

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE  
(Sub-Registry, Tobago)

Claim No. CV 2011- 00281

Between

**SMITH LEWIS**

Claimant

AND

**ANJAN SOOKDEO**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

Appearances:

Mr. G. Peterson S.C. instructed by Ms. D. Palackdharry for the Claimant.

Ms. N. Sharma instructed by Mr. R. Ramoutar for the Defendant.

## Reasons

1. These are the reasons for the court's judgment delivered on the 25<sup>th</sup> September 2012.
2. The Claimant's case in brief, was that he became the legal owner of land situate in the parish of St. Patrick, Tobago ("the said land") by Memorandum of Transfer dated 28<sup>th</sup> November 2003 and registered on the 30<sup>th</sup> January 2004, the said land having been previously owned by one, Mr. Hugh Sampath. Mr. Sampath had been the owner of the said land by virtue of a Certificate of Title registered as Volume 4436 Folio 71. The Claimant averred that the Defendant was a trespasser on approximately a lot and a half of the said land ("the portion of the said land"). What was being sought by the Claimant was, *inter alia*, a declaration that he was the legal owner of the said land and a mandatory injunction ordering the Defendant to remove the buildings erected on the portion of the said land.
3. The Defendant claimed to be a lessee and occupier of the portion of the said land, having obtained an assignment of a lease from Nazim and Fareeda Ali by lease dated 1<sup>st</sup> June 2001. According to the Defendant, Nazim and Fareeda Ali had themselves obtained a lease dated the 24<sup>th</sup> October 1988 from Robert Sanowar and Kayso Rampersad, the previous owners of the said land. The Defendant averred that the Claimant had notice of his occupation before he (the Claimant) purchased the land. The Defendant also claimed that he (the Defendant) had acquired an equitable title to the lot as the lease had never been registered. It was the Defendant's case that the Claimant was estopped from denying the Defendant's title by his words and conduct and the words and conduct of the his predecessors in title as the Defendant had been led to believe that his right and title to the lot was lawful and that he acted in reliance of such words and conduct to his detriment.
4. The Defendant sought, *inter alia*, a declaration that he was the owner and entitled to possession of the portion of the said land and an order directing the Registrar to register his lease or endorse his interest on the Certificate of Title registered as Volume 4436 Folio 71.

5. The court identified the issues as:
  - i. Whether the leases dated 24<sup>th</sup> October 1988 and 1<sup>st</sup> June 2001 were invalid against the Claimant for want of registration.
  - ii. Whether the Claimant was a bona fide purchaser for value without notice of the Defendant's occupation and interest in the disputed land.
  - iii. Whether the Defendant has an equitable interest to the disputed land.
  - iv. Whether the Claimant is estopped from denying the Defendant's right and title to the portion of the said land.

### **First Issue**

8. It was agreed between the parties and accepted by the court that the Defendant's occupation of the portion of the said land was as a result of an **unregistered** lease dated the 1<sup>st</sup> June 2001 from Nazim and Fareeda Ali. It was also agreed between the parties and accepted by the court that the said Nazim and Fareeda Ali leased the portion of the said land to the Defendant having purportedly obtained leasehold title to the portion of the said land by an **unregistered** lease dated 24<sup>th</sup> October 1988 granted by Robert Sanowar and Kayso Rampersad the previous owners of the said land. Further, the parties agreed and the court accepted that Mr. Hugh Sampath was the **registered** owner of the said land which included the portion occupied by the Defendant by Certificate of Title registered as Volume 4436 Folio 71. Mr. Sampath obtained title by Memorandum of Transfer No. 16 dated 16<sup>th</sup> December 2002 from Robert Sanowar, Savitri Rampersad and Ray Sastri Rampersad registered in Volume 4436 folio 65.
9. In the system of registered title the title of every proprietor registered therein is "absolute and indefeasible" and cannot be impeached or affected by the existence of an estate or interest which, but for the registration, might have had priority. This is of course subject to certain exceptions in the *Real Property Act Chap 56:02*: see **Helen Clarke v Mitchell Masterson and Shanti Masterson HCA 2319 of 2004**; and sections 45 and 143 of the *Real Property Act Chap 56:02*.

10. In this regard, Counsel for the Claimant submitted that the Claimant has an indefeasible title which could not be defeated by the unregistered lease of the Defendant. Counsel further submitted that the production of the Certificate of Title by the Claimant was definitive and an absolute bar both in law and equity to any action against the Claimant.
11. Counsel for the Defendant in response submitted that both the Act (s. 141) and the common law protect the unregistered owner as against the fraud of the owner with whom he contracted as well as a third party purchaser who acquired his registered title with a view to depriving that occupier of those rights: *Merri v McKay [1897] 16 NZLR 124*. Counsel explained that the fraud of Robert Sanowar consisted mainly of selling the 1988 lease of the portion of the said land for valuable consideration (to Nazim and Fareeda Ali) and then transferring the entire parcel of the said land to a third party (Hugh Sampath) again for valuable consideration. Counsel further explained that the Claimant clearly knew of the Defendant's possession of the portion of the said land and argued that although mere knowledge that an unregistered interest exists will not impute fraud on the Claimant, knowledge also of possession under an agreement and the outlay of money under it, can impute fraud on the part of the Claimant: *Merri v McKay (supra)*.
12. What is clear is that within the registered system there is title by registration and not registration of title. While registration is necessary to pass the legal interest and is proof of the facts stated on the Certificate of Title, the law does not totally undermine unregistered instruments if the circumstances of the unregistered interest falls within the exceptions set out in the Act, for example, fraud. In this case, the Defendant submitted that there was fraud on both the part of the previous owners and on the part of the Claimant, and the court was entitled to consider such as it related to the Claimant's indefeasible title.
13. The tenor of the submission by Counsel for the Defendant was that the Claimant knew that the Defendant was in occupation under a lease agreement and that the Claimant had expended money on same. The Claimant himself testified in cross examination that the final payment for the said land was made around the 28<sup>th</sup> November 2003. This was after the survey plan was done on the land and after he had discovered that the Defendant was in occupation of the portion of the said land. However, the Claimant's evidence in cross

examination was that although he knew the Defendant was saying that he was not a trespasser he only knew that he was claiming a leasehold interest on the portion of the said land when he filed the injunctive proceedings relating to the portion of the said land in 2004.

14. In this case, the court found that fraud had not been made out. The Defendant put forward that the Claimant knew that he (the Defendant) had been claiming a leasehold interest and had made payments pursuant to same. The court found however that the Defendant did not prove that the Claimant knew that the Defendant had an unregistered interest, was in possession under an agreement or that he expended money pursuant to that agreement.
15. The Court found as a fact that the Claimant did not have knowledge of the existence of the purported lease. The court reasoned that the lease had not been registered and on the evidence the Defendant had not produced any lease to the Claimant either on site at the time the survey was conducted or through his attorney at a subsequent date before the Claimant purchased the said land. Additionally, when the Claimant's Attorney wrote to the Defendant by letter dated 4<sup>th</sup> November 2003, requesting removal of his buildings from the portion of the said land, by response letter dated 11<sup>th</sup> November 2003, the Defendant had not indicated that he was in occupation by an unregistered lease.
16. It follows that there being no knowledge of the lease on the part of the Claimant, there could have been no fraud in the manner as alleged by the Defendant.
17. Therefore, the finding of the court was that the effect of the non registration in these circumstances was that the lease agreements both of the 24<sup>th</sup> October 1988 and 1<sup>st</sup> June 2001 were invalid in law against the Claimant.

## **Second and Third Issues**

18. Notwithstanding the fact that the agreement of the 1<sup>st</sup> June 2001 was found to be invalid in law between these parties, unregistered rights, interests and instruments are now almost universally regarded as being proprietary in nature and creating equitable estates and interests: **Barry v Heider [1914] 19 CLR 197 (High Court of Australia); Great Western Permanent Loan Co. v Friesen [1925] AC 208 (Privy Council).**
19. In spite of sections 80 and 81 of the ***Real Property Act*** the effect of an unregistered agreement for a lease exceeding three years operates as a contract between the parties and can confer on the intended lessee a right to enforce the contract by specific performance and to obtain from the lessor a registrable lease: **Souza Figueiredo v Moorings Hotel [1960] EA 926.**
20. On this issue, Counsel for the Claimant contended that there may have been an equitable lease between Robert Sanowar et al and Nazim and Fareeda Ali, but that the Defendant failed to support his claim that this equitable interest had been transferred to him. Counsel for the Claimant further contended that even if the Defendant had an equitable interest, it could not bind the Claimant as he was a bona fide purchaser for value without notice.
21. The Defendant on the other hand submitted that the Claimant was estopped from denying the Defendant's equitable title and that the remedy being sought by the Defendant was available against a successor in title (the Claimant in this case). It was further contended that the Claimant had notice of the Defendant's occupation of the portion of the said land before the sale of the said land was completed and consequently the Claimant was not a bona fide purchaser for value without notice.
22. A specifically enforceable agreement for a lease creates an equitable interest in land. Thus, a lease which is ineffective at law to create a legal estate may take effect in equity as an equitable lease. This court considered that an equitable interest was enforceable against a successor in title since, for the most part, parties under an agreement for a lease will be in the same legal position as regards each other and as regard third parties as if the lease had been granted in the appropriate form. However, such enforcement as

against the Claimant in this case will depend on whether the Claimant was a bona fide purchaser for value without notice.

23. The Claimant's evidence on the issue of notice was somewhat ambiguous. He appeared to be inconsistent on several issues, particularly on the question of when he discovered the Defendant was occupying a portion of the said land. An analysis of the evidence revealed that the Claimant had knowledge of the Defendant's occupation before he completed the sale of the said land. It appeared though, that he may have been under the impression in the same manner as the Defendant and the witness Mr. Walters, although mistakenly, that the portion of the land occupied by the Defendant was not situate on the land in respect of which he had paid a deposit. It was his testimony under cross examination that he visited the land before buying it but did not meet with Mr. Sampath on the land at the time of that visit. In this regard the court also noted that while the Claimant testified that he visited the land, he gave no evidence as to the date of his visit. Both the Defendant and Walters however testified that this event occurred in the month of August 2003 and the court accepted this in the light of there being no evidence to suggest otherwise.
24. Additionally, there was no evidence of the boundaries ever being pointed out by Mr. Sampath. The evidence in cross examination of Mr. Walters was that he pointed out at least one of the boundaries by reference to a fence. But Mr. Walters was not the owner in fee simple nor was he the vendor of the 6 acre parcel. For obvious reasons no reliance was placed on the attempt to point out the boundaries by the defendant and his neighbours as it was not their obligation so to do and not being the owners the information they purported to give may have been unreliable. Further, it was the duty of the Claimant to ensure that he knew of the precise boundaries by way of them being pointed out by the vendor or by someone designated by him. So that it appeared to the court that the proper boundaries were not identified to the Claimant until the delivery of the survey plan sometime after. It followed that the Claimant would not have known that the Defendant was encroaching on a portion of the land which he was purchasing at that time and so would have had no notice that there may have existed an "encroachment" on his land, far less an agreement for a lease in relation to a portion of the lands he was

purchasing. The evidence of the Claimant was that he discovered the Defendant's occupation extended partially unto the lands he was purchasing after he had paid the deposit for the purchase and had the land surveyed **but** before the completion of the sale. The Claimant also testified that some time after the 11<sup>th</sup> November 2003 he was informed by the Defendant **orally** that he (the Defendant) occupied the portion of the said land pursuant to a lease. The date of this conversation was given. In any event, nowhere in the letter of the 11<sup>th</sup> November 2003 did the Defendant state that he was in occupation pursuant to a lease.

25. This court found therefore that the Claimant did not have precise knowledge of the details of the Defendant's occupation. He did have knowledge that the Defendant was in occupation of a portion of the said land upon receipt of the survey plan but did not know that the Defendant was saying that he was occupying pursuant to a lease as was clear from his answers in cross examination. It followed that prior to completion of the sale on the 28<sup>th</sup> November 2003 the Claimant was unaware that the Defendant was claiming that he occupied the disputed portion as a lessee.
26. The plea of bona fide purchaser for value without notice is available to a purchaser who, at the time of the purchase, obtains a legal estate without notice of a prior or existing equitable claim or interest and the onus of proof usually lies with the party making the plea of bona fide purchaser. Notice includes actual or constructive notice of such facts as would have been discovered if all usual and proper inquiries were made of the vendor's title, interests and encumbrances affecting the land. See Boodoosingh J in **Ramoutar, Mohan, Administrator of the estate of Bachan a/c Bachan Garib; Ramoutar, Mohan; Sharma, Dhaniram; Bachan, Tarmattie v Moser, Ronald; Moser, Prematee; Jaggernaut, Ricky; Charles, Lucia** H.C.1545/2009. CV.2009-01545. H.C.1846/2009. CV 2009-01846.
27. Within the registered system, one is not required to search the root of title to ensure that there is a good root. However it is practice, and perhaps incumbent on a potential purchaser that the usual checks for "hidden" encumbrances be made. That is to say, not all interest or encumbrances affecting the land appear on the certificate of title. Thus the purchaser ought to visit the land to ensure for instance that the land is free from



trespassers or other forms of possessory encumbrances. But this case was somewhat different. This was not a case of a claim in adverse possession where the mere fact of occupation without permission would be sufficient to put the Claimant on notice. This was a case where the Defendant was saying that he was in possession of a lease from a party who had taken from another party who was not the present vendor. The Claimant/Purchaser did visit the land and did speak with those who were in occupation but all seemed to be unaware that there was occupation of a portion of the land which was being sold. In those circumstances, the purchaser took the added step of enquiring of the vendor. There was little if anything more that he could have done which may have revealed the existence of an unregistered lease between the Defendant and another party who was not a party to his agreement for sale. This was a fact the existence of which could reasonably have only been ascertained through information provided by the Defendant who only disclosed this after the sale.

28. The court therefore found that having regard to the evidence, although the Defendant derived an equitable interest from the unregistered lease, such interest did not take priority over the Claimant's legal interest, the Claimant not having notice of the Defendant's equitable lease. The finding of the court was that the Claimant was a bona fide purchaser for value without notice.

#### **Fourth Issue**

29. The Defendant also submitted that in any event the Claimant was estopped from denying the Defendant's interest. In order for the Defendant's plea of estoppel to succeed, he had to show (1) A promise, in that the claimant or his predecessor in title had represented that he would obtain an interest in property either by words or conduct; (2) Encouragement, that is his belief must have been encouraged by the titleholder or his agent or predecessor in title; (3) Expectation/Belief, that is, he must have acted in the belief either that he already owned sufficient interest in the property to justify the expenditure or that he would obtain such interest; (4) Expenditure/Detriment, that is, he

must have incurred expenditure or otherwise acted to his detriment: *Mahabir and others v Mangatoo* H.C.A 1621 of 2002

30. Attorney for the Defendant explained that title to the said land passed from Mr. Sanowar to Mr. Sampath **before** it passed to the Claimant. On the strength of the acquiescence of Mr. Sampath that his title was good, the Defendant established a business on the land. It was the Defendant's submission that it was not necessary in law for the Claimant to have led the Defendant to believe that he would allow the Defendant to remain on the land for the plea of estoppel to succeed but that the actions of his predecessors in title were sufficient.
31. Attorney for the Claimant however submitted that there was no form of assurance given by the Claimant on which the Defendant could rely and act on, as such, since there was no representation, then no form of detriment can be shown to arise. Attorney therefore submitted that proprietary estoppel could not be successfully argued. Additionally, Attorney for the Claimant submitted that the Defendant led no evidence as to money expended on the property or any detriment suffered as a result of reliance on anything said or done by the Claimant.
32. The Court considered each element necessary to establish the plea of estoppel:

### **Promise**

By the conduct of the Claimant's predecessor in title, that is the original owners Robert Sanowar et al, there was a representation. The leasehold interest was given to Nazim and Fareeda Ali. This appeared to have been a representation that they, the Ali's would obtain an interest in the property. By implication this was also sufficient to constitute a representation to both the Ali's and to those deriving lawful title from the Ali's that they would also acquire a proprietary interest. This representation would have been made since 1<sup>st</sup> June 2001. Such a representation need not come directly from the Claimant but it is sufficient that the promise/representation arose from the Claimant's predecessor: *Mahabir and others v Mangatoo* (supra).

### **Encouragement**

There was encouragement by the titleholder in the execution of an agreement for a lease. This was not a situation where it was not intended to convey an interest in the property. The fact of execution of an agreement for a lease points to the intention to convey an interest and is in this case sufficient encouragement, even if that encouragement came from a predecessor in title and not from the Claimant himself. Further, the failure of the titleholders to act when the Defendant established an obvious type of business on the land in the court's view amounted in these circumstances to encouragement.

### **Expectation/Belief**

The evidence was that the Defendant bulldozed the disputed land, laid foundation and constructed a two-storey house after he obtained the lease to the portion of the disputed land on 1<sup>st</sup> June 2001. The Defendant has operated his business on the portion of the said land since. The court was of the opinion that these are acts pursuant to the belief that he had acquired a leasehold interest.

### **Expenditure/Detriment**

The Defendant's evidence was that there was an incomplete two storey concrete structure on the disputed parcel of land as well as a flat wooden structure and a shed. The Defendant averred that the words and conduct of the Claimant's predecessor in title led him to act to his detriment by constructing the buildings and the establishment of his business on the disputed land. The Defendant claimed he has expended considerable sums of money and time and effort on the maintenance and development of the lot. Contrary to the Claimant's submission that the Defendant has not lead any evidence as to money which was expended on the property or any detriment suffered as a result of reliance, this court was of the view that construction of the buildings on the lot and the establishment of a business was a clear case of the Defendant acting to his detriment. It was quite apparent that during a period of some two years, the Defendant would have by

implication on the evidence, expended more than a trivial sum as it is well known that construction in our economy invariably implies considerable expense. The Defendant need not prove an exact figure but it would be an error in judgment should the court choose to ignore the reasonable and ordinary inference that construction would have involved more than what can be considered minor expenses. Further, it was not in dispute that the Defendant's buildings are on the disputed parcel of land, as the Claimant himself has sought the removal of the buildings from the portion of the said lands. Consequently it could not be argued that the Defendant has not proven expenditure. This court found that he did in fact act to his detriment in all the circumstances.

33. As a consequence, the court found that on the Defendant's plea of estoppel it would be unconscionable to insist on the strict application of the Claimant's legal right to the portion of the said parcel of land in all the circumstances of this case.

34. For these reasons, the court therefore disposed of the Claim by making the following order:

- i. The Claim is dismissed.
- ii. Judgment for the Defendant on the counterclaim.
- iii. It is hereby declared that the Defendant is entitled to possession of All and Singular that lot of land situate at Ferrari Street off Marley Street, Milford road, Kilgywn Estate in the Island of Tobago comprising five hundred and forty six point one meters being portion of a larger parcel of land comprising six acres, one rood and sixteen perches and described in Certificate of Title Volume 4436 Folio 71 pursuant to an agreement for a lease made the 1<sup>st</sup> June 2001.
- iv. The Registrar General is directed to endorse both leases of the 24th October 1988 and 1st June 2001 on Certificate of Title in Volume 4436 Folio 71.
- v. The Claimant shall pay the prescribed costs of the Defendant on the Claim assessed in the sum of \$14,000.00.

- vi. The Claimant shall pay the prescribed costs of the Defendant on the counterclaim assessed in the sum of \$14,000.00.

Dated this 28th day of September 2012

Ricky Rahim  
Judge