

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2015- 03425

Between

Cuthbert Fullerton

Claimant

And

Vetha Laptiste

(As the Legal Personal Representative of Mr Arthur Laptiste, deceased)

First Defendant

Betty Maddox

Second Defendant

Lincoln Blackburn Bartholomew

Third Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mrs Donna Prowell and Ms Christiane Prowell for the Claimant

Mr Alvin Brazer and Mrs Sally King-Solomon for the Defendants

Date: 20 July 2018

JUDGMENT

1. The claimant has been in occupation of the downstairs of a building located in Point Fortin since about 1985. He has been operating a restaurant business there called “The Eatery”. He occupied the premises as a monthly tenant dealing with a Mr Lionel Bartholomew as the agent of the owners. Over time, the claimant said he expanded the area being tenanted to double the original 1400 square feet. He has made improvements to the property. He said all of this was known to Mr Bartholomew over the years who encouraged him to do it. After Mr Bartholomew could not collect rent anymore, the claimant alleges his two nephews, Peter and Owen Julien collected rent. All of these gentlemen passed away. Payment of rent has stopped.
2. The claimant says he has acquired an equitable interest in the property “in the semblance of a constructive trust”. He says the defendants are estopped from taking steps to remove him without payment or giving him credit for the moneys expended by him in the property and in paying water rates for the property. He also contends that he ought to have first option to purchase the property in the event it is to be sold, at a fair price. He alleges that any interest the defendants hold are subject to his constructive trust. The reliefs follow from this. One of the reliefs is for specific performance of an agreement made between the “landlord” and the claimant for sale to him of the property.
3. In their defence and counterclaim the defendants said in 1968 James Cook by a will devised a building located at 49, Main Road, Point Fortin to his wife Camilla Cook as a life tenant and thereafter to Lionel Bartholomew and Arthur Laptiste as tenants in common. The building stood on lands leased to Mr Cook by an oil company, Trintoc. In a deed made in 1978 Camilla Cook, Bartholomew and Laptiste were referred to as the purchasers of the land. James had owned the building and the tenancy rights of the land. Probate of James Cook’s will was granted to Lionel Bartholomew in 1972. The second and third defendants are the children of Lionel Bartholomew and entitled to the share of his interest. A grant of letters of administration for his estate was made to the third defendant in 2015.
4. The claimant has been, according to the defendants, one of 5 commercial tenants. He has not paid rent since 2008. They say the claimant recognised them as the

landlords in 2014 when he signed a lease agreement for one year for the property. This was after a generic letter was sent out to all of the tenants offering them a new lease or requesting they vacate the premises.

5. The defendants say the claimant was no more than a commercial tenant who paid rent for part of the downstairs that he occupies. After signing the lease, he paid 2 months' rent upfront in the sum of \$4,600.00 and has since not paid any rent. The defendants counterclaimed for rent not paid. Up to March 2016, this was \$195,000.00. They also ask the claimant be "evicted" and that he remove "illegal structures constructed on the premises".
6. The evidence in this case was confined to the claimant and the second defendant. A witness statement of the first defendant was struck out at trial because the witness did not present herself for cross-examination. The third defendant has died.
7. The claimant said his father knew Lionel Bartholomew. In March 1985 he opened a food business in the downstairs of the property. Mr Bartholomew saw him early on cutting up chicken in the open area and advised the claimant to build a shed to the back of his place. There were 4 other tenants there. After his father died, he would visit Mr Bartholomew and he got close to him. He would visit him at his house which was just two streets away. He would pay Mr Bartholomew rent. Then Mr Bartholomew got frail and Peter started collecting the rent. On one of his visits to Mr Bartholomew, he met Peter with Mr Bartholomew. Mr Bartholomew told Peter he was in charge of the building and that the claimant had spent money on the building and if anything happened to him Peter was not to put him out of the building, and if it was being sold, the claimant should have first preference to buy it.
8. The years went by and he added rooms to the side of the building. He gives no dates for these activities. There were break-ins and Mr Bartholomew told him to do what he needed to do to secure his place. The claimant says he used his money to block off the back step and he repaired the back and side walls. Persons from nearby bars would urinate in front of the building, and with Mr Bartholomew's

consent, he got someone to power wash the building's front weekly. He paid for this and was told by Mr Bartholomew to deduct this from the rent. This deduction was \$300.00 per week. The claimant did not, however, tell us what the rent was at that time. The claimant said in 2007 the water for the property was disconnected. Mr Bartholomew told Peter he would no longer be responsible for paying the water rates and that the claimant would pay it and deduct it from the rent. The bill would now be addressed to the claimant to differentiate it from Mr Bartholomew's other property. The claimant enclosed part of a statement from WASA which he said showed he paid the water rates. Mr Bartholomew died in 2007. Peter and Owen also died in the following year. There was then no one to pay the rent to.

9. He said a man who described himself as Mr Laptiste contacted him and told him he was the new owner and desirous of selling the building. He went and flew to Miami to meet Mr Laptiste but he did not meet Mr Laptiste's mother who was said to be the new owner of the property because she was hospitalised. He said he was contacted again about selling the building to him but nothing came of it. By that time the roof of the building was leaking badly. This began to affect the downstairs where he occupied. He therefore spent money to repair, renovate and remodel the building. Based on the conversations with Mr Laptiste and his belief he would soon become the owner of the building he spent money to replace the entire roof which was rotted. No one had come forward at this stage to collect rent.
10. He said an attorney for the "new owners" Mrs Sally Ann King wrote to him saying that he was occupying the building illegally and would have to pay back rent. She informed him and the other tenants that they could come to her office and sign a new lease. She "threatened" that if he did not sign he would be evicted. He went and signed a new lease because he was afraid he would be evicted. He said he was bullied to sign the agreement. He does not say how though.
11. After he signed the agreement he had a search done on the property. This showed the property was owned by Lionel Bartholomew, Camilla Cook and Arthur Laptiste and not the defendants as the attorney, Mrs King claimed.

12. The claimant did not advance any bills or receipts to support that he spent money on the property. He did refer to a valuation report of work done. This was dated as inspected on 3 August 2015. It said it dealt with new additions to the property. It does not however state when these works were carried out.

13. The second defendant gave evidence. She and the third defendant are Lionel Bartholomew's children. She also knows the first defendant being the widow of Arthur Laptiste. She lives abroad. She knew the building was owned jointly. She talks about the history of the building and that it was occupied from the 1970s by commercial tenants. She noted that her father, then his nephews, collected rent from the claimant but this had stopped in 2008. She noted in 2014 a valuation was done on the building for the purposes of applying for letters of administration of her father's estate. It showed the roof needed work to be done because it was termite infested.

14. She detailed various correspondence between the claimant and her attorneys over time about the building. In April 2015 she noticed certain structures on the premises which were not on the premises in 2007 when she came to bury her father. She said the claimant blocked off the backstairs to increase the space for his business. These were done illegally. The building was subsequently inspected for safety concerns and a number of deficiencies were highlighted in a report of the Fire Prevention Department of the Fire Service.

15. She did not know if the arrangement was for the tenants to pay the water rate but she knew the bills were still in her father's name up until 2016. The claimant owes rent from 2008 after the death of her cousin Peter Owen.

16. In deciding whether the respective parties have made out their claims the court is entitled to look at the contemporary records and documents available. There is little by way of contemporaneous documentation, but there is some light that can be shown by some of the correspondence.

17. The first document of assistance is the lease agreement signed by the claimant in October 2014. This demonstrated an acknowledgement by the claimant that the arrangement with these defendants was by way of landlord and tenant. The claimant was renting the space he occupied from them. Clause 23 provided that the lease constituted the entire agreement. In bold was written: “Any prior understanding or representation of any kind preceding the date of this Lease is hereby superseded.” The lessee by clause 9 was prohibited from making any alterations or improvements to the property without the prior written consent of the lessor first had and obtained. By clause 17 if the lessee remained in possession after the expiration of the lease, a month to month tenancy was to be created “which shall be subject to all the terms and conditions of this Lease” but terminable by 30 days’ notice.

18. It is this lease agreement, the claimant said, he was threatened and bullied to sign. I did not accept this evidence at all. First the claimant is a businessman for many years. He demonstrated that he was intelligent during cross-examination. His manner suggested he would not easily be bullied. He only said he would be evicted. He was not prevented from seeking legal advice about this lease. He signed on to it and he in the absence of evidence to the contrary must be taken to have known and agreed to the terms. It provided specifically that any prior understanding or representations fell by the wayside with this new lease. He also recognised the defendants as the landlords.

19. By Mrs King-Solomon’s letter dated 28 May 2015 it was clearly set out that the lease would come to an end in October 2015 and because of the state of the building the claimant was required to vacate the premises for the work to be carried out. A letter from WASA dated 5 October 2016 is relevant as a means of rebutting assertions by the claimant that his name was on the property from the time when Mr Bartholomew was alive. It noted the bill was still on Mr Bartholomew’s name up to 2016 and it was put c/o The Eatery on 29 May 2013.

20. The claimant’s documents does show a receipt for payment of a WASA bill on 5 August 2015 for \$4007.64. In a letter by the claimant’s attorney on 18 May 2015, it was stated the landlord died in 2008 “and thereafter our client carried out major work including the replacement of the roof of the building at his expense”. The

date when this roof work was done is not stated and there is no supporting evidence to show when it took place. What we do have is the defendant's valuation for letters of administration which showed that up to 2014 repair works were needed for the roof. It is odd that the claimant has not provided any supporting bills for work done on the property especially since it was clear that by 2014 the defendants were showing interest in the property.

21. What is also clear from the correspondence is that it was only on filing the claim that the claimant advanced the position that he was the beneficiary of a promise by Mr Bartholomew about having first option to purchase or that his position would be secured in the property.
22. What the evidence clearly points to is that what the claimant had at all times was a landlord and tenant relationship with Mr Bartholomew and thereafter by a written lease followed by a month to month tenancy with the defendants. This was a commercial arrangement. There were also other commercial tenants on the property.
23. I found the claimant's case to be implausible and unreliable for several reasons.
24. I find it highly unlikely that the claimant would have had the arrangement with Mr Bartholomew but would have signed the lease agreement in 2014 without raising this prior agreement. I also found his assertions to be vague and lacking in concreteness. He refers to conversations and work being done but gives no time frame about any of these matters.
25. Further, while the claimant says he did work over the years on the property such as the payment of WASA bills and power washing, he was reimbursed for these by a deduction of rent at the material time.
26. I find it strange that the claimant waited until the passing of Mr Bartholomew, and Mr Bartholomew's nephews, to assert his equitable claim, when they are not here

to refute it. It seems convenient for him to do so now. Notwithstanding the claimant's assertions, the evidence shows a landlord and tenant relationship over the years and continuing up to the claimant signing a new lease in 2014.

27. What also seems implausible is that the claimant had some sort of special relationship with Mr Bartholomew as he claimed. The evidence on both sides is that Mr Bartholomew relied on his nephews to collect rent and serve as his agent regarding the property when he was unable to do so. If such promises were made to the claimant it seems odd that Mr Bartholomew did not leave the arrangements to the claimant. There is also no evidence that the claimant had to liaise with the other tenants over the property. All of this suggests a landlord/tenant relationship was what existed and no more.
28. The lease he signed also provided that any renovations or improvements had to be done with the written permission of the lessors. While this related to the period after October 2014, the evidence does seem to suggest that these works were done after the 2014 period. The claimant was unable in his pleaded case or witness statement to fix the time when these works were done. He speaks broadly of the period 2008 to 2014 for the roof renovations. It is odd that for such recent work the claimant cannot pinpoint when the work was done. It would have been open to him to call the contractor or some other witness who could testify to this matter.
29. The claimant raised the issue in submissions that the defendants have not shown that they are the owners of the property and therefore had no right to claim rent. The documents however show that the building was transferred at one point and then the land was transferred at another time. In terms of ownership, it is clear that the first defendant is entitled to her husband's estate. The second defendant has pursued obtaining letters of administration from her father's estate. Whether the relevant grants and deeds of assent were done or not in the 2008 to 2014 period, the fact remains that the defendants were the persons entitled to benefit from the estate of the last owners of the property. They were therefore entitled to collect rent for the property which would be held in trust for the respective estates until such time as the relevant grants were made or title documents had been generated. Put another way, it cannot be said that the tenants were not obliged to pay rent for the property simply because the relevant grants were not in place.

The monthly rent remained due and owing. The tenant's obligation was to pay the rent or tender it to a suitable party or have it available at the waiting for when it was demanded. This is of relevance to this case also because the claimant is seeking equitable relief. He must show that he acted in good conscience over time as he who seeks equity must do equity.

30. I do not accept the claimant's case that either proprietary or promissory estoppel applies in the circumstances of this case. I find this was a straight landlord and tenant relationship over the years. Whatever payments may have been made towards the WASA rates or power washing have been compensated for by the deductions made from the rent.
31. After Mr Bartholomew's death, to the extent that the claimant did work on the property, this can be seen as being for his own benefit. I do not accept that he did these works because he had a belief that he already owned sufficient interest in the property to justify the expenditures or that he believed he would own the property.
32. I do not find the claimant has proved that he invested as substantially in the property as he claimed. The evidence is far too tenuous to come to that conclusion. His own valuation report noted that there was no access made to the roof space. Further in the report there is mention of roofing. However, it is certainly not clear that this applies to the building as a whole. It may well apply to the extension at the back of the property added on by the claimant for his business since the report is expressed to be for "new additions" to the property where the accumulated square footage added to the original structure is expressed as 1,430 square feet. I also find it unlikely any promise was made to the claimant by Mr Bartholomew.
33. The defendants previously gave notice to the claimant to vacate the premises. He has not done so and he has not paid any rent. Mrs Maddox gave evidence that she and the other defendants agreed to accept arrears of \$90,000.00 up to September 2014. Two months' rent was paid for October 2014 and November 2014. Rent is therefore now due for December 2015 to June 2018 for 31 months at \$2300.00

per month. This amounts to \$71,300.00. I will deduct the sum of \$4008 which the claimant proved that he paid to WASA. There is accordingly judgment for the defendants on the counterclaim against the claimant for the sum of \$157,292.00. Costs for this sum are payable on the prescribed scale for this sum.

34. Accordingly the claimant has not proved his claim. The claim is dismissed. The costs payable on the counterclaim are in my view adequate to cover the defendants' costs on the claim as the matters were dealt with together. I will therefore not make any additional costs order against the claimant pursuant to the dismissal of his claim.

35. Notice had been given to the claimant to vacate the premises from as far back at 2015. I will make an order that the claimant vacate the premises on or before 30 September 2018, unless of course the parties come to some other arrangement to extend his tenancy. He has been in the property for a considerable period of time and should therefore be given some time to make alternative arrangements.

Ronnie Boodoosingh

Judge