

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

PORT OF SPAIN

CV2015-01289
Civil Appeal No. P005/2017

BETWEEN

MARGARET FLETCHER

EVERY OTHER PERSON IN OCCUPATION OF
No. 1 OROPUCHE ROAD IN THE WARD OF SIPARIA

Appellant

AND

SAMPSON PHILLIP

BY HIS LAWFUL ATTORNEY

THERESA PHILLIP

Respondent

Appearances:

Mr. K. Scotland instructed by Ms. A. Watkins-Montserin for the Appellant

Mr. D. Allahar instructed by Mr. K. Saney for the Respondent

DATE OF DELIVERY:

JUDGMENT

[1] **SHORT STATEMENT OF FACTS**

The Applicant/First Defendant, Ms. Margaret Fletcher ("MF"), has been residing on a parcel of land described as No.1 Oropouche Road, in the Ward of Siparia since 1986. She and Mr. Curt Fletcher ("CF"), began clearing the land and erecting a structure which would serve as their matrimonial home.

In that year CF and the paper title owner, Mr. Harripersad, entered into a written lease. MF was not a party to this lease. By January 1987 CF paid Mr. Harripersad two months' rent. Mr. Harripersad passed away soon after. Mr. Sampson Phillip ("SP"), the Respondent/Claimant, became vested with title to the land. The Fletchers separated in 2002. Although their living arrangements changed, CF maintained control and possession of the upstairs portion of the matrimonial home. CF continued to make rental payments to SP. On 5th October 1997, CF paid SP \$30,000.00, which represented his rental arrears up to December 1997. He paid a further \$300.00 in April 2004 and that was the last payment. On 20th November, 2008 a Decree Absolute was issued, legally terminating the Fletchers' marriage.

[2] On 12th December, 2012 in the matrimonial property settlement hearing, the Honourable Justice Vasheist Kokaram, awarded whatever represented CF's interest in the matrimonial home to MF. On 19th December 2012, CF contacted SP and informed him of the decision. CF informed SP that from that date, he could no longer be his tenant. SP agreed that the tenancy would end at that time.

[3] In or around April 2013, SP's lawful Attorney Mrs. Teresa Phillip ("TP") observed that MF was carrying out construction activity on the property. On 3rd June, 2013, SP's Attorney issued a letter to MF asking that she vacate the premises. SP received no response to this letter. On 2nd April, 2015 SP filed a claim against MF for vacant possession of the said property.

[4] **PROCEDURAL HISTORY**

22 nd April 2015.....	Fixed Date Claim Form
25 th May 2015.....	Appearance of First and Second Defendants
25 th May 2015.....	1 st CMC adjourned
25 th June 2015.....	Defence and Counterclaim
20 th October 2015.....	1 st CMC
	Submissions by Mr. Allahar and Mr. Davidson.
	Matter adjourned to 30th November 2015.
30th November 2015.....	ORDER #1
	Mohammed J.'s decision under Part 68.1. The trial judge determined that the defendant failed to establish that the defence has a reasonable prospect of success. An order for vacant

possession of the property was awarded in favour of the Claimant, together with costs in the amount of \$7,700.00.

28th January 2016..... Defendant's Notice of Application to the Court of Appeal for:

(i) extension of time to file application for leave to appeal the judgment, arising out of the summary proceedings of 30th November 2015.

(ii) Leave to appeal the decision of the court contained in the written judgment of 30th November 2015.

4th April 2016..... Hearing of Notice of Application by the Court of Appeal. The appeal was compromised for the following results: (i) extension granted; (ii) defence is struck from the record; (iii) the Order of Mohammed J. is set aside; (iv) Defendant/Appellant to file and serve Affidavit of Merit and (v) the matter remitted for first hearing of the claim under Part 68.7.

19th May 2016..... Mr. Saney filed a Notice of Application requesting leave to reply to the affidavit of Merit, as it *"raised several new matters...which necessitate a reply"*.

25th May 2016..... Mohammed J. granted the Claimant's application to file affidavits in reply.

11th October 2016.....

ORDER #2

Hearing of Fixed Date Claim Form under Part 68.

After reading the affidavits of the parties and examining the exhibits attached to the affidavits, Mohammed J. determined:

(i) permission for the First Defendant to respond to the affidavits is denied, as there is no right of reply; (ii) the defendant give vacant possession of the property to the Claimant; (iii) there be a stay of 42 days; and (iv) the First Defendant to pay the Claimant's costs in the sum of \$14,000.00.

18th October 2016..... Defendant's Notice of Application to appeal the order of 11th October 2016.

6 th December 2016.....	Defendant’s Amended Notice of Application to appeal the order of 11 th October 2016 and requesting a stay of execution pending the hearing and determination of the appeal. Hearing of the Amended Notice of Application for leave.
17 th January 2017.....	ORDER #3 The application for leave to appeal the Order of 11th October 2016 is dismissed.
24 th January 2017.....	Defendant’s Notice of Application in the Court of Appeal to appeal the trial judge’s order of 17 th January 2017.
10 th March 2017.....	Amended Notice of Application: (i) that the order of 17 th January 2017, refusing the leave to appeal be vacated; and (ii) that leave be granted to appeal the orders of the 11 th October 2016.

[5] **DECISION OF JUDGE ON SUMMARY JUDGMENT APPLICATION - 11TH OCTOBER 2016 (ORDER #2)**

On 11th October, 2016, the trial judge, after hearing submissions from both parties determined that the defendant was unable to discharge her duty of demonstrating that she had been in “*exclusive undisturbed possession*” of the property. Based on admissions in the defendant’s affidavit and the contemporaneous documents in support of admissions the defendant was unable to demonstrate that she had a “*realistic prospect of success*”. The application was dismissed with costs and summary judgment entered for the claimant.

[6] **DECISION OF JUDGE ON APPLICATION FOR LEAVE TO APPEAL - 17TH JANUARY 2017 (ORDER #3)**

The defendant’s defence was based on adverse possession. The judge examined facts and evidence presented in support of the claim of exclusive and continuous undisturbed possession of the property. Together with the affidavit of Merit and the contemporaneous documents¹ supplied by the CF and defendant herself and determined that she was not in exclusive and continuous undisturbed possession since 1997. Further, the trial judge noted that the authorities cited by

¹ These documents included: (i) Property Settlement Proceedings filed in the divorce proceedings. SM 224 of 2008; and (ii) the letter from MF’s attorney to CF regarding the upstairs tenant.

Counsel, and his own admission, were irrelevant to the main plank of his defence. These authorities sought to introduce a defence of proprietary estoppel which was not raised on the original pleaded case. Further, the law on adverse possession is settled and there was no issue which would be of the public interest. The trial judge therefore found that MF failed to establish, that her defence of adverse possession held a “realistic prospect of success”. The application was dismissed.

[7] **THE AMENDED APPLICATION FOR LEAVE TO APPEAL FILED ON 10TH MARCH 2017**

An amended Application for leave was filed on 10th March 2017 and was presented as a two-part application, which prayed:

- i. *That the order of the Honourable Madam Justice Margaret Y Mohammed made on the 17th day of January, refusing the application of leave to Appeal be vacated;*
- ii. *That Leave be granted to appeal the orders of the Honourable Madam Justice Margaret Y Mohammed made on the 11th day of October, 2016 wherein it was ordered that judgement is granted to the Respondent/Claimant against the Applicant/Defendant for vacant possession of the property situate at No.1 Oropouche Road in the ward of Siparia and that the Applicant/Defendant do pay the Respondent/Claimant’s costs of the Claim in the sum of \$14,000.00.*

...

[8] **GROUND OF APPEAL**

A. The Refusal of the Application for Leave

The trial judge erred in;

- i. not permitting MF’s Counsel to complete her submissions in reply.

B. The Decision Itself

The trial judge erred in;

- i. her analysis of the evidence;
- ii. finding that the Applicant did not discharge her duty to show that she had been in continuous undisturbed possession of the property for the period claimed;
- iii. law by exercising her discretion to determine the matter summarily; and
- iv. fact by finding that the issue of proprietary/equitable estoppel was not raised on the evidence or in the pleadings.

[9] **ISSUES FOR APPEAL**

The issues on which the Appeal turns are:

- I. WAS THE TRIAL JUDGE PLAINLY WRONG TO REFUSE THE DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL THE DECISION TO GRANT SUMMARY JUDGMENT?***

- II. DID THE DEFENDANT'S AFFIDAVIT OF MERITS DISCLOSE A SUFFICIENT BASIS FOR THE GRANT OF LEAVE OF TO APPEAL SUMMARY JUDGMENT PURSUANT TO SECTION 38(2)?***

- III. NOT WITHSTANDING II, DID THE APPELLANT'S AFFIDAVIT DISCLOSE A DEFENCE WITH A REALISTIC PROSPECT OF SUCCESS?***

I thank Counsel for their submissions, however I will not recite these submissions, but shall only refer to relevant points.

[10] **DISPOSITION**

Against the backdrop outlined and having considered all of the evidence and arguments I find that:

1. On the application to vacate the refusal of leave to appeal by the trial judge, that application is dismissed because, the trial was not plainly wrong when she dismissed the application for leave to appeal the summary judgment.
2. On the application for leave to appeal the orders of 11th October 2016, that application is dismissed on the ground that the appellant in her affidavit did not disclose grounds which showed that she had a realistic prospect of success in defending the claim.

[11] I will not recite the facts and history.

[12] **LAW**
APPLICATIONS FOR LEAVE TO APPEAL

Section 38(2) of the **SUPREME COURT OF JUDICATURE ACT**² provides that a party wishing to appeal a summary judgment must obtain leave either from the judge making the order, or from the Court of Appeal. In this case, the Appellant is exercising her rights to the two bites of the cherry offered.

[13] **REAL PROPERTY LIMITATION ACT (“RPLA”)**³

In the case at bar the applicant is seeking to use the provisions of the **RPLA** to advance her defence in adverse possession. For her to succeed she must show that she was in continuous possession over a period of 16 years, during which time, the paper title owner has not sought to take action against her for recovery of possession. Further, in order for a defendant to establish possession, she must show, not only the fact of possession, but the animus.⁴ Section 3 of the Act gives the title owner 16 years within which to take action against persons who have illegally entered upon their land. This Section is clear. Section 22 provides that upon the determination of the limitation period, the rights of the tile owner would be extinguished. In **CLYDE DIPNARINE ET. AL. v. ESTHER DIPNARINE**, Mendonca J.A. succinctly lays out the factors which much be satisfied in order to establish adverse possession, those factors being factual possession and the intention to possess.

[14] Weeks J.A. in **OCEAN DEVELOPMENT LIMITED v. MAHABIR DEONATH AND ANOR.** ⁵ which stated that applications for leave may only succeed if the applicant can demonstrate on the pleadings, that he possesses a “*realistic prospect of success*”.⁶ There must be an argument which is capable of being advanced or for some other compelling reason, which includes the public interest or elucidation in a point of law. The onus is on the Defendant to demonstrate on the support of the evidence that these criteria are satisfied.

² This Section states,

No appeal shall lie, except by leave of the Judge making the order or of the Court of Appeal from—

(a) an order made with the consent of the parties;

(b) an order as to costs;

(c) a final order of a Judge of the High Court made in a summary proceeding.

³ Chap. 56:03.

⁴ Stephen Jourdan. Adverse Possession. Chap. 6. Reed Elsevier (UK) 2003.

⁵ **CIV. APP. NO. 12 OF 2008.**

⁶ Id.

[15] Part 15.2 of the **CIVIL PROCEEDINGS RULES, 1998 (CPR)** deals with summary proceedings. The judge hearing the application for summary judgment must be satisfied that a defendant's defence has a "*realistic prospect of success*". Part 15.2 of the **CPR** provides that,

The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—

- (a) on an application by the claimant, the defendant has no realistic prospect of success on his defence to the claim, part of claim or issue; or*
- (b) on an application by the defendant, the claimant has no realistic prospect of success on the claim, part of claim or issue.*

Part 15.6 of the **CPR** gives the court the power to grant summary judgment, "*on any issue of fact or law whether or not such judgment will bring the proceedings to an end*"⁷.

[16] Part 26.1 of the **CPR** grants the court powers to exercise its discretion in the management of cases and so, an application for summary judgment may be made at a case management conference.

[17] Part 68 of the **CPR** makes provisions for summary proceedings for possession of land. This Part 68.1 provides that an application for the possession of land may be made against any person who is not a tenant or has remained in occupation of land without a licence or the consent of the title holder. The powers of the court under summary proceedings are encompassed in Part 68.7, which provides,

(1) At the first hearing the general rule is that the court must give judgment unless there is a defendant who attends and satisfies the court that he has a defence with a realistic prospect of success.

(2) Nothing in this Part prevents the court from ordering possession to be given on a specified date.

(3) If judgment is not given the court must give directions as if the hearing were a case management conference.

[18] **REALISTIC PROSPECT OF SUCCESS**

The burden is on the defendant to demonstrate that the defence contains a "*realistic prospect of success*". This was discussed in **SLYVESTER v. FAELLESEJE, A DANISH FOUNDATION, ST. VINCENT AND THE GRENADINES**, in which Barrow J.A. took guidance from the Practice Direction

⁷ **CPR**, Part 15.6(1).

in **SMITH v. COSWORTH CASTING PROCESSES LTD.** in which Lord Woolf posited that it must be a realistic prospect of success and not one which is fanciful.⁸

[19] **ANALYSIS OF ISSUES**

I. WAS THE TRIAL JUDGE PLAINLY WRONG TO REFUSE THE DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL HER DECISION TO GRANT SUMMARY JUDGMENT?

At the hearing for leave, it was MF's burden to show how the defence may in fact succeed. After reviewing MF's proceedings, the reasons given by the trial judge, that conflicting information and the contemporaneous documents which spoke to the fact that she was in exclusive possession of the property, cannot be faulted.

[20] On the amended application for leave the grounds adduced were that the trial judge: (i) erred in the analysis of the evidence, which resulted in the determination that CF was still in occupation of the property and that MF did not discharge her duty to demonstrate that she had been in exclusive and continuous undisturbed possession of the property; (ii) did not allow the Applicant's Counsel to complete her oral submissions; and (iii) ought not to have exercised her discretion to determine the matter summarily.

[21] Mr. Allahar submitted that both the letter from MF's attorney complaining of CF's occupation of the upstairs portion of the property, as well as the order from the matrimonial proceedings, demonstrate that MF was not in exclusive and continuous undisturbed possession. The trial judge cannot be faulted for taking those documents into consideration in her determination as to whether MF discharged her duty. Further, to support her conclusion, the trial judge noted that MF did not challenge the contemporaneous documents which were relied upon in arriving at the determination. Thus I cannot find that the trial judge was plainly wrong in her determination on this issue.

⁸ *The court will only refuse leave if it is satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.*

[22] MF sought to introduce a new ground of proprietary estoppel. MF's Counsel relied upon the cases of **KNOWLES v. KNOWLES**⁹ and **E & L BERG HOMES LTD v. GREY AND ANOR**¹⁰. Mr. Allahar objected to a new ground being introduced at the leave stage and the trial judge agreed, since these cases were on proprietary estoppel and that was not raised in the affidavit of merit. As such, the submissions on this issues, together with the cases, were irrelevant to the application for leave and were not allowed. Counsel for MF also requested an opportunity to reply to the affidavits. This was not permitted by the trial judge as Part 68 does not afford a right of reply. The trial judge was not plainly wrong.

[23] **THE TRIAL JUDGE HAS DEALT WITH MATTER SUMMARILY**

With regard to the trial judge's discretion in dealing with matter summarily, this ground of appeal is a non-starter. The **CPR** makes provisions for judges to deal with a matter justly and more specifically, the application is a Part 68 application, which provides that in the event that the defendant has failed to satisfy the burden of demonstrating the defence has a "*realistic prospect of success*" the court must give judgment. The trial judge dismissed the application for leave as MF failed to demonstrate that the defence held a "*realistic prospect of success*". There existed no material error in law or otherwise, which would grant jurisdiction upon this Court to interfere with the trial judge's decision. The Court finds that since MF did not provide any indication as to why she disagreed with the trial judge, and I myself, can find no reason to disagree, the ground of the appeal is dismissed.

[24] **II. DID THE APPELLANT'S OF MERITS RESPONSE DISCLOSE A SUFFICIENT BASIS FOR THE GRANT OF LEAVE OF TO APPEAL SUMMARY JUDGMENT PURSUANT TO SECTION 38(2)?**

The Appellant is now affording herself a second bite of the cherry. I note that the record of Appeal in this application before the Court of Appeal for leave to appeal, contain the same documents presented to the trial judge on that similar application. MF did not use this opportunity to advance her case any further. I must point out that it may have been prudent to file an affidavit, since counsel's submissions cannot take the place of evidence for the Court's consideration. I therefore can make no finding that MF discharged her burden to prove that the affidavit of Merits upon which she relies to defend her clam in these proceedings had a realistic prospect of success. MF's attempts to

⁹ [2008] UKPC 30.

¹⁰ [1980] 1 EGLR 103.

demonstrate that the leave to appeal against the summary judgment decision ought to be granted. MF did not expand on the issue or add further her attempt to satisfy the burden that her defence held a “realistic prospect of success” .

[25] **III. NOT WITHSTANDING II, DID THE APPELLANT'S AFFIDAVIT OF MERITS DISCLOSE A DEFENCE WITH A REALISTIC PROSPECT OF SUCCESS?**

Counsel is now invoking this Court's jurisdiction for leave to appeal to the full court. The full court is bound to treat it as the same principles of the trial court. **RAINBOW COURT TOWNHOUSE**¹¹ lays out the four relevant factors which a trial judge needs to contemplate when determining the summary judgment application. These factors are: (i) whether the claim has a realistic prospect of success; (ii) the overriding objective; (iii) the scope of the inquiry, which would consider whether the defence is maintainable and whether the factual basis of the claim is “fanciful”; and (iv) inconsistencies in statements. I will adopt the robust approach of the **THREE RIVERS**¹² case which spoke to examining these factors and notes,

Lord Hope succinctly sets out the factors to be addressed on an application for Summary Judgment. They can be summarised as follows:

- a) whether the claim (or defence in this case) has no real prospect of success at Trial, (that criterion to be applied is, according to Lord Hobhouse of Woodborough “not one of probability; it is of absence of reality”) (Emphasis mine);*
- b) whilst considering the overriding objective of dealing with cases justly;*
- c) to consider the scope of that inquiry.*

In **RAINBOW COURT TOWNHOUSES**¹³, a judgment which was approved by the Court of Appeal, the judge continued on the further question of (c) in this way,

On the further question at (c), Lord Hope suggested that the approach should be to examine whether the exceptions to the traditional method of trying issues of fact can be accommodated on the application. Two suggested exceptions are –

- a) whether it is clear as a matter of **law** at the outset that even if the party proves his case successfully, that the remedy he seeks is not sustainable; or in this case, that the Defence proffered is not maintainable;*

¹¹ CV 2014-04525.

¹² **THREE RIVERS DISTRICT COUNCIL v. GOVERNORS OF THE BANK OF ENGLAND (NO. 3) [2003] 2 A.C. 1.**

¹³ CV 2014-04525.

b) *that the factual basis of the claim is “fanciful” as being “without substance”; (for example, that the Statement of Facts is contradicted by the documents upon which it is based, or as in this case, that documents which are uncontestable believe the contents of the Affidavits of Merits);*

My own addition to these exceptions is,

c) *that there are inconsistent statements in the statement of case filed by the party whose pleadings are under scrutiny.*

If these exceptions occur, then Lord Hope was quite certain that “a trial of the facts would be a waste of time and money, and it is proper that the actors should be taken out of court as soon as possible”. I associate myself fully with this line of reasoning and analysis.

[26] **(a) MATTER OF LAW**

MF must satisfy the provisions of Section 3 the **RPLA** and demonstrate that she has been in adverse and continuous possession of the property for at least 16 years. **PYE** puts forth the two-part test as stat, which must be undertaken in the determination of adverse possession claims.¹⁴ It is required that there is factual possession of the property and the intention to possess the subject property, through the exercise of custody and control.¹⁵ **PYE** quoted by Mendoca J.A. in **CLYDE DIPNARINE ET. AL . v. ESTHER DIPNARINE**¹⁶ states,

It must be a single and [exclusive] possession, though there can be single possession exercised by or on behalf of several persons jointly...everything must depend on the particular circumstances but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

This case did not turn on the *animus*, but instead was determined by MF’s inability to prove factual possession.

[27] MF has failed to demonstrate that her defence of adverse possession has a *realistic prospect of success* as she was unable to establish that she was in exclusive and continuous undisturbed possession for the 16 years required under the **RPLA**. It is clear that as a matter of law, MF’s reliance on adverse possession is not one which is maintainable. I must reiterate, that in pursuit of

¹⁴ **J A PYE (OXFORD) LTD. AND ANOR. V. GRAHAM AND ANOR. [2002] 3 ALL ER 865, 875.**

¹⁵ *Id.*

¹⁶ **CIV. APP. NO. 34 OF 2010. Para. 39.**

the overriding objective, and its obligation the “*deal with all cases justly*”, the principles of “*equality, economy, proportionality, expedition and procedural fairness*” and made a proper determination in the management of the case, as is within the powers and duties of the Judge. I can see no error in the trial judge’s determinations.

[28] **(b) FACTUAL BASIS OF THE DEFENCE**

MF attempted to defend the claim by stating that she was in exclusive and continuous undisturbed possession of the property. MF’s evidence of factual possession of the property contained inconsistencies and conflicts that were determinative in her failure to prove this element. These comprised: (i) inconsistencies in evidence which included contradicting dates of when MF claimed to be in exclusive control over the property; and (ii) the contemporaneous documentary evidence from MF herself which conflicted with MF’s claim of exclusive possession.

[29] The most telling evidence that MF was not in adverse possession for the requisite period is the fact that rent paid up to 2004. In her affidavit, MF acknowledged that a tenancy existed in 1989. As such, it cannot now lie in her mouth to claim adverse possession. CF’s tenancy ended in 2012 and it was only then that MF could take his place. MF stated in her affidavit, that by virtue of the court order, “*I was awarded our matrimonial home and I agreed to pay him \$40,000.00 for his share and interest*”. It stands to reason that since CF was a tenant his possession was not one that was adverse so she cannot claim adverse possession.

[30] Notwithstanding that Kokoram J. gave possession of CF’s interest in the matrimonial home to MF in 2012 in accordance with the provisions of Sections 56(1) and (2) of the **MATRIMONIAL PROCEEDINGS AND PROPERTY ACT**¹⁷, the Order has no effect on the land and Kokoram J. informed the parties,

*It is noted and is accepted by both parties that the occupancy of both of these parties and their entitlements to occupy these properties are tenuous in that, both may be subject to eviction if the lawful owners have made the decision to repossess their property.*¹⁸

¹⁷ Chap: 45:51.

¹⁸ **MARGARET FLETCHER v. CURT FLETCHER. CIV. NO. MA S224/2008.** Proceedings heard before the Honourable Justice Vasheist Kokoram. Pg. 3. Dec. 17, 2012.

MF was fully aware that the matrimonial order clearly distinguished between ownership of the matrimonial property and the lands upon which it stands. All the judge did was award CF's interest to MF. It was a personal contract, not one that would pass with land.

[31] **(c) INCONSISTENCIES IN STATEMENTS**

MF's affidavit contained dates which she suggested was the beginning of the adverse possession period and the period of her exclusive possession of the property. These dates conflicted within the affidavit itself and with her contemporaneous documents. MF further stated that she lived on the property with her husband at the time from 1997 to 2002 and thereafter with her daughter, then stating that she has not paid rent since 1997. MF then conflicts her earlier statement by saying she has been in exclusive possession of the property since 1997. Further, MF's admittance in her affidavit that she paid CF for his share and interest in the matrimonial home as a result of the 2012 matrimonial proceedings, is another glaring conflict, which opposed her claim of exclusive and continuous undisturbed possession of the property. These conflicts together with the evidence contained in the contemporaneous documents, such the letter from MF's Attorney to CF were within the contemplation of the trial judge in arriving at her decision to grant summary judgment.

[32] **CONTEMPORANEOUS DOCUMENTS**

The evidence in the letter dated 2nd March, 2011 showed that whilst MF objected to the type of business which tenanted the premises from CF, the content of the letter speaks mainly to a complaint of the nuisance created by the business. The letter admitted that without MF's "*consent or knowledge*", CF rented out the upstairs apartment. At no point in the letter did MF object to CF's occupation or inform him that did not possess the authority to tenant the upstairs apartment. It was merely a complaint regarding the type of business operated, as this was causing MF a great nuisance. This letter undeniably forms part of the unchallenged contemporaneous documents which I now take into consideration.

[33] **PUBLIC INTEREST**

This is an interesting point. When persons marry, the law treats them as one unit for certain purposes. The original entry of this couple was legal and it remains legal until they both are asked to leave the premises. A divorce does not necessarily result adverse possession, by one, part of the

couple, unless the landlord takes some action. It was made clear by Kokoram J. that the legal tenancy was to be transmitted to MF, but subject to SP's desire to continue in a relationship with her. If SP had allowed MF to continue in possession, without making a demand, no issue of adverse possession would arise, since on the acceptance of rents, he would continue to treat her as a tenant. SP did not wish her to be there. He told her this in 2013. On the expiration of that Notice to Quit, her possession became adverse. He filed a claim 2 years after. The filing of that claim stopped time from running. This is all established on the evidence before the court, which has not been contradicted. Therefore I cannot agree with Mr. Scotland, that there is any need for any clarification.

[34] **POWERS OF A CASE MANAGEMENT JUDGE**

The powers of a trial judge are contained within the **CPR**. These powers afford the trial judge the discretion to manage cases as he sees fit, in keeping with the administration of justice. The trial judge had all material before her to make her determination. It is not within the powers of this Court to tell a trial judge how to manage a case. So long as the overriding objective is observed, this Court will not interfere with the trial court's decision. The role of the Court of Appeal in **PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED v. RYAN AND ANOR.**¹⁹, the limited scope of the Court of Appeal does not permit interference with a finding of fact by a trial judge, unless there exists,

*some other identifiable error, such as...a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.*²⁰

Management of cases is left solely to the discretion of the Judge and the matter at bar falls outside the remit of **PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED.**

[35] The Court wishes to note that the submissions in this matter were late, though this does not excuse this Court's tardiness, for which it humbly apologizes. I place on record, my gratitude to Counsel for their submissions and to my JRC, Ms. Kim Ackee, for her support.

¹⁹ [2017] UKPC 30.

²⁰ Id. at para. 17.

[36] **DECISION OF THE COURT**

After examination and analysis of the relevant law and the circumstances of this case. I now say as follows:

1. That the appeal against the trial judge's order of the 17th January 2017, in which she refused the Applicant leave to appeal summary judgment of 11th October 2016, is dismissed.
2. That the trial judge's order of the 11th October 2016, granting summary judgment to the Respondent, is reinstated, on the that grounds that:
 - (i) the Appellant has failed to show how the trial judge was plainly wrong in her decision to deny leave to appeal summary judgment;
 - (ii) the Application before this Court for leave disclosed no sufficient basis for the granting of leave to appeal the summary judgment; and
 - (iii) the Appellant's affidavit of Merit failed to disclose a realistic prospect of success.

ORDER:

1. The Amended Notice of Application in so far as it appealed the decision of the trial judge, of the 17th January 2017, is dismissed.
2. The Amended Notice of Application, in so far as it seeks leave to appeal the decision of the 11th October 2016, be and is hereby dismissed;
3. That the trial judge's Order of 11th October 2016, granting summary judgment is reinstated;
4. The Appellant to pay the Respondent's costs in the amount of \$9333.00, being 2/3 of the costs awarded before the trial judge..

Dated this 24th day of November, 2017

/s/CHARMAINE PEMBERTON
COURT OF APPEAL JUDGE