THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No. CV2012-02005

ARIMA DOOR CENTRE HOLDING COMPANY LIMITED

Claimant

AND

SASSY GARCIA

Defendant

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Appearances:

Claimant: Mr. Michael Quamina instructed by Ms. Raisa Caesar

Defendant: Mr. David Hannays

Before The Honorable Mr. Justice Devindra Rampersad

Dated the 20th day of September 2016

JUDGMENT

Contents

Introduction

1. This is an action for possession of the parcel of land at No. 10 Farfan Street, Arima, in the Ward of Arima together with the dwelling house located thereon ("the subject premises"). At present, the Defendant is in occupation of the subject premises and counterclaims, inter alia, for:

    1.1. A declaration that she has acquired possessory title of the subject premises;

    1.2. A declaration that the paper title of the Claimant has been extinguished by reason of adverse possession; or

    1.3. Alternatively, a declaration that she is entitled to an equity in the said property in her personal capacity and/or as administrator of the estate of her father.

2. It was the Defendant's case that:

    2.1. She is entitled to the relief sought having been in continuous, undisturbed possession of the subject premises without paying rent for a period over 16 years together with her father and mother; and/or

    2.2. The original title owner of the subject premises and their successors are estopped from denying that she has an equity in the property as monies were expended by her father, and later by her, on the property in reliance on a representation to her father by the original owner that the subject premises would be sold only to him.

3. The relief for an equity in the property was not pursued as a result of the fact that there was no evidence to support such a finding in light of certain evidential objections raised by the Claimant's attorney at law with which the court agreed.

4. Ultimately, the case rests on whether or not the Defendant can prove to the required degree that she and/or her predecessors in title had extinguished the paper title of the Claimant by reason of adverse possession. Particularly, whether the Defendant, who was in occupation of tenanted premises, can show, on a balance of probabilities, that no rent was paid to the landlord for more than 16 years.

Background

5. The matter was initiated on 18 May 2012 by the filing of a fixed date claim form and affidavit in support which was later followed by the filing of a claim form and

statement of case on 26 June 2012 and 13 July 2012 respectively. The relevant uncontestable facts are as follow:

5.1. Carmen de Lisle was the original owner of the subject premises;

5.2. Carmen de Lisle let the subject premises to the Defendant's father, Henry Hannays, as a monthly tenant on 16 September 1971 with each period commencing on the first day of each month;

5.3. Mr. Hannays registered the said tenancy on 24 February 1982 pursuant to the Rent Restriction (Dwelling-Houses) Act Chap. 59:55;

5.4. By deed dated 10 March 1982 and registered as No. 11131, the subject premises was conveyed to Waveney Julien and Tessi Lum Kin as joint tenants;

5.5. Mr. Hannays died on 19 February 1996;

5.6. On 29 March 1996 the Defendant's mother, Maudlin Hannays, was served a notice to quit by Ms. Julien and Ms. Lum Kin but she, together with the Defendant, continued in occupation;

5.7. By agreement for sale dated 16 February 2004 the Claimant agreed to purchase the subject premises subject to a purported bare license granted to the Defendant to occupy same until revoked by the vendors or their successor because attorney for Ms. Julien and Ms. Lum Kin advised that the Defendant was a licensee;

5.8. By virtue of deed dated 05 March 2012 and registered as No. DE201200644675 the Claimant became the fee simple owner of the subject premises;

5.9. Upon acquiring the property the Claimant called on the Defendant to quit the subject premises by letters dated 22 March 2012 and 07 May 2012;

5.10. Notwithstanding those notices and earlier notices to quit, the Defendant continues, and was at all material times, in occupation of the subject premises.

6. The Claimant's pleaded case is that the contractual tenancy was terminated by a notice to quit dated 1 March 1982 issued by Carmen De Lisle or alternatively on 4 October 1982 by Mr. Julien and Lum Kin. Further, Mr. Hannays was a statutory tenant and the statutory tenancy came to an end after the death of the Defendant's mother and as such the Defendant has no right to possession.

Submissions

7. The court heard evidence from the parties and their respective witnesses at trial as expressed in written witness statements and in cross-examination. Submissions were then invited from the parties.

On behalf of the Claimant

8. It is the Claimant's submission that its right to possession is established by the existence of the deed in its favor and as such the onus is now on the Defendant to provide cogent and compelling evidence that her occupation and acts of possession were sufficient to displace and extinguish the title of the Claimant.[1]

9. The Claimant noted that the Defendant's case, as originally pleaded by way of her defence filed on 20 September 2012 and amended defence filed on 08 February 2013, averred that:

   9.1. She had an equitable interest in the subject premises based on an agreement between her father and Carmen de Lisle;

   9.2. Her father's contractual and/or statutory tenancy was vested in her personally or by way of her title as administrator of his estate; and

   9.3. The rent arising out of the contractual tenancy had been tendered to the previous owners but they refused to collect same and such rent was available and estimated to be in the sum of $14,400.00 as at June 2012.

10. In that regard, the Claimant further noted that 'a tenant' under the Rent Restriction (Dwelling-Houses) Act is defined to include the surviving spouse of a tenant and **only** where there is no surviving spouse would a tenant include persons residing with the tenant.

11. The Claimant also made reference to the Gujarat High Court judgment of ***Glamour Cleaners v Chandrakant Chhotalal Gandhi*** (1962) 3 GLR 941 in which Bhagwati J said the following in relation to statutory tenancies:

> *"It is now clear as a result of various judicial decisions both in this country and in England that a statutory tenancy arises when a tenant under the contractual tenancy-whether the contractual tenancy be a tenancy from month to month or from year to year or for a period certain-remains in possession without the landlords consent after the determination of the contractual tenancy. A statutory tenant has no estate or property as tenant at all but has a purely personal right to retain possession of the premises. On the determination of the contractual tenancy the landlord would under the ordinary law of landlord and tenant be entitled to recover possession of the premises from the tenant. But the Rent Act restricts the landlord's rights to recover possession of the premises from the tenant and as a result the*

[1] See ***Trevor Shade v Selma Clarke & Ors*** CV2014-02583 at para. 9

tenant if he fulfils the conditions set out in the Rent Act is entitled to remain in possession of the premises against the will of the landlord. It is this right of the tenant to remain in possession of the premises-which is a personal right as the decisions show-which is described as statutory tenancy. The statutory tenancy is thus nothing more than a status of irremovability. The statutory tenant is not a tenant at all in the sense that he has an estate or property in the premises. He has merely a personal right of occupation which right enures so long as he complies with the conditions set out in the Rent Act. The statutory tenancy being thus merely a personal right of occupation it has been held that it cannot be assigned……"

12. The reasoning of Bhagwati J echoes that of Edoo JA in the Trinidad and Tobago case of ***Hilda Cyrus v Emmanuel Gopaul*** Mag. App. No. 69 of 1987 whereby the learned judge opined that "*a statutory tenant has no interest in the land but merely a personal right to remain in occupation…. it cannot be transferred to another inter vivos or pass under his will or vest in his legal personal representatives"*.

13. Pemberton J similarly expressed that a statutory tenancy can neither devolve to heirs nor be the subject of an inter vivos transaction when her Ladyship held in the case of ***HV Holdings Limited v Ramratee Harripersad & Anor*** CV2009-03223 that upon death, the statutory tenancy came to an end and reverted back to the reversioner.

14. The Claimant therefore submitted that it was not possible for the Defendant to derive any benefit from the statutory tenancy held by her deceased father who left a surviving spouse. It is the Defendant's mother then who would have had the benefit of the tenancy and same would have come to an end upon her death.

15. The Claimant also submitted that there is no evidence before the court to support any claim for an equitable interest.

16. As it relates the Defendant's claim for adverse possession, the Claimant submitted that the Defendant's credibility as relates the non-payment of rent was in issue. The Claimant noted that the Defendant's initially pleaded case was that rent was tendered, and up to June 2012, was estimated in the sum of $14,400.00. However, in the Defendant's affidavit in opposition to the Claimant's fixed date claim form on 25 January 2012, she deposed:

> *"**I have repeatedly attempted to pay the rent assessed as due to the landlord but since about the year 2000 the landlord has refused to take the rent**. I have paid the rent into a separate account, and I am ready and willing to turn over the rent found to be due to the landlord. I estimate that the rent due is the sum of $14,400.00."* [emphasis added]

17. The Claimant submitted that this statement suggested that rent was last paid in 2000 and is further recognition of the owner's rights as she continued to pay rent into a separate account. However, by way of her re-amended defence filed on 11 April 2014 the Defendant averred that rent was last paid in 1992. This averment is

supported by her witness statement filed on 27 May 2015. In addition, when certain documents were disclosed by the Claimant the Defendant again amended her defence on 10 September 2015 and stated that rent was last paid on 01 January 1996. It was therefore submitted that the Defendant's evidence fell woefully short of the type of evidence required to prove adverse possession. According to the Claimant, "*the Defendant became in the end the cross-examiner's dream of a witness who is shown to be a stranger to the truth.*"[2]

18. Reference was also made to several authorities in support of the settled principle that a person who claims title by adverse possession in Trinidad and Tobago is required to demonstrate both factual possession and the intention to possess for a continuous period of 16 years without the paper owner's consent.[3] In that regard the Claimant submitted that the Defendant's case lacked an intention to possess as it hinged entirely on the non-payment of rent. The Claimant noted that the Defendant's witness statement made no averments that she intended to possess the subject premises but states simply that she was in exclusive occupation.

19. In addition, the Claimant submitted that the Defendant had another hurdle to overcome insofar as the evidence of Mr. Maundy, which was entirely untroubled, spoke of two offers to purchase the property by the Defendant. Mr. Maundy was the attorney for the previous owners and gave evidence of offers to purchase the subject premises made in September 1992 and April 2004. According to the Claimant the evidence suggested that the Defendant was of the view that she was always a tenant and at no time considered herself to have an entitlement to possess to the detriment or without the permission/consent of the owner. It was thus submitted that those offers are inconsistent with the Defendant's case as it was a clear recognition of the owners' rights.

On behalf of the Defendant

20. It was submitted that the Defendant's case was based on the non-payment of rent as a tenant for a period of at least sixteen years prior to the filing of the claim for possession by the Claimant in accordance with the relevant sections of the Real Property Limitation Act Chap. 56:03 (the Act) .

21. It was contended that the Defendant stated in her witness statement that rent ceased to be paid sometime in or about March 1992 based on her personal observations that rent was being refused when her father attempted to pay.

[2] See ***Lystra Beroog v Franklyn Beroog*** CV2008-004699 per Kokaram J

[3] See ***Grace Latmore Smith v David Benjamin & Anor*** Civ. App. No. 67 of 2007 and ***Sybil Chin Slick v Gail Hicks*** CV2013-04883 at para 30

However, the Defendant contended that it was not until certain disclosures were made by way of Mr. Maundy, for the first time in his witness statement, that leave was granted to the Defendant to change the 1992 date to January 1996. It was therefore submitted that the re-re-amended defence does not present an inconsistent case as upon the disclosure by Mr. Maundy it became apparent that the rent was being paid, a fact which was not previously known by the Defendant.

22. It was submitted that the last record of rent being actually paid and received is January 1996 by way of exhibit 'EM4' in which the previous owners acknowledged receipt of the rent to the period ending 31 January 1996. It was noted that there is a letter from D. Hannays & Company, attorney for the Defendant, dated **23 August 1996** purporting to enclose a cheque for payment of rent for March and April 1996 but there was no acknowledgement of receipt in relation to the purported rent payments. In fact, on 09 December 1996 attorney for the previous owners reminded attorney for the Defendant that rents were outstanding for March and April 1996.[4] It can therefore be inferred, the Defendant submitted, that the payments were not accepted when they were purportedly sent by D. Hannays & Company.

23. The Defendant submitted that even if rent was in fact paid until 30 April 1996 it was clear that the landlords considered the tenancy was at an end as at 30 April 1996 as was evident from the documentary evidence in the form of: (i) attorney for the previous owners requesting rent in December 1996 only until April 1996; (ii) notice to quit dated 29 March 1996 to expire 30 April 1996; (iii) subsequent ejectment proceedings as it was Mr. Maundy's evidence that ejectment proceedings were commenced shortly after the notice to quit was issued on 29 March 1996; and (iv) Mr. Maundy's evidence suggested that no rent was received by his client during the period for which ejectment proceedings were before the court and even sometime after.

24. As for the inconsistencies in the Defendant's evidence, it was submitted that the previous evidence by way of affidavit had to be read in conjunction with the Defendant's witness statement. It was noted that by her affidavit of 25 June 2012 she stated "*I have repeatedly attempted to pay the rent assessed as due to the landlord but since about the year 2000 the landlord has refused to take the rent*" whereas, in her witness statement, her evidence is stated as thus, "*After the death of my father I attempted to pay the rent on several occasions in the year 2000.*" It is submitted that the former affidavit evidence suggests that rent was being paid up to 2000 whereas the latter witness statement evidence suggests that attempt were made up to 2000 to pay rent. The Defendant stated in oral evidence that the former was made in

[4] See 'EM8'

error. Further, the evidence of both parties was that the magisterial proceedings lasted approximately 5 years. This would suggest that those proceedings ended sometime in 2001. Based on Mr. Maundy's evidence that no rent was collected during those proceedings, it was submitted that it is inconceivable that rent would have been collected up until or in the year 2000.

25. The Defendant submitted however that it is possible that rent could have been paid in February 1996 as the letter reminded the Defendant's attorney of outstanding rent made reference only to rent for March and April 1996 being outstanding. The last period covered by rent, the Defendant submitted, was therefore likely to be January – February 1996 but in no circumstances after 30 April 1996.

26. As relates the Claimant's submissions on the lack of intention to possess, the Defendant relied on the case of ***J.A. Pye (Oxford) Ltd. & Anor v Graham & Anor*** [2002] UKHL 30 and submitted that the necessary intention to possess could be inferred from an occupant dealing with the land as an owner and excluding the world at large including the paper owner. It was also submitted that a willingness to pay rent is not inconsistent with adverse possession.[5]

27. It was contended that the offer to purchase was made without prejudice and could not constitute an acknowledgement of title. It was further contended that the letter sought to assert a legal right to possess and so it was incumbent on the Claimant to commence proceedings if they felt that the Defendant did not have that right.

28. In any event the Defendant submitted that this claim represents an abuse of process given that possession proceedings were commenced in 1996 and discontinued.

Claimant's submissions in response

29. In reply, the Claimant submitted that the suggestion that there was an attempt to pay rent in 2000 is not supported by way of the Defendant's pleadings as set out in paragraph 19 nor does the witness statement itself bear out or provide particulars of attempts in 2000 to pay rent.

30. In addition, it was submitted that the letter of offer, 'EM10', does not constitute a 'without prejudice' letter which cannot be admitted into evidence. In fact, it was noted that it was not the subject of any objection in so far as admissibility was concerned and it was cross-examined on by the Defendant, and put to the Defendant in her own cross examination. The Claimant submitted that that letter clearly made an offer to purchase without prejudice to any legal rights by offering

[5] See para 46 of that ruling

the sum, and stating that it is so doing despite having undisclosed legal rights as a tenant.

31. It was also contended that at the time of the letter, the Defendant was asserting that she was a tenant (with a paper owner), which cannot support a case for adverse possession. Because of the particular wording of this letter, stating specifically that "*it was without prejudice to "other legal rights*", those "*other legal rights*" are what is relevant. The Claimant suggested that the issue is what was in mind when the offer was being made. It was thus submitted that in the Defendant's mind at that time was that she was a tenant not that she had an intention to possess adverse to the paper owner. In any event, the Claimant submitted the letter clearly demonstrated that the Defendant was asserting herself as a tenant as late as 2004.

32. The Claimant further submitted that the evidence of Mr. Maundy is confused. What he said is that the letters he presented are evidence of payments up until 1996 in response to the Defendant's representation that rent was last paid in 1992. His evidence is not that those were the last payments as he confirmed that he did not know how rent was paid though he assumed rent was paid. He went on to state that as far as he was aware, rent was paid from time to time most often in arrears.

33. The Claimant's case was thus mounted on the fact that rent had been unpaid since the year 2000 on the Defendant's own evidence and hence the period of 16 years had not elapsed by the time the action was filed. It was argued that claims for possessory title extinguish the title of the legal owner pursuant to the limitation act and the court should only act on very cogent evidence that proves that the person's possession has been visible, exclusive and continuous for the required statutory period.[6] The Claimant submitted that there is no reason why cogency ought not to be demanded for evidence as to payment of rent and the Defendant's evidence can certainly not be described as cogent.

Issues

34. The court is therefore required to determine whether the Defendant has acquired title to the subject premises by adverse possession, that is, whether there was factual possession by a person in whose favor time can run coupled with an intention to possess. In determining whether the necessary statutory time period

[6] See ***Lynch v Nova Scotia (Attorney General)*** [1985] NSJ No. 456 per Halet J***;*** see also ***Adina Hoyte v Donald Wohler*** CV2011-00977 per Boodoosingh J

has elapsed, the court must make a determination in relation to:

34.1. When time would have begun to run in favor of the Defendant and against the Claimant in relation to adverse possession;

34.2. Was there any acknowledgment of the owner's interest by the Defendant so as to stop time running?

35. If the Defendant's adverse possession claim is unsuccessful the case would come to an end as the case in equity was not pursued.

The Law

36. The relevant provisions of the Act, with added emphases, are as follow:

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.***

….

9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, ***shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).***

….

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.***

…

22. 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."

37. As suggested by the Claimant, the cumulative effect of sections 3, 9 and 22 of the Act is that:

    37.1. The paper owner of the land has the right to make entry and he has 16 years so to do;

    37.2. Time would start to run against the paper owner of the land from the determination of the tenancy or the **last date rent was received**; and

    37.3. Once time starts to run, and the 16 year period as defined in the sections elapses, then the right or title to the land by the paper owner is extinguished.

38. The Defendant has the onus of establishing the defence of adverse possession.[7] The relevant period commences as at the non-payment of rent pursuant to section 9 of the Act. Though that section spoke of a yearly tenancy, the phrase 'or other period' has been held to be applicable to any periodic tenancy and time would run despite the contractual tenancy possibly being transformed into a statutory tenancy since the existence of a statutory tenancy does not make the tenant's occupation any less adverse.[8] In the case of ***Jessamine Investment Co v Schwartz*** [1976] 3 All ER 521, time started to run because the tenant was not able to pay rent as the whereabouts of the mesne landlord were unknown, though she was willing to pay. The Limitation Act 1939 of the United Kingdom was considered. Section 9(2) of the Limitation Act is similarly worded to section 9 of the Real Property Limitation Act and in discussing the former, Sir John Pennycuick said at page 524:

> *"It seems to me that s 9(2) of the 1939 Act squarely covers the present case, and that Mrs Schwartz did indeed acquire a possessory title against the mesne landlord. The sub-tenancy, being a weekly tenancy, was for 'a year or other period'. Accordingly, the sub-tenancy must be deemed to have been determined at the end of the first week, and accordingly the mesne landlord's right of action must be deemed to have accrued at that date subject to the proviso postponing the deemed accruer of the right of action until the last receipt of rent. Nothing in s 10, having regard to the definition of 'adverse possession', displaces that result. Taking the last receipt of rent to have been in 1945, it follows that the mesne landlord's right of action accrued in 1945 and that the 12 year period expired in 1957."*

39. The applicable test to determine whether an occupant's possession was adverse however was considered settled by the Privy Council authority of ***J.A. Pye (Oxford) Ltd. v Graham***. The reasoning in that case has been held to be equally applicable to Trinidad and Tobago.[9] The principles established in ***Pye*** and the

[7] See ***Lystra Beroog & Anor v Franklyn Beroog*** per Kokaram J
[8] See ***Moses v Lovegrove*** [1952] 2 QB 533
[9] ***Grace Latmore Smith v David Benjamin*** per Mendonca JA

equally applicable case of ***Powell v Macfarlane*** (1979) 38 P&CR 452 were very helpfully summarized in the UK Court of Appeal decision in ***Topplan Estates Ltd v Townley*** [2004] EWCA Civ 1369 by Parker LJ and are as follow:

> *"[70] In the light of Powell and Pye, the following general propositions, relevant to the instant case, may in my judgment be stated.*
>
> *[71] First, the epithet 'adverse' in the expression 'adverse possession' in para 8 of Part I of Sch 1 to the Limitation Act 1980 refers not to the quality of the possession but to the capacity of the party claiming possessory title ("the squatter") as being a person 'in whose favour the period of limitation can run' (per Lord Browne-Wilkinson at para 35: see para 39 above). In particular, it does not connote any element of aggression, hostility or subterfuge (per Lord Hope of Craighead at para 69: see para 40 above), nor does it throw any light on the question whether the squatter is in possession of the land (ibid.).*
>
> *[72] Second, the word 'possession' in the expression 'adverse possession' means no more than 'ordinary possession of the land' (per Lord Browne-Wilkinson at para 36: see para 39 above). However, in order to establish possession in this context, the squatter must prove (a) sufficient objective acts to constitute physical possession ("factual possession") coupled with (b) an intention to possess (animus possidendi). "Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action" (per Lord Hope of Craighead at para 70: see para 40 above).*
>
> *[73] Third, an intention to possess must be distinguished from an intention to own: it is only the former which is relevant in the context of adverse possession (per Lord Browne-Wilkinson at para 42: see para 44 above). An intention to possess may be, and frequently is, deduced from the objective acts of physical possession (per Lord Browne-Wilkinson at para 40 (see para 38 above) per Lord Hope of Craighead at para 70 (see para 40 above) and per Lord Hutton at para 76 (see para 41 above)). However, where the acts relied on as objective acts of physical possession are equivocal, further evidence of intention may be required (see, eg, per Lord Hutton ibid.) An intention to possess means, in this context, "an intention to occupy and use the land as one's own" (per Lord Hope of Craighead at para 71: see para 40 above). It is not necessary for the squatter to establish that he had a deliberate intention to exclude the true owner (ibid.): it is enough that he intends to exclude the owner "as best he can" (per Slade J in Powell at p 472: see para 42 above); or, to put it another way (as Slade J did in Powell at pp.471-472: see para 43 above), "to exclude the world at large, including the owner with the paper title if he be not the possessor, so far as is reasonably practicable and so far as the processes of the law will allow". The intention to possess must be manifested to the true owner, but where the objective acts of physical possession are clear and unequivocal, those acts themselves will generally constitute a sufficient manifestation of the intention to possess (per Lord Hope of Craighead at para 71 (see para 41 above) and per Lord Hutton at para 76 (see para 41 above)).*
>
> *[74] Fourth, as to factual possession, as Slade J said in Powell (at p 470-471) in the passage cited with approval by Lord Browne-Wilkinson in para 41….:*
>
> > *"The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. . . .. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question*

as an occupying owner might have been expected to deal with it, and that no one else has done so."

40. In that case the respondent's father was granted a grazing licence over the disputed lands. His father died 29 April 1982 and after his death the respondent wrote to the lesser asking for an agreement but received no reply and no rent was paid. The respondent continued to use the disputed lands in the same way as it had previously been used by himself and his family. The appellant became the registered owner of the premises in 1992 and sought an order for possession. The judge upheld the respondent's adverse possession claim and same was affirmed on the appeal whereby Parker LJ opined:

> *"[79]…… it would run wholly contrary to their Lordships' observations in Pye to hold that objective acts which would otherwise amount to factual possession during the relevant period can somehow be diluted or denatured by reference to dealings between the squatter and the true owner which, by their own terms, relate exclusively to some earlier period. Nor, in the light of Pye, can I see any basis for the proposition that a squatter who holds over after the expiry of an earlier consensual arrangement with the true owner is somehow in a weaker position in relation to his continuing activities on the land than a person who enters on the land for the first time as a trespasser and proceeds to carry out precisely the same activities."*

41. In the case of **Williams v Jones & Anor** [2002] EWCA Civ 1097 Buxton LJ said:

> *[14] ..... I give no weight, here or elsewhere, to the occasions upon which, during his evidence, the Claimant, who was a small farmer in rural Wales, referred to himself as having a licence or permission to graze sheep on the land. The question was what the arrangements established in law, not how an unsophisticated layman sometimes talked about them.*
>
> *[15] Second, as a matter of law, the effect of para 5 was only to deem the tenancy to be at an end for the purposes of the Limitation Acts, so that the paper owner could not object to time running on the sole ground that an ex-tenant was there by grant. The possession obtained by operation of law by the creation of the tenancy expired with the expiry of that tenancy.*

42. Buxton LJ found that the following principle was correct in law: "*The true distinction between a "trespasser case" and a "former tenant case" is that in the former, animus possidendi is required in order to establish that the paper owner has been dispossessed. That is not necessary in a "former tenant" case, because as the freeholder has permitted the tenant into possession, he will normally continue in possession, just as he did before the payment of rent stopped."*

43. To my mind, the provisions quoted above under our Act in relation to the nonpayment of rent recognize that a tenant continuing in possession would have fulfilled the requirements under ***Pye*** of being in actual possession with intention to possess so that the only other ingredient required for adverse possession in

relation to a former tenant would be the nonpayment of rent for the required number of years.

44. In ***Pye*** it was held that a willingness to pay rent is not inconsistent with adverse possession. However, an acknowledgement, in the form of that anticipated by section 15 of the Act will have the effect of starting time all over again. Where, having taken adverse possession of unregistered land, a trespasser expressly or impliedly acknowledges the title of the owner, time will start to run afresh against the owner from the date of the acknowledgment.[10] The learned author Stephen Jourdan in the text '*Adverse Possession'* states the principle as such:

> *"16-57 Normally, where an occupier of property writes a letter to the true owner seeking to buy or rent the property, that will implicitly recognize the title of the owner. In the Irish case of Johnson v Smith, an order for sale had been made in an administration action, and the occupier of the land to be sold wrote to the solicitor of the party having the carriage of the order a written proposal for the purchase of the land. This was held to be an acknowledgment of the owner's title.*
>
> *In Edginton v Clark, letters written by person in adverse possession offering to buy the land were held by the Court of Appeal to amount to an acknowledgment of the title of the trustees as freeholders. The letters were to the true owner's agent.*
>
> .....
>
> *Upjohn LJ said:*
>
> > *'If a man makes an offer to purchase freehold property, even though the offer be subject to contract, he is quite clearly saying that as between himself and the person to whom he makes the offer he realises that the latter has a better title, and that would seem to be the plainest possible form of acknowledgment.'*
>
> *That will not be so, however, if the letter makes it clear that the writer does not recognize the owner's title. In Doe d Curzon v Edmunds, the squatter wrote a letter to the true owner saying:*
>
> > *'Although, if matters were contested, I am of opinion that I should establish a legal right to the premises, yet, under all circumstances, I have at length made up my mind to accede to the proposal you made, of paying a moderate rent, on an agreement for a term of twenty-one years.'*
>
> *Parke, B, in his judgment said that the trial judge had been right to direct that this was no acknowledgment. He said:*
>
> > *'… it was no acknowledgment of title, because there was no final bargain.'*
>
> *Nor will negotiations amount to an acknowledgment if it is mere bargaining which never eventuates in a recognition of the owner's title, as in the Australian case of Bree v Scott."*

45. The UK Court of Appeal decision in ***Mayor and Burgesses of the London Borough of Tower Hamlets v Barrett & Anor*** [2005] EWCA Civ 923 involved a question as

[10] Halsbury's Laws of England > LIMITATION PERIODS (VOLUME 68 (2008)) > 2. PARTICULAR CAUSES OF ACTION > (2) LAND AND RENT > (iv) Possession of Land > 1081. Effect of acknowledgment of owner's title.

to whether or not there was an acknowledgement of the paper owner's interest so as to stop time running by way of a 'without prejudice' correspondence and the following observation was made:

> *[75] Mr McDonnell nonetheless submits that the fact that the 30 April 1985 letter was written "without prejudice" means that it cannot operate as an acknowledgment. In support of that contention he cites the (strictly obiter, if strong, remarks of Mellish LJ in re River Steamer Company (1871) LR 6 Ch App 822 at 831) that "a letter which is stated to be without prejudice cannot be relied on to take a case out of the Statute of Limitations, for it cannot do so unless it can be relied upon as a new contract."*
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> *[76] I do not accept that submission. First, the letter in the River Steamer case was genuinely "without prejudice" in the familiar legal sense in that it was written in the context of a dispute which had advanced to the point of an arbitrator having been appointed. Here the correspondence in March and April 1985 was not written in the context of projected litigation or arbitration, or even in the context of a dispute. The heading "without prejudice", introduced, it would seem, by the Council, was, at least in the eyes of a lawyer, inapt.*
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> *[77] Secondly, the formulation of Mellish LJ, which may have been justified in relation to an effective ac-knowledgment of a debt under the seventeenth century Statute of Limitations then in force, does not appear to represent the law under s 29 of the 1980 Act. In Edginton's case, at 376, Upjohn LJ, giving the judgment of this court, said:*
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> > *'If a man makes an offer to purchase freehold property, even though the offer be subject to contract, he is quite clearly saying that as between himself and the person to whom he makes the offer he realises that the latter has the better title, and that would seem to be the plainest possible form of acknowledgment.'*
>
> *[78] If, as is clear from that passage, a plainly non-binding offer, ie one whose acceptance cannot lead to a concluded contract, can operate as an acknowledgment, it is very difficult to see how, at the same time, an acknowledgment can only be effective if "it can be relied upon as a new contract". In my view, we would be increasing the uncertainty in this already difficult area of law if we distinguished this case from the principle laid down in Edginton's case.*
>
> *[79] It is true that, in that case, Upjohn LJ said at 377, "it is not possible to lay down any general rule as to what constitutes an acknowledgment". However, the difference between a simple "subject to contract" offer, as in that case, and a slightly more tentative "subject to contract" acceptance, as in this case, is too slight to justify a different result, especially in light of the robust way in which Upjohn LJ expressed himself. (I should add that, although Upjohn LJ was considering the effect of the Limitation Act 1939, it was not relevantly different for present purposes from the 1980 Act).*
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> *[80] It accordingly follows that I consider that the Council's case on acknowledgment under s 29 of the 1980 Act would, subject to the point that the acknowledgment was made by Trumans, rather than the Bar-retts, succeed, but that its case on implied licence fails.*

46. In ***Ofulue and another v Bossert & Anor*** [2009] 3 All ER 93 the Claimants challenged the Court of Appeal's decision to dismiss their appeal against a ruling that the title to a property in London should be amended to show the Defendant as the registered owner instead of them. The Claimants based their appeal on a "without prejudice" letter the Defendant sent them in 1992 in response to previous

possession proceedings. They argued that as the Defendant offered to buy the property in the letter, she had effectively acknowledged that they were the rightful owners. They felt that this defeated her claim that the title of the property should pass to her because of 12 years' adverse possession. However, the House of Lords ruled by a majority in favour of the respondent and found that a statement in without prejudice negotiations should not be admissible in evidence, other than in exceptional circumstances. In the case, the offer in the letter was connected with the issue between the parties in the earlier proceedings and the title to the property was in issue in the sense that the Claimants claimed the unencumbered freehold whereas the Defendants were contending that the freehold was subject to their interest. Their Lordships found that it would be inappropriate, for reasons of legal and practical certainty, to create further exceptions to the rule and s 29 of the Limitation Act could not justify overriding the public policy of not admitting in evidence what was said in without prejudice negotiations.

47. Unless there is a hiatus between the periods of possession of successive squatters, the second squatter, whether he has purchased from the first squatter or dispossessed him in some other way, can rely on the first squatter's period of adverse possession.[11] Further, it is trite law that previous notices to quit or unsuccessful demands for possession have no effect on time running.[12] Similarly, unsuccessful ejectment proceedings have no effect on time running.[13]

The Evidence

Evidence of Mr. Maundy

48. Evans Mundy, attorney at law for the previous owners, Ms. Julien and Ms. Lum Kin, gave evidence based on personal knowledge and perusal of the record and documents in his possession in relation to his former clients. He was retained around April 1996 and his instructing attorney was Mr. Sean Julien. His instructions were that at the time the property was conveyed to his clients there had been a tenant on the property and a notice to quit had been served on 1 March 1982. Further, after his clients became the owners they terminated the tenancy through notice to quit dated 04 October 1982. Notwithstanding the notice to quit

[11] See ***Mayor and Burgesses of the London Borough of Tower Hamlets v Barrett & Anor*** [2005] EWCA Civ 923; and also ***Asher v Whitlock*** (1865) LR 1 QB 1 and ***Willis v Earl Howe*** [1893] 2 Ch 545

[12] See **Mount Carmel Investments Ltd v Peter Thurlow Ltd** [1988] 1 WLR 1078; see also ***Bedford Thomas v Annie McPhy & Anor*** Claim No. 558 of 2001 (Eastern Supreme Court of Justice)

[13] ***Markfield Investments Limited v Evans*** [2001] 1 WLR 131), or the making of related applications or objections to Land Registry; ***J A Pye (Oxford) Ltd v Graham*** [2000] Ch 676 at 699-703 - upheld on appeal to the House of Lords, where this question was not considered: [2002] UKHL 30

Mr. Hannays and his family continued to occupy the property. By letter dated 10 September 1992 Mr. Hannays, through his attorneys, offered to purchase the property. He was retained after Mr. Hannays passed away and a notice to quit was served on Mrs. Hannays dated 19 March 1996 to expire 30 April 1996. Ejectment proceedings were initiated but it never went to hearing as Mrs. Hannays never attended court and medical certificates were submitted to the court to account for her absence.

49. Thereafter his clients asked for assistance in finding a purchaser. The Defendant was approached to purchase but she was unable to raise the money. He was not aware of any repairs being conducted though he remembered a request to do electric repairs which request was denied. He understood Mrs. Hannays to be a statutory tenant and did not dispute her right to occupy same but was of the opinion that upon her death the tenancy reverted back to the landlord and for that reason he always treated the Defendant as a licensee.

50. During the time that his clients and the Claimant were in negotiations for the property a letter was sent to the Defendant requiring her to vacate the premises. In response her attorney, Mr. David Hannays, indicated that there was no question of a license between the Defendant and his clients as the Defendant was a tenant and was prepared to purchase the property. The letter read:

> *"My client, Sassy Garcia, has handed me you letter to her dates the 8th day of April 2004 with instructions to apply as follows:*
>
> *(a) There has been no question of a licence between the parties in this matter. My client is the tenant having lived with the previous tenant, Maudlin Hannays up to the time of her death;*
>
> *(b) The correct position is that my client can raise the money, but that her bankers after having had a valuation of the said premises, have advised my client to pay no more than $350,000.00; and*
>
> *(c) My client, however, is prepared to offer $375,000.00, without prejudice, to her other legal rights.*
>
> *My client has further advised me that she is prepared to contest any legal proceedings brought against her."*

Mr. Maundy indicated that it was not true to say that rents were last paid in 1992 as he was in possession of records showing rent paid up to April 1996. By way of letter dated **23 August 1996**, Mr. David Hannays tendered to Mr. Sean Julien, by way of Messrs. B. D. Hewitt & Co., rent for the period ending 30 April 1996.

Evidence of Eustace Nancis, Managing Director of the Claimant

51. The evidence of this witness was of little to no assistance as it simply rehearsed what was represented to him by Mr. Maundy and given the time the Claimant

became the paper owner he had no personal knowledge of the previous transactions in relation to the subject premises.

Evidence of Sassy Garcia

52. In her witness statement filed 27 May 2015, the Defendant gave evidence that her father died in 1995 and thereafter she continued in exclusive occupation and she attempted to pay the rent on several occasions in the year 2000 but same was refused.

53. The Defendant was not an impressive witness and her inconsistencies were brought to the fore by the Claimant's attorney at law in his written submissions wherein he drew attention to the fact that:

    53.1. The Defendant initially pleaded and deposed that rent was last paid in the year 2000 but later amended her pleadings to aver that her father stopped paying rent since the year 1992; and

    53.2. The Defendant again amended her pleadings to later aver that rent was paid up to 01 January 1996 but stated in her witness statement that her father ceased to pay rent from on or about March 1992.

54. The court agrees with those observations as they concur with the court's own sentiments and conclusions in relation to the Defendant's credibility. She was caught out on a lot of her evidence and it is obvious that her credibility was totally out of the door. All of the documents which were filed had that the last time she paid rent was 1992. There was an explanation given that there were letters produced which showed that the last time rent was paid as 1996 yet even on that she was quite unreliable. The court further took issue with the Defendant's evidence in her June 2012 affidavit that she paid the rent into a separate account as the landlord refused to take same and that the rent stood at $14,400.00. The uncontested evidence of the Defendant was that the rent was $100.00 per month. The sum of $14,400.00 would thus represent rent for a period of 12 years supposedly suggestive of the fact that rent was last paid in the year 2000 (2000 to 2012 being 12 years which amounts to 144 months totaling $14,400.00 at $100 per month). There was no explanation given by the Defendant as to how this figure would have been derived when her evidence later adduced that rent was last paid in March 1992. It appears therefore that that figure may have been manufactured to reflect the length of time the Defendant **initially** claimed rent remained unpaid.

55. Further, the Defendant's witnesses were not considered reliable in any event because of the failure to have separate panels of witness statements – they were all "cut-and-paste". The Defendant called two other witnesses, being neighbors, who simply confirmed that the Defendant resided at the subject premises with her father and mother since moving into the property in 1971 till present. Also, they deposed that the subject premises were in a state of disrepair but her father had substantial renovation works done to it. The witness statements appear to be cut and paste without identifying specifically what repairs would have been done.

56. One of her witnesses, Mr. Charles, tried to say that his witness statement was written by him and then typewritten up but it is obvious that his statement, along with the others, were all offered by the same person – more than likely by the attorney at law.

57. At the end of the day, however, the question to be determined by the court relies heavily on the contemporaneous documentary evidence since it was quite clear to the court, as evidenced by the several amendments to the defence and counterclaim, that the Defendant was not fully aware of the dates when rent was paid. It seems apparent that during her mother's lifetime, and after the death of her father, the Defendant was not the one instructing the attorney, Mr. Hannays, to forward the rent to the landlord since she was not aware of the payment of rent beyond the date set out in her first version of the defence and counterclaim. It was only after discovery was made that she became aware of later payments.

Analysis

58. The original tenancy would have been a contractual one which was converted into a statutory tenancy upon the death of the Defendant's father. At the time of his death, the Defendant and her mother, Maudlin, were apparently residing with him. As a result, under the operation of the law, the Defendant's mother would have been entitled to the statutory tenancy and that statutory tenancy would not have been transferable in law to her, as set out above.

59. If the notice to quit was sufficient to determine the statutory tenancy, then the statutory tenancy would have come to an end by 30 April 1996. Therefore, the landlord's right to re-enter would have accrued by 1 May 1996 unless, as per the provisions of section 9 of the Act, there was a later payment of rent since the Act outlines that time shall start to run at the determination of the tenancy or when rent was last **received, whichever shall happen last**.

60. Attorney-at-law for the Defendant had submitted that the court ought to construe the payment made in relation for the period for which it is paid i.e. a payment made in August 1996 for rent due in April 1996 should be counted as relating to the April 1996 date and not August 1996. The court rejects that submission as being contrary to the provision of the Act. The terminology quite clearly defines the relevant date of accrual as being the last time when any rent payable in respect of such tenancy shall have been received. It does not define the relevant date of accrual in relation to the period for which the rent was due. Therefore, a payment in August 1996 for rent due in April 1996 is counted as relating to the August 1996 date and not the latter. In this case, payment by 23rd of August 1996 means that the relevant date of accrual of the cause of action is 23 August 1996, at the very least.

61. The last receipt of payment which was acknowledged was for the period ending 31 January 1996. However, by letter dated 23 August 1996 payments were purportedly made for rents outstanding for March and April 1996. On behalf of the Defendant it was submitted that this letter ought not to be indicative of a payment because of Mr. Sean Julien's letter dated 09 December 1996 whereby he reminded Mr. David Hannays that rent was still outstanding for the period March and April 1996. The inference then being that the rent tendered on 23 August 1996 was not accepted. In considering this submission the court notes:

    61.1. There is no evidence of the rent tendered on 23 August 1996 being refused;

    61.2. The letter of 23 August 1996 was addressed to Mr. Sean Julien in the care of Messrs. B. D. Hewitt and Co.;

    61.3. The letter of 09 December 1996 was written to Mr. David Hannys by Mr. Sean Julien in his own personal capacity whereas previous correspondence from Mr. Julien to Mr. David Hannays was written using the letterhead of B. D. Hewitt and Co such as that written 27 March 1996 requesting possession of the subject premises;[14]

62. Taking into consideration that the burden of proving adverse possession rests on the Defendant, the court cannot accept the submission that rent was not paid/received on 23 August 1996. On a balance of probabilities the court accepts that rent was received 23 August 1996, the said letter being found in the records of Mr. Maundy, then attorney for the previous owners. There was no follow-up correspondence to suggest that there was no receipt of the alleged payment enclosed in the 23 August 1996 letter. The fact that Mr. Sean Julien may have suggested in December 1996 that the rent covered by that payment was

[14] See EM4

outstanding could simply be as a result of him not yet having sight of the said letter since he did not make mention of it in his December letter to suggest that the contents of it were untrue. The Defendant's contention that the rent tendered on 23 August 1996 was refused was not borne out by any contemporaneous document or evidence and, as the court has mentioned, the court was not impressed by the Defendant's credibility. There was no correspondence, for example, returning the rent tendered on 23 August 1996 nor did the Defendant provide any cogent evidence in relation to the alleged refusal of this tender.

63. Rent having last been received on 23 August 1996, time would therefore start running as of that date. A period of sixteen years puts the expiration of the statutory limitation period at 23 August 2012. The claim was initiated on 18 May 2012, which is before the expiration of the sixteen years. The matter being commenced before the expiration of the 16 year period, the first Defendant has not been in 16 years undisturbed possession so as to satisfy the Act for the purpose of making a successful claim of adverse possession. The Claimant's title has therefore not been extinguished.

64. If even the statutory tenancy could not have been determined by the notice to quit, which is not a point raised by the Defendant, then it must have come to an end only upon the death of the Defendant's mother which would have been on the 27 March 2002. Therefore, the determination of the tenancy, one of the limbs for consideration under section 9 of the Act, would have been at that date in light of the non-transferability of that type of tenancy and therefore, definitely, 16 years would not have expired before the commencement of these proceedings.

65. In the circumstances, the court is not required to determine if there was an acknowledgement so as to stop time running. In any event, the court would not have been minded to accept the Defendant's letter from Mr. David Hannays, attorney-at-law, in 2004 as an unequivocal admission of the Claimants' title in light of the language used in the letter as set out above. But, this does not arise for resolution in light of the finding above.

The Defendant's equitable interest in the subject premises

66. The court notes that the Defendant did not pursue the claim for an equitable interest in the property and she was well advised in that regard. She was not able to provide any cogent evidence in respect of that pleaded claim and the unreliable evidence in respect of it in her witness statement was struck out. Therefore, it is not necessary for this court to determine that issue.

67. The Defendant's claim of an equitable interest would thus be dismissed.

Order

68. Having regard to the matters discussed above, it is clear that the Defendant cannot succeed in her claim for title by adverse possession.

69. As a result, the court orders that the Defendant do deliver up possession of the parcel of land known as No. 10 Farfan Street, Arima in the Ward of Arima together with the dwelling house located thereon forthwith.

70. The Defendant shall pay to the Claimant the prescribed costs of the claim quantified by the court in the sum of $14,000.00.

71. The counterclaim is dismissed and the Defendant shall pay to the Claimant the prescribed costs of the counterclaim quantified by the court in the sum of $14,000.00.

72. In light of the length of time that the Defendant has been in possession of the premises, the court will entertain from the parties' submissions with respect to a possible stay of the order.

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/S/ Devindra Rampersad J
High Court Judge

Assisted by
Charlene Williams
Judicial Research Counsel
Attorney-At-Law