REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 189 of 2009

BETWEEN

JOSEPHINE JORDAN APPELLANT

AND

PHILLIP LUCAS RESPONDENT

PANEL: P. JAMADAR, J.A.

N. BEREAUX, J.A.

R. NARINE, J.A.

APPEARANCES:

Mr. Manwah and Mr. Ramoutar for the Appellant.

Mr. Bengochea and Ms. Neives for the Respondent.

DATE OF DELIVERY: 23rd July, 2012.

JUDGMENT

Introduction

1. The Respondent commenced this action by fixed date claim form (filed on the 14th November, 2006), claiming an order for possession of certain lands known as lot 453 St. Cecelia Road, Tunapuna. This was the second attempt by the Respondent to get possession of these premises. In an earlier action (H.C.A. No. 1917 of 1994) a similar attempt had been made.

2. The premises were owned by Martin Lucas until his death in 1992. They had been purchased by him in 1969, subject to a yearly tenancy in favour of Christopher Harewood. Christopher Harewood died in 1951. His wife Anna Harewood survived him and lived in the premises until her death in 1963. The Appellant was born on the premises and has lived there (initially with her grandparents) since that time (1942).

3. In that earlier action, before Mendonca J., the Respondent had succeeded in getting the order for possession, but it was set aside on appeal. Mendonca J. had held, on the evidence, that the Appellant (who was not claiming under any tenancy) had been in sole possession of the premises since September 1963 (upon the death of her grandmother, Anna Harewood) as a licencee of the Harewoods and of Martin Lucas (deceased) - the father of the Respondent (who was the Plaintiff in that action).

4. Mendonca J. also held that, in these circumstances, there was a prima facie case that the annual tenancy between the Harewoods' and Lucases had been extinguished and the Respondent was entitled to possession, unless the Appellant could have established an interest in the lands by virtue of the doctrine of proprietary estoppel (which the Appellant had relied on). He held that the Appellant had not done so, that she was a licencee, whose licence had been duly determined, and that the Respondent was therefore entitled to possession. In that matter the Appellant did not raise the issue of adverse possession, but relied rather on attempting to prove an interest in the land by way of estoppel.

5. Before the Court of Appeal it was held (on the 30th April, 2002), that the tenancy between the Lucases and the Harewoods had not been determined (as service of a notice to quit on the Administrator General was necessary to effect same, given the death of the Harewoods), and the Respondent "had therefore not satisfied the evidential burden of proving his entitlement to possession".[1]

6. In this context Warner J.A., who delivered the decision of the Court of Appeal, made the following concluding observations[2]:

> As regards the present character of that tenancy, it may well have been caught by the Land Tenants (Security of Tenure) Act, 1981 which would have converted the then existing tenancy into a statutory lease for thirty-years, or on the other hand, the appellant/plaintiff may well have acquired a possessory title. (See Privy Council Appeal 8 of 2000 **Goomti Ramnarace v Harrypersad Lutchman) (unreported)**. These issues however, do not fall for determination by this Court.

7. It is also to be noted that there has never been any challenge to Mendonca J's finding on the evidence, that the Appellant was in occupation of the premises as a licencee of the Harewoods and the Lucases and that she had not established any interest in the lands by virtue of a proprietary estoppel.

8. It is in this context that the Respondent commenced the instant action, after having duly served a notice to quit on the Administrator General as suggested by the Court of Appeal in the earlier action and the Appellant having refused to deliver up possession of the premises. In this matter the trial judge, on the 30th July, 2009, made the following orders:

1. There be judgment for the Claimant against the Defendant.

2. That the Claimant is entitled to possession of the parcel of land described by Deed of Conveyance made on the 22nd day of April, 1969 and registered as Deed No.

[1] See judgment of Warner JA at page 10.
[2] See judgment of Warner J.A. at page 11.

5061 of 1969 … and shown as Lot No. 453 ("the premises") on the General Plan annexed to Deed registered as No. 15506 of 1960 ("Lot 453").

3. The Defendant do quit and deliver up possession of the said premises within six (6) months of the date of this Order.

4. The Defendant to pay Claimant's costs prescribed in the sum of Seven Thousand, Seven Hundred Dollars ($7,700.00).

5. Leave to appeal granted to the Defendant.

6. Application for stay of execution refused. The period of time for this Order to take effect is reasonable.

Issues

9. The issues that arose in this appeal may be succinctly stated as follows:

1. In what capacity did the Appellant occupy the premises?
2. Whether the Appellant can claim protection under the Rent Restriction Act?
3. Whether the Appellant can claim protection under the Land Tenants (Security of Tenure) Act?
4. Whether the Respondent's title to the premises has been extinguished by reason of adverse possession by the Appellant?

Background Facts

10. As already explained, on the 22nd April, 1969 Martin Lucas became the paper title owner (Deed number 5061 of 1969) of Lot No. 453, subject to, inter alia, "the yearly tenancy of Christopher Harewood". Christopher Harewood died on the 30th August, 1951. Martin Lucas died testate on the 17th May, 1992. The sole beneficiary under the will of Martin Lucas was Phillip Lucas (the Respondent). The will was duly proved and admitted to probate and a Deed of Assent for Lot No. 453 was executed in favour of Phillip Lucas on the 14th November, 1993, subject to the reservations stated in Deed No. 5061 of 1969.

11. The history and outcome of the earlier action has also already been narrated. Subsequent to that action on the 27th May, 2003 a notice to quit was served on the Administrator as suggested by the Court of Appeal, calling for the delivery up of possession of the premises by the 31st December, 2003 (six months clear notice for a yearly tenancy). The Appellant did not vacate the premises, despite written notice (dated 7th September, 2005) being given to her setting out what had been done and demanding possession within 21days of the date of the notice. Instead, by letter dated 17th October, 2005 attorney-at-law for the Appellant responded in the following terms:

> "I have been consulted by and act for Ms. Josephine Jordan in respect of your letter of September 7, 2005. Notwithstanding the contents of your letter your client is not entitled to possession of these premises."

Not surprisingly these proceedings were then commenced.

The Trial Judge's Reasons

12. The trial judge held that the Appellant had not satisfied the very first requirement to establish a claim in adverse possession; that is, that she had occupied the premises adverse to the right and interest of the paper title owner uninterrupted for sixteen (16) years. This was because:

(i) her original entry was lawful. She was there at the behest of her grandparents, therefore she was given permission to be there;

(ii) her adverse possession would have started at best from 2003 when Martin Lucas' interest in the premises had reverted to his estate, by the termination of the existing yearly tenancy of Christopher Harewood effected by the service of the notice to quit on the Administrator General;

(iii) the Appellant had not laid a factual basis for describing herself as someone holding adversely to the rights of the true owner for the required period of 16 years, so as to satisfy sections 3, 4 and 22 of the Real Property Limitation Act; and

(iv) the Appellant could not be regarded as a tenant since no rent had ever passed from her to anyone else.

13. In these circumstances, the trial judge concluded that the Appellant had no interest in the property which entitled her to remain in possession. Indeed, the trial judge was of the opinion that if the Appellant had contributed to the repair and maintenance of the property, all that she would have been entitled to is reimbursement of those sums (however no evidence was led in this regard).

Analysis

(I) In what capacity did/does the Appellant occupy Lot No. 453?

14. Clearly there is an issue estoppel in relation to the trial judge's finding of fact in H.C.A. No. 1917 of 1994, that the Appellant was in occupation of the premises as a licencee of the Harewoods and of the Respondent and had not established any interest in the lands by virtue of a proprietary estoppel. In the face of this, counsel for the Appellant argued before this court that the Appellant occupied the premises as a third party stranger (akin to a squatter) in relation to Martin Lucas' and the Respondent's interest in the premises.

15. Based on the decision of the Court of Appeal in the earlier action, which binds this court, the relationship between Martin Lucas and the Harewoods was one of landlord and tenant. Further, it was a relationship that subsisted as such, to the detriment and for the benefit of their respective estates, until the tenancy was duly determined by the service of a notice to quit by the heir of Lucas (the Respondent) on the Administrator General on the 27th May, 2003. In these circumstances, the Appellant's status as licencee of the Harewoods and of Martin Lucas and the Respondent, would also have subsisted until her licence to occupy came to an end (with the service of a notice to quit on the Administrator General and subsequently on her).

16. Indeed, the facts determined by Mendonca J in H.C.A. No. 1917 of 1994[3] (and now in law binding on the Appellant) and as stated by the Appellant in this matter,[4] reveal the following.

(i) The Appellant lived on the premises with the knowledge and consent of her grandparents the Harewoods and the Respondent's predecessor in title Martin Lucas, as a licencee.

[3] See pages 1 to 5 and 9 to 14 of the judgment of Mendonca J.
[4] See the Appellants affidavit filed on the 29th March, 2007, at paragraph 3 to 7.

(ii) The Appellant on the request of Martin Lucas gave money to him to contribute to the payment of the land taxes and water rates for the premises.

(iii) Martin Lucas on the request of the Appellant gave permission to her to repair the premises and to erect a parlour on the premises, which she did.

(iv) The relationship between Martin Lucas and the Appellant was not a strained one, but an open and coorporative one.

17. In fact, Mendonca J. in summing up his findings of a licence in favour of the Appellant (which as I have pointed out have never been challenged) stated:

> "What evidence there is before me shows that the life tenant referred to in the 1969 deed of conveyance, Christopher Harewood, the grandfather of the Defendant, died in 1951. His wife Anna Harewod, the grandmother of the Defendant, died in September 1963. According to the evidence of the Defendant she has been in occupation of the premises since her birth in 1942. She lived there initially with her grandparents and her brother and sister. By September 1963 however she was in sole occupation of the premises. The Defendant has not made any claim under the annual tenancy. Her only claim to an interest in the property is by way of a proprietary estoppel consistent with the title of the Plaintiff which claim as I have held later in this judgment has failed. On the evidence therefore for the last 38 years at least the Defendant, who is not claiming under the annual tenancy, has been in possession of the premises, and as will be seen also later in this judgment, was in possession as a licencee of the Deceased (Martin Lucas) and the Plaintiff (Respondent)."[5]
>
> "Indeed on the evidence I cannot reasonably conclude that the defendant entertained the belief that the premises were in fact hers. Such a belief seems to me to be inconsistent with the Defendant obtaining from the Deceased (Martin Lucas) permission to do the repairs and to erect the parlour. It is also difficult to accept

[5] See page 9 to 10 of the judgment of Mendonca J.

that the Defendant would have paid the rates and taxes to the Deceased in the alleged circumstances if she thought the property to be hers."[6]

"But moreover what evidence there is points to the fact that Deceased regarded the premises as his and exercised his proprietary rights over them in such a way as left no room for anyone to believe that he was not the owner or for anyone to believe that he would acquire any interest in the premises. There is no evidence that the Defendant thought otherwise."[7]

18. In these circumstances it would appear that this court has little option but to conclude that as long as the relationship of landlord and tenant subsisted between the estate and heirs of the Lucases and the Harewoods, the Appellant enjoyed an undetermined licence to occupy the premises as she had in fact been doing all along.

(II) Whether the Appellant can claim protection under the Rent Restriction Acts?

19. This ground of appeal was abandoned by the Appellant and little more needs to be said on it. As a matter of law, the only persons who could have benefited from the protection of any statutory tenancy were Christopher Harewood and on his death Anna Harewood his widow (and no one thereafter).

(III) Whether the Appellant can claim protection under the Land Tenant (Security of Tenure) Act, No. 11 of 1981?

20. On the issue as framed, clearly if the Appellant was a licencee of Martin Lucas and of the Respondent, which she cannot avoid at this stage, then it is settled law that she cannot be a 'tenant' for the purpose of Act No. 11 of 1981 and the beneficiary of the statutory lease created by that legislation.[8]

[6] See page 12 of the judgment of Mendonca J.
[7] See page 14 of the judgment of Mendonca J.
[8] See Commonwealth Caribbean Property Law, 2nd Ed., by Gilbert Kodilinye, at pages 104 – 105, and the several cases referenced at footnote 95.

21. The security of tenure granted by Act No. 11 of 1981 (a thirty year statutory lease commencing on the 1st June, 1981, with an option to renew for a further thirty years) benefits 'tenancies in respect of land' only (section 3). And, a tenant as defined by section 2 of the Act simply does not include a licencee. Neither in this case nor in the earlier one has the Appellant at any stage contended that she was a tenant of land. Indeed, she has been found to be a licencee; and she has enjoyed that status until the 22nd May, 2003 (when notice was served on the Administrator General determining the tenancy between the Lucases and the Harewoods), or until the 7th September, 2005 (when notice was served on her as a consequence).

22. However, an interesting sub-issue has arisen in this context before this court. Was the tenancy that the Harewoods held converted to a statutory lease on the 1st June, 1981? And if so, what are the implications for the Respondent's action for possession which was filed in 2006, if the statutory lease created could have only expired in June 2011?

23. On this sub-issue, I am of the opinion that the tenancy of the Harewoods was converted to a statutory lease, pursuant to Act No. 11 0f 1981, on the 1st June, 1981.

24. First, this case is unlike that of **Ramdass v Bahaw-Nanan**[9], where the premises were subject to a statutory tenancy under the Rent Restriction Act which was subsisting on the 1st June, 1981. Here it has not been contended by either party that such a situation existed. In fact that argument was abandoned by the Appellant before this court. **De Hayney v Ali**[10] and **Alexander v Rampersad**[11] are therefore of little assistance.

25. Second, the uncontroverted evidence is that the Harewoods were tenants of the land and had constructed a house on it that was used as a dwelling and that that status continued in 1981.[12]

[9] Privy Council Appeal No. 38 of 2009.
[10] [1986] Mag. App. No. 169 of 1984.
[11] [1978] Civ. App. No. 11 of 1989.
[12] See the decisions of Mendonca J and Warner JA in H.C.A. 1917 of 1994 and paragraph 4 of the affidavit of the Appellant filed in this action.

26. There is therefore no question that a chattel house used as a dwelling was erected on Lot No. 453 and occupied as such on the 1st June, 1981. There is also no question that the yearly tenancy for the land had not been determined on that date and that it subsisted until determination by service of a notice on the Administrator General on the 27th May, 2003 (this court is bound to that conclusion by the decision of the Court of Appeal in action 1917 of 1994).

27. Third, this court is also bound by the decision of the Court of Appeal in **Ghany Investments Ltd v Ward**,[13] where Hamel-Smith J.A., in delivering the unanimous decision of the court, stated:

> "The additional argument that the words "used as a dwelling" in section 3(1) requires the tenant to be in actual occupation of the chattel house on the appointed date bears little or no examination. Had it been the intention of the framers of the Act to impose such a condition the section would have expressly so stated by simply adding the words "by the tenant". It is evident that the only requirement is that the chattel house be used as a dwelling. And this unqualified requirement is consistent with the definition of "tenant" in section 2 of the Act which includes any person who has acquired the interest in the land by way of assignment or operation of law. This makes it possible for a person acquiring an interest by operation of law (e.g. under a will) to inherit the tenancy with a chattel house thereon 'used as a dwelling' (and so claim the protection of the Act) without assuming occupation thereof."

28. There is therefore no requirement in law for the tenant to be in occupation of the chattel house or the premises, and the beneficiaries of the estate of a tenant inherit the benefit of a statutory lease created by Act No. 11 of 1981. In this regard section 3(1) of the Act is clear: "… this act applies to tenancies in respect to land on which … a chattel house used as a dwelling is erected …".

[13] Civ. App. No. 5 of 1989.

29. In **Gopaul v Baksh,**[14] Lord Walker in delivering the decision of the Board gave the following explanation in relation to section 2 of the Act and the meaning of 'chattel house':

> In this definition, the word "includes" is important. It is common ground that the definition extends to any building falling within the first part of the definition ("a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord") whether or not it is capable of being removed without destruction. Section 2 also contains a wide definition of "tenant", and "tenancy" is to be construed accordingly.

30. Therefore, in my opinion and on the undisputed evidence and by operation of section 3(1) of Act No. 11 of 1981, the tenancy of the Harewoods which subsisted in law for the benefit of their estate, was converted into a statutory lease on the 1st June, 1981.

31. The implications of this conclusion are obvious in so far as the Respondent sought to recover possession of the lands in 2006. In the context of a statutory lease which could only have expired in June 2011 and the occupation of the chattel house as a dwelling by a licencee of the tenant and /or his estate, such an action was premature. Indeed, there is no evidence before this court as to whether the option to renew the statutory lease has been exercised pursuant to section 4(3) of the Act (as amended by Act No. 10 of 2010) – by notice of renewal duly given "on or before the expiration of the original term of the statutory lease". Clearly, if no such written notice has been duly served on the landlord (who is now the Respondent) then the protection offered by Act No. 11 of 1981 no longer exists.

(IV) Whether the Respondent's title to the premises has been extinguished by reason of adverse possession by the Appellant?

32. Was the Appellant in adverse possession of the premises for upwards of 16 years prior to the commencement of this action, so as to result in the Respondent's title to same being extinguished by operation of sections 3, 4, 9 and 22 of the Real Property Limitation Act?

[14] Privy Council Appeal No. 92 of 2010; [2012] UKPC 1 at paragraph 9.

33. On this issue I am of the opinion, that even if the Appellant was in adverse possession of the premises, in light of my conclusion on the creation of a statutory lease, that possession can only be adverse in relation to the tenant and as against the statutory lease. The law on this is clear.[15] Where a tenant is dispossessed, the adverse possession runs immediately against the tenant, and only against the landlord on the expiry of the tenancy or lease. In this case the contractual tenancy only expired on the 22nd May, 2003 when notice to quit was served on the Administrator General; and the statutory lease only expired on the 31st May, 2011, if there was not a renewal. In either of these scenarios sixteen (16) years have not elapsed so as to extinguish the title of the landowner/landlord.

34. In any event, on the facts that have been unchallenged in this case, it is difficult to see how the Appellant could succeed on her assertion of adverse possession. First, no tenant or person claiming through one has come forward to claim such an occurrence on the basis of any failure by the landlord to collect rent or by the tenant to pay same pursuant to the provisions of the Real Property Limitation Act. Second, the Appellant has never claimed that she was a tenant with respect to the premises. Third, Mendonca J. found in H.C.A. No. 1917 of 1994 that the Appellant was a licencee of both the Harewoods and the Respondent, and the Appellant advanced in that case that she occupied the premises in circumstances where it can hardly be contended that there was an absence of consent of the legal owners of the premises with respect to her use and occupation. Indeed, the evidence shows that the Appellant enjoyed an open and cooperative relationship with Martin Lucas and contributed to his payment of the rates and taxes, and sought and received his agreement to repair the premises and to construct and run a parlour. This first requirement of an absence of consent by the owners, that is required for proof of adverse possession, clearly cannot be satisfied in the circumstances of this case.[16]

[15] See Commonwealth Caribbean Property Law, 2nd Ed., Gilbert Kodilinye, at page 258; and The law of Real Property, 6th Ed., Charles Harpum, page 1313, paragraphs 21-026; and Adverse Possession, 2nd Ed. Jourdan and Rodley – Gardner, at pages 519 – 520. And see also Chan v Li (2006) HKCFA 5, at paragraphs 17 to 20.
[16] See **Smith v Benjamin** Civ. Apps. No. 67 and 68 of 2007, at paragraph 48 of the judgment of Mendonca J.A.

Conclusion

35. Given the existence of a statutory lease in favour of the Harewoods, the Respondent's claim for possession, which was commenced in 2006, must fail. The consequence is that this appeal must be allowed. However, because this issue was only developed fully before this court and, because both the Appellant and the Respondent have failed in all of the arguments that they formally advanced in this appeal, I am of the opinion that this is an appeal in which the general rule that costs are to follow the event may not be appropriate. The parties will therefore be heard on the issue of costs.

P. Jamadar
Justice of Appeal

I have read the judgment of P. Jamadar, J.A. and for the reasons given I agree that the Appeal be allowed with costs to be assessed by this court.

N. Bereaux
Justice of Appeal

I have also read the judgment of P. Jamadar, J.A. and for the reasons given I also agree that the Appeal be allowed with costs to be assessed by this court

R. Narine
Justice of Appeal