

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**San Fernando [Virtual Trial]**

Claim No. CV2017 -01755

**BETWEEN**

**Mcleod Richardson**

**Claimant**

**AND**

**Avril George**

**Defendant**

**Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell**

Delivered on: August 23, 2021

**Appearances**

Mr. Mustapha Mushim Khan and Ms. Kristin Khan, Attorney at Law for the Claimant

Mr. Edwin K. Roopnarine and Ms Shelly Khan, Attorneys-at-Law for the Defendant

## Oral Judgment

### A. Introduction

1. This Claim was filed by McLeod Richardson, the Claimant, seeking repossession from Avril George, the Defendant, of two lots of land forming part of a six-acre (6) property that he has owned since 1995. He contends that she is a Statutory Tenant who has not renewed her tenancy in accordance with the provisions of the Land Tenants (Security of Tenure) Act, 1981 ["the Act"] and accordingly, she must vacate the premises.
2. The Defendant denies that she was ever a Statutory Tenant. According to the Defendant, she and her grandmother, Joanna King ["Grandma"], orally entered into a contractual tenancy agreement in or around 1964 with the Defendant's mother Lorna Richardson ["Mama"]. This tenancy agreement was for four and a half (4 ½) lots and the two lots referred to by the Claimant are not properly identified in the Claim. The Defendant supports her case as to the oral contractual tenancy by documentary evidence of a receipt exhibited as "A" to her witness statement. The receipt, addressed to Grandma, is for payment of \$83 rental for four and a half (4 ½) lots of land in 1966.
3. Further, as it relates to the description on another rent receipt, relied on by the Claimant as "Exhibit MR 4", of the property as "the land the church is on and the lot behind the church", the Defendant's case is that there is currently no use for dwelling purposes of those two lots. This raises for consideration whether the occupation of the two lots falls outside the definition of a Statutory Tenancy, which would have automatically terminated in 2011 under the Act.
4. The oral agreement relied upon by the Defendant was for a yearly tenancy with an option to purchase the lands "at a much reduced rate." The concession as to reduced cost was included for three reasons:
  - a. firstly, to account for rental paid;
  - b. secondly, out of family relationship; and finally,

- c. based on Mama's alleged shared membership and desire to "invest" in the Church built within the land.
5. In these circumstances, the Defendant refutes the lawful basis for the Claimant's case seeking vacant possession. She contends that the circumstances of the Claimant accepting yearly rent after 2011 were such that the parties reverted to the prior contractual arrangement. These circumstances included the prior oral agreement, the family relations amongst the parties, the initial intention of Mama to invest in the Church and the fact that, based on the foregoing, Mama and the Claimant acquiesced in the construction of two buildings used for church purposes on the two lots. According to the Defendant, if the Claimant never served notice to terminate the yearly contractual tenancy, the Claim for vacant possession must fail.
6. In addition to relying on the contractual tenancy, which was never terminated, the Defendant relies on equity. She contends that based on close family, community and religious ties there was also permission and acquiescence to develop the four and a half (4 ½) lots of lands for dwelling, agricultural use and the building of a church. In addition to three dwelling houses, a church was built several years before 1977. However, only the Church is on the two lots sought by the Claimant herein. The Defendant's dwelling house is on a separate one-lot parcel purchased in 1977, pursuant to the option to purchase.
7. The Defendant counterclaims seeking declarations that she is a contractual yearly tenant and/or that she has acquired an equitable interest in the remaining three and a half (3 ½) lots of lands she and her predecessor Grandma rented from "Mama" in or around 1964.

**B. Issues**

8. Success for the Claimant in obtaining the relief of vacant possession sought herein requires proof, on a balance of probabilities, of the following:
  - a. The location of the two lots of land alleged to be in the Defendant's possession is sufficiently defined by reference to the description stated in the receipt

annexed to the Statement of Case as “B”, namely “the church lot and the lot behind the church”

- b. The lawful basis for the Claimant’s possession of the said two lots was as a statutory tenant for a period which expired without renewal in 2011, and
- c. That there is no other lawful basis for the Claimant to remain in possession and, in particular, that the acceptance by the Claimant of rent for a few years after expiration of the alleged statutory tenancy is “explainable on another footing other than that a contractual tenancy was created for a new term.” [Rahim J in **CV 2013-02481 Indra Joycelyn v Sharon Tewarie** delivered on 20 Oct 2015, at paragraph 22 where he further explained that “parties are free to contract outside the ambit of the Act” so the court must determine whether in all the circumstances the parties intended to create a further term.]

9. Success for the Defendant in securing the declarations sought by her Counterclaim requires proof of either or both of the following:

- a. That she was not a statutory tenant of two lots holding over after 2011 but rather she had been a contractual yearly tenant of three and a half (3 ½) lots from the time of her grandmother’s death, paying rent in that capacity up to 2014 and, no notice to quit having been served, she remains a tenant entitled to continue in occupation, and/or
- b. That she has acquired an equitable interest in the three and a half (3 ½) lots based
  - on the contractual tenancy with an option to purchase and permission in the interim to construct four buildings, two of which comprise church buildings referred to by the Claimant as being on two lots, and also
  - on acquiescence by the claimant and his predecessor when the Church was built.

10. Additionally, the Defendant may succeed on a technicality if she can prove as pleaded that the Claimant failed either to plead details of persons in occupation of the two lots that are the subject of the Claim or to serve them with the Claim. The Defendant relies

on the **Civil Proceedings Rules 1998 as amended [“CPR”], Rule 69.3 (d) and (e)** in raising this technical point.

### **C. Law**

#### *Statutory Tenancy*

11. On coming into force in 1981, Sections 3 and 4 of the Act provided that any pre-existing tenancy with a chattel house used as a dwelling erected thereon was converted to a Statutory Tenancy in 1981. That meant that tenants gained security of tenure for a period of 30 years. After that, in the year 2011, the Tenant could either exercise a right to renew the tenancy for a further 30 years or to purchase it at half the market value. This had to be done by 2011, the expiration of the 30 year statutory tenancy. Land of more than one acre used for agricultural purposes was expressly excluded from the provisions of the Act and land used for a building that was not for dwelling was also excluded.
  
12. Parties on both sides referred to Judgments addressing the interpretation of these provisions of the Act. However, some of the authorities cited determined issues distinguishable from those to be decided in this case. In particular, the point addressed at para 11 of the October 2018 Judgment in **CV 2015-01590 Arnim Cooper et al v Winston Blackman**, cited by the Claimant, does not address the circumstances examined in detail by Rahim J in the **Indra Joycelyn v Sharon Tewarie** also cited by the Claimant.
  
13. Additionally, the cases of **David Gopaul on Behalf of HV Holdings Ltd v Vitra Imam Baksh on behalf of the Presbyterial Church of Trinidad and Tobago [2012]UKPC 1** and **Civ Appeal No. P191 of 2016 Motilal Gokool et al v Minerva John** are distinguishable. In **David Gopaul**, the fact circumstances differ as in that case there was use of the land for dwelling purposes from the time the Act came into effect and continuing. In the instant case, the Defendant’s evidence at paragraphs 12 and 13 of her Witness Statement is that in 1970, a house was built but it was later converted to a prayer room. Neither side puts a date to the time the house became a prayer room for the Church nor whether was this the use of the two lots before 1981. Under cross-

examination, the Defendant was resolute in insisting that no one resided on the two lots referred to in the receipt at “MR 4” relied on by the Claimant.

14. In the case of **Civil Appeal No 5 of 1989 Ghany Investments Limited v Minerva Ward**, there was no issue as to whether there were buildings for dwelling purposes on the land in 1981.

15. The Court of Appeal, in **Motilal Gokool**, determined issues as to proper service of a notice to renew a Statutory Tenancy which are not relevant in this case where the Defendant denies there was a Statutory Tenancy and neither side alleges any notice was served.

#### *Contractual Tenancy*

16. The Defendant, in submitting that the requirements for termination of her contractual tenancy have not been fulfilled by the Claimant, cites **Halsbury’s Laws of England, 5<sup>th</sup> Edition, volume 62: Landlord and Tenant, para 213**. The text explains that a tenancy from year to year is determinable by notice to quit. In the absence of any other stipulated period of notice agreed by the parties to the tenancy agreement, a yearly tenancy can be determined at half-year notice. The notice is to expire at the end of some year of tenancy.

#### *Equitable Interest*

17. The principles governing equitable interests in property are well established. Both parties rely on the recent Privy Council Judgment in **Mohammed v Gomez and Others [2019] UKPC 46** at paragraphs 23 to 40.

18. Counsel for the Defendant usefully cites the judgment in **CV2017-01900 Prakash Thackoor v Sarah Ramdeen** where Mohammed J, citing many prior Judgments, summarized at paragraph 12 that;

*“In order for the Defendant to succeed in her counterclaim, she must establish some type of promise and/or encouragement, reliance on that promise and/or*

*encouragement and detriment. In the case of detriment, that detriment, while it need not be only in monetary terms, it must be substantial.”*

**D. Findings**

19. There is inconsistency in the pleaded case for the Claimant as to the description of the two lots. Whilst the Defendant does not challenge the Claimant’s title to lands based on which she recognizes him as her landlord, she points out that the Deeds relied upon by the Claimant do not identify the two lots sought herein.
20. In bold print before paragraph one of the Statement of Case, the Claimant pleads that the premises is occupied for residential purposes. However, in the receipt annexed as “B” to paragraph 4 of the Statement of Case, the two lots are referred to as one with a church on it and the other, the lot behind the church. There is no pleading at paragraph 4 that there is any dwelling house on the two lots. Paragraph 9 of the Statement of Case reiterates the description of the land as having “a Structure” on it, which is a church.
21. In light of these inconsistencies, the Claimant has not proven the precise location, nature of land use and description of the two lots.
22. In order to prove occupation by virtue of a statutory tenancy, which expired by law in 2011, it was necessary to prove that the occupation was residential or for residential purposes in 1981. The pleadings and undisputed evidence that the land the Claimant refers to as the two lots was occupied for religious purposes by way of a church, render it difficult to prove that, on a balance of probabilities, the occupation was residential in 1981.
23. On the evidence before the Court, this case is distinguishable from the **David Gopaul** case where the subject property included a Manse and a Church. The fact that the Manse was a dwelling location from the relevant date in 1981 when the Act came into force was determined by the Privy Council to bring the tenancy within the protections of the Act. The Claimant has not proven that, in 1981, there was a Manse or other

dwelling house on the subject property in this case. Accordingly, there is no proven basis for a finding that there was a statutory tenancy which ended by law in 2011. The Claim fails on that basis alone.

24. Even if there had been proof of residential occupation, the undisputed evidence based on the receipt dated December 27, 2013 attached to the Statement of Case at B, is that the tenancy did not end in 2011 as alleged. Under cross-examination, the Claimant confirmed that, as depicted on the receipt, from 2011 to 2014 he continued to collect yearly rent from his tenant - the Defendant. Hence, even if there was a statutory tenancy before 2011, the Claimant has not proven that, thereafter, the Defendant's presence on the property was as a former statutory tenant unlawfully holding over when the tenancy expired.
25. The Defendant's occupation and the continued collection of rent after 2011 has been proven, on a balance of probabilities, to be based on a contractual yearly tenancy. This proof is in the circumstances of the acceptance of rent up to 2014, the credible evidence of the oral agreement since 1964, the family and community relations, the intention to invest in the church, acquiescence in its construction and attendance therein by Mama.
26. It is my finding that the contractual tenancy was renewed after 2011. Such a tenancy can only be terminated by Notice to Quit. No such Notice was served on the Defendant in this case. As such the Claimant has failed to establish a lawful basis for recovery of possession.
27. Moreover, even if the occupation of the property had been for dwelling purposes, the Defendant gave forthright credible evidence that the terms of the contractual tenancy for the initial four and a half (4 ½) lots occupied by her grandmother and herself was with an option to purchase at a reduced rate. The reduced rate was based on the close community relations between the parties and the fact that the original owner had an interest in investing in the church.



28. Under cross-examination, the Claimant admitted that both he and his mother attended ceremonies at the church, but not for worship. Under cross-examination, both the Claimant and the Defendant used the same terms of endearment in referring to their mother and grandmother respectively i.e. Mama and Grandma. The Defendant's account of being the niece-in-law of the Claimant's mother, Mama, and spending time daily at her house, sharing produce from the land and so-on was credible.
29. On a balance of probabilities, the Claimant is a witness of truth as to the closeness of the relationship that generated the oral contractual agreement that the tenants could eventually purchase the lots occupied. This is further borne out by the fact that, in the 1970s, they were allowed to purchase one lot on which their home was constructed.
30. Accordingly, my finding is that there was an oral contractual yearly tenancy. It commenced in or around 1964, was renewed and continued after 2011. The Claimant could only terminate it if the Defendant did not exercise the option to purchase at a reduced cost.
31. Having made that finding, it follows that the Claim fails. However, only part of the Counterclaim that seeks a declaration as to the contractual tenancy succeeds.
32. The Defendant has proven that there was acquiescence by the Claimant and his mother in the building of a church on the land claimed. However, she has not proven that she paid to construct the Church. She honestly admitted, under cross-examination, that mainly her grandmother and a Member of Parliament paid for its construction and later renovation.
33. In order to succeed in her Counterclaim for a declaration of equitable interest, the Defendant needed to prove that she acted to her detriment. That aspect of her Counterclaim has not been proven. On the record before the Court, there is no documentation to support the value of the construction of the church so as to

determine the minimum equity required to do Justice. However, the pictures disclosed by the Defendant are of a formidable concrete structure comprising the Church so it may be implied that there is a substantial equitable interest owned by the estate. The estate of her Grandmother may have been in a better position to prove the equity but was not joined as a party to the estate.

34. As to the technical point raised by the Defendant, she is not contending that persons were resident on the two lots claimed by the Claimant who ought to have been identified by the Defendant. Under cross-examination, she was resolute in insisting that there was never a residence behind the Church. She and her relatives currently reside on the purchased one lot of land. They do not reside on the lot with the Church or the lot behind it.

35. The technical point on the Claimant's need to plead that others were in possession is, however, quite applicable in the circumstances where the Claimant was required to prove use for dwelling purposes. The fact that no person is identified gives rise to the inference that there was, in fact, no-one dwelling on the two lots. It therefore bolsters the success of the Defendant's case that there is no Statutory Tenancy of the two lots in question.

#### **E. Decision**

36. The Claimant has failed to prove a lawful basis for recovery of possession from the Defendant. The Defendant successfully established her Defence and Counterclaim by proving, on a balance of probabilities, that she and Grandma were contractual yearly tenants of Mama and the Claimant. That contractual tenancy was renewed after 2011 and has not been determined. As such, there is no basis for an award of vacant possession to the Claimant.

#### **37. IT IS HEREBY ORDERED:**

- a. The Claim is dismissed.
- b. Judgment in part for the Defendant on the counterclaim.

- c. A declaration that the Defendant is a contractual yearly tenant of three and a half lots of rented lands more or less with an option to purchase at a reduced cost.
- d. The Claimant is to pay the costs of both the Claim and half the cost of the Counterclaim to the Defendant on the prescribed basis totaling \$21,000.

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Eleanor Joye Donaldson-Honeywell

Judge