

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-03101

BETWEEN

MARK CUDJOE

CROMWELL BISSESSAR

Claimants

AND

VANESSA GORDON

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: April 30, 2019

Appearances:

Mr. Nyron Heeralal, Attorney at law for the Claimants

Mr. Robert Boodoosingh, Attorney at law for the Defendant

REASONS

The Claim

1. The Claimants are the last surviving siblings, sons of the late Archibald Cudjoe. This action concerns a parcel of land situate at Eastern Main Road, Tacarigua measuring 130 feet on the Eastern/Western Boundary lines – 60 feet on the Northern Boundary line and 67 feet on the southern boundary line (the subject lands). It is described in a deed of assent registered as No.860 of 1973.
2. In the course of the trial some issues were raised as to lot number assigned to it. I has been referred to at times as Lot 117, Lot 115, as No.174, and No.118. It is accepted however that the claim is to the parcel of land originally owned by Emelia also called Amelia Elizabeth Frederick. It is the parcel on which it is not disputed that Archie Cudjoe built a house for his

family and which he converted to a rum shop and from which he ran Aries Recreation Club, and at which he met his violent death December in 1981. It is the parcel of land on which there were two houses one the roadside and one at the back.

3. The Claimants' case is simply that as against this Defendant they are entitled to possession of the disputed lot. They claim to have been born on the disputed lot and to have lived on it for all of their lives. There were originally two houses on the parcel. They lived with their father at the back house and their siblings Churchill and George, now deceased, lived in the front with two ladies they remember only as "Aunty Jean" and "Aunty Jenny". The ladies left that front house sometime in the 1970's never to return.
4. The Claimants' case is that after the death of their father in 1981, Cromwell applied for a transfer of the club license and the operations continued under his management until 1994 when he leased it to be run by someone else. All this time he lived the part of the back house to which the club was attached. The siblings continued to occupy the front house exclusively up until the time of their respective deaths in the mid 2000's. For a few years Mark was incarcerated. That was the only time he was away from the subject lot. Immediately upon his release he returned to it.
5. The Claimants claim that the rumshop operated until the early 2000's when a fire destroyed the club building and parts of the dwelling house at the back. After the fire, Cromwell moved between the subject lot and his mother's home, but he continued to visit and occupy part of the building that had not been destroyed. Mark built up a shed which he occupied. The brothers continued to occupy the subject lot maintaining it, and doing some planting. Mark also rented a spot on the front of the lot to a doubles vendor. Sometime in 2011, the rubble at the back was cleared and the Claimants began repairing the back house.
6. In March 2015, the Defendant came on to the subject lot accompanied by armed police officers. She subsequently bulldozed it. She claimed to have a proper title to the lands. This did not cause the Claimants to abandon the lands. They returned and began construction

once more putting up a wooden structure measuring 16' x 24'. The Defendant returned to the lands three weeks later and demolished that second structure. She set up a 20' container on the lands.

7. Curious as to her claim to a legal title to the subject lot, the Claimants procured a report on title which revealed the existence of five deeds all of which purport to effect the conveyance of the subject parcel of land to various persons between with the final DE2015 00885 1040 D001 one purporting to vest the legal title in the Defendant. The deed reflected a purchase price of \$800,000.00.
8. These proceedings were filed by the Claimant seeking a declaration that they are entitled to possession, injunctive relief, orders setting aside the five deeds, as well as damages for trespass including aggravated damages, special damage in the sum of \$75,000.00 and possession of the lot.

The Defence

9. The Defendant disputed that the Claimants had been in continuous and exclusive possession of the lot for over 50 years. She claimed to have some authority over the lands through a chain of relation to Amelia Elizabeth Frederick under intestacy. Specifically the Defendant claimed Amelia was her grandmother, the mother of her own mother Yvonne Gordon. Her mother Yvonne had made an application for a grant of Amelia's estate but had passed away before the grant was obtained. The Defendant herself has an application for a grant of her mother's own estate, pending.
10. The Defendant's Defence confirmed (though it was clear in her evidence that she had no first hand knowledge of any of it), that the Claimant's father was given permission to occupy at least the back portion of the land, since as far back as in the mid 60's. She claimed that while Archie was in "permissible occupation" of that portion there were other tenants at the front. She claimed that 4 years after Archie's death in 1981 – the rumshop was burnt down in a fire.

This was as opposed to the Claimants claim the fire happened in the early 2000's. Her case was that the premises were never rebuilt nor was any other building constructed on the site. She disputed all the claims of the Claimants as to what they did on the lands after the fire. She sought to give the impression they abandoned it. The WASA bill was unpaid and in arrears, the lands became a dumping ground and she entered to clean it up. Her evidence as I said was not of her own knowledge and therefore inadmissible, but I have considered it helpful only to the extent that she confirmed some of the claimants' evidence as to their family occupation.

11. The Defendant claimed her mother exercised some authority over the land, and then she took over. Rishi, the doubles vendor, the same one the Claimants named, was her tenant. Her tenant left the plot only because the Claimants were trying to get money from him. She asserted further that previous tenants had paid rent to her mother who collected it on behalf of Amelia. Her attorney (Mr. Boodoosingh) had written a letter to Cromwell indicating that her mother was making an application for a grant of Amelia's Estate. This too was an assertion of some legal authority. Her attorney had suggested to him that pending the grant the status quo should remain.
12. The Defendant admitted as the Claimants complained, that she entered the lot and demolished a building (a tapia and brick house) but she said she did so with the consent of the owner of that house Mrs. Jean Senford. She was protected in conducting this demolition exercise by the presence of the police who first satisfied themselves that the Claimants could produce no deed for the lands.
13. The crux of her Defence was to be found at paragraph 21 in which she stated: -

"She is lawfully entitled to be on the lands – her entitlement stems from intestacy. The Claimants have no lawful right to be on the land. In short they are themselves trespassers since the license granted by Amelia came to an end whether Cudjoe from ceased to reside in the building built by Archie Cudjoe in the later 1970's and was completely destroyed by fire in 1985."

14. As for the alleged fraudulent deeds she was aware of them and of the fact that the fraud squad was looking into them. She would be “mystified as to why she would pay the sum of \$800,000.00 for a property that would be hers anyway”. Ms. Gordon counterclaimed for damages for trespass to the subject lot on the basis that Archie Cudjoe’s license extinguished in 1985.
15. The nub of the Defence was a legal entitlement to the Estate of Amelia Frederick, whom it is not disputed was the legal title holder of the subject land. The evidence elicited under the Defendant’s cross-examination put that claim to rest. She was not entitled under the chain of intestacy to Amelia’s Estate. Indeed, the evidence established that contrary to her claims, Amelia was not her grandmother. Her grandmother was a woman named Priscilla James. There were other persons who would have been entitled under intestacy to the estate of Amelia Frederick. Her mother was certainly not one of them.
16. The Defendant’s assertion at paragraph (2) of the Defence, Yvonne Gordon her mother who took control over the aforesaid parcel of land was a bare one which could not introduce a rival claim to possession of the said lands. This was not a case of someone else i.e. her mother having assumed exclusive possession of the lands. Her case was that her mother, applied for a grant of letters of administration of Amelia’s Estate in 1998. This Defendant was at times seeking to establish a legal title on Amelia’s intestacy. Paragraph 21 of the Defence could not have put it more clearly.
17. In the light of the Defendant’s evidence that her mother Yvonne was not in fact Amelia’s daughter, the entire foundation of her defence was destroyed. This evidence clearly established that she had no locus to contest the Claimants’ claim. The result is this, the Defendant is not a paper title holder nor is she entitled to it. In the circumstances, the Claimants were not required to show that they had prescribed against her. They were only

required to establish that they had been in continuous possession until the Defendant's unlawful entry on the parcel in 2015.

Assessment of Credibility/Rejecting the Defendant's

18. The Defendant sought to establish that the lands had been abandoned by the Claimants since after the fire in the mid-eighties. They left the lands and never returned there to, they never planted, maintained, cleaned etc. In those circumstances, I had to consider the evidence to determine whether the Claimants' claims as to the period of their possession was more credible than the Defendant's. In other words if the Claimants had indeed long abandoned possession and occupation of the parcel in 1985, then it may well have been arguable that the Defendant's entry in 2015, even as a trespasser did not amount to an ouster and in those circumstances, the Defendant would not be liable in damages in trespass.

19. The resolution of this issue turned on my assessment of the credibility of the parties and their witnesses. I shall start with the fraudulent deeds. The glaring irregularities on the faces of the several deeds was established by the evidence and title report of Ms. Pauline Phillip, Search Clerk and Real Estate Consultant.

20. This witness was not cross examined. On the basis of her evidence I consider that these deeds are indeed fraudulent and that they should be struck off the register. Several of the parties to them are not before the Court but I doubt very much that these are actual persons. In any case the persons named no longer have any interest in the land and there is no prejudice to them. The Defendant's position on the deeds is that she knows of them, but has had nothing to do with them. She asks rhetorically why would she be stupid to pay \$800,000.00 for a property which was coming to her anyway.

21. The answer is to be found in this. The evidence has established that the property was not coming to her anyway. She could not lawfully claim it as indeed her mother could not. The fact that the deed reflects a purchase price of \$800,000.00 does not of course mean that that money actually passed. In any case the price would hardly matter in a fraudulent deed. What

is significant is that the final transaction registered in March 2015 purports to vest legal title the Defendant and there is a notable proximity with the date of the deed and the timing of the Defendant's moves to try to exercise control of the subject lot and her efforts and to openly claim it. Since she had not obtained a grant one can only surmise as to how the Defendant was able to persuade the police to allow her to carry out the bulldozing exercise. These were the same officers who came to the conclusion that the absence of documents on the part of the Claimant made the Defendant's claims stronger. I can reasonably infer she showed them some document.

22. Further the fact that the final beneficiary of the fraudulent transaction was the Defendant or someone with her name on the face makes her claim not to know anything about it on a balance of probabilities somewhat hard to believe. It begs the question, why anyone would go through the trouble and expense, no doubt, of procuring the preparation and registration of 5 fraudulent deeds ultimately for her benefit without letting her know. These transactions raised many questions and ended up giving her a paper title that her mother had not been able to obtain after almost 12 years. The Defendant's assertion the property "was coming to her anyway" especially given that the failed efforts of her mother to obtain a grant indicates a curious optimism. It could only have been coming her way if she false, claim to being Amelia's granddaughter succeeded.
23. On this significant and very serious matter I find that the Defendant's attempt to distance herself from the said deeds fails. The matter is already the subject of a police investigation so I shall say no more. However, my findings on this has adversely affected my view of Defendant's credibility generally.
24. In her affidavit on 10th September 2018 at paragraph (2), the Defendant said: -

My great great grandmother owned a piece of land at Erin Main Road, Tacarigua which she rented out to tenants ... There were tenants occupying the said land

including Archibald Cudjoe ... the Mahons the parents of Jean Senford etc.

25. Mere months later, in her witness statement (paragraph 2) Ms. Gordon changed her position on Mr. Cudjoe's status on the lands. She once again identified tenants Mr. and Mrs. Mahon but this time she added: -

“Also living on the lands was Mr. Archibald Cudjoe who was given permission by my grandmother in the 1960's to build a house – she continued, he built in the early 1970's and then converted it into a rumshop in the late 1970's.”

26. This clear shift in her evidence to support her claim for what it is worth that the Claimants father was a bare licensee of Amelia's, did not impress me. First, such a finding is a matter of law, but the inconsistency of her statements undermined her credibility further. I rejected the evidence of the Defendant and her witnesses who were called to support her claim that they were tenants of her grandmother, it was not her grandmother in any case. The receipts which were produced related only for recent years I am inclined to believe they were conveniently made for these proceedings.

27. I also infer from the fact that in 2010, Mr. Boodoosingh, attorney at law was writing to Mr. Cudjoe suggesting that “it is prudent for the status quo to remain” until the issuance of a grant, suggests that Ms. Yvonne Gordon was well aware of the claim of the Cudjoes to the property. The vague reference to the issuance of a grant which had been applied some 12 years early and not yet issued, indicates the weakness of the Defendant's story.

28. I believe the Defendant produced Jean Senford and her daughter in an effort to establish that Mrs. Senford continued to claim or control the front house. But the evidence that she had a sister Jenny supports the Claimants' case that there was some relationship and that two of their siblings lived in the front house with the ladies whom they called “Aunty”. I believe there was some connection between them and Archie and his sons. Mrs. Jean Senford showed

herself under cross-examination to be unable to remember very much. I attached little weight to her evidence. Similarly I reject the evidence of Sharon and James Gabriel as to their continued control of the front house. I believe the other Cudjoe brothers Churchill – George occupied the front house until their deaths. I believe that about the time where the deed was prepared and executed the Defendant may have started attempting to claim some kind of control of the property. In any case Mrs. Senford has not established that when she left the property in 1982 she maintained any control of it. If her son-in-law entered to do some renovations in 2004 that was not sufficient to establish a re-entry and I do not believe that following that, there was any continued control. It is clear that Mr. Samaroo a tenant who was placed in the front house had concerns about the claims of others including someone else who was there. He may have done only after the George and Churchill died. In any case, at best this evidence does not support the Defendant's case against the Claimant.

Claimants' Evidence Preferred

29. I have generally preferred the evidence of the Claimants and their witnesses all of whom supported the Claimants' case that the club was in existence until the year 2001 and not 1985 as the Defendant was suggesting. And this finding as to the date of the fire had an extremely significant bearing on the credibility of the parties. I found the evidence of the several gentlemen from all walks of life who recalled patronising the club, to be very cogent. These witnesses were Mr. Cecil Boyce, Justice of Peace, Mr. Selwyn Paul – founder of Parry's Pan School who had vivid recollections of attending curfew parties then during the 1990 Coup, Mr. Deolal Seenath aka Toyin who actually rented it and ran the club in 1990 who knew it to be running up to years after he left. Even after that he started frequenting Dallas Recreation Club, which is located opposite the subject lot. He continued to observe what was happening across the road.

30. Mr. Ancil Elcock owner and founder of Ancil Elcock Coaching School former captain of our strike squad soca warriors team who wore our national colours between 1994/2004 was particularly impressive. Mr. Elcock referred to his career achievements at the time and confirmed that up until 2001 the bar was in existence. Only when he returned from abroad in

2002 would there have been no bar. The relationship between the football Community and the bar was well established. Cromwell ran it as the unofficial club house for the Parliament Football Club which played in the Eddie Hart League. Mr. Elcock recalled long limes after every game, two or three times per week. He specifically recalled Cromwell living on the premises. So impressive a witness was this gentleman, Counsel for the Claimant apologised for having to cross-examination him and to put his instructions to him.

31. Mr. Moonian, the doubles vendor also supported the Claimants case of possession. For about 14 years he sold doubles through an arrangement with Mark Cudjoe. He paid Mark \$400.00 a month and sold at entrance the driveway of the yard. He confirmed too that Mark sold vegetables from a shed on the premises. He knew the brothers Churchill and Stone living on the premises. He believed Mark lived there. He saw them cleaning up the grass etc. and moulding peas and corn.

32. Mr. Moonian did meet the Defendant whom he came to know as Vanessa. He had not known her throughout the 14 years he was there. At their first meeting she told him she was the owner and she had papers for the land. He told Mark of that conversation. He continued selling and paying Mark rent until March/April 2014 when someone came to him claiming he had instructions to block up the place, and telling him he would have to move. Some threats were exchange. Sometime later he saw Vanessa with police officers and a backhoe cleaning. He then believed she had papers for the land. He spoke to her and asked to rent his spot and they agreed a rent of \$700.00. He did pay for one month but that arrangement came to an end when she would not give him a receipt.

33. Mr. Emmanuel Murphy, confirmed the pre-fire occupation and that Churchill and Stone occupied the front house. He confirmed that after the fire Mark continued occupy the shed and Cromwell moved back and got between his mother's house on Huggins Street and the subject property. He saw them planting and he himself would assist. He helped them build the wooden structure.

34. These witnesses were all considered by me to be independent with nothing to gain by giving evidence in support of these Claimants. I found that though independently there were obvious limits to the extent of the knowledge each had about the lives and activities of the Claimants, there was no attempt to embellish. When taken together with the Claimants evidence, they established that the Claimants were from their childhood in occupation of the subject lands and that they remained so until the bull dozing in 2015. There was no break in their continuous occupation and possession. Mr. Murphy as well as Rishi Moonian knew their brothers George and Churchill to be in the front house.

35. The Estate of Amelia Frederick is not a party of this case so I can make no finding on an issue of adverse possession, and the Claimants have not claimed such. Suffice it to say, if indeed the entry into the parcel was with the permission of Amelia Frederick, the facts suggest that Mr. Cudjoe was granted exclusive possession to build what he wanted to convert it and open a bar/rumshop with relevant licences to have his family occupy both houses on the land. This hardly seems to support a claim of a bare license which could have ended with this death. If that bar was in operation even until 1985 as the Defendant claims then the legal title estate of Amelia may well have extinguished even of the Defendant's case.

36. The Ruling in **Ramnarace v. Lutchman (PC) 2001 WLR** would apply: -

Para 12: - The effect of Sections 3 & 8 of the Ordinance taken together is that if no action is taken by the true owner, his title is extinguished after the expiration of 17 years from the commencement of the tenancy even though the possession of the occupier is permissive throughout."

37. I hasten to add these observations are obiter. The evidence in this claim establishes that the Claimants have been in continuous and undisturbed possession of the subject parcel of land since the 1960's until the Defendant removed them and entered into occupation in 2015. The Claimants promptly resorted to the Court for injunctive relief. The Defendant's actions in removing them were high handed, I believe she encouraged the police to protect her illegal

actions by producing some document which caused them to believe she had title. It is not too far fetched to believe or a balance of probabilities that the fraudulent deed may have been used. The Defendant had no legal authority but sought to install herself through the force and abuse of connections. I therefore reject the Defendant's case. I find that the Claimants are entitled to Judgment. The conduct of the defendant warrants an award of aggravated damages.

Disposition

38. The following deeds are set aside and the Registrar General is directed to expunge them for the register of Deeds: -

- (1) DE 2015 005881 40 D001
- (2) DE 2015 003158 95 D001
- (3) DE 2014 028851 61 D001
- (4) DE 2014 020116 07 D001
- (5) DE 2014 025257 38 D001

(b) The Court declares that the Claimants are entitled to possession of All and Singular: -

“ALL AND SINGULAR that parcel of land situate at Eastern Main Road, Tacarigua in the Ward of Tacarigua in Trinidad measuring 130 feet on the Eastern and Western boundary lines 60 feet on the Northern boundary line and 67 feet on the Southern Boundary line and bounded on the North by lands now or formerly of A Bonas on the South by the Eastern Main Road on the East by lands now or formerly of E Lyder and on the West by lands now or formerly of A Travelie and intersected by a drain.”

(c) The court declares that the Defendant has no right to title or interest in the subject lands, described above.

(d) The Defendant is ordered to deliver up vacant possession of the subject lands on or before 30th May 2019. The Defendant is restrained whether by herself her servants and or agents

from entering or remaining upon the subject lands, save for the purpose of removing any structure or item placed by her on it on or before 30th May 2019.

- (e) There being no evidence to support it, the claim for Special Damage is dismissed.
- (f) The Defendant is to pay nominal damages for trespass in the sum of \$20,000.00 and aggravated damages in the sum of \$15,000.00.
- (g) The Defendant will pay the prescribed costs of this action as well as the costs of the injunction to be assessed by the Registrar in default of agreement.

Carol Gobin

Judge