REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN

Claim No. CV2015-04292

BETWEEN

WENDY PERSAD

Claimant

AND

DOLLY RAMCHARITAR

Defendant

Before the Honourable Mr Justice Kevin Ramcharan

Date of Delivery: December 15, 2017

APPEARANCES:

Mr. Gerard Raphael instructed by Ms. Lana Chunilal for the Claimant

Ms. Camilla Jankie instructed by Mr. Samuel Saunders for the Defendant

REASONS FOR DECISIONS

The Claim

1. By Claim Form and Statement of Case filed on December 17, 2015, the Claimant claimed against the defendants the following relief:
    a. Damages including aggravated damages for Trespass.
    b. An injunction restraining the Defendant whether by herself her servants and/or agents from entering on or remaining on **ALL AND SINGULAR** that single storey

concrete dwelling house situate at #4 Hugh Street, Montrose, in the Borough of Chaguanas, in the Island of Trinidad comprising approximately 900 square feet of floor area standing on concrete pillars with three bedrooms living/dining room, kitchen, toilet/bathroom and an open side garage together with the tenancy rights thereto on one lot of land bounded on the North by lands of Rattansingh on the South by lands of Sammy on the East by Hugh Street and on the West by Constance street ("the said property").

c. An injunction restraining the Defendant whether by herself her servants and/or agents from evicting or attempting to evict the Claimant from the said property.

d. An order ordering the Defendant to return one heavy duty washing machine, one gould water pump and one water heater, two thousand gallons water tanks to the Claimants or their value.

e. Costs.

f. Further and or other relief.

2. In her Statement of Claim, she claimed that her parents had been given permission to build on the premises in 1956 by her maternal grandparents, and that in 1972, a concrete structure was built. By deed registered No 1427 of 2000, the Claimant and her parents became owners of the said structure as joint tenants. It was averred that the grandparents had promised to transfer the land to the Claimant's parents. The Claimant's mother Molly Baksh died on August 31, 2008 while her father, Unoos Baksh died on June 30, 2015.

3. The Claimant further averred that the she built an annex to the structure at the cost of some $110,000.00, and since the death of her father was renting the house out to a family.

4. The Claimant avers that the Defendant, who is the Claimant's maternal aunt, claims ownership through Deed registered as 10150 of 1960. It is averred that the Claimant's maternal grandmother filed a writ of summons in 1970 challenging that Deed, but that the action was never pursued. She avers that on diverse occasions since 1990, the Defendant had been trying to get the Claimant's parents and the Claimant to vacate the premises, through letters from Attorneys at Law, to which her father, and then she had instructed Attorneys at Law to respond.

5. She alleges that on or about the December 5, 2015, the Defendant through her servant, a licenced bailiff evicted the Claimant's tenants from the premises, despite the Claimant showing the bailiff her Deed for the dwelling house. She further avers that sometime later the Defendant on the December 6, 2015, the Defendant caused her heavy duty washer, a Gould Water Pump, a water heater and 2 thousand gallon water tanks from the premises. That same day, the Claimant observed that the house was demolished.

6. In her Defence and Counterclaim, the Defendant avers firstly that the Deed number 1427 of 2000 did not transfer any rights in the lands to the Claimant or her parents. She also alleges that the description of the land is wrong as the lot on which the house stood is bounded by the Defendant's land and not Constance Street.

7. She claims that she became owner of the premises together with her children by virtue of Deed number 10510 of 1967. She denies that the Claimant's parents built the house, but rather, states that she built the house and allowed the Claimant's parents to live there as her licencees. She further alleges that when she wrote in 1990, she allowed her sister to remain on the premises with her family out of compassion. She admits that the Claimant's tenants were evicted by her agent, but denies sanctioning the breaking down of the house, and avers that she is unaware as to who demolished it.

8. She denies that the Claimant's parents were her tenants, but avers that if they were, they were tenants under the Land Tenants (Security of Tenure) Act Chapter 59:54, and therefore, (a) the purported assignment to the themselves and the Claimant was in breach of the Act and (b) this made them only entitled to a Statutory Lease which expired in 2011.

9. The Defendant counterclaimed for

    a. A declaration that the Claimant's Statutory Lease expired on the May 31, 2011.
    b. An order that the Claimant deliver up possession of the said property.
    c. An injunction restraining the Claimant from entering upon and/or remaining upon the said property.
    d. Further and/or other reliefs
    e. Costs.

10. In light of the Defence, the Claimant filed an Amended Statement of Case averring that there was never any tenancy arrangement between the Claimant's parents and the Defendant, or the Claimant's maternal grandparents. In response, the Defendant in her amended Defence pleaded that the Claimant could not plead a position that was contrary to the Deed on which she was relying. The Claimant filed a Reply to the Defence and Counterclaim essentially repeating the contents of the Amended Statement of Case and denying that the Defendant was entitled to the relief sought. The Claimant also averred that if the Defendant her children were owners of the land, their title was extinguished by the continuous possession of the Claimant and her predecessors in title.

The Evidence

11. The Claimant gave evidence on her own behalf and also relied on the evidence of Ganga Persad Kissoon, who gave expert evidence as a valuation surveyor, to give an estimated value of the premises which the Claimant alleges was demolished by the Defendant.

12. The Claimant in her witness statement essentially repeated the averments in the Statement of Case. Mr. Kissoon in his witness statement and report indicated that he was provided with pictures of the demolished building and was advised as to what existed previously by the Claimant. He estimated that the value of the structure before demolition was $600,000.00, $550,000 being apportioned to the dwelling house, and $50,000 for the shed which the Claimant said she built.

13. At trial, the Defendant took objection to the admission of Mr. Kissoon giving expert evidence on the basis that he did not comply with the provisions of part 33.10 particularly with the provision requiring the expert to state which literature he used in reaching his determination. Particularly objection was taken to the reference to the RICS "Red Book". It was noted that there was no reference to edition, or year of publication. The report was allowed on the basis that it was felt that the report complied with the provisions of Rule 33.10, in that the reference to the "Red Book" was sufficient. In any event, it is felt that in this case, non-compliance with that aspect of Rule 33.10 would not have rendered the report inadmissible for non-compliance with the rules, given the limited reliance on such literature.

14. In cross-examination, the claimant was asked questions about the plans to build the house. She was asked about the elevation under the house, and whether she could stand under the house. She stated that the space under the house was 3 feet at parts, and in parts she could stand under it. It was drawn to her attention that there were certain discrepancies between the building which existed and the plans which were approved by the Town and Country Planning division. She was unable to account for discrepancy between the 2.

15. She was also asked about certain receipts which were attached to the Statement of Case. These receipts dated from 1964 to 1986 purported to be receipts for rent, water rates and land taxes, and were all purported to be signed on behalf of the Claimant's maternal grandmother, Molly Ramoutar, even though some of these receipts were issued after her

death. The Claimant signed one of these receipts and indicated that she was following the instructions of her father when she signed it. She indicated, that they were made for proof that he paid the water rates and land taxes.

16. She admitted that she did not see the Defendant breakdown the house or remove the items.

17. In his cross-examination, Mr. Persad indicated that the structure was a single dwelling house on dwarf pillars of about 1 metre (3 feet). He indicated that he did not inspect the whole premises as he did not enter the premises and take measurements. With respect to the physical condition of the information before the demolition, he indicated that he got the condition of the premises prior to the demolition from pictures he was shown, as well as information he received from the Claimant. He indicated that he was provided with a plan, for a building which was not built on the hose.

18. The Defendant gave evidence on her behalf. In her witness statement, she indicated that she built the house in the mid-60s with the permission of her mother, the Claimant's maternal grandmother. She stated that the Claimant's mother ("Molly") eloped with the Claimant's father ("Unoos") when she was very young, and that this caused their parents to disown her.

19. She stated that the house was built to house Venezuelan students who were in Trinidad to learn English. She further stated that Unoos was hired by her first husband at his gas station, but had to be let go because of his drinking issues. She then said that her husband

bought Unoos a taxi, but that it got into an accident, as a result of which, Unoos was attacked and that he never worked again.

20. Because of this, the Defendant stated that she hired Molly to work as a maid and cook for the Venezuelans. Molly then asked her to allow herself (Molly), her 2 children and Unoos to live in the property, which she allowed. She stated that when the last Venezuelans left, Molly, Unoos and their 2 children came into the property to live.

21. She stated that her husband, who knew the General Manager of Sissons Paints, got Molly a job at Sissons, as Unoos was not working.

22. She also stated that she had several letters written to Molly to leave the premises, the first of which was in 1990, written by her then husband, who was an Attorney at Law. None of the other letters were annexed. However, the Defendant states that she would feel sorry for Molly, and let her remain.

23. She goes on to say that following the death of Molly in 2008, she asked Unoos to leave the premises, and promised to do so within a year, however he failed to do so. As a result of this she caused her Attorney at Law to write a letter to Unoos calling on him to leave the premises. She states that Unoos asked her to remain on the property till his death as he was ill.

24. After the death of Unoos, she wrote to the Claimant and called on her to deliver vacant possession of the premises. Upon the Claimant's refusal to do so, she engaged the services of a Bailiff to evict the Claimant's tenants from the premises. She denies

demolishing the house, but states that the Claimant's brother told her that he would break the house down.

25. In Cross-examination, the Defendant at first stated that she built the house in the 70s, then changed it to say that it was in the 60s. She said that Martha Ramoutar, had a house on the premises first, and then she built the structure that was there. She claimed that it was only Molly she gave permission to stay in the premises, not Unoos or the children (contrary to what was stated in her witness statement).

26. When questioned about the letters asking Molly, and then Unoos to leave the premises, she said that her husband sent several letters to Molly, but she never responded, and that he got frustrated and passed the matter to another Attorney at Law.

27. She insisted that she never received rent from the Claimant or her parents at any time, and that she knew nothing about any rent.

The Submissions

28. In his submissions the Defendant contended that the Claimant was bound by the Deed, Bill of Sale which purported to transfer the house from her parents to her parents and herself and as that Deed stated that they were tenants on the lands, the Claimant could not set up any other state of affairs other than that they were tenants of the land. That being the case, they would fall under the provisions of the Land Tenants (Security of Tenure) Act Chapter 59:54 and as no notice of renewal was made, then there could be no existing tenancy.

29. I find that this is a remarkable submission to make in light of the fact that the Defendant herself vehemently denied that the Claimant or her parents were ever her tenants. I accept what the Claimants submits, that the generality of the lands being described is tenanted lands does not stop the Claimant from setting up her claim. In any event, if the only person that the evidence shows could have been the landlord is Martha Ramoutar, who died sometime prior and any event had transferred the land to the Defendant in 1970. In those circumstances, neither the Claimant nor her parents could have been the tenants of the owner of the land, that is to say the Defendant. In those circumstances, the provisions of the Land Tenants (Security of Tenure) Act would not have been invoked. In any event, in light of my findings of fact in this case, the question of a tenancy does not arises.

Assessment of the Evidence

30. I say from the outset the evidence from Mr. Kissoon is of limited value in that he acknowledged that the photographs from which he made his findings were not done by him and he could not say when they were taken.

31. Now the evidence in this case is somewhat unsatisfactory in both sides and the court has had difficulty in resolving the where the facts lay. The first question that had to be determined was who built the house. The Defendant claimed that she build it but she gives three (3) time periods within which it would have been built, either in the late 50's, the 60's or the 70's. The court just has to bear in mind that the Defendant is very aged

and that these events took place sometime ago. At the same time, in giving her evidence the court did not find that the Defendant was necessarily frail of mind but it was still noted that these events took place between 40 and 60 years ago.

32. In respect to the Claimant evidence, she depose to the fact that the house is according to plans which they clearly were not and in cross examination in relation to whether she could stand beneath certain pillars it is clear that that evidence she give was erroneous. So we at the very unsatisfactory state of affairs in trying to ascertain where the truth lay.

33. At the end of the day, the court is of the view that on a balance of probability it is more likely that it was the Defendant who built the house on the premises and that she gave permission to Molly and her family (Unoos and her children) permission to live in the property at some point before 1975.

Analysis of the issues

34. In light of this, the question as to whether the Claimant has established a case in adverse possession arises.

35. The first issue is in what circumstances did the parents enter the premises and when did their permission to remain in the premises terminate. And in that regard again the evidence is somewhat unsatisfactory, because we have conflicting dates from the Defendant as to when these events occurred. What we do have and what the court has

relied on because of its relative vintage is the letter from Mr. Hilton Clarke dated April 1990 in which he wrote.

"My Client informs me that around the year 1959 or thereabouts … she permitted you as a tenant at will in the house… I am also advised that from since <u>1975 to date</u> she has been asking you via several accounts of time to vacate the premises all to no avail." (emphasis supplied).

36. With the lack of more cogent evidence the court has used these dates as "flag dates", the first date being 1959 when I hold that the Defendant would have put the Claimant's parents and the children into the property and then 1975 when she first asked them to leave thus terminating the licence. The question is, what is the effect of that?

37. The court has relied on the case of ***Romany v Romany***[1]. Although Mr. Hilton Clarke described the parents as tenant as will, I note the learning in ***Romany*** which states that family arrangements without more do not create an intention to create legal relations. As Georges, JA stated **"Recent authority makes it clear that in family situations of this sort where one member helps another in a period of difficulty over accommodation there is usually no intention to create legal relationships so that there can be no tenancy, but merely a licence"**[2] and therefore I hold that what was in fact created was a licence.

[1] (1972) 21 WIR 491
[2] Ibid at p 494

38. That licence was first terminated in 1975. The question is whether after 1975 whether that the licence was renewed. Again, ***Romany*** indicates that mere inaction will not revive a licence. In that case a mother gave her son permission to reside on the premises and then several times asked him to leave. As stated by de La Bastide, JA **"The questions which remains, which therefore assumes great importance is whether or not Mary Elizabeth Romani is repeated request to Jules to vacate the premises, did or did not amount to relocates to the licences, thereby making him a trespassing who is favour to statutory limitation to start to rent or whether Mary Elizabeth by her inaction on his reluctance to leave did not at least by implication allow the licences to continued.**

The Learned Trial Judge did not specifically state in his judgement which of these two inferences he had drawn (although this would have been seem to be desirable0 but it seems from his judgement when considered as a whole that he well have been satisfied with the arrangement constituted a licence and further that such licence had been revoked by the request of Mary Elizabeth Romany to her son Jules.

In those circumstances, now might be my judgements correct to interfere with the decision arrived at the Trial Judge as there was ample evidence to which could probably have arrived at the conclusion which he did, I therefore dismissed the Appeal with costs to the taxed."[3]

39. In other words, question the court has to determine in the instant case is whether there was a renewal of the licence to the parents when the Defendant did not take any steps to

[3] Ibid at p 496

have the parents ejected from the premises. There was no evidence provided by the Defendant between 1975 and 1991 which is sixteen (16) years after 1975 that there was any renewal of the licence. While the Defendant does say that she did allow Molly to stay, because she was sorry for her, this is direct conflict with her own assertion that \that several letters were written to Molly calling on her to leave, but they were not responded to. I hold therefore that there was in fact no renewal of the licence by the Defendant before the end of 1991 or at all. In those circumstances time would have started to run in 1975 and therefore the Claimants parents would have been in adverse possession from 1991. The evidence of the Claimant is that Mr. Hilton Clarke wrote several letters but there is no indication that there was any renewal of the licences.

40. In the circumstances, the court is of the view that, upon determination of the licence in 1975 time began to run from then and therefore Sections 3 and 22 of the Limitation of Real Property Act would have applied from the end of December 1991 at the very latest. These circumstances the Defendant's title to the land would have extinguished at the end of 1991 and the Claimant's parents would have been in adverse possession of the premises.

41. A question remains as to whether the Claimant is a successor of her parents in respect of the possession of the premises, and I hold that she is on the basis that she would on their death be entitled to at least a share whatever interest they had in the property, as well as the fact that the intent of Deed 1427 of 2000 was no doubt to ensure that she would benefit from whatever interest they had in the land.

Animus Possidendi

42. For there to be adverse possession, there must be the requisite *animus possidendi* on the part of the person claiming adverse possession. The classic case on the point is the House of Lords decision of ***JA Pye (Oxford) Ltd v Graham***[4]. The discussion on what is required to attain the relevant *animus* was considered in depth at paragraphs 43 – 46 of that judgement, but to summarize, what is required is that the occupier must have an intention to possess the land, not necessarily to own, to the exclusion of all others, including the paper title owner. This *animus* can exist even where the squatter has offered to pay the paper title owner money to remain on the land.

43. In the Court of Appeal decision of ***Clyde Dipnarine & Ors v Esther Dipnarine***[5], the Court, after considering the effect of the judgement in ***Pye,*** stated at paragraph 48: **"From the above, it is clear that although the necessary intention as formulated by Lord Browne-Wilkinson is to exclude the world at large including the paper title owner, it is not necessary to show a deliberate intention to exclude the paper title owner. The intention to possess can be demonstrated where the evidence establishes that the alleged possessor has used the lands as his own in the way in which one would expect him to use it if he were the true owner. That is sufficient to establish intention to possess."**

[4] [2003] 1 AC 419
[5] CA Civ 43 of 2010

44. To be clear, I do not accept the Defendant's evidence that Unoos agreed to leave within a year in 2008, or asked the Defendant to allow her to remain in the premises until he died, as those are inconsistent with the letter he caused his Attorney at Law to write the Claimant when she wrote to him in 2013 calling on him to vacate the premises. However, even if this were to be accepted, based on the learning above, it would not necessarily preclude him from possessing the requisite *animus* necessary to establish adverse possession.

45. Therefore, when the Defendant evicted the Claimant in 2015 she did not have the authority to do so as any title which she may have had was estinugished.

The Destruction of the House

46. The next issue to be arise is the question of damages and the first issue was who demolished the house and what was the value of the house? Both parties denied having anything to do with the demolition of the house. The Defendant said she would not have demolished the house because she intended to live in it. She also vehemently denied placing any security guard on the premises, contrary to the claimant's assertion, and also stated that she did not know whether the Bailiff had put any security on the premises. As far as she was concerned, she only locked the gate to the premises. The Claimant said she did not demolished the house and further that the Defendant had threatened to demolished the house from March of the previous year.

47. Given the unreliability of the evidence of both parties, I again have struggled to find where the facts lie. However, at the end of the day the fact of the matter remains that from the time of the eviction the property would have been in the control of the agent of the Defendant, so the balance of probabilities tilts slightly towards the Defendant having been responsible for the demolition of the house. This is also buttressed by the fact that the Defendant admitted locking the gate to the premises, which begs the question as to how one would be able to access the premises with the necessary equipment to demolish the building.

48. On the question of damages the court finds that the evidence provided by the Claimant as stated before was somewhat unsatisfactory and therefore a proper valuation of the house prior to demolition was not done, the court being able to rely on the evidence of Mr. Kissoon in that regard. In the circumstances, the court is of the view that only nominal damages can be awarded for the demolition of the house and the circumstances has awarded the sum of Twenty Thousand Dollars ($20,000.00) as nominal damages.

49. With respect to the items in the house, again there was no satisfactory evidence as to what really happened to the items or whether they are still in a position to be returned if they were in fact taken by the Defendant. However, again as the Defendant had control of the premises, I hold on a balance of probabilities that the Defendant was responsible for their removal.

50. There is an issue with respect to the amount of damages to be awarded however, as apart from the evidence from the Claimant in her witness statement there is no independent or reliable evidence as to the value of those items. As a result of this the court is therefore going to award a nominal sum for their value in sum of Three Thousand Dollars ($3,000.00).

51. The order of the court is as follows:-

    a. The court declares that the title of the Defendant to the lot claim by the Claimant has been extinguished by the adverse possession of the Claimant and her predecessors, and the court grants an injunction preventing the Defendant from remaining on the said lot of land;

    b. Court had granted another injunction restraining the Defendant from preventing the Claimant from accessing the said lot of land;

    c. The court awards damages in the nominal sum of $20,000.00 for the demolition of the house.

    d. Nominal damage in the sum of $3,000.00 for the items missing from the house.

    e. The Counter claim is dismissed.

    f. The Defendant to pay the Claimant the costs of the Claim in the sum of $14,000.00 and the costs of the Counterclaim in the sum of $14,000.00.

Kevin Ramcharan
Judge