JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO: 3/07

BEFORE: **THE HONOURABLE MR. JUSTICE PANTON, J.A.**
THE HONOURABLE MR. JUSTICE HARRISON, J.A.
THE HONOURABLE MRS. JUSTICE McCALLA, J.A.

BETWEEN:	**JOYCE MORGAN**	**APPELLANT**
AND	**WINSTON WRIGHT**	**RESPONDENT**

ORAL JUDGMENT

Leonard Green instructed by Chen Green and Company for the Appellant.

Miss Judith Clarke instructed by Palmer, Smart and Company for the Respondent.

June 11 & 14, 2007

PANTON, P:

I have read in draft, the judgment of Harrison, J.A. I agree with his reasoning and conclusions and there is nothing further I wish to add.

HARRISON J.A:

1. This is an appeal from the judgment of His Honour Mr. Collymore Gordon, Resident Magistrate for the parish of Westmoreland who on the 10th of January 2007 ordered that judgment be entered for the Plaintiff in an action brought for Recovery of Possession of a house spot at Cairo, Savanna la Mar, in the parish of Westmoreland.

2. The appeal arose out of a claim brought for recovery of possession of a house spot on land comprising approximately 125 acres vested in the names of Hugh Astley Hendricks, Michael Anthony Hendricks and Elizabeth Bodden, children of Astley Sinclair Hendricks, now deceased. Letters of Administration were granted in the estate of Astley Sinclair Hendricks to Hugh Hendricks in the Supreme Court of Judicature, Jamaica. The Administrator Hugh Hendricks has consented to Michael Hendricks bringing the action. Winston Wright, by power of attorney, filed the plaint on behalf of Michael Hendricks.

3. The plaintiff/respondent's case was supported by two witnesses: Hugh Hendricks, the Administrator of the estate of Astley Hendricks and James Dunkley, a past employee of Hugh Hendricks' father.

4. The evidence given on behalf of the plaintiff revealed that the Appellant lived on the property for a period of over thirty (30) years but her occupation of this house spot was permissive. According to Hugh Hendricks, that section of the land was first rented by one Arthur Smith who had worked on the property for Astley Hendricks. Smith and his common-law wife, Mavis Forrester, had occupied a house on the spot that was rented. After Smith died, Forrester continued to occupy the house. She had asked Hugh Hendricks if she could remain on the land as a tenant. Permission was granted and she paid rent for the house spot on a yearly basis.

5. After the death of Mavis Forrester the appellant sought and was granted permission by Hugh Hendricks to continue living on the land as a tenant. She was the common law wife of Vernon Gooden, son of Arthur Smith and Mavis Forrester.

6. On the plaintiff/respondent's case, the appellant paid a yearly rental of $800.00 up until about 2002.

7. Hugh Hendricks testified at the trial that he had given the appellant verbal notices to vacate the spot of land since 1996 but she refrained from doing so. A Notice to Quit and Deliver up Possession by September 30, 2004, was eventually served on the appellant by Hugh Hendricks. The Notice to Quit (Exhibit 1) stated the following reasons for recovery of possession: 1) non-payment of rent and; 2) that the landlord required the house spot for his own use and benefit.

8. The defence of the appellant at the trial was that she was never a tenant of the respondent. She contended both here and in the court below that she was living on the premises for a period in excess of 40 years. On this basis, she claimed that she had acquired title to the house spot by virtue of the doctrine of adverse possession. In the alternative, she contended that she had acquired an equitable interest in the house spot.

9. At the trial the appellant testified that she had begun living at Cairo since she was 16 years of age and that she came to live on the property because of a common law relationship with Vernon Gooden. There are three children from this relationship.

10. The appellant testified that the original house that was built on the spot of land was destroyed and a new one was built by Vernon Gooden. She further said that no one had ever opposed or objected to her occupying the house spot. She knows Hugh Hendricks and has said in evidence that she had assisted Mavis Forrester to "look after" his father.

11. The appellant strongly denied that she was a tenant of the respondent. She said that Hugh Hendricks would come to the spot and "pest" her for money and that he would give her a receipt. She denied that she had paid Hugh Hendricks sums of money over the years for rental of the house spot. She admitted nevertheless under cross-examination that she knew that Hugh Hendricks owned the land. She said: "The father died so the son must take over". She further agreed with Counsel for the respondent, that she had never stopped Hugh Hendricks from coming on to the property.

12. Notice and Grounds of Appeal were filed in the Resident Magistrate's Court and on the 5th day of June 2007, the Appellant filed Supplemental Grounds of Appeal in the Registry of the Court of Appeal. The original grounds were abandoned and leave was granted for the supplemental grounds to be argued.

13. In relation to ground 1, Mr. Green submitted that the learned Resident Magistrate had proceeded on a wrong basis when he sought to ground the court's jurisdiction on the yearly rental of $800. He argued that the Magistrate had used his general knowledge in order to arrive at the annual value in respect of the lot of land and referred the Court to page 43 of the Record of Appeal where the learned judge said in his reasons for judgment:

> "Be that as it may, the evidence is that the rental was eight hundred dollars ($800.00) per year.
>
> In the case of Francis v. Allen (1957) 7JLR at 100 it was said, "to ascertain the annual value, from the rent must be deducted rates, taxes, cost of repairs, insurance and other expenses necessary to maintain the premises in a state to command such rent In (sic) order to arrive at the annual value.

> The evidence is that the defendant pays eight hundred dollars ($800.00) yearly for rent, even without the deductions this falls well below the jurisdiction of the Resident Magistrate's Court when the action for Recovery of Possession is brought under section 96 of the Resident Magistrate's Court Act."

14. Mr. Green submitted that there must be an evidential basis which the Magistrate must consider before he can arrive at the annual value. He submitted that what the learned Magistrate said was unacceptable.

15. In relation to ground 2, Mr. Green submitted as he did in the court below, that a genuine dispute as to title arose in the case. He argued that there was evidence that the appellant was living on that house spot at Cairo for well over 40 years. He submitted that in these circumstances the learned Resident Magistrate was called upon to determine whether the appellant was a tenant, licensee, or one who had adversely occupied the lot of land. He also submitted that one who acquired possession adversely would also have acquired an equitable interest. He referred the Court to the case of ***James Williams v Hylton Sinclair*** (1976) 14 JLR 172.

16. Mr. Green submitted in relation to ground 3 that the learned Resident Magistrate had provided insufficient bases for the conclusions he arrived at in his reasons for judgment. He submitted that he had omitted to make critical finding of facts.

17. Miss Judith Clarke, for the Respondent, pointed out to the Court that she would respond firstly to ground of appeal 2. She submitted that it is plain to be seen that when one examines the Notice to Quit, it was obvious that the action was one for recovery of possession under the Rent Restriction Act. It would not be fair to say, she

argued, that the claim was initiated under section 96 of the Judicature (Resident Magistrates) Act. She submitted that the reasons given for recovery of possession which were stated in the Notice were in compliance with section 25 of the Rent Restriction Act.

18. Miss Clarke further submitted that the learned Resident Magistrate's reason for saying that section 96 was in issue was because of what was stated in the Defence. She further submitted that no dispute as to title arose on the facts of the case.

19. So far as the issue of adverse possession is concerned, Miss Clarke submitted that the appellant would have had to establish inter alia by evidence that she had occupied the house spot by continuous user without interruption. However, the appellant had testified that Hugh Hendricks did come to her for rent and that she would tell him that she had no rent to pay. Miss Clarke further submitted that the appellant had testified under cross-examination that Hugh Hendricks owned the land. It is obvious, she said, that on these facts, the appellant could not succeed on the basis of occupation by adverse possession.

20. We have given the submissions and arguments put forward by both Counsels very serious consideration. We are in full agreement with the submissions of Miss Clarke and reject those made on behalf of the appellant by Mr. Green.

21. There could be no doubt in anyone's mind regarding the nature of the claim brought in the Resident Magistrate's Court. The Particulars of Claim filed on behalf of the Respondent, clearly stated that the claim was to recover possession of a house spot which the appellant occupies. The Notice to Quit stated the reasons why possession

was required. There was non payment of rent and the respondent had required the house spot for his own use and benefit.

22. The learned Resident Magistrate having reviewed the evidence stated in his reasons for judgment that he had taken the demeanour of the witnesses into consideration and had accepted on a balance of probabilities, the plaintiff and his witnesses as witnesses of truth. These were his finding of facts:

> "(1) The defendant was the tenant of the plaintiff.
>
> (2) The rental for the house spot was eight hundred dollars ($800.00) per year and as such falls within ambit of the Rent Restriction Act.
>
> (3) That the defendant pays rent up to the 17th of March 2000, a period less that (sic) twelve years before the action was brought.
>
> (4) That a valid Notice to Quit was served on the defendant on the 28th of March, 2004".

23. We also agree with the finding of the learned Resident Magistrate when he stated at page 43 of the Record of Appeal that "there was no genuine dispute as to title and that the jurisdiction of the Court is not ousted." The learned Magistrate was obliged we think, to properly consider the defence that was raised. He did just that. He asked himself if there was a genuine dispute as to title and thereafter considered the evidence presented on behalf of the appellant. He stated that the "whole tenor of the defence was that the defendant's occupation of the house spot is "permissive". He also considered the arguments raised by the defence in relation to the appellant's entitlement to an equitable interest in the land she occupied. He found that there was no basis for the contention that an equitable interest had arisen.

24. What is also of further importance in the Magistrate's reasons is where he stated: "Be that as it may, the evidence is that rental was eight hundred dollars ($800) per year". He then looked at the authority of ***Francis v Allen*** (1957) 7 JLR 100 and how it is that the Court should determine the annual value of property. We are of the view that Mr. Green has misconstrued what the learned Resident Magistrate said thereafter. We understand the Magistrate to be saying that had this been a case where there was a dispute as to title the evidence had shown that the appellant paid eight hundred dollars yearly for rent and that even without the deductions this sum falls well below the jurisdiction of the Resident Magistrate's Court when an action for recovery of possession is brought under section 96 of the Judicature (Resident Magistrates) Act. We are of the view that this statement by the Magistrate was a mere comment and ought not to have been understood as the reason given for the learned Magistrate's jurisdiction to hear the case. The Magistrate's finding that he was dealing with a landlord and tenant situation was very explicit in his reasons for judgment.

25. The Notice to Quit which contained the reasons for acquiring possession of the house spot and the rental paid gave the learned Resident Magistrate the necessary jurisdiction to proceed to hear the matter pursuant to section 25 of the Rent Restriction Act. There was therefore no basis for the learned Resident Magistrate to determine the case upon adverse possession which as a matter of fact and law clearly did not exist. The question of determining an annual value would be wholly unnecessary.

26. We therefore dismiss the appeal and affirm the judgment of the learned Resident Magistrate. There shall be costs to the Respondent fixed at $15,000.00.

McCALLA, J.A: I agree.

PANTON, P.

ORDER:

The appeal is dismissed. The judgment of the learned Resident Magistrate is affirmed. There shall be costs to the Respondent fixed at $15,000.00