

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2010-04811

BETWEEN

NAMA HOLASSIE

Claimant

AND

CYNTHIA BLAKE

DON B. LAVENDE

WINSILLA JAHGOO

(In her personal capacity and as Legal Personal Representative of the estate of Carlos Mendoza, deceased)

LISA FELIX

Defendants

Before the Honourable Mr. Justice V. Kokaram

Appearances:

Mr. Gerard Raphael for the Claimant

Ms. Reah Sookhai for the Defendant

ORAL DECISION

1. This is a very simple case but like most simple cases several legal issues often emerge. I must commend the efforts of both attorneys for their co-operation with the Court to deal expeditiously with this claim in which the first CMC was held on the 28th January 2011. Although the matter could not have been settled and directions were given on the 7th April I commend both attorneys for their dedication in preparing for this trial by the timely meeting of deadlines and their presentation of their propositions of law which were quite helpful. Much has been said about the new culture of litigation but if we proceed on the basis in

which the present attorneys have proceeded in this litigation we will be on good footing for the fair and economical disposition of cases under the CPR, I commend both of you.

2. This is a claim made by Nama Holassie which is for a declaration that she is the owner and entitled to possession of a concrete flat house described in her claim form. She also seeks possession of the said premises and damages for trespass. Nama Holassie is the step-daughter of one Carlos Mendoza, her mother was one Bernice Wallace who lived with Carlos Mendoza before her death. Mr. Mendoza lived at LP#1 Guaico Extension Street, on the lands situate at Railway Road, Guaico in the County of St. Andrews in the Island of Trinidad and bounded on the North upon a Road Reserve on the South upon lands occupied by Naresh Ragoos on the East upon lands occupied by Kenneth Maraj and on the West upon lands occupied by Barbara Griffith.
3. It is not in dispute that Mr. Mendoza is the statutory tenant of the said lands and paid rent to the landlord Mr. Randolph Manick. It is on those lands Mr. Mendoza built a house which is the subject of this claim. He first built a wooden chattel house on the parcel of land and later, he built a three bedroom house. It was described by Beena Holassie, who holds the Power of Attorney for the Claimant, and the sister of Nama Holassie, as a concrete flat house, with a concrete roof comprising a three bedroom, a gallery, a living room, kitchen, toilet and bath.
4. Ms. Holassie's claim for possession of the house and land is based upon a bill of sale registered on the 14th January, 2000 as 901/2000. This document the Claimant contends properly assigns the statutory tenancy and the said house to both herself and Carlos Mendoza as joint tenants. After the death of Carlos Mendoza however, the Defendants, his sister, his nephew and his cousin entered into possession of the said premises. It is not in dispute that the Claimant did not enter into possession of the said premises since the date of the said bill of sale. Ms. Holassie contends that the Defendants continued possession is illegal as they have no colour of right to enter into possession, and that by virtue of the bill of sale she is the statutory tenant of the said lands.
5. The nub of the Defendants defence is contained in paragraphs 5 and 11 of the defence filed on 25th February, 2011. In it the Defendant contends that the house did not belong to the

deceased at the date the bill of sale was executed. At that time the house was not a chattel house but a complete structure which became a fixture to the land which was the subject of the statutory tenancy and could not be transferred to the Claimant without the consent and approval of the landowner as per *section 5 (8) of the Land Tenants Act*¹. Mr. Manick, owner of the land, never consented to the transfer of the statutory tenancy to the Claimant. The land owner Mr. Manick entered into an agreement for sale of the said land with the first named Defendant who has paid the sum of \$10,000.00 as a deposit. Finally, the Defendants state that by Grant of Probate on the 29th May, 2009, the Defendants became entitled to the house.

6. It is important to consider some background facts, to obtain a chronology of the events that lead up to this dispute.

Mr. Mendoza transferred his interest in the house to one Annette Edghill. This transfer was later revoked on 3rd November 2006, the effect of the revocation makes the assignment to Annette void and of no effect. On 3rd September, 2007, Mr. Mendoza executed a will devising the said house to the Defendants. Grant of Probate was obtained on the 29th May, 2009, but there is no deed of assent.

In December, 2009 the sum of \$10,000.00 was paid as a deposit towards the purchase of the land by the first named Defendant. There is no evidence that the sale has been completed and the receipt states that the balance is due to be paid after the survey. The bill of sale was adduced into evidence through Beena Holassie as *BH5* and I take it as an undisputed fact that the Bill of Sale can only assign interest in chattels as defined by *section 3 of the Bills of Sale Act*². Equally however, the Bill of Sale by way of deed amounts to sufficient evidence of the assignment of a tenancy. The Defendant contends that the house was mis-described on the schedule of the Bill of Sale and rendered it void.

The Chattel House:

7. I asked Attorney for the Defendant about the description of the house from the authorities for a court to make a distinction between a chattel and fixture there must be evidence concerning

¹ Land Tenants (Security of Tenure) Act 1981 Ch. 59:54

² Ch. 82:32

the annexation of the house to the land. See; *Halsbury Laws of England at paragraph 174*³, see also *Mitchell vs. Cowie*⁴. I also considered the case referred to by Defendants counsel of *Elitestone Limited vs. Morris and Another*⁵. The test to determine whether a object is a fixture is:

- i. First, whether an object that has been brought onto the land has been affixed to the premises so as to become a fixture is a question of fact, which principally depends first on the mode and extent of annexation and especially on whether the object can easily be removed without injury to itself or to premises.
- ii. Secondly, the purpose of the annexation, that is to say whether it was for the permanent and substantial improvement of the premises or merely for a temporary purpose or for the more complete enjoyment and use of the object as a chattel. The mode of annexation is therefore only one of the circumstances to be considered and may not be the most important consideration.

Notably, in the case of *Elitestone Ltd vs. Morris*,⁶ the Court had to consider whether the occupier of a bungalow was a fixture or a chattel. Lord Lloyd of Berwick stated that

“An object which is brought onto the land may be classified under three broad heads. It may be (a) a chattel, (b) a fixture or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land”.

In that case the House of Lords held that the question whether a structure became part and parcel of the land depended on the degree and object of annexation to the land. Assessed objectively, a house built in such a way that could not be removed except by destruction could not have been intended to remain a chattel and must have been intended

³ 4th Edition 2006 Reissue Volume 27 (1)

⁴ (1964) 7 W1R 118

⁵ [1997] 1 WLR 687

⁶ *ibid*

to form part of the reality, and that accordingly the assistant recorder was correct. In that case the assistant recorder had the benefit of visiting the house and examining the house to determine the question of annexation. Importantly, in the case of *Elitestone*⁷ an undisputed principle of law was enunciated by Lord Clyde; *that there is the general well known rule that whatever is fixed to the freehold of land becomes part of the freehold or inheritance*. This was also supported in the well known authority of *Mitchell vs. Cowie*⁸.

8. The evidence in so far as the chattel house in the case is concerned is that Ms. Holassie could not tell the difference between a fixture and a chattel and there is no cross examination of the Defendants witness on this issue. However, on a balance of probabilities like Lord Lloyd in *Elitestone*⁹ the inference of a large object such as a concrete structure is that annexation goes without saying. The house is therefore a fixture. In *Mitchell vs. Cowie*¹⁰ however, CJ Wooding stated:

“because a tenant possesses no more than the right to sever his fixtures thereby to reconvert them into chattels during the term of his tenancy, it is only that right which he can assign or transfer. If he does assign or transfer his fixtures, he may assign or change them separately from his interest in the land in which event he will employ the machinery of a bill of sale, or he may transfer them together with his interest in the land in which event all that he needs do is to transfer the tenancy itself. And if the tenancy is so transferred, it is not essential that the transferee should go into occupation in pursuance thereof or even that the transferor should cease thereafter to occupy either by himself or by anyone through him; the matter becomes one of title”.

From the passage of CJ Wooding I gather the following principles of law to be undisputed;

- i. the fixtures becomes part of the freehold and is capable of assignment,
- ii. an assignment must take place during the term of the tenancy,

⁷ ibid

⁸ supra

⁹ supra

¹⁰ supra

- iii. if a tenant is to transfer the fixture and land all he has to do is to assign his interest in the land that is assigned the tenancy,
 - iv. it is not essential that the transferee should go into occupation in pursuance of the transfer and,
 - v. it is immaterial whether any or what form of receipt is given for monies paid as consideration for the assignment.
9. Justice Stollmeyer in *Shirley Jones Rajkumar v Merle Taurel John*,¹¹ equally pointed out that assignments of a statutory lease must be in writing and in his view the bill of sale was capable of assigning a statutory tenant's interest in a tenancy. This is found in his judgment at pages 7 and 8. The defect that Justice Stollmeyer detected in the bill of sale under consideration in that case was that the bill of sale made no reference either in its recitals or in its operative part to the tenancy rights, nor did the schedule say anything more than the house which stands on the lands based on that bill of sale. Justice Stollmeyer concluded that it was not possible to read into that document an assignment of the tenancy. Conversely however, in our case the bill of sale *BH5* is sufficient evidence of an assignment of the tenancy rights in the disputed parcel of land. In that document which was registered and is evidence by way of deed Carlos Mendoza conveyed both to himself and Nama Holassie the statutory lease in respect of the parcel of land and the chattel house. The deed is also evidence of the consideration of \$80,000.00 paid for the said assignment. Both in the recitals in the body of the deed and in the schedule, it is made clear that the assignment is in relation to both the house and the statutory tenancy. Matters which according to Justice Stollmeyer in **Rajkumar** is effective to assign tenancy rights under the Land Tenants Security of Tenure Act.

Land Tenants Security of Tenure Act:

10. In so far as the *Land Tenants (Security of Tenure) Act*¹² is concerned, sections 5, 6 and 7 are important for the resolution of this dispute. Section 5 sets out the terms and conditions of the existing tenancy. Section 5 (4) provides for the remedy of the landlord if the rent payable under the statutory tenancy is in arrears for six months the landlord may apply to the land

¹¹ HCA 1784 of 2005, H.C.439/2005.

¹² supra

commission for redress. Importantly, tenants under a statutory tenancy under sections 5 (5) of the Act has an option to purchase the land at any time during the term of the statutory lease at a price not exceeding 50% of the open market value of the land without the chattel house ascertained at the date of service on the landlord of a notice to purchase. Section 6 of the Act provides for options for renewal of the lease. The Landlord's redress for non-payment of rent is set out in Section 7 of the Act.

Land tenants (Security of Tenure) Act;

5. (1) The terms and conditions of any existing tenancy converted into a statutory lease by section 4 shall, subject to this section, be incorporated in the statutory lease as terms and conditions in such lease.

(2) On the conversion of an existing tenancy into a statutory lease, any term or condition of such tenancy inconsistent with the terms and conditions of a statutory lease set out in this section, or with any other provisions of this Act, shall be void to the extent of such inconsistency.

(3) Notwithstanding any other law, the rent under a statutory lease shall be the rent which was payable in respect of the land immediately prior to the appointed day or as varied under section 5A.

(3A) The rent payable under this Act shall be paid by the tenant annually either in advance or as otherwise agreed by the parties.

(3B) A tenant shall not be required to pay to the landlord any fine, premium or other like sum or to give any consideration in addition to the rent as a condition of the grant, renewal or continuance of a tenancy or a statutory lease.

(4) If the rent payable or any part thereof is in arrear for six months the landlord may apply to the Land Commission for redress and—

(a) where the chattel house erected on the land is of a type such as is expressly included within the meaning of "chattel house" in the definition of this expression in section 2, the Land Commission may, subject to section 7(3), order the termination of the statutory lease and grant the landlord possession of the land subject to the

payment by the landlord to the tenant of compensation for the chattel house assessed by the Land Commission under section 7;

(b) where the chattel house erected on the land is not of such a type, the Land Commission may make an order for the termination of the statutory lease, for the tenant's eviction from the land and for the removal of the chattel house from the land by the tenant.

(5) The tenant shall have an option to purchase the land at any time during the term of the statutory lease at a price not exceeding fifty per cent of the open market value of the land without the chattel house ascertained at the date of the service on the landlord of notice of purchase under section 9(1).

(6) (a) The landlord and the tenant may agree for payment of the purchase price to be made by instalments and in that event the statutory lease shall continue in force and the rents continue to be payable until the final instalment of the purchase price is paid.

(b) Such memorandum of the agreement as may be prescribed by Regulations under section 18 shall be deposited with the Land Commission.

(c) The landlord shall have the same powers of enforcing the payment of instalments as are conferred on him by subsection (4) for enforcing the payment of rent, and subject to any Regulations made under section 18, the Land Commission shall have power, on the application of the landlord, to make such Orders as may be necessary or expedient for enforcing the agreement between the parties.

(7) (a) A tenant who purchases the land under subsection (5) shall not, before the expiration of five years from the date of the purchase, be entitled to sell the land to any person other than the State at a price exceeding fifty per cent of the open market value ascertained at the date of the agreement for sale.

(b) A tenant who purchases land under subsection (6) shall not, save with the landlord's consent, sell the land to any person other than the State

before completion of payment of the purchase price unless the purchase price exceeds the unpaid balance of the purchase price and a portion of the purchase price equal to such unpaid balance is paid directly by the purchaser to the landlord.

(c) The Registrar General shall not register any transfer of the interest of a tenant made in contravention of this subsection.

(8) A tenant has the right to assign or sublet with the consent of the landlord whose consent shall not be unreasonably withheld; but the rent payable by any subtenant shall not exceed the rent payable by the tenant to the landlord under this Act.

**5A. (1) The Land Commission may on the application of a landlord or a tenant review the rent in respect of land to which this Act applies in any area for which a Rent Assessment Board has been constituted under the Rent Restriction Act.*

(2) Until the Land Commission is appointed, rent may be reviewed by the Rent Restriction Boards for their respective areas and such Boards shall exercise the powers of the Land Commission under this section.

(3) For the purpose of the review of rent the Minister shall by Order specify the matters to which the Land Commission or the Rent Assessment Boards, as the case may be, shall have regard in undertaking a review.

(4) An Order of the Minister under this section is subject to affirmative resolution of the House of Representatives.

(5) A review under this section shall be conducted in accordance with procedures provided for in Regulations made by the Minister under section 18.

5B. Rents paid in excess of any amounts payable under this Act are not recoverable.

6. Where under section 4 a tenant has an option for renewal of his lease and gives notice of renewal under section 4(3), the rights and obligations of the landlord and the tenant arising from the notice shall enure for the benefit of and be enforceable against them, their executors, administrators

and assigns to the like extent (but no further) as rights and obligations arising under a binding contract for sale freely entered into between the landlord and the tenant; and accordingly references to the tenant and the landlord in relation to matters arising out of any such notice shall include their respective executors, administrators and assigns.

7. (1) Where a landlord applies to the Land Commission pursuant to section 5(4)(a) the Commission shall assess the amount of compensation to be paid by the landlord to the tenant for the chattel house at a sum equivalent to the price of the open market value of the chattel house and may make such orders in the circumstances as may be just.

(2) Where pursuant to section 5(4) the Land Commission makes an order for possession in favour of the landlord, the title of the landlord thereby conferred shall be subject to any existing subtenancy.

(3) Subject to such Regulations as may be made under section 18, an Order made against a tenant under section 5(4) shall be conditional on the failure of the tenant, within a period of 30 days of the Order or such of the period as may be prescribed, to pay all arrears of rent, and if the tenant satisfies the Commission in the prescribed manner that all arrears of rent have been paid within such period, the Commission shall cancel the Order.

(4) (a) The open market value for the purposes of subsection (1) shall be determined by the Land Commission as if the chattel house alone were available for sale on the open market at the relevant date in vacant possession and free from encumbrance.

(b) In this subsection "relevant date" means the date of the application to the Land Commission pursuant to section 5(4)."

The Evidence:

11. The evidence in this case consisted mostly of the documentary evidence. The oral testimony of Ms. Holassie really was not very helpful as most of her evidence was based upon matters which were told to her by her sister Nama Holassie. In so far as the Defendant was concerned

there was little cross examination of that witness, perhaps for the reason that many of the matters stated in her witness statement would form the subject of legal submissions and do not take the case any further. The star witness however, is Mr. Manick, and this was pointed out to the parties by the Court at the case management conference. Mr. Manick was the witness to support the Defence that he did not consent nor approve the transfer or assignment of the statutory tenancy. In fact, he signed a statutory declaration to that effect and his witness statement was unequivocal that he would not give any permission at all to Mr. Mendoza to assign the tenancy to himself and the Claimant.

12. Under cross examination this witness wilted and conceded that he did consent to the assignment of the tenancy from Mr. Mendoza to Mr. Mendoza and the Claimant. He admitted that he did issue a receipt which was disclosed to the parties during the course of this litigation and it surprised and shocked me to know that no one sought his instructions on that receipt prior to his cross examination. I gathered from his evidence that he was quite evasive, if not dishonest with regard to that receipt until as I mentioned earlier he wilted under the pressure of cross examination and admitted that he did issue the receipt and consent to the assignment.

13. That being the state of the evidence, the Bill of Sale being perfectly capable of assigning rights under the tenancy from Mr. Mendoza to himself and the Claimant as joint tenants, the house being a fixture and therefore passing with the realty together with the assignment of the tenancy, I agree with the submissions of the Claimant that the Defendants have no colour of right to remain in occupation of the subject premises. I will make an order in terms of the claim form for the declaratory relief and for possession, but of course adopting the humane approach of staying execution of the order for possession. My order is that:

- The Court declares that the Claimant is the owner and entitled to possession of the property described in paragraph 1 of the claim form filed on the 19th November 2010.
- That the Defendants do deliver possession of the said premises to the Claimant.
- There is no evidence of damages for trespass and I award no damages

- Costs are payable by the Defendants to the Claimant in the sum of \$14,000.00. The Claimant has succeeded on all its reliefs and I have no evidence of any conduct on the part of the Claimant to reduce the amount of \$14,000.00 in my discretion under *part 67 of the Civil Proceeding Rules 1998*.

Court: \$14,000.00 Mr. Bullock I think even on the evidence as I have found it even though Mr. Raphael has withdrawn his claim for damages, he could have persuaded me, he has not pursued this claim for damages for trespass, he could have persuaded me to award nominal damages.

A stay of execution of this order of three months is granted from the date hereof.

Dated this 24th day of June 2011

Vasheist Kokaram
Judge