

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

CV2016-01585

BETWEEN

Kathleen Ramjit

(Administrator ad litem for the Estate of Indra Ramdial)

Claimant

V

Hosein Gafoor

1st Defendant

Anand Lutchman

2nd Defendant

Ria Rampersad

3rd Defendant

Rita David Noel

Interested Party

Before the Honourable Madam Justice Eleanor Donaldson-Honeywell

Delivered on: November 19, 2018

Appearances

Ms. Tara Bhairosingh, Attorney at Law for the Claimant

Mr. Sherman Mc. Nichols and Mr. Chanka Persadsingh, Attorneys at Law for the Defendants

Reasons

1. On September 25, 2018 an oral decision was delivered determining this Claim for recovery of possession of property, namely a dwelling-house on land subject to a Statutory Tenancy. Judgment was awarded for the Claimant. I now provide Reasons for the decision.

Introduction

2. Kathleen Ramjit is the daughter of the deceased Indra Ramdial. The Estate of Indra Ramdial is the Claimant herein. Kathleen Ramjit serves as Administrator ad Litem for her mother's estate for purposes of bringing this Claim. Indra Ramdial ["Indra"] bequeathed the family home, a building at No 24 Salt Mine Trace, Thick village, Siparia Road, Fyzabad and the statutory tenancy for the land on which it stood ["the family home"] to Kathleen Ramjit.
3. The 1st Defendant in this matter is Kathleen Ramjit's father, Hosein Gafoor, who was divorced from her mother in 1979, having left the family home a year earlier.
4. The Claim seeks recovery of possession of the family home because after Indra died in 2014, Kathleen Ramjit's father Mr. Gafoor purported to sell the home and transfer the tenancy in the land on which it stands to the 3rd Defendant Ria Rampersad and her husband, Anand Lutchman, the 2nd Defendant.
5. It was very late in the proceedings that it became clear to the Court that the 3rd Defendant had grown up living next door to the deceased, Indra Ramdial. She was not a blood-relative of Indra but she is the cousin of her daughter Kathleen Ramjit and the niece of two of Indra's ex-husbands; namely the 1st Defendant Hosein Gafoor and his nephew Sookdeo Rampersad, who Indra also married.
6. The bare details in the Defendants' pleadings left me with the impression that the 2nd and 3rd Defendants may have been bona fide purchasers with no knowledge as to anyone else's claim to the property the 1st Defendant allegedly sold to them. In other

words they appeared to have interests independent of the 1st Defendant and possibly an ancillary claim against him.

7. I therefore recommended that they seek separate counsel. Later on I came to understand that the 1st and 3rd Defendants were related and the 3rd Defendant was at all time fully aware of Indra's potential interest in the family home. This was so because she was present to observe Indra Ramdial in possession of the family home while living next door for decades.
8. The main reason for the determination of this matter in favour of the Claimant was that it was clear to all parties at the end of the Trial that the case pleaded and presented by the Claimants established a stronger right to possession based on
 - a) Indra being in occupation as a Tenant in 1981 when the Tenancy became a Statutory Tenancy pursuant to the Land Tenants (Security of Tenure) Act, Chap. 59:54.
 - b) Indra's renewal of the Tenancy in compliance with the said Act in 1981.
 - c) Indra's continued contributions to the property. This included the part she played in building the home which started as a two bedroom wooden structure in 1965 and the renovations she made to the home after the 1st Defendant left. Those renovations comprised an extension to the back and blocking around the entire building, addition of a concrete toilet and bath on the upper floor of the extension and adding two bedrooms.
 - d) Indra's undisturbed possession of the property for over 16 years.
9. It was clear that there was no merit to the attempt by the Defendants to prove that they had a better right to possession based on:
 - a) The 1st Defendant having built the home and been named as assessed owner in 1965
 - b) An equity arising from his alleged renovations of the home
 - c) His continued visiting to the property and allegedly paying rent after his divorce.

- d) The alleged recognition of the Defendants as Statutory Tenants by letter in April 2015.
- e) The alleged sale of the property to the 2nd and 3rd Defendants

10. In light of a Defence that was hopeless based on the pleadings and evidence before the Court, Counsel for the Defendants made no attempt at the end of the proceedings to persuade the Court that Judgement should be awarded in favour of the Defendants.

11. The weaknesses in the Defendants' case, in comparison with the strength of the Claimant's version of events was evident from the earliest stages of the proceedings and became progressively clearer up to the end of the Trial.

Weaknesses in Defendant's Case noted at Close of Pleadings

12. As soon as the pleadings were closed the weaknesses in the Amended Defence filed by the Defendants were evident. The Claimant applied for Summary Judgement setting out a number of points of weakness in the Defendants' case. These and other deficiencies in the pleaded Defence were among those that I took into account in awarding Judgment for the Claimant.

13. In the first sub-paragraph of paragraph 3 of the Amended Defence there was a pleading that the 1st Defendant was the tenant of one Mr. David Alfred Felix in respect of land on which he had built a wooden house. He claimed he was the sole builder of the house, thereby denying the Claimant's pleading that the couple built the house together after being married in 1965.

14. He says this is so since the deceased Indra was never employed and she had no income whatsoever. He said he was the only one employed. However, neither his type of employment nor earnings was pleaded. In contrast, the Claimant attached to her Statement of Case the Divorce proceeding documents regarding the 1st Defendant and Indra's divorce. The un-contested statement as to arrangements for children indicated that Indra was a Sales Representative for Trinidad Cosmetics Ltd and she

was earning \$700 per month in 1979. Her then husband, Hosein Gafoor, was a Taxi-Driver earning a lower income at \$350.00 per month. Accordingly, on the pleadings the 1st Defendant's claim to have been the only party to the marriage earning enough to have built the home was doubtful.

15. In the second sub-paragraph of paragraph 3 of the Amended Defence, the Defendants say that after David Alfred died 15 years ago his daughter Rita David Noel came to all tenants in the area and was collecting rents from them. The Defendants, presumably all three, are said to have been among those visited by Ms. Noel for that purpose. There are four rent receipts attached to prove this but none of them reflect any payment by the 1st Defendant as a Tenant.

16. Instead, three of the receipts are dated at a time after Indra's death, when the 3rd Defendant and her husband the 2nd Defendant were moving into the family home. Those receipts indicate only the 3rd Defendant's husband Anand Lutchman as having paid the rent. Inexplicably, the fourth receipt is dated 2006, a time when it is not disputed that Indra and her children lived in the family home. However, as to this time as well there is a receipt attached with Anand Luthchman's name on it. In these circumstances the pleading that the 1st Defendant was the paying tenant from 1965 to 2015 was doubtful.

17. The final sub-paragraph of paragraph 3 of the Amended Defence indicated that Rita David Noel gave permission, by letter dated April 27, 2015, for the 1st Defendant to transfer the statutory tenancy in the land on which the family home stood to the 2nd and 3rd Defendants. However, the letter attached to the Defence contradicts a fact that was undisputed on the pleadings. That fact is that the 1st Defendant had moved away from the family home since 1978 or 1979. The letter is addressed to no-one and states in the fourth line that Mr. Gafoor is the tenant of the land and has been in occupation of the land for over a period of fifty years.

18. The letter purports to mandate that “Anan” Lutchman and Ria Rampersad, the 2nd and 3rd Defendants, “are free to purchase the said house and to effect all repairs to same fully with my consent”. The letter ends with a purported signature of Rita David Noel on a line with a blank space for ID# below. The 3rd Defendant who stood to benefit from the alleged transaction, is named as the witness.
19. There were no documents, such as a sale agreement or even receipts to prove that the 1st Defendant ever actually sold the family home to the 2nd and 3rd Defendants. The alleged sale price was not pleaded. All that is said at paragraph 8 of the Amended Defence is that the 2nd and 3rd Defendants commenced occupation of the family home a few days after the alleged letter from Rita David Noel was prepared, in or about May 2015.
20. Ironically, there is an inadvertent admission at paragraph 9 of the Amended Defence as to paragraph 15 of the Statement of Case. The admission is that the 2nd and 3rd Defendants unlawfully and/or illegally entered the land and commenced occupation of the family home on or around the date of the said letter, April 27, 2015.
21. The said letter described above served as a relatively weak basis for a claim for possession when compared with the pleadings in support of a right to possession at paragraphs 9 to 14 of the Claimant’s Statement of Case. There the Claimant set out, with supporting documents attached, her history of becoming the Statutory Tenant in 1981, being treated as such by the landlords who sent her many letters, renewing the statutory tenancy by notice dated November 29, 2010 and bequeathing the statutory tenancy and the dwelling house to her daughter Kathleen Ramjit by will dated October 22, 2014. In response the Defendants pleaded a bare denial
22. The Claimant’s Amended Reply to the Amended Defence responded to the 1st Defendant’s assertion that he built the family home and was the assessed owner in 1965. The response was that as a result of Indra’s “continuous, undisturbed and exclusive possession of the dwelling house and the said tenanted lands for a period in excess of sixteen years, any interest the First Defendant may have had in the dwelling

house or the said tenanted lands had been extinguished by virtue of section 3 of the Real Property Limitation Act, Chapter 56:03.”

23. Although it was clear that the Defendants had not pleaded anything but a bare denial as to the history of Indra Ramdial having been a Statutory Tenant, having renewed it and bequeathed the family home to her daughter, I decided to allow the proceedings to continue. This was done because there remained the glimmer of a possibility that the 1st Defendant could present evidence to prove that he had an equitable interest in ownership of the family home, based on his alleged construction work on it. This claim was included at paragraphs 3 and 6 of the Defence.
24. The Claimant had pleaded that Indra jointly built the home and solely constructed renovations to the home. Neither party attached receipts for expenditure on the renovations. Accordingly, I saw the possibility that by verbal testimony the Defendants may have been able to present witnesses to prove that it was the 1st Defendant and not Indra who paid for the renovations. Thereafter, in light of the Claimant’s Amended Reply the 1st Defendant also had to prove that any equitable interest he may have had in the family home had not been extinguished by virtue of Section 3 of the Real Property Limitation Act, Chapter 56:03 .

Weaknesses in Defendants’ Case noted after exchange of Witness Statements

25. Kathleen Ramjit, Indra’s administrator ad litem, did not file a witness statement. The Claimant’s case was supported by the evidence of two of Kathleen’s older step-brothers and of Eldon Kerry David Sanchez. He is the son of Indra’s landlady Rita David Noel, aged 78, who was too ill to attend Court. In addition the Claimant’s case as to the building works done by Indra was supported by the Witness Statement of Sharda Persad Jadoonanan, a carpenter who helped in the construction. However, the carpenter was eventually not called as a witness at the Trial.
26. The step-brothers, Steven and Ronald Goolcharan provided supporting evidence for every aspect of the Claim as pleaded save that they said it was their mother and grandfather who together built the family home. Their version of events excluded the

1st Defendant's involvement. They provided supporting circumstantial context to the pleading that their mother constructed renovations in 1981 and named Sharda Jadoonanan as having been paid by her for the work.

27. They underscored that their mother was gainfully employed and also re-married so that she had sources of income for the renovations. Her new husband was the 1st Defendant's nephew. According to the Defendants' pleadings, this nephew was also the father of Indra's last son Clifford (deceased). Clifford however, carried the surname Gafoor. (Later at Trial it became apparent that this person Indra married was the brother of the 3rd Defendant's mother.)
28. The step-brothers reinforced the information in the pleadings that the 1st Defendant played no role regarding the family home after his Divorce, as he had moved out since 1978 and later re-married in 1981. The fact of their mother's Statutory Tenancy of the land dating back to 1981 was supported by their Witness Statements and documentation attached thereto. The supporting documentation included the Statutory Tenancy Renewal as well as letters addressed by the Landlord to Indra as the Tenant. No receipts for payment of rent were attached.
29. The two step-brothers said in their witness statements that when the Defendants took possession of the family home after their mother died, they also took all her personal belongings that were in the house. Indra's five children had always lived at the family home with her until they moved away as adults. Hence, neither Kathleen Ramjit nor her two step-brothers lived in the family home for the period after their mother Indra's death. During that period the 3rd Defendant (who later at Trial was revealed to have been a cousin living next door) took possession.
30. The Defendants' pleaded case relied on documentation purportedly prepared by Rita David Noel, but was not supported by any evidence from her. Earlier in the proceedings, during case management, I had asked that she be added as an Interested Party. This was done. Thereafter, Counsel for the Defendants informed me that Ms David Noel was deceased. However, this was not so.

31. On a subsequent occasion Counsel for the Claimant pointed out that she had discovered that Ms David Noel was alive. This information was set out in the Claimant's Amended Reply. There was no explanation thereafter from the Defendants for not calling Ms David Noel as a witness.
32. The 2nd Defendant, who was the person alleged to have received rent receipts from Mrs. David Noel, filed a witness statement but was not called as a witness. The 3rd Defendant, whose name is indicated as a witness to the letter Ms David Noel allegedly signed, did not mention that letter in her Witness Statement.
33. The lacuna of evidence concerning the purported writings of Rita David Noel was filled by the Claimant who called Ms. Noel's son, Mr. Sanchez, as a Witness. He explained in his Witness Statement that his mother was not deceased but that she is not of sound mind, having been diagnosed with dementia. He did not have a Doctor's Report confirming this but indicated that a Doctor could provide one if the Court so ordered.
34. He indicated that his mother was already succumbing to mental illness at the date when the Defendants say she signed the April 27, 2015 letter. It was not signed in the presence of any family member of hers. It was a typed document and her son was of the view that she did not prepare it.
35. Mr Sanchez confirmed that his mother was responsible for collecting rents for lands in the area of the family home. However, he opined that "lawyers and other individuals have taken advantage of her mental state. The full scope of literature and documents she affixed her signature to is not known. Many persons visited her in her vulnerable state unknowing to me."
36. The landlady's son confirmed that he is familiar with the tenanted lands where the family home stands. He knew Indra Ramdial as the tenant occupying the lands. He had neither met nor ever known the 1st Defendant to be the tenant. He said he and his mother had met the 3rd Defendant. He could not remember meeting her husband Anand, the 2nd Defendant in whose name rent receipts were put forward by the Defendants as proof of their tenancy.

37. The Witness Statement of the 3rd Defendant added new information that had not been pleaded. It went into great detail about the neighbourly relationship she had with Indra; the 3rd Defendant claiming to have been helpful to Indra up to the time of her death.
38. In support of the Defendants' version of events that the 1st Defendant remained the owner of the property after he was divorced in 1978, copies of utility bills and a District Revenue Office assessment in his name were disclosed. These are the "documents of ownership" the 3rd Defendant claims to have relied on in deciding to purchase the family home from the 1st Defendant. She makes no mention in her own Witness Statement of a purchase price paid to the 1st Defendant for the family home but she volunteers new un-pleaded information about spending \$15,000 to improve it, after moving in.
39. The 3rd Defendant's 83-year-old uncle, Hosein Gafoor [the 1st Defendant], filed a Witness Statement which contradicted his pleaded case by saying that he left the family home not in 1978 or 1979 but in 1980. He claims to have continued giving his former wife Indra financial assistance from his earnings as a taxi-driver, after he moved out of the family home. This he says was used for payments such as utility bills which had remained in his name since 1965.
40. He claimed to have been paying land rent but attached no receipts. He said they were "lost through moving and misplacing them." He claimed the family home always belonged to him, he was the tenant and his former wife could not have left it in her will to their daughter Kathleen. He denied that his wife did any renovations to the property but did not in his Witness Statement set out any details of his own alleged renovation work that was referred to in the Defence.

Claimant's Witnesses credible and un-contradicted under cross-examination

41. The first witness called by the Claimant was Eldon Kerry David Sanchez, the son of the landlady. He impressed me as a witness of truth because he testified in a manner that was consistent with his written evidence. He remained calm and forthright in

answering questions put to him. He gave logical explanations to questions about information not made clear in his witness statement.

42. In particular, when asked how he could say that his mother suffered with dementia without producing a medical certificate he explained that the doctor said the information was confidential. The doctor could only put it in writing if the patient consented or the court ordered it.
43. Mr. Sanchez said his mother never agreed to have herself certified as declining in mental health. However, he gave convincing evidence that he was present with his mother for doctor's visits. Further he was present with his mother when she was signing some documents and could tell that she was in decline mentally as she had difficulty speaking. She also had "frequent use of the bathroom". He and his siblings had to go with her to the doctor and to meet with the tenants for rent collection.
44. Accordingly, I found as a fact based on his evidence that he often accompanied his mother to collect rent from tenants, that he knew Indra Ramdial as the tenant of the family home that is the subject of this case and that he had never seen the 1st Defendant Hosein Gafoor or known him to be a tenant.
45. Indra's two elder sons, the two step-brothers, were also in my view, truthful witnesses. They remained true to the written evidence in their witness statements, admitting candidly where such information was based on what their parents had told them as children.
46. Mathew Goolcharan, the younger of the two, said that he was very young when he moved into the family home with his mother. As such he could not speak as to the financial state of his mother and the 1st Defendant in 1965. He denied however, that only the 1st Defendant was earning an income since as far as he knew his mother was also doing sales work. This fact of his Mother's gainful employment was corroborated by the disclosed divorce documents.

47. He and his brother supported the Claimant's case that their mother's source of income for the rent was from her sales work. They admitted that they had seen receipts in the 1st Defendant's name even though no such receipts were disclosed by the Defendant in the discovery stage of these proceedings. However, they explained that after he was divorced from their mother in 1979 his name continued to appear on the receipts but it was Indra who was paying. This, they said, was reflected in an endorsement on the receipts.
48. The elder of the two step-brothers, Steven Goolcharan, was nine years old in 1965 when his mother married the 1st Defendant and the couple moved to the family home. He remained living with his own father but visited the family home once a month, eventually moving in there as well.
49. He admitted that he could not say for certain who built the house but he said he knew that his mother was "selling on foot" and it was not true that she did not contribute to the house. He said he had been told by his mother that she and her father contributed to building the house. This was done with Indra's income from sources that included money from her earlier divorce from his own father, who was the first of Indra's three husbands.
50. The information about his own father's alleged divorce settlement money given to his mother was admittedly hearsay and had not been pleaded. He denied that after the divorce of Indra and the 1st Defendant, the first Defendant continued to give her money. When it was pointed out to him that in the Divorce Documents attached to the Claimant's case there was provision for the 1st Defendant to make payments, he maintained that he wouldn't know whether any payments were made.
51. At that time the court took notice of the fact that the payments that were to have been made were in the amount of \$200 per month, to contribute to the larger amount that Indra agreed to pay for the maintenance of the two children of the marriage, Kathleen and her younger brother Clifford, while they were minors.

Witnesses for the Defence discredited under cross-examination

52. The 1st Defendant presented as a person whose healthy, robust appearance belied his advanced age. However, under cross-examination he was unable to give evidence consistent with many salient aspects of his pleaded case and his Witness Statement. His testimony did not support that the version of events in the Defence was more credible than the Claimant's case on a balance of probabilities.
53. He denied that he was married in 1965. He denied the description given in his own Amended Defence of the family home as a two bedroom wooden house. He denied that he left the family home in 1978, or 1979 as stated in his amended Defence. Instead he said he left in 1992.
54. He could not recall that he and Indra had been divorced in 1979 and could not explain how thereafter he could have remained living at the family home when she had re-married to his nephew. He said he knew Indra remarried but could not say whether it was in 1980 or 1983.
55. He said he did renovations to the family home before he left, claiming that he did so with his nephew Sookdeo Rampersad who married Indra. When pressed as to how he and the new couple could have worked together on renovations, he said Indra and his nephew were not yet married then. Despite the fact that it was pleaded in his Defence, he said he could not recall that Indra was involved with his nephew before that and they had a son.
56. Later on in the cross-examination he was asked whether he lived with Doll Bhagan from 1982. In contradiction to his earlier testimony that he left the family home in 1992, he said yes.
57. He claimed that after the Divorce from Indra, although he was only ordered to pay \$200 per month for his two children he would give Indra "a little extra to pay for the land." He could not recall how much he gave Indra but admitted that he was married to Doll Bhagan at the time and also used to give her money.

58. Thereafter, when it was put to him, he admitted that any money he gave Indra was for maintenance of his two Children. Subsequently, when it was put to him that he gave no money to Indra for water, lights and land rent, his response was a denial.
59. He admitted that after leaving the family home he only visited the home to check on the children but also admitted that by 1991 his children were not living there. He said “they married and gone.” This left it clear on his testimony that for more than 20 years at least, Indra was the one living undisturbed at the Family home.
60. Mr. Gafoor testified that although Indra was remarried to his nephew, the nephew soon “went his way”. Mr. Gafoor said it was all done, i.e. the marriage to his nephew, to get him to leave the house. Yet, inconsistently with that explanation, he claims Indra always said “Gaff the house is yours”.
61. When asked whether he had ever renewed his Statutory Tenancy the 1st Defendant gave two answers. At first he said he did not know and then he said “no”. He denied that Indra renewed the Statutory Tenancy. He admitted he brought no receipts to show he paid any rent and said that Indra paid rent sometimes. He said she kept the receipts and it’s just the last payments, “the arrears” he had receipts for. As aforementioned, those receipts were in the name of the 2nd Defendant and not Mr. Gafoor.
62. As to the items left in the family home when Indra died, the 1st Defendant provided new information that had not been pleaded. He said that a person called Sandy was allowed by the Goolcharran brothers to rent the family home. He said he told Sandy “don’t pay them, I own the house”. He then sold the property and Sandy moved out leaving nothing in the house. According to the 1st Defendant “The house was mine and I took it”
63. By the time the 3rd Defendant entered the witness box for cross-examination I had formed the impression, based on the revelations in her Witness Statement, that she was a driving force behind the move by the Defendants to take possession of the home of the family she had lived next door to all her life. Under cross-examination she

admitted that Indra's daughter Kathleen, who filed this Claim on behalf of Indra's Estate and her younger brother Clifford Gafoor are her cousins. She had a close relationship with them when they lived next door. She knew Indra and claims to have taken care of her.

64. Yet when asked whether knowing that Indra lived in the family home with her children, she did not wonder if her estate had an interest in the property, she said no. She said she didn't ask any questions. Instead she says "I did not ask a question. We took the papers when Mr. Hosein Gafoor came with it and then we find out when Ms Rita came she give us the 'OK' to be her new tenant". The papers which she referred to as Mr. Gafoor's documents of ownership, were documents from "inland revenue" and the divorce papers. She took these papers to a lawyer who, according to the 3rd Defendant, said the papers established that the 1st Defendant was the owner of the family home.

65. She said after that Rita David came to her mother's home, and agreed to make her and her husband her tenants. They then paid off rent arrears to Ms. David. Although it had not been indicated in her pleadings, in her own witness statement or that of Mr. Gafoor, the 3rd Defendant said under cross examination that she paid \$30,000 for the house. No receipt was produced to confirm that she bought the home. There was no confirmation in evidence from Mr. Gafoor that he received that amount.

Findings on Conclusion of the Evidence

66. The Defendants' case was closed after the 3rd Defendant's cross-examination. At that point neither of the parties had made closing submissions. However, I indicated that my preliminary findings were in favour of the Claimant. Those findings were as follows:

- a) As to initial ownership of the family home, there is no dispute on the pleadings that Indra and the 1st Defendant were the initial owners in 1965 as a married couple. It is for this reason that utility bills remained in his name and he was listed as the owner of the building as certified by the District Revenue Office in Siparia. It is not unusual that even after he left the home around forty years ago Indra did

not take the time and trouble to change those records. Those records do not, in my view, constitute sufficient proof that the 1st Defendant remained the owner until 2015.

- b) The Claimant pleads and I accept as a fact, that both spouses contributed to building the family home in 1965. It was then a small two bedroom wooden structure. However, my finding is that Indra's income from employment was higher than that of the 1st Defendant who has not provided any evidence as to the quantum of his contribution. In any event, the Claimant's witnesses have established that any legal or equitable interest the 1st Defendant had in the building, based on having participated in its construction, was extinguished when Indra remained in undisturbed possession for more than 16 years.
- c) Further, I find as a fact that Indra and not the 1st Defendant renovated the building into a partly concrete building with twice as many bedrooms in 1981. This was after her divorce from the 1st defendant. She thereby had a more probable equitable interest from her contributions to the property than the 1st Defendant. This finding is based on many factors.
- d) It is firstly based on that fact that there is inherent logic in that she and her new husband and not the 1st Defendant would have done this. Secondly, both her sons testified as to the reason for Indra's construction, which was in preparation for one son's wedding. They gave the name of the builder, Jadoonanan, who was paid for the renovations. Thirdly, the 1st Defendant's pleading and evidence as to his source and quantum of contribution to these renovations and to continued utility expenses lacked sufficient particulars.
- e) The divorce papers disclosed by the parties set a figure of \$200 per month as payable by the 1st Defendant for the maintenance of his two children. He admits that by 1991 they had left the family home. Furthermore, the 1st Defendant said he did not have any receipts to prove he paid rent. He said some were lost while moving but under cross-examination he admitted that Indra paid "sometimes" so she kept the receipts.
- f) It is my finding that from 1978 to the time of her death in 2014 only Indra contributed to the maintenance, renovations and utility expenses for the family

home. Accordingly, the 1st Defendant gained no equitable interest in the family home from post-divorce contributions to renovations.

- g) On the pleadings there was no dispute that Indra was in occupation of the family home with her children in 1981, when by law the prior landlord and tenant relationship both she and her ex-husband Hosein Gafoor had with Rita David Noel's father was converted to a Statutory Tenancy.
- h) Mr. Gafoor was discredited when he gave different dates in evidence as to when he moved from the home. In his witness statement the date changed to 1980 and under cross-examination he said it was in 1992. It is my finding that only the Claimant occupied the premises in 1981 and became a Statutory Tenant.
- i) Both parties rely to an extent on hearsay documents from Rita David Noel who could not testify. No direction was given allowing the parties to file evidential objections before the Trial. Parties, though permitted to make oral evidential objections, did not object to the admissibility of the hearsay evidence they each relied on.
- j) The Claimant's reliance on the renewal of Statutory Tenancy Notice signed by Ms. David on November 20, 2010 was supported by the evidence of Indra's two sons and the landlady's son. On the other hand, the only evidence that purports to prove the Defendants' case that Mr. Gafoor was the tenant is the letter they say Rita David Noel signed in April 2015.
- k) The said letter was of little probative value without Ms. David Noel's testimony to support it. This was so because of doubtful characteristics of the letter itself, including the fact that it was witnessed by a person who intended to benefit from it and that the ID information for Mrs David Noel was left blank. The 3rd Defendant gave no evidence confirming that she had signed the letter as a witness. Furthermore, the letter set out false information that the 1st Defendant occupied the family home for 50 years.
- l) The evidence of Rita David Noel's son was persuasive with regard to his impressions of her mental decline and that customarily he or other siblings accompanied her to meet the tenants. His view that she did not prepare the typed letter was convincing.

- m) Even if the April 2015 letter was genuinely signed by Rita David Noel, she could only have by that means indicated her desire to transfer the Statutory Tenancy to the 2nd and 3rd Defendants. She was not the owner of the building, so the letter could not have been effective in that regard. She could not, by the letter, have dispossessed Indra's estate of its interest in the family home. That interest was based on Indra's initial co-ownership, her increased equitable interest from construction and the eventual extinguishment of the 1st Defendant's interest in it by the passage of over 16 years of her undisturbed occupation, leaving her as the sole owner.
- n) The doubtful nature of the letter relied on by the Defendants, reinforced my view that Indra and not Mr Gafoor was the Statutory Tenant of the land where the family home stood. Indra was the only person legally entitled to remain in occupation of the land after renewing the statutory tenancy in 2010. Accordingly, there was no basis upon which a tenancy of the 1st Defendant could have been transferred, purportedly by Rita David Noel, to the 2nd and 3rd Defendants in 2015. Any interest the 1st Defendant had as an owner who helped build the initial two bedroom wooden structure, was extinguished over the years. As such he also had no right to sell the building to the 2nd and 3rd Defendants.
- o) It was my distinct impression that the 3rd Defendant was always fully aware of the strong interest Indra's Estate and her former neighbour/cousin Kathleen Ramjit had in the family home. She had knowledge of this when, after Indra's death, she sought to arrange with her uncle, the 1st Defendant, to take over ownership of the home.
- p) The aspect of that arrangement that included the purchase of the building was not supported by any documentary evidence. There was no pleading as to the quantum paid for the home and the 3rd Defendant gave no evidence as to any payment she made. Her husband's Witness Statement alleged that he paid \$30,000 for the family home, a figure that was not pleaded. He failed to attend for cross-examination.
- q) In all the circumstances, it was my finding that the entire alleged arrangement with Rita David Noel was a ruse intended to secure occupation of Indra's family home for the 3rd Defendant and her husband.

- r) I found as a fact that the 3rd Defendant took possession of Indra's personal items when she moved into the home. On the Claimant's case, the pleadings and evidence supported by pictures of Indra with her belongings in the home before she died, were persuasive. The Defendants did not plead a Defence to this aspect of the case. Their Witness Statements were silent as to whether the allegation of their taking Indra's belongings was true or not.
- s) The Defendants' belated explanation, under cross-examination, as to another person called Sandy having been living in the home after Indra died, being evicted by Mr. Gafoor and having left the family home empty was never pleaded. The Claimant had no opportunity to respond to this new information. As such I treated the evidence presented as having no weight. I find it more probable than not that the family home was taken by the Defendants with all the personal contents of the deceased Indra still on the premises.

Closing Submissions

- 67. After bringing to the Parties' attention my initial findings, closing submissions were taken orally. Counsel for the Claimant reminded the Court that when the Summary Judgment Application was made at an earlier stage the Court had expressed the view that that there were issues to be tried. In her oral submissions she highlighted weaknesses related to the absence of pleadings and evidence as to an actual sale of the premises being supported by any documents. Accordingly, the Defence of the 2nd and 3rd Defendants purchase of the property was not established.
- 68. Furthermore, all three Defendants had not pleaded any response to the claim as to taking possession of Indra's personal belongings. These items were of sentimental value so the main relief sought was to have them returned. Counsel for the Claimant made submissions seeking nominal damages for trespass and mesne profits.

69. Counsel for the Claimant also made extensive submissions as to the weaknesses in the case for the 1st Defendant.

70. Defence Counsel, in his closing comments, essentially conceded to weaknesses in the Defendants' case. This is reflected in the following extract from the notes of the Trial.

"Ct: Ok thank you Ms Rampersad you may step down. So we are very close to the time, but I think in this matter we could have very short submissions. It seems to have been based on my misunderstanding in relation to which the way the matter was allowed to proceed and I think at some stage the Defendants were not well represented and that may have been why we didn't pursue the application for summary judgement. Was that what happened at the time?"

Ms. Bhairosingh: My lady had indicated that there was an issue to be tried and my lady was not minded to grant a summary judgment at the time.

Ct: Ok I don't know what else to say I think I have said what I think about it at this stage but what is your submission? You could just give a brief submission and I need to hear from Mr. Mc Nicholls, I mean you have heard from your cross examination, certain things became clear to me, but is it anything else you have to say about it or would you want me to hear from Mr. Mc Nicholls first.

Ms. Bhairosingh: From Mr. Mc Nicholls first please my lady and I will respond if necessary to any.

Ct: Yes Mr. Mc Nicholls what is your position on what I really just noticed, that there is nothing in the pleadings that says that the 2nd and 3rd Defendants purchased the property from the 1st Defendant. Nothing about them paying any money at all. It is the first I heard about the \$30,000.00. Nothing about an agreement for sale and there is also an admission that they were there unlawfully. I admit I thought that that might just have been a mistake by one of the lawyers, but then now.

Mr. Mc Nicholls: My lady I remember when the issue about the admission came up the defence was not given permission to amend it and of course my

lady in giving that ruling she would have then placed the evidence that would have come out today against that admission. So I understand that please my lady. In terms of no actual agreements

Ct: Again you can't give evidence about it now.

Mr. Mc Nicholls: It was not pleaded in the pleadings my lady.

.....
.....

Ct: As to the claim for possession against the 1st Defendant, that has to be based on my assessment of the evidence. What would be your submission with regard to how I should assess the evidence given by Mr. Gafoor with regard to his claim for possession? Essentially he had said that he built the property, he is saying that it was not two wooden rooms, although it is in his witness statement he says that it was two rooms. Can you just give me a submission on that and I will hear from Mr. Mc Nicholls.

.....

Ct: Mr. Mc Nicholls is there anything you would have to say to persuade me that your witness Mr. Gafoor, we have already dealt with the case of the 2nd and 3rd Defendants, but that his evidence is to be preferred to that of the 3 witnesses for the Claimant.

Mr. Mc Nicholls: No please my lady not at this time.

Ct: So in addition there would be the same judgement for the Claimant against the 1st Defendant."

Determination of the Claim

71. On conclusion of the Trial, having considered the pleadings, evidence and oral submissions of the parties it was determined that Judgment would be awarded in favour of the Claimant, granting possession of the family home to the Estate of Indra Ramdial.

72. Counsel for the Claimant cited the case of **Hughes & Connell v Francis & Francis General Services Co. Ltd. CV2012-02163** as precedent for the award of \$15,000 as damages for trespass. The Court also had sight of the cases of **Jacob & Polar v Samlal CV 2005-00454** and **Per Limited v Thomas & Paul CV2014-04682**.

73. In **Hughes & Connell**, the court awarded \$15,000 as a nominal sum for the infringement on their right to possession of the land for a period of nearly ten years. In that case there was no damage to the land. Any loss that may have been sustained was not particularised. In the present case, the period of trespass was approximately 3 years and the mesne profits lost were calculated to be approximately \$5,800.

74. In **Jacob & Polar v Samlal**, Pemberton J at paragraph 8 stated as follows:

“In this jurisdiction, nominal damages have been awarded in various cases what is of relevance to me is the quantum of damages awarded by the Court under this head. The figures range from \$100.00 to \$2,500.00 and cover the same subject matter as the case at bar – trespass to land. The range therefore at present values stands at \$3,500.00 to \$10,500.00.”

75. In the 2018 decision of **Per Limited**, the court having considered **Jacob & Polar**, awarded \$6,000 as nominal damages for trespass where no specific loss was proven. In the present case, the Court found as a fact that there was a loss of the items in the house. The value of these items, however, was not quantified. Therefore the nominal sum for trespass would be increased to include a compensatory sum for these items.

76. Judgement in favour of the Claimant was in the amount of \$11,000.00 nominal damages for trespass. Of that amount \$5,000 represented the nominal sum awarded for the loss of items from the house that were not valued. \$5,800 was also awarded for the loss of mesne profits in the time that the Defendants had possession of the house.

77. Costs in the sum of \$14,000 was also awarded.

IT WAS ORDERED that:

- i. There shall be judgment for the Claimant against the 1st, 2nd and 3rd Defendants in the sum of \$11,000.00 for trespass which includes \$5000 for items appropriated.
- ii. Mesne profits in the sum of \$5800.00 is awarded to the Claimant.
- iii. The 1st, 2nd and 3rd Defendants are to pay to the Claimant costs in the sum of \$14000.00
- iv. Stay of execution 28 days.
- v. Leave is granted to the Claimant to issue a writ of possession forthwith failing compliance with the order.

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely JRC I