THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019-00375

Between

GRACE STANNEVELD

Claimant

And

LEMUEL NELSON

(Trading as "Jubilee Auto")

Defendant

Appearances:

Claimant: Robert Boodoosingh

Defendant: Farai Hove Masaisai instructed by Antonya Pierre

Before The Honourable Mr. Justice Devindra Rampersad

Date of Delivery: July 31, 2023

JUDGMENT

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1. By claim form and statement of case filed on 29 January 2019, the claimant filed a claim seeking the following reliefs:

   1.1. Vacant possession of premises situate at No 203 Eastern Main Road, Tacarigua as described in the tenancy agreement between the claimant and defendant;

   1.2. Payment of arrears of rent for the period September 2017 to December 2017 at a monthly rate of $5,000;

   1.3. Payment of mesne profits from January 2019 and ongoing at the rate of $5,000 per month;

   1.4. Interest at the statutory rate of 5% from September 2017 – until date of payment;

   1.5. Costs;

   1.6. Such further and or other relief as the Honourable Court deems fit in the circumstances of the case.

2. The defendant filed its defence and counterclaim on 31 January 2020 claiming the following:

   2.1. A declaration that the claimant, is not entitled to the subject property situate at No. 203 Eastern Main Road, Tacarigua;

   2.2. A declaration that the defendant has an equitable interest in the subject property;

   2.3. An order that the defendant has an equitable interest in the subject property;

   2.4. An order preventing the claimant, her servants and or agent from removing the defendant from the subject property.

3. In the alternative to 2.4,

   3.1. An order that the claimant do pay to the defendant the sum of $150,000 for works done on the subject property;

   3.2. Damages for conversion/detinue;

   3.3. Interest;

3.4. Costs;

3.5. Such further and or other relief that may be deemed just and expedient in the circumstances.

Background

4. The defendant alleged that in or around September 2011, he became aware of the property situate at 203 Eastern Main Road, Tacarigua along with another parcel of land ("the connected parcel") connected to the said property while he was driving around the East West Corridor in search of a property to rent.

5. Upon coming across the two parcels of land, the defendant met a man by the name of Ricardo Garcia who informed him that he was the caretaker and that the landlady was Grace Stanneveld, the claimant, and that she was residing in Canada at the time.

6. The defendant then obtained the claimant's contact and called her that same night to inform her of his interest in opening a garage. The claimant indicated her willingness to rent the parcels of land since it was being used as a carpark at that time.

7. The defendant was then instructed to pay a deposit of $10,000 into the claimant's Republic Bank Account. But the next day, informed the defendant that another person had already made a deposit for the connected parcel.

8. The defendant received a phone call from the claimant in or around November 2011 enquiring whether he was still interested in renting the connected parcel and informed the defendant that she was in Trinidad at that time.

9. On 30 November 2011, the defendant received a copy of the keys for the connected parcel from the claimant and on 1 December 2011, the parties signed a tenancy agreement and the defendant paid a sum of $10,000.

10. In or around February 2013, the claimant offered the defendant an opportunity to rent the demised premises to which the defendant accepted the said offer. On 1 March 2013, the parties executed the tenancy agreement for the demised premises.

11. The defendant then proceeded to clear the area, levelling same and then paved it with concrete.

12. From 2011 to present, the defendant has since rebuilt and or constructed and or renovated both parcels of land and stated that he has incurred expenses in excess of $150,000.

13. The defendant has stated that he relied on a promise made to him by the claimant that upon the expiry of the period of three years less one day of the lease, the defendant would be entitled to purchase the demised premises and the connected parcel. The tenancy agreement expired on 29 February 2016.

14. In or around October 2017, Mr Elroy Weekes, who purported to be a bailiff acting on behalf of the claimant, visited the demised premises as the defendant did not pay his rent. Mr. Weekes then took one Mazda Familia Singapore Registration PBY 9214.

15. On 22 December 2017, Mr. Weekes then returned to the premises in the company of police officers. He informed the defendant that he was acting as an agent of the claimant and that the bailiff was Dennis Durity. Mr. Durity then took one blue Toyota Tercel Registration PBD 1829, a Mazda Demio Japan Registration PCA 6673 and an Izuzu Hiab Truck TCD 7226.

16. The defendant was informed via letter dated 1 August 2018 that Mr Rodney Charles was acting as the claimant's agent with regard to the premises. He then received another letter dated 13 August 2017 informing him to pay all arrears, failing which, the claimant would re-enter the premises.

17. The defendant commissioned a search on the premises and the connected parcel and obtained a copy of the Deed which shows that the two parcels of land are vested in Irene Dookhie and not the claimant.

Issues to be determined

18. Whether the claimant has locus standi to act for and on behalf of the estate of Irene Dookie;

19. Whether an agreement existed between the parties for the purchase of both parcels of land;

20. Alternatively, whether the claimant is liable in detinue and conversation to the defendant;

21. Whether the defendant has an equitable interest in the property;

22. Whether the defendant is entitled to damages.

The defendant's submissions

23. The defendant relied on ***Administration of Estates Act Chap 9:01, section 10(4)*** and ***Sections 10 and 11 of the Wills and Probate Act Chap 9:03, Ingall v Moran[1], Ramlogan Roopnarine Singh and others v Ralph Ramjohn and Sabita Ramnarine[2], Alexandrine Austin and others v Gene Hart[3]*** and stated that an Executor or Administrator derives his title only when given the grant of representation which then allows him to act on behalf of the estate of the deceased.

24. The defendant also submitted that the claimant admitted that she was not the owner of the subject property, neither does she disclose in her pleading any evidence of a will, death, certificate or a grant of probate giving her the authority to deal with the estate of Irene Dookhie who the claimant has purported to be deceased. Therefore, barring any evidence from the claimant to the contrary or late disclosure of the grant of probate, the claimant could not have lawfully offered the defendant the subject property by way of sale as the subject property was not legally hers to sell nor could she lawfully have commenced and maintained this claim.

[1] [1944] 1 All ER 97
[2] CV2014-03384
[3] [1983] UKPC 6

25. As it relates to the agreement, the parties came to an oral agreement that the defendant would be entitled to purchase the parcels upon the expiration of the period of three years less one day. This was the reason that the defendant started developing the property and why the claimant never objected to the open development work being conducted by the defendant.

26. The defendant argued that the oral discussions and agreements between the parties were intended to be binding and that such a binding agreement exists. Further, the claimant has not given any evidence to refute the promises made to the defendant nor the substantial amount of retrofit works done to the property.

27. It was also argued that a claim in detinue can be made by a person with the immediate right to the possession of the goods against the person in possession of the goods and who, in the face of a proper demand to deliver them up, has failed or refused to do so without lawful excuse.

28. The defendant stated that he is entitled to the sum of the vehicles seized in the sum of $200,000 plus general and aggravated damages.

29. The defendant stated that it is not in dispute that he relied on the assurances that were made orally and summarised the essential elements of proprietary estoppel. He also incurred expenses in excess of $150,000 and averred that the claimant consented to all of the work being done on the both parcels. Further, that he entered into an oral agreement with the claimant to have a valuation done but ultimately the claimant failed to assist the defendant engaging the valuator by providing the documents for the subjected property. Therefore, the defendant ought to find that a case for proprietary estoppel was made between the parties.

The claimant's submissions

30. It was submitted that the tenancy agreement states that the tenant is not to undertake any alterations and or repairs to the said premises without the consent of the landlady first and the defendant produced no evidence that he had the written consent of the landlady.

31. Further, the tenancy agreement was for a period of three years from 2013- 2016 and expired for some time but the defendant continued in occupation of the said premises so the defendant is therefore holding as a month to month tenant and by law, the landlord can insist on double the monthly rent for the period of time the tenant is holding over.

32. As it relates to the alleged promise that the claimant stated that she would sell to him the premises, the defendant has not shown any particularisation or any terms of the said promise such as a purchase price.

The defendant's submissions in reply

33. It was submitted that the parties did not finalise the purchase price of the subject property and this does not negate the fact that the claimant made a promise to the defendant to purchase the subject property upon which the defendant relied to his detriment.

34. The claimant also saw all the renovation works being done purposefully and refused to stop the defendant from expending his own monies on the subject property. Further, the defendant tried to obtain a valuation on the property but same could not have done without the requisite deed.

35. The claimant has also failed to provide any evidence that she had the legal title to the property to sell same to the defendant. Under cross examination, the claimant admitted that she was not the owner of the subject property and that same was owned by Irene Dookhie.

36. It was submitted that the renovation works were done with the permission of the claimant and this was not done secretly. There is no evidence of any police reports or any letter or contemporary correspondence by the claimant indicating that the construction works should be halted. The claimant was fully aware of the defendant's works on the subject property and consented to same.

Issues raised by the court at the 17 March 2023 hearing

37. At the hearing held on 17 March 2023, the court raised the following concerns and requested that the parties provide further assistance on same:

    37.1. Was the issue of the claimant not having title pleaded by the defendant? If not, can it now arise?

    37.2. Does one have to be the owner of premises to be able to rent it out or is the tenant estopped in law from denying the title?

    37.3. In those circumstances, if the issue is one that was pleaded, does it matter whether the claimant was acting under the estate or not?

    37.4. Can someone who is not the owner of premises make a representation upon which the representee can act in relation to proprietary estoppel?

    37.5. Can someone who is not the owner of premises grant a valid option to sell those premises?

    37.6. Has the defendant cogently proven ownership and the value of the vehicles taken sufficient for the court to determine the amount of any set-off in relation to rentals that are/were owing?

The claimant's supplemental submissions

38. The claimant then filed its written submissions on 21 April 2023 and supplemental written submissions on 17 July 2023.

39. It was argued that it is trite law that once the tenant enters into the tenancy agreement, the tenant acknowledges the title of the landlord and cannot thereafter challenge same. Therefore, in the circumstances, only the true owner can challenge the title of the Landlord.

40. The claimant also relied on the authorities of ***Hill and Redman's Law of Landlord and Tenant*** and stated that it is trite law that a tenant cannot challenge the title of the landlord once the tenant enters into a relationship of landlord and tenant and the only person to defeat the title of the landlord and tenant.

41. It was submitted that the tenancy agreement is a lease and not a license that was for a fixed term and the tenant had exclusive possession of the premises.

42. Further, there was no budgeted costs application and the costs should be based on the value of what is gained by either party to this claim.

43. The defendant already admitting to not having the said monthly rent since the month of October 2019 to present at the rate of per month. The tenancy agreement has expired and the defendant is therefore now a month to month holding over and is liable to pay double the monthly rental rate as per ***Landlord and Tenant Act, Chapter 27 No. 16*** until he vacates or until he enters into a new tenancy agreement with the landlady.

44. Further, an option to purchase the said demised premises did not form part of the tenancy agreement.

The defendant's supplemental submissions

45. It was submitted that the issue of title to the property not being in the name of the claimant was raised by the defendant. The defendant and the actions of the claimant in standing by while the defendant acting to his detriment based on the promises and in full view of the claimant, the claimant had an obligation to respond on the issue of title.

46. It was also accepted that a person who is not the legal owner of property can rent it out and in effect, contract with the tenant on their legal basis as landlord.

47. It was submitted that the court ought not close its eyes to the whole dealings between the parties as put before the court by way of evidence. The claimant is seeking not merely the payment of outstanding rents but also vacant possession in circumstances where the evidence clearly supports a claim of proprietary interest in the Landlord's reversionary interest and as such, the hue and colour of such title is relevant.

48. The claimant had to be able to either convey or procure the conveyance of the reversionary interest in the said property to the defendant. The claimant by virtue of possession has title against the whole world save and except someone with a better

right to possession. In raising the issue of Irene Dookie being the owner, the defendant also raised the issue of a person with a better right to possession to which the claimant has failed to respond.

49. The claimant, having not disclosed any letters of administration, does not have locus to act on behalf of the estate far less to pass any legal interest in the property. yet, the court can look at what weight a promise in this context may hold as per ***Mohan Jogie v Angela Sealy***[4]***.***

50. The defendant acted in good faith having at the inception of the rent agreement and oral agreement for the purchase of the land having been of the firm belief that the claimant as the holder of the reversionary interest was the owner or a representative and or agent of the owner.

51. Acting on the promise of the purchase of the reversionary interest and the belief that the claimant was the owner of the property, the defendant proceeded to invest in and renovate the subject property to his detriment and in full view of the claimant. Thus, the claimant cannot now seek to evade the binding nature of the defendant's proprietary interest by seeking to merely compensate the defendant for the substantial improvements to the property based upon the agreements between the parties.

52. The defendant then can rely on the promises of the claimant in whatever capacity as individual or representative of the estate even though no letters of administration have been placed into evidence, but subsequent upon when such letters of administration is granted. The defendant is also entitled to rely on the representations and enforce possession as against the claimant herself.

53. The defendant also submitted that the claimant ought to have set off the cost of the vehicles in the sum of $200,000 against any outstanding rents owed by the defendant.

54. There is no evidence to rebut the presumption of ownership of the vehicle as outlined in the certified copies. There is also no evidence to rebut the presumption of the true value of the seized and sold vehicle as given by the defendant.

[4] [2022] UKPC 32

55. Therefore, the court, in absence of any other evidence of independent valuation report should adopt the approach of accepting the defendant's evidence in the absence of probative evidence.

Discussion

Lack of Title

56. In this courts respectful view, the challenges to the claimant's title has come rather late in the day. There is no doubt that the claimant is not the registered owner of the subject lands but she entered into this tenancy with the defendant since 2013 with the defendant having tenanted the connected parcel which is adjoining since December 2011. It was incumbent upon the defendant to have done a search to ensure that the claimant, at that time, was not only the registered owner of the subject property but was also empowered to make representations in order to bind the title and estate in the subject property. Having not done so, in respect of which the principle of caveat emptor applies, it is not appropriate for the defendant to try to avoid his obligations under the tenancy 6 years later in December 2017 by seeking to rely on the issue of title.

57. Issues raised in submissions by the defendant in relation to the application of section 10 (4) of the Wills and Probate Act Chapter 9:03 and the authorities of ***Ingall vs. Moran***, ***Ramlogan Roopnarine Singh and others vs. Ralph Ramjohn and Sabita Ramnarine*** and ***Alexandrine Austin and others vs. Gene Hart*** do not assist him at this time. Those authorities and legislation are more appropriate in relation to matters raised by beneficiaries who challenge the propriety of the actions of a legal personal representative or in matters where a claim has been brought by a person on behalf of an estate which is not supported by a valid grant of representation for that estate. This claim is not one brought under the estate of the deceased Irene Dookie. It is a claim in contract between one party to the contract and another.

58. The above authorities may have applied to the defendant at the time when he sought to commence a relationship with the claimant in relation to the tenancy of the property. This is especially so when he was contemplating spending money on the

property in the manner in which he said he was contemplating, and which he said he did. However, having accepted the claimant as his landlord, and having paid rent to her since 2013, save for the arrears which developed thereafter, he is now estopped from challenging the claimant's title in relation to the contractual relationship between he and the claimant. The claim is in contract and the contract still remains in force.

59. The court notes that it was clear from the statement of case and the list of documents filed by the claimant that she was not relying upon any bona fide deed of conveyance or certificate of title to establish her right in this matter. In fact, in the defence and counterclaim the tenancy agreement was agreed save for the allegation that there was an option to purchase. At paragraph 13 of the defence, the defendant raised the issue that the subject lands were vested in one Irene Dookie but that was a mere statement of fact rather than a challenge to the contract and the counterclaim itself made no mention of any relief to set aside the tenancy contract on the ground of any lack of authority. The court is therefore of the respectful view that even though the first claim in the counterclaim seeks relief that the claimant is not entitled to the subject property, the basis for that claim was not particularized or established. Instead, the thrust of the counterclaim is to seek to enforce the option to purchase or, in the alternative, to be reimbursed in the sum of $150,000 for works done on the subject property.

60. In any event, there is the general proposition of law that tenant cannot challenge the title of the landlord where there is no claim by a third party arising as to better title. That is set out in ***Hill and Redman's Law of Landlord and Tenant***[5]:

> *"[47]*
>
> *The application of estoppel to the law of landlord and tenant may be subsumed under two related heads. First, a tenant is prevented or estopped from denying the right of his landlord to grant the lease and, conversely, a landlord is prevented or estopped from denying the title of his tenant under the lease.*

[5] ***Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 1 The relationship of landlord and tenant/A Introduction to the relationship of landlord and tenant/4 Tenancies by estoppel***

Second, a person who has no legal estate in the land may nevertheless purport to grant a lease of that land; in that event, there is created between him and his purported tenant a tenancy by estoppel which binds them and their respective successors in title just as if the landlord had a sufficient interest to grant the lease. It does not bind strangers to the transaction. The effect of the two principles is that a tenant cannot generally avoid his liability on the covenants in the lease, such as the liability to pay rent or to keep the premises in proper repair, by asserting that the landlord had no title to grant the lease. However, the tenant can claim that he is not liable on the ground that he has been disturbed by someone who has a better title than his landlord or on the ground that his landlord's title has ended. For example, if A who has no good title to land grants a lease of it to B and C, who has good title, evicts B, B can then assert as against A the better title of C. Indeed, should C recover from B damages for trespass in respect of the period when B was in possession as a trespasser against C, B can probably recover from A any rent which he has paid prior to his eviction. This general inability to set up, as a defence to a claim by a landlord, the contention that some other person has a better title than the landlord (sometimes called an inability to plead a ius tertii) is an aspect of the wider principle of English land law that title to land is relative not absolute. Thus, if A takes possession of land from B and is sued by B who seeks to recover possession and obtain damages, A cannot by way of defence claim that C has a better title than B. The question is not whether B has a title that is absolutely good but, rather, whether he has a better relative title than A. The law of tenancies by estoppel is founded on the similar principle that where a person takes a lease he cannot escape liability on the covenants simply by proving that his landlord did not have a good title to grant the lease or that some third party had a better title. No distinction is drawn in the many decided authorities between the two above general aspects of tenancies by estoppel. "

61. In fact, in the House of Lords decision in ***Bruton v Quadrant Housing Trust***[6], it was decided that the determinative factor in a contractual lease was the contract between

[6] [2000] 1 AC 406, [1999] 3 All ER 481

the parties rather than the existence of any proprietary interest. Lord Hoffman said that, although a lease usually does create a proprietary interest, whether it did in a particular case would depend upon whether the landlord had any interest out of which he could grant such an estate.

62. Therefore, in this case, since the defendant never challenged the claimant's title, or lack of it, at the time of entering into the agreement, and having paid rent and enjoyed the use and occupation of the subject parcel, he can no longer try to assert any *jus tertii* in the light of the absence of any claim by the estate of the registered proprietor of the parcel of land.

63. Even though the option to purchase was not in writing, the defendant relies on part performance as evidenced by his having spent $150,000.00 in the development of the property. In the further and better particulars filed on 23 July 2020 pursuant to this court's order, the defendant alleged having spent:

    63.1. $25,000 for labour and $40,000 for materials for the fabrication and erection of a 30 x 25 garage shed and parts rack by one Vivian Providence in May 2012;

    63.2. $95,000 for labour and $53,000 for materials for the clearing and cleaning of the property of overgrown bushes, preparing a foundation and casting of three-inch flooring and fabricating and erecting a 22 x 20 x 20 structure to house a paint room and living quarters by one Brian MacFae between August 2 October 2013;

    63.3. $16,000 for wiring and other electrical works and plumbing and $6000 for gravel and sand done during the same time period as in the preceding paragraph by the same contractor;

64. Making a total of $170,000 rather than the $150,000 pleaded in the defence and counterclaim.

65. Paragraph 1 (e) of the tenancy agreement entered into between the parties, which tenancy agreement is not in contention, provides that the defendant, as the tenant, agreed with the claimant:

"Not to make any alterations or additions to the said premises without the consent of the Landlady first had and obtained in writing."

66. There is no evidence or allegation of the claimant having obtained such consent in writing. In cross-examination, the claimant admitted that when the land was tenanted to the defendant, there was nothing on it and now there are structures and any such structures would have been built by the defendant. Further, she was not in a position to agree or disagree with the defendant's contention that he had spent $170,000 on the building of the structures on the property.

67. The claimant also alleged that she never gave the defendant permission to build anything on the lands and she was not aware that anything was built. The tenancy agreement entered into in 2013 specifically mentions that the property, which had previously been used as a parking lot, would be used as an auto garage and it must have been in the contemplation of the parties that an otherwise empty parcel of land would have required some sort of structure on it, whatever the extent of it. The issue that arises, however, is where the construction actually took place and what it involved.

68. The parties were in agreement that there were 2 lots of land involved. In cross-examination, the defendant's witness was asked about the eastern parcel and the western parcel. The court gets the impression, from the tenor of the cross examination, that the western side was the parcel of land initially rented to the defendant by the claimant. That is the parcel, apparently, that the defendant tenanted from the claimant in November 2011 and in respect of which the parties signed an agreement on 1 December 2011. He defined that parcel as "the connected parcel". According to him, the connected parcel contained a house and an open space at the time, in 2011. That is the area over which he constructed a shed and in respect of which he brought a witness, Vivian Providence, who allegedly did the construction at the combined cost for labour and materials of $65,000 mentioned above. Mr. Providence accepted that in cross-examination. Since the connected parcel is not the parcel which is before this court but seems to be before the Honourable Madam Justice Charles instead as a separate action, Mr. Providence was not helpful to the defendant's case before this court other than to confirm that an element of the

further and better particulars was not applicable to the subject property. Similarly, the defendant's other witness Orrin Sanovich spoke about the western side i.e. the connected parcel.

69. The court therefore dismisses any further reference in relation to these 2 witnesses named and the alleged costs of $65,000.00 mentioned in the further and better particulars for the shed.

70. In February 2013, the subject parcel was offered to the defendant by the claimant to rent which was accepted and reduced into the tenancy agreement dated 1 March 2013 referred to above. According to the defendant;

> *"10. At this time the demised premises was an empty lot used for parking, on which a third of it was overgrown with weeds. I proceeded to clear the area, level it and then paved it with concrete. I also built a paint room with a living quarters above on the demised premises."*

71. The court therefore accepts that the defendant stated in the further and better particulars filed by the defendant that between August 2013 to October 2013 he did the work that he mentioned above at the combined cost of $170,000.00. This suggests that when he took the subject parcel in February, he did not have it clear until August or thereabouts of that year. When he saw the parcel, with which he was obviously familiar having rented the connected parcel since 2011, he would have known that it needed to be cleared and there was no provision in the tenancy agreement for him to be reimbursed for clearing it. He also would have known that there would have been need to have the lands paved with concrete in order to run the auto garage that he wanted to and he also would have known the use for which he intended the subject parcel i.e. a paint room.

72. The claimant was adamant that she never authorized this construction of the paint room. However, it was clear from Mr. Providence that a shed was built on the western portion in May 2012 and, notwithstanding that, and notwithstanding the fact that the agreement for that tenancy was not put before the court, on a balance of probabilities, the court accepts that the claimant must have expected similar construction to be conducted on what was obviously an empty piece of land before. It is also difficult to

believe that from 2013, when the paint room was constructed, to 2019, when these proceedings were filed, the claimant was unaware of the substantial structure on the subject parcel. There is no evidence that she did anything about it.

73. However, Jones JA, in ***Kameel Khan vs. C.G.A.S Development Company Limited***[7] said:

> *"68. To succeed in establishing a waiver the Appellant must not only show that the Respondent knew of the breaches giving a right to the forfeiture of the lease but he must show a positive act of waiver on the part of the Respondent. The mere act of standing by and doing nothing will not found the basis for a waiver of a forfeiture clause: Perry v Davis (1858) 3 CB NS 769; Penton v Barnett [1898] 1 QB 276"*

74. Therefore, the mere act of doing nothing without any evidence of a positive act of waiver does not assist the defendant. The determination of the issue therefore rests on the determination of the allegation as to whether there was an agreement for the defendant to have an option to purchase and whether the claimant consented to the building of the paint room.

The Option to Purchase and the Equity

75. It has been stated about the nature of an option to purchase[8]:

> *"[4164]*
>
> *A lease may confer upon the lessee an option to purchase the lessor's interest in the demised premises. Such an option is collateral to the lease and creates a property right which is in principle capable of assignment by the lessee.*
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> *.....*
>
> *[4165]*
>
> *As an option to purchase the lessor's interest is not strictly a term of the lease, it will not be incorporated into the terms of a yearly tenancy created by the tenant holding over after the expiration of the lease1, and when the parties*

[7] Civ App No. P-183 of 2014

[8] Hill and Redman's Law of Landlord and Tenant/Division A General Law/Chapter 13 Options/A Option to purchase/1 Nature of option to purchase lessor's interest

agree that a lease shall be extended for a further term of years the option will not be deemed to be one of the terms of the extended lease."

76. The written agreement between the parties makes no mention whatsoever of an option to purchase nor does it make any reference to any consent for the building of a paint room. Therefore, when considering the alleged oral agreement between the parties as contended by the defendant in relation to these 2 matters, the court notes that the written contract between them does not express any such intention. Even though the agreement was only for 3 years and would have expired by 2016, it is trite law that the parties would continue their contractual relationship upon the same terms and conditions set out therein. However, as mentioned above, any alleged option to purchase will not be incorporated into the terms of any tenancy where the tenant holds over after the expiration of the lease unless there is such an express provision in the original tenancy agreement.

77. Notwithstanding the above, the court will come to a determination as to whether, in law, any such option to purchase existed.

78. Chitty on Contracts, Twenty-Fifth Edition Vol 1 page 437-438 paragraph 802 states:

"Where the parties have embodied the terms of their contract in a written document, the general rule is that "verbal evidence is not allowed to be given…so as to add to or subtract from, or in any manner to vary or qualify the written contract". This rule is often known as the "parol evidence rule". Its operation is not confined to oral evidence, but extends to extrinsic matters in writing, such as drafts, preliminary agreements and letters of negotiation, Evidence is not admissible of negotiations between the parties; nor is it permissible to adduce written instrument……"

79. Chitty on Contracts, Twenty-Fifth Edition Vol 1 page 428 paragraph 782 states:

"In constructing a contract, the Court is not entitled to look at what the parties thereto said or did whilst the matter was in negotiation nor can drafts be admitted either to alter the language of the contract or to help its interpretation except where it is sought to rectify the document or to show that the parties negotiated an agreed basis the words used before a particular

meaning."

80. The Privy Council judgement in ***Attorney General of Belize v Belize Telecom Ltd [2009] UKPC 10*** provides:

> *"19. The proposition that the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic (since a court has no power to alter what the instrument means) but also well supported by authority. In Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board [1973] 1 WLR 601, 609 Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:*
>
> > *'[**T]he court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.***"*
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> *20. More recently, in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, Lord Steyn said:*
>
> > ***'If a term is to be implied, it could only be a term implied from the language of [the instrument] read in its commercial setting**.'*

21. It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean. It will be noticed from Lord Pearson's speech that this question can be reformulated in various ways which a court may find helpful in providing an answer – the implied term must "go without saying", it must be "necessary to give business efficacy to the contract" and so on – but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?

22. There are dangers in treating these alternative formulations of the question as if they had a life of their own. Take, for example, the question of whether the implied term is "necessary to give business efficacy" to the contract. That formulation serves to underline two important points. ***The first, conveyed by the use of the word "business", is that in considering what the instrument would have meant to a reasonable person who had knowledge of the relevant background, one assumes the notional reader will take into account the practical consequences of deciding that it means one thing or the other****. **In the case of an instrument such as a commercial contract, he will consider whether a different construction would frustrate the apparent business purpose of the parties****. That was the basis upon which Equitable Life Assurance Society v Hyman [2002] 1 AC 408 was decided.* ***The second, conveyed by the use of the word "necessary", is that it is not enough for a court to consider that the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied that it is what the contract actually means.***

23. The danger lies, however, in detaching the phrase "necessary to give business efficacy" from the basic process of construction of the instrument. It is frequently the case that a contract may work perfectly well in the sense that both parties can perform their express obligations, but the consequences would

contradict what a reasonable person would understand the contract to mean. Lord Steyn made this point in the Equitable Life case (at p 459) when he said that in that case an implication was necessary "to give effect to the reasonable expectations of the parties."”

[Emphasis added]

81. It is instructive that, in light of there being a written agreement between the parties which clearly showed an intention to formalize their contractual relationship in writing, there is no cogent written evidence of the defendant seeking to exercise his option to purchase at any point in time.

82. There is no definition of the option to purchase i.e. whether at an agreed price or at a price to be agreed upon by an agreed formula. The time for the exercise of the option to purchase is as well solely lacking and, when considered in the round, it is clear that even if this court were to accept that there was such an option to purchase, the same would be void for uncertainty as there is no meeting of the minds on the terms and conditions thereof.

83. When considering the very persuasive authorities mentioned above, this court is of the respectful view that it cannot accept parol evidence in relation to this alleged option to purchase. There is absolutely no contemporaneous documentary or independent evidence to support any option to purchase or any consent to build. The court cannot therefore hold that there was any or either of the two in the circumstances.

84. The question which the court raised with the parties is whether a person who is not the titleholder and is not acting on behalf of an estate is entitled to be held to a purported option to purchase. That question is answered in ***Bruton*** above and it makes logical sense. One cannot give what one does not have and if one does not have the proprietary interest in the subject parcel of land, then any claim in respect of an option to purchase that proprietary interest i.e. the reversion, cannot succeed.

85. The court has also considered whether any estoppel arises in relation to the building on the subject premises and is not satisfied that there is any cogent evidence in this regard to support a finding on a balance of probabilities. The defendant’s assertion in

this regard was a bald one with no contemporaneous evidence to support it. Having regard to the fact that the agreement between the parties was reduced into writing as mentioned above, it is more than just passing strange that important matters such as an option to purchase, permission to build or any representation in relation to the former two matters sufficient to create an estoppel was not mentioned whatsoever during the 6 years prior to the commencement of this action. No letter or correspondence whatsoever supporting either of these 2 positions.

86. Consequently, the court is of the respectful view that the defendant has failed to prove the counterclaim that he has brought in relation to the declarations and orders that he seeks in relation to having an equitable interest in the subject property.

The $170,000 spent on the subject lands

87. With respect to the $170,000.00 expended in relation to the clearing of the land and the building of the paint room, the court is of the respectful view that these would be preparatory steps taken by the defendant to maximize the use of the tenanted lands which he has had the use and enjoyment of for over 10 years to date. During that time, he has run a business and provided accommodation for a worker on the subject premises earning an income therefrom and has not paid any rent since September 2017 – that is more than 5 years ago and coming up to 6.

88. In this court's respectful view, there can be no equity arising as he would have seen the land and would also have seen that these preparatory works had to be done along with any other expenditure necessary to achieve his commercial objective.

89. As a result, the court adopts the maxim: - "***Quicquid plantatur solo, solo cedit***" - to say that any fixtures on the land which are removable may be removed but those affixed to the land must remain and run with the land to the benefit of the landlord i.e. the claimant, in so far as it is required. Otherwise, there would be waste to the lands for which the claimant would have a remedy to the extent of the removal thereof and the restitution of the lands to the condition it was in when the tenancy was granted.

The Notice to Quit

90. The claimant employed one Elroy Weekes to levy on the defendant's property for the payment of outstanding rent. In the statement of case, the claimant said that the defendant did not pay rent for the months of September and October 2017 and that she issued a Notice to Quit on 1 November 2017. She said that no money was paid for use and occupation from November 2017 to the time of the filing of the statement of case on 29 January 2019 and that accrued at the rate of $5000 per month.

91. The statement of case did not identify when the Notice to Quit was served. Instead it went on to conclude that arrears of rent were outstanding for the period September 2017 to December 2017 at the rate of $5000 per month and Mesne profits thereafter from January 2018 also at the rate of $5000 per month. The defendant said that he never received any Notice to Quit and the claimant herself, in her witness statement, did not mention when, if at all, it was served and by whom. In cross-examination, the claimant said she hired Mr. Rodney Charles to serve the notice and she personally mailed one to his home address and personally delivered it to the property. This information was not set out in her witness statement and there was no contemporaneous evidence to prove that the Notice to Quit was in fact delivered. Further, Rodney Charles came to give evidence and he did not mention anything about having served the defendant with the alleged Notice to Quit. The claimant's other witness, Sanannan Sookdeo was not able to assist the court on this issue at all.

92. In the circumstances, the court has found that the claimant has failed to prove on a balance of probabilities that the Notice to Quit exhibited in her witness statement was ever served on the defendant. As a result, the court is of the respectful view that the tenancy has not been validly terminated and therefore has continued on a month-to-month basis from the expiry of the tenancy in 2016 to date, and continuing, at the rate of $5000 per month under the same terms and conditions specified in the written tenancy agreement.

93. Of course, notwithstanding the failure to properly terminate the tenancy, there is nothing to stop the claimant from now properly doing so and that would not be an issue estoppel in this court's respectful view.

Detinue and conversion

94. The defendant stated in his witness statement that the value of the vehicles seized by the claimant's agents and/or servants was in the sum total of $200,000.00 at the time they were levied upon, as follows:

94.1. One Mazda Familia Singapore Registration No. PBY 9212-$30,000.00;

94.2. One Blue Toyota Tercel Registration No. PBD 1829-$20,000.00;

94.3. A Mazda Demio Japan Registration No. PCA 6673-$30,000.00;

94.4. Isuzu Hiab Truck Registration No. TCD 7226-$120,000.00;

And that the claimant ought to have set off the cost of the vehicles in the sum $200,000.00 against any outstanding rent owed by him.

95. Unfortunately, despite the fact that the court is satisfied on a balance of probabilities that these vehicles were in fact taken from the defendant, and that he was in possession of the same at the time, the defendant provided no cogent evidence of the value of these vehicles before the court.

96. Mr. Weekes, who was the one who levied upon the vehicles, indicated that valuations of the vehicles were in fact done by one Oliver Rosemin and Company. That company is a reputable valuer as far as this court is aware. The valuations were conducted on 25 January 2018. Those valuations were disclosed by the claimant after the court asked the parties to come to an agreement with respect to the value of the vehicles that were levied upon.

97. In his witness statement, Mr. Weekes said that he gave to the defendant on 28 July 2018 all outstanding matters including copies of the valuation report return of sale and the balance of arrears of rent after deduction of the sale of vehicles. His exact words were:

> *"16. On or around the 28th of July 2018 I give (sic) to the defendant herein Mr. Nelson a full report of all outstanding matters including copies of the valuation report return of sale and the balance of arrears of rent that will be due and owing after deduction of the sale of the vehicles value (sic) at $80,000*

as of August 1, 2018 and that I have instructions to levy to recover the said 10 months' rent."

98. The following valuations were given for each vehicle:

98.1. TCD 7226 Isuzu ELF 3Ton Truck Fitted Crane: $50,000.00

98.2. PCA 6673 Mazda 323 (Auto): $15,000.00

98.3. PBD 1829 Toyota Tercel (Auto): $15,000.00

98.4. PCA 6673 Mazda Demo Foreign Used (Auto): $15,000.00

98.5. Total fees for services rendered: $1406.25

99. The defendant's attorney did not agree to these valuations but, as mentioned, provided nothing other than his own unprofessional and unsupported opinion evidence.

100. With nothing else to work with, and bearing in mind the contemporaneity of the said valuations from a recognized professional valuer of vehicles and not wanting to dismiss the defendant's obvious loss for want of proof, the court will therefore accept the valuation that was submitted by the claimant as that is the only cogent evidence of the values before the court.

101. Therefore the court will deduct the valuation of the vehicles in the sum of $96,406.25 from the outstanding rent, thereby leaving the balance of the rent owing to be paid by the defendant.

The Order

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102. Having regard to all that is before the court, including the pleadings, the evidence and the submissions, the court will now go on to make the appropriate orders in this case.

102.1. The defendant shall pay to the claimant arrears of rent from September 2017, inclusive, to date at the rate of $5000 per month amounting to $350,000.00 less the sum of $96,406.25 being the total values and valuation fees of the vehicles leaving a balance in the sum of $253,593.75.

102.2. It would be unfair to the defendant for him to pay interest on the entirety of the $253,593.75 from day one as the sum accumulated over the course of over 5 years at the rate of $5000 per month and the defendant would be entitled to the setoff as mentioned. There is no actuarial calculation of the interest to date so the court is unable to ascribe interest thereto notwithstanding the fact that the court accepts that the claimant was deprived of the use of the rent money.

102.3. Due to the fact that the claimant has not proven the service of the Notice to Quit, the relief for vacant possession is refused.

102.4. The defendant shall pay the claimant 50% of the prescribed costs of $253,593.75 having regard to the fact that she was unsuccessful on the issue of vacant possession due to the failure to prove the service of the Notice to Quit.

102.5. On the counterclaim, in light of the finding that the termination of the tenancy was not proven and the failure to prove the equitable interest as being an applicable one, the court does not feel moved to grant the declarations sought and dismisses them. The defendant shall pay the claimant's prescribed costs on the sum of $150,000 claimed on the counterclaim quantified in the sum of $31,500.

/s/ D. Rampersad J.