

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**  
Scarborough Sub-Registry (Virtual Hearing)

Claim No. CV2018-02997

**IN THE MATTER OF THE REAL PROPERTY ACT CHAPTER 56:02**

AND

**IN THE MATTER OF THE APPLICATION OF JULIA JOHNSON PURSUANT TO SECTION 49 OF THE SAID ACT FOR A VESTING ORDER**

*Claimant*

AND

**IN THE MATTER OF THE APPLICATION BY THE INTERVENER SMALL BUSINESS CONSTRUCTION LIMITED PURSUANT TO SECTION 54 OF THE SAID ACT**

*First Intervener*

AND

**IN THE MATTER OF THE APPLICATION BY THE INTERVENER TAURUS SERVICES LIMITED PURSUANT TO SECTION 54 OF THE SAID ACT**

*Second Intervener*

**Before the Honourable Madame Justice Eleanor Joye Donaldson-Honeywell**

Delivered on: 18 February 2022

**Appearances:**

Mr. Anthony Arnold and Ms. Jocelyn Lynch-Benjamin, Attorneys-at-Law for the Claimant

Mr. Alvin Pascall, Attorney-at-Law for the First Intervener

Mr. Sherwin Rampersad, Attorney-at-Law for the Registrar-General

## ORAL JUDGMENT

### **A. Introduction**

1. By Fixed Date Claim Form and Affidavit in Support of Ms. Julia Johnson, both dated the 12 July 2018 and filed on the 17 August 2018, together with the supporting affidavits of Phillip Smart, Claude Roberts and John Roberts, the Claimant applied for the following:-
  - i. A vesting order of **ALL AND SINGULAR** that the parcel of land affected by these proceedings comprises **SIX ACRES or 2.0588 hectares** be the same, more or less, situated in the parish of St. Patrick in the island of Tobago and bounded on the North by a road reserve 10.6 metres wide, on the South by Lot No. 4, on the East by a Reserve 10.6 metres wide and on the West by lands formerly of Small Business Construction Ltd now Celestine Josefita Charles (hereinafter referred to as “the said parcel of land”), being the remaining portion of a larger parcel of land comprising **SIXTEEN ACRES TWO ROODS AND 10 PERCHES (16a. 2r. 10p)** registered in Certificate of Title registered in Volume 3339 Folio 137.
  - ii. The Registrar General do issue a new Certificate of Title in the name of the Applicant
2. Mr. Vincent Taylor swore an Affidavit on 14 September 2018 and filed it on 17 September 2018 in support of an intervention by Small Business Construction Limited – SBC (“the First Intervener”) in opposition to the application in the Claimant’s Fixed Date claim.
3. Pursuant to Court Orders dated 1 February 2019 and 11 March 2019, the Claimant filed an Amended Fixed Date Claim and Affidavit in Support on 29 March 2019, which included Taurus Services Limited (“The Second Intervener”) as an interested party and intervener in the matter.
4. By Affidavit in Response dated 18 April 2019 and filed 29 April 2019, Ms. Debra Chandler, on behalf of the Second Intervener, responded in opposition to the Claimant’s Amended Fixed date claim and Affidavit in support.

5. Thereafter on 14 May 2019 the Claimant replied to the Affidavit in Response of the Second Intervener.
  
6. On 22 May 2019, the Court directed as follows:-
  - i. Written Submissions are to be filed and served by the Claimant on or before 16 September 2019.
  - ii. Written Submissions are to be filed and served by the First Intervener on or before 7 October 2019.
  - iii. Written Submissions are to be filed and served by the Second Intervener on or before 31 October 2019.
  - iv. Legal Note by the Registrar General to be filed and served on or before 31 October 2019.
  - v. Submissions in Reply (if necessary) are to be filed and exchanged by the parties on or before 29 November 2019.
  
7. Having considered the submissions duly filed by all parties, the Court concluded that there were issues of fact to be determined in a Trial before finally determining the Claimant's application. Accordingly, on 5 December 2019, the Court gave directions for a site visit and trial. A direction was also given for the Claimant to file an affidavit disclosing field investigators reports from a prior related matter CV2015-04354.
  
8. The trial was postponed on a number of occasions awaiting improved pandemic conditions so that a site visit and trial could be conducted in-person. Eventually, the proceedings were set to commence in-person with a site visit on Wednesday this week. That had to be aborted due to on-going pandemic restrictions and the trial proceeded for two days virtually, from Thursday 17 February 2022 and was completed today. As an alternate to the in-person site-visit, parties were permitted to rely on video evidence of the subject locations.
  
9. The Claimant failed to comply with directions regarding proper filing and service of Trial bundles and the filing of the affidavit with the field reports. That latter failing was remedied

on the first day of the trial. The Second Intervener withdrew any interest in the matter on the day before the trial. Counsel for the Registrar General was excused after making an appearance on the first day of trial.

10. The Trial proceeded with only the Claimant's witnesses available for cross-examination. Only the Claimant herself was cross-examined. The sole witness for the First Intervener died prior to the trial so that they relied solely on the untested testimony of that witness, Vincent Taylor.
11. Parties were invited to make oral submissions on conclusion of the oral testimony. In so doing, they each relied on the written submissions filed prior to the trial. The First Intervener also filed a supplemental submission on the final day of the trial. In light of the reliance on written submissions, both sides made only minimal oral submissions.

**B. Factual Matrix**

12. The Claimant is the daughter of Roosevelt Johnson (*deceased*) and who, up to around 1983, was employed by the First Intervener as a Labourer and Caretaker/Watchman of the said lands. He also resided on the land.
13. On 11 July 1984, the Second Intervener's predecessors in title, the Workers' Bank of Trinidad and Tobago granted a Demand Loan facility to the First Intervener to be repaid together with interest. The loan was granted to the First Intervener for the purpose of financing construction projects in Tobago. The security for the Demand Loan comprised of a Deed of Debenture dated 15 July 1985 and registered at the Registrar General's Office as No. 13213 of 1985 on 5 August 1985 over the fixed and floating assets of the First Intervener.
14. The First Intervener failed to service its debt to Workers' Bank. On 19 November 1986, a Receiver was appointed under the Deed of Debenture and a Notice of Appointment of a Receiver was filed and lodged at the Companies Registry.

15. The Receivership was ultimately wound up in 1991 with the said lands remaining unsold and vested in the name of the First Intervener; subject to the Deed of Debenture in favour of the Second Intervener.

16. The evidence before the Court is contained in the following affidavits:-

a. In relation to the Claimant's application:

i. The Amended Affidavit of Julia Johnson, together with the supporting affidavits of Phillip Smart, Claude Roberts and John Roberts, all filed 29 March 2019, on behalf of the Claimant.

ii. Affidavit of Julia Johnson, together with the supporting affidavits of Phillip Smart, Claude Roberts and John Roberts, all filed 29 May 2019, on behalf of the Claimant.

b. In relation to the First Intervener's application:

i. Affidavit of Vincent Taylor filed 17 September 2018 on behalf of the First Intervener.

### **C. The Central Issue**

16. The central issue to be determined is whether the Claimant can successfully prove that she was in adverse possession for more than 16 years as required under Real Property Limitation Act Chapter 56:03 ("RPLA") to entitle her to a vesting order of said lands.

17. In order for an occupier of land to obtain a vesting order under the RPLA based on extinguishment of the paper owner's legal title (in this case, the title of the First Intervener), possession of the land by that occupier must be "adverse possession". (*per Sharma J.A, Alphonse Ali Mohammed v. Anthony Guerra The Registrar General, Civ Appeal No.47 of 94*).

18. The well-known authority of *JA Pye (Oxford) Ltd v Graham (2003) 1AC 419* sets out the applicable criteria for adverse possession. In *Grace Latmore Smith v David Benjamin; Grace Latmore Smith v. Patrina Benjamin and Kenneth Baptiste, Civil Appeal No.67&68 of 2007*,

Justice of Appeal Mendonça endorsed the elements necessary to prove legal possession as established by Lord Browne-Wilkinson in *Pye v Graham*.

19. Justice of Appeal Mendonça, at paragraphs 38 and 39 of his judgement, explained:-

*“38: What constitutes possession in this area of the law was discussed in the **Pye** case. In the judgment of Lord Browne-Wilkinson, with which the other Law Lords agreed, he stated ([2002] 3 All ER 865 at [37], [2003] 1 AC 419 at [37]) that it was clearly established:*

*‘... that the taking or continuation of possession by a squatter with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purposes of the Act.’*

*39: He went on to say (at para 40) that there are two (2) elements necessary for legal possession and these are: ‘(1) a sufficient degree of physical custody and control (“factual possession”); (2) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (“intention to possess”). What is crucial is to understand that, without the requisite intention, in law there can be no possession.’”*

20. Flowing from the central issue and the authorities, thereon, certain underlying issues must be examined. They are as follows:

- a. Has the First Intervener proven that the Claimant’s occupation is based on the consent of the titleholder i.e. as a licensee of a licensee? And in particular:
  - i. Is there proof that at the time when the Claimant took independent possession her father was a licensee of the First Intervener?
  - ii. Is there evidence that the Claimant was a licensee of her father or alternately that she was always a joint squatter from the time she took independent possession?
- b. What evidence is there of the Claimant’s physical custody and control?

- c. What evidence is there of the Claimant's intention to exercise custody and control on her own behalf and for her own benefit?
- d. What is the location and extent of the area occupied by the Claimant?

**D. Analysis**

*Was there any proof that Julia Johnson occupied the lands based on consent of the titleholder? In other words, as a licensee, based on the facts of this case - as a licensee of the titleholder's licensee?*

21. Under this heading, the first question to address is whether there is any proof that her father was a licensee when she took independent possession. Secondly, whether there is any proof that she was a licensee of her father or alternately that she was a joint squatter from the time she independently took possession. The other two areas of possession - her physical custody and control and then her intention to exercise custody and control, will thereafter be examined and the extent as to how much of the land was she occupying.

22. Was Julia Johnson a licensee of her father and is there any proof that her father was a licensee? Based on the evidence of the Claimant, her father received his last salary from the First Intervener in 1983. There is no proof that he was a caretaker after 1983 or had permission to remain. On the evidence of the Claimant in October 1985, he was offered a watchman job. However, he was to share the duties with another man, giving the impression that he would be there on and off, and that they would interchange.

23. Throughout the evidence before the Court, there is no documentation to show that there was a licence for Mr. Roosevelt Johnson to remain on the land from 1983 and on. This watchman offer fell through. Therefore, the initial licence, if any i.e. prior to 1983 when he was a caretaker, was revoked implicitly because there was nothing to "caretake" or watch over, there was no business. The Principals of the company disappeared. The sole witness, Vincent Taylor, went abroad from 1989 to 2006, approximately, and in the only contact with Mr. Johnson was to check on materials left on the site. Hence, my finding is that there was

no proof that Ms. Johnson's father was a licensee when she took possession around 1985, 1986.

24. Is there any proof that Julia Johnson was a licensee of her father or was she always a joint squatter from the time she independently took possession? Ms. Johnson moved to the subject lands in 1983 at a time when she knew the job of her father, who had been a caretaker ended in 1983, based on her affidavit. She is aware that in 1985 her father's employer's company failed, according to her affidavit. He was no longer a caretaker from about 1985, 1986.

25. The Claimant then became a teen mother at age around 15 or 16 years and resided independently. She lived at first at her father's house, and in 1986, she established her own home. Mr. Vincent Taylor swore that her father, Roosevelt Johnson, left the land around 1998-1999. Mr. Taylor was away for many years, and could not find Mr. Johnson with regard to missing materials. Only Julia Johnson lived there (this is based on the First Intervener's case) from 1998 to around 2001, at least, and beyond. The Claimant's father was not occupying the land but she was there.

26. Ms. Johnson appeared to have been independent in the way that she was living there. In her father's 2010 Will, there is no mention of him or her being licensees. However, the Will does say that he bequeathed a house to her, also all of his other property and he appears to be saying that he was the owner of the entire piece of land that is the subject of these proceedings.

27. The affidavits of the supporting witnesses were examined. Though much was made in cross-examination and submissions to suggest that the only result to be gleaned was that they are agreeing that Mr. Roosevelt Johnson was a caretaker and, therefore, a licensee, when I examined carefully, for example evidence of John Roberts, there is no mention of a licence. Mr. Roberts indicates knowledge of the Claimant's father, Roosevelt Johnson, living there from the early 1980s, and he says that Roosevelt was a watchman. Afterwards, he was there

on his own, as the company was no longer around or functioning in the area. This corroborates what Julia Johnson herself was saying.

28. In Julia Johnson's affidavit, she says that she was bequeathed certain property. But it is clear, from a reading of the Will, that Roosevelt Johnson is admitting that he was not vested with the land yet, although he says he's the owner. In fact, the Small Business Construction Limited's ("SBC") case is that he was not the owner, so they cannot, at the same time, rely on this Will to prove that he was. They, SBC, are saying he was not. The Will, though, does treat Julia as an existing co-occupier because it states they were both jointly applying to have the property vested. My finding is that Ms. Johnson was a joint squatter, engaged in a similar act of squatting as her father. There she had her family and, according to the Defendant's witness, lived there with a man.

*Physical custody and Control*

29. The next issue to consider is the Claimant's physical custody and control of lands occupied for the requisite period of 16 years under the **RPLA Section 3**. Based on the evidence presented, she was there for over 33 years, and therefore she meets that requirement. However, the quality of the condition that she was there has to be considered. Under cross-examination, she testified that she had children and grandchildren at the time that she was living on that particular parcel of land.

30. She makes no admission that she was asked by Mr. Taylor on behalf of the First Intervener to leave in 1998, or that she complied and then came back. Mr. Taylor, as the First Intervener's witness, unfortunately, is deceased and could not have been cross-examined about that. Therefore, on a balance of probabilities, the Claimant's version is accepted that she was never asked to leave and left and then came back.

31. In fact, there is no written Notice to Quit to indicate that she was asked to leave or any other documentation that would show she should have left and come back around 1998, 1999. Further, in the closing submissions, Counsel - Mr. Arnold - said that it was never put to the

Claimant in cross-examination that she was asked to leave and came back. That was not refuted, so I will accept that this is the case.

32. The only acts of the First Intervener connected to the land were in 1996, checking on materials, allegedly checking with her father about some materials and in 1999, responding to complaints about how the land was being kept. Some neighbours were complaining that there was some dumping of materials on the land and the First Intervener contacted the persons constructing the Hilton to complain about that. But that was not enough to discount the physical control of the Claimant.

33. There is no evidence of the First Intervener preventing Julia Johnson from doing any building or farming as she said she was doing, which was how she exercised control. There is no evidence from anyone that they tried to prevent her from doing that. There is no evidence that the First Intervener ever cleared the site. The affidavit evidence of their deceased witness was that a plan to clear the land was the reason they were asking her to leave in 1998, which she denies. But they admit they never did anything on the land. And, in fact, her home was left intact, buildings were left intact.

34. In 1999, the First Intervener's witness admits he saw Julia extending the building for the caretaker and that someone else was occupying a second building; that is the concrete building, which he says was a head office.

35. When the picture was examined at trial, there was focus placed on that old caretaker's building which was dilapidated and no longer existed. There was only a sort of foundation which was overgrown with grass. There is also another building which is near to Alescon.

36. The witness for the First Intervener said that in 1999, he observed someone else occupying another building, which based on the trial when we looked at videos of the buildings, could only have been that building near Alescon. It was being put to the witness that that wasn't a residential building, it was supposed to be an office. It all ties together that that is the

building that is being referred to by Vincent Taylor. Ms. Julia Johnson, under cross-examination, was saying that this is her home.

37. The Claimant says that in 1991, some trucks and two men came from the bank to remove materials and slabs. But the bank only owned the land. The bank denied moving any materials in 1991. There is no evidence of any act of possession by the bank, and the bank's withdrawal two days before the trial allows the Court to draw an inference that the bank appears to agree that Julia Johnson was there on the land for the requisite period of time and they cannot disprove it. There is no evidence to contradict as stated by Julia Johnson in her affidavit that she took possession before the bank's debenture in 1985.

38. There are photographs of the Claimant's animals on the land. Those are attached to the field investigator's report, and, of course, the field investigator is independent. Julia Johnson in her oral testimony, pointed out some fencing. But there is no date with regard to all of the fencing as to when it was put into place. In her affidavit filed in 2019, she had admitted only partial fencing. Therefore, it appears that this fencing was ongoing. I can take notice of the fact that she was questioned about the fencing in her cross-examination and there is no fencing visible behind the place that she refers to us as her home. Instead, there was a sort of a sizeable clump of trees but no fencing.

39. In her first affidavit, Julia Johnson stated that she constructed three dwelling houses and two buildings on the land. She did not give dates, but under cross-examination, she only spoke about two dwelling houses and one was dilapidated, but there was one that she referred to as her home. In addition, there was also one shop, which could be seen in the picture, so her evidence as to five buildings is not borne out and instead only evidence of the one building that she calls her home. As to the shop, this is contradicted by the field investigator's report. There was no shop in 2016, therefore the shop is new.

40. Julia Johnson also had evidence that she backfilled land. I found that she was quite credible and honest. She was cross-examined about where her receipts for it, but she said that it was

just old, discarded material that she was using, so that was honest and I accepted as being truthful. There is no evidence to contradict it.

41. She also has evidence of electricity bills in her own name and this was around 2008, when her father was still alive. This shows that she really felt that she had custody and control. In fact, she exercised it.

42. While her father was alive, she says that she permitted people to hunt when it was put to her that that area was hunting land. I see that as exercising some control. In other words, people were not free to come and go, she had to give them permission. She said they were hunting in the trees behind her home, from which I conclude that the entire land was not occupied by her. Perhaps that area behind her home with the trees may have been free for hunting and she was not exercising full control over it, but she was exercising control over where she lived. Thus, if anyone wanted to pass her home in order hunt, she had to give permission. That was some exercise of control there.

*Intention to exercise custody and control on her own behalf and for her own benefit.*

43. With regard to her intention to exercise custody and control, one of the main issues of concern would be as to whether or not she fell under a family arrangement, which would mean that she would not have the intention. In this regard, the main issue was the fact that she was a child, and I believe the case for Counsel for the First Intervener, based on the submissions, focuses a lot on the fact that she was a child, and it must be implied that she was there only as a licensee of her father, and that regarding her adverse possession, she cannot be considered to have had that intention because she was a child.

44. **Halsbury's on Limitation Periods** states at para. 1182:

*"Where the trespasser was a minor at the start of the purported period of adverse possession, time may still run in his favour. However, age may be relevant in determining whether the necessary intention was present."*

45. The decision cited in support of this is the case of **Willis v Earl Howe [1983] 2 Ch 545** in which possession was taken of a property by the mother of an infant, in the infant's name (under the false pretence that the infant was the heir of the owner). The infant died and the mother continued to hold possession. The court found that the time of limitation began to run from the time of entry of the mother on behalf of her son.
46. This case has been cited by the Court of Appeal in **Lashley v Marchong CA No. 266 of 2012** in support of the transmissibility of adverse possession rights through succession (not specifically in relation to minors).
47. In **LexisNexis Claims to the Possession of Land at [G2.21]**, the authors consider the wording of the **UK Limitation Act** (comparable to the wording in **S13. Limitation Act 1981**, replaced by **RPLA Chap. 56:03**) as not specifically barring minors:

*"This phrase (in Sch 1 para 8(1)) does not exclude the running of the limitation period in favour of a child: Willis v Earl Howe [1893] [2 Ch 545](#), or by analogy, a person under a disability; it refers to those persons who are excluded by [LA 1980](#) because they are trustees or beneficiaries under a settlement who would be claiming against those also concerned in that settlement."*

48. I am satisfied, based on these authorities and the circumstances of this case, that the fact that the Claimant was a child at age about 15 or so, does not rule her out from having adverse possession run in her favour. It only has relevance as regards to intention. In addition to all that had been stated earlier on in this Judgment concerning whether or not she was a licensee of her father, which I found that she was not based on certain factual circumstances, I think judicial notice can also be taken of the child pregnancy scenario in Trinidad and Tobago. It occurs up to recent times prior to amendment of the Law, not only out of wedlock, but also in wedlock. We do have that history in the Caribbean, and perhaps in other areas, of children taking on adult roles of parenthood at a young age.

49. In this case, the Claimant was 15, but it is my finding, taking judicial notice of that scenario, that she really operated as an adult from 1985. She had children and, in fact, she said she had more after that and the First Intervener's witness said she lived there with a man and she has continued to live there. She has grandchildren.

50. Therefore, my finding is that in terms of her intention, she saw her father squatting at the subject lands in 1985. Before 1985, the squatting may have started and she simply did likewise. She squatted there as well and set up her own family there. Her continuous building projects and other actions show that she believes that she owned the land.

*What is the extent and location of the Claimant's occupation?*

51. The Claimant had that intention to own the lands generally. However, although my finding is that these building projects that she was continuously engaged in were on-going up to recent times, it is not sufficient to establish that she had adverse possession of the entire piece of land.

52. However, if no one does anything, with regard to even the area where the new shop is, in due course, perhaps, she may have adverse possession of that part of the land as well. Looking at that building process that she was conducting and the fencing she says she kept erecting bit by bit shows that, from the initial piece where she said was her home from 1986, she is on an expansion mode and she is trying to make the entire parcel of land her own. But my finding is that from 1986, she was in occupation of the house that is near Alescon. She said that, at first, she resided in her father's house. She was cross-examined about that and she confirmed that a piece was tacked on to that when she first got pregnant.

53. She said she eventually had her own house. She was living independently, from all the evidence presented. On a balance of probabilities, I find that the land she occupied was at the house near Alescon, which she pointed out as her home under cross-examination. The First Intervener's affidavit corroborates that there was a building other than the original

caretaker's that was being occupied from at least 1999. The First Intervener's witness was away a lot of the time, but they did observe when they were around in 1999, someone was occupying that building.

54. My finding is that the Claimant occupied only that building. The field investigator's report shows that the new shop referred to as a minimart was built sometime after 2016. There was a report from 2016 that showed no other building, and then in 2019, the report that relates to this case shows that the minimart was there. This leads to the conclusion that the minimart was new. There is no adverse possession of the part of the land where the minimart now stands.

55. The Claimant admitted that the building on the part of the land where her father lived was completely disintegrated. She had her own place from 1986, so that part of the land originally occupied by her father's home was not hers. Recently, there are concrete blocks going up in that area formerly occupied by the Claimant's father. However, that part was not occupied by the Claimant after she first got pregnant in around 1985, 1986. She moved to her own home which was near Alescon. She is not in adverse possession of that part of the land where the ruins of her father's former home stand.

#### **E. Conclusion**

56. The decision is that the Claimant is in adverse possession of the home near Alescon, so she succeeds in that regard. However, she does not succeed with regard to the entire parcel of land.

#### **57. It is hereby determined that:**

- i. An Order is granted vesting in the Claimant **ALL and SINGULAR** a parcel of land on which stands a dwelling house in the vicinity of Alescon compound, the said parcel of land comprising part of the larger parcel that was the subject of these proceedings described herein as comprising **SIX ACRES or 2.0588 hectares** be the same more or less

situated in the parish of St.Patrick in the island of Tobago and bounded on the North by a road reserve 10.6 metres wide, on the south by Lot No. 4, on the East by a Reserve 10.6 meter wide, on the West by lands formerly of Small Business Construction Ltd now of Celestine Josefita Charles (hereinafter referred to as “the said parcel of land”), being the remaining portion of a larger parcel of land comprising **SIXTEEN ACRES TWO ROODS and 10 PERCHES (16a. 2r. 10p)** registered in Certificate of Title registered in Volume 3339 Folio 137.

- ii. The Order is stayed until the following matters are settled:-
  - a. A survey is conducted by the Lands and Surveys Department to excise a parcel of the land to create an individual plot based on the current planning policy for the area;
  - b. Approval is sought and obtained from the relevant Government Agencies for the creation of the individual plot based on the current planning policy for the area.
- iii. Upon settlement of the matters at a. and b., the Registrar General is directed to issue a new Certificate of Title in the name of the Applicant for the individual plot referred to at a. above.
- iv. No order as to costs against the Second Intervener on withdrawal from the proceedings.
- v. The First Intervener is to pay 25% of the costs of the Claim on the prescribed basis in the sum of \$3,500.00.
- vi. Liberty to Apply.

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Eleanor Joye Donaldson-Honeywell

Judge