REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 116 of 2004

BETWEEN

ROSALIND RAMROOP (also called Rosalind Sampson) **APPELLANT**

AND

JOHN ISHMAEL and LALL HEERASINGH **RESPONDENTS**

Panel: R. Hamel-Smith, JA
S. John, JA
P-M. Weekes, JA

Appearances:

Sir Fenton Ramsahoye, Q.C. for the Appellant
Mr. Abdel Ashraph for the Respondent

Date: July 22, 2008

JUDGMENT

R. Hamel-Smith, JA

1 This appeal is against the decision of Jamadar J. in which he struck out the appellant's claim to a possessory title to land at Union Street in Marabella. He found that the appellant had failed to prove that more than sixteen years had accrued (as required by the Real Property Limitation Act Ch 56:03 ("the Act")) to establish such a title. The judge dismissed the claim and ordered the appellant to give up possession of the premises. The appellant has now challenged that decision.

Title to the land

2 The respondents are the fee simple owners of premises situate at 22 Union Street, Marabella. Hurbert Vincent Gopaul was the original owner. He rented the land to the appellant's aunt, Sookdaya Rahim sometime in or about 1950. Sookdaya built a house on the land and lived there until her death in 1962. On her death the tenancy was bequeathed to her daughters, Sonia and Popo, who subsequently purchased the fee simple as joint tenants from Gopaul in 1972.

3 In June 1977, Popo transferred her share to her husband John Ishmael, the first respondent. Popo died on July 21, 1977. Sonia instituted proceedings in the High Court over the validity of the transfer to Ishmael but the Court rejected her claim and upheld the validity of the deed of conveyance. Sonia died in July 1991, and the appeal was later dismissed. Lall Heerasingh, the second respondent, was joined in this action to represent her estate.

Appellant's Case on the Pleadings.

4 It was the appellant's case that she lived with her aunt from 1950 and had lived there continuously from that date until her aunt's death in 1962. After her death, the appellant continued to reside there in the downstairs portion of the building. When the first respondent attempted to evict her from the premises in 1994, she instituted this action. The appellant put forward several grounds to justify her claim to the property but in the end the majority of them was abandoned.

5 First, she asserted that her aunt had promised that if she (the appellant) lived with her and took care of her, she would pass on the premises to her. The judge disposed of this on a question of fact and the appellant has not pursued the issue on appeal. It failed principally because of her failure to prove the alleged promise. The aunt did not need taking care of as she had a permanent job and was able to look after herself. In the end, the aunt devised the tenancy to her daughters, Sonia and Popo.

6 In the alternative, the appellant asserted that on the death of the aunt she became a tenant *at will* and after the expiry of one year time began to run against the true owner for the purposes of the Act. Thereafter she continued in sole and continuous possession for more than 16 years, thereby entitling her to a possessory title to the land.

7 The judge disposed of this aspect of her claim with little difficulty. He considered it a bit of a quantum leap on her part to assert at one moment she was living with the aunt and in another, to suggest that she had become a tenant at will. As the judge held, there were no legal relations between the appellant and the landlord to create any tenancy at all in her favour and rejected this aspect of the claim outright. In any event, as circumstances unfolded her inability to convince the judge that she had exclusive and continuous possession from 1963 proved to be her undoing. This too has not been pursued on appeal.

8 As a further alternative, the appellant claimed that in any event her continuous and sole possession of the premises for more than sixteen years from 1963 entitled her to a possessory title. This too was not proved because, as already indicated, the appellant was unable to show that she occupied the premises exclusively or at all between 1963 and 1972. The appellant cannot realistically challenge the judge's findings of fact on this issue and, rightly, did not pursue this item on appeal. In fact, her credibility on this aspect of the matter led to a finding by the judge that the appellant and her husband had attempted to deliberately mislead the Court as to her alleged continuous occupation of the premises from 1962.

9 Finally, the appellant contended that she was entitled to the benefit of the Land Tenants (Security of Tenure) Act 1981 and to the benefit of the Rent Restriction Act Ch 59:50. Both claims were abandoned at the trial and not pursued in this Court. On the pleadings therefore nothing remained of the appellant's case but yet, the claim of the appellant was allowed to persist. I shall come to that in a moment.

10 The trial judge, in a very detailed judgment, rejected the appellant's claim for possessory title but ordered the respondents to pay her compensation, more or less equivalent to the monies she had expended on repairing the house. He found that the respondents were aware of the repairs undertaken by the appellant and, in fairness, considered that she should be compensated for improving and/or maintaining their property. There has been no appeal against this, so the order stands.

The possessory title claim on the pleadings

11 On the pleadings, her claim to possessory title was based on her occupation of the premises from 1963, after the aunt had died. The claim failed because the judge found that the appellant and her husband had deliberately misled the court as to her occupation of the premises during that period. She in fact lived with her first husband, Poolool, in Kelly Village, Caroni, between 1960 and 1961 and 1966 to 1968 when four children were born to them in Kelly Village, a fact she failed to disclose to the Court until virtually compelled to do so.

12 After Poolool's death, she met her present husband (Sampson) in the same Village. It was after that relationship began that she moved back to the premises sometime between 1970 and 1972. When she did return the judge found as a fact that she did so as a tenant of Popo, paying a monthly rent of $30.00 for occupation of a portion of the main building. She ceased paying rent in 1977 when Popo died in July 1977. Accordingly, her claim to possessory title from 1962 could not be sustained for the simple reason that her occupation was not exclusive nor continuous from 1963 as she had alleged. It was therefore rejected and has not been pursued on appeal and indeed, it cannot.

The New Claim to Possessory Title

13 It seems however that without any amendment to her statement of claim the appellant was allowed to restructure her case on the issue of exclusive and continuous possession. The first shift was to the years 1970 to 1972 when she allegedly moved back into the premises. She alleged that Popo allowed her to occupy the portion of the premises upstairs rent-free (later the downstairs portion) but the trial judge found that the parties had agreed to a monthly rental of $30 and not rent-free as she had claimed. She was therefore a monthly tenant of a portion of the premises.

14 The appellant challenged this finding of fact. The challenge does not advance the appellant's case for the simple reason that whether she occupied the downstairs portion rent-free or not, she was unable to show that she had exclusive possession of the entire premises from the year 1972 when she returned to live there. Nevertheless, I shall deal briefly with the submission for the sake of completeness and before dealing with what seems to be the more substantive part of this appeal.

15 Counsel submitted (in his skeletal arguments) that the judge had found as a fact that she had lived on the premises *rent-free* from 1972. He based his submission on the fact that the judge, in calculating the amount of money expended on repairs and maintenance by the appellant, took into account the fact that she had lived there *rent-free* for almost *twenty-seven years.* Counsel calculated that period from 1972 based on her allegation that she paid no rent at all.

16 The submission is misplaced and contrary to the express finding of the judge. He did not find that she lived there rent-free but, rather, expressly found that the appellant paid a monthly rental of $30 from 1972 until Popo's death and then expressly made his calculation from the date of Popo's death in 1977 to the date of judgment in 2004. It was only after Popo died that the appellant ceased paying rent. Accordingly, the submission cannot stand.

17 Counsel further submitted that there was no documentary evidence to show that the appellant had paid rent at any time, hence his submission that it was rent-free from 1972. It is necessary therefore to examine the judge's analysis of the evidence in this regard. It is true that the respondents were unable to produce any receipts to show that the appellant paid rent to Popo between 1972 and 1977 but, apart from the appellant's overall evidence having been rendered unworthy of belief, there was other evidence upon which the respondents relied to infer payment of rent.

18 There was the evidence of the first respondent that he had witnessed the agreement between the appellant and Popo when the latter agreed to rent a portion of the premises to the appellant at $30 per month. The judge accepted this evidence and noting has been offered to say why this finding should not stand.

19 Further, Sampson (the appellant's husband) admitted that he was the custodian of the receipt book on Popo's behalf. He prepared the receipts on Popo's directions when

she collected the rent from her tenants. This book was produced in court and the judge observed that it had been tampered with, in that certain receipts were missing and others were not in sequential order. Sampson was unable to explain what had happened to the book and the judge drew the inference that it was deliberately tampered with to conceal the fact that they had paid rent. The judge in the circumstances held that the appellant was a tenant and not someone living there rent-free. Accordingly, the submission that in some way time would have begun to run in the appellant's favour from 1972 for the purposes of acquiring a possessory title could not survive.

20 In any event, as I have already mentioned, if the appellant were living there rent-free as she had alleged, time could not have started to run for the simple reason that she was not in exclusive occupation of the entire premises between 1972 and 1977. The judge found as a fact that Lystra Parfitt was living upstairs the premises as a tenant up to 1977 and was still to the date of judgment living there. I shall return to deal with Lystra's occupation of the premises shortly.

21 In the circumstances, whether the judge was correct to find that she was a tenant of Popo or that she was living there rent-free, the appellant's case could not succeed because on either score her occupation between 1972 and 1977 would not have been sole and exclusive. Her claim for possessory title based on time running from 1972 therefore, cannot survive.

The final attempt for possessory title

22 The appellant was then allowed to *fast-forward* her claim to the years 1977-79 after Popo died. Popo had transferred her share in the premises to the first respondent shortly before her death. That meant that he stepped into her shoes and became the appellant's landlord. He, took no steps however, to collect rent from her after Popo died. Since the appellant was a monthly tenant, by virtue of section 9 of the Act, after the expiry of that period from the cessation of payment of rent, time would begin to run in her favour for the purposes of acquiring possessory title.

23 There was however, one stumbling block in the path of the appellant. In order for time to start running in her favour she had to show that she was in sole and exclusive occupation of the entire premises and not just the rooms she occupied downstairs of the main building. This was clearly a significant issue at the trial. In her attempt to do so the appellant alleged that Lystra became her *licensee* in 1979. Contrary to her pleadings that there was a single building on the land, she alleged that Lystra lived in a shed in the back of that building and after the death of Popo she (the appellant) demolished the shed and allowed Lystra to occupy a room upstairs as her licensee. Obviously aware of the need to show exclusive possession of the entire premises, she claimed that Lystra had become her licensee in 1979. If her story were accepted, then she had effectively cleared the path to establish exclusive possession and time would begin to run in her favour from 1979.

24 The judge, however, rejected the appellant's evidence and held that Lystra was a tenant of a room upstairs the premises and was still living there. He held that Lystra was

Popo's tenant and had stopped paying rent when Popo died. Counsel for the appellant has not been able to demonstrate that this finding of fact should be reversed and there is considerable doubt that he can.

25 In their defence and counter-claim, the respondents had pleaded that Lystra was a tenant of a part of the upstairs portion of the house. Significantly, the appellant did not deny this fact but in her Reply pleaded that Lystra was in occupation of one room of the upstairs portion for which *she has not paid rent for many years.* The reference to payment of rent inferred that Lystra was a tenant and if she lived in the upstairs portion of the main building, then the judge was right to reject the appellant's evidence that she lived in the shed and had become her licensee in 1979. Whether she paid rent or not for many years could not advance the case of the appellant. The fact remained that Lystra was living there as a *non-paying* tenant and not as her licensee, as she had alleged.

26 The conflict in the pleading and the appellant's evidence was not lost on the judge and he rejected her evidence. He also relied upon the evidence of Dwarika, the appellant's witness, who told the court that Lystra always lived in a room upstairs the main house. He accepted this evidence unreservedly. Counsel was unable to persuade me that such a finding of fact should be reversed.

The Error of Law

27 On the appellant's case therefore, on an overall best-case scenario, her claim to possessory title could only survive after 1979 when, on her evidence, Lystra became her licensee. And this is where the difficulty arises. At the trial, counsel on both sides were *id idem* on one issue – they both agreed that time would stop running in the appellant's favour on March 2, 1994. That was the date when the first respondent *filed* ejectment proceedings against the appellant. This was not a correct proposition of law but at the time no one, including the judge, was aware of this. Accordingly, the judge treated March 1994 as the cut-off date for the purposes of calculating time i.e. to determine whether sixteen years or more had elapsed in the appellant's favour.

28 This Court was concerned about this apparent error and out of an abundance of caution, requested the Clerk of Appeals to obtain the judge's notes in respect of the submissions made after the close of the respondents' case. This was to assist the Court in appreciating the argument on this point in the court below. It is clear from those notes that both sides led the Court into believing that time stopped running when the ejectment proceedings were filed in March 1994. These notes should have been part of the record. I would order that the record be supplemented by the addition of these notes that have since been placed on the file.

29 Armed with this agreed cut-off date, the judge proceeded to test the appellant's case to demonstrate whether sixteen or more years had accrued. He held that even on her own evidence, taking the year 1979 as the earliest date on which she could demonstrate *likely exclusive occupation,* sixteen years would not have accrued by March 1994. In those circumstances her claim to possessory title was bound to fail.

30 At the hearing of the appeal neither side considered it necessary to produce any authority on this error of law. Counsel for the appellant submitted that time did not stop running but could cite no authority for his submission. Counsel for the respondents found himself in a similar position. After the hearing, counsel for the appellant was good enough to furnish the Court with the relevant authorities to support his submission. It was then discovered that the mere filing of proceedings did not stop time running. In fact, there had to be service of the proceedings in order to do so. Further, if the proceedings were later withdrawn, as occurred in this case, time continued to run. It did not start afresh (see ***Markfield Investments Ltd v Evans*** [1]. This meant that counsel on both sides in the Court below had inadvertently misled the judge into accepting that time stopped running in March 1994.

31 Counsel for the appellant made two submissions on this issue. Firstly, he submitted that implicit in the judge's finding was that the appellant was in exclusive possession of the premises from 1979. Since time could only stop running when the counter-claim for possession was served in July 1996, the requisite time period of sixteen years had accrued in the appellant's favour.

32 His second submission, (it came rather late in the day) with which I shall deal with immediately, was that the appellant and Lystra were in *multiple occupation* of the land (and building) and both were entitled to a possessory title after the expiry of sixteen years exclusive occupation, each to that portion of the house they occupied and the land upon which the building stood.

33 I am not familiar with the concept of multiple occupation of *a building* that can lead to both persons individually having a possessory title to *the land* conferred upon them separately. In the absence of specific legislation, such a possessory title could only be acquired if the parties jointly occupied the premises. There is no authority to suggest that one can acquire a possessory title that includes only the downstairs portion of a building, as in this case.

34 Possessory title goes to the land. If someone e.g. cultivates a defined parcel of land *adverse* to the true owner with the requisite intent, then he may acquire a possessory title to the land if he can show exclusive possession for more than sixteen years. Similarly, if one occupies a house (and land) exclusively it is possible to acquire a possessory title to the land. But where two persons occupy separate rooms in the same building, each paying a monthly rental for the rooms, if the landlord ceases to collect rent and even if more than 16 years accrue, one tenant cannot claim to be in exclusive possession of the land (the house being part of realty) to the exclusion of the other for the purposes of acquiring a possessory title.

35 Significantly, that was not the case of the appellant in the Court below. Her case, as it ultimately unfolded, was contested solely on her exclusive possession and she was at pains to establish that Lystra was her licensee. The authorities relied upon by counsel for

[1] (2001) 1 W.L.R. 1321

the appellant proved not to be helpful. They dealt with the issue of lateral support to ancient buildings and were not concerned with issues of multiple occupation. In one case, the plaintiff claimed possession to a cellar but the cellar appears to have been the only structure on the land (see ***Rains v Buxton*** Ch D [1879] R 129). I would respectfully reject this submission.

36 Returning to the first submission, the judge, having been wrongly directed on the law, the question of exclusive possession would not have played any direct part in his finding. As he himself put it, the appellant was only able to show *likely* exclusive possession and taking the *most favourable* of these scenarios, 1979, the date she alleged Lystra became her licensee, he found that time would have stopped running in March 1994. Significantly, the judge never made a finding of fact that Lystra was the appellant's licensee, a finding he would have had to make if the appellant hoped to succeed. To the contrary, he expressly found as a fact that Lystra was a tenant and implicit in that was the rejection of the appellant's assertion that Lystra was her licensee.

37 I would think that had the judge not been misled on the law, he would have directed his mind to both the cut-off date (the service of the counter-claim in 1996) and the issue of exclusive possession. Having found as a fact that Lystra was a tenant of the premises and was still residing there, albeit rent-free, he would have had no alternative but to hold that because of Lystra's occupation of part of the premises, the appellant was not able to prove exclusive possession from 1979 or at all. In my view he came to the right decision in dismissing the appellant's claim and on the facts as found by the judge, I cannot see how that decision can be reversed. The respondents are entitled to possession but the order for compensation stands.

38 I would therefore dismiss the appeal with costs. Given the fact that the appellant has resided in the premises since 1972, I would allow a stay of execution for three months, to continue in the event of an appeal to the Privy Council or further order.

R. Hamel-Smith
Justice of Appeal

I have read the judgment of Hamel-Smith JA and for the reasons he has given I would dismiss the appeal with costs. I also agree with the orders he has made.

S. John
Justice of Appeal

I have read the judgment of Hamel-Smith JA and I also agree that the appeal be dismissed with costs. I also agree with the orders he has made.

P-M Weekes
Justice of Appeal