

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2019-01405

BETWEEN

**VIGIL FRANCIS ANTOINE**

Claimant

AND

**DEREK MOHAMMED**

**(as the Administrator Pendente Lite of the Estate  
of Kayoum Mohammed deceased)**

First Defendant

**HENRY DE NOBRIGA ESTATES LIMITED**

Second Defendant

**RODNEY WINTERS also called RODNEY WATSON**

Third Defendant

**TARA SEBRO**

Fourth Defendant

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

Date of Delivery: February 17, 2021.

Appearances:

Claimant: Mr. Y. Ahmed instructed by Ms. C. Legall

First and Second Defendants: Mr. K. Mc Intyre instructed by Ms. K. Piper

Third Defendant: Absent and unrepresented.

Fourth Defendant: Mr. B. Winter.

## JUDGMENT

### **The Claim**

1. The claimant's claim that begun in 2018, is one of adverse possession and he claims in the alternative that he is a bona fide purchaser of the land upon which his steel structure formerly stood (it having been demolished by the third defendant) and he is entitled to specific performance of the agreement for sale he entered into with the second defendant in respect of the land. He claims that he has been in undisturbed and continuous possession of a parcel of land comprising 5,300.1 square feet situate at LP B2 Hall Street, Sherwood Park, Arima ("the disputed land") for seventeen years. It is his case that in the year 2000 he purchased a chattel house on the disputed land and he furnished it with a stove, fridge, furniture and appliances. Subsequently, sometime in 2005 he broke down the chattel house and began construction of a steel structure. The construction took many years and by 2017 was still incomplete. In May 2017, the claimant observed a Notice to Quit affixed to the steel structure prior to its demolition.
  
2. In November 2017, the claimant entered into an agreement for sale with the second defendant to purchase the disputed land for the sum of \$40,000.00 and paid the sum of \$500.00 as an initial payment, which sum was allegedly returned by cheque by the first defendant (a director of the second defendant) to the claimant.
  
3. The claimant therefore, seeks *inter alia* the following:
  - 1) *A declaration that the second defendant's right and/or interest or title to the parcel of land situate at LP B2 Sherwood Park comprising either 5,181 sq. ft. or 5,300 sq. ft. has been*

*extinguished by the claimant's continuous and exclusive occupation for a period of more than sixteen (16) years.*

- 2) A declaration that the claimant is the lawful owner of the said parcel of land described at [1] above.*
- 3) An order of possession of ALL AND SINGULAR that parcel of land now found to comprise either 5,181 sq. ft. or 5,300 sq. ft. situate at LP B2 Sherwood Park, Arima.*
- 4) Alternative to reliefs [1] and [3] above, an Order for Specific Performance of the Agreement for Sale for the lot of land now found to comprise either 5,181 sq. ft. or 5,300 sq. ft. for the sum of \$40,000.00 to be paid over 24 months by the claimant to the first defendant and/or the second defendant.*
- 5) A declaration that the purported Agreement for Sale dated 9 April 2018 and entered into between the fourth defendant and the second defendant for the purchase of land including the disputed parcel of land is null, void and of no effect.*
- 6) Damages for trespass against the defendants.*
- 7) An Injunction preventing the defendants by themselves, their servants/agent from interfering with or damaging or disturbing the claimant in his use and enjoyment of the parcel of land described in relief [1] above.*

#### **The first and second defendants**

4. The disputed land forms part of a larger fifteen-acre parcel of land. By virtue of a Deed of Conveyance dated September 18, 2000 and

registered as 20155, the second defendant is the title holder of the disputed land. The first defendant was the Managing Director of the second defendant and passed away after this claim was filed. His son was subsequently appointed to represent his estate for the purpose of the claim.

5. It is the case for the first and second defendants that while a chattel house existed on the disputed land in 2000, the said house was abandoned and the claimant never treated it as his own.
6. By an Order dated 14th January, 2020 the Defence and Counterclaim of the second defendant were struck out. In addition, the first defendant did not file a witness statement in support of his case neither did he cross-examine any of the witnesses at trial. There is an outstanding application for judgment against the second defendant by way of application of January 13, 2020 which by Order of January 14, 2020 the court ordered would be determined upon determination of the claim.

#### **The third defendant**

7. The third defendant acted as an agent for the first and/or second defendants and demolished the steel structure on the disputed parcel of land on their behalf. The third defendant has never appeared in this matter and there is a pending application for judgment against the third defendant.

#### **Defence of the fourth defendant**

8. The fourth defendant is the granddaughter of Carmen Wiley and occupies a house that was owned by her grandmother on a parcel of

land (“the Wiley parcel”) to the south-west of the disputed land. The Wiley parcel comprises 2,517.7 square feet.

9. It is the case of the fourth defendant that the disputed land and the Wiley parcel (together referred to as “the entire parcel”) was leased to one Roland Thomas. There were two structures on the entire parcel. Thomas lived in a wooden house on the eastern side and the other house was occupied by Ms. Wiley on the western side. Thomas subsequently assigned his interest in the entire parcel to Ms. Wiley.
10. The fourth defendant avers that the claimant never occupied the disputed land nor the chattel house thereon and that the steel structure was only erected sometime in 2008. Further the claimant resided at other addresses and as such, the claimant has not been in continuous, exclusive and undisturbed possession.
11. It is the case for the fourth defendant that she entered into an agreement with the second defendant to purchase the Wiley parcel. By a further agreement, the fourth defendant then agreed with the second defendant to purchase the entire parcel.
12. The fourth defendant avers that the claimant is not entitled to specific performance as the agreement for sale is an invalid one.

#### **Reply to the Defence of the fourth defendant**

13. The claimant replied that he mended the fence and kept the steel gate locked so as to keep out trespassers. He also obtained the help of his cousins to maintain the disputed land and prior to the purchase of the chattel house he resided with them when he visited from Canada.

14. Prior to 2005 and whenever he visited his family's estate in Talparo, he would bring certain provisions for Ms. Wiley with whom he shared a cordial relationship and she was aware of his construction.

15. He replied that he stayed with the De Silva's during the construction of the steel structure and paid them approximately \$200.00 to \$300.00 per month for lodging.

#### **ISSUES TO BE DETERMINED**

- i. Whether the claimant has been in continuous and exclusive occupation of the disputed land for a period more than sixteen years with the required animus possidendi and is therefore in adverse possession of the land;
- ii. Whether the claimant is entitled to specific performance of the agreement for sale with the first defendant.

#### **Evidence of the claimant**

16. The claimant testified and called two witnesses namely Ruby Delancy and Augustus Bain.

#### **Virgil Francis Vernon Antoine**

17. It is the claimant's evidence that in the latter part of 1999, he saw a 'for sale' sign on a wooden chattel house situate at LP #2 Hall Street, Sherwood Park, Arima. After contacting someone by the name of Elix, the claimant agreed to purchase the chattel house (only) for the sum

of \$22,000.00. Elix acted for the owner of the house, Francis Gonzales who was himself a tenant of Henry De Nobriga.<sup>1</sup>

18. The chattel house was a two-bedroom structure standing on concrete pillars. There was also a chain link fence with an iron and steel gate around the disputed land. This fence separated the disputed land from that of the claimant's then neighbour Carmen Wiley. Wiley occupied a house on the south side of the chattel house on a smaller parcel of the entire parcel.

19. The claimant holds dual citizenship and it was customary for the claimant to travel between Canada and Trinidad as he sought medical treatment in Canada. In the latter part of 2000 the claimant returned to Trinidad and began living in the chattel house. The claimant then furnished the house albeit without electricity. However, if needed he received electricity from his neighbours.

20. According to the claimant, from 2000, he treated the disputed land upon which the chattel house stood as his own. In June 2018, he retained the services of a Licensed Surveyor, Arnold Fortune to sketch the disputed land which measured 5181 square feet.<sup>2</sup> It is to be noted that all of the parties have accepted the accuracy of namely a survey plan by Gillian Burkett dated 24/03/17 that shows the disputed land measures 7817.8 sq. ft.

21. The claimant explained that the chain link fence separated the chattel house from the Carmen Wiley house on the south western side on the smaller parcel of land. The claimant testified that he did not have any

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<sup>1</sup> See exhibit V.F.V.A.1 namely copies of receipts dated March 16, 2000 and April 30, 2000. The receipt dated 03/16/00 states that Francis Gonzales was a tenant of Henry De Nobriga on the rented lands.

<sup>2</sup> See exhibit V.F.V.A.1a containing the sketch and a survey plan by Gillian Burkett dated 24/03/17 that shows the disputed land measures 7817.8 sq. ft.

personal contact with Carmen Wiley's granddaughter, the fourth defendant.

22. The claimant maintained the fence and kept the gate to the disputed land locked. He also maintained the surroundings and planted coconut trees. According to the claimant, he was in full control of the disputed lands and proceeded to pay the Land and Building tax for the period 1998 to 2009.<sup>3</sup> It is to be noted that the claimant is listed as having paid only in 2007 and 2008. It means that even if he paid before as he said he did the payment was still being recorded as coming from the owner Henry De Nobriga.

23. It is the case for the claimant that sometime in 2005, he demolished the chattel house and constructed a steel and concrete structure over a period of ten years. He relied on and exhibited a number of receipts that detailed the monies he expended on the construction. During construction, when he was in Trinidad the claimant stayed with his neighbours, the De Silva's. He laid the foundation of the structure himself and hired assistance when necessary. He stored the materials for the structure at a friend's place in San Juan. The foundation was completed sometime in 2008 and during this time no other person used the disputed land. Thereafter, the claimant installed steel uprights and expended considerable sums of money.

24. He detailed the construction process and testified that through the years he purchased material to install the steel uprights and

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<sup>3</sup> See the bundle of exhibits V.F.V.A.2 namely Land and Building tax receipts dated 2000, 2004, 2006, 2007, 2008 and 2009. The said receipts say that payment was *made by Henry De Nobriga- Francis Gonzales* save and except for 2007 and 2008 *from Vigil F. V Antoine*. See also V.F.V.A.3 namely Land and Building taxes return dated 04/06/2004 for change of ownership in the name of Vigil F.V. Antoine.

employed someone for fabrication and erection of the steel structure.<sup>4</sup>

25. During construction, the claimant maintained the surroundings of the disputed land. In 2015 decking works were done. There were trucks that brought I-beams and other materials to the disputed land in April, October and December 2015. The claimant continued to be in use and possession of the disputed land.

26. Works continued including casting the ground floor of the steel structure and the digging of a trench. Between September 2016 and November 2016 no work was done on the steel structure. However, the claimant continued to visit the site to look after his material. Whenever the claimant travelled to Canada he instructed his cousin Yvonne Gaspard to check on the structure on the disputed land.

27. Works resumed sometime in April 2017 and the following month, the claimant received a Notice to Quit. The Notice required the claimant to leave the property by May 31, 2017.<sup>5</sup> The claimant was not served with a Notice to Quit prior to this and he further says that he was not given Notice of a survey that took place in March 2017. Further, the claimant denied that he had any conversation with the fourth defendant in relation to his trespass on the disputed land.

28. Due to the confusion, the claimant temporarily halted construction works. In November 2017, the claimant visited the first defendant with Augustus Bain. The first defendant and the claimant entered into an agreement for sale whereby the claimant would purchase the

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<sup>4</sup> See exhibits V.F.V.A.4 to V.F.V.A.9 namely various receipts and invoices for 2011; See exhibits V.F.V.A.10 to V.F.V.A.16 namely various receipts, invoices for 2015 & 2016 and a flooring contract dated 08/08/16.

<sup>5</sup> See exhibit V.F.V.A.17 namely a Notice to Quit dated 01/05/17 from Henry De Nobriga Estates Ltd by its Director Kayoum Mohammed to Francis Antoine.

disputed land for the sum of \$40,000.00. The terms of the agreement were that the claimant would immediately pay a deposit of \$500.00 and the balance of within one to two years.<sup>6</sup> In addition, upon payment of the second instalment, the first defendant would provide ownership documents of the disputed land. The first defendant attempted to return the sum of \$500.00 by a cheque dated April 24, 2018 but same was refused by the claimant.

29. It is his evidence that sometime in December 2017, he attempted to pay a second instalment of \$19,500.00 but the first defendant did not have the title documents so the money was not paid.

30. According to the claimant, from January 2018 to March 2018, he continued to visit the disputed land. It was on April 3, 2019 that the claimant observed damage to the steel structure. The third defendant then informed the claimant that he was given permission from the first defendant to demolish the said structure and proceeded so to do.

31. Thereafter, the claimant reported the incident to the Arima Police Station. A quotation to repair the damaged structure in the sum of \$153, 075.00 was produced by the claimant.<sup>7</sup>

#### **Cross examination by the fourth defendant**

32. At the date of trial the claimant was eighty years of age. He testified that the house was vacant when he purchased it. He first became aware of the first and second defendants when he saw the Notice to Quit. He was not familiar with Francis Gonzales but continued to pay

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<sup>6</sup> See exhibit V.F.V.A.18 namely a receipt for the sum of \$500.00 dated 09/11/17 for the purchase of one lot of land situate at Hall Street, Sherwood Park, Arima.

<sup>7</sup> See exhibit V.F.V.A.20 namely a quotation dated 17/04/2018 from RSR Practical Solutions.

the annual rent to one Ms. Clementina Hall. Eventually the claimant stopped paying the annual rent.

33. Attorney for the fourth defendant attempted to elicit from the claimant whether he knew that the second defendant was the owner of the disputed land. The claimant was referred to various Land and Building tax receipts which showed that Henry De Nobriga was the lawful owner, despite the taxes being paid by the claimant. However, the claimant maintained that he never met anyone named Henry De Nobriga and refused to accept that De Nobriga was the owner. He appeared to the court to be purposely distancing himself from knowledge of De Nobriga although that name was written on the Land and Building tax receipts paid by the claimant and on the receipt for the house he received when he purchased it.

34. The claimant explained that after he purchased the house, he paid the outstanding Land and Building taxes for 1998 and 1999 and was issued a receipt dated February 18, 2000. Further, he continued to pay the taxes without considering the names written on the receipts. He also refused to accept in cross examination that Francis Gonzales from whom he purchased was a tenant of De Nobriga, despite the same being stated on the receipt for the house.

35. The claimant denied the assertion that he was not in occupation of the chattel house in April 2000. He testified that his cousin paid the balance of the purchase price and he, the claimant returned to Trinidad in the latter part of 2000 and collected the keys to the said house from his cousin. He then gave evidence that appeared to be wholly inconsistent with that testimony in that he stated that the year he returned from Canada was the first year he paid the land and building taxes and moved into the house. That first receipt is dated 2004. The claimant also testified that in his view residing at the house

permanently did not mean that he was there daily. He travelled back and forth to Canada and sometimes he stayed by his relatives.

36. The claimant testified that he could not recall when the electricity was disconnected. When he returned to Trinidad there was no electricity in the chattel house and he lived without current for many years. Further, when he needed electricity, Mr. Herman Nicholls provided same via an extension cord across the roadway. The claimant also testified that when he purchased the said house there was a water connection but he did not pay the outstanding bill to WASA nor T&TEC so the services were eventually cut. He accepted that he could not say when the electricity was cut because we was in Canada at the time.

37. The claimant admitted that he was unable to provide any documents that tended to show that he lived at the address of the disputed land from 2000 to 2005 nor did he provide receipts for the alleged works done on the chattel house. When questioned as to the reason for the absence of receipts during 2005 to 2008, it was his testimony that he was unable to find the receipts.

38. He admitted that in his statement of case he claimed that he spent \$550,000.00 on construction but in his pre action letter he claimed that he spent \$375,000.00. Further, when the receipts produced were tallied, the sum he claimed in expenditure on construction amounted to \$697,895.03. His explanation for the disparity was that he kept finding other receipts so that he had to add those sums. The receipts attached to the witness statement however totalled \$520,895.03.

39. During cross examination, he insisted that his vision was to build a place for disabled children but he did not have Town and Country

planning permission. According to the claimant, he thought that the disputed land was owned by the State.

40. At the meeting with the first defendant on November 9, 2017, the claimant expressed his desire to purchase the disputed land but failed to disclose that he had received a Notice to Quit.

41. Finally there occurred a bit of cross examination that has proven to be instructive in this case. The claimant admitted that when he purchased the house he knew that the land was owned by someone else. He said that he thought the government owned the land. He at first admitted that he bought a tenancy and had intended to continue the tenancy and paid rent to Clementina Hall in 2001 and 2002 but stopped paying after he could not get a proper receipt. In answer to whether it was never his intention to take the land from the owner he testified that he hoped that the owner would find him. He was unaware that Clementina Hall was the agent of De Nobriga Estates. He admitted that when he received the Notice to Quit in 2017 he stopped construction.

42. The cross examination continued;

*Q When you saw the Notice to Quit, telling you that the structure was illegal, you stopped work; true?*

*A Yes, sir.*

*Q Right. And then you tried to locate the owner?*

*A Yes, by the notice.*

*Q Right. You went to an address in Port of Spain?*

*A Yes, I am [sic].*

*Q And you also asked -- you tried to make inquiries of Ms. Wiley as to who was the owner?*

*A I can't recall that. I went to Ms. Wiley to figure out what's happening and she told me --*

*Q So you didn't go to Ms. Wiley to find out where the owner was?*

*A She told me she don't know either, she granddaughter is handling it from there. She don't know.*

*Q Now, when you went -- in your Witness Statement at paragraph 73, it is said, "I told him..." that's in relation to your meeting with Mr. Kayoum Mohammed, "I told him that I was now the owner of the disputed parcel of land and I never knew who the legal owner of the land was before me."*

*A Yes, I told him and I show him the receipt that I have.*

*Q Yes, you --*

*A And he told me he is the owner.*

*Q But you told him that you were the owner, according to this statement.*

*A No, I cyah -- I couldn't be telling him that I'm the owner and I'm not the owner. I show him my receipt. I explain to him. I said I would like to have it. He claim to me he giving me first preference. He going to sell it for [sic] me for \$40,000.00.*

*Q Because, of course, you couldn't tell him you were the owner, because you were asking him to purchase the land.*

*A To buy land. To buy the land.*

*Q Yes? Yes, (indiscernible 11:36:00 a.m.).*

*A Yes. But if I meet you and you is the owner, and I told you I'm interested to buy the land and you decide to sell me the land, I want to see further documents. That's the only reason why I didn't make a down payment.*

43. The claimant also gave evidence in cross examination that his agreement with the first defendant was that he would return with \$19,500.00 to make up half of the purchase price and then he would

be give the title documents. He admitted that he never said this in his witness statement.

44. Finally, although given the opportunity attorney for the first defendant who in fact filed a defence had no questions in cross examination for the witness neither did attorney for the claimant have any questions in re-examination.

#### Ruby Delancy

45. Delancy's property is situated to the west of the disputed land and she has lived there for the past forty years. Delancy also has a clear view of the disputed land from her gallery.
46. Sometime in late 2000, she observed that the claimant began occupying the chattel house and maintaining the surroundings of the disputed land. According to Delancy, the claimant cleaned and cleared the disputed land, planted flowers and coconut trees. Delancy denied that anyone else lived on the disputed land.
47. Delancy witnessed the demolition of the chattel house and construction of the steel structure. She was also aware that during that stage, the claimant resided with another couple in the neighbourhood, Mr. and Mrs. De Silva. During the construction of the steel structure, Delancy provided refreshments for the labourers as they worked from morning to evening. Delancy also provided water from her tank to the claimant during the construction of the decking to prevent cracking. Although the construction works were interrupted, the claimant visited the disputed land regularly. Delancy witnessed the subsequent demolition of the decking by four persons and thereafter informed the claimant.

### **Cross examination by the fourth defendant**

48. According to Delancy, who has lived at Sherwood since 1979 or thereabouts, Ms. Clementina Hall and Mr. Alphonso acted on behalf of the second defendant and collected the annual rent from all the tenants that occupied the fifteen-acre parcel. She testified that the chattel house to the front of Wiley parcel was occupied by Roland Thomas. Thereafter, different persons occupied the said house. She recalled that the claimant moved into the wooden house sometime in the year 2000 because she saw him and one Mr. Hernandez measuring the disputed land. The board house has been vacant for some months before. Delancy testified that she remembered the year because she had made a joke with the claimant about the millennium. She never visited him when he lived in the board house but she had a clear view from her place. Because she never visited she was in no position to speak about his furniture and appliances.

49. She also recalled that the chattel house was demolished in 2005 as a family member of the claimant discussed with her the intention to use the remaining materials after demolition.

50. Delancy testified that the foundation of the steel structure was completed sometime in 2015 and the decking sometime in 2017.

### **Augustus Bain**

51. Bain is a Construction Engineer and has known the claimant on a personal level for approximately six years. Sometime in late April 2017 the claimant employed him to cast the ground floor of the steel structure.

52. Approximately two to three days after the commencement works, Bain observed copies of a Notice to Quit attached to the steel

structure. Bain showed the claimant the said Notice and they agreed to halt works until the issue was resolved. Bain also confirmed that he was present when the fourth defendant accused the claimant of trespassing.

53. During the claimant's time out of the country, Bain would look after the disputed land but had no interaction with the fourth defendant.

54. After the demolition of the steel structure, on April 5, 2018, Bain assessed the damage and photographed same. He is the co-owner of a company, RSR Practical Solutions and provided the claimant with an estimate of the repairs in the sum of \$153,075.00.

#### **Cross examination by the fourth defendant**

55. Bain testified that when he met the claimant sometime in 2014/2015, he resided at Talparo and sometimes Tobago.

56. Bain confirmed that after seeing the Notice to Quit, he and the claimant visited Ms. Wiley on two occasions. He confirmed that he accompanied the claimant to the office of the first defendant although he did not say so in his witness statement and he, Bain returned by himself on another occasion to see the first defendant, a matter which he also failed to include in his witness statement.

#### **Case for the fourth defendant**

57. The fourth testified and called two witnesses namely Carmen Wiley and Herman Nicholls.

Tara Sebro

58. The fourth defendant was born in 1977 and grew up with Mrs. Carmen Wiley, her grandmother on the Wiley parcel which formed part of the entire parcel. Growing up, she recalled that a man named Roland Thomas lived in a board house on the disputed land. She left the home of Ms. Wiley in 2001 and returned in 2003. She explained that there are presently two structures on the entire parcel, the steel structure and the chattel house constructed by her grandmother.

59. It was sometime between 2007/2008 that the fourth defendant observed construction works. When her grandmother made enquiries, the claimant informed her that he purchased the entire parcel and that he, the claimant can have them evicted. As such, the fourth defendant did not object to the construction of the steel structure.

60. By virtue of a chattel deed dated July 19, 2013 Ms. Wiley transferred ownership of the chattel house to the fourth defendant.<sup>8</sup> At that time, she discovered a licence agreement between her grandmother and Mr. Thomas in which he assigned the wooden dwelling to her for her natural life only<sup>9</sup>. Further, Ms. Wiley paid the Land and Building tax for her parcel from 2002 to 2009.

61. As a result of such discovery, a title search of the entire parcel was conducted. The search revealed that the entire parcel is owned by the first defendant.<sup>10</sup> Thereafter, by an agreement for sale dated February

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<sup>8</sup> See exhibit T.S.1 namely a Chattel Deed dated 20/04/13 registered as DE201301854155D001 conveying a piece or parcel of land at No. 32 Hall Street, Sherwood Park, Arima with one-storey 2-bedroom concrete dwelling house and shed annexed to witness statement of Tara Lee Sebro.

<sup>9</sup> See exhibit TS3 of witness statement of Tara Sebro.

<sup>10</sup> See exhibit T.S.8 namely a Deed dated 18/09/00 for lands comprising 15 acres in the name of Henry De Nobriga Estates such land having thereon 118 tenants each paying an annual rent of \$36.00.

19, 2016, the fourth defendant agreed with the first defendant to purchase the Wiley parcel for the sum of \$20,141.60.<sup>11</sup>

62. The fourth defendant maintained that the claimant did not reside at the disputed land. The first defendant also informed the fourth defendant he did not sell the disputed land to the claimant.

63. The claimant having no interest, the fourth defendant commissioned a survey on the entire parcel. A cadastral sheet dated March 24, 2017 was filed with the Lands and Surveys Division on March 27, 2017.

64. Sometime in April 2017 the fourth defendant informed the claimant of her interest in purchasing the entire parcel. She also warned him that as he had no interest, he will be served with a Notice to Quit and would be required to demolish the steel structure. When the fourth defendant attempted to serve the Notice to Quit, the claimant refused to sign it.<sup>12</sup>

65. Thereafter, Mr. Augustus Bain who claimed to be an agent of the claimant persistently visited Ms. Wiley's home. She eventually had cause to file a citizen's report against him.

66. By an updated agreement for sale dated April 9, 2018<sup>13</sup> the fourth defendant agreed with the first and second defendants to purchase the entire parcel. The parties agreed to a purchase price of \$80,000.00, less the sum of \$12,000.00 to be applied towards the demolition of the steel structure. The fourth defendant has since paid a deposit of \$10,000.00.

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<sup>11</sup> See exhibit T.S.9 namely an Agreement for Sale dated 19/02/2016 of a parcel of land comprising 2517.7 sq. ft. to Tara Sebro.

<sup>12</sup> See exhibit T.S.11 namely the Notice to Quit dated 03/05/17 with an endorsement 'refusal to sign the notice'

<sup>13</sup> See the Agreements for Sale exhibited as T.S.13 dated 27/03/2018 and T.S.14 dated 09/04/2018 to convey the entire parcel comprising 7817.8 sq. ft. to Tara Sebro.

67. She confirmed that the third defendant demolished part of the concrete flooring of the steel structure and further since 2002, there was no electricity on the disputed land.

#### **Cross examination by the claimant**

68. Sebro knew of Roland Thomas as her neighbour growing up. She last saw him on the disputed land when she was between the ages of fourteen to sixteen years. Sebro maintained that she heard other persons refer to 'Roland Thomas' by the names 'Rodney' and "Smiley". She was a child and so had no discussions with him. It was suggested to her that the names Rodney and Smiley were fictitious but she disagreed.

69. Sebro was referred to the receipts in the name of Carmen Wiley referred to above<sup>14</sup>. It was Sebro's understanding that despite the words *one spot of land* used on all of the receipts, Thomas in fact granted a licence to Ms. Wiley to occupy for life the house situated on one lot land and did not assign his tenancy rights. It was suggested to her that the rental receipts were in fact for a house spot and not for the entire lot of land and she denied same.

70. Sebro also explained that when she entered into the Agreement for Sale dated April 9, 2018, she was an occupier of the Wiley parcel only.

71. Attorney referred Sebro to the Burkett survey plan that purports to show a wire fence that separates *Tara Sebro's* house from the *Steel Structure*. Sebro denied that the disputed land was secured. To her recollection, when she was younger there was a steel gate that secured the disputed land for a short period of time. Thereafter, there was no gate as there was an open entrance. She accepted that this

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<sup>14</sup> T.S.4, T.S5 and T.S 6.

omitted from her witness statement. She denied that the claimant mended the gate and fence to keep trespassers out. When it was put to her that the claimant fenced the premises and installed a gate this was her answer;

*I don't agree, sir. Because in his own statement he claim that people came onto the land and stole his material, and other than that if the gate was fenced and locked then his cousin could not have entered, and other people could not have trespassed on the land, frequently, as they did. So, what he's stating is totally untrue and fraudulent.*

72. Sebro testified that as a child there were always coconut trees and other fruit trees on the disputed land. She accepted though that she did not say this in her witness statement because she did not think it was important. Further, she was the one that employed labourers to clean and maintain the disputed parcel to avoid snake and insects from coming into the Wiley parcel. Once again this was omitted from the witness statement.

#### Carmen Wiley

73. Roland Thomas was one of the tenants of the entire parcel. In 1980 Thomas and Ms. Wiley entered into a licence agreement whereby Thomas permitted Ms. Wiley to build a wooden house on a part of the entire parcel.<sup>15</sup>

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<sup>15</sup> See exhibit A namely a Licence Agreement dated 30/12/80 between Roland Thomas (yearly tenant) and Carmen Wiley to build a wooden house on the western side of the parcel of land.

74. Thomas also lived in a wooden house on part of the entire parcel and Ms. Wiley erected a wire fence to separate the properties. According to Ms. Wiley, she paid Thomas \$1,000.00 for the entire parcel.<sup>16</sup>

75. Thomas passed away and his wooden house fell into disrepair. Ms. Wiley paid an annual rent and continued to do so after his Thomas's death. She also paid the Land and Building tax for the parcel she lived on.<sup>17</sup>

76. She denied that the claimant lived in Thomas's wooden house. Ms. Wiley could not recall the year but at some point the claimant began planting on the disputed land with his cousin. At one point Ms. Wiley provided water and electricity to the claimant. Eventually, the claimant began ploughing the land and when Ms. Wiley questioned him about the works he was doing, he insulted her.

#### **Cross examination by the claimant**

77. At the time of the trial Ms. Wiley was ninety-four years of age. She knows the claimant as 'Mr. Francis' and also knew Mr. Roland Thomas as Smiley. She denied that she and the claimant had a cordial relationship especially after the claimant used obscene language. Ms. Wiley recalled that prior to the claimant occupying the disputed land, there were two wooden houses that had water and electricity. The wooden houses were eventually broken down either in 1990 or 1993. Further, when the claimant started visiting the disputed land there were no houses thereon at all.

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<sup>16</sup> See exhibit B namely a receipt dated 05/10/89 received from Carmen Wiley for one house spot of rented land and one board building.

<sup>17</sup> See exhibit D namely Land and Building tax receipts dated 2002, 2003, 2004, 2005, 2006, 2007, 2009 received from Henry De Nobriga-Carmen Wiley (tenant).

78. Ms. Wiley maintained the surroundings of the disputed land and paid rent for the entire parcel to Ms. Clementina Hall (deceased).
79. She could not recall when the construction of the steel structure began. Further, she denied that the claimant lived on the disputed land. The claimant only frequented the disputed land immediately prior to construction works.
80. The two receipts for Land and Building tax payments were pointed out to her. They both bore different assessment numbers. One was 3ZG-1 and the other 3ZG-2. It was suggested to her that the parcel she occupied was only one of those namely the parcel assessed as 3ZG-1 as was also stated on the last receipt in the name of the claimant. She denied same.

#### Herman Nicholls

81. Nicholls resides at #18 Hall Street, Sherwood Park Arima and has lived there since 1965. His house is obliquely opposite the Wiley parcel. He recalled that during his twenties, Ms. Wiley came to live on Hall Street, Sherwood Park, Arima. To his knowledge, Ms. Wiley was given permission to occupy the parcel by Thomas.
82. He explained that during the 1980s there were two structures on the entire parcel. The house to the front was occupied by Thomas and another was situated to the back of it on the western side of the entire parcel.
83. Thomas left the property prior to the 1990s and his wife and son moved into the house. Thereafter, a man named Francis (a bus driver) lived in the house. Nicholls could not recall when the Francis moved out from the house but at that time, the house had an electrical

connection and was eventually disconnected by T&TEC for non-payment.

84. Sometime in 2012, Nicholls observed the construction of the steel structure. The man in charge of the structure was named Francis (the claimant). He would be back and forth from the disputed land. According to Nicholls, he provided electricity from his house to the claimant to assist with the construction works only. The claimant also temporarily resided with the De Silva's during construction works.

85. Nicholls stated with certainty that the claimant did not permanently reside at the wooden house to the front of the entire parcel. Sometime after, the claimant revealed to him that he purchased the disputed land.

#### **Cross examination by the claimant**

86. Nicholls is a retiree from the Ministry of Works, Maintenance Department, Laventille. At the time of the steel construction, his working hours ranged from 7:00 a.m. to noon. As such, he did not know of events that may have taken place on the disputed land in his absence. He recalled that prior to construction of the steel structure in 2012, the disputed land was vacant save and except for overgrown grass and coconut trees. There was also a broken down fence encircling the disputed land. He however accepted that he did not begin to pay attention to the land until the construction of the steel structure began in 2012.

87. He could not state with certainty, at what point there was a wooden house on the disputed land. To his knowledge 'Mr. Smiley' was the owner of the disputed land. Nicholls accepted that he could not recall

the year but explained that he observed the commencement of the steel structure on the disputed land including the casting works.

## Issue 1- Adverse possession

### The Law

88. In ***Lares v Lares and Others*** [2020] UKPC 19 Lord Leggatt noted that the case of ***JA Pye (Oxford) Ltd. v. Graham*** is the leading authority on adverse possession in this jurisdiction.

*It is common ground that the concept of adverse possession is the same in Trinidad and Tobago as in England and Wales, and that the law has been authoritatively stated by the House of Lords in ***JA Pye (Oxford) Ltd v Graham*** [2003] 1 AC 419. In particular, as there explained by Lord Browne-Wilkinson at para 40, there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control (“factual possession”); and (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit (“intention to possess”). Possession is not “adverse” so as to be capable of barring a right to recover land if it is enjoyed as a lawful owner or with the consent of the owner(s): see paras 35–37; and *Buckinghamshire County Council v Moran* [1990] Ch 623, 636.*

89. The learned authors in Halsbury's<sup>18</sup> also stated the following on adverse possession.

.....

*What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in*

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<sup>18</sup> Halsbury's Laws of England, Vol 68 (2016) para 1076

*particular the nature of the land and the manner in which land of that nature is continually used; there is no general principle that, to establish possession of an area of land, the claimant must show that he made physical use of the whole of it. However, for the claimant's possession of the land to be adverse, so as to start time running against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession on his own behalf and for his own benefit. Where the occupier's possession of the land is by permission of the owner, that possession cannot be adverse and possession is never adverse if it is enjoyed under a lawful title.....*

90. Section 3 of the Real Property Limitation Act Chapter 56:03 (“the Act”) provides:

*3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.*

91. In relation to adverse possession and acknowledgement, section 15 of the Act reads:

*15. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his*

*agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.*

92. Further, Section 22 of the Act provides as follows:

*At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.*

## FINDINGS OF FACT

### **What was the extent of the interest of Carmen Wiley**

93. The court finds that Ms. Wiley had in fact acquired a licence to occupy a wooden house measuring 30 feet by 12 feet on the spot on which it stood, from the person who was an annual tenant (Mr. Thomas) of what was described in the licence agreement registered as 69 of 1981 and dated December 30, 1980 as a parcel of land comprising one lot

situate at Sherwood Park. The licence granted to her for her natural life did not extend to the entire tenanted parcel but only to her house spot. This much is pellucid from a simple reading of the agreement. Further, the licence agreement sets out that Mr. Thomas and Ms. Wiley purchased the material. The deed also recites that the house had been completed by the date of the deed. The agreement also purported to assign the dwelling house unto Ms. Wiley for life and thereafter the property on the said parcel of land was to revert to the tenant Mr. Thomas absolutely inclusive of any additions made thereto.

94. The finding is supported by receipt attached as B to the witness statement of Carmen Wiley. The finding is also supported by the fact that Mr. Thomas (who the court accepts would have been known as Smiley by Ms. Wiley having regard to there being direct evidence that Smiley was the one from whom she bought and the registered agreement having named that person as Roland Thomas) at the time continued to live in another board house situated at the side of the area licenced to Ms. Wiley or to the west of the said lands. It is highly unlikely that he would have sold the entire tenancy to someone when in fact he continued to reside thereon.

95. The court also finds that Ms. Wiley paid rent for the house spot upon which the house stood as the receipts produced dated October 5, 1989 is for "payment of one spot of rented land and one board building". The inference to be drawn from the words set out in the receipt is that Ms. Wiley paid an annual fee for the occupation of the land upon which the house stood as the house had already been purchased by the date of that receipt according to the agreement.

96. By another receipt dated October 5, 1989 signed by Clementina Hall as agent of De Nobriga, Hall purported to transfer property (one

house spot) from Roland Thomas to Carmen Wiley for the sum of \$200.00. Whether that transfer was an effective one or not is not an issue for this court. The essence of the evidence demonstrates however that once again the subject was one house spot and nothing more and the court so finds.

97. Further by receipt dated September 1994, under the hand of Hall once more rent was accepted for land comprising one house spot in the sum of \$100.00. Again the property for which Ms. Wiley paid was one house spot and the court so finds.

98. There are two further matters of plausibility that emanates from the above evidence that must be dealt with. Firstly, the receipt of September 1994 is for \$36.00 for one year, namely 1995. It follows that there is an inference that the receipt dated 1989 may have been for the years gone by and also for years to come. It is more probable than not therefore that payment of the mere sum of \$200.00 in 1989 could not have been for an outright purchase having regard to the sums paid on the other receipts.

99. The court therefore finds that Ms. Wiley never owned, was the tenant of or held a licence to the entire parcel of land but only to her house spot. It matters not therefore whether hers was a tenancy or a contractual licence or whether her tenancy had expired as her tenancy was never held in respect of the disputed land.

100. It follows that Ms. Wiley could not have transferred more than that which she was entitled to her granddaughter the fourth defendant and the court so finds. In any event the chattel deed attached as TS1 to the witness statement of the fourth defendant purports to transfer the house only and the land upon which it stands.

The court finds that the land upon which it stands does not include the disputed land and it never did.

101. Finally it is noted that the evidence of the witness Herman Nicholls does not assist the evidence for the fourth defendant in this regard as upon cross examination it was revealed that he could not accurately recall the dates and he gave no evidence that Carmen Wiley actually occupied the entire parcel.

**Did the claimant possess the disputed land and if so from when**

102. The court finds that the disputed lands and house would have remained largely unoccupied after the death of Thomas save and except for a few persons living there until the 1990's as testified to by Herman Nicholls. On the issue of date of possession by the claimant there is a divergence in the evidence between the claimant and the fourth defendant. The claimant says that when he purchased the wooden chattel house previously occupied by Thomas in the year 2000 the house was still standing. He exhibited two receipts, one for \$1,000.00 which he says was paid by his cousin Hernandez on his behalf on April 30, 2000 and the other made in his name on March 16, 2000. It is noted that the receipt in the name of Hernandez does not state that the money for the house is paid on behalf of the claimant. However the court accepts and finds that it was for two reasons. Firstly, there is no evidence to refute the assertion. Secondly, the receipt of March 2000 is for the sum of \$22,000.00 for the same house so that there is an inference that the claimant is the one who paid the first amount of \$1000.00 through his cousin seeing that he, the claimant was abroad at the time and the court so finds.

103. The evidence of the claimant is that he bought in 2000 and returned from Canada to live in the house. It is also his evidence that he was not always resident in the house but would return from Canada from time to time. He did not have electricity so would take from a neighbour. There was extensive cross examination of the claimant on whether he actually lived in the house and from what date. The court is of the view that the issue is not one of whether the claimant lived in the house but whether he had exclusive possession of same. As a matter of practicability a person may have exclusive possession of premises although he is seldom ever present at those premises. The exclusivity of his possession may be reflected in his possession of keys to the premises and his ability to lock those premises to ensure that no one gains entry without his permission. To that end, the fact of residence is just but one item of evidence that may assist in the establishing exclusive possession but it is not the sole factor nor is it necessarily required.

104. The evidence from the fourth defendant however is that that house was broken down well before the year 2000 so that the claimant could not have bought it at that time. Further, it is her case that she and her family occupied the land after the house broke down.

105. The following evidence lies in favour of the claimant's case;

- a. There is clear evidence that the disputed property was fenced as is obvious from the survey plan. The said fence separates the disputed property from the Wiley property. The point was made in cross examination that the survey does not demonstrate that there was a gate. In this regard the court notes firstly that it has not been demonstrated that a gate is a feature that would be shown on a survey

plan and secondly in the court's view, the existence of a fence is potent evidence that supports the evidence of the claimant that there existed both a fence and a gate.

- b. The claimant has exhibited in evidence two receipts. The first is for payment of \$21,000.00 for "all taxes & (indecipherable) to be paid by purchaser for one 2-bedroom board house at Hall Street, Sherwood Park, Arima, fenced around with chain-link wire.....on rented lands of Henry De Nobriga assessment #3ZG2...Francis Gonzales (tenant). It is signed by Elix Rodulfo agent for Henry De Nobriga and agent for Francis Gonzales. The second is dated April 30, 2000 in the sum of \$1000.00 for "completion of purchase price on house at pole (indecipherable) at Hall St. Sherwood Park, Arima. It is signed by Elix Rudulfo.
- c. The court finds that the evidence of the receipts is cogent proof that the claimant purchased the chattel house from Francis Gonzales. The house at the time existed on the rented lands of Henry De Nobriga. However the claimant did not purchase the tenancy rights thereto.
- d. It follows that the claimant having purchased the house in 2000 and not an assignment of the tenancy, should the house not have existed as claimed by the fourth defendant, the claimant would have knowingly purchased nothing. This is not a plausible state of affairs in the court's view. It must therefore follow as a matter of pure common sense that the house was in existence at the time the claimant purchased it.
- e. Further, the evidence of the claimant is that he collected the keys upon his return to Trinidad. Heavy weather was made in cross examination of the fact that the claimant seemed to give inconsistent testimony in relation to the

issue of whom he collected the keys from. In the court's view this matters not as mundane matters such as the collection of keys tend to take a back seat to other issues over a period of twenty years. It is there therefore more likely than not that the claimant's recollection as to the collection of the keys is unreliable. This in no way diminishes the very strong evidence that he purchased the house that not only was in existence in 2000 but was also fenced and therefore separated from the Wiley land and the court so finds.

106. The court therefore finds that the claimant took possession of the chattel house on the disputed land in 2000 as he testified. He took possession to the exclusion of all others. In that regard the evidence of Tara Sebro set out above is instructive in its logic. It was her view that the claimant was being fraudulent in his evidence in relation to the existence of a gate because the claimant admitted persons broke into his premises and stole material. Her assertion is that if he had a gate that would not occur. Needless to say, such an assertion is a blind one intent on obfuscating the reality that one can only break and enter property that has been secured. It is clear to this court that the claimant took possession of the premises in 2000 to the exclusion of all others.

107. The court also accepts and finds on the evidence that it is more likely than not that the house was demolished in 2005 as stated by the claimant. The court is fortified in its finding by the very clear evidence of Ruby Delancy who was adamant that the claimant moved in in 2000 and demolished the house in 2005. According to her she had special reason to recall that date because a relative was about to get the material to reuse. This in the court's view, having come out of

cross examination demonstrated that Delancy had a plausible explanation for being able to recall the year of demolition.

108. Further, the evidence of the defence is very poor on this issue. Wiley says both houses were broken down in 1992 or 1993. There is no evidence to support her contention and further, it would mean that when the claimant purchased a house in 2000, he essentially purchased nothing. This simply makes no sense to the court.

109. The court therefore finds that the evidence in this case has demonstrated that it is more likely than not that the claimant exercised a sufficient degree of physical custody and control of the disputed land since his purchase in 2000.

#### **Intention to possess**

110. The court must consider whether the claimant had the intention to exercise such custody and control on his own behalf and for his own benefit. For the claimant's possession of the land to be adverse, so as to start time running against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession on his own behalf and for his own benefit. There is evidence in this case that the claimant approached the first defendant to purchase the land. This approach was made in November 2017, a Notice to Quit having been posted on the land in April 2017. At that time the claimant was in the midst of building the steel structure. His actions thereafter are telling. It is his evidence that he paused on building the structure and visited the first defendant. He then entered into an agreement to purchase the land.

111. In the court's view the actions of the claimant are telling. Firstly he was aware at all times that the house he purchased was situated on rented lands of De Nobriga as his purchase receipt for the house stated and the court so finds. In that regard he attempted in cross examination to distance himself from knowledge that he was on rented lands of De Nobriga and when confronted with the receipt went on to testify incredibly that he never read the receipt. This in the court's view was an attempt to deceive the court so as to mask the truth which is that he knew at all times that the house was so situated.

112. Secondly the fact that he halted construction for a considerable period is evidence that the claimant while having the intention to possess to the exclusion of all, his intention was never to exclude the title owner of the land and so was not exclusive in that sense. In other words his possession was not adverse to the owner of the land. This is ultimately reflected in the fact that he subsequently agreed to purchase the land.

113. Thirdly, some of the receipts for Land and Building tax payments made by the claimant and those he has exhibited which were paid before he purchased also showed that the lands were in the name of Henry De Nobriga. This would have been enough to have put him on enquiry even if he did not read his purchase receipt (which in any event the court also does not believe).

114. His claim for adverse possession must therefore fail and the court so finds.

## Issue 2- The Agreement for Sale and Specific Performance

115. Section 4 of the Conveyancing and Law Property Act reads as follows:

*No action may be brought upon any contract for sale or other disposition of and/or any interest in land, unless the Agreement upon which such action is brought or some memorandum or note thereof is in writing and signed by the party to be charged or by some person thereunto by him lawfully authorised.*

116. To enforce specific performance the learned authors in Halsbury's<sup>19</sup> stated the following:

*Where it is sought to enforce specific performance of a contract, the court must be satisfied:*

*(1) that there is a concluded contract which is binding at law, and in particular that the parties have agreed, expressly or impliedly, on all the essential terms of the contract; and*

*(2) that the terms are sufficiently certain and precise that the court can order and supervise the exact performance of the contract.*

117. Further, the authors<sup>20</sup> stated the grounds for refusing specific performance.

*....specific performance will not be granted if the contract is illegal or oppressive, if the claimant has failed to perform conditions of the contract or done acts amounting to a repudiation of the contract or been guilty of undue delay in performing his part of the contract, if it*

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<sup>19</sup> Halsbury's Laws of England, Vol 95 (2017) para 540

<sup>20</sup> Halsbury's Laws of England, Vol 95 (2017) para 541

*has become impossible for the defendant to perform the contract, if the contract has been rescinded or varied.....*

Submissions of the first and second defendant

118. Attorney submitted that the first defendant is deceased. Therefore, there is no evidence of any discussion to sell the disputed land to the claimant.

119. Further, the claimant misrepresented himself on November 9, 2017 when he failed to show the first defendant the Notice to Quit. As such, the first and/or second defendant is entitled to possession of the disputed land.

Submissions of the fourth defendant

120. Attorney submitted that the receipt dated November 9, 2017 is unenforceable for a few reasons. Firstly, the claimant received a Notice to Quit from the first defendant to deliver vacant possession. Secondly, the receipt excluded important terms such as the capacity of the first defendant to sell, no identification of the parcel being sold and no date for the balance of the purchase price. It should be noted that the first defendant attempted to return the deposit to the claimant.

Submissions of the claimant

121. In relation to the agreement to sell the claimant the disputed land, the claimant has implored the court to consider the failure of the first defendant to file a witness statement.

122. Attorney argued that the receipt dated November 9, 2017 gives sufficient details that there was an agreement to for sale. This fulfils the requirement under Section 4 of the Conveyancing and Law of Property Act Chapter 56.01. Attorney also relied on the case of *Steadman v Steadman*, (1976) AC 536 where the House of Lords carefully considered the existence of an oral agreement made between a husband and wife and the principle of part performance in upholding same.

123. Therefore, the claimant is seeking the sum of \$39,500.00 being the balance of the purchase sums be set off against the award of damages \$153,075.00.

### **Finding**

124. The court finds that it is clear that the first defendant was acting on behalf of De Nobriga Estates as is obvious from the contents of the Notice to Quit<sup>21</sup>. Therefore the receipt does not suffer for want of capacity or jurisdiction on the part of the first and second defendant as appears to have been the argument of those parties.

125. Additionally the receipt describes with sufficient particularity the parcel of land to be sold and the full price inclusive of the fact that a deposit was being paid and a balance would be outstanding. The receipt does not give a set time for payment but this does not in the court's view derogate form the fact that a memorandum was created in law evidencing an agreement for sale of the land pursuant to section 4. The memorandum must be taken in the context of the evidence as a whole in that regard.

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<sup>21</sup> See V.A.V.F 17

126. It is the evidence in chief of the claimant that when he visited the first defendant on November 9, 2017 he explained that he was now the owner and showed Mr. Mohammed his house receipt and the Notice to Quit. He then arranged to pay \$500.00 deposit and the balance in one or two years. This is evidence of when the agreement was to be completed. There was some confusion by him in cross examination whether he showed the Notice to Quit and he ultimately said he could not recall. The court finds in that regard that when viewed as a whole the evidence points to the claimant more likely than not having shown the Notice to Quit as it was the document that prompted his visit to Mohammed in the first place.

127. This was part of the discourse in cross examination;

*Q But you told him that you were the owner, & according to this statement.*

*A No, I cyah -- I couldn't be telling him that I'm the owner and I'm not the owner. I show him my receipt. I explain to him. I said I would like to have it. He claim to me he giving me first preference. He going to sell it for [sic] me for \$40,000.00.*

*Q Because, of course, you couldn't tell him you were the owner, because you were asking him to purchase the land.*

*A To buy land. To buy the land.*

*Q Yes? Yes, (indiscernible 11:36:00 a.m.).*

*A Yes. But if I meet you and you is the owner, and I told you I'm interested to buy the land and you decide to sell me the land, I want to see further documents. That's the only reason why I didn't make a down payment.*

128. The claimant proceeded to testify in cross examination that the agreement was that he would pay out half of the price in two months so that he had to pay a further \$19,500.00 in two months. He

did not state this in his witness statement but the court is not of the view that the failure to express it therein makes his evidence on the issue devoid of credibility. In fact it is clear that he gives good details of his agreement while giving viva voce evidence and the court has found a clear ring of truth in what he stated.

129. Further and fundamentally from an evidential perspective there is no evidence from the first defendant to contradict the terms of the conversation.

130. The court therefore finds that there existed an agreement for sale which agreement was breached by the first and second defendants. The court also finds that there is a concluded contract which is binding at law, and in particular that the parties agreed, expressly on all the essential terms of the contract. Further that the terms were sufficiently certain and precise so that the court will order specific performance of the contract.

### **Trespass**

131. It follows that the claimant having been in possession and an agreement for sale having been concluded, the refusal to complete by the acceptance of the balance of the purchase price and the purported return of the deposit was a breach of the contract. It means therefore that the demolition of the steel structure was a trespass to the property of the claimant.

132. In that regard the claimant has sufficiently set out his damages and there has been no substantial challenge to those sums save and except that in cross examination issue was made of the fact that there seems to be three different sums relied upon. The unchallenged evidence demonstrates damage and replacement costs in the total

sum of \$153, 075.00. This sum will be set off as against the balance owing on the purchase price of the land.

133. In relation to the fourth defendant, the court finds that it was not unreasonable to have joined that person as a party as the fourth defendant has alleged that she owns the entire parcel of land. In that regard, the purported transfer of the entire parcel by Carmen Wiley is void and of no effect on the basis that Carmen Wiley never held such interest in the whole. Further, the purported sale from the second defendant to the fourth defendant is also void as this would have come after the creation of a valid agreement for sale between the first and second defendant and the claimant.

#### **Disposition**

134. The order is as follows;
- i. There shall be judgment for the claimant as follows;
    - a. The first and second defendants shall convey to the claimant the freehold title in the property described as LP B2 Hall Street Sherwin Park Arima comprising 5300.1 square feet more or less and shown as the western portion of the entire lands set out in the survey plan of Gillian Burkett dated 24<sup>th</sup> March 2017 (hereinafter referred to as “the property”) upon payment of the balance of the purchase price in the sum of \$39,500.00 in manner hereinafter appearing by way of the execution and delivery of a deed of conveyance, the cost of which shall be borne by the claimant.

- b. In default the Registrar of the Supreme Court is hereby authorized and empowered to execute same on behalf of the first and second defendants.
- c. The first, second, third and fourth defendants are restrained whether by themselves or through their servants and/or agents howsoever from interfering with or damaging or disturbing the claimant in his use and enjoyment of the property.
- d. It is declared that the purported agreement for sale entered into between the second defendant and the fourth defendant on April 9, 2018 is null and void and of no effect.
- e. The first, second and third defendants shall pay to the claimant damages for trespass in the sum of \$153,075.00.
- f. The sum of \$153,075.00 shall be set off against the balance owing on the purchase price of \$39,500.00.
- g. The first, second and third defendants shall pay to the claimant the prescribed costs of the claim on the basis of the claim being one valued at \$153,075.00.
- h. The fourth defendant shall pay to the claimant prescribed costs of the claim in the sum of \$14,000.00.

Ricky N. Rahim

Judge