THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-00831

BETWEEN

THE MAYOR, ALDERMAN, COUNCILLORS AND CITIZENS OF THE CITY OF PORT OF SPAIN

CLAIMANT

AND

PIRANHA AQUATICS LIMITED

DEFENDANT

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant:	John Jeremie S.C.; Kerwyn Garcia instructed by Laurissa Pena
Defendant:	Gregory Armorer
Date of Delivery:	23rd March 2022

JUDGMENT

[1] The Claimant by Claim Form and Statement of Case filed on 17th March 2015 pleaded the following facts against the Defendant:

a. By a Deed of Lease registered as No. 12121 of 1989 dated June 13, 1989, and varied by a Deed of Rectification dated April 11, 1990 and registered as No. 16781 of 1990, made between the Claimant and the Defendant ("the said Lease"), the Claimant, in consideration of the rent, covenants, conditions and agreements therein contained to be observed and performed by the Defendant, leased unto the Defendant all and singular the parcel of land described in the First Schedule thereto ("the demised lands") for a term of twenty-five years from August 1, 1989 ("the said term")[1].

b. By a Supplemental Deed of Lease dated January 16, 2002, the said Deed was reaffirmed and varied as outlined below[2].

c. By Clause 3(b) of the said Deed, the Defendant covenanted during each succeeding period of five years after the first five years of the said term, to pay such rent as shall have been agreed between the Defendant and the Claimant or determined in accordance with the provisions specified in the Third Schedule thereto[3].

d. Clause 4 of the said Deed outlined in detail various covenants agreed to by the Defendant to, inter alia, erect a 10-lane 50 metre swimming pool and associated facilities, to maintain and manage these facilities, proper roads, drains, culverts, passages and to permit members of the public access to the said facilities[4].

e. Clause 6 (11) of the said Deed provided for an option for the said Lease to be renewed for a further term of fifteen years. The Defendant was required to give notice of its desire to exercise the option at least three calendar months before the expiration of the said term, and if at the expiration of the said term there shall not be any existing breach of any of the covenants therein contained on the part of the Defendant to be performed and observed, the

[1] Paragraphs 3 and 4 of the Statement of Case
[2] Paragraph 5 of the Statement of Case
[3] Paragraph 6 of the Statement of Case
[4] Paragraph 7 of the Statement of Case

Claimant shall at the cost of the Defendant grant to the Defendant a new lease of the said premises for the further term of fifteen years[5].

f. On account of the Defendant's breach of the covenant in Clause 4 (3) to build the swimming pool and associated facilities and failure to pay rent as agreed, the Claimant by High Court Action No. 1096 of 1999 brought a claim against the Defendant seeking to be put back into possession of the lands, payment of arrears of rent totalling the sum of $78,333.34 and interest on the arrears inclusive of mesne profits. A settlement was agreed between the parties and by Consent Order dated October 30, 2001, it was agreed, *inter alia*, that the Defendant will pay all arrears in full and the period for the erection of the 10-lane 50 metre swimming pool and associated facilities as per Clause 4 (3) of the said Lease be extended for an additional three years to September 30, 2004[6].

g. Prior to expiration of the said Deed, by notice in writing dated April 22, 2014, the Defendant purported to exercise the option to renew the said lease pursuant to Clause 6(11). At the time of the notice and at the date of expiration on July 31, 2014, there remained subsisting breaches on the Defendant's part of its covenants under Clause 4(3), 4(4), 4(15) and 4(18) of the said Deed. The Claimant informed the Defendant formally by letter of September 19, 2014 that on account of the Defendant's failure to observe Clause 4(3) of the said Lease, no new lease would be granted pursuant to Clause 6(11)[7].

h. The Claimant further contends that notwithstanding the Defendant's payment of rent which was accepted by the Claimant's City Treasurer's Department on October 29, 2013 in the amount of $21,081.72 by way of advance rent up to the period October, 2015, such payment was accepted under a mistake of fact in that the said Deed was to have expired on July 31, 2014. That by such acceptance of rent, which was done in error, the Claimant in no way created a tenancy in favour of the Defendant beyond the expiry of tl1e said term. Further, the said amount is not rent in accordance

[5] Paragraph 8 of the Statement of Case
[6] Paragraph 9 of the Statement of Case
[7] Paragraphs 9, 10 and 11 of the Statement of Case

with Clause 3 (b) as such rent was to have been agreed between the parties as payable for the relevant period, and no such agreement was made[8].

i. By Clause 4 (20) of the said Deed, the Defendant was required quietly to yield up unto the Claimant the said premises but wrongly and/ or unlawfully, the Defendant has failed to do so[9].

[2] The Claimant sought the following Reliefs:

i. A declaration that the Defendant is not entitled to the grant of a renewal of the said Deed and/ or a for a further term of 15 years pursuant to Clause 6 (11) of the said Lease;

ii. A declaration that since and with effect from August 1, 2014 the Defendant has not been entitled to remain in occupation of the said premises;

iii. A declaration that since and with effect from August 1, 2014 the Defendant has been a trespasser upon the said premises;

iv. Mesne profits in respect of the Defendant's occupation of the said premises since August 1, 2014 until possession thereof is delivered up to the Claimant;

v. Possession of the said premises;

vi. Damages for breach of covenants;

vii. Interest, costs and any further and/ or other relief.

[3] By its Defence and Counterclaim filed on May 18, 2015, the Defendant disputed the Claimant's claim and by way of Counterclaim claimed, *inter alia*, the following reliefs:

i. A declaration that the Defendant is entitled to a renewal of the said Deed for a further term of 15 years pursuant to Clause 6(11);

ii. A mandatory injunction requiring the Claimant to take all such steps as are requisite and necessary to abate the nuisance created in the adjacent

[8] Paragraphs 15, 16 and 17 of the Statement of Case
[9] Paragraph 12 of the Statement of Case

premises thereby rendering the said lands useable for the purpose for which it was leased;

iii. Damages for trespass, nuisance and breach of the covenant of quiet enjoyment contained in the said Deed;

iv. Costs and such further and/ or other reliefs.

[4] In summary, the Defendant's case is as follows:

a. That the Defendant, the owner of an elite swimming club was granted the said lease of the demised lands [10].

b. During the period November 2001 to January 2002, in observance of the covenants in the said Lease, the Defendant retained several consultants in connection with the proposed development and commenced the process to obtain the necessary planning approvals for the project, namely:

i. that on February 5, 2002 the Defendant applied for planning permission and on September 11, 2003 obtained from the Town and Country Planning Division an outline planning permission to develop the said lands. The final permission to develop the lands was obtained from the Town and Country Planning Division on May 17, 2004.[11]

ii. that the Defendant commissioned a geo-technical investigation and survey for the construction of the said 10-lane 50 metre swimming pool and associated facilities, as it was required to do, and which report was produced on March 19, 2004[12].

iii. the Defendant also applied for and obtained a Certificate of Environmental Clearance (No.CEC0640/2014) from the Environmental Management Authority for permission for the project[13].

c. That the Defendant expended in excess of TT$800,000 on consultant fees and other professionals in planning and developing a comprehensive

[10] paragraphs 3 and 4 of the Defence and Counterclaim
[11] paragraphs 10, 11 and 14 of the Defence and Counterclaim
[12] paragraph 12 of the Defence and Counterclaim
[13] paragraph 13 of the Defence and Counterclaim

development package inclusive of business plan, sports tourism perspective, national objective and computer generated designs, for the construction of an International Aquatic/Swimming Complex[14].

d. In early, 2005, the Defendant then proceeded to expend a further TT$300,000 to fence the demised lands, and installed electricity thereon together with floodlights. The Defendant again paid substantial sums to contractors in order to mobilize[15].

e. That throughout the period of the lease, several obstacles were met towards the establishment of the development, namely:

   i. that in or about the year 2005, the National Housing Authority ("NHA") as it then was (now the Trinidad and Tobago Housing Development Corporation, ("HDC") with the permission of the Claimant began massive excavation of the hill to the eastern and northern sides of the said lands. At the time of the filing of these proceedings, several support buildings including multi storey parking lots were being erected, the excavation for which took place in the year 2014 much to the nuisance and discomfiture of the Defendant and residents of the adjoining Powder Magazine development[16].

   ii. that the contractors used by the Claimant's agents to conduct such works were Gortoy Construction Company Limited, the same contractors commissioned for the Defendant's proposed project and structural engineers were also KS&P, the Defendant's consultants[17].

   iii. that despite the Defendant's several complaints, the Claimant and the HDC continued to excavate and develop its lands and construct the towers thereon without any approvals from the Environmental Management Authority, Town & Country Planning Division, Ministry of Works and Transport and the like[18].

[14] Paragraph 15 of the Defence and Counterclaim
[15] Paragraph 17 of the Defence and Counterclaim
[16] Paragraph 17 of the Defence and Counterclaim
[17] Paragraph 17 of the Defence and Counterclaim
[18] Paragraph 18 of the Defence and Counterclaim

iv. that the wanton excavation and restructuring of the topography has resulted in the said lands becoming a catchment area for all the water that falls in the area, and this has rendered it unsuitable for the purpose for which it was leased. That without the necessary substantial corrective action by the installation of storm drains, among other interventions which are costly, and which the Defendant did not precipitate but in any event as a mere swim club could not afford[19].

v. the Defendant contended that the actions of the Claimant's agent, servant and/or tenant, the HDC, by continuing to perform works on the lands adjacent to the demised lands, has and continued to adversely affect the drainage in the area, effectively creating a dust bowl to the nuisance of the Defendant and tenants of the adjoining Powder Magazine apartments. Several complaints were again made to the HDC and the Claimant however no responses were forthcoming. The Defendant contended that such an environment is now inimical to the construction, establishment and maintenance of an aquatic facility[20].

vi. that in addition to the trespass, nuisance and disturbance caused by the construction of the apartments by HDC, the Defendant's project was further hampered and/ or delayed by the announcement of the Minister of Works of the construction of a highway and a bypass which would involve the acquisition of a portion of the said lands leased to the Defendant[21].

f. The Defendant averred that it would be inequitable and unfair to allow the Claimant to rely on alleged breaches of covenants by the Defendant as a basis for refusing to renew the lease when those breaches arose in circumstances of the Claimant's own making[22].

g. Further, the Defendant denied that it has wrongfully and/ or unlawfully refused to yield up the demised lands unto the Claimant. The Defendant also contended that by reason of the fact that it has paid lease rent throughout

[19] Paragraph 18 of the Defence and Counterclaim
[20] Paragraph 23 of the Defence and Counterclaim
[21] Paragraph 28 of the Defence and Counterclaim
[22] Paragraphs 29, 30 and 31 of the Defence and Counterclaim

the years in respect of the said lands, and which sums in the amount of $27,492.62, representing the correct sum for the full annual payment in respect of the period ending October 2015, were paid and accepted by the servants and/ or agents and/ or duly authorized representative of the Claimant, and by the unqualified receipt of such rent, the Claimant has waived breaches (if any) of the said lease, and the Defendant is therefore entitled to remain in occupation and possession of the demised lands and further to specific performance of the option to renew the said Lease[23].

h. The Defendant, in the alternative, averred that the Claimant's claim is wholly unmaintainable against the Defendant owing to the acquiescence and delay of the Claimant and the Claimant is stopped by virtue of the doctrine of laches from maintaining this action[24].

[5] In its Reply to the Defence and Defence to Counterclaim filed on February 3, 2016, the Claimant denied the Defendant's claims and contended that the Defendant is not entitled to any of the reliefs sought. The Claimant asserted that the HDC was, at all material times, the Claimant's tenant and not the Claimant's agent and/or servant.

ANALYSIS AND CONCLUSION

Was the Defendant in breach of the covenants in the Lease?

[6] The Claimant submitted, that the Defendant was in breach of the covenants in Clause 4(3), 4(4), 4(15) and 4(18) of the said Lease, by which it covenanted:

i. by Clause 4(3), to erect or cause to be erected on the said premises within five years from the said August 1,1989 a 10-lane 15metre swimming pool of international standards and associated facilities;

ii. by Clause 4(4), to maintain, manage and use the said premises as, inter alia, a swimming complex;

[23] Paragraphs 34, 36 and 37 of the Defence and Counterclaim
[24] Paragraph 40 of the Defence and Counterclaim

iii. by Clause 4 (15), to construct a road to link Powder Magazine Phase 1 and Phase 2;

iv. by Clause 4 (18), to permit members of the public to utilize the said premises for the purposes of learning to swim for pleasure and/ or for competition upon reasonable terms and conditions.

[7] By Consent Order dated October 30, 2001 (the said Consent Order), it was agreed, *inter alia*, that the period for the erection of the 10-lane 50 metre swimming pool and associated facilities as per Clause 4(3) of the said Lease be extended for an additional three years to September 30, 2004.

[8] The combined effect of the Deed and the Consent Order was that the Defendant was required to erect a 10-lane 50 metre swimming pool and associated facilities by September 30, 2004. The undisputed evidence before me is that the Defendant had not complied with this term of the Consent Order by September 30, 2004.

[9] Clause 6 (11) of the said Deed provides:

> *"If the Defendant shall be desirous of taking a new lease of the said premises for a further term of fifteen (15) years to commence from and after the expiration of the term hereby granted and shall at least three calendar months before the expiration of the said te1m signify its desire by notice in writing to be delivered to the Claimant and if at the expiration of the said term there shall not be any existing breach of any of the covenants therein contained on the part of the Defendant to be performed and observed, the Claimant shall at the cost of the Defendant grant to the Defendant a new lease of the said premises for the further term of fifteen years to commence from and after the expiration of the term hereby granted at such revised rent as the Claimant may determine and subject to the same covenants and provisions as are herein contained except this present covenant for renewal."*

[10] The chronology of events between the parties since the grant of the said lease is important in determining the important issues to be decided in this case. The

Claimant's case is that the term of the said lease expired as at July 31 2014 and the Defendant was not entitled to have the said lease renewed as a result of the existing breach of the covenants contained in Clauses 4(3),4(4),4(15), and 4(18) of the said lease.

[11] Neither the swimming pool nor the link road had been built as at July 2014, however the Defendant continued in occupation and paid the rent due under the said lease up to October 29 2013, when rent was paid in advance up to October 2015. Additionally, by written Notice dated 22 April 2014, the Defendant exercised its option to renew the said lease in accordance with Clause 6(11) of the said lease.

[12] The Defendant argued that it was not in breach of the covenants under the said lease by reason of the fact that:

a. there was a lawful excuse for the non-performance of the covenants;
b. the waiver of any alleged breaches of covenant by the acceptance of rent.

[13] The unchallenged evidence before me is that it was impossible to build the link road between Phase I and Phase II Powder Magazine since the said lands was not situate between Phase I and Phase II. There was therefore a lawful excuse for the Defendant's failure to perform this covenant; I therefore hold that the Defendant was not in breach of Clause 4(15) of the said lease.

WAIVER

[14] The essential elements of waiver are:

a. actual knowledge by the landlord (or knowledge to be imputed to him from knowledge of his agent) of the relevant breach;

b. unequivocal acts by the landlord (or his agents) which are consistent only with the continued existence of the lease; and

c. communication of the implicit recognition of the continued existence of the lease to the tenant[25].

[25] (Hill and Redman's Law of Landlord and Tenant/Division A General Law/ Chapter 14 Determination of the tenancy /J Forfeiture/11 Waiver at paragraphs 4810 -4820) [Tab 09].

[15] On the issue of Waiver, the undisputed evidence is that the Defendant paid and the Claimant received rent for the said lands on multiple occasions since 2004 including up to and post the expiry of the lease in July 2014. Indeed the Claimant received rent from the Defendant on the 29th October 2013, in the sum of $27,492.62 for the period ending October 2015, in respect of which the Claimant was issued two receipts. I note that each payment was accompanied by a letter from the Defendant describing the payment as rent for a specified period which was accepted without objection by the Claimant. I accept the Defendant's submission that its failure to build the swimming pool by September 2004 was a once for all breach waived by the Claimant when it accepted rent in October 2004 and thereafter until October 2013. The fact that the Claimant accepted rent for 11 years from the Defendant without objection supports the view which I hold that the construction of the pool and facilities by September 2004 was waived by the Claimant. The consequence of the failure to build the facilities being a once and for all breach is that the right to forfeit the lease for such a breach is lost once the landlord has waived such breach as is the case here[26]. The waiver of forfeiture for breach of the covenant to build the swimming facilities also carried with it a waiver of forfeiture for breach of a covenant to repair the facilities if and when constructed[27]. Accordingly, I hold that the Defendant was not in breach of Clauses 4(4) and 4(18) of the said lease.

The Effect of the Payment of Rent by the Defendant in October 2013

[16] The Claimant both in its pleadings and submissions contended that the acceptance of rent from the Defendant after the expiration of the lease was a mistake of fact; however no evidence was led to support this assertion; to the contrary, all the evidence surrounding the payment of rent in October supports the view that the payment of $27,492.62 in October 2013 by the Defendant was unequivocal and without protest. I noted that this sum was not refunded to the Defendant nor was any offer made to refund the sum. In determining whether the evidence supported that the receipt of rent was indeed a mistake of fact, I had regard to the following:

[26] Stephens v Junior Army and Navy Stores Ltd 1914 2 CH 516
[27] Stephens supra

a. no evidence was adduced by the Claimant from the persons who received the rent, or issued the receipts that they were mistaken as to the purpose of the payment;
b. as late as 2017 the Claimant claimed outstanding rent from the defendant for this period;
c. the Defendant held over after the expiry of the lease, paying the annual rent which was accepted by the Claimant, who made a further demand for rent after the period covered by the rent paid in October 2013;
d. the Claimant accepted payment for rent in advance in October 2013; the sum paid represented 14 months' rent which was accepted unconditionally as outlined above;
e. there was a cover letter accompanying the payment which clearly stated that the payment was for rent for the period October 1 2014 to September 30 2015.

[17] In light of the pleadings, evidence, including the documentary evidence on this issue, I concluded that the acceptance of rent by the Claimant after the expiry of the said lease served to create a yearly tenancy in favour of the Defendant. There was no basis upon which I can conclude that there was any mistake on the Claimant's part in accepting rent from the Defendant such as to relieve the Claimant of the consequences of such acceptance. If indeed there was a mistake of fact, the Claimant was required as soon as possible thereafter, to repay the sum offered as rent and reject the attempt, clearly and equivocally, to extend the life of the tenancy. Not only was this course of action not adopted, but as late as 2017 the Claimant demanded rent from the Defendant. It therefore follows from the above that the Defendant could not be a trespasser on the said lands from August 1st 2014, since it was holding over after the termination of the said lease.

The Option to Renew

[18] A lessee who wishes to exercise an option to renew must conform with the

conditions in the lease as to its exercise, and those conditions must be strictly observed[28].

[19] If the option is exercisable only on condition that the tenant has performed the covenants of the lease, any subsisting breach of covenant at the operative date will prevent its exercise, even though trivial and the landlord has been silent as to the breach[29].

[20] In compliance with Clause 6(1) of the said lease, the Defendant gave notice in writing of its exercise of the option to renew the lease. The Claimant, by letter dated September 19th 2014 advised the Defendant that the said lease would not be renewed due to the failure of the Defendant to construct the swimming facilities since the agreed extension to present. I note that Clause 6(1) provides that once the tenant indicates its desire to renew the lease within three (3) months of the expiration date, then it must be granted a fifteen (15) year extension unless there be any existing breaches of the tenancy. I have already held that as at the 31st July 2014, the Claimant was not in breach of the covenants contained in clauses 4(3), 4(4), 4(15) and 4(18) of the said lease. As a result, there was no basis upon which the Claimant could have properly refused to renew the lease for a further period of 15 years from August 1 2015. I therefore hold that the Defendant is entitled to a renewal of the said Deed of Lease dated the 13th June 1989 registered as No. 12121 of 1989 (the said Deed) (as rectified by Deed of Rectification registered as No. 1678 of 1989 and as varied by Supplemental Deed of Lease registered as No. DE200200287637D001) for a further term of 15 years pursuant to Clause 6911) of the said Deed in respect of all and singular that certain piece or parcel of land situate in the ward of Diego martin in the island of Trinidad comprising nineteen thousand four hundred and fifty three point six square metres more or less together with its abuttals and boundaries has shown on the plan and annexed and marked “A” Deed of lease dated the 13th June 1989 registered as No. 12121 of 1989.

[28] (Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 13 Options/B Option to renew lease/2 Exercise of option) [Tab 12].

[29] Bass Holdings Ltd v Morton Music Ltd [1987] 2 All ER 1001 [Tab 13]; Bassett v Whiteley (1983) 45 P & CR 87, CA [Tab 14].

[21] Having determined that there was a waiver of the breaches of covenant by the acceptance of rent from the 30th September 2004 onwards, and that the Defendant was not in breach by reason of the impossibility of performing Clause 4(15) this is sufficient to dispose of the claim.

The Defendant's Counterclaim for Damages for Nuisance and Breach of the Covenant for Quiet Enjoyment

[22] The Claimant let to the HDC a parcel of land in close proximity to the parcel let to the Defendant for the purpose of constructing public housing thereon ("the tenanted parcel"). From 2005, the HDC began preparatory works for the erection of multistorey housing units and other related structures on the tenanted parcel which included the excavation and digging of the land and the dumping of large mounds of dirt, the movement of huge trucks and other construction vehicles in and out of the tenanted parcel. The Defendant contended that during the period of construction, the Claimant's tenant, the HDC, excavated a portion of the Claimant's land which comprised a hill on the north and eastern areas of the said land[30]; this incursion and damage to the Defendant's premises is admitted by the Claimant[31]. The Defendant contended that this massive construction continued as late as 2015; that the destruction of the existing topography caused the leased premises to become a catchment area for all the water runoff in the area, thereby preventing the Defendant from constructing the swimming facilities for which it had obtained planning approval in 2005. It was further contended that the actions of the Claimant's tenant the HDC, constitute a nuisance for which the Claimant is liable. The Defendant argued further, that the 'dustbowl' and flooding caused by the Claimant's tenant aforesaid also amounted to a breach of the covenant for quiet enjoyment contained in the said lease and prevented Piranha from performing the covenants contained in the said lease. A claim for Trespass was mounted on the fact that the Claimant permitted a company, Jusamco to trespass onto the premises leased to the Defendant[32] impeding the latter's entrance and egress

[30] Para 17 of the Statement of Case
[31] Para 8 of the Reply
[32] Para 25 of the Defence

therein. This allegation was denied by the Claimant[33]. The Claimant, on the other hand, argued that the Defendant failed to establish a case in nuisance since Piranha was required to conduct similar heavy construction in order to erect the swimming facilities that it had covenanted to erect. Additionally, the Defendant has adduced no evidence in support of its contention that HDC's works prevented it from carrying out its own works[34]. The Claimant also contended that the HDC was its tenant not its agent- it was therefore not liable for any alleged torts committed by it. The Claimant also pointed out that the HDC was at all times acting in accordance with its statutory mandate to provide housing for low and middle income families pursuant to the provisions of the **Trinidad and Tobago Housing Development Act**[35], accordingly, there was no breach of the covenant of quiet enjoyment.

[23] The learned authors of **Hill and Redman** opined[36]:

. "*If a public authority interferes with the enjoyment of the tenant by exercising executive or statutory powers over which the lessor has no control and which he does not cause to occur, there is no breach[37].*"

"It follows that there is no breach if the interruption is caused by an adjoining lessee whose lease, although granted by the same lessor, does not authorise the act causing the interruption[15]; nor, in the case of a lease with a covenant for quiet enjoyment of sporting rights over a farm, if the farm tenant interferes with the sporting rights in breach of the terms of his own lease[38]."

[33] Para 15 of the Reply
[34] Para 32 and 33 Claimant's submissions
[35] Para 13(1)
[36] Hill and Redman's Law of Landlord and Tenant/Division A General Law, Chapter 9 ,Para 2965
[37] Crown Lands Comrs v Page [1960] 2 QB 274; Popular Catering Association v Romagnoli [1937] 1 All ER 167
[38] Jeffryes v Evans (1865) 19 CBNS 246

> *"A landlord is not liable in negligence or in nuisance towards an existing tenant because he selects tenants for other property who commit nuisances[39]."*

Further the learned authors of **Halsbury's Laws of England** opined[40]:

> *"If a nuisance is the inevitable consequence of what has been authorised the defence will be available by necessary implication even if the statute does not expressly authorise the commission of a nuisance in so many words[6]. If, on the other hand, the statute authorises a particular act only if no nuisance is caused, statutory authority will be no defence to a claim in nuisance[7]. But a body acting under a statutory duty, as distinct from a mere power, will not be liable for nuisance, even if such liability is expressly preserved by the statute, unless the nuisance was caused negligently[41]."*

[24] I agree with the Claimant's submissions that the heavy construction work carried out by its tenant was done in pursuance of its statutory mandate to provide middle to low income housing for the public good. The covenant for quiet enjoyment therefore could not be applied to 'prevent or fetter the proper bona fide exercise' by HDC of its statutory powers[42]. There is no evidence before me that the specific acts of nuisance committed by the HDC were authorized by the Claimant. Even where, as in this case, the Claimant became aware of the acts complained of by the Defendant, it could not be held liable for any acts of nuisance or trespass committed by the HDC pursuant to its statutory mandate. The removal of landfill from the Defendant's land by the HDC and the subsequent nuisance thereby created makes the HDC, and not the Claimant liable for the continuing nuisance thereby created.

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[39] Smith v Scott [1973] Ch 314, [1972] 3 All ER 645; O'Leary v Islington London Borough Council (1983) 9 HLR 81

[40] Halsbury's Laws of England/Nuisance (Volume 78 (2018))/2. Legal Proceedings and Defences/(4) Defences/192. Statutory authority.

[41] Department of Transport v North West Water Authority [1984] AC 336, [1983] 3 All ER 273, HL (no liability when water main burst without negligence).

[42] Shebelle Enterprises Ltd v Hampstead Garden Suburb Trust Ltd 2014 AER 228 para 42, 53, 55, 56).

[25] The evidence of the trespass onto the Defendant's land by the HDC was largely unchallenged[43]. However, I am of the view that the Claimant cannot be made liable for acts of trespass by its tenant against the Defendant unless it can be shown that the Claimant also purported to let to the HDC a portion of the lands leased to the Defendant or authorized such trespass. No such evidence having been adduced, I hold that the Defendant has failed, on a balance of probability to show that the Claimant thereby trespassed onto the Defendant's land.

[26] There is one act of Trespass for which I hold the Claimant liable - that of permitting Jusamco trucks to block entry and egress from the Defendant's land in order to access another parcel of land belonging to the Claimant[44].

[27] In the circumstances, I dismiss the Claimant's case and give judgment for the Defendant on the issue of Trespass committed by the Claimant against it via the activity of Jusamco trucks as well as an Order for the renewal of the said lease. I therefore make the following Orders:

a. The Claimant's case against the Defendant is dismissed;

b. The Claimant to pay to the Defendant the costs of the Claim to be assessed by the Registrar in default of agreement;

c. A Declaration that the Defendant is entitled to a renewal of the Deed of Lease dated 13th June 1989 registered as No. 12121 of 1989 (as rectified by Deed of Rectification registered as NO. 1678 of 1989 and as varied by Supplemental Deed of Lease registered as NO. DE200200287637D001) for a further term of 15 years pursuant to Clause 6(11) of the said Deed in respect of all and singular that certain piece or parcel of land situate in the ward of Diego Martin in the island of Trinidad comprising nineteen thousand four hundred and fifty three point six square metres more or less together with its abuttals and boundaries has as shown on the plan annexed and marked "A" Deed of Lease dated the 13th June 1989 registered as No. 12121 of 1989;

[43] Paras 26 to 47 of the Witness Statement of Shastri Roberts
[44] Para 47 of the Witness Statement of Shastri Roberts

d. An Order that the Claimant do execute in favour of the Defendant within fourteen (14) days from the date of the Order a new Deed of Lease for the period of fifteen (15) years in respect of the said premises;

e. The Claimant to pay to the Defendant Damages for trespass to be assessed by a Master in default of agreement;

f. The Claimant to pay to the Defendant the costs of the Counterclaim to be assessed in default of agreement by the Registrar.

Joan Charles
Judge