



[2022] JMSC Civ 126

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2021CV04709**

|                |                              |                                 |
|----------------|------------------------------|---------------------------------|
| <b>BETWEEN</b> | <b>JOHN SARJU</b>            | <b>CLAIMANT</b>                 |
| <b>AND</b>     | <b>MICHAEL ANTHONY SARJU</b> | <b>1<sup>ST</sup> DEFENDANT</b> |
| <b>AND</b>     | <b>RAAMDHANI SARJU</b>       | <b>2<sup>ND</sup> DEFENDANT</b> |
| <b>AND</b>     | <b>HAZEL SARJU</b>           | <b>3<sup>RD</sup> DEFENDANT</b> |
| <b>AND</b>     | <b>CHARLENE NARCISSE</b>     | <b>4<sup>TH</sup> DEFENDANT</b> |

**IN CHAMBERS**

**Mr. Brian Forsythe and Claudia Forysthe Attorney-at-Law, instructed by Forsythe & Forsythe for the Claimant/Respondent**

**Mr. Stuart Stimpson Attorney-at-Law instructed by Hart, Muirhead Fatta for the 1<sup>st</sup> -3<sup>rd</sup> Defendants/Applicants**

**Mr. Neco Pagon, Attorney-at-Law for the 4<sup>th</sup> Defendant.**

**HEARD: July 11, 2011 and July 20, 2022**

**Civil Procedure – Application to Strike out Case – Application Made in Claim Started by Fixed Date Claim Form – Whether or Not Permissible.**

**Land Law – Adverse Possession – Whether or not Claimant as Licensee can establish adverse possession – Whether granting of license by one joint tenant binds all joint tenants – Whether license created was revoked by death of one joint**

**tenant – Whether Claimant’s pleadings disclose no reasonable grounds for bringing the Claim.**

**DALE STAPLE J (AG)**

## **BACKGROUND**

- [1] To paraphrase a local Jamaican saying, is this a case of rooster mouth killing rooster? Or does the Claimant have a case worthy of going to trial for determination?
- [2] The 1<sup>st</sup> to 3<sup>rd</sup> Defendants (for the purpose of this ruling referred to hereafter as “the Defendants”) have filed an application to strike out the Fixed Date Claim Form filed by the Claimant. It is significant that they have not filed an application for summary judgment as the rules prohibit the granting of summary judgment in cases commenced by Fixed Date Claim Form<sup>1</sup>.
- [3] The basis of the 1<sup>st</sup> - 3<sup>rd</sup> Defendants’ application is that:
- (a) The Claim is an abuse of process (for various reasons);
  - (b) The statement of claim discloses no reasonable grounds for bringing the claim.
  - (c) The Court can strike out a statement of claim (regardless of method of commencement) pursuant to its powers under CPR Rule 26.1
  - (d) It would further the overriding objective.
  - (e) Non-compliance with rule 8.9 of the Civil Procedure rules.
- [4] The essence of the Defendants’ position is that the Claimant, when he had filed the claim, failed to disclose that he had admitted, in his application to the Registrar of Titles when lodging the caveat to the title, that he was put into occupation of the premises by his brother the now deceased Arthur Sarju, one of four joint tenants

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<sup>1</sup> See rule 15.3(c)

along with the 1<sup>st</sup> three Defendants/Applicants. As such, he is a licensee and by virtue of that, cannot claim adverse possession.

- [5] Realising his dilemma, the Claimant/Respondent filed an affidavit in response where at paragraph 4 he said as follows:

*“The assertions made out in paragraph numbered 26 is denied, and I assert that I was only ever granted permission to occupy the premise [sic] by the said Arthur Sarju, who died on the 30<sup>th</sup> March 1988, and I have been [sic] possession adverse to the title [sic] owners since then.”*

- [6] So he concedes he was given a license to occupy by Arthur Sarju, but said that it was only Arthur that had granted him the license and that when Arthur died, he was in possession adverse to the Defendants (who were joint tenants with Arthur at the time the license was given) as at the date of Arthur’s death.

## **THE ISSUE**

- [7] So the question now is, whether there are reasonable grounds for maintaining the claim against the Defendants. For certainly, on the face of the original claim, he may have had a leg to stand on to at least go to trial. But now that he has conceded that he was a licensee at the start of his occupation, does his argument give him reasonable grounds for maintaining the claim?

## **APPLICATIONS TO STRIKE OUT – THE LEGAL PRINCIPLES**

### ***No Reasonable Ground for Bringing an Action***

- [8] The Court’s power to strike out a statement of case that discloses no reasonable ground for bringing an action are found under rule 26.3 (c). The Court may also strike out a case for failure to comply with a rule, order or practice direction in accordance with rule 26.3(a).

[9] Now striking out is one of the most draconian actions a court may take in relation to the statement of case of a party to a claim. It should therefore be used sparingly and only in the most obvious of cases.

[10] Borrowing from the dicta of my sister judge Jackson-Haisley J in the case of ***Lozane v Beckford***,<sup>2</sup>

*“[30] ... in S & T Distributors Limited and S & T Limited v. CIBC Jamaica Limited and Royal & Sun Alliance SCCA 112/04 delivered 31st July, 2007, in which Harris, J.A. stated at page 29: - “The striking out of a claim is a severe measure. The discretionary power to strike must be exercised with extreme caution. A court when considering an application to strike out, is obliged to take into consideration the probable implication of striking out and balance them carefully against the principles as prescribed by the particular cause of action which sought to be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases.”*

*[31] Similarly, in the case of Drummond Jackson v British Medical Association and Others [1970] 1 WLR 688, Lord Pearson opined at page 695 that: - “Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.” [my emphasis]*”

[11] In deciding whether to strike out a statement of case on the basis that it discloses no reasonable ground for bringing a claim, the court must consider whether or not the Claimant has pleaded facts supportive of the cause of action he seeks to establish. So it is not enough for the Claimant to plead the cause of action, there must be a factual basis established on the face of the pleaded case to support the cause of action. There must be a factual basis for going to trial.

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<sup>2</sup> [2020] JMSC Civ 106 at paras 30 and 31

[12] I agree with the authority submitted by the Defendants/Applicants of ***City Properties Limited v New Era Finance Limited***<sup>3</sup> and the statement of the principle of Batts J at paragraphs 9-11 of the judgment.

[13] As Batts J said, what is required is an examination of the statements of case to ensure that the facts as alleged support the cause of action the Claimant seeks to establish.

[14] In the context of the Fixed Date Claim Form, the statements of case means the Affidavits in support of and in response to the Fixed Date Claim Form as well as any affidavits filed in support of or in response to the Application to strike out.

***Has the Claimant's Case Collapsed? Or Does He Still Have Reasonable Grounds for Bringing the Claim?***

[15] The Claimant is seeking certain declarations in his Fixed Date Claim Form. He asks the court for a declaration that he has an *equitable interest* (**emphasis mine**) in the property at Volume 1059 Folio 56 of the Register Book of Titles and a declaration that the title of the Defendants was extinguished under the provisions of ss. 3 and 30 of the **Limitations of Actions Act**.

[16] The Claimant would not receive an equitable interest if the Court finds that he has successfully established that the Defendants' title to the property has been extinguished by his occupation adverse to their interest. He would be entitled to the legal title not just an equitable estate.

[17] When the Claim began, the Claimant's affidavit stated that he entered into possession of the disputed property at Volume 1059 Folio 56 since 1986 and has since then been conducting his business in open, quiet, undisputed, continuous and undisturbed manner to the exclusion of all others. He further said that when

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<sup>3</sup> [2013] JMSC Civ 23

he entered into possession in 1986, he constructed a two room self-contained concrete house used as office units. This was also the position he took when he filed an Amended Affidavit in support on the 15<sup>th</sup> December 2021.

[18] However, what has been revealed is that, by his own affidavit evidence, the Claimant actually took possession of the property as a licensee. What is more, the construction of the building was done with the agreement of Arthur. This was the Claimant's own evidence. This is material as it goes to one of the grounds raised by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants in their application to strike out – that the Claimant failed to identify or annex any document they consider necessary to their case contrary to rule 8.9(3). The Defendants' position is that the statutory declaration made to the Registrar of Titles in support of the Claimant's Application for Title by Adverse Possession was such a document he failed to disclose.

[19] But in a strict sense of the wording of rule 8.9(3) a Claimant need only attach or identify documents to the pleadings that are "**necessary to his case**". This obligation is different from the obligation imposed under Part 28 dealing with disclosure of documents. In compliance with orders for standard disclosure you have a duty to disclose all documents that are **directly relevant** to the proceedings<sup>4</sup>. So a document may be directly relevant to the proceedings, but not necessary to that party's case. In my view therefore, the failure to attach or identify the Statutory Declaration in the Affidavit in Support of the Fixed Date Claim Form would not be a breach of rule 8.9(3). If there had been an order for standard disclosure and he failed to disclose the document, then that would be a breach of rule 28.4(1).

[20] Now I am not going to examine the Defendants' responses in their Affidavits in Response to the Fixed Date Claim Form. This will allow me to focus on whether,

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<sup>4</sup> See CPR Rule 28.4(1)

on its face, the Claimant's Statement of Case discloses reasonable grounds for bringing the Claim. It is his statement of case with which the Court should be concerned when deciding whether to strike out. To do otherwise would tempt the court in deciding the matter as a contest between cases. That would not be appropriate in an application to strike out.

***Can a licensee successfully claim adverse possession?***

[21] A licensee cannot successfully bring a claim for adverse possession. There cannot be adverse possession of land which is enjoyed, occupied or used under a lawful title or with the permission of the true owner<sup>5</sup>.

[22] Owusu went on to say (as it relates to the act of possession) that, "It should be without the consent of the one legally competent to deliver possession. Rights exercised under license, contract of sale, trust, easement cannot be adverse."<sup>6</sup>

*Was it only the License of Arthur or was it the License of all Joint Tenants?*

[23] It is important to note that a joint tenant, by implication, gives a license on behalf of all his fellow joint tenants. This is because the granting of a license by one of the joint tenants, not being an act of severance of the joint tenancy<sup>7</sup>, binds the others. It is not disputed that at the time when Arthur Sarju gave the Claimant the permission to occupy the property and build on it, that Arthur was a joint tenant with the Defendants all of whom were adults.

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<sup>5</sup> Owusu, S. Commonwealth Caribbean Land Law, p 310 and *Ramnarace v Lutchman* (2001) 59 WIR 511 at p 515.

<sup>6</sup> Owusu, S. Commonwealth Caribbean Land Law, p 310

<sup>7</sup> See the *locus classicus* on how joint tenancies can be severed of *Williams v Hensman* (1861) 70 ER 862 at 867 and the excellent exposition on the topic by McDonald-Bishop J (As she then was) in the case of *Miller-Weston v Miller et al* (Unreported, Supreme Court of Jamaica, CL 2002 M094, June 22, 2007).

[24] The Claimant argues that it was only Arthur that gave him the license, but respectfully, this is incorrect in law. The license granted him by Arthur was, in my view, given for and on behalf of all his fellow joint tenants. According to Somervell LJ in the case of *Leek and Moorlands Building Society v Clark*,<sup>8</sup>

***If property or rights are held jointly, prima facie a transfer must be by or under the authority of all interested.***

[25] In that case a husband and wife were in possession of premises under a joint tenancy. By a contract of sale dated 21 December 1950, the husband agreed to buy the premises from the landlords “subject to the existing tenancy,” and by a further contract, dated 1 January 1951, he agreed to sell the premises to C, vacant possession to be given on completion. On 13 March 1951, C mortgaged the property to the plaintiffs. The wife had no knowledge of the terms of the sale to C or of the mortgage, nor did she authorise the termination of her joint tenancy. On a claim for possession by the plaintiffs as mortgagees, it was held on appeal that in the absence of express authority it was not competent for one of two joint tenants to surrender rights held jointly, and, therefore, the sale by the husband of the premises to C without the wife's authority did not terminate the joint tenancy, and, as against the husband and wife, the plaintiffs were not entitled to possession.

[26] There is no evidence from the Claimant that Arthur was acting on his own or that any of the other joint tenants ever opposed his occupation or the granting of the license to him by Arthur. If he wanted to establish this, he would have had to aver those facts expressly in his pleadings.

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<sup>8</sup> [1952] 2 ALL ER 492 at p. 496 per Somervell LJ



- [27] In the circumstances, in my view, his license was a license granted by all the joint tenants and, contrary to the submission of the Claimant, the license did not expire at the death of Arthur in 1988.
- [28] The position of the Claimant in this case is distinguishable from the position of the Appellant in the case of *Fullwood v Curchar*<sup>9</sup>. In that case the Appellant, the Defendant in the case below, was claiming as his defence to a Claim for Recovery of Possession by the Respondent/Claimant, that the title of the Respondent had expired by virtue of ss. 3 and 30 of the Limitation of Actions Act. The trial judge held that the Appellant/Defendant had failed to prove that the title of the Respondent/Claimant had been extinguished by adverse possession. The Court of Appeal, after a thorough review, determined that the learned trial judge was wrong on the facts and had not properly applied the law. The Court of Appeal held that it was for the Respondent/Claimant in the case below, to establish that her title **had not been extinguished** by the Defendant/Appellant<sup>10</sup>.
- [29] In this case, the Claimant is asserting the statute of limitations to say that not only has the title of the Defendants been extinguished, but it now vests in him. However, his issue is that, unlike the Appellant in the *Fullwood v Curchar* case, his basis for entry onto the property was not as an adverse possessor to the joint tenants, but as a licensee to the joint tenants. In the *Fullwood v Curchar* case, the Appellant never held herself out as a licensee of the Respondent/Claimant at any point in time. In fact, as the evidence showed in that case, the Respondent/Claimant could provide no evidence that she had not abandoned her rights in the property. In the case at bar, the Claimant has, by his own admission, admitted that his possession was as a result of permission received from one of four joint tenants. He cannot, in my view, establish that this license was not given on behalf of all joint tenants. As such, it was a license given by all joint tenants and

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<sup>9</sup> [2015] JMCA Civ 37

<sup>10</sup> Id at paragraphs 38-42

there is no evidence that it was ever revoked. So he was never in the position of an adverse possessor.

***Was the License Given Even Capable of Revocation?***

- [30] It is true that a license may expire on the death of the grantor of the license as submitted by the Claimant. He relied on the authority of ***Sharon & Harold Burghardt v Tracy Taylor***<sup>11</sup>. But, it depends on the nature of the license granted as there are licenses that, even though they are licenses, are capable of binding even successors in title. Some of these instances are informal family arrangements, a license acted upon, or where revocation is restricted by estoppel<sup>12</sup>.
- [31] In his evidence, the Claimant is asserting that he had an agreement with Arthur to build the 2 room structure in 1986. On any interpretation, the Claimant has some form of license and it may even be an irrevocable license as a license accepted upon or where the revocation would be restricted by estoppel. In any case, the license would persist and the Claimant's own evidence is that none of the Defendants have revoked his license.
- [32] In the circumstances therefore I am satisfied that on the Claimant's case, he has no reasonable ground for bringing the Claim as his occupation of the premises from inception was as a licensee and his license was never revoked either by the death of Arthur or by any subsequent act of the Defendants.
- [33] As such, he would not be able to refute the Defendants' claims that their titles were not extinguished by adverse possession under ss. 3 and 30 of the **Limitation of Actions Act** and his claim will be struck out.

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<sup>11</sup> [2012] JMSC Civ 126

<sup>12</sup> Megarry & Wade The Law of Real Property, 17 ed p. 1397-1398.

**DISPOSITION:**

1. The Claimant's Statement of Claim is struck out as disclosing no reasonable grounds for bringing the Claim.
2. Judgment is entered for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants.
3. Costs to the Applicants to be taxed if not agreed.
4. As a consequence of orders 1 & 2, the Statement of Claim against the 4<sup>th</sup> Defendant is also struck out and she is entitled to the legal and equitable interest in the property at Volume 1059 Folio 56 of the Register Book of Titles.
5. The 4<sup>th</sup> Defendant shall bear her own costs.
6. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants Attorneys-at-Law shall prepare, file and serve this Order by July 29, 2022 by 3:00 pm.

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**D. Staple, J (Ag)**