

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011- 02297

BETWEEN

**THE NATIONAL INSURANCE BOARD
OF TRINIDAD AND TOBAGO LIMITED**

Claimant

AND

TEELUCKRAM RAMPAUL

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Mr. S. Sieuchand for the Claimant.

Mr. Y. Ahmed instructed by Ms. T. Lutchman for the Defendant.

Reasons(Oral)

The Claimant is the owner of the property the subject matter of this action (“the land”) by virtue of its rights as mortgagee under a deed of mortgage between itself and one George Rowbotham Huggins. The Defendant is in the occupation of the land. The Claimant by this action alleges that the Defendant is in the unlawful occupation of the land and seeks possession from the Defendant.

The Defendant denies that he is in the unlawful occupation of the land, avers that he went onto the land in or around 1996/1997; contends that he has an equitable interest in the land and alleges by way of a counterclaim that he is entitled to the benefit of an agreement for the sale of the premises to him for the sum of \$25,000.00. At the end of the day the Defendant justifies his

occupation of the land with reference to the agreement for sale. The burden of proof is on him in this regard.

It is not in dispute that:

- (i) Pursuant to an advertisement for sale published in the newspapers in around the year 1995 the Defendant by way of a letter dated 5th September 1995 submitted a bid for the purchase of the land and in accordance with the advertisement paid a bid fee of \$500.00.
- (ii) The advertisement advised that the successful bidder would be required to pay a down -payment of 10% of the purchase price within 14 days of acceptance of the bid.
- (iii) By way of a letter dated 10th January 1996 the Defendant was informed that his bid of \$25,000 had been accepted.
- (iv) The letter advised the Defendant that:
 1. the acceptance was valid for 14 working days after notification and that within that time he was required to enter into an agreement for sale with the Claimant's agent, the National Insurance Property Development Company Limited "NIPDEC";
 2. the agreement be effected through the Claimant's named Attorney whose offices he was required to attend to facilitate the execution of the agreement;
 3. he deposit with the attorney at the time of signing the agreement for sale the 10% of the purchase price of the property less \$500 or

\$2500 by way of a banker's draft made out in the name of
NIPDEC;

4. the balance was to be paid within 90 days, and
5. the acceptance would cease if he failed to sign the agreement
within the 14 days.

- (v) The letter also required him to obtain a licence agreement which would allow him access to the property for the purpose of carrying out repairs.
- (vi) The Defendant did not enter into an agreement for the sale to him of the property within the 14 day period or at all.

According to the Defendant in his evidence in chief in early February 1996 within the 14 day period he attended NIPDEC's offices with a banker's draft in the sum of \$2511.50 and was informed that the he had to pay the money to the attorneys. Under cross-examination he gives two dates as the dates he attended NIPDEC's offices, the 20th January and the 9th February. It is clear from his cross-examination that he did not in fact attend on the 20th January. Later in his cross-examination he suggests that he did not attend the Attorney's office on the same date as the date on which he attended NIPDEC's office. He says that when he attended NIPDEC's office an appointment was made by the receptionist for him to attend the Attorneys office and that pursuant to the appointment made he attended the Attorney's offices on the 9th February.

The Defendant did not present as a credible witness. In particular his evidence on this crucial aspect of the case was in chief vague and under cross-examination contradictory. The position taken by the Defendant in his evidence in chief accords with what he states in his affidavit in

these proceedings. Indeed in his affidavit he specifically states that he spoke to the receptionist at the head office told her that he came to pay the deposit on a property in Manzanilla waited a little while and as a result of what the receptionist said took the bank draft to the law firm.

Under cross examination however he says something different. I am satisfied that the Defendant is not speaking the truth when he says that an appointment was made for him to attend the Attorney's office on a later date or that he went into NIPDEC's offices on the 20th. I am satisfied that the first attempt by the Defendant to present the cheque and arrange to enter into the agreement for sale was made on the 9th February.

According to the Defendant he attended the attorney's offices and spoke to the attorney. Save that he was advised that the search was necessary he gives no evidence of this discussion. In accordance with the attorney's instructions he paid the sum of \$150 for a search on the property and left the bank draft. He produces the receipt for the \$150.00 and a receipt for a bank draft issued to National Property Development Ltd in the sum of \$2511.50 dated the 18th January 1996. It is not in dispute that this bank draft has not been negotiated. Further the receipt suggests that a bank draft was issued to the National Property Development Ltd, rather than the National Insurance Property Development Company Limited.

From late 1996 early 97, he says he began visiting and clearing the property and began occupying it from the year 2000 and based on his Attorney's advice from the year 2005 began paying the land taxes. It is on these facts that the Defendant seeks to deny the Claimant's right of possession and seeks equitable relief. There is no issue raised on the pleadings as to adverse

possession and consequently such a position is not open to the Defendant. In any event on his evidence he has not satisfied the 16 year requirement.

On the evidence I am satisfied that there was no valid agreement for sale made between the Claimant and the Defendant. It is clear that the arrangement between the parties was as set out in the letter of 10th January 1996. In accordance with that letter the Defendant had to enter into the agreement for the sale of the premises within 14 working days after notification. It is for the Defendant to satisfy me that he has complied with the terms of the letter or was prevented from doing so by the Claimant or its agents.

In this regard the Defendant must first of all establish that he attempted to enter into the agreement for sale within the time fixed by the letter. He has failed to do so. There is no evidence from this Defendant as to when he received the letter. In his evidence in chief he merely says it was early January. In cross-examination he says it was certainly by 15th January. It is however accepted by both sides that the 14 day period would have expired by the 5th February 1996. In his evidence in chief the Defendant states that he went into NIPDEC's offices within the 14 day period. This is a conclusion drawn by him. The Defendant must provide primary facts upon which I can come to that conclusion. The Defendant has failed to do so.

Even if I accept the evidence of the Claimant given at the trial that he went to NIPDEC's offices prior to 9th February, and I do not, this does not in my opinion assist him. The clear terms of the letter was that he attend the Attorney's offices within the 14 day period. It is not in dispute that the first time that the Defendant attended those offices was the 9th February 1996. I find as a fact

that the Claimant did not attend either the attorney's offices or NIPDEC's offices or attempt to satisfy the conditions contained in the letter within the period specified by the letter.

In my opinion the counteroffer contained in the letter of the 10th January expired on the 14th day after receipt by the Defendant and could not be revived by any actions subsequent to that date.

At trial the Defendant relied on waiver. According to the submission the actions of the Attorney amounted to a waiver of the terms of the letter. Waiver has not been pleaded. In those circumstances in accordance with Part 10 of the Rules the Defendant cannot rely on such an allegation. The Claimant has not had the opportunity of answering, by way of evidence, such a case. For example had this case been pleaded the Claimant may have determined that it needed to call the Attorney.

In any event from the Claimant's evidence the conversation with attorney merely related to the usual procedure to be followed with respect to the sale of a property. He gives no evidence of advising the Attorney that he was purchasing a property from the Claimant pursuant to a bid or of any reference to the letter of the 10th January. In those circumstances it would seem to me that it cannot be said that there is evidence of an intentional act on the part of the Claimant through its agent to not rely on the terms of the letter. In the circumstances even if the Defendant was able to rely on a waiver by the Claimant's agent of the terms contained in the letter there is no evidence to support such a position.

The facts before me are clearly distinguishable from the cases relied on by the Defendant's attorneys. In the first place there was no agreement for sale entered into between the parties. At best, there was an agreement to enter into an agreement for sale if the Defendant complied with certain requirements as outlined in the letter of 10th January. The Defendant did not comply with these requirements. The Claimant received no benefit from the Defendant. Further the said letter specifically stated that possession would only be granted pursuant to a licence and for the purpose of doing repairs. The Defendant's entry into possession was not with the consent or license of the Claimant or the Claimant's agent and was at all material times illegal. In the circumstances in my opinion the Claimant cannot use this unlawful possession to bolster a claim for a remedy in equity.

In my opinion at all material times the Defendant was in the occupation of the premises as a squatter and not pursuant to any agreement for sale. In similar vein neither sections 43 nor 37 of the RPO or the case of Asher v Whitlock, all relied on by the Defendant, apply to these facts.

At the end of the day the Defendant has not satisfied me that he is entitled to any of the orders sought by his counterclaim. The counterclaim is accordingly dismissed. I am satisfied that in the circumstances the Claimant is entitled to the possession of the premises sought.

Dated this 6th day of February, 2013.

Judith Jones
Judge