IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2002/0469

BETWEEN:

CATHERINE CHARLES

Claimant

AND

DENHAM PETERS

Defendant

Appearances:
Mr. Alban John for the Claimant
Ms. Denise Campbell for the Defendant

2010: December 20

DECISION

[1] **HENRY, J.:** The claimant Catherine Charles claims against the defendant as follows:

1. Possession of a parcel of land measuring 2,946 sq. ft. situate at Belmont in the parish of St. George and described in the schedule to the Fixed Date Claim Form and presently occupied by the defendant as tenant;
2. Damages of $450.00 for damage to and destruction of fruit trees growing on the said lot;
3. The sum of $100.00 being rent due and owing by the defendant to the claimant for the year 2002 for his occupation of the said lot of land as tenant;
4. Damages for trespass unto a contiguous lot of land in the possession of the Claimant which said lot is not rented to the defendant;

5. An injunction restraining the defendant either by himself, his servants or agents from further trespassing unto the said contiguous lot of land and from further committing act of ownership thereon;
6. Costs.

[2] The defendant asserts that the claim ought to be dismissed for the following reasons:

1. That no relationship of landlord and tenant ever existed between himself and the claimant and that he never attorned tenant of the claimant. He admits that his wife paid rent for three years but states that the payments were made without his approval or knowledge. There is no allegation, he says, that he ever personally paid the rent, nor is there any evidence that he was informed of the alleged change of landlord.

2. Invalidity of the notice: that even if one were to accept that there is a relationship of landlord and tenant between the parties, the Notice to Quit dated 21st December 2001 is not valid.

3. Non-compliance with the Rent Restriction Act

4. The claimant has failed to establish her title to the land

5. The claim for special damages has not been proved.

Relationship of Landlord and Tenant

[3] The claimant alleges in the affidavit in support of the fixed date claim that the defendant has been a tenant on the said land rented to him by the claimant paying there for annual rent of $100.00, that sum having been increased from $50.00 per annum. Receipts made out in the name of defendant's wife for the period 1993 to 2001 are exhibited.

[4] Louis Charles in his witness statement asserts that defendant was first brought onto the land as a tenant by Dora St. Bernard. Dora he says, was then occupying

the land with the permission of the claimant, whose mother, Viola Miller, had initially allowed Dora to remain on the land after Evalina died; that he was present with his mother and Elizabeth Peters, defendant's wife, sometime in 1992 when Dora told Elizabeth that the claimant would be taking over the land and collecting the rent; that thereafter the defendant, from 1993, paid rent to the claimant through him at a rate of $50.00 per year until 2001 when it was raised to $100.00 per year.

[5] The claimant's position therefore is that even though it was Dora St. Bernard who let the defendant into possession, Dora was acting as a licensee/agent of the claimant; that thereafter, the defendant's wife was informed that claimant was taking over and that defendant, by his wife, paid rent to the claimant for several years.

[6] The defendant in his affidavit and in his witness statement denies that he is the tenant of the claimant. He states that he has been living on the land since on or about March 15, 1981. He asserts that up to the date of her death around 12 years ago, he was the tenant of one Dora St. Bernard. He does not deny that his wife paid rent to the claimant, but he says that was only for the years 1997 to 1999, and that he did not learn of the payment until after the last payment. He asserts that he never attorned tenant of the claimant. According to defendant, upon receipt of the Notice to Quit, his Attorney requested proof of claimant's ownership of the land, but this had not been forthcoming.

[7] The defendant's wife, Elizabeth Peters, also asserts that Dora St. Bernard is the owner of the land on which she and her husband lives, and also an adjoining lot and that the land is registered at the Inland Revenue in the name of Dora's mother, one Evalina St. Bernard. She states that in 1997 the claimant came to her house and told her that the lot of land belonged to her and that she should pay the rent to her daughter, Clarissa Charles. According to Elizabeth, she asked the claimant for her papers for the land and the claimant replied that she had left them at home. Elizabeth admits that she paid rent in the sum of $50.00 to claimant's daughter in each of the years 1997, 1998 and 1999, but never received any

receipts for the payments. Further, that she never told her husband about the payments until 1999, due to the fact that he hardly resides at home. He is a fisherman she states and spends most of his time on the boat. She denies that any payment was made by her in 1996 and that the sum paid was other than $50.00.

[8] Both sides accept that Evalina St. Bernard was the original owner of the land. Both sides acknowledge that it was Dora St. Bernard who let the defendant into possession. The defendant's position is that she owned the land, it having been left to her by Evalina St. Bernard; that upon Dora's death it passed to Neil Cromwell under the provisions of Dora's will which has been duly probated and a deed issued to Mr. Cromwell in accordance therewith.

[9] The Claimant, on the other hand, says that she is entitled to the land by virtue of the fact that the land was owned by her grandmother Evalina St. Bernard and that it passed to her through her mother.

[10] Claimant says however that the issue of the competing claims of ownership as between Neil Cromwell and the claimant is not the subject of this action; that the defendant attorned the tenancy when for years they paid rent to claimant and that therefore the defendant is estopped from challenging the claimant's title.

[11] I do find that the defendant attorned tenancy. The essence of attornment is the acknowledgment or acceptance of the relationship of landlord and tenant between the two persons. There are two essentials of an attornment: (1) that the person attorning tenant is in occupation of the property and (2) that the person attorning tenant agrees to the establishment of the relation of landlord and tenant with another person who becomes his landlord. I find that both requirements have been met herein. While the defendant claims that he did not consent to the payment of rent and was unaware of the payment by the wife, I accept the evidence of the Mr. Charles together with the documentary evidence in the form of the receipts that payments were made over a number of years. I do not accept that the defendant throughout these years did not know that rent was being paid. I

do not believe that evidence. I find that defendant attorned tenancy. Therefore, not only has the relationship of landlord/tenant been established by the attornment, but this defendant is estopped from denying the landlord's title.

Validity of the Notice to quit

[12] The defendant asserts that the notice to quit by letter dated 21st December 2001 is not valid. According to the defendant, the yearly tenancy commenced in March 1981. Notice was given to quit the premises on 30 June 2002. Defendant therefore asserts that the notice is bad and that the action for possession must fail.

[13] The claimant asserts however, that this issue was never raised by the defendant in his pleadings as required by Rule 10.5 of the Civil Procedure Rules 2000. Therefore he ought not to be allowed to rely on same to defeat the claim.

[14] Rule 10.5 (1) provides that the defence must set out all the facts on which the defendant relies to dispute the claim. Rule 10.7 provides that the defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission. No permission was sought. In any event, the court may not give permission after the case management conference unless the defendant can satisfy the court that there has been a significant change in circumstances which became known only after the date of the case management conference.

[15] In none of the several Affidavits in opposition to the claim was the issue of the validity of the Notice to quit raised. The defendant in her pleadings, denied the relationship of landlord/tenant between the parties and challenged the claimant's title to the land. It was only at trial that the defendant raised, for the first time, the issue of the validity of the Notice. Accordingly, the defendant may not rely on this allegation.

Violation of the Rent Restriction Act

[16] The land the subject of this action, qualifies as premises to which the Rent Restriction Act Cap 286 applies. Section 22 of the Act provides that an order or judgment for the recovery of possession of premises to which the Act applies or for ejection of a tenant there from shall not be made unless one of the grounds set out in section 22 is satisfied. The defendant asserts that none of the grounds set out in section 22 for recovery of possession was given in the claim, and no ground is stipulated in the witness statement of the claimant.

[17] Item 3 of the claimant's Fixed Date Claim Form prays for the sum of $100.00 being rent due and owing by the defendant to the claimant for the year 2002 for his occupation of the said lot. Rent lawfully due from the tenant which has remained unpaid for at least 30 days is the first ground listed in section 22 (1). However, non-payment of rent is not mentioned in the notice to quit served on the defendant. The stated reasons in the said Notice to Quit are (1) that defendant has carried out wanton acts of destruction of certain plant and fruit trees growing on the lot without authorization from the claimant and (2) that the defendant, his wife and children have habitually been harassing the claimant's daughter to her annoyance and injury.

[18] According to the witness statement of Louis Charles, a witness for the claimant, in or about the month of December 2001, the defendant destroyed certain plants and fruit trees and planted peas in place thereof. In response, on 27th December, his mother, the claimant, caused the notice to quit to be served on the defendant. According to the witness, not only has the defendant not given up possession, but he has refused to continue to pay rent and has not paid rent since. So according to claimant's witness the non-payment of the rent occurred after the notice to quit was served. In fact the claimant's case is that the defendant paid rent up to 2001. In fact, the claimant exhibited a receipt for the payment of the sum of $100 rent for the year 2001. Therefore at the time of the service of the notice to quit in December 2001, on the claimant's case, no rent was owing and the only grounds for seeking to terminate the tenancy were those cited in the notice to quit.

[19] While claimant is entitled to be paid for the occupation of the land after the notice to quit was served, the non payment after the notice is served cannot form the basis for an order for possession of the premises pursuant to the same notice to quit.

[20] Further, while the claimant may recover damages if proved, unfortunately neither of these two grounds constitute a basis for an order for the recovery of possession of the premises under section 22 (1) of the Rent Restriction Act. Accordingly, the claim for possession of the premises is denied. Of course, the claimant is at liberty to serve a new Notice to Quit in compliance with section 22 of the Act, if such grounds exit.

Damages for destruction of fruit trees

[21] The claimant claims the sum of $450.00 for damage to and destruction of fruit trees growing on the said lot. In her witness statement the claimant states that the defendant did cut down fruit trees and caused damage thereon contrary to her wishes. The evidence of the defendant is that he did not cut down the trees but that he trimmed certain trees to avoid damage to his house, since the branches were overhanging his house. However, the claimant's evidence is that defendant did cut down fruit trees; that when she went there, the trees were no longer there. This evidence that the trees have been cut down was supported by the evidence of Louis Charles. I find the claim for damage to and destruction of the trees proved and award the sum of $450.00.

Damages for trespass to the contiguous lot

[22] Claimant claims further damages for trespass by the defendant unto a contiguous lot of land in the possession of the claimant which lot is not rented to the defendant. In paragraph 5 of the Affidavit of Louis Charles in support of the Fixed Date Claim, he states that the defendant and his family have committed acts of trespass and ownership upon a contiguous parcel of land in the possession of the claimant and cut down fruit trees growing thereon and have planted peas in place

thereof. Except for this allegation in the pleading, the acts of trespass and damage done are not mentioned in any of the witness statements on behalf of the claimant.

[23] The defendant denies that he damaged or destroyed any fruit trees growing on adjoining land, or that he entered on the said adjoining land and planted peas. The defendant's evidence is that in April 2002, the claimant's son came to his house and told him to pick all the peas from the trees on the land on which he lives and to cut down the trees because he wanted to build something there. That later he returned and broke some branches of the peas trees. Furthermore that on 28th November 2002 he returned home to find the said Louis Charles in his garden; that he cut down 30 holes of peas trees in the defendant's garden. He also cut down mango tree, saffron trees and pepper trees. Defendant called the police. Upon his arrival, the officer advised the defendant to get a Government surveyor and obtain the value of the trees and then make a report. The defendant seeks compensation from the claimant for the trees destroyed by the claimant's agent.

[24] The claim by the claimant for damages is denied. Except for the bare allegation in the pleadings, no further details of the alleged trespass or damages are to be found in the witness statements of any of the witnesses on behalf of the claimant. I therefore do not find the allegation of trespassed proved by the claimant.

[25] The counterclaim by the defendant for damages against the claimant is also denied. No evidence was adduced by the defendant to support the allegation that at the time Louis Charles allegedly cut down the peas trees, that he was acting as the agent of the claimant.

[26] Accordingly, judgment is granted as follows:

1. Claimant's claim for possession of the parcel of land, the subject of this action, is denied.

2. Judgment is granted to the claimant in the sum of $450.00 for damages to and destruction of trees on the said parcel of land.

3. Judgment is also granted to the claimant in the sum of $100.00 for rent for the year 2002.

4. The claimant's claim for damages to the contiguous lot and for an injunction is denied.

5. The defendant's counterclaim for damages is also denied.

[27] Cost to the claimant in the sum of $1,500.00.

Clare Henry
HIGH COURT JUDGE