

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2017-03058**

**IN THE MATTER OF THE REAL PROPERTY ACT CHAPTER 56:02  
AND  
IN THE MATTER OF THE APPLICATION OF STEPHEN DUNBAR in  
respect of the lands in Certificate of Title in Volume 5243 Folio 415**

BETWEEN

**STEPHEN DUNBAR**

Claimant

AND

**ANN MARIE SWANN-GUADA**

1<sup>st</sup> Defendant /Intervener

**THERESA SWANN**

2<sup>nd</sup> Defendant /Intervener

**JUNE SWANN**

3<sup>rd</sup> Defendant/Intervener

**YOLANDE WATSON**

4<sup>th</sup> Defendant/Intervener

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

Date of Delivery: May 07, 2019

Appearances:

Mr. R. Dowlath, Attorney at law for the Claimant

Mr. S. Jack, Attorney at law for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Defendants

## JUDGMENT

1. The Claimant and Dimus Swann (deceased) are the registered proprietors of one undivided half share each of lands comprising NINE ACRES THREE ROODS AND THIRTY TWO PERCHES be the same more or less delineated in the diagram attached to the Crown Grant in Volume 26 Folio 517 and also described in Certificate of Title in Volume 963 Folio 407 and bounded on the North by lands of Remy Eustache, and by lands of James Whiskey, on the South by Crown Lands and by lands of Abraham Whiskey, on the East by Crown Lands, and by lands of Abraham Whiskey and on the West by Crown Lands and intersected by a road reserved twenty links wide which said piece or parcel of land is now described in Certificate of Title Volume 5243 Folio 415 (hereinafter referred to as "the said Lands").
2. The title history is as follows - Pursuant to memorandum of transfer No.95 dated 26<sup>th</sup> July 1980, the Claimant's uncle Isaac Dunbar and Dimus Swann, his nephew were registered as the proprietor of the said lands as joint tenants.
3. By memorandum of transfer No.88 dated 16<sup>th</sup> September 1983, Isaac Dunbar severed the joint tenancy transferring his one half undivided share to the Claimant's grandmother Lorna Lewis.
4. By memorandum of transfer No.87 dated 7<sup>th</sup> August 1984, Lorna Lewis transferred her one half undivided share to Iris Dunbar, the Claimant's mother and the Claimant as joint tenants. Iris died on 11<sup>th</sup> March 1989. Her death was endorsed on the Certificate of Title on 9<sup>th</sup> December 2010. It came to the knowledge of the Claimant that Dimus Swann died on 12<sup>th</sup> April 2005.
5. The Claimant filed this Fixed Date Claim Form seeking a vesting order in relation to the undivided half share of Dimus Swann. His claim was essentially that since the year 1984, he began collecting rents from the eleven tenants his grandmother had on the lands since about 1974. Further he had been planting and cultivating the lands with cocoa, coffee, coconut and citrus to the exclusion of Dimus Swann. He claimed therefore to have been in continuous possession and control of the said lands and to "have been in contact with the tenants."

6. The Claimant filed Affidavits in support of his application of the following persons – Clyde Bobb (aged 64) Janice Samuel (62) Soogrim Rago (aged 81). A field investigators report dated 19<sup>th</sup> February 2018 was submitted by the Registrar General’s department. I directed notice of the claim to be advertised in a newspaper and the following persons intervened, Ann Marie Swann-Guada, Theresa Swann, June Swann and Yolande Watson. They are daughters of Mr. Dimus Swann. Essentially they dispute the claim that Mr. Dunbar has been in exclusive possession of the entirety of the lands.
7. Affidavits in support of Ms. Swann/Guada’s claims were filed by herself and Shirley Kerr and her brother Kenny Kerr. Shirley and Kenny are the children of Evelyn Nicholas and Sidney Kerr. Their parents were tenants of Isaac Dunbar. It is not in dispute that Isaac and his sister Lorna left the lands many years before their deaths. The Claimant says this was in 1977 or thereabouts. The Defendants and the tenants put it in about 1990 (which as it turns out was after their deaths).
8. Both the Kerr’s say that they only came to know Mr. Dunbar when he appeared in or about 2006 claiming to be the owner of the lands. By the time this happened most of the original tenants had either died or left the land. Shirley was living in a house she got from Etwaria Kissoon. Shirley said that her mother continued after her father’s death in 1992 to pay rent to Dimus Swann but no receipts were produced. She stated that Dimus himself stopped coming eventually. She confirmed that she first saw Mr. Dunbar in or about 2006, when he came to her mother and identified himself as the owner of the lands – asking her to pay back rent from the date of her father’s death. Her mother was afraid because of the way he spoke to her and started to pay the rent and was issued a receipt for 15 years back rent.
9. This is a case which essentially turned on my assessment of the credibility of the parties and the witnesses. The Claimant’s Counsel has asked me in addition to consider what he says is an issue of law of the impact of the collection of rent by the Claimant since 1984 and I shall return to that matter.

10. Having heard the evidence, I reject the Claimant's case. It was fraught with inconsistencies and was not helped by the absence of all three of the deponents of his supporting affidavits. In order to succeed on his claim the Claimant had to persuade me on a balance of probabilities that he had been continuous and exclusive possession of the entirety of the parcel of lands since 1984 and specifically to the exclusion of his co-owner Dimus Swann.
11. None of the Claimant's three supporting deponents Mr. Bobb, Mr. Ragoor or Ms. Samuel turned up at the trial. The Claimant offered as an explanation that persons aged 64, 62 and 81 were too old to come to Court. I do not believe this. I have drawn adverse inferences from their absence. I do not believe they could have supported his case under oath at the trial. I think they stayed away deliberately at least Mr. Bobb and Ms. Samuel.
12. Further to the adverse inferences I drew from their absence I noted the inconsistencies in any case of the affidavit evidence of Mr. Bobb, Mr. Ragoor and Ms. Samuel. First none of them mentioned that there were tenants on the lands. If they knew anything about the history of the land or were familiar with it, they must have known of the tenants. Mr. Bobb said the Claimant planted cocoa, coffee, coconut and citrus. This, on the Claimant's own admission turned out to be an untruth.
13. Janice Samuel mentioned nothing of the claimant cultivating coffee and cocoa but spoke of him bringing her coconut, oranges, portugal, lemon and lime which he cultivated on the land. This claim of him cultivating citrus was on the Claimant's own admission a lie. Mr. Ragoor who lived only 200 feet away from the lands for all his life could say only that the applicant's grandmother used to plant coffee and cocoa. This is significant in that it confirms no continued activity by the Claimant after his grandmother's cultivation. Again, it mentions no tenant. These inconsistencies even on their affidavits were telling.

14. By the close of his cross-examination Mr. Dunbar admitted that contrary to what he had put forward as a significant part of his case i.e. continued cultivation of coffee, cocoa, coconut and citrus to the exclusion of Mr. Swann, he had in fact planted nothing. This admission marked a significant departure from his pleaded case. He had deposed to a lie on an assertion of fact which was central to his claim to have been in possession of the lands and had procured witnesses to support him. This had a devastating effect on his credibility.
15. Counsel for the Claimant has submitted that this notwithstanding I should consider the evidence contained in the report on Title of Mr. Ramchand Hardy, Field Investigator as independent evidence which supported the Claimant's case.
16. I reject that submission. The Field Investigator's report is not sworn evidence. The investigator is not a witness who can be cross-examined. His report is based on statements made by persons who have not deposed to affidavits. In most cases especially where there is no dispute – the court is entitled to attach such weight as it deems appropriate. In this case I am prepared to disregard in its entirety. It is troubling to say the least that at page (3) of his report, Mr. Hardy described the land and the state of it. He claimed he observed one acre of corn cultivation - half acre ochroes, one acre tomatoes. I think in the light of the other evidence as to the state of the lands from both the Claimant and Shirley Kerr, serious questions have to be raised as to whether Mr. Hardy even visited the lands in question or whether he prepared his report with the aim of supporting the Claimant's claim for reasons best known to themselves. This could not be the same parcel of land. I suggest the Registrar General look into this matter further.
17. At the close of the evidence and after he admitted he had planted nothing on the land, Counsel for the Claimant was forced to accept that his entire case had to rest on his assertion that since 1984 he had collected rents from the tenants who remained there. In the case of one alleged former tenant Joseph Stephen, he produced a letter dated 29<sup>th</sup> January 2018, purportedly written by Mr. Stephen in which the latter notified him of "the closure of his tenancy". Here was a person who was allegedly Mr. Dunbar's tenant at the date when this

claim was filed on 21<sup>st</sup> August 2017. Mr. Stephen was not called upon to swear an affidavit in support of the claim. I draw further adverse inferences from the failure to call him as a witness to support the cases. In the circumstances, I attached no weight to the letter but consider its production by Mr. Dunbar another attempt to fabricate evidence. He has failed even to indicate where this particular lot was located.

18. Insofar as the evidence of the Defendants is concerned, given my assessment of the Claimant's credibility they had a less difficult task. Mr. Swann remains a registered proprietor of an undivided half share. In the absence of cogent evidence that Mr. Dunbar assumed possession and control of the entire parcel of land – there is no question of the registered title of their father having extinguished.

19. I shall indicate however that there are some aspects of their evidence that I have rejected. I do not believe that Dimus Swann ever collected rent from any of the tenants. I believe that well before Dimus became a registered part owner, coffee and cocoa plantation had ceased. I believe he may have visited his uncle Isaac from time to time before they moved away, but after Isaac and Lorna left the property, his visits, like theirs, ceased. I do not believe that Shirley or Kenny Kerr could have had any recollection of Isaac and Ms. Lorna and their references to him and any relationship or interaction they claimed to have with them were probably made in an attempt to assist the Defendants.

20. But at the end of the day my assessment of their credibility even with those findings does not assist the Claimant on whom the onus of proof remained. I shall turn to the issue of the collection of rent by Mr. Dunbar and the significance of the receipt of rent or his claim to possession.

21. First, I accept the evidence of the Kerr's that the first time they came to know Mr. Dimus and of his claim to be the owner was in or about 2006. This time was after Mr. Swann had died. I believe Mr. Dunbar came to know of his passing and decided to assert his claim to sole ownership of the land as a result. The proximity of the date of Mr. Swann's death, and his

appearance on the lands and the sequence of the events, is more consistent with the evidence of the Kerr's.

22. I believe he did in fact demand back rent from the date of Mr. Kerr's death and that Evelyn did pay it out of fear because of how he spoke to her. For Mr. Dunbar it was important to have a receipt that appeared to show he had been recognised as the owner of the land for at least the preceding 15 years. I believe the Kerr's version that Mr. Dunbar also demanded separate rent from Kenny for the plot he had built on with his mother's permission. Kenny's spot was part of what was originally rented to his father. He made the same demand from Shirley for what was formerly Etwara's spot. He was doing this because of his lack of knowledge as to what was actually on the ground on the lands prior to his appearance there in 2006. He did not know which plot had been occupied by any particular tenant because he had no dealings with the tenants. But he sought to extract additional rent from the family. The inconsistency in the amount of land described in the Kerr's receipts also raised doubt as to the Claimant's credibility.
23. I believe that Mr. Dunbar requested Evelyn Nicholas and Shirley Kerr to sign statements in or about 2012 certifying him to be the owner of the lands. I believe he dictated Shirley's statement and that his wife wrote her mother's statement which Mrs. Kerr signed. This was all in an attempt to assist him in making his claim to sole ownership. This is only consistent with the conduct he displayed in filing these proceedings on the basis of a false claim regarding cultivation.
24. The legal issue raised by the Claimant is this, that Mr. Dunbar having collected rent since 1984 for a period of 16 years and he having retained it all without paying any part to Dimus Swann, since rent is equivalent to profits, then this puts Mr. Dunbar in possession of the lands to the exclusion of Dimus Swann for the relevant period.
25. Everyone accepts that Isaac and Lorna Lewis had tenants. From the evidence the tenants occupied only small areas of the land – leaving most of it under forest. In the first affidavit

filed on 21<sup>st</sup> August 2017, Mr. Dunbar made a bare statement (paragraph 18) that in 1984 he began collecting rent from the tenants whom he named. He later said (paragraph 16) since 1984 he had “been in contact with them”, which of course means little. In his affidavit in response to those of the First Defendant and the Kerr’s, Mr. Dunbar for the first time attached a bundle of receipts (paragraph 8). These receipts show sporadic issuance of rent receipts to about ten different persons between the years 1984 and 1992, save in the case of Sidney or Evelyn Kerr.

26. At best the receipts, other than those which were issued to the Kerrs show that between 1984 and 1994 receipts on the face of them for rent were issued, some signed by Mr. Dunbar. This period if indeed it can be said that Mr. Dunbar was receiving the rents and profits fall far short of 16 years. But I am not persuaded that Mr. Dunbar actually collected rent or that the persons named were in fact tenants at the time.

27. The tenanted plots of land and their location on the larger parcel have not been identified. Mr. Dunbar has not been able to give evidence as to what became of these tenants, when they left, what became of their houses and their plots. He has not denied that other than the Kerrs there are now no houses or plots occupied by anyone. His failure to produce Mr. Stephen has not helped. Not one person has been produced who can confirm that Mr. Dunbar was their landlord or that some relative of their’s was his tenant.

28. This suggests that Mr. Dunbar had limited contact with the tenants and that in any case after they left the lands he did not seek to do anything which would indicate he continued in relation to those plots to exercise control exclusive or otherwise. He give no evidence of re-entering, reclaiming possession of houses or plots, renting to anyone else.

29. At best then Mr. Dunbar may have collected rent for plots in a very small portion of the lands for the period 1984 to 1992 and not consistently from any particular tenant it seems. This falls short of the period of which exclusive possession and control is required. So while the law is that receipt of the rent and profit is indeed possession, the duration of his possession was not



for the requisite period of 16 years from 1984. There was therefore no question of him having acquired title adverse to Mr. Swann's.

30. Further, control of small plots of the land, while the vast expanse of its 9 acres remained untouched and forested could hardly give Mr. Dunbar an adverse title to the whole. I have accepted Shirley's evidence that just about 5 lots of the 9 acres remains cleared. This has been done to keep away snakes and pests from their homes and their garden. The rest remains forested. The cases cited in support of the legal submissions of the Claimant (**Sanders v Sanders (1881) 19 Ch. 373**); (**Hobbs v Wade (1887) 36 Ch. 553**) are therefore not of any assistance. In both of them the real property was small and the rent and profits were generated from the entirety.

31. Further it is settled that what constitutes possession must depend on the nature of the land and what is capable of use. Dunbar's occasional visits to the roadside properties to collect rent if he did so was not in the circumstances of this case and given the nature of the land sufficient to establish possession of the rest of it or all of it. Given my poor assessment of Mr. Dunbar's credibility, I have grave doubts even as to the duplicates of the receipts he has produced.

32. As for the Kerr's alleged tenancy, in my assessment, Mr. Dunbar in issuing the receipt dated 2007 and his insistence on the payment of back rent was clearly an attempt to retrospectively establish that he had been recognised as the owner of the land. It is clear that he had not been receiving the rent during those years – or arrears would not have accumulated. So the law that receipt of rents and profits equals possession could not apply. He was not in receipt of rent from the Kerrs for that period. I do not believe he was even known to them.

33. I believed Mr. Dunbar prevailed upon the Kerr's to pay the rent just as he prevailed upon them when he wanted the letters in 2012, for his claim. I reject the suggestion that Mr. Dunbar he had sympathy for Evelyn Kerr after he husband died leaving her with 8 children and that is why he did not collect rent since 1992. His recent conduct hardly supports a picture of a

sympathetic character. Shortly before the trial, mere days before Mr. Dunbar entered the lands to erect a fence. He was carrying his licensed firearm. I did not accept his explanation for his conduct on that recent occasion. I am more inclined to the view that Mr. Dunbar is a man who would show such force as he believes is necessary to achieve his own ends. I was not impressed with his conduct especially so close to the trial. The Kerr's knowing no better began to pay him rent including what he claimed as back rent in 2007. He was not then nor had he ever been in possession of their lot.

34. In the circumstances, the Claimant's claim is dismissed.

35. The Claimant will pay the Defendant's costs on the prescribed scale in the sum of fourteen thousand dollars (\$14,000.00).

**Carol Gobin**

**Judge**