

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2018-03261**

Between

**LEELA ROSE VALENTINE**

**(Legal Personal Representative of the estate of Julien Valentine otherwise  
Julien Martin Valentine, deceased)**

Claimant

And

**PERCIVAL STRACHAN**

Defendant

**Before the Honourable Mr. Justice R.N. Rahim**

Date of Delivery: Tuesday January 12, 2021

Appearances:

Claimant: Mr. S. Roberts instructed by Ms. K. Amin

Defendant: Ms. A. Charles

## JUDGMENT

1. This is a claim for possession of a parcel of land measuring approximately 5,000 square feet together with a house thereon situate at Brown Trace El Dorado Road Tunapuna (the property) by the Legal Personal Representative of the estate of the deceased registered proprietor Julien Valentine. It is the case for the claimant that the defendant in possession as the son of the former statutory tenant Veronica Strachan who died on September 17, 1999. By virtue of the Land Tenants (Security of Tenure) Act Chapter 59:54 (the Act) the statutory tenancy expired May 31, 2011 without notice of renewal being given to the Landlord pursuant to the Act.
2. It is the case for the defendant that he was born in 1954 and has lived for all of his adult life in the house without paying rent to anyone. Further, that there are two houses on the property, the main house, which was occupied by his mother and her sister and a board house that he built in 1983 and in which he resided. However, he moved into the main house after the death of Laurencia on December 9, 1987 and extended it. He admitted that he did not give notice of renewal pursuant to the Act. It is his counterclaim that he has been in adverse possession of the property since the death of Veronica. In 2001, his daughter Alicia went into joint occupation of the main house with him. He then proceeded to pay the land and building taxes for the years 2002, 2004, 2005, 2006, 2008 and 2009. He has relied on receipts on that regard.
3. The defendant therefore counterclaims for a declaration that he has been in adverse possession of the property and is entitled to possession of same. The wooden house has long been demolished and the concrete structure extended.

## Evidence of the Claimant

### **Leela Rose Valentine**

4. The claimant testified and called two witnesses namely, Agatha Valentine and Elsie Valentine-Wilson. She testified that Julien was her husband and that Laurencia rented the property from him in the late 1950's. As with all similar tenancies, the tenancy was converted to a statutory tenancy for 30 years in the year 1981. Laurencia transferred the chattel house situate on the land to herself and Veronica Strachan as joint tenants absolutely on November 13, 1986 by deed registered as number 21255 of 1986. Prior to this, around 1983, a wooden house was constructed on the property by a man unknown to the claimant but who she knew to be the driver of a maxi taxi with the word Zebedee written thereon despite objections by Julien. Laurencia died on December 9, 1987 leaving Veronica the surviving statutory tenant who eventually passed on September 17, 1999.
  
5. It is the evidence of the claimant that she has known the defendant since he was a little boy living at the house with his mother and aunt. It is her case that he has lived there with their permission. On her instructions a pre-action protocol letter was sent to the defendant dated June 5, 2018 calling on the defendant to deliver up possession. It is also her evidence that she is the one who paid the land and building taxes.

## Cross examination

6. The claimant admitted in the process of a very short cross examination that her husband stopped collecting rent in the year 1975 from Laurencia. Further that Veronica did not pay rent.

### **Agatha Valentine**

7. This witness is the sister of Julien deceased. Her evidence was very short and perhaps wholly unnecessary as she merely confirmed that the defendant lived at the property with his aunt and mother since he was a boy, a matter that is not in dispute in this case.

#### Cross examination

8. The witness explained that her father was the landlord prior to turning over the property to her brother Julien. She would receive the rent payment for her father when he was absent. According to the witness she did not know about rent being paid by Veronica but she was aware of rent being paid by Laurencia.

### **Elsie Valentine**

9. Elsie was also a sister of Julien and was aware that their father Christopher Valentine gave four lots including the property that is the subject of this claim to Julien when Julien married Leela. Christopher tenanted the property to Laurencia a few years before he handed over the property to Julien but prior to so doing he granted permission to Laurencia to erect a simple structure for residential use. Laurencia paid rent by leaving the money at the family home on many occasions. As is the case with the other testimony, the witness confirmed that the defendant lived there from a young age.

#### Cross examination

10. The witness testified that Laurencia would leave the rent payments with either her mother or her sister at the house. She was unaware as to whether rent was paid by Veronica after Laurencia died.

## Evidence of the Defendant

### **Percival Strachan**

11. In addition to his own testimony the defendant called one witness Janet Akal. The defendant testified that he was born in 1954 and lived on the property since he was a child. That he constructed buildings on the property and no one ever asked him for rent or object to his construction. He has never paid rent to anyone. He has not found any rent receipts in the name of his deceased mother Veronica and as far as he knows she did not pay rent. When Veronica died there were two houses on the property. However, it is clear from his evidence later on that there was one structure on the property, one part of that structure being an extension built by him in 1983. After his mother died he continued in occupation without hindrance or objection without paying rent to anyone. It is his testimony that he treated the property as his own at all times. He has planted bananas, paw paw, lime, mango, guava, sapodilla trees, ochro and bodi over the years. He rebuilt the fence in 2017, has always been fully aware of the boundaries of the property and continues to clean and maintain it.

### Cross examination

12. He admitted that both his mother Veronica and his aunt Laurencia were tenants and he lived there with them. He knew Zebadee however, Zebadee was his aunt's tenant and the wooden house was owned by the defendant and not by Zebadee. He was asked whether he remembers that Julien had a problem with the fact that Zebadee was living in the property and he at first answered yes. However, he subsequently testified that he was unaware of any such conflict. In the court's view this apparent inconsistency matters not to the material issues in this case and is not reflective of general lack of credibility on the part of the defendant in any

event. These are matters of some vintage and both parties are elderly so that it is reasonable to expect a level of inaccuracy of recall.

13. As he did in his pleading and in his evidence in chief the defendant accepted that he gave no notice of renewal of the tenancy. It was put to him that he remained on the property in the same capacity as his aunt and mother, namely as a tenant and he agreed. This of course is a matter of law for the court to decide.

14. It was put to the witness that he testified at paragraph 12 of his witness statement that he received the pre action letter of June 5, 2018. However, in the court's view the plain reading of paragraph 12 disclosed no such acceptance of receipt on the part of the defendant. Further, there was an attempt by attorney for the claimant to rely on the averment contained at paragraph 5 of the defence to ground a suggestion that the defendant had in fact received the pre action letter. However, in the court's view a reading of the averment shows that no such acknowledgement of receipt is therein set out. Paragraph 5 of the defence appears to be in answer to the existence of the letter and its legal effect only. As a consequence, the question was not allowed. It is in that context that the defendant has steadfastly maintained that he did not receive the said letter even upon the occasion of the letter being placed in his hand during the trial.

15. What came next was unexpected. It was put to the defendant that he remained on the property as a tenant and he accepted that he did. The evidence is repeated hereunder for clarity and context in relation to what the court shall say about that evidence later on in this judgement;

*Q So, sir, I am putting -- saying to you that you remained on the land in the -- as a tenant just like your mother and your aunt.*

*THE COURT: Now, Mr. Strachan, when a lawyer put's something to you --*

*THE WITNESS: Yeah.*

*THE COURT: -- what he is doing, he is saying to you, that this is his client's case. So his client's case is that you remained on that land as a tenant. So when he says, "I put that to you" he is saying that this is our case. This is our client's case. It's a question and you have to answer it. You can do one of three things: You could accept what he says as being correct, you could disagree with what he says or you could give any answer that you think is relevant to what he says. All right. So, his question to you is, --*

*THE WITNESS: Mmh-hmm, (affirmative).*

*THE COURT: -- he is saying to you that you stayed there, in fact, as a tenant. What is your answer?*

*THE WITNESS: Yes, Sir.*

### **Janet Akal**

16. This witness is a 75 years old neighbour of the defendant who has lived close to the subject property for all of her life. She testified that the defendant lived there with his mother and aunt and that the house was built and the property fenced from the date they moved in. After their deaths the defendant continued to live there and has since expanded and made improvements to among other things the house, kitchen and fence. As is the case with her evidence in chief, the cross examination of this witness was unremarkable and elicited no material evidence above and

beyond that which she testified to in chief save and except that she acknowledged that Christopher Valentine was the original owner of the property.

## **ISSUES**

17. The issues for determination are straight forward. They are:

- a. Was the defendant a tenant of the property.
- b. If he was, then did he fail to renew the tenancy in accordance with section 3(3) the Act.
- c. In either case, was he in adverse possession for the required number of years so as to extinguish the title of the claimant.

### **First Issue**

*Was the defendant a tenant of the property*

18. The court finds that the defendant was himself entitled to the remainder of the statutory tenancy for the following reasons;

- a. It is not in issue that the claimant's husband was the owner of the property and that his father had in fact tenanted out the land.
- b. The court finds that the house first built on the property was built by the then tenant of the land.
- c. The clear evidence is that a statutory tenancy was created in the year 1981 by operation of section 4 of the Act which reads as follows;



*4. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.*

*(2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years.*

*(3) In order to exercise the right of renewal conferred by subsection (2), the tenant shall serve on the landlord a written notice of renewal on or before the expiration of the original term of the statutory lease.*

*(4) Upon service of the notice by the tenant under subsection (3), the statutory lease shall be deemed to be renewed for a period of thirty years subject to the same terms and conditions and to the same covenants, if any, as the original term of the statutory lease but excluding the option for renewal.*

*(5) Nothing in this section shall operate so as to affect any mortgage, charge or security existing at the appointed date upon any land the subject matter of a statutory lease and such mortgage, charge or security shall attach to the statutory lease.*

- d. The defendant has admitted that his mother and aunt were statutory tenants and that the tenancy expired on May 31, 2011 without renewal.

- e. Save and except for his admission, there one other item of evidence that points to his mother Veronica being a tenant in law, namely the deed set out hereafter. The court also notes that the evidence from the witnesses of the claimant appears to be that Veronica's sister Laurencia was the person who paid rent and there is no evidence that rent was ever paid by Veronica.
- f. Additionally, the claimant has produced no rent receipts or other document to support its case that Veronica was in fact a tenant. The court therefore finds that on the totality of the evidence it is more likely than not that Laurencia was the sole lawful tenant of the property until she assigned the benefit of same by deed.
- g. Deed number 21255 of 1986 purports to be a conveyance upon sale by the tenant Laurencia of the chattel house to both herself and Veronica together with the benefit of the tenancy. This deed was made the 13<sup>th</sup> day of November 1986 and clearly sets out the conveyance to be that of an undivided share in both the house and the tenancy. The court therefore finds that in all of the circumstances, Laurencia transferred the house and assigned the benefit of the tenancy to herself and Veronica as joint tenants.
- h. It follows equally that upon the death of Laurencia, Veronica became the statutory tenant by virtue of the principle of survivorship.
- i. The evidence of the witness of the claimant when considered with the admission of the defendant therefore told the story of the defendants having resided with his aunt and mother most obviously with their permission and the court so finds.

- j. However, upon the death of the surviving statutory tenant, it is equally clear to the court that the statutory tenancy did not come to an end as it would have devolved either upon intestacy or by way of will of Veronica. There is no evidence before this court of the latter.
- k. What is equally clear is that the tenancy being created by statute remained in existence at least until the date of expiration in 2011 and was capable of assignment.
- l. The defendant was therefore entitled to the benefit of the remainder of the statutory tenancy as the lawful issue of his mother Veronica after her death on September 17, 1999.
- m. In so determining the court is fortified in its view by the dicta of Justice of Appeal Mendonca in **Carl Hector v Oliver Keith** Civ App 6 of 2010:

*16. The clear intention of the Act is to vest in the statutory tenant a leasehold interest in land capable of being assigned inter vivos and capable also of being transmitted by will or on intestacy. This is obvious from the provisions of the Act. First there is the provision of the Act, already alluded to, that converts a tenancy to which the Act applies to a statutory lease for thirty years. This is clearly an interest in land and not merely a right in personam. There is no indication in the Act that such an interest cannot be assigned or that it does not pass on the death of the tenant. On the contrary there is section 5(8) that specifically speaks of assignment by the tenant. Section 5(8) is as follows:*

*“5(8) A tenant has the right to assign or sublet with the consent of the landlord whose consent shall not be unreasonably withheld; but*

*the rent payable by any subtenant shall not exceed the rent payable by the tenant to the landlord under this Act.”*

*17. There is also section 6 which refers to the option for renewal of the lease conferred by the Act on a tenant. This section makes specific provision that the rights and obligations of the tenant arising from a notice of renewal shall enure for the benefit of and be enforceable against the landlord’s executors, administrators and assigns. If the option for renewal enures for the benefit of the tenant’s executors, administrators and assigns there is no logical reason why the original lease should not also be for the benefit of the tenant’s executors, administrators and assigns.*

*18. There is also the definition of tenant in the Act, which is as follows: “tenant’ means any person entitled in possession to land under a contract of tenancy whether expressed or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and “tenancy” shall be construed accordingly. This definition expressly refers to the interest of the tenant being acquired by assignment and is also wide enough in its contemplation to refer to persons acquiring an interest on the death of the original tenant.*

*19. I do not think that there can be any doubt that the Act gives to the tenant an interest in land capable of being transmitted on the death of the tenant. The interest of the deceased in the parcel of land therefore did not cease on her death but became vested after her death in the Respondent. Counsel for the Appellant in the course of argument did not really press this point and it is fair to say that it was conceded by him. We think he was right to so do.*

- n. In closing on this issue the court notes that the defendant has raised the issue of the non-payment of rent by the defendant. The court however agrees with the submission of the claimant that the issue of non-payment of rent is not relevant to the existence of the statutory tenancy which is a creation of statute and which appeared not to have been terminated prior to its expiration in law.

### **Second Issue**

*If he was, then did he fail to renew the tenancy in accordance with section 3(3) the Act.*

19. The answer to this issue on the evidence of both parties is clearly that notice of renewal was not given in keeping with the provisions of the Act.

### **Third Issue**

Adverse Possession

20. The **Real Property Limitation Act Ch. 56:03 sections 3**, provides:

*“3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.”*

21. Further, **Section 22 of the Real Property Limitation Act** provides as follows;

*“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”*

22. In the case of ***Grace Latmore Smith v David Benjamin***<sup>1</sup> at paragraph 48, per Mendonca JA it was recognized that in order for a claim in adverse possession to be made out, there must be an absence of consent of the paper title owner or his predecessor in title, factual possession and an intention to possess by the occupier. In *Grace Latmore supra* it was accepted that the principles set out in the authority of ***JA Pye (Oxford) Ltd v Graham***<sup>2</sup> applied in this jurisdiction. Factual possession signifies a degree of exclusive physical custody and control and the question of whether the acts of the occupier are sufficient to meet this must depend on the circumstances of the case. The intention to possess means *“an intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with paper title ....so far as is reasonably practicable and so far as the processes of the law will allow.”*<sup>3</sup>

23. A Defendant must therefore show (a) factual possession of the land for a period of 16 years before the commencement of an action for possession; and (b) the *animus possidendi*, or the intention to possess the land if they are to exclude the paper title owner (*or those entitled to paper title*) so far as is reasonably practicable: ***Megarry’s Manual of the Law of Real Property. A.J. Oakley; 8<sup>th</sup> Edn pgs. 551-552***

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<sup>1</sup> Civ. App 67 and 68 of 2007

<sup>2</sup> [2002] UKHL 30

<sup>3</sup> See *JA Pye supra*, Lord Browne-Wilkinson, paragraph 43

24. Where however, the owner of a property grants a lease of it, the tenant becomes entitled to exclusive possession against the landlord. However, the landlord retains the reversion on the lease, with the right to receive any rent reserved by the lease, to enforce the tenant's covenants, and to take back the premises at the expiry or sooner determination of the lease.

Thus:

- a. The tenant is in exclusive possession of the land, with the right to exclude the landlord from the land;
- b. The landlord is in possession of the reversion on the lease;
- c. The tenant's possession, although exclusive of the landlord, is also on behalf of the landlord<sup>4</sup>.

25. The sub issue in this case therefore becomes one of the time from which adverse possession is likely to run. This in turn is inextricably linked to the issue as to whom must time run against in circumstances where there exists a statutory tenancy in respect of the property. From the dicta in *Jourdan* above, it can be gleaned that the title of the possessor must be adverse to that of the tenant in the case where a tenancy subsists<sup>5</sup>. Indeed, this was the case here as the statutory tenancy continued to exist until its expiration in 2011.

26. Further and in any event, it follows that the defendant would have been residing at the property with the permission of the statutory tenants up to the death of the last tenant, his mother but for him to raise a successful plea of adverse possession his possession would have to be adverse to the statutory tenancy up to its expiration in 2011 and beyond.

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<sup>4</sup> See *Adverse Possession*. Stephen Jourdan QC, Oliver Radley-Gardener July 28, 2017 para 7-99.

<sup>5</sup> See also para 33, *Josephine Jordan v Phillip Lucas* Civ App 189 of 2009, Jamadar JA.

27. The evidence in this case demonstrates and the court finds that the defendant was resident at the property with the permission of both his aunt and mother as a licensee and after the death of his mother he was entitled to the benefit of the tenancy by virtue of his mother's estate. In those circumstances it cannot be that his possession after the death of his mother would have been adverse to the very thing to which he was in law entitled namely the remainder of the statutory tenancy. It follows therefore that at all his possession can be characterized as being adverse, time for same could only begin to run upon the expiration of the tenancy and not upon the death of his mother as he argues.
28. That time period amounts to some 8 years between the expiration of the tenancy and the filing of the counterclaim for adverse possession, a period much shorter than that required under the Real Property Limitation Act. His counterclaim for adverse possession must therefore fail.
29. Finally, the defendant has relied on section 9 of the Limitation Act in support of its argument that there being no written lease, time for adverse possession begins to run from the first date of non-payment of rent. The court however is of the view that that section does not apply to statutory tenancies created by the Land Tenants (Security of Tenure) Act, which are fixed term tenancies created by statute and which carry with them particular rights set out in the Act.
30. The defendant in this case was entitled to renew the lease for an additional period of 30 years as the beneficiary of the estate and may have also have been entitled to purchase the land at half of the market value but he failed to exercise either of those options. Additionally, in this case proprietary estoppel has not been raised. In the circumstances the claimant has



proven her entitlement to possession and the court makes the following order:

- i. The defendant shall surrender and deliver vacant possession to the claimant of ALL THAT piece of land situate at Brown Trace, El Dorado Road, Tunapuna, in the Ward of Tacarigua, in the Island of Trinidad comprising FIVE THOUSAND SQUARE FEET be the same more or less delineated and coloured pink in the plan registered in Volume 2761 Folio 5, being portion of the lands described in the Certificate of Title in Volume 2486 Folio 343 and shown as Lot 4 in the General Plan filed in Volume 2749 Folio 517 and bounded on the North by Brown Trace twenty-one point three feet wide, on the South by lands of George Vincent, on the East by Lot 3 and on the West by lands of Fitzgerald Wharton and which piece of land is now described in Certificate of Title in Volume 2761 Folio 9 (hereinafter called "the land")
- ii. The claimant and defendant shall within 14 days of the date of this order enter into an agreement for the appointment of a valuator to value the chattel house (the cost of such valuation to be borne by the defendant) and the value so certified by the valuator shall be the value of the chattel house.
- iii. The claimant may pay to the defendant the value of the chattel house upon delivery of vacant possession of the land in which case he shall also surrender possession of the house.

- iv. In lieu of the actions at paragraphs ii and iii of this order the defendant is at liberty to break and remove the chattel house upon the surrender and delivery of possession of the land.
- v. The counterclaim is dismissed.
- vi. The defendant shall pay to the claimant the prescribed costs of both the claim and the counterclaim based on the value of each being one for \$50,000.00 in the sum of \$14,000.00 each.
- vii. There shall be a stay of execution of sixty days.
- viii. Liberty to apply.

Ricky N. Rahim

Judge