

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-01490

BETWEEN

NAZIM EDOO
CHANDRA EDOO

CLAIMANTS

AND

HEMANT BRIDGLALSINGH
ANJANEE SIEWDHAN BRIDGLALSINGH

DEFENDANTS

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. G. Mungalsingh

For the Defendant: Mr. N. Ramanan

Date of Delivery: 27th August, 2012

DECISION

BACKGROUND

- CLAIM

[1] By Claim Form and Statement of Case filed on the 13th April, 2012 the Claimants are seeking the following relief:

- i. Possession of ALL and SINGULAR that concrete building comprising ONE THOUSAND FIVE HUNDRED AND FORTY TWO SQUARE FEET used as an Office, Store-room and Service Bay together with the dispensing pumps and all other fixtures and fittings on the Gas Station Business standing on FIFTEEN THOUSAND AND EIGHT SUPERFICIAL FEET of lands tenanted formerly of Petrotrin now National Petroleum Marketing Company of Trinidad and Tobago Limited, situate at No. 40 Guapo, Cap-de-ville Road, Point Fortin in the Borough of Point Fortin in the island of Trinidad (“the said premises”);
- ii. The sum of \$180,000.00 being arrears of rent for the months of January, 2011 to March 2012; and,
- iii. Mense profits from the 1st April, 2012 until possession of the said premises is delivered to them.

[2] By letter dated the 30th November, 2011 the Claimants informed the Defendants that they were in arrears of rent for the period of January 2011 to November 2011 in the sum of \$132,000.00. As a result, the Claimants invoked Clause 6 of the lease agreement and required that the Defendants deliver up vacant possession of the said premises. Additionally, the letter cautioned that failure to comply would result in the Claimants enforcing the proviso for re-entry and forfeiture.

- [3] The Defendants did not comply and on the 5th January, 2012 the Claimants – by their agent, Amrit Ajodha – re-entered and secured the premises. Mr. Ajodha took an inventory of all the items thereon.
- [4] Thereafter, on the 6th January, the Defendants’ Attorney-at-Law wrote to the Claimants informing them that the action taken on the previous day constituted criminal acts and that the Defendants will be visiting the premises on the 12th January, 2012 to take an inventory of the stock in the building. However, on the said day the Defendants entered the said premises and retook possession of it.
- [5] As a result, the Claimants instituted these proceedings against the Defendants seeking the reliefs at caption.

- DEFENCE

- [6] The Defendants acknowledged entering into a lease agreement with the Claimants for the said premises. However, they contended that sometime between 2007 and 2008, the Claimants orally agreed that the monthly rental of the said premises would continue from the 1st January, 2008 at the sum of \$10,000.00 per month. Accordingly, the Defendants duly paid this monthly sum for the period 1st January, 2008 to 31st December, 2010. Further, they contended that the Claimants never made any prior demand for the alleged \$2,000.00 difference in the rent.
- [7] The Defendants contended that they were in negotiations with the Claimants to purchase the said premises as the latter represented that they had the leasehold interest in the said premises. However, when called upon to produce documentation to this effect, the Claimants could not produce any. They concluded therefore that the Claimants did not have title to the property and

“stopped paying rent at this point in order to protect itself less it became subject to an adverse claim for use and occupation from the true owners in addition to paying rent to the Claimants”.

[8] By letter dated the 13th January, 2012 from the Trinidad and Tobago National Petroleum Marketing Company Limited (“NP”) addressed to Mr. Hendrickson Seunath, Attorney-at-Law for the Defendants, the former indicated that they owned the said premises together with the equipment situate thereon.

[9] It was admitted by the Defendants that they re-entered the said premises and reclaimed possession thereof on the 12th January, 2012. In answer to the Claimants’ claim for possession and arrears of rent they pleaded the following:

- i. The landlord and tenant relationship had ended pursuant to Clause 6 of the lease agreement;
- ii. Their purported re-entry after the Claimants’ re-entry was therefore under the implied authority of the true owners of the premises - *i.e.* NP - pursuant to a contract between NP and the Defendants - the Owner/Operator Supply Agreement; and,
- iii. A claim for possession by the Claimants should be a claim for trespass simpliciter and not on the basis of the Defendants holding over in their capacity as tenants upon the expiration of the lease.

[10] The Defendants counterclaimed for the following reliefs:

- i. Loss and damages in a sum to be assessed for trespass and/or conversion in relation to the Defendants’ goods at the premises;
- ii. If possession is granted to the Claimants, the Defendants claim the increase in value of the premises by reason of improvements to the

said premises, or alternatively the sum of \$314,000.00 which was expended in effecting the said repairs;

- iii. An Order allowing the Defendants to set-off its claim against the claim for rent by the Claimants;
- iv. Alternatively, a Declaration that the Defendants are entitled to a proprietary and/or equitable interest in the said premises.

APPLICATION

[11] On the 18th July, 2012, the Claimants applied, pursuant to **PART 26.2(1)(c)**¹ of the **CIVIL PROCEEDINGS RULES 1998** ("CPR"), for parts of the Defence to be struck out as disclosing no grounds for defending the claim for possession. In particular:

- i. Paragraph 1, the words "*the Defendant contends that the Claimant, either at the time of the execution of the lease agreement between the Claimants and the Defendant dated 26th day of April, 2007 (hereinafter referred to as the lease), or at any time at all, had no title to any of the property mentioned therein ("the demised premises")*"; and,
- ii. Paragraph 7(e), the words "*In any event the Defendants are not estopped from challenging the title of the Claimants and therefore require the Claimants to prove superior title*".

Further, the Claimants applied for an Order pursuant to **PART 26.4(1)**² of the **CPR** that the Defendants deliver up vacant possession of the said premises.

¹ The Court may strike out a statement of case or part of a statement of case if it appears to the court ... that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim.

² If the party does not comply with the order, any other party may ask for judgment to be entered for fixed costs appropriate to the stage that the proceedings have reached.

[12] The grounds of the Application were as follows:

- i. The term created by the Deed of lease (“the said lease”) dated the 26th April, 2007 expired on the 31st March, 2012;
- ii. That the Defendants admitted Paragraph 1 of the Statement of Case which pleads the fact of the said lease and its terms particularly those relating to rent and the duration of the said lease;
- iii. By their Defence filed on the 3rd July, 2012, the Defendants pleaded that they remained in possession for the duration of the lease undisturbed by an adverse claim by title paramount, NP. Indeed by letter dated the 13th January, 2012³, NP in response to an enquiry from the Defendants indicated that they were the owners of the land and the equipment thereon; they also indicated that they were in the process of granting a two (2) year lease to the Claimants. However, no claim for rents in respect to the said premises was made by NP;
- iv. The Defendants have not answered Paragraph 6 of the Statement of Case wherein the Claimants pleaded that the term created by the said lease expired on the 31st March, 2012 – they are therefore deemed to have admitted this paragraph;
- v. There is no counterclaim by the Defendants for possession of the said premises; and,
- vi. The Defendants are estopped from denying the Claimants’ title.

SUBMISSIONS

[13] On the 23rd July, 2012, the parties made oral submissions before the Court on the Claimant’s Application.

³ Exhibited to Paragraph 1 of the Defence as “A.B.1”

- CLAIMANTS

[14] Counsel for the Claimants submitted that there is no defence to a claim for possession of leasehold premises where the term has expired and there is no claim by superior title during the entirety of the said term. In support of this, Counsel relied on the cases of National Westminster Bank v Hart & Another⁴ and Industrial Properties v A.E.I Ltd.⁵. It is worth noting that Counsel for the Claimants also made extensive written submissions on this issue in the Notice of Application of the 18th July, 2012.

[15] Counsel argued that there is no counterclaim for possession of the premises and therefore possession should be granted to the Claimants. Further, the order for possession is being sought to facilitate completion of the Claimants' lease agreement with NP.

[16] Counsel submitted that there will be evidence at trial from a representative of NP that they are not claiming superior title to the said premises or claiming any part of the arrears in rent.

- DEFENDANTS

[17] Counsel for the Defendants submitted that the claim for possession of the said premises under the tenancy is misconceived as the relationship of landlord and tenant ended on the 5th January, 2012 when the Claimants re-entered the said premises. The claim therefore should be one for trespass in which case the Claimants would be required to prove their superior title to the said premises.

⁴ [1983] QB 774

⁵ [1977] 2 All ER 301

[18] Counsel argued further, that the Defendants re-entered the premises and reclaimed possession thereof under the implied authority given to them by the Owner/ Operator Supply Agreement. I note at this point that this agreement was not exhibited before the Court.

ANALYSIS

- WHETHER THE DEFENDANTS ARE ESTOPPED FROM DENYING THE CLAIMANTS' TITLE TO THE SAID PREMISES

[19] The Claimants have contended that the Defendants are estopped from denying their title to the said premises and in support of this Counsel for the Claimants relied on the case of Industrial Properties v A.E.I Ltd.⁶, where Lord Denning MR opined:

"... the tenant is estopped from denying the title of the landlord. It is no good his saying: 'The property does not belong to you but a third person' unless that third person actually comes forward and successfully makes an adverse claim, by process in the courts or by the tenant's attornment; or acknowledgment of it as by the tenant defending on an indemnity. If the third person, for some reason or other, makes no adverse claim or is debarred from making it, the tenant remains estopped from denying the landlord's title. This is manifestly correct: for, without an adverse claim, it would mean that the tenant would be enabled to keep the property without paying any rent to anybody or performing any covenants. That cannot be right."

[20] Although the Defendants have pleaded that the Claimants had no title to the said premises either at the time of the execution of the said lease or at any time during

⁶ *Op. cit.*, pp. 301-302

its term, there is nothing in their pleadings to indicate that there was an adverse claim by title paramount during the term of the lease. At most, on this point, is the letter dated 13th January, 2012 from NP, the title holder, indicating to Attorney for the Defendants their ownership of the land and the equipment and the fact that they were in the process of granting a two year lease to the Claimants. Nothing further was said or done by NP to indicate that they were making any claim adverse to that of the Claimants in respect of the said premises. They did not challenge the Claimants' right to enter into the tenancy agreement with the Defendants, nor did they seek to collect rents payable to the Claimants from the Defendants. Further, there was no attornment to NP by the Defendants and it is clear that pursuant to the said lease they paid rent to the Claimants from 2007 to 2010.

[21] This in my view cannot amount to an adverse claim to the said premises as described in **Industrial Properties v A.E.I. Limited** and **National Westminster Bank v Hart & Another**. They are therefore estopped from denying the Claimants' title to the said premises.

[22] In any event, Counsel for the Defendants later conceded on this issue his during oral submissions. Therefore, I order that the following be struck out from the Defence:

- i. Paragraph 1, the words "*the defendant contends that the Claimant, either at the time of execution of the lease agreement between the Claimants and the Defendant dated 26th day of April, 2007 (hereinafter referred to as the lease), or at any time at all, had no title to any of the property mentioned therein (the demised premises)*"; and,

ii. Paragraph 7(e), the words *“In any event the Defendants are not estopped from challenging the title of the Claimants and therefore require the Claimants to prove superior title”*.

- WHETHER THE CLAIMANTS CAN RECOVER POSSESSION OF THE SAID PREMISES ON THE CLAIM BEFORE THE COURT

[22] It should be noted at the outset that the Defendants have not denied that the Claimants are entitled to possession. They submit, rather that the claim for possession should be against trespassers and not against occupiers holding over after the expiration of the lease. As well, the Defendants have not counterclaimed for possession; the sole issue to be determined therefore is whether the Claimants can be granted possession on the basis of the Claim Form and Statement of Case filed before me.

[23] **PART 68** of the **CPR** outlines the procedure for the summary possession of land. **PART 68.1(a)** expressly excludes tenants *“holding over after the determination of the tenancy”* but **PART 68.1(b)** provides that this summary procedure is to be applied in respect of persons *“who entered into or remained in occupation without the license or consent of the claimant or any of his predecessors in title”*. The terms of this Part mirrors **PART 55.1** of the **CPR (UK)** which provides:

“A possession claim against trespassers means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub tenant whether his tenancy has been terminated or not.”

[24] It is clear from a reading of **PART 68.1** of the **CPR** that where a tenancy has been determined and a landlord seeks to recover possession he cannot bring a claim in trespass against the former tenant or sub tenant. This process is expressly prohibited by **PART 68.1**, no doubt because a tenant, unlike a trespasser, may be able to counterclaim against a landlord for relief pursuant to the terms of a tenancy. In the circumstances, whether the tenancy had been terminated on the 5th January, 2012 when the Claimants, as landlords, re-entered or whether it was determined upon the expiration of the said lease on the 31st March, 2012, it was not open to the Claimants to proceed in trespass against the Defendants. In my view therefore, without determining the issue as to whether the tenancy determined on the 5th January, 2012 or the 31st March, 2012, I hold that the Claimants brought this action after the determination of the tenancy and the claim could be proceeded with in the manner filed.

[25] **PART 26.8** of the **CPR** makes provision for the Court to rectify any matters where there has been an error of procedure and further states that such an error does not invalidate the proceedings unless by order of the court⁷. In particular, **PART 26.8(3)** provides:

“Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.”

The Court can make such an order without an application by the party.⁸ In addition, the Court also has general powers of case management to *“take any step,*

⁷ Part 26.8(2)

⁸ Part 26.8(4)

give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective”⁹.

[26] I note that the Defendants have filed a Counterclaim seeking a number of reliefs against the Claimants including a declaration that they are entitled to an equitable interest in the property as well as the sum of \$314,000.00 expended on the said premises. I hold that the procedure as adopted by the Claimants in pursuing their claim is appropriate for dealing with issues raised by both sides and the proper management of the case.

[27] I note that in the Defendants’ Counterclaim¹⁰ for relief they do not seek possession of the said premise but rather they claimed:

“If possession is granted to the Claimants, the increase in value of the demised premises by reason of improvements to the premises or alternatively the sum of \$314,000.00 which was expended in effecting the said improvements.”

Therefore, it would not be in the interest of justice or in furtherance of the overriding objective to deny the Claimants’ possession of the said premises particularly when possession of same is necessary for the renewal of their lease agreement with NP which is currently being negotiated.

[28] Accordingly, I hold that the Claimants are entitled to possession of the said premises.

⁹ Part 26.1(w)

¹⁰ Para. 20(b)

CONCLUSION

[29] In the circumstances, I order that:

- i. The following words be struck out from the Defence:
 - a. Paragraph 1, the words *““the Defendant contends that the Claimant, either at the time of the execution of the lease agreement between the Claimants and the Defendant dated 26th day of April, 2007 (hereinafter referred to as the lease), or at any time at all, had no title to any of the property mentioned therein (“the demised premises”)”; and,*
 - b. Paragraph 7(e), the words *“In any event the Defendants are not estopped from challenging the title of the Claimants and therefore require the Claimants to prove superior title”;*
- iii. The Defendants are to deliver vacant possession of ALL and SINGULAR that concrete building comprising ONE THOUSAND FIVE HUNDRED AND FORTY TWO SQUARE FEET used as an Office, Store-room and Service Bay together with the dispensing pumps and all other fixtures and fittings on the Gas Station Business standing on FIFTEEN THOUSAND AND EIGHT SUPERFICIAL FEET of lands tenanted formerly of Petrotrin now National Petroleum Marketing Company of Trinidad and Tobago Limited situate at No. 40 Guapo, Cap-de-ville Road, Point Fortin to the Claimants within one (1) month of the delivery of this Decision; and
- iv. The Defendants to pay the Claimants’ costs in this Application, to be assessed in default of agreement by the Registrar.

JOAN CHARLES
JUDGE