

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB REGISTRY, SAN FERNANDO

**H.C.A. NO. S-1247 of 2003**

BETWEEN

**H.V. HOLDINGS LIMITED**

Plaintiff

AND

**DAN RAMNARINE MAHABIRSINGH**

Defendant

DATE: 19<sup>th</sup> May, 2009

**Before the Honourable Mr. Justice Geoffrey A. Henderson**

**Appearances:**

Mr. H. Seunath S.C, instructed by Mr. A. Mohammed for the Plaintiff.

Mr. A. Sinanan S.C leading Mr. P.Persad-Maharaj for the Defendants.

**RULING**

**Introduction**

1. In these proceedings, Counsel for the Defendant has submitted in limine that this Court has no jurisdiction to entertain this action brought by the Plaintiff, H.V. Holdings Limited against the Defendant, Dan Ramnarine Mahabirsingh for inter alia, possession of certain building and lands in Marabella, damages for trespass and Mense profits. Counsel for the Defendant submitted that by virtue of the conjoint effect of the provisions of Section 15 of the **Rent Restriction Act Chap. 59:50** and the **Summary Ejectment**

**Ordinance Chap. 27 No. 17** this Court has no jurisdiction to entertain the claim and that this action ought properly to have been brought in the Magistrates Court

2. Counsel for the Plaintiff contends that this submission is premised on the existence of a relationship of landlord and tenant and that in this case, no such relationship exists. The pleadings alleged that the defendant is a trespasser and that this is an ordinary action of ejectment. Accordingly, the provisions of the Rent Restriction Act are inapplicable and therefore do not confer jurisdiction in the Magistrates Court.

### **Preliminary**

3. In this case, the Court is invited to determine whether the Magistrates Court is the appropriate jurisdiction to hear and determine this matter. As it deals with this issue, Counsel for the Defendant argued that it is “a highly impermissible approach” to consider the arguments on the basis that the allegations set forth in the Statement of Claim are taken as proved. This Court is not persuaded to follow this beguilingly simple approach.

4. When an objection in point of law has been set down for hearing, the party objecting ordinarily has the right to begin, and for the purposes of the argument, he is taken to admit all the facts alleged in the pleadings to which he objects: **Burrows V. Rhodes [1899] 1 QB 816 at 821** cited in **Ogders Principles of Pleadings and Practice in Civil Actions in the High Court of Justice, 22 Edn. at P.145**. This in fact was the approach of the defendant in his oral submissions when Counsel made extensive reference to the allegations contained in the statement of claim as well as the nature of the reliefs that were sought.

### **Facts**

5. The Plaintiff is a Company with its registered office situate at Marabella House, Marabella. The Defendant resides at No. 234 Southern Main Road, Marabella on a plot of land known as Lot 51. By a deed of conveyance dated 20<sup>th</sup> February, 1974 the Plaintiff Company became the owner in fee simple of a parcel of land comprising approximately 360 acres (the Marabella estate) of which the said Lot 51 formed part.

6. Prior to the purchase of the Marabella Estate by the Plaintiff, Lot 51 was tenanted by Inez Paul and Albert Paul who maintained a building thereon. By a notice to quit dated the 15<sup>th</sup> June, 1970 the contractual tenancy of Inez Paul and Albert Paul was duly determined on the 31<sup>st</sup> December, 1970 and thereafter possession of Lot 51 was held by virtue of the Rent Restriction Ordinance, Chapter 27 No. 18.

7. Sometime in 1972, Albert Paul died and Inez Paul continued in occupation of Lot 51 as a statutory tenant until she sold the building by which she occupied the said Lot 51. By a letter dated 24<sup>th</sup> May, 1988 from Attorneys-at-Law acting for the Defendant, the Plaintiff was informed, inter alia, that by a Deed of Conveyance dated 10<sup>th</sup> May, 1976 Inez Paul sold the building on Lot 51 to Barjoon Mahabirsingh. Barjoon Mahabirsingh is the mother of the Defendant.

8. The Defendant has requested that the Plaintiff recognize him as a tenant of Lot 51, but the Plaintiff refused to do so. The Plaintiff avers that the Defendant is in wrongful occupation of Lot 51 and that he wrongfully claims to be entitled to a Statutory Lease.

9. The Plaintiff commenced these proceedings claiming, inter alia, possession of Lot 51, damages for trespass and mesne profits.

### **The Law**

10. In **Geraldine De Hayney v. Cynthia Gloria Ali (1986)** (unreported) Magisterial Appeal No. 169/84, the Court of Appeal helpfully explains the expression “Statutory tenancy.” **Mc Millan J.A (Ag.)** said at page 6:

*“It is trite law that a contractual tenancy continues to neither to exist nor subsist where the tenant remains in occupation under and by virtue of the Rent Restriction Act after his contractual tenancy has been properly determined by notice to quit or otherwise, until a Court of competent jurisdiction pronounces on the validity of a notice to quit as a step in determining whether to make an order for possession under the Rent Restriction Act, or that he has a tenancy created by*

*statute under that Ordinance. The expression “statutory tenancy” is a popular expression, first used by Lord Colerige 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. Determination of the contractual tenancy is a prerequisite to the coming into being of a “statutory tenancy” since a “statutory tenancy can only come into existence to use the language of Section 15(1) of the Act ... by the circumstances that a contractual tenant retains possession of the subject matter of the tenancy after the contract has been determined”: per **Raymond Evershed M.R.**, in Strutt v. Pantor [1953] 1 All ER 445 at 446. What continues to subsist are the terms and conditions of the original contract but only in so far as they are consistent with the provisions of the Act. The “statutory tenant” has no interest in the land but merely a personal right to remain in occupation, a statutory license so to speak, and unlike a contractual tenancy it cannot be transferred by the “statutory tenant” to another inter vivos, or pass under his will, or vest in his legal personal representative: Keeves v. Dean [1924] 1 KB 687, and Lovibond & Sons v. Vincent [1929] 1 KB 687.*

11. In Keeves v. Dean, supra, the Plaintiff, the landlord, claimed possession of certain premises, alleging that the defendant had wrongly taken possession of the premises and still wrongfully retained possession of them against the will of the Plaintiff. The premises had been assigned to the Defendant by the statutory tenant, and the Defendant claimed that he was entitled to remain in possession. The County Court Judge held that the statutory tenant could not assign his interest in the premises, and the tenant appealed. On Appeal, it was held that the right of a tenant who remains in possession of premises under the Rent Restriction Act is a purely personal right and he cannot assign his interest in the premises. **Lush J.** quite helpfully considered the scope of Section 15(1) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920 (the equivalent of our Section 15(1), Rent Restriction Act, Chap. 59:50) and the position of a widow. At page 19E-20C he said:

*“When it is said that a person who, sometimes inconveniently, is called a statutory tenant, can assign, one necessarily asks oneself what it is that he has to assign. He has no estate in the land, as that estate has come to an end and the right to possession and to enjoy the land has reverted to the lessor, or, if the lessor has, as he was fully entitled to do, created a fresh tenancy, the right to possession and the right to occupy has passed to the new lessee. The person who was a tenant has no estate that I can see and no interest in the land of any sort or kind. I think that all this Act of Parliament has given him is a purely personal right, namely, to be free from disturbance by the landlord. It is a negative right; it is a very valuable right, but it is personal to him, and the right consists, not in having something, but in being free from having a landlord take action for possession. The fact that he has a personal right apart from Section 15 is, I think, shown both by the whole scheme of the Act and also by a certain provision in the Act. I turn to Section 12(1) (g), which makes provision for the case of a tenant who dies intestate, and allows the widow, provided she was residing with the tenant at the time of his death, to continue in possession of the house, and if there was no widow, then a member of the family, to be decided by the county court judge in default of agreement. It seems to me that that provision shows that the statute regards the person selected as having the right to the protection that the Act gives to the statutory tenant, and it seems a little strange, if this right to assign exists, that the widow, the moment she becomes the statutory tenant, can herself assign and so force a tenant on the landlord who has no voice in the selection of the persons who may come into occupation. The widow would have a right herself to assign away that which was given to her personally and allow strangers to come into the house and give to them a right which she, but for the statute, never possessed. The difficulty which, to my mind, seems insuperable in the way of the view that the statutory tenant can assign is this. The right to possession has reverted to the landlord; the right of the statutory tenant, by the plain terms of Section 15, and, indeed, other Sections in the Act, is limited to such time as he continues in possession; the moment he goes out he no longer has the right to insist upon entering. If he has not got the right of entering, how can he confer it*

*upon another? It is vital to the validity of an assignment by a tenant that the assignee shall obtain the right to enter, and if the statutory tenant has not got the right to enter I cannot for myself see how he can possibly assign it to someone else.”*

Speaking for myself, I cannot come to the conclusion that a right to assign a tenancy is one of the terms or condition of tenancy.”

12. On the basis that the law is correctly set out in **Geraldine De Hayney v. Cynthia Gloria Ali (1986) supra**, it must follow that a statutory tenant has nothing to assign, and that a purported assignment of the tenancy in the form of a sale, will be a sufficient abandonment of occupation by the statutory tenant to cause his protection under the Rent Restriction Act to be forfeited.

### **Jurisdiction**

13. Counsel for the Defendant contends that in this case, it is the premises which attract the provisions of the Rent Restriction Act and further submits that by the conjoint effect of the **Rent Restriction Act, Chap.59:50** and the provisions of the **Summary Ejectment Ordinance Chap. 27 No.17**, exclusive jurisdiction for the recovery of possession of the premises have been conferred on the Magistrate. Counsels relied on the decision in **Dillon Ruiz v. Christina Clara Lazar (1984) (unreported) No. 1941 of 1982** where at Page 14, **Ibrahim J.** (as he then was) stated:

*“I hold that the original common law jurisdiction of the High Court in a claim for possession has been modified by this Ordinance and the 1981 Act and in the cases of houses to which the 1981 Act applies a claim for possession of such a house cannot be made under the common law in the High Court but can only be made in the Magistrate’s Court if the rent is \$6,000 per annum or less. In such cases the High Court no longer has jurisdiction (see the Judgment of Scrutton L.J. in **Russoff v. Lipovitch (1925) 1 K.B 628.**”*

14. In the instant case as set out in the statement of claim, the Plaintiff denies the existence of any relationship of landlord and tenant and avers that the Defendant is a trespasser. On these instant facts, **Russoff v. Lipovitch (1925) 1 K.B 628.**” is inapplicable.

15. In **Russoff v. Lipovitch, Scrutton LJ** reserved consideration of the question that arose in **Gunter v. Davis [1925] 1 K.B 124** which was whether proceeding against a mere trespasser, who has never filled the position of tenant or sub-tenant, for the recovery of possession of a house to which the Act applies are proceedings arising out of the Act. At Page 640 he said:

*“On that question there is much to be said on both sides, but it does not arise here, and our judgment need not deal with it.”*

16. In **Gunter v. Davis [1925] 1 K.B 124**, the Plaintiff was the owner of a certain dwelling-house and premises. The rental value brought the premises within the ambit of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The predecessor in title of the Plaintiff leased the subject premises for eighty years from June 24, 1843. On the expiration of the lease on June 24, 1923, the Defendant was in occupation of the said premises, and the action was brought by the Plaintiff as reversioner to recover possession. The Defendant by his defence, alleged that he occupied as a sub-tenant to a Mrs. W, in whom the above lease of April 22, 1845 had been vested, and claimed that on the expiration in 1923, he became a statutory tenant of the Plaintiff under the provisions of Section 15 of the Increase of Rent, etc (Restrictions) Act, 1920. Mc Cardie J. held that the Defendant had never had a tenancy of and no right or title to the possession of the premises, that he was a trespasser and gave judgment against him for possession and for mesne profits. On judgment being given, it was contended on behalf of the Defendant, that the Plaintiff was not entitled to any costs, it being contended that the claim or proceedings arose “out of the Act”. Dicta of **Mc Cardie J** at Page 128 is apposite:

*“In my view the action of ejectment in the present case was not brought by virtue of the provisions of the Act of 1920. It does happen accidentally that the premises fall within the rental limit fixed by ... the Act, but apart from that circumstance*

*the Act has nothing to do with the case, and, broadly speaking, my view is that, save as cut down by the Act all common law rights of a landlord remain. Now here the landlord brought his action a trespasser, and his action was an ordinary action of ejectment, and the writ was endorsed in the ordinary way. That being so the Defendant is unable to destroy the Plaintiff's prima facie right to costs by an ingenious, but unsustainable contention."*

**Conclusion**

17. Having given careful consideration to the Defendant's submission, I am not persuaded that this Court lacks jurisdiction to hear this matter and I find accordingly.

Dated this 19<sup>th</sup> day of May, 2009

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**GEOFFREY A. HENDERSON**

**Judge**