THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. CAP 267 of 2012
Claim No. CV 2009 – 01524

IN THE MATTER OF THE REAL PROPERTY ORDINANCE CHAPTER 27 NO.11

AND IN THE MATTER OF THE APPLICATION OF TRENT SKINNER OF 384, 2ND STREET BROOKLYN, NEW YORK 11215 FOR A VESTING ORDER UNDER THE PROVISIONS OF THE REAL PROPERTY ORDINANCE

Between

TRENT SKINNER

Claimant/Appellant

And

MULTINO FRANK RAYMOND

1st Defendant/1st Respondent

And

DEVELOPMENT FINANCE LIMITED formerly TRINIDAD AND TOBAGO DEVELOPMENT FINANCE COMPANY LIMITED

2nd Defendant/2nd Respondent

And

TRINIDAD CONVERTERS LIMITED

3rd Defendant/Intervenor/3rd Respondent

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Delivered the 6th day of November, 2017

Panel: Justice of Appeal Narine
Justice of Appeal Moosai
Justice of Appeal Rajkumar

Appearances:

Mr. C. Kangaloo instructed by Ms. N. De Verteuil-Milne on behalf of the Appellant

Ms. R. Van Lare instructed by Mr. W. Smart on behalf of the Third Respondent

I have read the reasons for decision by Justice of Appeal Rajkumar and I agree with them.

R. Narine

Justice of Appeal

I also agree.

P. Moosai

Justice of Appeal

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Reasons for decision

Delivered by P. Rajkumar J.A.

On May 31st 2017 our oral judgement was delivered dismissing this appeal, with more extensive written reasons to follow. These are now set out hereunder.

Background

1. The appellant **Trent** Skinner applies for a vesting order in respect of property situated at Trincity Industrial Estate (the property). He claims on the basis of possession, first by his parents **Keith** and Bernadette Skinner, and then by himself, adverse to the registered proprietor, (Mr. Raymond, the first named respondent). At one point in time the property had been mortgaged to the second named respondent. The third named respondent, **(TCL)**, is a company owned and controlled by **Edwin** and **Selwyn** Skinner, the uncles of the appellant[1].

2. The first named and second named respondents took no part in the trial before the High Court or this appeal. The third named respondent opposes the application for a vesting order on the basis that the appellant and / or his predecessors did not occupy the property (adversely) for the continuous period of 16 years required to extinguish the title of the registered proprietor.

[1] As this matter turns upon the evidence of family members, all with the same surname, for the avoidance of confusion the witnesses will be referred to by their first names

Issues

3. (i) Whether, as a question of fact, the appellant has occupied and /or possessed the property, whether by himself, or through the occupation/ possession of his predecessors, (his father and mother and/or companies controlled by either or both of them), for a period sufficient to extinguish the title of the registered owner.

(ii) Whether the trial judge was plainly wrong in his assessment of the evidence so as to justify re-visiting and overturning his findings of fact on this issue.

Factual background

4**.** It is not disputed:-

i. that the appellant himself was never in physical occupation of the property.

ii. that the appellant's father, Keith, was in physical occupation of a portion of the premises from **1987 to 1993,** via two companies, (including a company Summit Abrasives Limited - SAL), that he operated.

iii. that Keith collected rent from a tenant of the remaining portion.

iv. that Edwin and Selwyn Skinner entered into occupation of the property in 1993, and later incorporated the third named respondent TCL which operates out of the property .

v. that another company ICIL, (the tenant), also occupied part of the premises and paid rent from 1987 to1993 to the appellant's father, or his company SAL.

vi. that between 1993 and 1998 no rent was paid by ICIL **directly** to the appellant or his parents. Rent was instead collected from ICIL by the third named respondent[2].

[2] Page 189 of the supplemental record of appeal

vii. Rent collected from **ICIL** for that five year period 1993 and 1998 was **not paid** to the appellant or his parents[3].

viii. After 1998 rent from ICIL was paid into accounts for the benefit of the appellant

ix. On the appellant's own evidence, neither the appellant's uncles, Edwin and Selwyn Skinner, nor their subsequently incorporated company, TCL, has ever paid any rent since entry into occupation of the premises in 1993, (whether to the Appellant or to his father's company SAL)[4]. On the appellant's own evidence a demand for rent made on **January 28th 1998** by attorney at law on behalf of the appellant's father for rent to be paid by **TCL** has not been complied with to date.

Findings of fact by trial judge

5. The trial judge was entitled to analyse and accept the evidence that Keith had himself offered to purchase the property from Development Finance Limited (DFL) by letter dated **June 23rd 1992**[5]. This was the year before his brothers, Edwin and Selwyn, entered into occupation of the property. The trial judge was entitled to conclude that that offer was inconsistent with his owning the property himself.

6. He was entitled to consider and accept the evidence that Edwin wrote to DFL on 20th **September 1993**[6] offering to acquire the building, as he thought that DFL was itself the actual owner. The documentary evidence as analysed by the trial judge supported Edwin's evidence

[3] see witness statement of Edwin Skinner and letter of demand for rent dated January 28th **1998** from M. Haynes on behalf of the appellant
[4] Page 152 supplemental record
[5] page 888 supplemental record of appeal
[6] Page 906 supplemental record of appeal

that he did not believe Keith to be the owner of the property and therefore Keith was not entitled to collect rent, either from TCL or from ICIL.

7. The trial judge concluded that this, rather than any alleged licence to TCL to occupy rent free for 5 years, explained why TCL did not ever pay rent, not only from 1993 to 1998, but to date. The trial judge also analysed the circumstances under which Edwin and Selwyn Skinner, and then TCL took over the equipment and machinery of SAS, (after being called upon to satisfy the indebtedness of SAS under their personal guarantees). He was entitled to find in effect that those circumstances, coupled with the inability of Keith Skinner to demonstrate any claim to ownership of the premises, explained the **non-payment of rent by TCL**.

8. i. The **finding** of the trial judge that collection of rent by the third respondent (TCL) from ICIL from **1993 to 1998** was **not done** on behalf of Keith Skinner or SAS was one of fact that was open to him on the evidence.

ii. The trial judge accepted that payment to the appellant of the **rent** received from **ICIL after 1998** was the result of a **family arrangement** as described by Edwin Skinner. He took into account that although this had been raised in the third respondent's defence, the appellant's father Keith Skinner was silent as to this arrangement in his witness statement. His analysis of the evidence with regard to this arrangement cannot be faulted.

Conclusion

9. Accordingly the trial judge was **entitled to reject** any allegation that TCL occupied rent free from 1993 – 1998 as a result of any **licence** granted to it. Neither the analysis of the

evidence by the trial judge, nor the finding of the trial judge that TCL was **not a licencee** of the appellant or his father could be faulted, far less shown to be plainly wrong.

10. Neither the analysis of the evidence by the trial judge nor the finding of the trial judge with regard to:-

a. the **non-collection** of **rent from ICIL** by the appellant or the appellant's predecessors for the period **1993 to 1998**; or

b. **Non-collection of rent** from **TCL** ,ever,

has been shown to be plainly wrong. In fact the trial judge's conclusions were justified on the evidence.

11. The trial judge's findings of fact on the evidence, reasoning, and conclusion therefrom, that the requirement to demonstrate adverse possession for a continuous period of 16 years has not been fulfilled, cannot be faulted. They were based upon justifiable findings of fact that:-

a. TCL was not a licencee of the appellant or his predecessors, as Keith had not demonstrated any right to ownership of the property when given the opportunity to so do by Edwin.

b. TCL had never paid rent, this notwithstanding a demand for rent in 1998.

c. Rent, though collected from ICIL from 1993 to 1998 by Edwin, (or Edwin on behalf of TCL), was not paid over to the appellant or his predecessors. After 1998 it was paid over to the appellant because of a **family arrangement**, brokered by the appellant's grandfather, and not because of any right to possession by the appellant or his predecessors.

12. Therefore possession by the appellant, even if based solely on the collection of rent from one tenant of the property, ICIL, by the appellant, (or his predecessors), would have been for the period **1998 to 2012**, (less than 16 years,) and/or via his father, Keith, or his company SAS, from **1987 to 1993**, (less than 16 years).

Orders and Disposition

13. In the circumstances the appeal was dismissed.

Analysis and Reasoning

14. The circumstances in which an appellate court will overturn a trial Judge's findings of fact are well known.

Revisiting findings of fact

15. In **Beacon Insurance Company Limited v Maharaj Bookstore Limited Privy Council Appeal No. 102 of 2012** the Judicial Committee of the Privy Council reiterated that an appellate court should only exceptionally contemplate reversing a trial judge's findings of fact. The circumstances in which an appeal court can interfere with findings of fact were discussed as follows (all emphasis added):-

16. At paragraph 12 of the judgment Lord Hodge referred to the judgment in *Thomas v Thomas* [1947] AC 484, per Lord Thankerton, at pp 487-488[7]

[7] *"Where a question of fact has been tried by a judge without a jury, and* ***there is no question of misdirection of himself by the judge****, an* ***appellate court which is disposed to come to a different conclusion on the printed evidence should not do so*** *unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial*

17. At Paragraph 13 Lord Hodge referred to the case of ***In re B (A Child)(Care Proceedings: Threshold Criteria)*** [2013] 1 WLR 1911 in which Lord Neuberger (at para 53) indicated that a Court of Appeal will only rarely even contemplate reversing a trial judge's findings of primary fact.[8]

18. At Paragraph 14 of the judgment Lord Hodge pointed out that the Judicial Committee had adopted a similar approach in a case from this jurisdiction, **Harracksingh v Attorney General of Trinidad and Tobago [2004] UKPC 3** in which it referred (at para 10) to the dictum of Lord Sumner in SS Hontestroom (Owners) v SS Sagaporack (Owners) [1927] AC 37, 47[9]:

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judge's conclusion; II The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

Lord Hodge stated that "*it has often been said the appeal court must be satisfied that the Judge at first instance had gone "**plainly wrong***" and "*directs the appellate court to consider whether it was permissible for the judge at first instance to make findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed records of the evidence. The Court is **required to identify a mistake in the Judge's evaluation of the evidence that is sufficiently material to undermine his conclusions**. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence. Choo Kok Beng Kok Hoe (1984) 2 MLJ 165 at 168-169 (Lord Roskill)*"

8 Lord Neuberger had stated:
*"This is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached **a conclusion on the primary facts**, it is only in a **rare case**, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it….*

9 *"… not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, **merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case**. …"*

Background

19. The appellant applied for a vesting order on May 1st 2009. He claimed that the title of the registered owner, the first named respondent, had been extinguished by the acts of possession by himself and his predecessors, (his parents and/or a company, SAS, controlled by his father), which were adverse to that of the registered owner.

20. The registered proprietor and the second respondent took no part in these proceedings. In fact the first named respondent was served by newspaper advertisement as it was claimed he could not be found.

Factual context

21. The following facts are largely undisputed save as noted.

a. In 1987 the appellant's father and mother, Keith and Bernadette Skinner, (the purchasers), purchased the shareholding in a company, Beacon Engineering Associates Limited (Beacon), owned by the first named respondent and his wife, for $900,000.00.

b. The agreement for sale conferred a right on the purchasers to occupy the premises. (However it should be noted that nowhere in that agreement, - for sale of **shares**-, was there any reference to a purchase of any **real property**).

c. A condition of the agreement for sale was Keith and Bernadette Skinner paying the sum of nine hundred thousand dollars ($900,000.00), partly as to cash ($180,600.00) directly to Frank Raymond, and partly to Development Finance Company (DFC) for

clearing the Vendor's indebtedness with DFC in the amount of $719,400.00). In fact Keith never paid the portion of the purchase price which represented the indebtedness of Mr. Raymond to the DFC[10].

d. The agreement provided that the purchasers would have the right **to occupy** the premises on which Beacon operated[11]. That document is the only one disclosed by the appellant that makes reference to the subject property. Nowhere does it provide for the vesting of ownership of that property in the appellant's predecessors or parents.

e. This is relevant simply as to the background to the entry onto the disputed premises of Keith and Bernadette Skinner, and the company SAL. There is no issue with respect to the 1987 agreement, and no finding of fact of the trial Judge in relation thereto is sought to be overturned.

1987 to 1993

22. The trial judge found as a question of fact that the appellant's parents entered into occupation on the subject premises via the operation of two companies, (one of which was SAL). He also found that they did collect the rent from 1987 to 1993 from ICIL, another company operated by a third party on the property. It is therefore largely accepted that from the period 1987 to 1993 the property was occupied by ICIL, (from whom rent was collected), and by the

[10] paragraph 4 of the witness statement of Keith – at page 118 Record of Appeal

[11] page 824 of supplemental record of appeal

appellant's parents, (or the company SAL operated by Keith). This occupation therefore extended to the entirety of the property.

1993

23. In 1993 Keith Skinner migrated due to the need for medical treatment of two of his sons. Prior to his migration it is undisputed that his brothers Edwin and Selwyn effectively took over the operations of SAL in 1993. The circumstances of their taking over the operations of SAL are not seriously in dispute.

24. In 1993 the company SAL, (which was operated by the appellant's father Keith), experienced financial difficulties. Edwin and Selwyn Skinner were called upon to honour their personal guarantees. They were initially directors and shareholders of that company, and were not involved in its day to day operation. The trial judge accepted their evidence that they did pay off the company's liabilities to DFL.

25. They did not take over SAL itself. SAL remained a company incorporated with Keith as the majority shareholder owning two hundred and sixty thousand shares, with a minority shareholding of forty thousand shares owned by a company Skinner Enterprises Limited, SEL.

26. Edwin and Keith executed an agreement to acquire the equipment and machinery of SAL, and utilised this in the operation of their own company TCL, (the third named respondent). TCL was incorporated in 1994 without Keith's participation.

27. Keith contends that at that time he permitted TCL a rent free licence to occupy the premises after his departure. The trial Judge found that there was no such rent free licence. This is one of the findings of fact which we are being asked to overturn.

28. There is dispute concerning evidence of Edwin in his witness statement at paragraph 14 on the issue of whether Keith in fact agreed to the acquisition by TCL, or by Edwin and Selwyn, of the subject premises. However this was clarified in cross examination by Edwin. He accepted that Keith never made a statement to him agreeing to the acquisition of ownership of the subject property by him. He explained however that, as Keith had not demonstrated ownership of the subject premises, no discussion was in fact held with Keith **on this aspect**, and his agreement thereto was not required.

29. The trial judge accepted Edwin's evidence that despite Keith's claim to ownership of the subject property, Keith was unable to provide any proof, documentary or otherwise, of any interest in the subject property.

Documentary evidence

30. In fact any claim by Keith to ownership was inconsistent with a letter Edwin claimed to have seen. That letter was from Keith to DFL dated June 23rd 1992 in which Keith indicated to DFL that his company SAL wished to purchase the building. This was some five years after he had entered into a 1987 share purchase agreement with Mr. and Mrs. Raymond. It was contended on appeal:

i. that the letter was unfortunately worded and should not have been read literally, despite its express language, to mean that SAL wished to now purchase the building, and

ii. that the trial Judge erred in not considering the entire context of the transaction, (including a 1990 letter from DFL). By not doing so he allegedly erred in interpreting that letter to mean that Keith was in fact now simply offering to pay off **indebtedness** in respect of those premises.

31. The difficulty with this interpretation of the letter is that there is simply no basis within that letter to so read it. It cannot be said that the Judge was plainly wrong in reading that letter in its plain and literal English meaning as he did. That plain meaning was that the letter was a request by Keith to purchase the building, and an implicit acknowledgement therefore that he did not already own it.

32. The natural and logical interpretation of that letter is that he requested that opportunity to purchase the property because he himself had not purchased that property previously and did not own it. It cannot be said that the Judge was plainly wrong, or misunderstood the evidence, or even misunderstood the context of that evidence, in ascribing to it that interpretation.

33. In fact however that letter is important, not so much for the point of whether or not Keith **owned** the subject premises, but as providing the basis for the **belief** by Edwin and Selwyn Skinner that Keith did not own those premises. This is consistent with their own evidence, and in particular the evidence of Edwin:-

(i) that Edwin had asked Keith to supply evidence of ownership,

(ii) that Keith was unable to do so,

(iii) that Keith, not being able to provide any evidence of ownership, Edwin and Selwyn went into occupation of the property to continue the operations of SAL, (eventually by their own company TCL), without further reference to any interest, or claimed interest by Keith in those premises.

34. Accordingly in 1993 there was no further discussion about:-

a. transferring the ownership of the property, (as Keith had not demonstrated that he had any right to such ownership, and because at that point Edwin and Selwyn **did not believe** that Keith had demonstrated any title or **claim to ownership**), or

b. rent free occupation for 5 years as a licencee of Keith or SAL, (also for the same reason).

That belief is important because it explained the fact that they, and TCL, did not pay rent to Keith and have never paid rent to Keith, or the appellant.

35. Further in December 1993 Edwin wrote a letter in which he sought to purchase the premises from DFL. The offer to purchase went nowhere as their subsequent searches revealed that DFL was not in fact the actual owner. However their 1993 letter indicates, and is also consistent with, their belief that Keith had no title or ownership interest in the premises.

36. The finding by the trial judge that Edwin and Selwyn took over factual possession, not as licencees of Keith, but in their own right[12] was consistent with evidence before him, including:-

i. the 1987 **share purchase agreement**;

ii. the absence of any further documentary material relating to title of the subject premises;

[12] para 91 of the judgement

iii. the letter **dated June 23rd 1992** that Edwin claimed to have seen, by Keith to DFL seeking to purchase the building ;

iv. the subsequent letter by Edwin to DFL on 14th December 1993 seeking the opportunity to purchase the building.

37. It was contended that the trial judge had failed to take into account the letter in **1999**, (purportedly dated January 28th **1998** (sic)), from attorney at law Mr. Haynes[13], as well as Edwin's response thereto.

38. It was suggested that the letter dated February 22nd 1999 in response to Mr. Haynes demonstrates an acknowledgment that Keith in fact had such right to receive rent in respect of TCL's occupation of the property. It was contended that the Judge was wrong in not understanding the letter being to this effect.

39. In fact however that letter is not to that effect. Nowhere in that letter did Edwin acknowledge Keith's right to rent. The letter makes it clear, because it says so expressly, that at no time had Keith substantiated that he was the sole owner of the building. Further, the acquisition of the business by Edwin and Selwyn was in the context of taking over a company which was non-viable at that point, having been forced to do so because DFL had called upon them to satisfy their personal guarantees.

[13] on behalf of Keith, which had requested rent from Edwin for occupation of the premises

40. The offer made by Edwin in that letter for Keith to buy their interest in the business, or to allow them time to sell the business and vacate the building, was in the context that they wished to resolve the matter. Clearly it was not an issue about which they wished to engage in litigation with their brother. This did not mean that they accepted that their brother, Keith, had any right to rent. Never in relation to that letter did they offer to pay any rent.

41. In fact TCL has never to date paid rent to Keith or the appellant, consistent with the fact that neither had ever demonstrated a right to ownership of the subject property. This was all consistent with their belief that Keith in fact did not own the subject property. The Judge could not be said to be plainly wrong, or to have misdirected himself, or to have misconstrued the evidence in this regard. In fact he was clearly correct in his construction, analysis, and comprehension of that evidence.

Period 1993 to 1998

Rent free occupation by TCL

42**.** In so far therefore as Keith, and then subsequently his successor, his son Trent, seek to claim possession of the subject premises via their actions in collecting rent, it is clear that no such rent was collected from Edwin and Selwyn, or TCL, the company they subsequently incorporated.

43. We were asked to find that the trial Judge was wrong in effect in not finding the non-payment of rent by TCL, Edwin, or Keith from 1993 to 1998, was based upon a licence for rent free occupation for that period. In fact the letter to Mr. Haynes makes it clear that there could be

no such licence or agreement for the non-payment of rent to Keith for that period, when Keith had not substantiated that he was the owner of the property.

44. The evidence accepted by the trial judge was that Keith effectively abandoned the company SAL in 1993. Edwin and Selwyn were constrained to honour liabilities of SAL under their personal guarantees. Edwin/TCL's position was that TCL, having taken over the liabilities of SAL in those circumstances, the question of paying rent to Keith, who could not even demonstrate ownership of the building, was clearly not a priority. It was in those circumstances that they denied existence of any temporary licence from Keith or SAL to occupy the property rent free.

45. The trial judge was entitled to evaluate the evidence as he did, and find on a balance of probabilities that Edwin's version was more consistent with the facts and circumstances that existed at that time. He was therefore entitled to conclude that TCL was not in occupation as a gratuitous licencee from 1993 to 1998, or thereafter was a licencee who was in default of payments for the occupation of the premises.

46. This was corroborated by the contemporaneous documentary evidence – i. the 1992 letter, by Keith to DFL, ii. the 1993 letter by Edwin to DFL iii. the January 28th **1998** (**9**) letter from Maurice Haynes demanding rent from TCL and iv. the February 22nd 1999 response by Edwin/TCL.

1993 to 1998 - rent collected from ICIL

47. The tenant ICIL did pay rent for the period 1993 to 1998. It is contended that the claimant, and his father before him, had collected rent from ICIL for a portion of those premises, and this demonstrated their continuing right to possession of those premises.

Evidence of Mr. Howie

48. In this regard it was contended that the trial Judge did not properly construe the evidence of Mr. Michael Howie and was wrong in his finding that Mr. Howie's belief in Keith being his landlord was not determinative of the issue of entitlement to possession[14].

49. Although Mr. Howie testified that he believed that Mr. Keith Skinner was his landlord, and that he had paid rent to him on this basis, Mr. Howie did not appear to be aware of the fact that, when Edwin had collected the rent from 1993 to 1998, he did not hand it over to Keith. He did not know what they did with the money. He was not even sure as to whom he had made out the cheque, whether TCL or otherwise. He did not know that TCL had taken over SAL (or more accurately, its operations). When this was put to him he made it clear that this did not really concern him.

50. We were asked to consider that Mr Howie's evidence, as to the party that he believed to be his landlord, should not have been dismissed by the trial Judge. However the trial Judge in fact considered Mr. Howie's evidence in its entirety. In particular he considered the fact that Mr. Howie paid over rent without regard to the party with whom his contractual relationship was. On Mr. Howie's own evidence he was not cognizant of the arrangement between SAL and Keith on

[14] paragraph 83 of judgment

the one hand, and Edwin and Selwyn on the other, when in 1998 they took over the equipment and machinery of SAS. In fact he was unaware that this had occurred.

51. Mr. Howie's knowledge was therefore correctly assessed by the trial Judge as limited simply to his payment of rent to a landlord in order to permit him to continue occupying those premises. He did not address the fact that the rent from 1993 to 1998 was not being handed over by Edwin to Keith. In fact he appeared unaware of this fact also.

52. In 1998 Keith made a demand for the rent that ICIL was paying in respect of the premises, demonstrating that he had not been receiving that rent from Edwin. It is not in dispute that after 1998 the rent began to be paid to Trent and his grandfather Horace, and then to Trent alone.

53. The trial judge accepted the evidence of Edwin that this payment of rent from 1998 by ICIL occurred pursuant to a **family arrangement**. The third respondent contends that those payments are a result of the intervention by Horace to avoid family discord in 1998 when Keith accused Edwin in strong terms of withholding the rent from ICIL to which he claimed to be entitled.

54. Edwin's evidence was that it was in recognition of severe financial difficulties that Keith experienced, in accessing medical attention for two seriously ill sons in the United States, that the arrangement was put in place for that rent to be paid into an account in the joint names of the appellant and his grandfather. The arrangement was brokered by Trent's grandfather, Horace, for

Trent and his grandfather, (father of Keith and Edwin), to receive payment of ICIL's rent into a joint account. Subsequently just prior to the death of Horace, the rent was paid directly into an account for Trent.

55. The family arrangement was referred to in the defence of the defendants but was not addressed in the witness statement of Keith. It could not be said therefore that the Judge was plainly wrong in ascribing weight to the fact that that arrangement was not addressed by Keith, or in accepting the evidence of the family arrangement. The family arrangement certainly was not denied by Keith.

56. The family arrangement was the background to the transmission of the rent from ICIL to the appellant. The trial Judge could not be said to be plainly wrong in concluding therefore either a. that the transmission of the rent from ICIL was **not** pursuant to any **entitlement** by Keith or Trent to collect the ICIL rent, or b. that it demonstrated any acceptance by TCL, Edwin or Selwyn, that Keith or Trent were **entitled** to such rent from ICIL.

57. The trial judge was entitled on that evidence to conclude that when the rent was collected by Edwin from ICIL from 1993 to 1998 it was not collected on behalf of Keith. He was also entitled to find as he did that the belief of the tenant Mr. Howie / ICIL as to the identity of his landlord was not determinative of the issue before the court, given that the tenant was not aware of the details of the arrangements and financial settlements that took place between the appellant's father and the appellant's uncles.

58. The trial judge was entitled to find that the collection and retention of rent by Edwin from ICIL was consistent with the belief by Edwin that neither Keith nor SAL had demonstrated any proprietary interest in the subject property so as to justify accounting to them for the rent received. This was especially so after he and Selwyn had had to satisfy the liabilities of SAL under their personal guarantees.

59. Further, the trial judge could not be said to be plainly wrong in ascribing greater weight to the **fact** that rent had not been collected by Keith for the period 1993 to 1998, than the **belief** by Mr. Howie that he was paying rent to Keith.

60. Keith and Trent together have to establish sixteen years of continuous possession adverse to the rights of a registered proprietor, and, in so far as they seek to demonstrate that possession in the absence of physical possession, by their collection of rent.

61. The Judge was therefore entitled to conclude that the non-receipt of rent from 1993 to 1998 in respect of ICIL interrupted any claim to possession by Keith or by Trent. The non-receipt of rent from ICIL by Keith, SAL, or the Appellant, for the period 1993 to 1998, was a significant finding by the trial judge, and one which was on the evidence, open to him.

62. The trial Judge found as a question of fact that their collection of rent was interrupted:-
(a) with respect to ICIL from the period 1993 to 1998, and (b) with respect to TCL as rent was never collected from TCL, from the date of occupation in 1993 by Selwyn and Edwin, to date.

63. The trial Judge reasoned that the claimant had failed to establish the factual basis for his claim for possession and his claim would therefore fail.

64. It cannot be demonstrated that he was plainly wrong in his apprehension of the evidence highlighted above.

Payment of Land and Building Taxes by SAL

65. We agree with the reasoning and finding of the trial judge that payment of land and building taxes was not determinative of the issue of possession.

Roma Mcknight – discrepancy

66. It was also contended that the trial judge did not pay sufficient regard to the fact that there were two inconsistent witness statements by this witness, an initial statement, purporting to support the appellant, and a subsequent one on behalf of TCL. Neither witness statement, whichever party it was intended to support, is of much assistance. On examination it is clear that paragraphs 4 and 5 of the initial affidavit filed on May 1st 2009 could not have been of much assistance. At paragraph 4 she claims that ICIL is still a tenant of SAL and pays rent accordingly.

67. However her evidence glosses over the fact that Edwin collected the rent from 1993 to 1998, and that Trent and his grandfather then collected the rent which was deposited into an account in their joint names. Her testimony in that affidavit was clearly incomplete. The affidavit also contained conclusions on the very issue of possession by Keith and Bernadette

Skinner that the court was asked to determine. The trial judge was entitled to disregard the initial affidavit, especially, but not solely, because she resiled from it completely in cross examination.

68. It was contended that the trial judge did not pay sufficient regard to the fact that this witness had denied the original affidavit. However the trial judge did not ignore this matter. In fact he considered referring the issue to the DPP. The trial judge was entitled not to ascribe much weight to either version, or to the fact that they were divergent. It remains unclear therefore what legitimate criticism could be made of the judge's approach to this evidence.

Conclusion

69.

i. The trial judge was entitled to consider as he did the evidence of the circumstances in which Keith had migrated to the United States. He had left SAL indebted to the DFL. His brothers Edwin and Selwyn had to resolve the issue of its indebtedness because of their liability under personal guarantees that they had provided for the debts of SAL.

ii. He was entitled to conclude, as he did, from all those circumstances that **TCL had never paid rent** because it had never accepted Keith or the appellant as the owners of the property, and not because of any licence granted to it for rent free occupation for 5 years. He was entitled in the circumstances to reject the assertion that TCL was a licencee of SAL, Keith or the Appellant Trent.

iii. He was entitled to accept the evidence of the **family arrangement** under which payment of rent from **ICIL alone** was resumed to the appellant and his grandfather for part of the premises from 1998.

iv. Even if there were a resumption of rent payable by ICIL to the appellant, the trial judge was entitled to find as a question of fact that it could not be demonstrated that the appellant or his predecessors exercised rights of ownership, possession or control by the collection for rent :-

a. for the entirety of the premises (given that it never collected rent from TCL) and

b. for a continuous period of 16 years preceding the date of their application, (given the interruption in collection of rent from ICIL from 1993 to 1998).

v. He was entitled to conclude therefrom that the appellant and his predecessors had not been in occupation, possession, or control, actual or constructive, of the **entirety** of the subject premises from 1993 to 2012.

70. Neither the analysis of the evidence by the trial judge nor the finding of the trial judge with regard to:-

a. the **non-collection** of **rent from ICIL**, by the appellant or the appellant's predecessors, for the period **1993 to 1998**; or

b. **Non-collection of rent**, ever, from **TCL**,

has been shown to be plainly wrong. In fact the trial judge's conclusions were justified on the evidence.

71. The Appellant's claim to have the legal title of the premises vested in him was on the basis of acts of possession adverse to that of the registered owner for a continuous period of 16 years preceding the application. The evidence as properly found and evaluated by the trial judge, resulted in his findings:

i. that **TCL never paid rent** for the portion of the premises that it occupied;

ii. that the fact that it did not do so from 1993 to 1998 was not because of any licence for rent free occupation granted by the appellant or his predecessors, and it was not a licencee;

iii. that rent collected from **ICIL**, by TCL or Edwin, over the period **1993 to 1998** was not collected on behalf of Keith or the appellant ;

iv. that rent paid to ICIL after 1998 was based on a **family arrangement** brokered by the appellant's grandfather, and not because of any right of ownership or right to occupation or possession by the appellant or his predecessors.

72. Accordingly the trial judge was **entitled to reject** any allegation that TCL occupied rent free from 1993 – 1998 as a result of any **licence** granted to it. Neither the analysis of the evidence by the trial judge, nor the finding of the trial judge that TCL was **not a licencee** of the appellant or his father could be faulted, far less shown to be plainly wrong.

73. The trial judge's findings of fact, reasoning, and conclusion therefrom that the requirement to demonstrate adverse possession for a continuous period of 16 years has not, on the evidence, been fulfilled, cannot be faulted. They were based upon justifiable findings of fact that:-

a. **TCL had never paid rent** for the portion of the property that it occupied as Keith had not demonstrated any right to ownership of the property when given the opportunity to do by Edwin.

b. It had never accepted Keith's assertion of ownership or right to collect such rent, notwithstanding a demand for rent in 1998. TCL was not therefore a licencee of the appellant or his predecessors.

c. **Rent**, though collected from **ICIL** from 1993 to 1998 by Edwin, or Edwin on behalf of TCL, was **not paid over** to the appellant or his predecessors. Thereafter it was paid over to the appellant because of a **family arrangement**, brokered by the appellant's grandfather, and not because of any right to possession by the appellant or his predecessors.

74. Therefore possession by the appellant, even if based solely on the collection of rent from one tenant of the property, ICIL by the appellant, (or his predecessors), would have been for the period **1998 to 2012**, (less than 16 years,) and/or via his father, Keith, or his company SAS, from **1987 to 1993**, (less than 16 years).

Orders and Disposition

75. In the circumstances the appeal was dismissed.

Peter A. Rajkumar

Justice of Appeal