

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

Claim No. CV2020-00609

Between

**DIPCHAND SEENATH
(as the Court appointed Legal Personal Representative
of the Estate of Motilal Seunath also called Motilal Seenath)**

Claimant

**And
AMBROSCIO RIVIERA**

First Defendant

RITA MITCHELL

Second Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: June 15, 2021.

Appearances:

1. Ms. Tara Lutchman Attorney-at-Law for the Claimant.
2. The First Defendant being unrepresented.
3. Mr Kenneth Thompson, Attorney-at-law for the Second Defendant.

DECISION

Introduction:

1. Before the Court for its determination is the Claimant's Notice of Application dated 3 March 2021 ("the application") by virtue of which the Claimant sought the following reliefs:
 - a. An Order that the Amended Defence and Counterclaim as filed on the 27th October, 2020 on behalf of the Second Defendant and the purported Reply and Defence to Counterclaim as filed on the 5th January, 2021 on behalf of the Second Defendant be struck out on the grounds that it is frivolous and/or vexatious and/or is an abuse of the process of the Court and/or does not disclose a reasonable Defence in the matter.

- b. Alternatively that summary judgment be entered for the Claimant in terms of paragraphs 1, 2 and 3 of the Amended Statement of Case as filed on the 28th September, 2020.
 - c. That the Second Defendant pay the Costs of this action and the Costs of this application to be assessed by the Court; and
 - d. Such further and/or other relief.
2. The grounds upon which the application is premised are as follows:
- a. The Claimant's grandfather granted a yearly lease in the 1950's regarding No. 5 Mission Road, San Juan to Fautino Riviera, the father of the First Defendant, along with his wife Daisy and the First Defendant.
 - b. Mr Riviera died in the 1970s and his wife continued living with permission of the Claimant's grandfather. The First Defendant also moved out of the property in this time and Mr Riviera's wife died in 1979.
 - c. Thereafter a new lease dated 30 November 1981 was made and the First Defendant became the yearly land tenant for a period of 21 years. The Second Defendant resided at the house in the 1970s.
 - d. The First Defendant paid a yearly land rent to the Claimant's grandfather until 1999 and then to Motilal Seunath until the end of 2004. Thereafter he refused to pay any sums. Since 2003 there was no renewal of the lease and a yearly tenancy took effect.
 - e. In 2019 separate letters were sent to the Defendants to quit and deliver up possession on or before 31 December 2019.
 - f. The First Defendant made an application on 3 March 2021 to treat his case as undefended.
 - g. The Amended Defence and Counterclaim filed on 27 October 2020 wherein the Second Defendant raised the defence of adverse possession does not create an interest in the land and the Second Defendant did not establish a case for exclusive occupation or exclusive possession of the land.
 - h. The initial occupation had not been shown to be without consent of the paper title owner.

The Law:

3. The law in relation to summary judgment is settled in this jurisdiction. The principles to be applied in an application for summary judgment were summarised by Lewison J in **Nigeria v Santolina Investment [2007] EWHC 437 (Ch)** as follows:
 - a. The court must consider whether the Defendant has a “realistic” as opposed to a “fanciful” prospect of success.
 - b. A “realistic” defence is one that carries some degree of conviction. This means a defence that is more than merely arguable.
 - c. In reaching its conclusion the court must not conduct a “mini-trial”.
 - d. This does not mean that the court must take a face value and without analysis everything that a Defendant says. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
 - e. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.
 - f. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without a fuller investigation into the facts at trial than is possible or permissible on an application for summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

4. In its determination as to whether the defence has a real prospect of success the Court also considered the established guidance articulated in **Swain .v. Hillman [2001] 1 All E.R. 91** and **Three Rivers District Council v. Governor and Company and Bank of England No. 3 [2001] UKHL, 16.**

Resolution of the Application:

5. In the Amended Defence and Counterclaim the Second Defendant pleaded that she was residing at the property since 1976 and has been in sole possession from 1979 to 2020. The Second Defendant pleaded that in 1988, the house on the land belonged to her and that she converted same into a modern concrete structure. The Second Defendant also pleaded that the First Defendant was not a tenant of the land and that he did not live on the said property.
6. The Second Defendant in her Amended Defence and Counterclaim also raised a claim of adverse possession.
7. The law in relation to adverse possession is settled in this jurisdiction and the general applicable principles are as follows:
 - a. The burden of establishing adverse possession rests entirely on the squatter.
 - b. There are two distinct elements of adverse possession which must be established: factual possession and the intention to possess.
 - c. The paper title holder is presumed to be in possession.
 - d. It is for the squatter to adduce clear and cogent evidence as to his factual possession and his intention to possess.
8. The matters raised by the Second Defendant certainly are triable issues. The determination of these issues are heavily fact dependent and it is not open to the Court, at this stage, to conduct a mini trial.
9. Based on the Claimant's pleadings a letter was sent to the Defendants requiring them to vacate the said premises. Furthermore based on the Claimant's case the lease in relation to the land ended on or about 2003. Accordingly the possibility of occupation adverse to the interest of the Claimant from 2003 to 2019 cannot be summarily disregarded.
10. In the circumstances, the Court holds the view that the defence and counterclaim cannot be struck out and triable fact dependent issues which have a reasonable prospect of success

have been raised. Consequently, the Notice of Application must be and is hereby dismissed and the Claimant shall pay to the Second Defendant costs in the sum of \$7,500.00.

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FRANK SEEPERSAD

JUDGE