

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-02094

BETWEEN

BERTRAND NEPTUNE

Claimant

AND

RICARDO MANZANO

1st Defendant

ANDREW CROSS

2nd Defendant

No.15845 PC CYRUS GREENE

3rd Defendant

DAPHNE MANZANO

(Executrix of the Estate of Estella Allum Deceased)

4th Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

5th Defendant

LENORE DELEON

6th Defendant

CV2015-02098

BETWEEN

FAREEDA ROOPNARINE

Claimant

AND

RICARDO MANZANO

1st Defendant

ANDREW CROSS

2nd Defendant

No.15845 PC CYRUS GREENE

3rd Defendant

DAPHNE MANZANO

(Executrix of the Estate of Estella Allum Deceased)

4th Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

5th Defendant

LENORE DELEON

6th Defendant

CV2015-02099

BETWEEN

SAMANTHA MAHABIR

1st Claimant

ANTHONY FERGUSON

2nd Claimant

AND

RICARDO MANZANO

1st Defendant

ANDREW CROSS

2nd Defendant

No.15845 PC CYRUS GREENE

3rd Defendant

DAPHNE MANZANO

(Executrix of the Estate of Estella Allum Deceased)

4th Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

5th Defendant

LENORE DELEON

6th Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. E. Martin James for the Claimant

Mr. R. M. Kwalsingh for the 1st & 4th Defendants

Mr. Rajiv Ricki for the 2nd Defendant

N/A – 3rd and 5th Defendants

Mr. R. I. Boisson for the 6th Defendant

REASONS

Background

1. These proceedings were consolidated by Order made on 12th January 2017. On 26th April 2018, I struck out the claims in these matters against all defendants except for the 6th Named Lenore De Leon.
2. The claims arose out of unhappy events which occurred on 22nd February 2014. At that date, all the claimants had structures on individual lots of land which formed part of lands known as Sunset Valley or Mahabir Development, situate at Avocat Village, Fyzabad. Each claimant had a dwelling house on his or their lot and each had reached different stages of construction with values of them they claimed respectively as follows; Bertrand Neptune's \$93,000.00, that of Samantha Mahabir and Anthony Ferguson's \$43,191.00, and Fareeda Roopnarine's \$38,548.00.
3. The claimants had all entered into possession of vacant lots in or about 2012/2013 under what they claimed were leases or tenancy agreements with the 6th Named Defendant, Mrs. Lenore de Leon. They claimed that she had represented to them that she was the owner of the lands.

Unfortunately, it turned out she was not and in her defence filed in these proceedings, she accepted she was not.

4. On 22nd February 2014, in what must have been a traumatic event for the claimants, Mr. Ricardo Manzano, the first named Defendant acting on behalf of the 4th named Defendant, the Executrix of the estate of Estella Allum and other persons including Police Constable Cyrus Greene moved into the development. They broke down the structures erected by claimants, whom they say had all illegally entered upon the lands belonging to the Allum estate. This was after Mr. Manzano claimed he had left notices dated 14th April 2013 requiring the claimants to remove themselves from the lands and to cease all construction works. None of the claimants has specifically denied receiving such a notice. A reply was filed only to the Defence of the 6th Named Defendant.
5. The claimants complained about the conduct of the persons who were involved in the demolition exercise. More, particularly, they complained about the presence of PC Greene who was in uniform, acting in his capacity as police officer and who they claimed was essentially lending the colour of authority to what they say was the 1st and 4th Defendants' illegal operation.

The claims

6. Each claimant subsequently filed proceedings seeking damages for trespass to goods and malicious destruction against Mr. Manzano who was acting on behalf of the Executrix of the estate and Defendants 1 to 5. What was destroyed was not goods, but buildings affixed to the lots they claimed to have rented. The cause of action itself was dubious. The claimants could assert no right to have these "goods" affixed to the lands without an underlying claim to their alleged tenancies. Mrs. de Leon, their "landlady", was subsequently added as a Defendant.

This was essentially a claim to an interest in the lots they had been rented by Mrs. de Leon. One can only surmise that it was not pleaded as such for obvious reasons.

7. In the course of the proceedings Counsel for the claimants had to concede that the estate of Estella Allum was in fact the owner of the lands. In other words that the person whom the claimants said rented them the lands, had no title and could not have lawfully put them in possession lawfully. In her own defence, Mrs. De Leon denied renting any lands to the claimants, and she accepted that estate Estella Allum was the owner.
8. In the light of this concession as well as the indisputable claim that the persons involved in the demolition exercise were all authorised by the executrix to re-enter to protect the estate by removing illegal structures off the land, I enquired of the claimant's attorney whether the claims could be maintained against Defendants 1 to 5. It seemed appropriate and consistent with my case management powers that I should hear the claimants on why the claim ought not to be struck out against the first five Defendants. At all times I made it clear that the claimants' case against the 6th Defendant would continue because there were clearly factual issues which the Court had to determine.
9. It was my view that the Fourth Defendant as Legal Personal Representative (LPR) of the estate of Estella Allum in these circumstances was entitled, as the law permits her, to resort to self help to secure possession of the lots occupied by the claimants, even when I appreciated that they would have suffered considerable loss. They had no legal right to be there. They were not raising any arguments of title by prescription or acquiescence on the part of the lawful owner of the land. They had not specifically denied that they had received the notices to cease

construction and to vacate which had been issued some six (6) months prior to the demolition exercise.

Claimant's arguments against striking out

10. Counsel resisted my suggestion that the matters should be discontinued against the first five named Defendants in those circumstances for (2) reasons which at the end of lengthy exchanges, I understood to be:

(1) On 22nd February 2014, Daphne Manzano had no authority to evict the claimants. Neither the death of Mrs. Allum, her Will which appointed the 4th Defendant executrix of her estate, nor the subsequent grant of probate of the estate gave her the authority to take the steps she had taken to demolish the unlawfully erected building. Until a memorandum of assent was executed, no one was vested with authority.

(2) The claimant also contended that the Executor was in any case not entitled to resort to self help in the circumstances of this case. I understood Counsel to submit that even if the claimant had been placed there by someone (the 6th Defendant) who did not have title, the true owner could not without the institution of proceedings and obtaining a Court order, move in and demolish their structures. He emphasised that the claimants had all been there for at least one year.

Want of Authority of Daphne Manzano

11. The first submission as to the want of authority of the LPR Daphne Manzano to take steps flies in the face of statutory provisions as well as the authority of **Walcott v. Alleyne HCA No. T. 92 of 1985.**

S.10 of the Administration of Estate Act provides: -

Administration of Estates Act Chapter 9:01

10. (1) Where any real estate is vested for any term or estate beyond his life in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate (who and each of whom are included in the term “representative”) as if it were a chattel real vesting in them or him. And if such estate is held upon any trust or by way of mortgage, it shall likewise legally devolve on the representative of any person deceased in whom it has been vested during his life.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and Letters of Administration shall be granted in respect of, and shall take effect to vest in the executor or administrator, all real estate and personal estate whatever, including chattels real. And there shall be no devolution of estate by inheritance in any case save that the beneficial interest therein shall devolve as provided in Part III of this Act.

(4) On the death of any person all his estate real and personal whatever within Trinidad and Tobago shall vest in law in the Administrator General until the same is divested by the grant of Probate or Letters of Administration to some other person or persons: Provided that the Administrator General shall not, pending the grant of such Probate or Letters of Administration, take possession of or interfere in the administration of any estate save as in this Act and in the Wills and Probate Act provided.

(5) The provisions of the last preceding subsection shall be deemed to have applied to the real estate within Trinidad and Tobago of all persons who died prior to the 1st of January, 1903, which was, at the time of such death, liable to be escheated, in all respects as if such persons had died subsequent

to that date: Provided always, that nothing herein contained shall affect the operation of the State Suits Limitation Ordinance, or any right conferred thereby.

12. In **Walcott v. Alleyne Hamel-Smith J**, after analysing the law and the statutory provisions concluded: -

At page 18:

“Read in its historical context the meaning and intent of sub section (1) becomes apparent. It effectively maintains the common law rule that realty, like personality, vests in the executor at the time of death of the testator, and it effectively vests realty in an administrator at the time of a grant.”

13. In my opinion, not only did the estate of Estella Allum vest in the 4th Named Defendant Daphne Manzano upon the former’s death, the grant of probate issued on 19th November 2010 left no question as to her authority to take any steps permissible under the law to eject trespassers or to remove illegal structures being erected by them from the subject lands.

Self Help

14. There is no specific claim for damages for use of more force than was reasonably necessary to remove the claimants and the structures from the lands. The question that was left then was whether Mrs. Manzano as owner of the estate, through her agent, Ricardo Manzano was entitled to enter and to remove the structures. In other words was she entitled to resort to self help instead of initiating Court proceedings to secure injunctive relief or possession.

15. The decision of the Court of Appeal in **CA Civ. 96 of 2003 Between Vashti Sampson and others v the National Housing Authority** provides guidance on this issue. The case arose out of demolition excises conducted by the NHA (a statutory corporation), on State lands known as Tarouba North Development Marabella.

16. **Nelson JA** as he then was considered the issue of the legality of self help. The learned judge reviewed several authorities and extracted the following principles of law: -

47. The consequence of being a trespasser who has not obtained possession, sometimes referred to as “a mere trespasser”, is that such trespasser cannot maintain an action in trespass: see Browne v. Dawson (supra) at p. 629.

48. By contrast a person in de facto possession can sue in trespass anyone who does not have an immediate right to recover possession. Thus, a possessor in actual possession has a possessory title against all the world except the true owner: see Perry v. Clissold [1907] AC 73 (P.C.) (**emphasis added**).

17. His Lordship continued: -

Two propositions arise from the above:

(1) If the appellants, contrary to the contention of their counsel, are mere trespassers who have not obtained possession against the true owner, the Authority, then they cannot maintain an action in trespass.

(2) Even if the appellants, obtained de facto possession, as they allege, because the Authority delayed in taking steps to remove them, such possession cannot prevail against the true owner with an immediate right to possession, i.e. the Authority.

18. The learned Judge of Appeal went to consider the legality of self help against the background of a finding of the first instance judge that no unnecessary force was used. First, as I have indicated before, this issue did not arise on the pleadings in the instant case. His Lordship went on to cite, with approval, a statement of **Deyalsingh J, In re an application of Shyroon Mohammed HCA No.1128 of 1980**. At paragraph 68 of the Judgment he said: -

“The learned judge correctly states the law on forcible entry on the part of a true owner as follows: -

“It cannot be doubted that an owner of lands at common law has the right to evict trespassers. If he uses no more force than is necessary, he is not civilly or criminally liable for assault and battery and/or under the Statutes of Forcible Entry...”.”

19. This general principle is equally applicable in the cases before this Court moreso since there is no claim for damages for assault. In the circumstances, I struck out the claims against the First to Fifth Named Defendants and reserved on the issue of costs in relation to the 2nd Defendant who had not filed a defence against the Attorney General.

Dated this 9th day of July 2018

CAROL GOBIN

Judge