

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV2016-00235

BETWEEN

<b>ERICA PIERRE</b>	<b>1<sup>st</sup> Claimant</b>
<b>JUDY SPENCER A/C JOSEPHINE SPENCER</b>	<b>2<sup>nd</sup> Claimant</b>
<b>MARGARET PIERRE-HUNTE</b>	<b>3<sup>rd</sup> Claimant</b>
<b>DANIEL PIERRE</b>	<b>4<sup>th</sup> Claimant</b>
<b>ELIZABETH PIERRE</b>	<b>5<sup>th</sup> Claimant</b>
<b>KEITH SPENCER (The Legal Personal Representative of the estate of VIOLET SPENCER, deceased)</b>	<b>6<sup>th</sup> Claimant</b>

AND

<b>EUPHEMIA JARRETTE GEORGE JARRETTE PHENELLA JARROTT-PHILLIPS</b>	<b>Defendants</b>
--	-------------------

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

**Appearances:**

**Mr. Colvin Blaize for the Claimants**

**Ms. Carol Bernard instructed by Mr. Dale Kingston for the Defendants**

**REASONS**

1. In this action the claimants, members of the Pierre family claimed a declaration that they are owners entitled to possession of a parcel of land situate at 21 Glen Road, measuring approximately one acre. The Defendants, members of the Jarrette family claimed, on the other hand, that those lands formed part of a three acre parcel of land

which had been owned by their father/grandfather Mr. Henry Jarrette. The Defendants accepted that the claimants had been in occupation for several decades, but they disputed the extent of the area occupation on the ground.

2. The Defendant went so far as to accept that the Pierre's were entitled to the ownership of a small part of the one acre parcel, measuring an undefined "house lot" which they say was limited to an area just outside of the perimeter of two buildings which were on the lands. They presented no evidence by way of a sketch or plan of the actual area they conceded.
3. Neither party has a paper title to the land. The claimants claim that their mother Petty Pierre and their step father, Hendrickson Pierre bought the subject parcel sometime in or about the year 1949 from Henry Jarrette. The purchase price was paid over several years by instalments until completion, but Mr. Jarrette died without effecting a formal transfer of the lands.
4. The Defendants rely on the fact that Henry Jarrette's name appeared on the Wardens Roll as owner of a three acre parcel of land for the period 1948 to the year 2009. The boundaries are described on the records as North: Mt. Pelier Estate, South: R. Phillip, East: Glen & Ramsay, West: Mt. Pelier.

The records reflect the assessment number of the three (3) acre parcel first as "F46" and in later years since 1963 as "XH106".

5. I found that the acre claimed the Pierre's did indeed fall within the boundaries lands of the three (3) acre parcel described in the assessment roll. This is consistent with the claimants' claims that their parents purchased the lands from Henry Jarrette. A receipt produced by the claimants as evidence of the payment of land taxes for their parcel reflected the assessment number "XH106". This too supported the case that the lands claimed by the claimants were part of the larger parcel.
6. Mr. Henry Jarrette died on 11<sup>th</sup> April in the year 1952. Since that time until recently his heirs among whom are the Defendants, took no steps to regularize their title to the lands. They have only recently (2010) begun to take steps to bring the three (3) acre parcel of land under the provisions of the RPO.
7. The claimants have no paper title either, and they too intend to regularize their title under the RPO. They claimed, that since the time of their parents' entry on the lands through the arrangements with Mr. Jarrette in about 1947, and the completion of their purchase, that they have been in occupation of the one acre parcel.
8. Significant in my view, was the evidence that in 1963, Mr. Henderickson Pierre commissioned a survey of the parcel he had purchased from Mr. Jarrette. That survey was conducted by Mr. G.W. Gordon and a copy of the plan he produced was tendered in evidence. The boundaries shown in that 1963 Gordon plan were more or less the same as those redefined in a more recent survey which the claimants commissioned and which was conducted by Mr. Peter Goodridge. I found this evidence of that early survey to provide significant support for the claimants' case. It was a far more

contemporaneous documentary evidence made by a professional, well before this matter became contentious.

9. It made it clear that this was not simply a case of the claimants claiming to have acquired title by adverse possession. They claim that their predecessors had bought the one acre parcel and had it surveyed to the subject lands. The Defendants had no paper title. The statement of issues filed by Counsel for the Defendant confirmed that position. Indeed Counsel put it this way:-

**(1) In the absence of title documents who has the better claim to the disputed property?**

**(2) Whether the Defendant's right title or interest in the subject piece of land (if any) is extinguished by any act of the Claimants on the land and in particular by virtue of Section 3 of the Real Property Limitation Act Chapter 53:06;**

10. The witness statement filed by the Defendant's sole witness of fact was more than helpful in identifying the factual issue and I shall repeat the relevant paragraphs: -

**(6) The Claimants had occupied a portion of the land for as long as I could remember and over the years erected three structures on the land. There was never any intention to deprive the Claimants of their buildings and the land on which the structures stood. As soon as the provisions of the Real Property Act had been satisfied and the title properly vested, that portion would have been transferred to the Claimants. Another option would have been to make a joint application and divide the property along which was known as the informal boundary line;**

**(9) We have always acknowledged the Claimants presence and know they are entitled to the portion where they have been in occupation even before I was born;**

**(10) The Claimants have never done anything to ascertain their right to the portion of the land where they have built their houses but that right has never been challenged and there is no intention to challenge it. Any steps to their moving their occupation onto the previously unoccupied portion will however be strenuously resisted.**

**(11) After the initiation of this action, the Claimants have started to rear goats on the disputed portion. It is only now they are trying to establish some evidence of possession and occupation.**

**(12) We repeat that we do not wish to deprive the Claimants of the portion they have developed for their use. If the Claimants had occupied the entire land their entrance would have been from the road to which the land extends. Instead, their entrance and exit is around the corner from the disputed portion.**

11. By the time the case got to trial, and especially in the light of the above, the issue was clearly narrowed to what were the actual boundaries on the ground, of the parcel of land occupied by the claimants.

12. On the second day of the trial after parties had undertaken to do a further site visit before we resumed the hearing, it seemed as if the dispute had been further narrowed to the question of where one boundary, the northern boundary should be located. The record reflects that when the parties returned to Court on 5<sup>th</sup> March 2018, Counsel for the Defendant indicated that she was no longer disputing the claimant's survey plan (the Goodridge Plan) save and except for the location of the northern boundary. As a

result of this concession, on a day following the close of evidence, a site visit was conducted at which I was able to see on the ground what remained in dispute to determine whether that northern boundary could have identified on the ground.

13. Why all of this effort if the Defendants were not paper title holders? Since both parties indicated their respective intention to apply to bring their lands under the provisions of the Real Property Act, the identification of the Claimants' portion of the three (3) acre parcel was an issue that needed to be decided. In these proceedings the Court was properly placed to determine that issue. It would have arisen again on their respective RPO applications if the Court had simply determined there was no reason proceed with the case.
14. On 9<sup>th</sup> April 2018, after I had considered the evidence, the concessions made by Counsel, as well as my own observations of the layout of the land and the characteristics of it, I found that the claimants had been in undisturbed possession and control of the parcel of land measuring approximately one (1) acre and shown in the plan of Mr. Gordon. In the course of his evidence at the trial the Defendant's surveyor helpfully imposed the one acre parcel on to his own drawing of the three acre parcel.
15. In arriving at my conclusion on the factual issues I found the evidence of the claimants and their witnesses to be more cogent and credible. On the Defendant's side, the failure to produce one witness of fact only, Ms. Phenella Jarrott-Phillips, raised a question as to the general credibility of the Defence. There was no other witness to support her claim on the critical aspect of what the claimants had been occupying on the ground.

16. The claimants had been born on the lands and it was not seriously disputed that they had for almost 60 years, in some cases, as children of the Pierre family remained there. On the issue of how much land they believed was theirs and therefore occupied, I found the existence of the Gordon Plan which was produced on the instructions of the claimants' step-father to be extremely helpful. It was consistent with the claim brought decades after that survey had been done by Mr. Gordon. This was a more contemporaneous professionally produced document which indicated what on a balance of probabilities the Pierres would have treated as their own. The lines on all boundaries of Mr. Gordons' Plan were consistent with those of Mr. Goodridge.
17. I accepted the evidence of the claimant, Judy Spencer also called Josephine Spencer, who said she was present on the day of that Gordon survey though, she would have been a young child at that time. She stated that wire fencing was erected to mark the western and southern boundaries of their family parcel that was surveyed. The Defendant denied that there was any fence at all but then (following the site visit), claimed the fence may have been erected by someone else.
18. By the close of the case and at the time of the visit it was clear that there were remnants of an old wire fence on both boundaries. The denial of the existence of the fence up to that point caused me to confirm my unfavourable opinion of the credibility of Mrs. Jarrette Phillips. The southern boundary of the acre claimed by the Claimants had also been previously identified on a survey plan produced by Mr. Ramon Fortune in 1985. That was a matter of significance. It was consistent with the claimants' case.

19. I rejected other aspects of the Defendant's evidence. In pre-action correspondence (letter dated 14<sup>th</sup> January 2015), the Defendant instructed her attorneys that she lived on the land. It was later established that she did not. She had no house there.
20. Although the Defendant's case was that the claimants occupied no more than a house spot on the disputed one acre parcel – her conduct on the day of her survey of the larger parcel raised serious questions about the credibility of her claim. Her surveyor Mr. Seymour Alfred served no notice on the claimants although it would have been clear there were at least three buildings on the lands. In the circumstances, of the Defendant's claim that the claimants had never occupied more than a house spot, the failure to instruct the surveyor to delineate that lot or plot is inexplicable and I reject the Defendant's evidence that it was no more than a house spot.
21. Ms. Jarrotte Phillips claimed that she had been gardening that portion of the lands located south of the area claimed by the claimants. This was inconsistent with the evidence of her own surveyor, Mr. Alfred as to the state of the lands during his visit.
22. But the Witness Statement of Ms. Jarrotte Spencer itself undermined their case that the claimants were entitled to no more than a house spot. From her suggestion that the parties should make a joint application to bring the lands under the RPO, I drew certain inferences. The obvious question which arose was why if the claimants occupied or owned only a house spot - would the Defendant consider a joint application for a three (3) acre parcel. The suggestion of a joint application was more consistent with a recognition that the claimants were entitled to ownership of a far more substantial



portion of the three (3) acre parcel – such as an area measuring approximately one third of it that they were claiming, not a house spot.

23. While the concession on the part of Counsel for the Defendant that the remaining three boundaries were no longer in dispute did limit the factual issue to the location of the northern boundary, I wish to indicate my observations about the characteristics of the land and other findings which flow from that. The topography is fairly steep – the visit involved a steep climb from Glen Road, (2) that required a fair effort on the part of all concerned, to get to the western boundary – near to the location of the claimants' houses.

24. The partially concrete footpath which had been shown of Mr. Goodridge's plan was well defined and well established. There was no evidence to refute the claimants claim that they had erected the path over their lands, to facilitate access to their home. They had not sought the permission of the Defendant, nor had it been suggested by the Defendant that they had ever granted them a right to pass on the Jarrette lands. In those circumstances I accepted that the claimants treated their eastern boundary as the Branch Road, from which they entered their plot to get to their home well before a new road was erected to the western boundary that allowed easier access out.

25. But to be clear about its purpose, at the date of the Court visit to the site, I reiterated once more that I understood what was left to be identified was the northern boundary of the one acre parcel on the ground and the parties agreed that that was why we were there. Unlike the position with the other three of them, the northern boundary was not defined by any clear occupation on the ground. The area which is visibly cleared and

on which some fruit trees stood soon merged with what could be described as a woody area. There was no thick undergrowth, I would not describe it as dense forest.

26. The northern boundary shown on both Plans runs through that woody area. The Defendant's therefore claimed that the claimant's northern boundary should be established along the line on the ground which indicated clear physical occupation which stopped at the edge of the woody area. I rejected that approach. The characteristics of the subject parcel of land were very relevant to my determination. I found that the appearance of the tall trees in the woody area, north of the claimants house did not preclude a finding that their northern boundary fell beyond it.

27. This was not a case based on a claim only to possession of an area defined on the ground. The 1965, Survey Plan of Mr. Gordon had properly defined the northern boundary of the parcel that the claimants father purchased and which they owned. They were entitled to treat that line wherever it existed on the ground as their northern boundary. I am sure that in the early days, very much of the entirety of the one acre parcel of land, at the time of the initial entry by the Pierre's was covered in the same woody vegetation and that over the years different portions would have been cleared to accommodate the extension of their occupation on the ground. That notwithstanding, their northern boundary had not changed. It was where Mr. Gordon had run it. Until 2010, there was no dispute as to the location of their boundaries. More importantly I considered that the Defendants had no paper title and were not claiming to have been in possession or control of any area which fell within that woody area on the northern boundary.

28. The Pierre's were entitled to rely on their understanding that according to their survey plan – the boundary fell within the woody area. There was no obligation upon them to clear the lands in order to stake a claim to it. On that argument the Jarrettes would have no claim to the forested areas of the lands either.
29. Mr. Seymour Alfred, the Defendant's surveyor was present at the site on the Court visit. I asked him whether he could identify the northern boundary that was shown on his plan and to identify it on the plan of Mr. Goodridge. Mr. Alfred did very helpfully present a sketch shortly thereafter. I considered that the line drawn by Mr. Alfred would settle the issue of the location of the northern boundary which would be identifiable by the parties on the ground.
30. On 9<sup>th</sup> April 2018, I declared that the Claimants had been in undisturbed and continuous possession of the parcel of land shown on the plan of Mr. Peter Goodridge for a period well in excess of 50 years. I also ordered the Defendants to pay the Claimants costs of the sum of fourteen thousand dollars (\$14,000.00).

**Dated the 24<sup>th</sup> day of April 2018**

**CAROL GOBIN**  
**Judge**