



Trinity Term
[2023] UKPC 31
Privy Council Appeal No 0069 of 2021

JUDGMENT

**Sassy Garcia (Appellant) v Arima Door Centre Holding
Company Ltd (Respondent) (Trinidad and Tobago)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Briggs
Lord Kitchin
Lord Leggatt
Lord Stephens
Lord Richards**

**JUDGMENT GIVEN ON
1 August 2023**

Heard on 4 July 2023

Appellant

Navindra Ramnanan

(Instructed by Magna Mentis (Trinidad))

Respondent (written submissions only)

John Jeremie SC

(Instructed by Simons Muirhead & Burton LLP (London))

LORD LEGGATT:

1. This is an appeal from a decision of the Court of Appeal upholding an order for possession of land at 10 Farfan Street, Arima, in Trinidad and Tobago (“the property”). The appeal turns on the correct interpretation of section 9 of the Real Property Limitation Act 1846 (“the Act”) and its application to the facts found in this case, being the sole issue on which the Board granted permission to appeal.

2. The claimant (and respondent to the appeal) began this action to recover possession of the property from the appellant on 18 May 2012. Although other defences were originally raised, the only one that remains relevant is the appellant’s contention that the action was begun after the expiry of the limitation period prescribed by section 3 of the Act, with the result that the claim is barred and the claimant’s title to the property has been extinguished. Section 3 provides:

“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 ...”

Section 22 provides that, at the end of this period of 16 years, “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.”

3. The trial judge, Rampersad J, found as facts that: (i) the property was let to the appellant’s father (without any written lease) as a monthly tenant on 16 September 1971, with each period commencing on the first day of the month; (ii) in 1982 the father registered the tenancy under the Rent Restriction (Dwelling-Houses) Act; (iii) after the father died, the appellant’s mother was served on 29 March 1996 by the then owners with a notice to quit, to expire on 30 April 1996; (iv) the appellant and her mother nevertheless continued to occupy the property; (v) on 23 August 1996 the rent still outstanding for the months of March and April 1996 was paid; (vi) apart from that payment, no rent has been paid since 30 April 1996; and (vii) the claimant acquired the title to the property from the previous owners by a deed dated 5 March 2012.

4. The judge dealt with the effect of the notice to quit on two alternative bases. He found that, upon the death of the appellant’s father, the statutory tenancy vested in her mother and that, if the notice to quit was sufficient to determine the statutory

tenancy, the tenancy came to an end on 30 April 1996. Alternatively, if the notice to quit was not sufficient to determine the statutory tenancy, it came to an end when the appellant's mother died in March 2002.

5. As counsel for the appellant, Mr Ramnanan, has pointed out, the claimant's pleaded case, not disputed by the appellant, is that the tenancy was terminated, at latest, by the notice to quit served on 29 March 1996. The claimant has never sought to argue that the appellant's mother had a right to retain possession of the property after 30 April 1996, by reason of any statutory tenancy or otherwise. The Board therefore proceeds on the basis that the tenancy came to an end on that date.

6. The Act is modelled on the Real Property Limitation Act 1833 enacted in England and Wales ("the 1833 Act") and it has not been suggested that (apart from the length of the limitation period) there is any material difference between the two statutes or their legal effect. In Trinidad and Tobago, as in England and Wales, the basic rule is that, if a person has been in uninterrupted possession of land for the statutory period without the consent of the owner, an action by the latter to recover the land will be barred and the owner's title extinguished. Such "adverse possession" - as it is commonly called, although the term is not used in the legislation - requires a sufficient degree of physical custody and control of the land combined with an intention to possess the land on one's own behalf and for one's own benefit: see eg *Lares v Lares* [2020] UKPC 19, para 3. It is not disputed that on the facts of this case these requirements have been met by the appellant since 1996. The issue concerns the precise date in 1996 when, for the purposes of section 3 of the Act, the right to bring an action to recover possession of the property accrued.

7. If the relevant date was when the tenancy came to an end on 30 April 1996, it follows that the limitation period of 16 years had expired shortly before this action was begun on 12 May 2012. The claimant's case, however, is that the right of action did not accrue until 23 August 1996, when payment of the outstanding rent was made and received. If that is the relevant date, the action was brought in time.

8. Since the judge found as a fact that the rent paid on 23 August 1996 related to periods before the tenancy ended on 30 April 1996, it cannot be said that the payment of rent represented an acknowledgement of the title of the true owner, nor that acceptance of the rent by the owner implied consent to the continued occupation of the property by the appellant or her mother. It is therefore clear that, if the general law is applied, the right to bring an action for possession of the property accrued on 30 April 1996.

9. The claimant's argument to the contrary is based on section 9 of the Act, which states:

“When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).”

10. The claimant did not appear by counsel at the hearing of this appeal but relied on its written case. This maintains the argument, accepted by both courts below, that section 9 applies in this case and has the effect that, notwithstanding what the position would otherwise be, the right to bring an action to recover the property must be deemed to have accrued on whichever was the later of (1) the end of the first period of the monthly tenancy granted in 1971 and (2) “the last time when any rent payable in respect of such tenancy shall have been received.” As the first period of the tenancy ended in October 1972, that date is clearly not the relevant date and can be set to one side. The claimant submits that, on the plain wording of section 9 and the facts found by the judge, “the last time when any rent payable in respect of such tenancy shall have been received” was 23 August 1996. It follows that this was the date when the right of action accrued. So this action was brought in time.

11. The Board does not accept this argument. To appreciate why it is wrong, it is necessary to understand the function of the deeming provisions in the Act - a point on which the courts below appear not to have been assisted by counsel. The Act, like the 1833 Act and its successors in England and Wales, contains a number of deeming provisions, which include section 9. Soon after the 1833 Act was enacted, it was held that the deeming provisions were not exclusive and that, in any case not covered by them, recourse must be had to general principles to determine when a right to recover land first accrues. The purpose of the deeming provisions is not to limit the generality of the limitation period, but to explain the section imposing the limitation period and to settle cases where there might be a doubt about when time started to run: see eg *Paradise Beach & Transportation Co Ltd v Price-Robinson* [1968] AC 1072, 1085, and other cases cited in Stephen Jourdan and Oliver Radley-Gardner, *Adverse Possession*, 2nd ed (2017), para 5-05.

12. At common law non-payment of rent by a tenant does not automatically bring the tenancy to an end. Against this background, it can be seen that the purpose of section 9 is to provide a clear rule in circumstances where rent has not been paid under an oral periodic tenancy but no formal step has been taken to terminate the tenancy. In such a case, provided that some rent has been paid after the first period, time will run from the last time when any payment of rent was received. This prevents the landlord from arguing that the tenancy subsisted even though no rent was paid, so that time did not begin to run until what might be a much later date.

13. Section 9, however, has no application in a case such as this where the tenancy has been terminated by service of a valid notice to quit. In a case of this kind there is no doubt about when the landlord's right of entry arose: namely, when the notice to quit expired. Hence there is no need to have recourse to a deeming provision. Section 9 does not apply, as after the notice to quit has expired the person in possession of the land is not in possession "as tenant", nor is the right of the person entitled to bring an action to recover possession "subject to" a tenancy.

14. In short, the law applicable both in England and Wales and in Trinidad and Tobago is, in the Board's view, correctly stated in the following passage of *Jourdan and Radley-Gardner on Adverse Possession*, 2nd ed, para 5-07:

"One common situation which is not covered by any of the deeming provisions is that of the tenant who holds over wrongfully after the termination of his tenancy. ... In such a case, as none of the deeming provisions apply, the general law applies, and time starts to run against the landlord from the termination of the tenancy, which is when the landlord first acquires the right to recover the land from the tenant."

15. Thus, on the facts of this case time began to run from the termination of the tenancy on 30 April 1996. It follows that, before the action was begun on 18 May 2012, the right to recover the property from the appellant had been lost.

16. The Board will therefore allow the appeal and is minded, in consequence, to set aside the order for possession made by the judge and declare that the claimant's title to the property has been extinguished. If the claimant wishes to contend otherwise or to resist an order that it pay the costs of the action including the appeal, it must do so by filing a written submission within 14 days.