THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 2010

BETWEEN

CARL HECTOR

Appellant

AND

OLIVER OSWYN KEITH

Respondent

PANEL: **A. Mendonça, J.A**
P. Weekes, J.A.
P. Jamadar, J.A.

APPEARANCES: **Mr. M. George for the Appellant**
Ms. D. Moore-Miggins for the Respondent

DATE OF DELIVERY: **March 8th, 2013.**

JUDGMENT

Delivered by A. Mendonça, J.A

1. This appeal arises out of a claim for trespass to and a declaration that the Respondent is a statutory tenant of a certain parcel of land in Tobago (the parcel of land).

2. The Respondent is the legal personal representative of his deceased mother, Sarah James. He alleged that his mother in 1977 entered into a tenancy agreement with Cyril Hector, the father of the Appellant, in respect of the parcel of land. His mother immediately entered into possession of the parcel of land and built a house thereon. The Respondent alleged that the deceased lived in

the house with him and his siblings until her death in 1999. After her death the Respondent and his siblings continued to reside in the house on the parcel of land.

3. In 1977 Cyril Hector died. Subsequent to his death, his son, the Appellant in this matter and the executor of his will, wrote to the Respondent's mother in 1998 advising her that he was the owner of the parcel of land and that it was for sale. After the death of the Respondent's mother, the Appellant wrote to the Respondent in 2000 again advising that the parcel of land was for sale.

4. In 2001 the Appellant caused his Attorney-at-Law to write to the Respondent. The letter which is dated November 22nd, 2001, stated again that the parcel of land was for sale, outlined the asking price for the land, and requested a deposit of 10% within three months and the balance within a further six months. The letter concluded as follows:

> *"If we do not receive a response from you within this time we will assume that you are not interested in purchasing the said land and you will then have fourteen (14) days, that is, up until 20th December, 2001 to vacate the said land. If you fail to do so* ***we shall have you forcibly ejected therefrom****."*

There is no evidence that the Respondent replied to the letter. On or about November 24th, 2004 the Respondent alleged that the Appellant, his servants and/or agents accompanied by police officers entered upon the parcel of land with a backhoe and excavator and in spite of the Respondent's protestations unlawfully severed the telephone, electricity, cable and television connections to the dwelling house on this parcel of land and then unlawfully demolished a portion thereof which at the time contained items of clothing and furniture belonging to the Respondent. The Respondent also alleged that the Appellant, his servants and/or agents, unlawfully demolished a wooden structure he erected on the parcel of land which was used as a store room.

5. The Respondent, as legal personal representative of the estate of his deceased mother, commenced these proceedings in November 29th, 2004 and claimed, inter alia, a declaration that he is the statutory tenant of the parcel of land within the meaning of the Land Tenants (Security of Tenure) Act (the Act) and damages for trespass.

6. The Appellant in his defence did not deny that the parcel of land was rented to the mother of the Respondent. He however stated that it was rented sometime between 1981 and 1982. The Appellant further denied that the deceased went into possession of the lands in 1977. The Appellant also denied that he committed the acts of trespass as alleged by the Respondent or at all.

7. There were two central issues for determination by the trial judge, Gobin, J. The first issue was whether the Respondent was a statutory tenant within the meaning of the Act. The second issue was whether the Appellant entered upon the parcel of land in November 2004 as alleged by the Respondent.

8. As to the first issue, sections 3(1) and 4(1) of the Act are relevant. Section 3(1) provides as follows:

> "*3(1) Subject to subsection (2), this Act applies to tenancies in respect of lands in Trinidad and Tobago on which at the time specified in section 4(1) a chattel house used as dwelling is erected or a chattel house intended to be used as a dwelling house is in the actual process of being erected."*

Section 3(2) is not relevant to this appeal and need not be set out. Section 4(1) is as follows:

> *"4(1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed date shall as from the appointed date become a statutory lease for the purposes of this Act."*

9. The appointed day as defined in section 2 of the Act means the date of coming into operation of the Act, which is June 1st, 1981. June 1st, 1981 is therefore also the relevant date for the purposes of section 3(1) being the "time specified in section 4(1)".

10. The combined effect of sections 3(1) and 4(1) is that the Act applies to tenancies in respect of land subsisting immediately before June 1st, 1981 on which, at June 1st, 1981 a chattel house used as a dwelling was erected or a chattel house intended to be as used as a dwelling was in the actual process of being erected. In such cases, subject to certain exceptions that are not relevant to this appeal, the tenancy becomes a statutory lease, which is a lease for thirty years commencing from June 1st, 1981 and renewable by the tenant for a further period of thirty years (see section 4(2)).

11. The Judge noted that there was no dispute between the parties that the parcel of land was rented to the Respondent's mother, nor was there any dispute that the deceased erected a chattel house on the parcel of land immediately on the commencement of the tenancy. What was in dispute, in order to determine whether the tenancy was one to which the Act applies, was the date the tenancy commenced and the house constructed. The Judge noted that the Appellant did not deny that the commencement of the tenancy and the construction of the house took place simultaneously. According to the Appellant, however, that occurred between 1981 and 1982 and not in 1977 as the Respondent contended. If those events occurred after June 1st, 1981 the tenancy would not be one to which the Act applied. The Judge therefore stated that in view of the admissions of the Appellant, what the Respondent had to prove was that the parcel of land was rented to the deceased immediately before June 1st 1981. The Judge found that on the evidence that the Respondent had established that fact. As to the second issue whether the Appellant had committed the acts of trespass the Judge also found in favour of the Respondent.

12. In the circumstances the Judge granted the declaration that the Respondent is a statutory tenant within the meaning of the Act and entitled to the protection of the Act and awarded damages for trespass in the sum of $95,000.00. Included in this figure was an award of exemplary damages in the sum of $50,000.00.

13. Counsel for the Appellant in his written submissions outlined four issues namely:

1. Whether the trial judge erred in law when she held that the Respondent was a statutory tenant within the meaning of the Act.

2. Whether the trial judge erred in holding that there was evidence to support the existence of a statutory tenancy.

3. Did the entry on the parcel of land on November 27th, 2004 by the Appellant constitute a trespass?

4. Did the Respondent suffer the damages claimed?

I will refer to each issue in turn.

14. On the first issue the Counsel for the Appellant submitted that the right enjoyed by a statutory tenant under the Act is a purely personal right which cannot be assigned by one tenant to

another nor can it pass on intestacy or be left by will for another. It was not disputed that the tenant was Sarah James. She was, during her life time, entitled to possession of the parcel of land and to maintain an action in trespass. But Counsel submitted that her right to possession, being a personal one, ended on her death. The Respondent therefore In support of this proposition Counsel relied on **Keeves v Dean and Nunn v Pelligrini** [1923] ALL ER Rep.12 and **John Lovibond and Sons v Vincent** [1929] 1KB 687.

15. As Archie J, (as he then was) noted in High Court Action 3924 1989 **Kumar v Ramcharitar** those cases are perfectly valid for the principle of law which they state, namely that persons occupying premises by virtue of a statutory right conferred by the Rent Restriction Acts to which they refer have only a personal right to do so and has no interest in the land they occupy. They cannot pass on that right inter vivos or by will. Those cases, however, have no application to the Act.

16. The clear intention of the Act is to vest in the statutory tenant a leasehold interest in land capable of being assigned inter vivos and capable also of being transmitted by will or on intestacy. This is obvious from the provisions of the Act. First there is the provision of the Act, already alluded to, that converts a tenancy to which the Act applies to a statutory lease for thirty years. This is clearly an interest in land and not merely a right in personam. There is no indication in the Act that such an interest cannot be assigned or that it does not pass on the death of the tenant. On the contrary there is section 5(8) that specifically speaks of assignment by the tenant. Section 5(8) is as follows:

> *"5(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."*

17. There is also section 6 which refers to the option for renewal of the lease conferred by the Act on a tenant. This section makes specific provision that the rights and obligations of the tenant arising from a notice of renewal shall enure for the benefit of and be enforceable against the landlord's executors, administrators and assigns. If the option for renewal enures for the benefit of the tenant's executors, administrators and assigns there is no logical reason why the original lease should not also be for the benefit of the tenant's executors, administrators and assigns.

18. There is also the definition of tenant in the Act, which is as follows:

> *"'tenant' means any person entitled in possession to land under a contract of tenancy whether expressed or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and "tenancy" shall be construed accordingly.*

This definition expressly refers to the interest of the tenant being acquired by assignment and is also wide enough in its contemplation to refer to persons acquiring an interest on the death of the original tenant.

19. I do not think that there can be any doubt that the Act gives to the tenant an interest in land capable of being transmitted on the death of the tenant. The interest of the deceased in the parcel of land therefore did not cease on her death but became vested after her death in the Respondent. Counsel for the Appellant in the course of argument did not really press this point and it is fair to say that it was conceded by him. We think he was right to so do.

20. As to the second issue, the Judge in concluding that the Respondent established that the tenancy was in existence before the relevant date, June 1st 1981, took into consideration two documents. One was an assessment sheet stamped by the Commissioner of Valuation dated February 16th, 1981 and the other was the Land and Building Taxes Return dated February 16th, 1981. The Judge made reference to these two documents and stated:

> *"These two documents together confirmed that the claimant's home existed on the lands on the effective date to afford Sarah James, the protection of the Act."*

21. It was not disputed that the documents referred to the subject lands. Counsel for the Appellant however submitted that the Judge was wrong to rely on them as they were not in evidence before her. We however do not agree.

22. The documents are annexed to the witness statement of the Respondent. At paragraph 4 he states:

> *"Despite being constructed in and around 1977 the said dwelling house was assessed in the name of the deceased in the records at the Warden's Office, Scarborough,*

Tobago with effect from January 1st, 1981. Copies of the relevant assessment documents are annexed to it and mark 'B'.

23. The documents annexed to the witness statements are in fact the documents referred to by the Judge. The Judge seemed to think erroneously that the documents were not referred to by the Respondent in his written statement or annexed thereto. The Judge nevertheless considered the documents to be in evidence by reliance on certain provisions of the Evidence Act. We need not consider the correctness of that approach as we think that it is clear from a perusal of the witness statement that the documents were referred to in the body of the witness statement and annexed to it. The witness statement was admitted in evidence in chief. The documents annexed to it therefore stood as evidence unless there was a successful application that they be excluded but no such application was made. The documents therefore formed part of the evidence before the court and could properly have been considered by the Judge.

24. Counsel for the Appellant further submitted in the alternative that even if the documents were in evidence they do not establish or assist in establishing that the chattel house existed before June 1st, 1981. We are however unable to agree with this submission.

25. The Land and Building Taxes Return indicated that there had been a difference in the assessment of the property to which the return applied from the date of the last return. The difference was indicated to be a "new building to be assessed" and on the face of the document there is written words "please add to assessment... one building... w.e.f January 1st, 1981." I think it is fair to assume that the initials "w.e.f" mean with effect from. At the bottom of the page there is an indication that the new building was assessed and the annual ratable value is indicated.
We agree with the submission of the Respondent that the document indicates that something new was added to the property prior to the date of the document i.e. February 16th, 1981 and that was a building. This lends support to the allegation that the chattel house was in existence prior to June 1st, 1981.

26. The second document lends further support to the Respondent's allegation. It states that the building on the land is wooden and consists of three bedrooms and other rooms. The documents states that the building was inspected on February 9th, 1981 and gives the annual taxable value as $344.00, with the effective date of assessment as January 1st, 1981. This clearly

corroborates the allegation of the Appellant that there was a building on the land prior to June 1st, 1981.

27. In our view therefore the documents do corroborate the Respondent's evidence that the house was in existence prior to June 1st, 1981. The Judge was well entitled to conclude that the documents together confirmed that the Respondent's chattel house existed on the parcel of land as at the relevant date, i.e. June 1st, 1981. As there was no dispute that the house was erected immediately after or simultaneously upon the grant of the tenancy there can be no dispute that the tenancy was subsisting before June 1st, 1981. The Judge was therefore correct to conclude that the tenancy was one to which the Act applies and the Respondent was therefore entitled to the protection of the Act.

28. With respect to the third issue the Appellant did not dispute the Judge's findings of fact that he or his servants, or his agents had entered upon the parcel of land on or about November 27th, 2004. Counsel however argued that no right of the Respondent had been violated by the entry upon the lands. The Appellant's submissions in this regard relied on the submission in respect of the first issue that the statutory tenant under the Act enjoyed no more than a personal right to occupy the premises. According to Counsel's submission, as the deceased's right in the parcel of land expired on her death, it therefore followed that the entry upon the lands after her death did not constitute a trespass in respect of which the Respondent, as the legal personal representative of the estate of the deceased, could maintain an action. However as we mentioned under the first issue, the premise on which this submission is based is in our opinion erroneous. As is the case of the first issue, Counsel for the Appellant also did not press this submission:

29. With respect to fourth issue certain submissions were made as to the award of damages but they reduced themselves to the argument that the Court ought not to have made an award for exemplary damages. Counsel for the Appellant submitted that exemplary damages may be awarded only in respect of certain categories of cases and this was not a case falling within any of the recognized categories.

30. **Rookes v Barnard** [1964] 1 ALL E.R. 367, which we have followed in this jurisdiction, lays down that exemplary damages can be awarded in three categories of cases. The second category set out in that case is in our view relevant. In describing cases falling within the second category, Lord Devlin stated (at p 410):

> *"Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.*

This is not to be taken as meaning that a calculation of the actual monies which the defendant hoped to make out of the conduct is necessary or that the category is limited to money making in the strict sense. Lord Devlin added (at pp 410-411):

> *"Where a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to money making in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object:- perhaps some property which he covets - which he could not obtain at all or not obtain except at a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay."*

Exemplary damages have been awarded in favour of a tenant against a landlord in cases of trespass with a view to evicting the tenant and obtaining possession of the premises (see for example **Drane v Evangelou** [1978] 2 ALL ER 437 and **Asghar v Ahmed** (1984) 17 H.L.R 25).

31. The facts in this matter show that the Appellant wished to sell the parcel of land. He informed the deceased and then the Respondent that the parcel of land was for sale. When there was no response he made a formal offer to the Respondent for the sale of the land. In that offer he indicated that if the land was not purchased, the Respondent would face eviction. When the Appellant received no response he took the law into his own hands. He attempted to demolish the Respondent's home. His conduct was aimed at gaining possession of the parcel of land at the expense of the Respondent, who enjoyed security of tenure under the Act. A fair inference is that the Appellant did so to be better positioned to sell the parcel of land. This in our view falls precisely within the second category in **Rookes v Barnard.** It does not matter that the Appellant had not willfully set out to commit a tort. The motivation to evict the Respondent so as to obtain possession of the land is sufficient (see **Guppys (Bridport) Ltd. v Harry Brookling** (1984) 14 H.L.R. 1).

32. The Judge in this matter was highly critical of the conduct of the Appellant. She stated that his conduct was meant "to terrorize" the Respondent into submission to his will. She described the Appellant's conduct as "thuggery" and "high-handed" which "needed to be condemned in the

strongest terms". We agree with the Judge's criticisms. This is an appropriate case for an award of exemplary damages. As Lord Devlin put it "exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay." This is that case.

33. In the circumstances the appeal is dismissed. The Appellant shall pay to the Respondent the costs of the appeal determined at two thirds of the costs in the Court below.

A. Mendonça,
Justice of Appeal

P. Weekes,
Justice of Appeal

P. Jamadar,
Justice of Appeal