

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(TOBAGO)**

**CLAIM CV2006-01708
(H.C.A. T158 OF 2000)**

BETWEEN

MANZOOR ALI

CLAIMANT

And

VICTORIA URQUHART

DEFENDANT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. K. Ratiram for the Claimant

Mr. M. Meritt for the Defendant

JUDGMENT

This is claim concerns an 8,371 square foot parcel of land at Calder Hall, Tobago.

The Claimant claims possession based on his ownership by deed of conveyance in his favour dated 10th January 2000 registered as No. 4354 of 2000. The proceedings were started by an Originating Summons filed 29th September 2000 under the Rules of the Supreme Court 1975 and were ordered to continue as if began by writ. A statement of claim was filed on 19th February 2001 extending the claim to include mesne profits at the rate \$6,000.00 per month from January 2000.

The Defendant counterclaims a declaration that she is the owner of and entitled to possession of the parcel of land based on her having bought it for \$3,000.00 from Donlyn Phillip in 1976. She relies on a receipt dated 17th March 1976 supposedly issued by him to her for the purchase price.

While the Claimant's title is pleaded and accepted, he was unable to put forward any evidence to contradict whatever the Defendant might say about the purchase. The Defendant on the other hand gave certain evidence in cross-examination that affected her credibility adversely. I will return to this.

The Claimant brought the parcel of land at public auction from Lakeran Ramnarine who had exercised his power of sale as mortgagee. It is clear from the evidence that the Claimant knew at the time of the purchase that the Defendant lived there in a concrete house. He therefore had notice of the existence of the house and of her occupation, and was put on notice to ascertain or establish the basis on which she did so. He did not. Instead, he says, he relied on the auctioneer at the sale saying that he would get vacant possession and that after the purchase the lawyers would "...handle..." the issue of the Defendant being in occupation. After the purchase he went himself to the property and told the Defendant to move out. Any doubt as to his knowledge of an occupier is put beyond doubt by the conveyance to him from Ramnarine expressly being subject to an existing tenancy. I will return to this tenancy presently.

The Claimant was in no position to deny the authenticity of the receipt for the purchase price produced by the Claimant, saying that he did not know Donlyn Phillip's signature. Equally, however, he cannot be expected to accept its authenticity.

The outcome of this claim and of the counterclaim therefore turn on whether the Defendant has an interest in the parcel of land. The Claimant does not dispute, as

Mr. Ratiram conceded from the bar table on enquiry from me, that the Defendant built the house that is there.

Before going further I should say this. The conveyance to the Claimant (which would have been prepared by his attorney) recites the existence of a tenancy and the conveyance of the parcel of land is expressly subject to that tenancy. There is no evidence of any person apart from the Defendant being in occupation of the parcel of land in question at any time, so it is a reasonable inference to draw that this tenancy is a reference to the Defendant's occupation. That being so, there is then no evidence as to the terms of that tenancy, and nothing of its termination. On this basis alone, the claim would have to fail. It is regretted that this appears to have escaped the attention of Attorneys-at-law acting for the parties.

I return to the issue of whether any such interest exists, or, rather, existed at the time the Claimant bought the property. This turns almost exclusively on the Defendant's evidence. If the receipt is authentic, then she is the beneficial owner of the fee simple. If it is not, the question then arises as to whether she has any other, perhaps lesser, interest in the land.

The Claimant's case is that the Defendant was only a bare licensee of the parcel of land and that this licence was terminated by Donlyn Phillip before he died on 9th May 1993. While there is no evidence to support this, Mr. Ratiram in closing addresses urged me to so hold. The contrary is, however, in effect conceded, and perhaps properly so given the specific reference to a tenancy in the conveyance.

The difficulty in deciding this issue lies with the Defendant's evidence.

In cross-examination she expanded on her examination-in-chief (as set out in her witness statement) in response to Mr. Ratiram's questions and related that she had receipts for materials used to build the house, but that they were at home. She said that she would have brought them with her to the trial but did not know that it

was fixed for 15th July 2008 – she thought the fixture was a pre-trial hearing. I find all this difficult to accept. It is unlikely that her Attorney would tell her the fixture for 15th July was anything other than the trial. It is also unlikely that she would keep receipts for over 30 years if she enjoyed a good relationship with Donlyn Phillip, as she said she did, because there would have been no need or reason to keep them. And if she did have those receipts, there is no good reason, no reason at all, not to have provided them to her lawyer. After all, from 2000 she knew that her land and her house were in dispute.

She also spoke of letters written to and by various lawyers, particularly at the time of the auction of the property, none of which were produced, unlike one from Mr. Walters on her behalf written in March 2000 replying to the Claimant's attorney who had called on her to vacate the property.

She was uncertain, indeed she said she could not remember, when she actually went into occupation: it was, she said, after the land was bought in 1976 and after the house was built; but Mr. Walters' letter in March 2000 refers to her being in occupation since 1967 (which might be regarded as a typographical error) and in a previous High Court Action she brought against Muriel Phillip, as the legal personal representative of Donlyn Phillip, she claimed to have been in possession since 1973.

Those earlier proceedings in 1997 raise an even larger obstacle. She claims there a declaration of ownership to the parcel of land based on possessory title, and makes absolutely no mention whatever of any purchase. The latter is mentioned for the first time in Mr. Walters' letter of March 2000.

She also said in cross-examination that she attended the auction and told "...the gathering" ... of her ownership. The Claimant says she did not. She did not tell the auctioneer of her ownership. I accept that her being in possession was something known at that time to Lackeran Ramnarine's Attorneys as well as to the

auctioneer (not to mention the Claimant), so the auctioneer saying that the Claimant would get vacant possession is of little assistance to the Claimant.

She also said on several occasions that she could not remember when certain events took place. That is understandable in relation to events that took place in 1976 and thereabouts, particularly if there were no reason to keep them in mind. I would have thought, however, that her recollection of events some 8 years ago, such as the auction sale, the correspondence, and the like, would have been much better since her land and her house were the subject of a dispute.

There is also the unanswered question of why Donlyn Phillip would pay the Land and Building Taxes and the Water and Sewerage Rates in relation to the parcel of land up to date of his death in 1993 if he had in fact sold it to the Defendant in 1976. While I might accept the Defendant's evidence that there was a good relationship between herself and the later Mr. Phillip, I do not think it likely that the hand of friendship would extend that far and for that long.

In all this, however, the Defendant was not shaken, indeed she was not pressed on her evidence that she consulted various lawyers when she heard of the auction, or that she had receipts or that she had copies of letters. Nor was it put to her that she did not pay any purchase price to Donlyn Phillip, nor that she did not have the receipt in question prior to 2000, nor that it was fraudulent or forged or irregular in any other way.

There are two further matters that I have considered. The first is that the receipt sets out the purchase price as being \$3,000.00 in 1976. When Donlyn Phillip bought the parcel of land, together with another parcel of 5065 square feet in 1973, the total purchase price was \$2,000.00. This is indicative of a resale three years later at a very substantial profit and lends no credibility to the Defendant's evidence particularly in the light of her evidence that she enjoyed a good relationship with Donlyn Phillip

The second is that the conveyance from Lackeran Ramnarine to the Claimant is expressly subject to an "...existing tenancy".... This belies the existence of a sale/purchase of the parcel of land and confirms some other form of permitted occupation. There is no evidence of payment of any rent (which might point to some form of protected tenancy) but it indicates a level of occupation above any form of licence. That the conveyance is subject to a tenancy puts to rest any lingering doubt of whether the Claimant knew of the Defendant's occupation and leaves one to wonder how the auctioneer could have told the Claimant that he would get vacant possession as a term of the sale. As I have said, it is contradictory of the existence of a sale/purchase although it can be said – speculatively perhaps – that Lackeran Ramnarine either did not know of the sale/purchase or chose not to make mention of it if he did, preferring merely to "pass off" the Defendant's occupation as a tenancy. None of this detracts from the fact that the Claimant knew and accepted the Defendant's occupation as a term of the purchase. That is clear from the conveyance.

I have given the evidence my fullest consideration. On balance, and perhaps not without reservation, I am not persuaded that the Defendant did agree to buy the parcel of land from Donlyn Phillip as she says.

I turn therefore to whether the Defendant had some other interest in the parcel of land.

It is accepted by the Claimant that the Defendant went into possession at the very least as a licensee although the conveyance to the Claimant refers to an existing tenancy. It is accepted that she built the house that is there, and that she occupies it. It is a reasonable inference to draw, at the very least, that she built it with the agreement, consent or approbation of Donlyn Phillip.

Whether she was a licensee or a tenant would seem to make little difference to the outcome of the counterclaim. At a minimum, any such licence would be coupled

with some form of interest in the land giving rise to some form of beneficial interest and consequently be irrevocable. In such an event, however, and based on the evidence before me, it is not possible for me to quantify that interest with any degree of precision. I do not at the same time think that I can place it as high as a purchaser's beneficial interest in the fee simple.

I appreciate that this has the effect of leaving the title to the parcel of land in a state of some uncertainty, but I regret that the state of the evidence does not allow me to be more definite.

In the event, the claim is dismissed, as is the counterclaim. I consider this an instance when it would be appropriate that each party bear its own costs and I so order.

16th July 2008

C.V.H. Stollmeyer
Judge