

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: CV2018-00823**

**BETWEEN**

**KEITH ALEXANDER  
(The receiver ad interim of Neil Dernasius Bobb)**

Claimant

**AND**

**ANNMARIE JOB VALDEZ  
ANTOINETTE JESSICA VALDEZ  
TIMOTHY KENDRICK VALDEZ**

Defendants

**Before the Honourable Madame Justice Quinlan-Williams**

**Date of Delivery:** 12<sup>th</sup> January 2021

**Appearances:** Mr. Tim D. Charriandy for the Claimant  
Mr. Elvin Paul Michael Cudjoe for the Defendants

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**JUDGMENT**

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1. The parties agree that the legal title to the property is not in dispute. The only issue before the court is whether the defendants or, any one or two of them, by virtue of the circumstances of the evidence have successfully extinguished the legal titleholder's estate.
2. The defendants concede that they bear the burden to prove their pleaded case of adverse possession.
3. The issue is resolvable on the facts, as the court finds them. What evidence is cogent and reliable, what inferences the court can make and what evidence is not believable.
4. The parties agree that the law is clear in cases of adverse possession. The defendants who allege adverse possession must therefore prove that they were in possession for a continuous period of sixteen (16) years within the meaning of Section 3 of Real Property Limitation Act Chapter 56:03:

“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”.

5. Lord Brown-Wilkinson explained in the case of *J.A. Pye (Oxford) Ltd. & Anor. V Graham & Anor.* [2002] 3 WLR 221 that to be in possession, the squatter must demonstrate not only factual possession through physical control and custody, but also the intention to possess the land. Lord Brown-Wilkinson says at paragraph 40:

“... there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control (“factual possession”); (2) an intention to exercise such custody and

control on one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law there can be no possession.

Remarks made by Clarke LJ in *Lambeth London Borough Council v Blackburn* (2001) 82 P & CR 494, 499 ("It is not perhaps immediately obvious why the authorities have required a trespasser to establish an intention to possess as well as actual possession in order to prove the relevant adverse possession") provided the starting point for a submission by Mr Lewison for the Grahams that there was no need, in order to show possession in law, to show separately an intention to possess. I do not think that Clarke LJ was under any misapprehension. But in any event there has always, both in Roman law and in common law, been a requirement to show an intention to possess in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves. But there is no doubt in my judgment that there are two separate elements in legal possession. So far as English law is concerned intention as a separate element is obviously necessary. Suppose a case where A is found to be in occupation of a locked house. He may be there as a squatter, as an overnight trespasser, or as a friend looking after the house of the paper owner during his absence on holiday. The acts done by A in any given period do not tell you whether there is legal possession. If A is there as a squatter he intends to stay as long as he can for his own benefit: his intention is an intention to possess. But if he only intends to trespass for the night or has expressly agreed to look after the house for his friend he does not have possession. It is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is in possession".

6. The third defendant says that he is not in occupation of the lands at all. Therefore, he did not have the intention nor was he in actual possession within the meaning of *J.A Pye* (supra). The third defendant is not entitled to any estate in the disputed lands. The issue with respect to the third defendant is whether he was wrongly named as party and is therefore entitled to costs.

### **The Defendants' Case**

7. The first and second defendants allege that they came into possession of the land in 1996. They say they were put into possession by the first defendant's uncle, Mr. Kenrick Job. Mr. Job testifies that he was a lawful tenant of the predecessor in title, Lena Agatha Bobb from 1990. He claims that he was invited to rent a parcel of land by Enid Boucaud. He held over after the landlord died in 1993, did not pay any rent and therefore became a squatter.
8. If Mr. Job became a squatter in 1993, the time for adverse possession would commence in 1993. According to Mr. Job, he gave the property to the first defendant for her to build a home.
9. Mr. Job said that the property he tenanted was surveyed by the landlord, in his presence.
10. The first and second defendants say that they have been in continuous and undisturbed possession since 1996.

### **The Claimant's Case**

11. The claimant disputes both the time of occupation and the circumstances. The claimant says that the three defendants' occupation commenced in 2004 or thereabout and that such occupation has not in law, extinguish the legal title.
  - Actual Possession
12. While Mr. Job asserts that he entered into possession of a specific parcel of land, he has not provided any evidence of the survey. More importantly, Mr. Job has not given any evidence of the description or boundaries of the land formerly tenanted by him. He did not describe what marked the boundaries. If the landlord was particular enough to have a survey done in his presence, one can reasonably assume, that

the survey was to inform both the landlord and the tenant (Mr. Job) of the lay and boundaries of the land. If Mr. Job was a lawful tenant since 1990 and until he stopped paying rent, the survey would have described the lay and boundaries of the land. Moreso, he asserted that he built a galvanize home and planted the lands and presented that as evidence of his possession and traversing of the disputed lands.

13. Additionally the first defendant, who was gifted the lands, has not described the lay or boundaries of the lands. Her description is limited to the lands being approximately two lots. She did not say that the lands were pointed out to her nor did she say how she knows where the boundaries are. One would expect that if the defendants' case were true, that they would have firstly, cultivated the disputed parcel and secondly, if they occupied the parcel since 1996 and lived on the parcel since 2003, they would have more descriptively and particularly described the parcel of land they occupy.

14. The first defendant's evidence is that she has two homes on the disputed lands. The wooden home which she occupies, and the partial concrete structure, which is intended to be her permanent home. The defendants have not provided any evidence as to where these homes are situated within the parcel they occupy.

- Intention

15. With respect to intention, Mr. Job says that he gave the first defendant the land to build a home for herself and her family. If this is true, then a court could find the requisite intention from those circumstances.

16. Mr. Job and the first and second defendant say that they were able to fulfil this intention because after the death of Lena Agatha Bobb, no one disturbed them or their occupation.

17. The parties are seas apart about any interaction, both personal and documentary, between the claimant and the defendants.
18. A starting point in bridging that gap is the letter dated the 19<sup>th</sup> day of April 2017 written by Attorney at Law Mr. Toney. This letter provides insight into the first and second defendants' intention regarding their occupation of the disputed lands. The Attorney at Law wrote that he was acting on instructions of all three defendants. The instructions were that the defendants were put into occupation "for agricultural purposes by the lawful tenant". The letter does not name the lawful tenant. For that purpose, the agricultural purpose, the defendants "constructed a chattel house to facilitate [their] agricultural activities". Further, the Attorney at Law was instructed and relayed to the claimant, that any further communication regarding the disputed lands "should be addressed to the lawful tenant".
19. It is clear from the letters, that the three defendants, based on their instructions, did not have the intention to be in possession for their own benefit to the exclusion of all others. They did not intend to exclude the lawful tenant; whoever he or she was. Their intention in occupying the land was limited to agricultural use. To confirm their possession was temporary, the defendants' instruction to their Attorney at Law was that they built a chattel house. The linchpin was the defendants' instructions to the Attorney at Law the effect of which is - that because they do not have any interest in the legal or equitable title to the disputed lands, they should not be contacted or bothered by any further communication regarding the disputed lands; all further communication should be addressed to the lawful tenant.
20. If the first defendant was planting the lands since 1996 and spending nights there, surely that information would have appeared in the letter written by her Attorney at Law.

21. While Mr. Job says that at one time he was a tenant, he affirms that he became a squatter and eventually abandoned his occupation of the lands.
22. The court is not satisfied that any of the defendants are in factual possession within the meaning of the law and as defined by *J.A. Pye* (supra).

### **Findings**

23. What the court finds as the facts are that Mr. Kenrick Job lived at Depot Trace and sometime in the 1990s his niece, the first defendant and her two children (the second and third defendants) moved in with him. The court is satisfied that the catalyst for the defendants' occupation of the disputed lands was the fire which destroyed Mr. Kenrick Job's home in 2002. By that time, Lena Agatha Bobb, who seem to have been the person known for controlling the Boucaud lands had long died. The Boucaud lands was so extensive that Mr. Job and the defendants believed they could take up unlawful occupation of a parcel of those lands, without consequences.
24. Mr. Job occupied the galvanize house and the first defendant occupied the wooden house. Soon after, in 2003 or 2004, Mr. Job and the defendants' unlawful occupation came to the attention of the claimant.
25. From the evidence of the defendants themselves, Mr. Kenrick Job was the patriarch of the family. The defendants say when they received the correspondence they gave it to Mr. Job. It is not surprising therefore that in September 2004, Mr. Job was the person Bobb-Alexander made the claim against. The claim filed in 2004 also puts pale to the defendants evidence that the Boucaud lands were all but abandoned, with no one showing any interest in it.

26. The claimant and those entitled to the Boucaud lands acted quickly.
27. It seems likely that the fire is the trigger to the defendants and most likely Mr. Job's occupation after 2002. The court does not find that they were in possession, for any purpose or use, before that time.
28. The first defendant asserts that the claimant never visited her home nor did she know him to be the person in charge of the disputed land and that when Ms. Lena Agatha Bobb died, no one managed the land. They say the first contact with the claimant was the letter from his Attorney at Law dated 9<sup>th</sup> day of February 2017.
29. The second defendant says that she started living on the disputed lands after the fire in 2002. Her first contact with the defendant was on the 9<sup>th</sup> day of February 2017. The second defendant on the face of her evidence has not satisfied the basic requirement of possession for sixteen years required by Section 3 of Real Property Limitation Act.
30. The defendant's witness Mr. Kenneth Trinidad, contradicted material parts of the defendants' evidence. He claims to be a tenant of Lena Agatha Bobb since 1981. His evidence is that the first and second defendants have been living on the disputed lands since 1996. This is not the evidence of the first and second defendants; they both say that they started living on the disputed lands after the fire in 2002.
31. Further, Mr. Trinidad confirmed the claimant's account that he (the claimant) has managed the Boucaud lands and had visited him (Mr. Trinidad) and had discussions regarding the Boucaud lands over the years.
32. The court was also satisfied that the third defendant did enter into unlawful occupation with the first and second defendants after the

2002 fire. The letter written by his then Attorney at Law confirms the third defendant's occupation, albeit for agricultural purposes. Therefore, the claimant was correct in joining the third defendant as a party in this claim.

### **Disposition**

33. Consequent on the court's findings, It is hereby ordered that:
- a) There be judgment for the claimant against the first, second and third defendants;
  - b) There be an order for the possession of all that piece or parcel of land comprising approximately 9.5865 hectares bounded on the North by lands of Elizabeth Harper and lands of Maria Ash on the South by North Manzanilla Road reserved 60 links wide and by State land, on the East by State land and by a Road reserved 50 links wide and on the West by the lands of Elizabeth Harper and by the Manzanilla Road reserved 60 links wide (hereinafter referred to as "the Boucaud lands");
  - c) An injunction is issued restraining the first, second and third defendants whether by themselves or by their servants and or agents from entering the Boucaud lands from Saturday 17<sup>th</sup> April 2021 at 4:01pm;
  - d) The first, second and third defendants are permitted to remove their property from the Boucaud lands no later than 4:00pm on Saturday 17<sup>th</sup> April 2021; and
  - e) The first, second and third defendants shall pay the claimant's costs in the sum of \$14,000.00

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Justice Avason Quinlan-William

JRC: Romela Ramberran