

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016-03171**

**BETWEEN**

**KEITH RAYMOND**

**Claimant**

**AND**

**CAROLE GEORGE  
(erroneously sued as CAROL GEORGE)**

**Defendant**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Dated the 26<sup>th</sup> April, 2018**

**APPEARANCES:**

Ms. Ngozi Ihezu Attorney at law for the Claimant.

Ms. Jeane A. Warner Attorney at law for the Defendant.

**REASONS**

1. The Claimant and Defendant are siblings. On the 17<sup>th</sup> November 2017 (“the Order”) I made the following order at the end of the trial:

- (a) Possession is granted to the Claimant of ALL AND SINGULAR that piece or parcel of land situate at Light Pole No. 91 Pepper Hill Laventille Road, San Juan in the Ward of St. Anns forming part of the lands described in the First Schedule hereto comprising FIVE HUNDRED AND THIRTY-FOUR POINT ONE (534.1) SQUARE METRES (5,749 sq) FIVE THOUSAND SEVEN HUNDRED AND FORTY-NINE SQUARE FEET and bounded on the North partly by the pumphouse and partly by the Ravine, bounded on the South partly by Baldeosingh now Anjanie Maharajh and partly by Baldeosingh now Anjanie

Maharajh, on the East by Pepper Hill and on the West by lands of Baldeosingh now Anjanie Maharajh (“the property”).

- (b) Damages for trespass to be assessed by a Master in Chambers on a date, time and place to be fixed by the Court Office.
- (c) The Defendant has no legal right and/or equitable right and/or interest in the property
- (d) The Defendant to vacate the said property one month from the date of this Order.
- (e) The Defendant is restrained whether by herself, her servants and/or agents or otherwise howsoever from entering upon, remaining on or carrying on any activities on the property after the date for vacating.
- (f) The Defendant do pay to the Claimant prescribed costs assessed in the sum of Fourteen Thousand Dollars (\$14,000.00).

2. The Defendant has appealed and I now set out my reasons.

*The Claimant’s case*

3. The Claimant became the owner of the property in fee simple by Deed of Conveyance dated the 6<sup>th</sup> June 2016 and registered as DE201601460777 ( “the 2016 Deed”). In or about month of May 2015, the Defendant entered unto the property without the Claimant’s consent or permission. The Defendant has not and has never been a tenant or sub tenant of the property and she did not have the Claimant’s permission to occupy and use it. By letter dated 5<sup>th</sup> August 2016, the Defendant was informed that the owners of the property had sold it to the Claimant. On several occasions, the Claimant has requested the Defendant to vacate the property but she has refused to accede to the said request. As a result, the Claimant’s Attorney-at-Law served a written notice (“the notice”) dated the 5<sup>th</sup> August 2016 and addressed to the Defendant at the known address of the Defendant. The notice

required the Defendant to deliver up possession of the property to the Claimant on or before the 31<sup>st</sup> August 2016. Although the notice was delivered on the Defendant she refused it and she continued to remain in possession of the property as trespasser.

4. The Claimant instituted the instant action seeking an order to recover possession of the property from the Claimant; damages for trespass; an order that the Defendant has no legal or equitable right to the property; an order compelling the Defendant to vacate the property; an injunction restraining the Defendant, her servants and or agents from entering upon and carrying out activities on the property and costs.

#### *The Defendant's Defence*

5. The Defendant's case was based on adverse possession. The Defendant stated that based on advice from her attorney at law she was entitled to possession as an adverse possessor based on her own possession and that of her mother Stella Roberts. She relied on the following facts. She stated that the Claimant was aware that the property belonged to parties deceased mother Stella Roberts who resided on it with her common law husband of 18 years Mr. John Michael prior to his death in or around 1986 and that she had continued to reside there undisturbed until the time of her death in or around 2015. The Defendant stated that upon the passing of Mr. John Michael, he would have willed his interest in the property to her mother.
6. The Defendant also stated that she resided on the property since in or around 15<sup>th</sup> October 2007 when she moved in moved in to assist with caring for her mother. She was the only person taking care of her mother at the time and as such she became in charge of the household and the care of the upkeep of the property. She purchased a Twin Tub Washing Machine from Standards Distributors in San Juan in or around 13<sup>th</sup> day of October, 2008 in order to assist with washing.
7. According to the Defendant although she got married in 2009 she did not move out of the property since her matrimonial home was only some two houses away from the property. She spent time at the property and the matrimonial home, visiting and taking care of her

mother every day and she spent the nights at the matrimonial home. She said when she moved out she did not move her belongings from the property.

8. In 2015 the Defendant got divorced and therefore she had no cause to occupy the matrimonial home and from that date she has been taking care of the property financially and otherwise. In any event, the Defendant stated that the Claimant would have been aware of her occupation of the property prior to his purported acquisition of it.
9. On or around the 23<sup>rd</sup> of November, 2015, the Claimant posted a note for the Defendant on the door of the property indicating his intention to sell it and offering to share the proceeds of the sale with the Defendant.
10. The Defendant stated that the 2016 Deed referred to Deed No. DE3131 of 1998 (“the 1998 Deed”) wherein her mother is listed as a tenant at No. 23 in the third schedule therein. Although her mother is a named tenant in the 1998 Deed, she did not recall her mother paying rent since 1986.
11. Prior to 2007 the Defendant stated that she visited her mother regularly and when she moved in with her in 2007, she went through her personal effects and noticed that she was responsible for paying the electricity and water bills for the property. From the time she assumed responsibility for the general upkeep of the property which included personally cutting the grass and cleaning the yard. In 2015, while she was paying Mr. Barkley to cut the trees on the property to prevent any hazards from occurring, an accident had occurred, causing damage to some of the neighbour’s properties and she had to repay them for the cost of the repairs to the said damaged property.
12. The Defendant did not file a counterclaim but she asked for the claim to be dismissed and for her to be granted relief as an adverse possessor. Notably she did not state the nature of the relief she sought as an adverse possessor.

*The Claimant's Reply*

13. The Claimant denied that Stella Roberts was the owner of the property and he called upon the Defendant to prove her assertion. He asserted that the Will of John Michael ("the Will") was not probated and therefore it did not vests any title in Stella Roberts. He denied that the Defendant resided at the property since October 2007 but instead he stated that the Defendant entered the property without his consent in May 2015. He denied he offer to share any proceeds of sale of the property with her.He stated that even if Stella Roberts was a statutory tenant of the previous owner of the property, the statutory lease expired on the 31<sup>st</sup> May 2011 without having obtained a renewal.

*The Issue*

14. The sole issue for determination was whether the Defendant had established that she was entitled to possession of the property based on the possession by her and her mother.
15. At the trial the Claimant and his wife Althea Raymond gave evidence on behalf of the Claimant's case. The Defendant gave evidence, she also called her sister Christine Baird, Godfrey Baird, (Christine Baird's former husband) and Trevor Cain to support her case.

*Did the Defendant establish that she was entitled to possession of the property based on the possession by her and her mother?*

16. It was submitted by Counsel for the Defendant that she was claiming adverse possession against the previous owner of the property which should have expired between 1998 and 2000; the Claimant admitted that the Defendant lived on the property in 2015 before he purchased it and he has failed to prove that the Defendant was a trespasser since she was on the property before he purchased it.
17. Counsel for the Claimant argued that the Claimant is the paper title owner of the property. The Defendant in her own right was not in continuous exclusive possession of the property for 16 years prior to 2016 since on her own evidence she moved into the property in 2007.

Further the Defendant's mother Stella Roberts was a statutory tenant of the property until May 2011. Prior to 2011 Stella Roberts was still alive and if she was interested she could have given notice to renew the tenancy and no notice was given therefore the statutory tenancy expired in May 2011 and time only started to run with respect to her being an adverse possessor after 2011 which was still less than the requisite 16 year period prior to 2016.

18. Section 3 of the **Real Property of Limitation Act**<sup>1</sup> prevents the paper title owner from the right to recover lands either by action or entry within 16 years from the time when the right to bring the action or make an entry first accrued. Section 22 provides that where after the expiration of the limitation period prescribed by section 3 (ie 16 years) the person entitled to do so has not brought an action or made an entry for the recovery of the land his right and title to the land shall be extinguished. The conjoint effect is the person making the claim extinguishes the right of the title of the paper title owner to the land at the end of the statutory period. Time stops running when the owner either makes an effective entry on the land or takes legal proceedings.
19. The Defendant's case was that by virtue of her continuous undisturbed possession of the property by her mother and then by her the right of the Claimant to make an entry to recover it was barred.
20. It is settle law in this jurisdiction that the guidance in the English House of Lords decision in **J A Pye (Oxford) Ltd and anor, v Graham and anor**<sup>2</sup> on the two elements necessary for legal possession is applicable. They are (a) a sufficient degree of physical custody and control ("the factual possession") and (b) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("an intention to possess").

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<sup>1</sup> Chapter 56:03

<sup>2</sup> (2002) WLR 221

21. In **Bligh v Martin**<sup>3</sup> Pennycuick J opined that:

“(1) Possession is a matter of fact depending on all the particular circumstances of a case. In very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between the acts of user.”

22. Slade J in **Powell v Mc Farlane** described factual possession as<sup>4</sup>:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so”.

23. Slade J in **Powell v Mc Farlane**<sup>5</sup> described the “necessary intention to possess” as:

“3. ‘intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”.

24. The onus was on the party claiming possessory title, in the instant case the Defendant to prove, on a balance of probability that she was in continuous exclusive possession for the

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<sup>3</sup> [1968] 1 WLR 804 at 811 F

<sup>4</sup> [1977] 38 P& CR 452 at page 470-471

<sup>5</sup> [1977] 38 P&CR 452 at page 470

16 years prior to 2016. She had to prove the two elements of factual possession and the intention to possess.

25. I was not persuaded that the Defendant had been in factual possession and /or had the necessary intention to possess the property from 2000 for the following reasons.
26. Firstly, based on the Defendant's own evidence she was only in possession of the property since 2007 which was 9 years before the action and even during this period she was not in continued undisturbed possession of the property. The Defendant's evidence on her occupation of the property was that she moved in to live on the property in 2007 to take care of her mother. She got married to Mr. Carl Scrubbs in 2009 who lived two houses away from the property and she did not move her belongings out of the property since she would spend time at the property and her husband home which she called the matrimonial home. She visited the property every morning and evening to take care of her mother and she slept at the matrimonial home at nights. She got divorced in or around 2015 and she had no cause to occupy the matrimonial home. She stated that she had been taking care of the property financially and otherwise. To demonstrate this she stated that while she lived at the property she purchased a twin tub machine to assist with washing her and her mother's clothes. She said that they erected a steel gate in or around 2009 and eventually changed the roof on the house in or around 2014 but she had no receipts to prove this. She acknowledged that her defence was that of adverse possession. She admitted in cross-examination that her attorney at law explained the law on adverse possession to her but that she did not understand that she had to be in exclusive possession of the property for 16 years prior to 2016.
27. Even if I had accepted the Defendant's evidence she still did not cross the evidential threshold of being in continuous exclusive possession of the property from 2000 since based on her own evidence she moved into the property in 2007. Further, the Defendant was not in occupation of the property from 2009 to 2015 since based on her own evidence after she got married in 2009 she visited her mother during the day to look after her and she returned to her husband's house at night to sleep. I was of the opinion that the fact that the Defendant referred to the husband's house as the matrimonial home meant that she



considered this to be her new home and as such she was no longer in exclusive possession of the property for this period.

28. But that was not all. The evidence from the Defendant's witnesses did not assist the Defendant's case. Mr Godfrey Baird's evidence in cross-examination was that he knew that the Defendant moved into the property in 2007 and in 2009 she moved into her husband's home. Trevor Cain's evidence in cross-examination was that the Defendant moved onto the property sometime in 2008 and that in 2009 when the Defendant got married she moved to live with her husband. Even the Defendant's sister Christine Baird who lives abroad admitted in cross-examination that a person could not live in two places simultaneously and most of the information she had in her witness statement was told to her by her mother, Stella Roberts.
29. Secondly, during the period the Defendant lived on the property she was not in sole exclusive possession of it. The Defendant's evidence was that the Claimant visited their mother throughout the years. The Claimant had lived in the downstairs apartment on the property from in or around 2004 to in or around 2008. While the Claimant lived in the downstairs apartment, he was paying \$1,000.00 a month in rent to their mother which was later changed to \$500.00 a month when he added additional bedrooms to the apartment sometime between 2005 and 2007. In cross-examination she maintained that the Claimant moved to the property in 2004 and that he and his family lived there until 2008. She stated that after the Claimant and his family moved out he left his eldest son and his brother renting in the downstairs apartment.
30. The Claimant's evidence was that he lived on the property with his family from 1997 to 2006. His son Keith Junior was born on the property on the 29<sup>th</sup> March 2002. Sometime in 1997 his mother Stella Roberts gave him permission to construct a downstairs apartment on the property. At the then time, Stella Roberts was living alone on the upstairs apartment of the property until sometime in 2011 when one Mr. William rented one of the rooms in the upstairs apartment of the property. In 2006 he and his family moved out of the property but one of his sons Kellon Pope remained in the property. Mr. Williams left in 2013 and that was the room the Defendant was presently occupying. He made out receipts for rent

paid and his wife Althea Raymond also made out rent receipt for the said Mr Williams when he was renting the said one room.

31. The Claimant's wife's, Althea Roberts evidence corroborated the Claimant's evidence in the material aspects of when they lived on the property; that in 1997 Stella Roberts gave the her and the Claimant permission to build a downstairs apartment at a property and after they built the rent changed to \$500.00 per month; when they moved out ; Mr William rented a room in the upstairs apartment on the property and that she and her husband collected rent.
32. Although there was a dispute between the parties of the time the Claimant and his wife moved out of the property, the common ground was that the Claimant and his family was living in the downstairs apartment on the property at least between 2004 to 2006. Therefore based on this undisputed evidence the Defendant could not have been in exclusive possession of the property between 2004 to 2006 since the Claimant and his family was also in possession of the downstairs apartment of the chattel house.
33. Thirdly, the Defendant's mother had no proprietary interest in the property after the death of John Michael. The Defendant's evidence was that her mother occupied the property for over 30 years, after she received it from Mr. Michael John, who was her common law husband since in or around 1970. According to the Defendant, Mr. Michael John lived as a tenant on the property for many years and he died in or around the 10<sup>th</sup> March 1986, leaving his chattel house for her mother Stella Roberts. She attached a copy of the death certificate of Mr. John Michael and his will as "A". The Defendant said that she was certain that when her mother received the chattel house in 1986, she never paid any rent since she had never seen any receipts and she had never seen her mother pay any rent to anyone. For these reasons the Defendant said she was of the opinion that property were part of her mother's inheritance from Mr. John Michael.
34. According to the Will, John Michael gave the chattel house situated on the property to Stella Roberts. In the Will, he acknowledged that the land on which the chattel house stood was rented from "Smith Raymond". Based on the Defendant's own contemporaneous documents, I was of the opinion that even if I accepted the Defendant's evidence that her

mother had inherited the chattel house which was situated on the property after the death of her common law husband, there was no evidence adduced by the Defendant to demonstrate that the Will was probated and that the ownership of the chattel house was transferred to Stella Roberts. Therefore at best Stella Roberts was a beneficiary in waiting for the chattel house on the property but she was not its owner.

35. Fourthly, even if Stella Roberts had acquired a proprietary interest in chattel house, the Defendant mother's occupation of the property as an adverse possessor only started in 2011 after she was no longer a statutory tenant. According to the Will, the property upon which the chattel house stood was rented land. The tenant was John Michael who died in 1986. Under section 4(1) of the **Land Tenants Security of Tenure Act** every tenancy to which the said Act applied and subsisting immediately before the appointed date of the 1<sup>st</sup> June 1981 from that date became a statutory lease. The **Land Tenants Security of Tenure Act** applied to private residential tenancies therefore it applied to the property on which the chattel house stood. In 1981 John Michael was still alive so his tenancy for the land was converted by operation of law into a statutory lease for 30 years expiring on the 31<sup>st</sup> May 2011.
36. Even if I had accepted that Stella Roberts was a beneficiary in waiting of the chattel house and the said statutory tenancy after John Michael died, she was still a statutory tenant during the period after John Michael's death to the 31<sup>st</sup> May 2011. Section 2 of the **Land Tenants Security of Tenure Act** defines a tenant as “ means any person entitled in possession to land under a contract of tenancy whether expressed or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at a will and a tenant at sufferance and “tenancy” shall be construed accordingly.
37. According to the Defendant's evidence, after Michael John's death her mother did not pay rent, despite her mother being listed as a tenant at No 23 in the Third Schedule in Deed No.DE3131 of 1998. She annexed copy of the said 1998 Deed as “D”. I was of the opinion that even if Stella Roberts was not paying rent she was a tenant at will for the unexpired residue of the statutory period which expired on the 31<sup>st</sup> May 2011. There was no evidence that Stella Roberts was granted an extension or renewal of the tenancy after the 31<sup>st</sup> May

2011. Therefore the statutory tenancy expired on the 31<sup>st</sup> May 2011 and Stella Roberts occupation of the property as an adverse possessor only started to run from the from the 1<sup>st</sup> June 2011 which meant her period of possession s an adverse possessor still did not meet the statutory requirement.

**Margaret Y Mohammed**  
**Judge**