

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2016-03569**

**BETWEEN**

**MINERVA JOHN**

**Claimant**

**AND**

**LINDY ANOUKA MOOTILAL**

**Defendant**

**Before the Honourable Madam Justice Margaret Y Mohammed**

**Dated the 22<sup>nd</sup> August, 2017**

**APPEARANCES**

Mr. Cedric Neptune Attorney at law for the Claimant.

Mr. Mustafa Khan instructed by Ms. Kristin Khan Attorneys at law for the Defendant.

**REASONS**

1. On the 17<sup>th</sup> July 2017 I dismissed the Defendant's notice of application filed on the 20<sup>th</sup> April 2017 ("the first application") and the Defendant's application filed on the 14<sup>th</sup> July 2017 ("the second application"). I also ordered that the Defendant to pay the Claimant's costs of the first

application and with no orders as to costs for the second application. The Defendant having appealed both orders I now set out my reasons.

2. To place the first application and second application in context a history of the matter is necessary. On the 10<sup>th</sup> January, 2014 in High Court Action CV 2014-00091 between Motilal Gokool and Pearley Motilal (“the Deceased”) v Minerva John (Ms John”) ( “the first action”) they sought the following orders:-
  - (a) A declaration that the Deceased are Statutory tenants of the Defendant under the provisions of the Landlord and Tenant (Security of Tenant) Act, Chapter 59:54 as amended by Act No. 11 of 1981 (“the Act”)of All and Singular that certain piece or parcel of land situate at No. 353 Bonne Aventure Road, Gasparillo, in the Ward of Pointe a Pierre, in the Republic of Trinidad and Tobago comprising of one (1 Lot more or less and bounded on the North by other lands of the Defendant on the South by the Bonne Aventure Main Road on the East by lands of Kenny Khan and on the West by Other lands of the Defendant occupied Verlin Sampson under S.5(5) and 9 (1) of the Act as amended (“the said property”).
  - (b) An Order directing that Ms John do sell the said property to the Deceased at one half the market value within ninety (90) days of the Order.
3. In the first action, the Deceased averred that they were initially tenants on the said property which is owned by Ms John. They sought to avail themselves of protection under the Act by alleging that they had served a Notice of Renewal on Ms John thereby renewing the Statutory Tenancy in respect of the said property. They alleged that service or non-service of the Notice of Renewal was the main issue to be determined in the first action.
4. Ms John pleaded that no Notice of Renewal was served on her by the Deceased. Ms John did not file a Counterclaim against the Deceased seeking vacant possession. Ms John also pleaded that following the expiration of the initial tenancy in respect of the said property, she had offered the Deceased a non-contractual, non-transferrable licence to occupy it for the remainder of their natural lives but this offer was never accepted by the Deceased prior to their demise and its existence was never challenged by the Deceased prior to their respective demise.

5. On May 4<sup>th</sup> 2016, the first action was heard and determined following a trial before the Honourable Mr. Justice Peter Rajkumar (as he was then) (“the Rajkumar Order”). The Court found that the Deceased did not served a Notice of Renewal on Ms John. Therefore, they were not afforded any protection under the Act. The Court dismissed the first action and awarded costs against the Deceased.
6. The Deceased Motilal Gokool (prior to his death) filed a Notice of Appeal (No. P 191 of 2016) (“the Appeal”) in respect of the Rajkumar Order. The Defendant herein, subsequently applied for and obtained an Order to be substituted in place of the Deceased to facilitate the prosecution of the Appeal.
7. The Deceased departed this life on the following dates namely, Pearley Motilal on January 7<sup>th</sup> 2015 before the determination of the Claim and Motilal Gokool on August 8<sup>th</sup> 2016 following the determination of the Claim. Prior to 2014 the Defendant was allegedly put into occupation of the said property by the Deceased.
8. The second action was commenced by Ms John against the Defendant seeking vacant possession of the said property. In the second action the Defence filed by the Defendant was that the Deceased occupied the said property as statutory tenants. The statutory lease was renewed upon service of the required notice of renewal. The Defendant was present when the Notice of Renewal was served on Ms John at her place of residence on the 17<sup>th</sup> February 2011. The Defendant is not in illegal occupation of the said property since the house on the said property is owned by the Deceased and that she began residing at the said property in or around 2012 at the request of the Deceased who wanted her to secure it. The Defendant also averred that since she has been in possession of the said property she has been maintaining and up keeping it.
9. The first application came up for hearing at the first case management conference. At that hearing I gave the parties directions to file and serve submissions and I adjourned the first CMC to the 22<sup>nd</sup> June 2017 for my ruling.

The first application

10. In the first application the Defendant asked the Court to stay the proceedings in the second action pending the outcome of the Appeal and for costs.
11. The grounds in support of the first application were:
  - (a) The second action is connected to the first action since it concerns possession of the said property.
  - (b) The first action was dismissed after a trial by the Honourable Mr. Justice Rajkumar and his reasons was that the requisite Notice of Renewal was not served on Ms John. In the first action there was no finding in respect of Ms John seeking vacant possession and in the second action Ms John has brought a claim as against the Defendant seeking vacant possession of the said property.
  - (c) In order to find that Ms John is entitled to vacant possession of the said property the Court would have to similarly determine the issue of whether the said Notice of Renewal has been served which issue is now the subject of an appeal. To pursue this course, would be a collateral attack on the Rajkumar Order
  - (d) A proper use of the Court's resources would be for this action to be stayed pending the hearing and determination of the Appeal.
  - (e) Ms John seeks possession solely on the findings of the Rajkumar Order which is now the subject of an appeal and to continue to give directions for the furtherance of the second action would amount to an abuse of process.
  - (f) Ms John also seeks possession on the basis that no stay of execution was sought but in the Rajkumar Order there was no order for possession which would have permitted an application for a stay to be made on and/or granted as the matter simply stood dismissed.

- (g) The Defendant has acted promptly in making this application.
12. Ms John opposed the first application on the basis that : she is seeking vacant possession of the said property as the legal owner; the Defendant is seeking to re-litigate the issue which has already been determined by the Court in the first action and it amounts to an abuse of process; the Defendant was not called as a witness in the first action with respect to the assertion that she was present when the Notice of Renewal was served; and there is no realistic prospect of success of the Defence so it should be struck out.
  13. The Court's power to stay proceedings lies in the statutory provisions of **Section 18 (2) of the Supreme Court of Judicature Act, Chap 4:01), Rule 26.1(f) Civil Proceedings Rules** (“CPR”) and under its inherent jurisdiction. The effect of the stay of proceedings would halt the conduct of the instant matter unless lifted by an order of the Court.
  14. In **Dallas Corporation et al v Alnando Corporation et al CV 2011-04466**, Justice Jones (as she then was) cited the cases of **St. Pierre v South American Stores (Gath and Chaves) Ltd [1936] 1 KB 382** and the **Atlantic Star [1974] AC 436**. From these cases, she extracted the following principles of law:

“In order to justify a stay two conditions must be satisfied, one positive and the other negative: (a) the defendant must satisfy the court that the continuation of the action would work an injustice because it would be oppressive, or vexatious to him, or would be an abuse of the process of the court in some other way; and (b) the stay must not cause an injustice to the plaintiff.”: **per Scott LJ in the St. Pierre case at page 398.**”
  15. Lord Reid in **Atlantic Star** stated that the Court should examine all the circumstances of the case to determine what is oppressive. In **Edmeades v Thames Board Mills Ltd – [1969] 2 All ER 127**, the Court noted that the test to determine if to stay proceedings is whether in the circumstances of the particular case it is reasonable that a stay should be ordered so that justice shall be done between the parties.

16. The Court summed up the factors which the applicant must prove in order to obtain a stay of the proceedings where another action has been filed in **Slough Estates Ltd v Slough Borough Council**<sup>1</sup> as:

“It is common ground that to obtain relief the defendants must establish, (1) duplication between two sets of proceedings; (2) oppression, vexation or abuse of process of the court resulting from the continuation of the proceedings sought to be stayed; and (3) the absence of any other consideration against the relief sought such as- what was suggested in this case- unreasonable delay, or acquiescence on the defendants.”<sup>2</sup>

17. I refused the stay in the first application since I was of the opinion that Rajkumar J had already found in the first action that there was no Notice of Renewal of the statutory tenancy of the Deceased and the Defendant who was substituted for the Deceased in the Appeal did not seek to obtain a stay of execution of the Rajkumar Order.

18. Further, the issue in the second action is whether the Defendant is a trespasser on the said property. The Notice of Renewal is not in issue in the second action since it was already determined in the first action by the Rajkumar Order. Ms John is the legal owner of the said property and she has a superior title to it. Having obtained the Rajkumar Order Ms John has been unable to have the use and enjoyment of the said property due to the Defendant’s occupation of it.

*The second application*

19. In the second application the Defendant sought an order to be appointed as the Legal Personal Representative of the Deceased for the purpose of the second action.

20. The grounds in support of the second application were:

(a) Prior to their death the Deceased occupied the said property.

---

<sup>1</sup> [1967] 1 Ch 299 a

<sup>2</sup> Supra at page 312.

- (b) By the last will and testament dated the 25<sup>th</sup> day of July 2013 (“the Will”), the Deceased appointed the Defendant to be their sole executrix. Probate of the Will has not yet been granted.
- (c) The issue in the second action is whether the Deceased were statutory tenants of the said property at the time of their death. Therefore the estate of the Deceased should be added to the second action as it is necessary to resolve all the matters in dispute.
- (d) The Defendant can fairly and competently conduct these proceedings on behalf of the estate of the Deceased since the Defendant has no interest that are adverse to the said estate.

21. I dismissed the second application for the following reasons:

- (a) The Defendant’s defence was that she was in possession since the Deceased had asked her to look after the said property since 2012; she had appealed the Rajkumar Order and she was awaiting the outcome of the Appeal. The Defendant’s defence was filed in her personal capacity and not on behalf of the estate of the Deceased. By seeking permission to join the estate of the Deceased I was of the view that she was changing her defence from being in her own personal capacity to a different capacity namely as legal personal representative of the estates of the Deceased.
- (b) In those circumstances, I was of the view that since the second application was filed 3 months after the first case management conference the Defendant had to satisfy the Court that she had met the requirements of Part 20.1(3) CPR which provides that:

“(3) The court shall not give permission to change a statement of case after the first case management conference, unless it is satisfied that-

- (a) There is a good explanation for the change not having been made prior to that case management conference and
- (b) The application to make the change was made promptly.

(3A) In considering whether to give permission, the court shall have regard to-

- (a) The interest of the administration of justice;

- (b) Whether the change has become necessary because of a failure of the party or his attorney;
- (c) Whether the change is factually inconsistent with that what is already certified to be the truth;
- (d) Whether the change is necessary because of some circumstance which became known after the date of the first case management conference;
- (e) Whether the trial date or any likely trial date can still be met if permission is given; and
- (f) Whether any prejudice may be caused to the parties if permission is given or refused.”

(c) In my opinion the facts which the Defendant was seeking to rely on to join her in the capacity as legal personal representative of the estate of the Deceased were matters which were known to her since 2016 and there was no explanation to account for her failure to make the second application before the first case management conference which came up on the 1<sup>st</sup> May 2017. In this regard the application was not made promptly.

.....  
**Margaret Y Mohammed**  
**Judge**