

REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
Claim No. C.V. 2009-03223

BETWEEN
HV HOLDINGS LIMITED

CLAIMANT

AND
RAMRATEE HARRIPERSAD

1ST DEFENDANT

ANDY SINGH

2ND DEFENDANT



DECISION

Before The Honourable Madam Justice Charmaine Pemberton

Appearances:

For the Claimant: Mr. Seunath, S.C. instructed by Mr. Mohammed

For the Defendant: Mr. Hansraj Bhola

[1] **FACTUAL BACKGROUND**

The matter between the Claimant, HV Holdings Limited, and the Defendants, Ramrattee Harripersad (RH) and Andy Singh (AS), revolves around the possession of “*All and Singular that parcel or lot of land known as Lot 97 Tarouba Road, Marabella*”¹. The facts are as follows:

¹ Fixed Date Claim Form. Filed on Sept. 8, 2009.

- Hubert Vincent Gopaul (HVG), owner of the lands prior to 1974, tenanted the said lot to Kaiser Jagassar (KJ). (We have no information as to when this tenancy commenced, but suffice it to say that it was subsisting in 1971).
- On April 15, 1971, HVG served a Notice to Quit on KJ in the presence of his daughter RH.
- KJ did not observe the Notice but continued to pay rent for the lands to HVG, which was accepted.
- On February 20, 1974 by conveyance, HV Holdings Limited, Byron Gopaul (BG) being a director thereof became the owner in fee simple of the land.
- KJ died on May 30, 1986, leaving his wife Baboonie Kaiser (BK) in possession of the property.
- BK died on December 20, 1996. RH remained in possession of the property. (The relationship between BK and RH is not clear).
- RH continued to pay rent for the lands to HV Holdings Limited through BG, until 2002 until his refusal to accept further rental payments.
- In or around January 2009, HV Holdings Limited through BG offered to sell to RH the said lands at \$150.00 per square foot.
- This offer was not acted upon. HV Holdings Limited now brings this action to evict RH and her son AS.
- RH is claiming to have inherited a tenancy from her father KJ and further, has now offered to pay half the market value for the said lands.

[2] At the first Case Management Conference (CMC) in this matter Mr. Bhola, Attorney-at-Law for RH questioned if the Fixed Date Claim Form filed on September 8, 2009 disclosed a cause of action against his client. I ordered submissions on this issue.

[3] **DEFENDANT'S SUBMISSIONS**

Mr. Bhola defended this action solely on the intention of the parties, in 1971. Mr. Bhola submitted that the intention of the parties was that the tenancy continued even after 1971 when the Notice to Quit was delivered, not acted upon but rent was continually being paid and accepted. Those facts manifested that the tenancy continued. Mr. Bhola submitted that as a result of HV's acceptance of rent from RH until 2002, that RH is a Statutory Tenant of the land under the **LAND TENANTS (SECURITY OF TENURE) ACT 1981**. RH therefore had the option of purchasing the said lands at half the market value. Mr. Bhola referred me to several authorities on this point.²

[4] Additionally, Mr. Bhola submitted that RH *"has been in occupation of the said lands for over Thirty Eight years (38 yrs) without any disruptions or interference from anyone until now"*³ and HV Holdings Limited is attempting to claim possession of the lands simply because of RH's disability and age.

[5] **CLAIMANT'S SUBMISSIONS**

Mr. Seunath, Attorney-at-Law for HV Holdings Limited submitted that RH is misguided in her conclusion that she is a Statutory Tenant. Mr. Seunath submitted that after the service of the Notice to Quit, *"Kaiser Jagassar remained in possession under the provisions of the Rent Restriction Ordinance"*⁴ deeming KJ a Statutory Tenant. He relied on **HILDA CYRUS V. EMMANUEL GOPAUL**⁵. That matter clearly states, *"[t]he "statutory tenant" has no interest in the land but merely a personal right to remain in occupation...it cannot be*

² SNELL'S Principles of Equity. 28th Ed. Chp. 5, pg. 556, sec. 2.

CENTRAL LONDON PROPERTY TRUST LTD. V. HIGH TREES HOUSE LTD. (1974) KB COMBE V. COMBE [1951] 2 KB

FOSTER V. TROTMAN (1977) HC 2745. CRANE, J.

O'KIEFFE, CORRENE V. EMERY PETER AND SUSAN (1999) HC 1114. BEST, J.

³ Written Submissions and Authorities filed pursuant to the Order of the Honourable Justice Pemberton made on the 30th October, 2009. Para 11.

⁴ Claimant's Submissions. Para. 7(iii). Pg. 4. Filed on Dec. 18, 2009.

⁵ **HILDA CYRUS V. EMMANUEL GOPAUL. (MAG. APP. NO. 69 OF 1987) PG. 7.**

*transferred by the “statutory tenant” to another inter vivos, or pass under his will, or vest in his legal personal representatives.”*⁶

[6] Mr. Seunath further argued that Section 15 of the **ORDINANCE**⁷ was applicable. He contends that,

*Section 15 of the [Ordinance] provides that no order or judgment for the recovery of possession of any premises to which the [Ordinance] applies, or for the ejectment of a tenant theref[ro]m, shall be made or given unless one of the grounds set out in(a) to (r) of the said section 14 is proved. Until the landlord is able to prove one of those grounds, the tenant is entitled to remain in possession under the terms and conditions of the original contractual tenancy, but his status changes from that of a contractual tenant to that of a tenant holding over under the provisions of the statute, and has come to be called a statutory tenant.*⁸

CYRUS also provides support for this point and states,

*The expression “statutory tenancy” is a popular expression, first used by Lord Coleridge J. in Hunt v Bliss (1919) 89 L.J.K.B. 174 at 177 to describe “the status of irremovability” acquired by a tenant who continues in occupation under the Rent Restriction Act after his contract of tenancy is determined.*⁹

As such, Mr. Seunath submitted that RH is in fact a trespasser on the lands.

[7] Mr. Seunath addressed the question of whether a new tenancy was created after the Notice to Quit was served and rents continued to be paid and accepted. He guided the court to several cases¹⁰ which demonstrate that unless there is a clear agreement between landlord and tenant to create a new tenancy, then payment of

⁶ Id.

⁷ **RENT RESTRICTION ORDINANCE. CHAP. 27 NO. 18.**

⁸ Claimant’s Submissions. Para. 16. Pg. 8.

⁹ **CYRUS** at pg. 7.

¹⁰ **DAVIES V. BRISTOW (1920) KB 428, 440 SHEARMAN, J.**

ALI JUMANDEEN V. HV HOLDINGS LIMITED. CA NO. 93 OF 1998. DE LA BASTIDE, CJ.

rent after a Notice to Quit, does not effectively do so. Mr. Seunath echoed the utterings in **DAVIES** of Sherman J., who stated, “*after the expiry of the notice to quit the tenant is entitled to continue in occupation under the provisions of the statute until those conditions arise which enable the judge in his discretion to order recovery of possession or until the parties have arrived at a fresh agreement.*”¹¹

[8] Mr. Seunath further submitted that the dicta of de la Bastide, CJ in **JUMADEEN**¹² supported his view that neither RH nor AS are tenants of the lands. Consequently, they do not fall under the protection of the **LAND TENANTS (SECURITY OF TENURE) ACT, 1981**¹³. Mr. Seunath dismissed RH’s claim that she inherited a Statutory Tenancy from KJ and referred me to **DE HANEY V. ALI**¹⁴.

[9] In conclusion, Mr. Seunath submitted that RH’s defence did not have a realistic prospect of success, and as a matter of course, I should conclude the matter at this stage.

[10] **ANAYLSIS**

1. Applicability of the Ordinance to the “Lands”

The determining statute in this matter is the **ORDINANCE**. This **ORDINANCE** was in effect in 1971 when the Notice to Quit was served on KJ. Section 3(1) states, “*This Ordinance shall apply, subject to the provisions of sections 4 and 20 thereof, to all land which is **building land** at the commencement of this Ordinance or becomes **building lands** thereafter...*”¹⁵ There is contest that the disputed premises are “*building lands*” within the **ORDINANCE**. Therefore, RH and AS’s occupation of the lands fall within Section 3 of the **ORDINANCE**.

¹¹ **DAVIES** at pg. 441. This dicta agreed with that of **HUNT V. BLISS [1919] W.N. 331**.

¹² **JUMANDEEN** at Pg. 10.

¹³ **LAND TENANTS (SECURITY OF TENURE) ACT. ACT 11 OF 1981**.

¹⁴ **GERALDINE DE HANEY V. CYNTHIA GLORIS ALI. MAG. APP. NO. 169 OF 1984. MC MILLAN, J.A.**

¹⁵ **RENT RESTRICTION ORDINANCE. SEC. 3(1)**

[11] **2. Tenant**

Further, section 2 of the **ORDINANCE** defines “tenant” as including, “*the widow of a tenant who was residing with him at the time of his death...*”¹⁶ Additionally, this section goes on to state, “*for the purposes of this Ordinance one letting of premises shall be deemed to be in the same category as another letting of the premises if both lettings are of – (a) **building land**; or...*”¹⁷

[12] Of particular importance in the definition of “*tenant*” is that provision is made for only **one transmission** of the tenancy. In the instant matter, that tenancy was transmitted to BK, the widow of KJ. Mc Millian J. in **CYRUS** further clarified the position when he explained that the **ORDINANCE** does not provide for the statutory tenancy forming part of the estate of the original deceased tenant. The tenancy therefore can neither devolve to heirs nor be the subject of an *inter vivos* transaction. Thus the statutory tenancy devolved to BK by virtue of her status as JK’s widow. Upon BK’s death the statutory tenancy came to an end and reverted to the reversioner – HV Holdings Limited.

[13] **3. Land Tenants (Security of Tenure) Act, 1981**

The fatal flaw in Mr. Bhola’s defence is the fact that, as correctly submitted by Mr. Seunath, RH and AS are not “tenants” of the lands. Therefore at the operative date of the **LAND TENANTS (SECURITY OF TENURE) ACT, 1981 (the ACT 1981)**, they would have been unable to satisfy the “tenancy” requirement in order to be covered by the **ACT 1981**¹⁸. It stands to reason that this ground of the defence also fails.

[14] **4. Continued Payment of Rent**

A. *Rent Restriction Ordinance*

Additionally, de la Bastide, CJ dispelled the misguided notion that because rent was paid for an extended period of time that a new contractual tenancy was

¹⁶ **Id. at sec 2.**

¹⁷ **Id.**

¹⁸ **LAND TENANTS (SECURITY OF TENURE) ACT. Sec 2.**

created. In **JUMANDEEN** he opined, “I would have thought that it was well established law that the acceptance of rent per se from a person whose contractual tenancy has been terminated, but who continues in possession under the protection of Rent Restriction legislation, does not provide any basis for inferring the creation of a new contractual tenancy.”¹⁹ This effectively dispels Mr. Bhola’s argument that the extended period of time in which RH paid rent was a reflection of the intention of HVG and later HV Holdings Limited and KJ.

[15] *B. Common Law*

Mr. Bhola provided an extract from “*Yates and Hawkins*” in an attempt to support RH’s defence that the intention of the parties at the time of the receipt of the Notice to Quit, must be determined. The passage reads, “*landlords and sometimes tenants, occasionally seek to “withdraw” a notice before the operational date, or “waiver” its effect afterwards...A waiver may be deduced from the parties’ behaviour...The question therefore is quo animo the rent was received, and what the real intention of both parties was?...*”²⁰ I am not convinced that this argument can hold in the case at bar.

[16] **CONCLUSION**

Several factors affected the determination of this issue.

1. **Applicability of the Ordinance to the “Lands”.**

- a. The premises in dispute at the time of original letting were subject to the **ORDINANCE**.
- b. Section 15 of the **ORDINANCE** conferred on KJ the status of statutory tenant since none of the provisions had been satisfied for the determination of the tenancy.
- c. This conferred no interest in the land²¹.

¹⁹ **JUMANDEEN** at pg. 10.

²⁰ Written Submissions and Authorities filed pursuant to the Order of the Honourable Justice Pemberton made on the 30th October, 2009. Para 4. Filed on Jan. 13, 2010. This refers to the text Landlord and Tenant Law, Yates, David and A.J. Hawkins. Pg. 257.

²¹ de la Bastide, C.J. states in **JUMANDEEN** at pg. 13, “a person who hold over under the protection of the Rent Restriction law does so as a mere licensee who has no interest whatever in the land.”

2. **Tenancy**

- a. Upon KJ's death, his tenancy was transmitted to his widow, BK.
- b. Upon BK's death, the statutory tenancy came to an end.
- c. RH and AS did not qualify as "tenants" within the meaning of the **ORDINANCE**.
- d. The lands reverted to HV Holdings Limited, the fee simple owners.

3. **Land Tenants (Security of Tenure) Act, 1981**

- a. Since BK became a protected tenant under the **ORDINANCE**, there was no valid tenancy which could be protected under the **ACT 1981**.
- b. RH and AS do not qualify as "tenants" covered by the **ACT 1981** because at the operative date, June 1, 1981, BK was the recognized statutory tenant under the **ORDINANCE** which did not provide for further transmission after her death.
- c. Consequently RH and AS receive no protection under the **ACT 1981**.

4. **Continued Payment of Rent**

- a. The continual payment of rent to HV Holdings Limited and their admitted acceptance until 2002 did not create a new contractual tenancy between them.
- b. Even if a new contractual tenancy had been created HV Holdings Limited is still within its rights to seek to terminate it since only 6 years have elapsed since the date of the last acceptance of rent. The limitation period has not expired.

[17] In the face of these facts, it is clear that RH and AS have no realistic prospect of success in this matter. Subsequently, under the provisions of Part 68 of the **CIVIL PROCEEDINGS RULES 1998 (CPR 1998)**²², the requirements in Part

²¹ Part 68 of the **CPR 1998** states,
68.3 *The claimant must file with the claim form evidence stating -*
(a) *his interest in the land;*
(b) *the circumstances in which the land has been occupied without licence or consent;*

²² Part 68 of the **CPR 1998** states,

68.3 are satisfied by HV Holdings Limited. HV Holdings Limited submitted evidence which,

- showed their interest in the disputed lands,
- explained the circumstances in which the land was occupied without license or consent, and
- the circumstances in which the claim to possession arose.²³

[18] Therefore, pursuant to Part 68.7(1) summary judgment may be entered for the Claimant.

DECISION:

1. That Fixed Date Claim Form filed on September 8, 2009 does reveal a cause of action against the Defendant.
2. That the Defendant's defence does not present a realistic prospect of success.

68.3 *The claimant must file with the claim form evidence stating -*

- (a) *his interest in the land;*
- (b) *the circumstances in which the land has been occupied without licence or consent;*
- (c) *the circumstances in which his claim to possession arises;*
- (d) *that he does not know the name of any person occupying the land who is not named in the claim form; and*
- (e) *full particulars of the efforts he has taken to identify any person occupying the land who is not named in the claim form.*

...
Powers of court at first hearing.

68.7 (1) *At the first hearing the general rule is that the court must give judgment unless there is a defendant attends and satisfies the court that he has a defence with a realistic prospect of success.*

(2) ...

²³ Claimant's Submission. Para. 4. Pg. 2

IT IS HEREBY ORDERED AS FOLLOWS:

1. That Summary Judgment be given in favour of the Claimant.
2. That the Defendant do pay the Claimant's costs to be assessed.
3. Claimant to file and serve Statement of Costs on or before March 25, 2011.
4. Defendant may respond on or before April 15, 2011.
5. Date of Assessment May 13, 2011 at 10:45am in SF02.

Dated this 18th day of February 2011.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE