

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-03671

BETWEEN

ALLISON JOHN-DE COTEAU

Claimant

AND

LOUISE MAYNARD-PAUL

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Ms. Samantha Lawson for the claimant

Mr. Felix Celestine for the defendant

REASONS FOR ORAL DECISION

Background

The first High Court Action

1. In 2007 the Claimant initiated proceedings against Wendy Maynard, Ruth Hibbert, and Richard Persuad to be **declared the owner** of the property the subject of this claim. This

matter was dismissed on 28th September, 2010 after trial, and after hearing evidence, inter alia, from a handwriting expert.

2. On 17th August, 2012, the Claimant was evicted from the subject property by the Defendant through an agent on the basis that she possessed a Will for her father Nathaniel Maynard. The items allegedly removed from the subject property allegedly totalled in value \$67,264.22.
3. The instant action seeks reliefs that were the subject of, or which could have been the subject of, her previous claim which was heard and determined after trial.

Issues

4.
 - a. Whether the instant claim, in so far as it raises claims once again to possession of the premises, albeit on different bases, constitutes an abuse of process.
 - b. Whether the defendant committed a trespass to the claimant's goods by their removal.
 - c. If so whether the claimant has established that the goods were lost or damaged or that the value of her loss occasioned by their removal is in the amount of \$67,264.22, or alternatively, any amount.

Findings and Conclusion

5. The instant claim, in so far as it raises claims once again to possession of the premises, albeit on different bases, clearly constitutes an abuse of process.
6. The defendant committed a trespass to the claimant's goods by their removal as she had no proper basis for so doing, she not yet having any rights under a will of Nathaniel Maynard when a. the alleged will was not subjected to probate, and b. Nathaniel Maynard himself, though missing for an extraordinarily long time, has not yet been declared to be dead, such that any will by him can even take effect.

7. The claimant has not even established that the goods were lost or damaged, as the evidence is that the goods remain at a location on the premises covered by a tarpaulin. The claimant has never sought to examine the goods under that tarpaulin to ascertain whether they are all there as claimed, or even whether their condition has deteriorated. Without evidence of actual loss or actual deterioration the claim that the value of her loss occasioned by their removal is their **full replacement cost** in the amount of \$67,264.22 must fail.
8. In the circumstances nominal damages in the sum of \$5,000.00 are awarded for trespass to goods, which sum is to be paid by the defendant to the claimant after the claimant satisfies all previous orders for costs in this action against her.
9. Given that the major portion of this claim was a thinly disguised attempt to re-litigate matters previously determined and constitutes an abuse of process, each party will bear her own costs.

Disposition and Orders

10. The claimant's claims are dismissed save as follows:-
 - a. It is ordered that the defendant do return to the claimant, or make available for collection within 7 days, all of the goods removed by her or her agents and placed under a tarpaulin at the premises.
 - b. It is ordered that the defendant do pay to the claimant damages for trespass to goods in the sum of \$5,000.00 provided that previous orders for costs against the claimant in this litigation are first satisfied.

Analysis and reasoning

11. This matter has a long and convoluted procedural history. It is set out in two written decisions of this court. In these is found the explanation for any apparent delay in the decision in this matter, filed since 3rd September, 2012.

12. The claimant claimed the following reliefs:

- i. A declaration that she is **entitled** to the **chattel house and property** (Statutory Tenancy by virtue of a **Certificate of Comfort** under Section 4(1) of the State Lands (Regularisation of Tenure) Act, No. 25 of 1998, dated 13th March, 2002, situate at LP 59 Isaac Place, Blue Basin, Diego Martin.
- ii. A Declaration that she is entitled to **recover possession** of the **two-bedroom apartment on the upper floor** of the chattel house situate at LP No. 59 Isaac, Blue Basin, Diego Martin, in the Island of Trinidad on State Land;
- iii. A Declaration that the Defendant has committed an act of trespass **against her interest** in purportedly taking possession of and removing her possessions from the said chattel house and property.
- iv. An Injunction to restrain the Defendant, whether by herself, her servants and/or agents, or otherwise howsoever from obstructing the Claimant's **re-entry** to the said premises.
- v. An Injunction ordering the Defendants **to replace all items** of furniture and other household effects the property of the Claimant which she removed from the said premises.

13. An amended Claim form and Statement of Case was filed and served on 22nd May, 2013 claiming the following reliefs:

- i. A declaration that the Defendant has committed an act of trespass against her **interest** in purportedly taking **possession** from the chattel house and property;
- ii. An injunction to restrain the Defendant whether by herself, her servants or agents or otherwise howsoever from obstructing the Claimant's **re-entry to the said premises**.
- iii. An injunction ordering the Defendant to **replace** all items of furniture and other household effects the property of the Claimant which she has removed from the said **premises**;
- iv. **Damages**

- v. A Declaration that the Claimant has an **equitable interest** in the chattel house
- vi. A Declaration that the Claimant is **beneficially entitled** to the two storey chattel house situate at LP No. 59 Isaac Trace, Blue Basin, Diego Martin, in the Island of Trinidad on State Land;
- vii. **Alternatively**, the sum of \$67,264.22 to replace all items of furniture and other household effects, the property of the Claimants.

14. **However the issue of her entitlement, if any, to possession was decided at trial in a previous claim- CV2007-02340 Allison John v Wendy Maynard, Ruth Hibbert, Richard Persaud**, before this court, when the claimant failed to prove her case that she had bought the premises from one Nathaniel Maynard. The handwriting expert who then testified was clear that the signature on the document that was produced was probably not that of Nathaniel Maynard, The claimant cannot claim possession on a reformulated basis when that very issue was brought before the High court and she failed to establish her claim.

15. The other purported bases on which she now seeks to be restored to possession all existed at the time that she instituted those proceedings. They were not raised there. She is now estopped in this second action from claiming possession. The claim to possession under whatever guise is an abuse of process.

16. This is the third written judgment in which this point has had to be made.

Whether this instant action for recovery of possession is an abuse of process in light of the previous claim CV2007-02340 Allison John v Wendy Maynard, Ruth Hibbert, Richard Persaud.

17. The reliefs sought in this instant claim are not different from those sought in the 2007 claim. In the 2007 action, the Claimant sought the following:
- 1. **Possession** of the **Chattel house and premises** situate at LP No. 59, Isaac Trace, Blue Basin, Diego Martin;
 - 2. A Declaration that she is the **rightful owner of the said chattel house** and premises;

18. In this instant matter, the reliefs sought are as follows:

- i. A Declaration that she is **entitled to recover possession** of the **two-bedroom apartment** on the upper floor of the chattel house situate at LP No. 59 Isaac, Blue Basin, Diego Martin, in the Island of Trinidad on State Land;
- ii. A declaration that the Defendant has committed an act of trespass **against her interest** in purportedly **taking possession** from the **chattel house and property**;
- iii. An injunction to restrain the Defendant whether by herself, her servants or agents or otherwise howsoever from obstructing the Claimant's **re-entry** to the said **premises**.
- iv. An injunction ordering the Defendant to **replace** all items of furniture and other household effects the property of the Claimant which she has removed from the said **premises**;
- v. A Declaration that the Claimant has an **equitable interest in the chattel house**
- vi. A Declaration that the Claimant is **beneficially entitled** to the **two storey chattel house** situate at LP No. 59 Isaac Trace, Blue Basin, Diego Martin, in the Island of Trinidad on State Land;
- vii. Alternatively, the sum of \$67,264.22 to replace all items of furniture and other household effects, the property of the Claimants.

19. The court previously dealt with this issue in its written reasons delivered for refusing interim injunctive relief in this action as follows:

1. The claimant filed an application for injunctions on September 10th 2012. She claims that she was evicted from premises at LP 59 Isaac Place Blue Basin Diego Martin, and discovered this on her return from Tobago on August 17th 2012. She claims that she lived at those premises and had her belongings there.

2. Her claim for substantive relief in her claim form includes:-

a. a declaration that she is entitled to possession of the said chattel house and property (statutory right to a statutory tenancy under and by virtue of the State Lands (Registration (sic) of Tenure) Act No 25 of 1998, at Diego Martin,

b. a declaration that the defendant has committed an act of trespass against her interest in purportedly taking possession from the (sic) the said chattel house and property, and

c. injunctions to restrain the defendant from obstructing the claimant's re-entry to the said premises, and ordering replacement of furniture and household effects allegedly removed.

The application for injunctive relief was dismissed in the following circumstances.

THE FIRST ACTION

3. The claimant had filed action in 2007, (the first action). In that action the relief that she claimed included "a declaration that she was the rightful owner of the said chattel house and premises". These are the same premises which are the subject of the instant action. That matter proceeded to trial before this court. Her claim against the then defendants was based on an alleged sale to her of the premises for \$65,000.00, for which a receipt was given, allegedly signed by Nathaniel Maynard.

4. Nathaniel Maynard was the original owner of the premises. He has been missing for several years. The claimant claimed to have purchased the premises from him, though she testified in the first action that she paid no actual money.

5. In any event her claim to have done so was not accepted on the basis of the evidence at trial. Her claim was dismissed as she failed to establish that she had in fact entered into any agreement for sale with Nathaniel Maynard – the owner of the premises, (who had disappeared), and, (according to the agreed report of a handwriting expert), the signature on the alleged receipt for payment was probably not that of Nathaniel Maynard.

THE INSTANT ACTION

6. In the instant action she claimed to be entitled to reside in the premises under a Certificate of Comfort dated March 13th, 2002. That certificate would have existed at the time of the first proceedings and could have been produced, and its relevance determined, in those proceedings. In any event that Certificate of Comfort, on its face, merely protects against ejectment by the State unless an alternative site is provided. While it may create an obligation on the part of the State not to dispossess the claimant, it does not purport to create rights in the claimant against any party other than the State.

7. *The claimant seeks by injunction, to be restored to possession. She states her address, on oath, to be Windward Road, Goodwood Village in the Island of Tobago. She suggests that she remained in possession of the premises after the death of her mother. Thereafter Nathaniel Maynard sold the chattel house to her for \$65,000.00.*

8. *At paragraph 6 of her affidavit sworn on September 3rd 2012 she refers to that alleged sale of the premises to her by Nathaniel Maynard, for which he allegedly signed a receipt. This very receipt was rejected in the first action. It has ceased to be a triable issue, as this very issue has already been tried and determined by this court in previous proceedings.*

9. *On her own affidavit she was in possession on the basis of the alleged sale agreement. That basis which she asserted in the previous action was rejected. The claim to be entitled under a Certificate of Comfort applies only to the issuer of that certificate – the State. She has not therefore established a basis for any occupation. That is the status quo. She seeks to be restored into possession when:-*

a. she has not established a legal basis for being in occupation – (the Certificate of Comfort itself does not purport to be such a basis against a party other than the State), and

b. the original basis that she put forward for being there- under a sale agreement - was rejected by this court at trial after full hearing.

10. *Her status therefore was as a person who, as had already been determined, was not entitled to be in the premises on the basis that she had herself put before the court – that is, under a purported sale agreement.*

11. *The effect of the injunction she seeks is to circumvent this court's earlier finding in 2010, contrary to the doctrine of res judicata.*

12. *It was found in 2010 that she is not entitled to possession. The court is being asked to exercise its discretion to **restore possession** in respect of a claimant who was found in 2010 to be not entitled to possession.*

13. *To seek to be put into possession in 2013, when it has been already been found in 2010 that she was not entitled to possession under the basis that she put forward as entitling her to possession, is inconsistent with the court's decision in 2010.*

14. *She is starting her claim in this action, not tabula rasa, but with the history of a finding by a court that her claim to be entitled to possession under a sale agreement evidenced by a receipt, has been rejected.*

While it was agreed that the issue of damages for trespass was an issue that would proceed to trial, in the circumstances of this case the court declined to exercise its discretion to grant the injunctive relief sought to restore, or place, the claimant into possession

20. In **The Attorney General of Trinidad & Tobago v. Trevor Mahabir, Civil Appeal No. P238 of 2013 Trinidad and Tobago Society for Prevention of Cruelty to Animals (TTSPCA) and anor. v. Sakal Seemungal CA 181 of 2007** the Honourable Mendonça JA noted at para. 27 of that judgment (all emphasis added):-

*“27. Diplock LJ in Fidelitas [Shipping Company Ltd v V/O Exportchleb (1963) 1 Lloyd's Rep 246] suggested that issue estoppel may extend to not only issues that were actually decided but to every point which properly belonged to the subject of the litigation and which the parties exercising reasonable diligence might have brought forward at the time. This is best described as “Henderson abuse” which takes its name from Henderson v Henderson (1843), 3 Hare and is an authority for that proposition. However the scope of the ruling in Henderson was restated in Johnson v Gore Wood and Company (a firm) [2001] 2 AC 1 where it was said that failing to raise a matter that could have been raised in other proceedings **does not necessarily render the raising of it in a subsequent matter abusive.** The Court should adopt “a broad-based merits approach” and there will rarely be a finding of abuse unless the Court regards the subsequent proceedings as unjust harassment of a party.*

*Lord Bingham in that case stated (at p. 498-499): “The underlying public interest is the same; that there should be **finality in litigation** and that the party should not be twice*

*vexed in the same manner. **This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole.** The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the Court is satisfied (the onus being on the party alleging abuse), **that the claim** or defence should have been **raised in the earlier proceedings** if it were to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a **collateral attack on a previous decision** or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as **unjust harassment** of a party. It is, however, **wrong to hold that because the matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.** That is to adopt **too dogmatic an approach** to what should in my opinion be a **broad, merits-based judgment** which takes account of the **public** and private interests involved and also takes account of **all the facts** of the case, focusing attention on the crucial question whether, **in all the circumstances**, a party is **misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.***

21. The instant action is clearly “**a collateral attack on a previous decision**”, and seeks to raise the issue of recovery of possession based on an alleged entitlement to possession time and again first at trial on the basis of an alleged sale agreement, (the purported documentary evidence for which was not supported as authentic by the opinion of a handwriting expert), then on a different basis in this action on matters which were or which could have been raised in the previous trial proceedings, with an attempt to seek possession at an interlocutory stage in these proceedings. A multiplicity of proceedings has been generated to circumvent the initial decision which was based on a document which, contrary to the Claimant’s sworn testimony, was not proven to have an authentic signature of the previous owner Nathaniel Maynard.

22. A significant portion of the instant claim constitutes a very thinly disguised attempt to reformulate, resuscitate, and re-litigate a claim by the claimant to establish a claim of right and obtain possession of the premises. Her previous claim, based upon an alleged document allegedly executed by Nathaniel Maynard, was not authenticated by a hand writing expert and failed.
23. In relation to the property it is not necessary for this court to revisit the Claimant's alleged claim to possession, even on an allegedly different basis, and examine whether any of those bases now raised in this action but not at the first trial, will produce the result that the claimant sought at the first trial – a declaration of ownership equivalent to an entitlement to possession.
24. The continued attempt to re-litigate issues which could and should have been raised in those prior proceedings constitutes an abuse of process. The record will reflect the multiple approaches to the court. It is also in the public interest that there be finality in this litigation. Further those issues engaged a very significant portion of the instant litigation and the defendant should not have to be saddled with those costs.

Trespass to goods

25. Trespass is a claim against possession.

It is accepted that the Claimant held over in occupation of the subject property even after she failed in her claim in the first action to be declared the owner. In so failing she failed to establish her claimed right to possession. Her continued occupation thereafter is not the same thing as a right to possession. She failed to establish any such right and was therefore always at risk of being evicted by anyone with who could establish a superior right to possession.

The defendant's claim, based on an unprobated will of a person not confirmed to be or presumed to be dead, cannot provide such a basis.

26. This is independent of the issue, already determined, as to whether the claimant had any right to be in the premises. The issue here is whether the defendant had any right herself to remove the claimant's items. To the extent that she claimed to act purportedly under the will of

Nathanial Maynard, the fact is that the will has not been subject to probate and the testator has not even been declared to be deceased.

The defendant has established no lawful basis for removing the goods of the claimant.

27. I do not accept the bailiff's evidence on the goods he claimed were taken. He had not even read his witness statement and came extremely close to committing perjury as a result. The defendant's other witness testified unconvincingly about the claimant and her husband removing very specific items, but this evidence was clearly rehearsed as appears from the record, and the witness could not recall important contextual detail.
28. I accept the evidence of the claimant and her husband and her witness that they maintained a presence at the premises in an apartment and that they had goods stored there.
29. I accept the evidence of the claimant's husband in particular when he confirmed that the goods were left there. He did so from memory in answer to the court and did so convincingly, rather than in a rehearsed manner.
30. The Defendant has, by removing the claimant's goods without a demonstrated claim of right, committed a trespass in relation to those goods.
31. I accept however that the goods when removed were placed at another location on the premises and covered by a tarpaulin. There is no evidence to contradict the defendant's claim that they are still there, and offers were made for the goods to be inspected.
32. Further the claimant must prove both damage and special damage. The claimant has failed to prove that she sustained any actual loss by diminution in value of the goods which were removed. The goods removed were placed in a shed on the premises under a tarpaulin. I accept this evidence. They are alleged to still be there. I accept this also.

33. There is no evidence, apart from an inference that I am asked to draw, devoid of any basis that these items have deteriorated or have diminished in value as a result. The allegation that they are “battered by the elements” is not substantiated on the evidence. The claimant has made her position clear. She believes that the goods have deteriorated and she therefore wants to be compensated for the cost of new items. However that is inappropriate in the context where, as here, the evidence is that the goods are available, and there has been no effort to seek to even inspect the goods to establish whether, as suspected, they are all there or have actually been damaged. In that context there has been no proof of loss, far less quantum of loss.

Findings and Conclusion

34. The instant claim, in so far as it raises claims once again to possession of the premises, albeit on different bases, clearly constitutes an abuse of process.

35. The defendant committed a trespass to the claimant’s goods by their removal as she had no proper basis for so doing, she not yet having any rights under a will of Nathaniel Maynard when a. the alleged will was not subjected to probate, and b. Nathaniel Maynard himself, though missing for an extraordinarily long time, has not yet been declared to be dead, such that any will by him can even take effect.

36. The claimant has not established even that the goods were lost or damaged as the evidence is that the goods remain at a location on the premises covered by a tarpaulin. The claimant has never sought to examine the goods under that tarpaulin to ascertain whether they are all there as claimed, or even whether their condition has deteriorated. Without evidence of actual loss or actual deterioration the claim that the value of her loss occasioned by their removal is their **full replacement cost** in the amount of \$67,264.22, must fail.

37. In the circumstances nominal damages in the sum of \$5,000.00 are awarded for trespass to goods, which sum is to be paid by the defendant to the claimant after the claimant satisfies all previous orders for costs in this action against her.

38. Given that the major portion of this claim was a thinly disguised attempt to re-litigate matters previously determined and constitutes an abuse of process, each party will bear her own costs.

Orders

39. The claimant's claims are dismissed save as follows:-

- i. It is ordered that the defendant do return to the claimant or make available for collection within 7 days all of the goods removed by her or her agents and placed under a tarpaulin at the premises.
- ii. It is ordered that the defendant do pay to the claimant damages for trespass to goods in the sum of \$5,000.00 provided that previous orders for costs against the claimant in this litigation are first satisfied.

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Peter A. Rajkumar

Judge