sup>th</sup> October 2006. By letter dated 5<sup>th</sup> June 2006 the defendant's attorneys demanded outstanding rents owing since October 1994. The defendant attached a bundle of receipts which he claimed was evidence of the payment of rent by the claimant. The receipts were all made out in her name and all but one was signed by Mr. Bolden, who was the

predecessor in title of the defendant's vendor. The last receipt which was dated 31<sup>st</sup> January 1995 was signed by the vendor, Mr. James.

6. The defendant's counterclaim stated too, that previous ejectment proceedings had been brought in the Port of Spain Magistrates Court by him against the claimant. He said he withdrew those proceedings on the 1<sup>st</sup> October 2013 for certain reasons.

7. In specific response to the claimant's claim that she had been in exclusive and underestimated possession, the defendant pleaded at paragraph (5) of the defence.

*The defendant denies paragraph 3 of the Statement of Case and repeats paragraphs 3 (a) – (g) herein in response thereto. The defendant avers that the claimant has not been in exclusive undisturbed possession, adverse to the defendant or his predecessors in title for 16 years. After the last recorded rent was collected in January 1995, the defendant's immediate predecessors in title, Brian Carlyle James continued to make demands for rent orally to the claimant and her relatives and through the letter from his attorneys dated 5<sup>th</sup> June, 2006. Brian James served the claimant Notice to Quit on the 9<sup>th</sup> October, 2006. The defendant requested payment of rent from the claimant in 2009 and also served a notice to quit in April, 2009. **These actions on the part of the lawful owners of the property interrupt any purported 16 year period of occupation.** (emphasis added)*

8. The defendant was represented by Counsel on two occasions when I indicated that some legal issues arose on the defence. They were -

(1) Even if there was a tenancy in existence, and assuming that rent had been paid up until Janaury 1995, and this matter having been filed on the 18<sup>th</sup> June 2014, whether time had not begun to run against the defendant since one month after the non-payment of rent.

(2) What was the effect on the running of time of the withdrawal of the ejectment proceedings?

9. I referred counsel to the case of *Moses v Lovegrove 1952 2QBD 533*. It seemed to me on that authority that even if the claimant had been a tenant that 16 years having elapsed since the last payment of rent, and before the filing of these proceedings, the defendant's paper title would have extinguished.

10. I referred also to the case of *Markfield Investments v Evans* on the effect on the running of time as claimed by defendant of serving of notices to quit and the ejectment proceedings before the magistrate with the withdrawal in October 2013.

11. Counsel for the defendant appeared to agree with my observations that in the light of these authorities, the defence and counterclaim could not stand. The defendant subsequently appeared in person. He asked to be allowed to produce a record of proceedings in the Magistrates Court to persuade me that the non-

appearance of the claimant in those proceedings caused the matter to be protracted and that was the reason for the termination of the proceedings in that court. I indulged the defendant.

12. The record when it was produced confirmed that while several adjournments were occasioned by the non-appearance of the claimant for reasons including medical ones, the case was withdrawn voluntarily by the defendant through his attorney with leave of the Court.

13. I again explained to the defendant that in those circumstances the filing of the proceedings in the Magistrates Court had no effect on the running of time and the 16 year period had long elapsed. I struck out the defence and counterclaim and gave directions for the filing of witness statements as the claimant sought declaratory reliefs.

14. The claimant did not appear at the hearing, but I received her evidence after a medical report was produced on her behalf. Two children of the claimant gave oral evidence, accepting the contents of their witness statements as true and correct. I then made the order declaring that the paper title holder's interest had extinguished.

**Dated this 14<sup>th</sup> day of July 2015**

**CAROL GOBIN**

**JUDGE**