

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2015-01590

BETWEEN

ARNIM COOPER

URSULA DUNCAN

Claimants

AND

WINSTON BLACKMAN

Defendant

Before the Hon. Madam Justice C. Gobin

Appearances:

Mr. Y. Ahmed for the Claimants

Ms. S. Bullen for the Defendant

REASONS

Background

1. This matter was first docketed to me in September 2016. Before that, the case had been managed by Rajkumar J, (as he then was) who had ordered the filing of full submissions on certain issues which had been raised. By the time the file came to me, the subject matter of the claim i.e. the Claimant's entitlement or interest in a house standing on lands of the Defendant and their interest in the parcel of land if any, had already engaged the attention of the High Court in CV 2005 -00006 and on two separate occasions in the Court of Appeal i.e. Civil Appeal No. 107/2010 and CA P048/2016.

2. On 11th February 2010, Best J gave a judgment in the High Court CV 2005 - 00006 in which His Lordship made findings that the Land Tenants (Security of Tenure Act 1981) applies to the two lots of lands the subject of this litigation and that a statutory tenancy would have been created in favour of Ursula Worrell on the 1st June 1981, which tenancy would have devolved upon the Claimant, Arnim Cooper as sole beneficiary under the unchallenged Will of Ursula Worrell, (Probate granted 18th December 2006). In that matter the counterclaim for possession by the defendant, Mr. Blackman was dismissed.

3. This decision was appealed and a decision was given on 10th October 2013 by Mendonça JA Civ. App. No. 107 of 2010. The Justice of Appeal at paragraph 23 found that the evidence established that as at June 1st, 1981, there was on the lands a chattel house used as a dwelling house and erected by the tenant, Ms. Ursula Worrell. His Lordship, further stated that the High Court Judge correctly found that Ursula Worrell was a statutory tenant within the meaning of the Act and entitled to a lease of 30 years from June 1st 1981 and at the time of commencement of the action in 2005 the lease would have been still subsisting. The court further decided that the respondent, Mr. Blackman's counterclaim for possession could not succeed.

4. The Court of Appeal went on to say that even if there was not a lease under the Act it is clear on the evidence that at the very least Ms. Worrell was a yearly tenant, that there was no evidence that the tenancy was determined, a pre-requisite before a claim for possession could properly be made, thus the counterclaim could not succeed. The Court, however disagreed with the High Court judge's finding that the tenancy devolved upon the Respondent, Arnim Cooper. The Court found that the Respondent was however entitled to the House and that the High Court Judge ought to have

made an order in terms of the claim form of the Respondent declaring the Respondent beneficial owner of the house standing on the subject lands at Blackman Lane, Curepe.

5. The matter again engaged the attention of the Court of Appeal in **CA P048/2016 Arnim Cooper, Ursula Duncan v. Winston Blackman**, (Transcript dated 21st March 2016). Findings of the Court of Appeal are as follows:

- (1) It was found that the statutory lease which was renewed on 23rd November 2010 by Mr. Arnim Cooper could not have been so renewed. The Chief Justice commented that Mr. Cooper had no authority or basis in law to do so. Ursula Worrell, the statutory tenant that held the lease at the time died in 1996. Therefore by effluxion of time the statutory tenancy in favour of Ursula Worrell and the lease would have ended in May 2011. Therefore, Arnim Cooper, the Appellant was no longer a statutory tenant. If there was no such renewal then that's it. Ivor Archie J in CA P048/2016 Arnim Cooper, Ursula Duncan v. Winston Blackman, 21st March 2016.
- (2) Ursula was entitled to renew the lease and Arnim Cooper could not renew in his own right, it was never vested in him. In CA P048/2016 the appellant appealed against the decision that the statutory lease vested in Ursula Worrell was terminated by the effluxion of time on May 31st 2011 and that there is presently no existing statutory lease in the land and that the 1st Claimant is presently not a statutory tenant of the land.
- (3) The lease had to be renewed during the subsistence of the lease – See section 4(3) of the Land Tenants Act. This was not done during the tenant's lifetime therefore even if the Administrator General comes in there is no prospect of success.
- (4) That appeal was dismissed 21st March 2016 – Transcript.

6. Against this background, it was clear the proper management of the instant proceeding required an early determination of whether and to what extent issues in the instant case had already been considered and determined by the Court of Appeal in those previous appeals.

7. On 21st November 2016, I heard full submissions from the parties. Counsel for the Claimant, Mr. Ahmed identified three strictly legal issues which he believed on the pleadings in the instant case (including the intended amended pleadings) had to be determined in this action and it was agreed that I would consider them together with the authorities and the previous judgements of the Court of Appeal and rule on them.

The factual issues

8. The issues were: -

- (a) Whether generally at the end of a statutory tenancy, a yearly tenancy arose in favour of the statutory tenant, which then had to be determined by notice to quit before the landlord could recover possession;
- (b) Whether the **Land Tenant Security of Tenure Act (1981) Chapter 59:54** made provision for compensation for a house which was so affixed to the tenanted land that it could not be removed, and whether in the absence of an agreement between the landlord and tenant, the law required the house owner to be compensated for the loss of the property, upon determination of the tenancy.
- (a) Whether for the purposes of the Claimants' claim for adverse possession, it could be argued that time began to run against the

landlord upon the death of the statutory tenant in 1996. This claim had only been belatedly introduced in these proceedings.

9. The matter was adjourned to 9th January 2017, by which date, Mr. Ahmed had filed an application to cease to act on the basis that having further researched the issues which he had identified and on which he had made full submissions before me, and having had certain discussions with the Claimant, he could no longer represent the Claimants.

10. On 19th January 2017, I granted the application of Mr. Ahmed and delivered my decision. I found that on the three issues which had been identified, the Claimant had no prospect of success and in the circumstances it was appropriate to strike out the case.

Issue (i)

11. The law provides for the determination of the statutory tenancy by effluxion of time unless the tenancy is renewed by notice in accordance with the provisions of the Act. Save in those circumstances the tenancy is determined. The yearly tenancy was superseded by the 30 year lease imposed by the statute, but there is no provision for reverting to it at the end of thirty (30) years.

Sections 4 of the Land Tenants (Security of Tenure) Act Chapter 59:54 states as follows:

4. (1) ...

(2) **A statutory lease shall be a lease for thirty years**

commencing from the appointed day and, subject to subsection

(3), **renewable by the tenant** for a further period of thirty years.

(3) In order to exercise the right of renewal conferred by subsection (2), **the tenant** shall serve on the landlord a **written notice of renewal on or before the expiration of the original term of the statutory lease.**

Issue (ii)

12. The Claimant provided no authority to support the proposition that the law makes provisions for compensation in the Claimants circumstances. Section 8¹ **provides for agreement for compensation by the landlord to the tenant for the chattel house.** By virtue of sub-sections 5 (5) and 5 (6) of the Land Tenants Act there is provision for an option to purchase at fifty percent of the market value of the land **once the tenancy is still subsisting** and there is also **provision for payment by instalments.** In any event according to the Chief Justice in CA P048/2016, the Claimant is not a statutory tenant, the lease not having been renewed prior to its termination by effluxion of time, and the 30 year term having expired. Compensation would therefore not arise in this case where the claimant has no standing in law as a statutory tenant or otherwise to claim such compensation and in the circumstances of the lease having expired.

Issue (iii)

13. The landlord was not entitled to possession until the statutory lease came to an end in 2011. As per findings of Mendonca JA, Ms. Worrell would have been entitled as of 1981 to a 30 year lease as a Statutory Tenant. That lease would have ended in 2011. In those circumstances, there was no question of time running in the Claimants favour upon the death of the statutory tenant in the year 1996. A claim for adverse possession would therefore have no chance of succeeding as the 16 year requirement would not be satisfied 2011 to 2018 being no more than 7 years.

¹ Nothing in this Act precludes the landlord and the tenant from entering into an agreement for the surrender by the tenant, in consideration of an agreed sum to be paid to him by the landlord, of his right to compensation in respect of the chattel house.

14. There were no other factual issues to be determined. The determination of these legal issues was sufficient to bring this matter to an end. The matter did not proceed to a stage at which evidence was submitted.

Conclusion

15. The Claimants had several opportunities to present and change this case to try to hold on to the house which stood on the tenanted lot and Mr. Ahmed valiantly put every argument forward in the High Court and on two occasions before the Court of Appeal. But the law was not in their favour. I found that after having spent 8 or 9 years before the Courts, the Defendant was entitled to his justice. No useful purpose would have been served in further delaying the inevitable and fairness required the Defendant to have his order for possession. These Claimants had already had more than their fair share of judicial time and court resources to pursue a claim which was doomed to fail.

Dated this 26th day of October 2018

**CAROL GOBIN
Judge**