

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-00321

BETWEEN

MICHAEL FLETCHER

CLAIMANT

AND

NORBERT WICKHAM

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

APPEARANCES:

Mr Colin Selvon for the Claimant

Mr Felix Celestine for the Defendant

Dated: 28 February 2013

REASONS

1. An oral judgment was given on 26 July 2012. These are my reasons.

2. The defendant is the owner of a lot of land together with a building on it. He had been in possession of it from 1959. The claimant is his tenant. The date of the tenancy is not agreed. The defendant says the agreement was made because the claimant's mother came and begged for her son to use the place after he came out of prison. The defendant then rented the property which was an old wooden house to the claimant for \$50.00 per month and he has never increased the rent.

3. A claim was made for a declaration that the claimant was a statutory tenant under the **Land Tenants (Security of Tenure) Act, 1981**. At a Case Management Conference on 31 July 2008, this and related reliefs were not pursued. The question then was whether the claimant now had an equity in the premises because of the defendant's acquiescence and encouragement. Following from this was whether he was, on that basis, entitled to remain in possession of the premises because of the extent of the work he had undertaken on the premises.

4. Stollmeyer J (as he then was) on 31 July 2008 had given the claimant the opportunity to advance particulars of the acquiescence and encouragement by the defendant. These were filed on 20 August 2008.

5. These particulars can be summarised as follows:

- The claimant constructed an annex on the defendant's encouragement and the defendant told him that the claimant and his wife will have to take care of him in his old age.

- About 2003, the defendant encouraged the claimant to cast the front yard at a cost of \$8,000.00

- The claimant could purchase from the defendant's brother a parcel of land next door in exchange for the parcel of land.

- The defendant reminded the claimant on many occasions of this oral agreement.

-The defendant acquiesced about 2003 regarding the changing of the roof in the front of the property and materials were purchased for \$10,000.00

- After 1999 the defendant visited the claimant and his wife and promised the property would be theirs and on that basis the claimant continued to improve the premises by constructing drains, erecting a wall, doing repairs, painting, electrical works, placing tiles in the bathroom and kitchen.

6. The claimant made various additions to the property. He says this was with the consent of the defendant.

7. The defendant says he never consented to these additions. He says further that because of additions being made to the property he and the claimant went to an attorney in 1999 and made an agreement.

8. The defendant says the claimant has breached the agreement by putting up additional rooms and as a result he served him with a notice to quit and deliver up the premises.

9. The claimant and his wife gave evidence along with a friend, one Haniff Gobinda. The defendant and his wife gave evidence.

10. Noteworthy, the claimant did not give evidence in his witness statement regarding these particulars he had given of acquiescence and encouragement. His witness statement was in very general terms (for example, see paragraphs 8 and 9. This is significant since this was the core of his case.

11. Critical to deciding this case was the view the court took of the agreement made by the parties before an attorney, Mr Alvin Pascall. In his witness statement, the claimant sought to resile from this agreement stating that he had no independent legal advice and he was in effect forced to sign it because he was afraid of losing his investment in the property.

12. That agreement, dated 2 July 1999, between the claimant and the defendant provided:

- The defendant owned the property.
- The defendant let it to the claimant on a month to month tenancy which “commenced some thirteen years ago”.
- It was an implied term that the claimant would not alter the premises without the consent of the defendant.

13. Paragraph 4 of the agreement provided: “In breach of the implied term not to alter the premises without the consent of the Landlord the Tenant has constructed a two room structure in front of the premises and intends to do further structural improvements.”

14. Paragraph 5 stated: “It is hereby agreed between the Landlord and the Tenant that the Landlord will waive the breach of the covenant not to alter the premises and further instead of forfeiting the said tenancy reconfirms the tenancy for the original term granted.”

15. Paragraph 6 set out: “In consideration of the above the Tenant admits the breach of the implied term not to alter the said premises and release the Landlord from any claims by the Tenant or any other person that may have arisen as a result of the Tenant’s financial output in developing the tenement”.

16. Paragraph 7 stated: “The Landlord agree that should he or his heir decide to part with the property first option to buy will be granted to the Tenant”.

17. This agreement was signed by the both parties in the presence of one Carl Mohammed, Senior Research Officer, and the defendant’s wife.

18. This agreement is significant. It puts the relationship of the parties in context at the time. It is more consistent with the evidence and case of the defendant that he had objected to the alterations being made by the claimant to the property.

19. It also provided a way forward for the parties at that time. The claimant would have first option to buy if the defendant decided to sell. The tenancy was reconfirmed. This would have included that the claimant was not to make unauthorised alterations.

20. I do not accept the claimant’s evidence that he did not understand the terms or that he was forced into this agreement. All the evidence suggests the claimant had full opportunity to consider the agreement. I accepted on a balance of probabilities the evidence of the defendant and his wife that the claimant freely entered into this agreement. That he had the opportunity

to review it is also clear. I accept that it was not signed on the same day as the first visit to the attorney. Nothing prevented the claimant from seeking advice.

21. My observations of the claimant in the witness box did not lead me to think that he would be easily forced into signing an agreement that he did not want to.

22. The agreement then is consistent with the defendant's case that no permission was given for the alterations made before 1999.

23. Between the evidence of both sides, I preferred the evidence of the defendant and his witness.

24. I found the claimant to be untruthful when he said he had read the agreement which he signed at the attorney's office for the first time in these proceedings. He later admitted that he had the agreement since 1999.

25. I also did not accept the claimant's evidence that he had been occupying the premises for as long as he says. He produced receipts from 1986 only, which is consistent with the agreement signed before the attorney at law.

26. There were also inconsistencies in the evidence between the claimant and his wife also. The claimant, for example, said there was no disagreement or harsh words exchanged by the parties over the additions. The claimant's wife says she was present. The disagreement is also consistent with the defendant initiating the visit to the attorney to put the agreement in question into effect. Also, the claimant said he had built a part of the house at the front for the defendant to live and he told the defendant this. That assertion was not included in his witness statement, although it would have been a very important bit of evidence. He also did not say in his witness statement that his witness, Haniff Gobinda, had lived in the house for a while and assisted in its construction.

27. Gobinda's evidence was consistent with the defendant's evidence about the state of the premises when the claimant moved in. This witness admitted to being on drugs for 21 years. He owes a debt of gratitude to the claimants who have taken him in from time to time. He said he lived at the claimant's mother's house. He however says he was not present at the various occasions such as weddings and family gatherings that the claimant says the defendant attended. I found his evidence to be unreliable.

28. I also found the relationship between the parties was not as close as suggested by the claimant.

29. I considered both the defendant and his wife to be good witnesses. I found he was clear and categorical in giving his evidence about the circumstances which led up to this claim. I accepted his evidence about the relationship between the parties.

30. The defendant gave evidence that after a long while, having received reports that the claimant was making alterations, he visited the premises with his wife. He said he was making a lot of noise and his wife told him that before he makes a set of noise it was better to go to the lawyer's office and fix this up. I found the defendant had assisted the claimant because of the defendant's friendship with the claimant's mother. The defendant also exercised control over matters such as water and electricity connections on the property. There was never an intention to allow the claimant to do as he wished with the property.

31. I found the claimant made various alterations to the premises without the defendant's consent. I also found that the claimant continued to do this even after the agreement made in 1999. I did not find that the defendant either encouraged or acquiesced in the claimant's acts in making alterations to the premises.

32. I also found that a valid notice to quit was served.

33. Having found the claimant's case not proved and the defendant's case proved on a balance of probabilities, I order as follows:

- The defendant is entitled to have possession of the premises situate at LP 49 Beckles Trace, Kelly Village, Caroni registered in Deed No. 2783 of 1959. The claimant is to vacate the premises. The claimant is to pay arrears of rent of \$300.00 and mesne profits from July 2007 in the sum of \$50.00 per month to the time he vacates the premises.

- The claimant is restrained either by himself, his servant or agents from damaging, altering or in any way interfering with the defendant's premises. The claimant is to pay the defendant his costs in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge