ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 17 OF 1996

BETWEEN:

LOUISE CHANCE

Plaintiff

and

VERONICA JOHN

Defendant

Appearances:
Richard Williams for the Plaintiff
Parnel R Campbell and Cheryl McSheen for the Defendant

2000: October 2, 12, 18

JUDGMENT

[1] MITCHELL, J: This was a land dispute between a landlord and a tenant. The tenant claimed title to the house lot in question by adverse possession.

[2] Giving evidence for the Plaintiff was the Plaintiff alone. Giving evidence for the Defendant were the Defendant herself and her neighbour Albert Kydd. Albert Kydd is 74 years old and has been the neighbour of the land in dispute since the 1940s. I accept his evidence where it conflicts with the evidence of the parties to the case.

[3] The fact as I find them are as follows. The land in dispute is one of three house lots on a parcel of land at Richmond Hill Rockies in St Vincent. The land was originally Crown land. It appears to have been purchased from the Crown sometime in the late 1930s by Arthur John acting on behalf of his sister Millicent

John who lived in Trinidad. Millicent John never occupied the land herself, as she remained all her life in Trinidad. Arthur John's name was entered up on the tax rolls as the owner of the land, apparently because he was the one who had paid the Lands and Surveys Department the purchase price. Ivan Chance came into possession of the land from at least the 1940s. He may have been put there by Millicent John as alleged by the Defendant, the evidence is uncertain. In about 1984, Millicent John came to St Vincent from Trinidad. She discovered that since 1979 Ivan Chance had taken out a possessory title to her land. She commenced steps to re-take possession of the lands. This included bringing an action in High Court suit No 1/1986 against the Plaintiff and her mother Rosalind Chance, who had taken title to the lands in 1985 after the death in 1981 of Ivan Chance. In that action, she claimed a declaration that she was the owner of the parcel of land; she also sought an order cancelling Ivan Chance's registered declaration of possessory title of 1979 and the Plaintiff's deed of assent of 1985. The Plaintiff and her mother filed their defence to that action on 18th February 1986. But, that action was abandoned, and Millicent John appears not to have completed the process she began with that case of establishing her claim to the parcel of land. The land remained at all times, until the dispute in this case, in the possession of Ivan Chance, and after his death in 1981, of his widow Rosalind Chance, and after her death, of the Plaintiff.

[4] In 1975 Ivan Chance had put the Defendant in possession of the small house lot presently in contention, and which is a part of the parcel that would subsequently in suit No 1/1986 be claimed by Millicent John. The rent for the house lot paid to Ivan Chance by the Defendant was $30.00 per year. The arrangement was an oral tenancy from year to year. Pursuant to the agreement with Ivan Chance, the Defendant built her chattel house on the lot of land and paid the agreed rent to him annually from 1975. The Defendant testified that Ivan Chance represented to her at the time she first made the arrangement with her that he was renting the lot to her on behalf of the owner. That may or may not be so; Ivan Chance is not here today to answer the charge, and I make no finding on it one way or the other.

What is certain is that by a Declaration registered in the Registry of Deeds and dated 12th November 1979, 4 years after first renting the house lot to the Defendant, Ivan Chance claimed that he had been in uninterrupted possession of the land since 1940 cultivating it for his sole use and benefit. From at least that date in 1979, if not earlier, Ivan Chance was in adverse possession of all the land including the lot of land in dispute. Any right that Millicent John had in the land would have been extinguished under the provisions of section 17 of the Limitation Act at the very latest by November 1991. Ivan Chance died on 22 April 1981. On 6 September 1985 Letters of Administration to his estate, including the land in dispute, were granted to the Plaintiff. On 12th September 1985, the Plaintiff as Administratrix conveyed the lands in dispute to her mother Rosalind Chance and herself by a Deed of Assent. The Defendant continued to pay the rent to Rosalind Chance.

[5] In about the year 1983, the Defendant saw the Plaintiff and her mother constructing a concrete house on the land. From this, I conclude that their house had previously been of wood. She testified that from that time she determined to claim her adjacent lot for herself. Certainly, she ceased to pay rent to the Plaintiff's mother or to the Plaintiff. There is a dispute between the parties as to the last year that rent was paid. The Defendant produced no receipts for rent paid. She did not know the exact days or months when she paid the rents. The Plaintiff produced a rent book which shows a series of payments of rent by the Defendant going back several years. There is a receipt dated 26th February 1983. There is also a last receipt for a payment of $30.00 rent paid by the Defendant on 26th February 1984. The Defendant says that that receipt is a forgery, and the previous receipt in the book dated 26th February 1983 should be the last valid receipt. What is clear is that by a Magistrates Court writ dated 17 September 1985 the Plaintiff and her mother sued the Defendant for rent for the 2 years 1984 and 1985. They did not then claim rent for the year 1993. That is a declaration against interest that is binding on the Plaintiff. The Plaintiff thus admits to having last received the rent for the year 1983, but not for 1984. I accept that the receipt for

1984 is a forgery, and that the last amount of rent paid by the Defendant to the Plaintiff or her mother was for the year 1983. That Magistrate's Court case does not appear to have been tried. Indeed, there is an exhibit of the pleadings in the High Court in which the Plaintiff applied for an order of Mandamus against the Magistrate who had declined to hear the case, presumably because he had taken the view that he did not have jurisdiction in a case where title to land was in dispute. Leave was granted by Singh J, as he then was, on 20th January 1986 for an order for Mandamus to be applied for, but the Mandamus proceedings were, according to a notation on the back of the exhibit, discontinued with leave on or about 7 March 1986. A new Magistrate's Court writ appears to have been issued by the Plaintiff against the Defendant for the arrears of rent, for there appears a minute of a judgment in the Magistrate's Court on 28th June 1988 in suit 90/98 for $120.00, which would have been 4 years' rent. That judgment appears from the minute to have been obtained by the Plaintiff *ex parte*. The minute indicates that the Defendant appealed the judgment of 28 June on 11 July 1988. That appeal was for reasons unknown never heard. The Court understands from both counsel that there are in St Vincent hundreds of unheard Magisterial appeals, unheard because the notes of evidence have not been typed up in the Magistrates' Courts and sent to the Deputy Registrar for onward transmission to the Court of Appeal. Whatever the cause, the appeal by the Defendant against the order of the Magistrate to pay the Plaintiff the arrears of rent appears not to have been heard by the Court of Appeal and is presumably still pending. Meanwhile, on 3 January 1986 Millicent John had issued her writ No 1/1986 described above in the High Court against the Plaintiff and her mother. It may well be that the appeal was abandoned in favour of proceeding to establish the better title of Millicent John to the land in dispute and to the balance of the land occupied by the church and by the Plaintiff. In any event, this suit too of Millicent John was not proceeded with, and it appears also to have been abandoned.

[6] That leaves us with the Plaintiff's claim that the Defendant was a tenant from year to year with the tenancy expiring and liable to renewal every year. The Defendant

last paid rent on 26 February 1983 for the year expiring on 25 February 1984. The argument of the Defendant is that the 12-year period for the purposes of the Limitation Act commenced on the date of payment and expired 12 years later, on 25 February 1995. The Plaintiff's writ was issued on 16th January 1996, so that, according to the Defendant, the Plaintiff is out of time. The argument of the Plaintiff, on the other hand, is that the 12-year period commenced on the expiry of the year commencing with the payment of rent on 26 January 1983, ie, on 25 February 1984, so that the issue of the writ was just within the 12-year period. This difference of opinion calls for an interpretation of the law. No legal authority was produced for the assistance of the court. Let us look at the words of the Act. The Limitation Act is Cap 90 of the Revised Edition 1990 of the Laws of St Vincent and the Grenadines. Section 17 provides as follows:

(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
(2) . . .
(3) . . .
(4) . . .
(5) Part 1 of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned.

Paragraph 5 of Part 1 of the Schedule is the relevant paragraph. Paragraph 5 provides as follows:

(1) Subject to subparagraph (2), a tenancy from year to year or other period, without a lease in writing, shall for the purposes of this Act be treated as being determined at the expiration of the first year or other period; and accordingly the right of action of the person entitled to the land subject to

the tenancy shall be treated as having accrued at the date on which in accordance with this subparagraph the tenancy is determined.

(2) Where any rent has subsequently been received in respect of the tenancy, the right of action shall be treated as having accrued on the date of the last receipt of rent.

[7] The argument of counsel for the Defendant on the interpretation of paragraph 5 of the Schedule above is that the Defendant occupied the land on a tenancy from year to year without a lease in writing; the Legislature in its wisdom has prescribed with precision the method of calculating the accrual of the right of action in the case of a tenancy from year to year without a lease in writing; the legislative formula admits of no equivocation; it has the attractiveness of being clear and simple; it provides in essence that time runs from the date of the last receipt of rent; in this case the last receipt of rent was 26th February 1983; the legal consequence was that the right of action accrued on 26th February 1983; in consequence, the Plaintiff was out of time when the writ in this suit was issued. The argument of the Plaintiff in response to the above argument of the Defendant is that paragraph 5(2) of the Schedule above only applies to payments in respect of a subsisting tenancy; the Defendant was a tenant from year to year with the tenancy expiring and liable to renewal each year; accepting for argument's sake the Defendant's last lease as commencing on 26th February 1983, the Plaintiff's right of action would accrue on the date of last receipt of rent for that period only if rent was owing for and paid on account of that period at some stage after 26th February 1983; sub-paragraph (2) has no application where the rent is paid in full in advance for the period of the lease, it only applies where rent is owing and is subsequently received in respect of the tenancy; to find otherwise would mean that if a tenant from year to year agreed with the landlord to pay 12 or more years rent in advance, the tenant would only have to sit out the full period of the term for which he had paid and the limitation period would have passed, so that unless the landlord had issued a writ against him to stop time running, which would be impossible as no rent was owing, the provisions of section 17 would apply to stop

the landlord from being able to reclaim possession. Having considered both arguments, I am persuaded by that of the Plaintiff. To find otherwise would have an extraordinary effect. It would mean that the Legislature had enacted something that was contrary to reason in providing that a right of action accrues on the day of payment of rent in advance when by all logic there should be no right of action accruing against the tenant who has just paid rent. Sub-paragraph (2) can only have meaning and application where rent is owing for a particular period and payment is subsequently received; it cannot apply where no rent is presently owning for the period of the tenancy in question.

[8] Having found as above, that should settle the matter before the court for determination in this case between the Plaintiff and the Defendant. The limitation period would not have passed before the issuing of the writ in this case, and the Plaintiff would be entitled to succeed in her claim. Counsel for the Defendant went on, however, to argue the point as to when exactly the *animus possidendi* of the Defendant arose. *Animus possidendi* means no more than occupation of the land in dispute with the intention of excluding the owner as well as other persons from entering onto or possessing it. A tenant occupies the rented premises fully, with the right to exclude the owner as well as anyone else. An owner entering rented premises without the permission of the tenant does so as a trespasser. A tenant's verbal acknowledgment of his continuing obligation to pay rent does not detract from his exclusive occupation or diminish his right to exclude the landlord from occupation. Counsel for the Defendant revealed that the need to establish *animus possidendi* in holding over cases between landlord and tenant arose from the recent unreported decision of the Court of Appeal in Errol Davis v Timothy Nelson (St Vincent CA 4/2000). In that decision, the Court of Appeal held that a tenant holding over must show *animus possidendi* in order to sustain a claim of adverse possession. Redhead JA in delivering the decision of the court held:

> For there to be acquisition of property by adverse possession the person claiming must dispossess the real owner, ie, acquire adverse possession

against him and he must have the *animus possidendi*, that is, exclusive occupation with the intention of excluding the owner as well as other people. See Pollard v Dick 2 OECS LR 239. This is so when the person who is claiming title through adverse possession enters the land initially as a squatter or occupies initially as a tenant from year to year and claims under the Limitation Act section 17(5).

It does not appear from a reading of the judgment in Davis v Nelson that counsel for the respondent assisted the Court of Appeal with any law on limitation relating specifically to cases of landlord and tenant. The cases referred to the Court of Appeal by counsel for the appellant do not appear to deal with the situation of a landlord and a tenant. The leading case in our reports concerning a tenant claiming adverse possession against the landlord is the Trinidadian case of Richardson v Lawrence [1966] 10 WIR 234. In that case, the tenant's father went into possession in about 1915. The landlord died in 1936. The son of the landlord died in 1937 leaving the widow who was the appellant. The tenant's child was the respondent. The respondent did not pay any rent to anyone after the death in 1937 of the son of the landlord. The appellant widow, having obtained Letters of Administration to the estates of her father-in-law and husband, claimed rent, and the respondent refused to pay. The reason for refusal to pay was simply that the respondent was not sure that the appellant widow was entitled; he believed that the appellant widow had been divorced from the landlord's son. The appellant made no further move until 1955 when she brought an action in the petty civil court for recovery of the land. It was in reply to this claim that the respondent put up for the first time that the land was his. He had paid no rent since 1937, and the action was brought 18 years after the last payment of rent. It was argued in that case that there had been no adverse possession, principally because the appellant had been continuously claiming to be the owner of the land, and also that it had merely been unclear to whom the rent became payable, not that the respondent had ever claimed that no rent was due. The Court of Appeal of Trinidad upheld the finding of the trial judge that the title of the appellant was

finally extinguished. It is not clear whether our Court of Appeal would have found differently in the case of Davis v Nelson if it had had such landlord and tenant cases as Richardson v Lawrence brought to its attention. However, the decision on this matter of our Court of Appeal is binding on this court.

[9] The Plaintiff in our case did not dispute the intention of the Defendant to refuse to acknowledge the Plaintiff as owner of the property, the only question was whether it began in the year 1983 or in the year 1984. There is no evidence, other than paragraph 26 of her defence in this action, of the Defendant acknowledging the competing claim of Millicent John to the land in dispute. I have no difficulty in finding that at some stage during the term of the year commencing on 26 February 1983, the Defendant determined not to pay any more rent to the Plaintiff. In the sense used by the Court of Appeal in Davis v Nelson, that was *animus possidendi*. She began to build her concrete house on the land in about January 1996, by which time she had clearly come to the view that she had acquired by adverse possession a squatter's title to the land in dispute. The Defendant had, thus, repudiated the title of the landlord from the year 1983. However, at that time, she was occupying the premises under a tenancy from year to year expiring on 25 February 1984. As has been set out above, the court accepts that time began to run against the Plaintiff at the expiry of the tenancy on 25th February 1984. It could not have begun to run during the year 1993, as the Defendant, regardless of her subjective intention, had paid rent up to 25 February 1984. The issue of the writ on 16th January 1996 sufficed to stop the full period of 12 years from elapsing, so that the Defendant has not established adverse title against the Plaintiff.

[10] A question arose whether or not the judgment in the Magistrate's court obtained in 1988 by the Plaintiff against the Defendant for 4 years' rent would have stopped time running in a dispute between landlord and tenant over title to the land. The argument of the Plaintiff is that the Small Debts Act, Cap 95, section 36, under the heading Finality of Judgments, is final and conclusive between the parties as to the fact of a tenancy existing in the year 1988. The Plaintiff also relies on the

provisions of the Magistrates (Civil Decisions Appeals) Act, Cap 25, under the heading Effect of Appeal, for the proposition that it is only the execution of the judgment of the Magistrate that is suspended until the hearing of the appeal, but that the judgment is still good and valid until overturned by the appeal. The Plaintiff protests that the Defendant must not be permitted to benefit from her default in prosecuting her appeal. The contrary argument of the Defendant is that the Plaintiff took no action to execute the judgment of the Magistrate's court. The Defendant relies on section 39 of the Small Debts Act which provides that every judgment is discharged at the end of 4 years after the date of the judgment. The Defendant also protests that the judgment was a judgment for arrears of rent, and not for the possession of the house spot, and was thus a judgment *in personam* and not *in rem*. The Defendant also protests that the judgment was an *ex parte* judgment, and it would be repugnant to the fundamental principles of natural justice embodied in the maxim *audi alterem partem* for the serious question of title to land to be so vitally affected by an *ex parte* proceeding not itself directly affecting the question of title to the land. Counsel for the Defendant relied on the case of Derham v Doyle (1914) 2 IR 135 for the proposition that an unexecuted judgment does not operate as a declaration of title or as an acknowledgment of the Plaintiff's title. I do not propose to deal with this question of the effect of the Magistrate's Court decision, as I consider that the limitation point has been decided above on the calculation of time running from the termination of the one year tenancy commencing on the date accepted by the Defendant as the date she last paid rent, ie, 26th February 1983.

[11] Given the above findings of fact, and applying the law as set out above, the court gives judgment for the Plaintiff. The Defendant's counterclaim is dismissed. The Plaintiff is entitled to a declaration that she is the fee simple owner of the lot of land in dispute. She is entitled to an injunction restraining the Defendant whether by herself, her servants or agents or otherwise from building, constructing or erecting any permanent structure on the Plaintiff's said land. She is also entitled to an order that the Defendant do forthwith pull down and remove the concrete

structure and/or building which is being built by the Defendant on the Plaintiff's said land. The Plaintiff is entitled to general damages which I set at $5,000.00 and mesne profits which I calculate at $30.00 per year for 17 years from 1984 to 2000, or $510.00. The Plaintiff is also entitled to her costs to be taxed if not agreed.

[12] Before I conclude, I must express my appreciation to both counsel for their carefully researched and prepared legal briefs which they submitted for the assistance of the court and which made their closing arguments so much easier to follow than would otherwise have been the case, and which saved much time.

I D MITCHELL, QC
High Court Judge