

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-03190

BETWEEN

MAUREEN MOTTLEY

Claimant

And

MARVIN GRIFFITH

First Defendant

MELVIN GRIFFITH

Second Defendant

NISHA GRIFFITH

Third Defendant

NATHANIEL GRIFFITH

Fourth Defendant

JAVON GRIFFITH

Fifth Defendant

LINDSEY GRIFFITH

Sixth Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: December 7, 2018

Appearances:

Claimant: Mr. L. Elcock

Defendants: Mr. D. Ali

JUDGMENT

1. This claim is one for possession of property situate at Lot No. 6 Las Lomas No. 2 consisting of a two storey dwelling house (“the house”) and a parcel of land comprising five hundred and twenty-nine point zero square metres (“the land”). The house and the land will hereinafter be jointly referred to as the subject property.
2. The claimant is the second cousin of the defendants who themselves are siblings. The defendants’ mother, Josephine Phillip (deceased) was the niece of the claimant’s mother Eugenia Orosco (also deceased).
3. By Claim Form filed on September 23, 2016 the claimant claims that she acquired the subject property by Deed of Conveyance dated January 18, 2008 and registered as DE200800352393. Pursuant to a Power of Attorney, the claimant at the material time acted through her agent and lawful attorney, Catherine Mc Allister (“Catherine”).
4. The essence of the claimant’s claim is that she has served a notice to quit on the defendants and they have failed to deliver up vacant possession of the subject property. As such, the claimant claims the following relief;
 - i. A declaration that she is entitled to possession of the subject property;
 - ii. An order that the defendants do deliver up vacant possession of the subject property;
 - iii. Mesne profits for the use and occupation of the subject property at the rate of \$800.00 per month from March, 2009 to the present date;

- iv. Costs;
 - v. Interest; and
 - vi. Such other further relief as the court may deem fair and just.
5. By Defence and Counterclaim filed on March 1, 2017 the defendants aver and claim that the house was built by Eugenia Orosco (“Eugenia”) on the land which was rented from the El Carmen Estate. That the first defendant, Marvin Griffith (“Marvin”) and the second defendant, Melvin Griffith (“Melvin”) first started occupying the subject property as tenants of Eugenia in May, 1998 at a rent of \$250.00 per month.
6. According to the defendants, after the death of Eugenia in 1999, the claimant and her sister, Annmarie Eugene (“Annmarie”) as beneficiaries of the Estate of Eugenia, agreed to sell the subject property to Melvin for the price of \$180,000.00. By Power of Attorney dated August 7, 2004 Annmarie authorized the claimant to act on her behalf in respect of real estate transactions.
7. The defendants allege that before the claimant and Annmarie could sell the subject property to Melvin, they had to obtain the freehold title from the El Tamana Estate under the Land Tenants Security of Tenure Act 1981. The defendants further allege that the claimant and Annmarie did not have the money to obtain the freehold title which was then approximately \$56,000.00.
8. According to the defendants, it was agreed between the claimant, Annmarie and Melvin that Melvin would provide the claimant and Annmarie with \$60,000.00 to purchase the land from the El Carmen Estate

and that he would pay the balance of the purchase price of \$120,000.00 to them once a good and marketable title was received.

9. On January 17, 2015 Melvin entered into a written agreement with Annmarie to purchase the subject property for the price of \$180,000.00 with a deposit of \$60,000.00 (“the agreement”). On March 22, 2005 Melvin as agreed with the claimant and Annmarie paid to the claimant on her behalf and/or as agent and/or as servant of Annmarie the sum of \$60,000.00.
10. By Deed of Assent dated March 15, 2006 and registered as DE200600888820D001 (“the deed of assent”), the claimant as Executrix of the Estate of Eugenia transferred the house to Annmarie. The defendants allege that on January 18, 2008 the claimant utilized the deposit paid to her by Melvin to obtain the freehold title to the subject property in her name solely at and for the price of \$56,940.00 with the knowledge, consent and/or approval of Annmarie in an attempt to deliberately avoid the agreement and thereby sell the subject property for a higher price.
11. The defendants claim by letter dated February 11, 2009, the claimant then offered to sell the subject property to Marvin at the price of \$270,000.00.
12. By Claim Form filed on April 20, 2012 (“the first claim”) the claimant initiated a claim against Marvin and the third defendant, Nisha Griffith (“Nisha”) seeking inter alia a declaration that she is entitled as Executrix of the estate of Eugenia to possession of the subject property. The defendants argue that the first claim was a patent falsehood since at that time the house was already vested by the claimant to Annmarie and the claimant was already the freehold owner of the subject property. As such,

the defendants claim that the claimant had no lawful basis to maintain an action for possession as Executrix. According to the defendants, these proceedings were initiated against them for the second time as the claimant failed and/or refused and/or neglected to pursue the first claim diligently and/or at all.

13. The defendants allege that to date Annmarie by herself and/or the claimant as her agent and/or servant continue to be in breach of the agreement by refusing to convey the subject property to Melvin at and for the balance of the purchase price of \$120,000.00. The defendants further allege that to date, the claimant by herself and/or as agent and/or as servant and/or attorney of Annmarie has never offered to return the deposit paid.

14. As such, the defendants counterclaimed for the following relief;
 - i. Specific performance of the agreement dated January 17, 2005 made between Annmarie and Melvin;
 - ii. Alternatively, an order that the claimant convey the subject property to Melvin for the sum of \$120,000.00;
 - iii. Alternatively, an order that the claimant as servant and/or agent and/or attorney of Annmarie convey the subject property to Melvin for the sum of \$120,000.00;
 - iv. Costs;
 - v. Such other relief as the court may deem fair and just.

CASE FOR THE CLAIMANT

15. The claimant gave evidence for herself. She resides at 740 Empire Boulevard, Brooklyn New York, 11213, United States of America. She testified that she is the owner of the subject property. That she acquired the subject property by Deed of Conveyance dated January 18, 2008 and registered as DE200800352393 ("the 2008 deed").
16. Sometime in the year 1999, the claimant allowed Marvin and Melvin to reside in the house. She collected a rent of \$800.00 from Marvin and Melvin. In or around 1999, Garvin Griffith ("Garvin"), the father of the defendants who was a paraplegic due to a work related accident, began living with Marvin and Melvin at the subject property. Garvin had obtained compensatory damages in the sum of approximately \$1,000,000.00 from the State.
17. According to the claimant, by written agreement for sale dated January 17, 2005 ("the agreement"), Garvin agreed to purchase the house from Annmarie. Garvin paid \$60,000.00 to the claimant as a down payment towards the agreed purchase price of \$180,000.00.¹
18. The claimant testified that she typed out the agreement and that the text of the agreement indicated that Melvin was the purchaser and that Annmarie was the vendor. However, after the claimant sent the agreement to Trinidad to be executed, Melvin and Garvin informed her by telephone that the down payment and the full purchase price were being made by Garvin and so instructed her to make the agreement in Garvin's name. The claimant did not type up another agreement but instead she used liquid paper to erase Melvin's name and replaced same with Garvin's

¹ A copy of the agreement for sale was attached to the claimant's witness statement at "MAM2".

name. She then sent the agreement back for Garvin for execution. Catherine who was acting as the claimant's agent under a Power of Attorney communicated directly with Garvin to get the agreement to him for execution by thumbprint.

19. Sometime after the agreement had been executed by Garvin, differences arose between Garvin and Melvin that led to a High Court action. Thereafter, by letter dated June 14, 2006 Garvin's lawyer demanded that Annmarie put herself in readiness to complete the agreement and to give him vacant possession within thirty days.² The letter provided as follows;

"Re: Agreement for sale dated 17th January 2005.

Dear Mrs. Eugene,

I act on behalf of Garvin Griffith.

I am informed by my client that on the 17th January 2005, he executed an agreement for the sale of property at LP#159 Las Lomas #2 for the sum of \$180,000.00. A copy of said agreement is attached for your ease of reference.

Pursuant to said agreement, my client paid the sum of Sixty Thousand Dollars (\$60,000.00) representing one-third of the purchase price.

My inspection of said agreement shows that the completion time is ninety days from "the execution of the will" which said expression makes no sense to me in law.

² A copy of this letter was attached to the claimant's witness statement at "MAM3".

In any event, the said money was in fact paid and to date, there has been no completion of the sale agreement.

In fact, my client has since that time been chased out of the property by his children who lived there with him and are themselves claiming that they are tenants of the owners.

This situation is unacceptable and my client instructs me to advise as follows:

- 1. That you put yourself in readiness to complete this sale agreement and give my client vacant possession within thirty (30) days.*
- 2. If you fail to do so within the said thirty (30) days, my client would like to have the return of his deposit together with all cost expended by him in this transaction....”*

20. Sometime in 2005, the claimant was in the process of making arrangements to come to Trinidad to complete the agreement but Garvin died sometime before her arrival. Thereafter, the claimant offered to sell the house to Melvin on the same terms of the agreement on the condition that he completed the transaction within six months. The claimant testified that sometime during that six month period, Melvin informed Catherine that he was no longer interested in completing the transaction for the property.

21. According to the claimant, a few months thereafter, whilst she was in Trinidad, Marvin approached her to buy the house. She told him that he could purchase the house but that it would be at a cost of \$270,000.00. In

an effort to assist Marvin, the claimant asked one of her friends who is employed in a company that provides mortgage loans to assist him. Those discussions however fell through as Marvin vacated the house in or around 2009 and told Catherine that he was no longer interested in purchasing same.

22. According to the claimant, Nisha entered into occupation of the house sometime after the death of Garvin and has been residing at the house to date. The other defendants have lived in the house from time to time.
23. By letter dated February 28, 2009, the claimant informed Catherine that 1) on February 21, 2009 Marvin had declined the offer to purchase the property, 2) she wanted to do renovations and needed to have access to the property and 3) if the defendants needed to stay on the property they would have to pay a monthly rent of \$800.00.³
24. On or about March 1, 2009 the claimant instructed Catherine to demand that Marvin, Melvin and Nisha pay a rent for the property. By letter dated March 3, 2009 Melvin's lawyer wrote to Catherine alleging the following;
 - i. The claimant had agreed to sell the property to Melvin for \$180,000.00;
 - ii. Melvin had paid the sum of \$60,000.00 to the claimant; and
 - iii. The claimant had agreed that Melvin, his servants and/or agents were free to remain in occupation of the property until she was in a position to complete the sale agreement and called upon the claimant to complete the sale agreement within twenty-one days.

³ A copy of this letter was attached to the claimant's witness statement at "MAM4".

25. By letter dated February 20, 2011 the claimant wrote to Melvin demanding that the matter concerning the down payment of \$60,000.00 on the property be settled as soon as possible. The claimant also indicated that all outstanding rent must be paid for the past three years and that his family should vacate the property on the date of settlement.⁴
26. By letter dated May 6, 2011 the claimant wrote to Melvin's lawyer demanding that Melvin provide her with a copy of the receipt or to show what method of payment he used to pay her the \$60,000.00 as down payment for the property.⁵
27. On June 18, 2011 the claimant caused a notice to quit to be served on Nisha. However, Nisha and her family have not delivered up vacant possession of the property. The defendants continue to occupy the property and have failed, refused and/or neglected to vacate same and/or to pay rent despite the claimant's numerous demand for them to do so.

The cross-examination of the claimant

28. The claimant has been residing in the United States since 2000. Her mother, Eugenia who died in July, 1999 rented the land from the El Carmen Estate ("the estate"). The claimant was referred to the 2008 deed. By this deed, the claimant purportedly purchased the land from Evelyn Matura ("Matura"). Annmarie had asked the claimant to purchase the land. Matura was the person who Eugenia paid rent to for the land. The claimant never paid rent to Matura. Although this deed referred to the claimant as

⁴ A copy of this letter was annexed to the claimant's witness statement at "MAM6".

⁵ A copy of this letter was annexed to the claimant's witness statement at "MAM7".

a tenant, she testified that she was never a tenant of the estate. The claimant paid the sum of \$54,940.00 to Matura for the land.

29. The 2008 Deed describes the land as follows;

“ALL AND SINGULAR that certain piece or parcel of land formerly situate in the Ward of Cunupia but now in the Ward of Chaguanas, in the Island of Trinidad FIVE HUNDRED AND TWENTY NINE POINT ZERO SQUARE METRES (being portion of a larger parcel of land described in the Second Schedule in Deed registered as No. 9936 of 1972) and bounded on the North by Ritz Avenue 6.10 metres wide, on the South by lands of Olson Pitt, on the East by the Caroni South Bank Road and on the West by lands now or formerly Mathura and which said piece of parcel of land is delineated and shown coloured pink on the Portion Plan hereto annexed and marked “A” and which said piece or parcel of land is assessed as No. 3ZA-19 in the Chaguanas Warden’s Office.”

30. The claimant agreed that nowhere in the 2008 deed does the address Lot 6, Las Lomas No. 2 appear. She further agreed that nowhere on the survey plan annexed to the 2008 deed does the address Lot 6, Las Lomas No. 2 appear. The claimant also agreed that the evidence she gave in her witness statement that by virtue of the 2008 deed she is the owner of the subject property was not accurate.

31. The claimant agreed that she was the Executrix of the estate of Eugenia and that under Eugenia’s will, Annmarie was entitled to the house. She further agreed that by Deed of Assent dated March 15, 2006 and registered as DE200600888820D001 (“the deed of assent”) she conveyed the house to Annmarie. As such, the claimant agreed that the evidence she

gave in her witness statement that she is the owner of the subject property is not true because Annmarie owns the house.

32. The claimant accepted that she received \$60,000.00 in respect of the sale of the house. However, she testified that she did not receive the \$60,000.00 from Melvin. It was her evidence that pertaining to the sale of the house, she was dealing with Garvin and that Garvin paid the \$60,000.00 to her. She then testified that if Melvin did deposit the \$60,000.00 into her account, he would have done so on behalf of Garvin. When she discovered that the \$60,000.00 was deposited into her account, she did not enquire as to who deposited same as Garvin had called her and told her that he had transferred the money into her account. The claimant testified that she received the \$60,000.00 on behalf of Annmarie as she has a Power of Attorney from Annmarie to do transactions on her behalf.
33. The claimant agreed that the sale of the house has not been completed and the \$60,000.00 has not been returned. She testified that the defendants were owing her rent in excess of \$60,000.00. However, she was not withholding the \$60,000.00 because the defendants owed her rent but because she had a transaction with Garvin and as Garvin has passed away, she is not of the view that she should pay the money to the defendants. The claimant denied that she used the \$60,000.00 to purchase the land.
34. The claimant testified that she made the offer to Melvin to purchase the house in 2006. Melvin refused to purchase the house. In her witness statement, the claimant testified that a few months thereafter whilst she was in Trinidad, Marvin approached her to buy the house and she told him that he could purchase the house but that it would be at a cost of

\$270,000.00. As such, Counsel for the defendants questioned the claimant as to why there was a \$90,000.00 increase of the purchase price of the house. The claimant responded by saying that the increase in price was due to the fact that at that time she had purchased the land. However, the claimant purchased the land in 2008 and at the highest her evidence of “few months after” would be late 2006 or early 2007. The claimant testified that her evidence of a few months after was inaccurate and that it was supposed to be two years thereafter.

35. The claimant was referred to the agreement. She testified that Annmarie did not tell her to white-off Melvin’s name and replace same with Garvin’s name. That she did so on her own.
36. The claimant was referred to the first claim she filed against Marvin and Nisha on April 20, 2012 wherein she sought a declaration that she is entitled as Executrix of the estate of Eugenia to possession of the subject property. She agreed that in 2012, she had already conveyed the house to Annmarie by the deed of assent and that she was the owner of the land by the 2008 deed.

THE CASE FOR THE DEFENDANTS

37. The defendants called two witnesses, Melvin and Marvin.
38. Melvin is a Helicopter Pilot. He currently resides at L.P. No. 13 Ganga Trace, Las Lomas No. 2. He previously resided at the subject property. He testified that the house was owned by Eugenia and that the claimant and Annmarie are the daughters of Eugenia. Although, the claimant and Annmarie are Melvin’s second cousins, based on the familial relation and the age

difference between them, Melvin and his siblings commonly refer to Annmarie as their aunt.

39. According to Melvin, in or around July 1998 Annmarie allowed Marvin and him to live at the house for a monthly rent of \$250.00. During cross-examination, Melvin testified that in 1998, he was a Security Officer. In or around 2001, Marvin left the house to reside elsewhere with his spouse and sometime in 2002 Garvin moved into the house with Melvin. In or around August, 2003 Melvin conducted renovations on the subject property to allow for easy access in light of Garvin's disabilities as a paraplegic. The monthly rent increased to \$500.00.
40. During cross-examination, Melvin agreed that Garvin became a paraplegic due to an injury on his job and that due to the incident, Garvin received a lot of money in compensation. Garvin received the compensation in November, 2004.
41. Melvin testified that after the death of Eugenia in 1999, Annmarie and the claimant as beneficiaries of the Estate of Eugenia agreed to sell the subject property to him for the sum of \$180,000.00.
42. As Annmarie had become ill and by Power of Attorney dated August 7, 2004 she authorized the claimant to act on her behalf in respect of the real estate transactions.⁶ The sale of the subject property was discussed and agreed on between the claimant, Annmarie and Melvin.
43. Melvin testified that before Annmarie and the claimant could sell the subject property to him, they needed to obtain the freehold title from the

⁶ A copy of the Power of Attorney was annexed to Melvin's witness statement at "Appendix 1".

El Carmen Estate under the Land Tenants Security of Tenure Act 1981. To acquire the freehold title of the land amounted to approximately \$56,000.00.

44. It was agreed between Annmarie, the claimant and Melvin that Melvin would provide Annmarie and the claimant \$60,000.00 to purchase the land from El Carmen Estate and that he would pay the balance of the purchase price which is \$120,000.00 to Annmarie and the claimant once a good and marketable title was received and upon which the claimant and Annmarie would convey the subject property to him.
45. In pursuance of the aforementioned, on January 17, 2005 Melvin entered into a written agreement with Annmarie to purchase the subject property for the price of \$180,000.00 with a deposit of \$60,000.00 (“the agreement”).⁷
46. On March 22, 2005 Melvin paid the sum of \$60,000.00 into the claimant’s Republic Bank account.⁸ This sum was paid to the claimant as agent and/or servant of Annmarie.
47. In or around 2006, Garvin died.
48. Melvin testified that at no time after the date of Deed of Assent⁹ did Annmarie ever offer the house to him in completion of the agreement. He further testified that on January 18, 2008 the claimant utilized the deposit he paid to her to obtain the freehold title to the land in her name solely at

⁷ A copy of this agreement was attached to Melvin’s witness statement at “Appendix 2”.

⁸ A copy of the deposit slip was attached to Melvin’s witness statement at “Appendix 3”.

⁹ A copy of the Deed of Assent was attached to Melvin’s witness statement at “Appendix 4”.

and for the price of \$56,940.00. At no time after that date did the claimant ever offer the subject property to Melvin to complete the agreement.

49. Marvin returned to the property in or around 2008. In or around 2008, Melvin left the property. He does not currently reside at the property. At present, Marvin, Javon, Nisha and her twelve month old daughter reside at the subject property.
50. Thereafter, Marvin was adamant in his demands to the claimant on the status of the Deed as he was desirous of completing the transaction and securing the title papers for the subject property. However, the claimant remained wispy in her responses on the status of the Deed. Melvin testified that it was at this juncture that the claimant offered to sell the subject property to Marvin for the new sum of \$270,000.00. By letter dated February 11, 2009 this new offer was made.¹⁰ This letter reads as follows;

“To Whom it May Concern,

Re-Agreement Letter

This is to confirm that Maureen Mottley... and Gratiana Eugene... has agreed to sell Marvin Griffith... the property located at LP 159 Las Lomas #2 Via Arouca, the land belonging to Maureen Mottley and the house belonging to Gratiana Eugene. The price in agreement for this property... is Two hundred and seventy thousand dollars... We hope that it will be a smooth transaction.”

¹⁰ A copy of this letter was attached to Melvin’s witness statement at “Appendix 5”.

51. According to Melvin, when the claimant instituted the first claim on April 20, 2012 some four years after she acquired the freehold title to the land, she sued on the basis that she was entitled to possession of the subject property by virtue of being the executrix of the Estate of Eugenia and not as the freehold owner of the property. Melvin testified that the claimant did the aforementioned deliberately to keep the fact that she was the freehold owner of the land hidden from him. That the claimant had no intention of disclosing that she and not Annmarie had obtained the freehold title to the land.
52. Melvin testified that the actions of the claimant were deliberately constructed in an attempt to defeat his interest as purchaser of the subject property pursuant to the agreement. He further testified that to date Annmarie by herself and/or the claimant as her agent and/or servant continue to be in breach of the agreement by refusing to convey the subject property to him at and for the balance of the purchase price of \$120,000.00.
53. The claimant by herself and/or as the agent and/or servant of Annmarie has never offered to return the deposit paid by Melvin.
54. According to Melvin, an inspection of the agreement revealed that an obvious attempt has been made by the claimant and/or Annmarie and/or their servants and/or agents to erase his name from the agreement and replace same with the name of Garvin. Melvin testified that any friction that may have been caused by the erasure of his name would conflict with the fact that his Trinidad and Tobago National Identification Card Number 19790326036 is affixed to the agreement as evidence that he executed

same and for which the claimant has offered no explanation.¹¹ During cross-examination, Melvin was referred to the agreement. He agreed that his signature was not attached to the agreement and that Garvin's right thumb print was affixed on the agreement. He testified that he does not have a copy of the agreement he signed as same was destroyed in a fire.

55. During cross-examination, Melvin denied that Garvin and he via a telephone call to the claimant insisted that the agreement be executed in the name of Garvin because Garvin was paying the sums towards the purchase of the house.
56. In or around 2009, Marvin received letters dated June 4, 2009 and August 12, 2009 from the claimant's lawyer. Melvin testified that in those letters, the agreement was acknowledged by the claimant but that she attempted to justify her refusal to complete same by stating the agreement had been terminated after six months.¹²
57. By letter dated August 25, 2009 Melvin's lawyer wrote to the claimant's then lawyer to advise that Melvin remained ready and willing to complete the purchase and called upon the claimant to specifically perform the agreement.¹³
58. By letter dated February 9, 2010 the claimant's lawyer responded to Melvin's lawyer advising that the documents as agreed between the parties were provided to them.¹⁴

¹¹ A copy of Melvin's ID card was annexed to his witness statement at "Appendix 6".

¹² Copies of these letters were attached to Melvin's witness statement at "Appendix 7".

¹³ A copy of this letter was attached to Melvin's witness statement at "Appendix 8".

¹⁴ A copy of this letter was annexed to Melvin's witness statement at "Appendix 9".

59. By letter dated March 8, 2010 Melvin's lawyer responded to the claimant's then lawyer advising that the claimant had not provided any documents to Melvin. This letter demanded that the claimant provide a copy of the agreement she had with Garvin.¹⁵
60. No response and/or action was forthcoming by the claimant for the next year until June 19, 2010 when a bailiff arrived at the subject property and served Marvin with a Notice to Quit.¹⁶ Thereafter, no response and/or action was forthcoming by the claimant for the next two years until the first claim was filed.
61. Upon receipt of the first claim, Melvin's lawyer entered an Appearance on Marvin's and his behalf. No further steps and/or action was pursued by the claimant in the first claim. Thereafter, no further steps and/or action was pursued by the claimant for the next four years until this present claim was filed.
62. Marvin is a Bailiff/ Security Officer. All of his evidence was the same as the evidence given by Melvin and so his evidence need not be repeated.

The cross-examination of Marvin

63. Marvin denied receiving letter dated February 11, 2009. He further denied that Annmarie and the claimant offered to sell him the subject property for the sum of \$270,000.00.

¹⁵ A copy of this letter was annexed to Melvin's witness statement at "Appendix 10".

¹⁶ A copy of the Notice to Quit was attached to Melvin's witness statement at "Appendix 11".

64. He initially began living at the property in 1999 and moved out in 2002. He thereafter returned to reside at the property in 2004. He currently resides at the subject property with Javon and Nisha. Neither he nor Javon and Nisha ever paid rent to the claimant for occupying the house.
65. According to Marvin, when he and Melvin first began to reside at the subject property in 1999, the claimant told them she had some WASA bills to clear up and so asked them to pay her \$125.00 each. It was his testimony that the claimant never indicated that the \$125.00 was rent. He denied that the claimant was receiving rent at the rate of \$800.00 from Melvin and him. He then testified that around the time he left the property, Melvin was paying rent to the claimant.

ISSUES

66. The issues for determination by this court are as follows;
- i. Whether the claimant has established ownership to the subject property and is therefore entitled to the relief she sought; and
 - ii. Whether the defendants are entitled to specific performance of the agreement.

ISSUE 1 - *whether the claimant has established ownership to the subject property and is therefore entitled to the relief she sought*

Law and Analysis

67. It is undisputed that the claimant's mother, Eugenia was the owner of the house and a tenant of the land which had been converted into a Statutory Lease for thirty years from June 1, 1981 under the Land Tenants Security of Tenure Act 1981 ("the Act"). Eugenia died testate on July 21, 1999. By

her last will and testament dated July 2, 1999, Eugenia bequeathed all her share, title and interest in the house together with her tenancy rights of the land unto Annmarie. Consequently, as the tenancy rights to the land was bequeathed to Annmarie, she was entitled upon serving on the landlord a written notice of renewal on or before the expiration of the original term of the statutory lease, to a renewal of the lease for a further thirty years.¹⁷

68. By the 2008 Deed, the claimant purchased the land. The defendants submitted that the claimant accepted during cross-examination that the schedule to the 2008 Deed does not refer to any property situate at Lot No. 6 Las Lomas No. 2. Be that as it may, the evidence of the claimant was that she became the owner of the land by the 2008 Deed. The court therefore finds that as there is no evidence to the contrary, the claimant's evidence that she became the owner of the land by the 2008 Deed is to be preferred.

69. The defendants further submitted that the second recital of the 2008 Deed referred to the claimant as the tenant of land and as the claimant admitted that she was never a tenant of the land, same was sufficient to vitiate and/or declare null, void and/or no effect of the 2008 Deed. The second recital of the 2008 Deed provides as follows;

"WHEREAS by Deed of Assent registered as No 9936 of 1972 (hereinafter referred to as "the said Deed") the Vendor became seised and possessed in fee simple of the parcel of land described in the Schedule hereto (hereinafter referred to as "the said parcel of land") SUBJECT HOWEVER to the Tenancy of the Purchaser which has been converted into a statutory lease for thirty (30) years from the 1st day of June 1981 under and by virtue

¹⁷ See section 4 of the Act.

of the Land Tenants and Security of Tenure Act 1981 and SUBJECT also to the exceptions of the mines and minerals BUT with the benefit of the covenants contained in Deed of Conveyance registered as No. 4157 of 1947 and No. 5581 of 1943 but otherwise free from all encumbrances.”

70. The court agrees with the submissions of the claimant that the fact that the 2008 Deed has expressly conveyed the property to her subject to a statutory tenancy that did not exist, cannot and did not vitiate or nullify the 2008 Deed. It was clear that the residue of the terms of years passed to Annemarie upon the death of Eugenia.

71. In the case of **Boysie Revero v Ruby Revero Ramdath**¹⁸, Justice Donaldson-Honeywell had the following to say at paragraphs 19 & 20;

“19. It is clear that tenanted land can be sold once the sale is made subject to the tenancy. The regular procedure for sale is applicable; however, the original landlord should include a provision in the Deed of Conveyance that the sale is subject to the tenancy. This procedure serves merely to satisfy a duty of disclosure to the new owner so as to ensure he is aware that in buying the land has become a landlord (See Halsbury’s Laws of England on Conveyancing)¹⁹.

20. In the present case, it is apparent that the tenant’s rights were implicitly conveyed with the land to the Claimant on sale as the Defendant admits to being aware of the tenancy. Thus, the tenant’s rights to renew the tenancy and the option to purchase were not affected by the sale. The Defendant and her mother maintained those rights against the new owner/landlord, the Claimant. They could have exercised their options to renew the tenancy

¹⁸ CV2015-02052

¹⁹ Vol. 23 (2016) [371]

or purchase the property as against the Claimant at any time from 1995 to 2011.”

72. The claimant was well aware at all material times that Eugenia bequeathed the tenancy rights to the land to Annmarie. Consequently, the land was conveyed to the claimant subject to the tenancy which in this case had passed to Annmarie. Therefore, Annmarie’s rights to renew the tenancy and the option to purchase were not affected by the sale of the land to the claimant. Annmarie could have exercised those options to renew the tenancy or purchase the land as against the claimant at any time from 2008 to 2011. However, there was no evidence before this court that Annmarie sought to exercise those rights. As such, Annmarie’s tenancy to the land expired at the end of May, 2011 and was never renewed. It means that the tenancy having come to an end the claimant was entitled to possession of the land.
73. Section 2 of the Act defines a chattel house as *“a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction”*. This definition goes against the grain of the usual legal definition of chattel house but is a feature of the Act for several reasons which are here not relevant. Suffice it to say that that the house in the present case falls within the definition of chattel house.
74. In the case of **Nama Holassie v Cynthia Blake and Others**²⁰, Kokaram J had the following to say at pages 4 & 5;

²⁰ CV2010-04811

“Notably, in the case of Elitestone Ltd vs. Morris²¹, the Court had to consider whether the occupier of a bungalow was a fixture or a chattel. Lord Lloyd of Berwick stated that

“An object which is brought onto the land may be classified under three broad heads. It may be (a) a chattel, (b) a fixture or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land”.

In that case the House of Lords held that the question whether a structure became part and parcel of the land depended on the degree and object of annexation to the land. Assessed objectively, a house built in such a way that could not be removed except by destruction could not have been intended to remain a chattel and must have been intended to form part of the reality... Importantly, in the case of Elitestone an undisputed principle of law was enunciated by Lord Clyde; that there is the general well known rule that whatever is fixed to the freehold of land becomes part of the freehold or inheritance. This was also supported in the well known authority of Mitchell vs. Cowie.²²

The evidence in so far as the chattel house in the case is concerned is that Ms. Holassie could not tell the difference between a fixture and a chattel and there is no cross examination of the Defendants witness on this issue. However, on a balance of probabilities like Lord Lloyd in Elitestone the inference of a large object such as a concrete structure is that annexation goes without saying. The house is therefore a fixture...”

²¹ [1997] 1 WLR 687

²² (1964) 7 W1R 118

75. By the agreement for sale dated January 17, 2005, the house was described as a two storey concrete house. It is therefore reasonable to infer that it would not be possible to remove the house without destroying it. Upon the expiration of the tenancy without renewal the provisions of the Act no longer apply to the house so that the definition of chattel house cannot then apply the tenancy having reverted to the freehold by expiration of the term. As such the court finds that house is a fixture. Consequently, the house runs with the land. The court therefore finds that the claimant has established that she is the owner of the subject property and is entitled to bring the claim.

ISSUE 2 - *whether the defendants are entitled to specific performance of the agreement*

76. By agreement for sale dated January 17, 2005 ("the agreement") Annmarie agreed to sell the house to Garvin for the sum of \$180,000.00. It was agreed that Garvin would pay the sum of \$60,000.00 as deposit on the purchase price on the execution of the agreement. It is undisputed that the sum of \$60,000.00 was paid to the claimant in accordance with the agreement.

77. The claimant testified that she typed out the agreement and that the text of the agreement originally indicated that Melvin was the purchaser and that Annmarie was the vendor. That after she sent the agreement to Trinidad to be executed, Melvin and Garvin informed her by telephone that the down payment and the full purchase price were being made by Garvin and so instructed her to make the agreement in Garvin's name. The claimant did not type up another agreement but instead she used liquid

paper to erase Melvin's name and replaced same with Garvin's name. She then returned the agreement to Garvin for execution.

78. Melvin testified that an inspection of the agreement would reveal an obvious attempt has been made by the claimant and/or Annmarie and/or their servants and/or agents to erase his name from the agreement and replace same with the name of Garvin. He further testified that any friction that may have been caused by the erasure of his name would conflict with the fact that his Trinidad and Tobago National Identification Card Number 19790326036 is affixed to the agreement as evidence that he executed same. During cross-examination however, Melvin was referred to the agreement. He agreed that his signature was not attached to the agreement and that Garvin's right thumb print was affixed on the agreement. He testified that he does not have a copy of the agreement he signed as same was destroyed in a fire.
79. Upon an examination of the agreement, it was observed that Garvin's name was inserted into the agreement via handwriting. It was further observed that on the right side at the bottom of the agreement, there is Melvin's Trinidad and Tobago ID No. 19790326036 and under that, a thumb print has been affixed right after the words *"the right thumb print of Garvin Griffith"*.
80. The court finds that the claimant's explanation for the amendment to agreement is plausible and that the defendants are attempting to revert to the pre-amended agreement. The court so finds for the following reasons. Firstly, it is more probably than not that as Garvin had the funds he received as compensation for a work related accident, he would have been in a position to purchase the house. Melvin during cross-examination

testified that Garvin received the compensation for his injury in November, 2004. The agreement for sale was executed in January, 2005.

81. Secondly, by letter dated June 14, 2006 Garvin's lawyer wrote to Annmarie demanding that she put herself in readiness to complete the agreement and give Garvin vacant possession within thirty days. The letter further stated that if Annmarie failed to do the aforementioned within thirty days that Garvin would like to have the return of his deposit. Moreover, in the letter it was clearly stated that Garvin executed the agreement and that he paid the sum of \$60,000.00 representing one third of the purchase price.
82. Thirdly, there were certain inconsistencies within the testimony of Marvin. During cross-examination, in contradiction of paragraph 18 of his witness statement, Marvin denied that he had ever seen letter dated February 11, 2009 made jointly by the claimant and Annmarie to sell the subject property to him for the sum of \$270,000.00, whereas Melvin, to whom the offer had not been made, readily admitted during cross-examination, that he had seen it.
83. Further, Marvin denied during cross-examination that he had ever paid any rent to the claimant or her agent for his and his siblings' tenancy of the house. That evidence was in contradiction of paragraphs 3 and 5 of his witness statement. Those inconsistencies within Marvin's testimony, in the court's view, added to the difficulty in the credibility and reliability of the evidence on the defendants' case on this issue.
84. Although Melvin has provided a deposit slip showing that he deposited the \$60,000.00 into the claimant's account, it is plausible that as Garvin was a paraplegic, Melvin would have deposited the \$60,000.00 on behalf of Garvin. The court therefore finds that the agreement was made between

Garvin and Annmarie and not between Melvin and Annmarie. The court also finds that there was no agreement for sale in which Marvin was a party.

85. It is undisputed that the agreement between Garvin and Annmarie was not completed. An inspection of the agreement showed that the completion date was “*ninety days after the execution of the will that GIVE, DEVISE and BEQUEATH the said property to the Vendor*”. The aforementioned was ambiguous and made absolutely no sense. Garvin by letter dated June 14, 2006 called upon Annmarie to complete the agreement and to give him vacant possession within thirty days. The claimant testified that sometime in 2005 she was in the process of making arrangements to come to Trinidad to complete the agreement but Garvin died before her arrival.

86. In **Narendra Maharaj v Dennis Michael Lutchman**²³, Justice Dean-Armorer had the following to say at paragraph 12;

“The general rule is that time is not of the essence of agreements for sale of land. It is not so, unless expressly provided or if the nature of the subject matter or surrounding circumstances so dictate. Where there is an express provision that time is of the essence, its effect depends on the construction of the contract. See J.T Farrand, Contract and Conveyancing 3rd Edition page 176.”

87. None of the parties to the agreement made time of the essence. The claimant did extend the time for completion by her promise to return to execute the deed but more than a reasonable time subsequently elapsed for completion and the agreement was never completed.

²³ CV2015-04304

88. However, quite simply, the court having found that the agreement was made between Garvin and Annemarie, the defendants cannot obtain specific performance of the agreement since 1) they are not Legal Personal Representatives of Garvin's estate and did not bring this claim on behalf of his estate and 2) Melvin was not a party to the agreement.

The claimant's claim for rent

89. In relation to her claim to rent, the claimant has not provided any proof that a house such as the one in these proceedings can be rented for and at the sum of \$800.00. She has stated that that was the sum agreed for rent between the parties but has attached no receipts or other proof. Consequently, the court would be engaging in the exercise of speculation should it order the defendants to pay mesne profits of \$800.00 per month. The court will however, award the claimant nominal damages in the sum of \$7,500.00 for mesne profits for the period May, 2011 (the date of expiry of Annmarie's tenancy) to the date of judgment.

DISPOSITION

90. The court will therefore make the following order;
- i. It is declared that the claimant is the owner and entitled to possession of ALL AND SINGULAR that property situate at Lot No. 6 Las Lomas No. 2 comprising approximately five hundred and twenty-nine point zero square metres together with the two storey dwelling house standing thereon also described in deed dated January 18, 2008 and registered as DE200800352393 ("the subject property").

- ii. The defendants are to deliver vacant possession of the subject property to the claimant.
- iii. The defendants shall pay to the claimant nominal damages for mesne profits in the sum of \$7,500.00.
- iv. The counterclaim is dismissed.
- v. The defendants shall pay to the claimant the prescribed costs of the claim based on the value of the claim being one for \$50,000.00 in the sum of \$14,000.00.
- vi. The defendants shall pay to the claimant the prescribed costs of the counterclaim in the sum of \$14,000.00.

Ricky Rahim
Judge