REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2016-03100**

BETWEEN

ANDERSON RICHARDS

Claimant

AND

WATER AND SEWERAGE AUTHORITY

Defendant

****

Before the Hon. Madam Justice C. Gobin

Appearances:
Mr. N. Ramnanan instructed by Mr. D. Hannays for the Claimant
Mr. Robin Otway instructed by Ms. A. Maharaj for the Defendant

REASONS

1. The simple issue which I had to determine in this case is whether the claimant, Anderson Richards has acquired a title through adverse possession of a lot of land measuring about 5000 sq. ft and known as Lot No.5 Glen Road, El Socorro Road, San Juan.

2. The defendant, The Water and Sewerage Authority (WASA) is the paper title holder of a large four acre parcel of land at Glen Lane which includes Lot No. 5. The lands consisted of a water Well Field which was compulsorily acquired in the year 1963.

3. The claimant's case is that Mr. Herbert Johnson, who was a former WASA employee, for the period 1973 to 1991 entered into possession of Lot No.5 in the year 1977 and began planting a vegetable garden. Mr. Johnson was a family friend of his mother Theresa Thomas Richards. Mr. Johnson invited him (the claimant) to join him in planting and tending the garden when he was a little more than a child, it seems to make some pocket change. They both continued together with no interruption or claims by WASA or anyone else until 2015.

4. In October 2015, Mr. Johnson who was getting on in years executed a deed of gift in his favour transferring all his interest in the land to the claimant. The claimant had constructed a small structure on the lot in 2015 and he continued his peaceful possession until December 2015 when the defendant through Licensed Bailiff, Mr. Peter Soon, under cover of a "warrant of possession" evicted him from the lot, destroying his structure and some crops in the process.

5. The claimant's claim therefore was that since Mr. Johnson's first entry on Lot No. 5 in 1977 and continuing with their joint possession until 2015, almost thirty-eight (38) years had elapsed. In those circumstances having regard to their continuous possession and control for well in excess of sixteen (16) years, they had acquired title and the defendant's title had extinguished.

6. The claimant's case was at all times founded on Mr. Johnson's and his joint possession of the lot for a continuous period. There is no issue between himself and Mr. Johnson regarding their title or rights. Indeed, Mr. Johnson went so far as to execute a deed of gift in the claimant's favour. Whatever might be the legal consequences, the transaction

confirmed that for the purposes of this claim, theirs was at all times to be regarded as a single continuous possession of Lot No. 5. Mr. Johnson also gave evidence at the trial supporting the claimant's claim in all material respects.

7. The defendant has submitted, inter alia, that if anyone was entitled to bring this claim, it was Mr. Johnson, not the claimant. That submission has been rejected in the circumstances above of there having been one continuous possession. The law seems to be fairly settled that if squatter A allows squatter B into possession, whether pursuant to a formal conveyance or not, time would have begun to run against the paper title holder when squatter A entered into possession.

The Defendant's pleaded case

8. The defendant's pleaded case was that Mr. Johnson was granted "a personal and non-assignable license" to plant a vegetable garden on Lot No. 5. Its position was stated at paragraph 5 of the Defence: -

> **"It is admitted Johnson was employed by the defendant as alleged in paragraph (5) of the Statement of Case, which paragraph is otherwise not admitted. The defendant avers that he was employed as an operator at the Well Field and he well knew and accepted that the Well Field belonged exclusively and entirely to the defendant. The defendant avers that it granted to Johnson a personal and non-assignable license ("the License"), to plant crops in order to establish a vegetable garden on the subject property, as was customarily allowed by the defendant in relation to staff members who resided in close proximity to the defendant's land holdings, with the defendant's other employees who resided in staff quarters adjoining the subject property also allowed access at all material**

> **times to the subject property for the same purpose, but that this did not create any legal, equitable, right, title or interest in any part of the Well Field, and particular in the subject property on the part of Johnson or anyone else."**

9. It continued, at paragraph 8: -

> **"Save that Johnson ceased occupying the subject property in or about the mid-nineties, which it is contended he had no legal or equitable title or right to occupy, paragraph (8) of the Statement of Case is denied. The Defendant specifically avers that the subject property remained unoccupied thereafter until in or about 2015, when the claimant unlawfully trespassed thereon and wrongfully constructed the Room and sought to begin planting crops there again, all on his own."**

10. And then there was paragraph 10: -

> **Paragraph (10) of the Statement of Case is denied, with the defendant specifically contending that neither Johnson nor the claimant have ever been in exclusive and/or joint possession with the intention to possess and/or with "animus possidendi" as alleged or at all, and paragraphs (5) and (7) above are here repeated.**

11. First, there is an obvious inconsistency in claiming on one hand that Johnson was granted an express license, and contending on the other that he had no legal or equitable title or right to occupy.

Defendant's case on the evidence

12. When Witness Statements were filed, it was clear that WASA had produced no evidence in support of the pleaded case of an express license to "establish a vegetable garden". There was no evidence to support the Defence that Mr. Johnson ceased occupying the subject lot in the mid-nineteen nineties. Indeed the question as to where this period referred to "the mid nineties" came from, remained unanswered throughout. The failure to produce any evidence at all in support of the core defence of the alleged "express license" did not impress me. This turn of events raised a serious issue as to defendant's credibility generally. How did the Defendant come to file a Defence in support of which one year later, it could produce no evidence.

13. The defendant's Witness Statements related to activities by its employers or agent from 2007 to 2015. The original defence had to be abandoned. The abandonment left the fact that Mr. Johnson had entered the lands in 1977 without the consent of the defendant, unchallenged. Even if it had been established (and it was not) that he had left the land in "the mid nineties", more than 16 years would have elapsed before he left. WASA did not claim to have re-entered the lands in the mid-nineties. It did so only in 2015. Between 1977 and 2015 just a couple years short of four decades had passed.

The Law

14. In the circumstances, the claimant was left only to establish that he and his predecessor had been in adverse possession. The **Court of Appeal in CA 86 of 2009 Paul Katwaroo**

v. Majid Kadir and ors. enunciated the current state of the law as to what the claimant must show to establish his claim. **Narine JA** identified the elements as: -

> **(1) A sufficient degree of physical custody and control (factual possession) and**
>
> **(2) An intention to exercise such custody and control on one's own behalf for one's own benefit (the intention to possess).**

15. The defendant's admission that Mr. Johnson entered in 1977 and established a garden which he left in the mid-nineties appeared to settle that question. But if more were needed, I found that on the evidence of Mr. Johnson and the claimant as well as his several witnesses as to their open occupation and activities on the lot, the claimant discharged the burden to establish the elements above.

16. The witnesses Kevin Benjamin, Atma Maharaj, Sanjeev Jamuna were all persons who knew both Mr. Johnson and the claimant for over thirty (30) years in their neighbourhood and knew them to be planting the lands with several crops over the years. I accepted their evidence even when I found that they were exaggerating or perhaps embellishing a bit. This was particularly so in relation to the length of time that "the structure" had been in existence on the land. Further, there were some inconsistencies as to what was planted from time to time and the extent of cultivation, but their evidence as to Mr. Johnson's open occupation along with the claimant's was generally sufficiently cogent to establish the element of physical control of Lot No.5. One would hardly expect them to detail what he was planting with a partially fenced (galvanise) lot.

17. As to any attempts to place the shed on the lot before 2015, since there had been no re-entry by the defendant since 1977 until 2015, it mattered little at the end of the day. By the mid-nineteen nineties at earliest, WASA's title to Lot No.5 had extinguished. If the claimant and his witnesses felt it necessary to embellish on this aspect of the matter, it made no difference to the legal effect of the running of time against WASA. The effect on their credibility of their attempt to put the shed on the land at any time before, was of no consequence. This is moreso since WASA led no positive evidence to challenge the evidence of the several witnesses in any other regard during the relevant period.

18. In cross-examination, Counsel for the defendant was at pains to attempt to establish that the entire lot was not actually planted up, and that there were only a few trees in the year 2015 when the Bailiff entered. Mr. Soon's photographs were relied upon to show the state of the lot in December 2015. The material period for the determination of the issues in this case was 1977 to 1995 and those photos were not strictly speaking relevant. But what the photographs supported, was that this was not a lot of land that had been completely abandoned since 1995. Had it been so for twenty (20) years, I daresay it would have been completely overgrown in bush. Mr. Soon accepted this as well.

19. Mr. Richards did not need to show that the lot had been under complete cultivation from 1977. As the author, ***Stephen Jourdan*** in his text, "***Adverse Possession"*** puts it at page 154 paragraph 8-09:-

> **"A squatter can be in continuous possession even if he does not use the land continually. In *Bligh v Martin*, Pennycuick J said:**
>
> **'Possession is a matter of fact depending on all the particular circumstances of a case. In very**

> **many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between the acts of user … In the case of farmland, this must habitually be the position; for example, as regards arable land during the winter months.'**

20. This was a small vegetable garden that was located a short distance away from the claimant's home. WASA accepted it was cultivated as such at least until 1995. Mr. Johnson was planting different rotation crops on different parts of the land over the years. He had coconut trees and bananas too. He had vines of barbadine on this wire fence and when it was in season. Most significantly Mr. Johnson partially fenced it with galvanise. This was the clearest evidence of his intention to possess a lot which was located in the middle of the defendant's property. If the defendant's agents had been visiting this Well Field as one expects its employees must have done, the claimant's and Johnson's presence and activities would have been obvious.

21. The defendant's evidence related only to its activities at earliest in 2007 until 2012 through visits to the area by the Production Engineer, Ms. Safiyyah Abdullah. By 2007 the defendant's title to Lot. No.5 would have long extinguished. Even then, her evidence contradicted the defendant's pleaded case that Mr. Johnson left in the mid 1990's. She confirmed that during the periods of her visits there was what she described "as a small vegetable garden, generally unkempt partially barred with old sheets of galvanise." From the missing sheets of galvanise she could see banana trees, bush and other species of trees and shrubbery.

22. Ms. Abdullah's evidence was consistent with the claimant's case that his small vegetable garden continued to exist there in 2007 through 2012. She could hardly have described a few banana trees and bush as a "vegetable garden". Even when she claimed to have been involved in a clean-up operation conducted by WASA, the claimant's fence largely remained in place. The Defendant removed only some old sheets of galvanise that had fallen into the drain. It was also clear from her evidence that Ms. Abdullah did not enter Lot. No. 5 at any time during her visits to the area.

23. The defendant's witness Mr. Davindra Narine, Facilities Manager was shown a survey plan dated 20th September 2002 of the area of the Glen Lane Well Field. On the face of it, the plan was drawn by Licensed Surveyor, Mr. Farrel for WASA to excise four (4) lots of land. The plan showed a lot marked "vegetable garden" next to one of those lots. The witness identified it from the location as Lot No.5. Counsel Mr. Otway objected strenuously to the admission into evidence of this plan.

24. This objection was surprising since the plan was among the documents disclosed by the defendant. It was not attached to any statement by the defendant's witnesses but its contents were clearly relevant to an issue of fact as to whether the vegetable garden remained in existence past the mid-nineties. It was also relevant to the defendant's credibility. The document having been disclosed, it was always open to the claimant to cross-examine on it, or indeed for the Court to seek assistance on it.

25. The objection that the claimant was seeking to introduce "expert evidence" without a proper Part 33 application was also rejected. The question posed to the witness on the

survey plan related to the appearance of the lot indicated as a "vegetable garden" and "fences". That had nothing to do with the expertise of the maker of the plan. It was simply a matter of reading a statement which appeared on the face of the document. What weight should be attached to the statement was a matter for the Court.

26. I found that the indication of the vegetable garden was supportive of the claimant's case that after the mid-nineties and at least up to the year of the drawing of Mr. Farrel's plan in 2002, Lot No.5 was clearly marked out as a vegetable garden. This was inconsistent with the defendant's case and rendered it less credible.

27. The overall credibility of the defendant's case was further undermined by the inconsistency with the position taken in its response to the claimant's pre-action letter. By its response dated 29th December 2015 in which the defendant's attorney wrote,

> **"We wish to take this opportunity to indicate that unauthorised activities such as construction of illegal structures, the use of pesticides and other agricultural activities are strictly prohibited and the continued unauthorised use of these lands will pollute the water aquifer and will prevent the authority from properly exercising its statutory obligations under the Water and Sewerage Act."**

28. This is completely at odds with the defence of an express license to grow a vegetable garden, and the obvious appearance of the garden on Mr. Farrel's plan. Quite apart from the lack of credibility against the background of the pleading defence, the acknowledgment that the use of the lands for a purpose which breached the defendant's policy to protect and preserve the aquifers in the Well Field, further established the element of intention of the claimant and Mr. Johnson to possess the lot.

29. At the end of my assessment of the evidence and the application of the law, I found in favour of the claimant.

Disposition

30. The Court holds that the claimant and his predecessor, Mr. Herbert Johnson have been in continuous and undisturbed possession of the parcel of land known as Lot No. 5 Glen Lane, El Socorro Road San Juan since the year 1977 until December 2015, and the defendant's title to the said lot has extinguished. The claimant has acquired a possessory title to Lot No. 5.

31. The defendant is to pay the claimant's prescribed costs of the claim in the sum of $14,000.00.

Dated the 13th day of June 2018

CAROL GOBIN

Judge