

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1995/P-075

BETWEEN JAMAICA PRESBYTERIAN PLAINTIFF
 CORPORATION

AND GEORGE LAWRENCE DEFENDANT

Ian Wilkinson and Shawn Steadman for Plaintiff instructed by Ian G. Wilkinson
and Company

Carleen McFarlane for Defendant instructed by McNeil and McFarlane

JUDGMENT

Heard: 22nd and 23rd October, 2002 and 1st November, 2002

RATTRAY, J.

The Plaintiff's claim against the Defendant in this matter is to recover possession of premises situated at 23 King Street, Montego Bay in the parish of St. James, which is presently occupied by the Defendant.

In the Statement of Claim filed on behalf of the Plaintiff, it is alleged that by an oral tenancy agreement made in or about September 1980, the Plaintiff let the said premises to the Defendant as a monthly tenant at a rental of \$25.00 per month payable on the 1st day of each month. The Plaintiff further pleads that on or about the 18th July, 1991 it gave the Defendant Notice to Quit the said

premises on the 31st day of August, 1991 in accordance with Section 25 of the Rent Restriction Act, but the Defendant has failed to vacate the said premises. It is further alleged by the Plaintiff in its claim that in or about 1987, the Defendant erected a building on the premises against its wishes, warnings and / or instructions, which he has refused to remove from the property.

In his Defence, the Defendant made certain admissions:-

- (1) that the Plaintiff is the lawful owner of the premises,
- (2) that the premises were let to him by an oral tenancy agreement in or about September, 1980 at a rental of \$25.00 per month due on the first day of each month.

However, he goes on to plead in his Defence that he was induced by the Plaintiff to enter the agreement by means of a promise that he would be granted a long term lease as soon as the Plaintiff's lawyer was available to prepare same and as a consequence of that promise, he bought an old dilapidated building on the land for \$1000.00 from the Plaintiff. Further, with the Plaintiff's knowledge and consent, he borrowed funds from his Credit Union and repaired the said house.

In his Counterclaim, the Defendant alleged that it was a term of the agreement that the Plaintiff would draw up a formal lease for a term of years and it was an implied term of that agreement that upon the determination of the lease

or tenancy, the Plaintiff would pay reasonable compensation for the house, which the Defendant has contended is worth \$300,000.00 or more.

The Defendant's case is that the Plaintiff has breached the agreement by refusing to grant the formal lease for a term of years and has sought to evict the Defendant without paying any compensation. The Defendant's Counterclaim then is for an Order requiring the Plaintiff to grant a lease for a term of years as agreed between the parties or for the sum of \$300,000.00 as compensation being the value of the house.

In its Reply and Defence to Counterclaim, the Plaintiff has joined issue with the Defendant on his Defence and Counterclaim.

The sole witness called on behalf of the Plaintiff was Mrs. Nell Clarke, a member and former Secretary and Elder of St. Paul's United Church, Montego Bay in the parish of St. James. She identified the Plaintiff as the governing body in charge of all the Presbyterian Churches now known as the United Church, which included St. Paul's United Church and stated that that Church reported to the Plaintiff. She further stated in her evidence that she was acquainted with the Defendant as she was the secretary from 1979, which was when she came to know him.

She gave evidence that he came and expressed an interest in renting 23 King Street, Montego Bay in the parish of St. James and by letter dated 24th July, 1979, he wrote to her making an offer, which letter was admitted as Exhibit 1.

It is to be noted that the parties to this action were able to agree a bundle of correspondence, which allowed the case to proceed smoothly with few interruptions with respect to the admissibility of documents. I must express my appreciation in that regard. Exhibit I reads:-

“Dear Mrs. Clarke,

It is my intention to purchase house at 23 King Street owned by your Church. I am hereby offering \$1000 for same. I am also asking for the land to lease for ten years if application is accepted. Kindly let me know ... an early date.”

Mrs. Clarke went on to give evidence of a meeting of the Board of Elders held on the 1st November, 1979, the Minutes of which were admitted as Exhibit

2. The relevant portion of those Minutes reads as follows:-

“King Street Premises: Lawrence was doing a good job at the repairs. He was requesting a letter to his Credit Union, for insurance purposes, to say that he had rented the building, with a view to buying it, and leasing the land.”

She further testified that as a result of that meeting she wrote a letter to the Montego Bay Credit Union on behalf of the Defendant dated the 6th November, 1979, which letter was admitted as Exhibit 3. That letter reads:-

“This is to confirm that Mr. George Lawrence is a tenant of St. Paul’s United Church, Montego Bay, occupying premises at King Street, Montego Bay.

Mr. Lawrence is occupying these premises with a view to buying the building and leasing the land. Investigations into this possibility are being conducted by the church’s lawyers in Kingston, through the Head Office.”

This witness further gave evidence that on the 9th September, 1980, she was present at a meeting with Rev. Redway, Mr. Dixon and the Defendant as well as other persons, at which the Defendant was informed inter alia that the Church could not lease the premises but could rent same to the Defendant and that they could now accept his offer of \$1000.00 for the old building:

Minutes of this meeting were also taken by Mrs. Clarke and dated 1st October, 1980 and these Minutes were admitted as Exhibit 4. This Exhibit reads:-

"MINUTES OF MEETING HELD WITH MR. G. LAWRENCE
ON 9TH SEPT. 1980
RE KING STREET PREMISES

Present were: Rev. H. Redway
 Messrs. H. Dixon
 J. J. Bayley-Hay
 L. Maxwell
 G. Lawrence
 Mrs. V. Levys
 C. Clayton
 N. Clarke

The meeting commenced with prayer by Rev. Redway, who expressed a welcome to all present, and in particular to Mr. Lawrence.

Rev. Redway informed Mr. Lawrence that he might have been wondering what had been happening, but over the many months we were trying to get information from Kingston. We now had some information as under:

1. We were sorry to say that we could not lease the property but could rent same.
2. We were now in a position to accept the amount previously offered for the sale of the old building, i.e. \$1000.

Mr. Lawrence was then asked to state how much he was willing to pay per month as rental. Mr. Lawrence quoted a figure of \$25 per month, and also expressed the view that if and when the time came and it was possible for the premises to be leased, he would love to lease same, as the King Street premises was an ideal place for business, very unique.

After much deliberation it was agreed that for the year 1980 Mr. Lawrence would pay \$25 per month, taking into consideration the fact that he had spent so much to fix the place, (i.e. \$300 for 1980). As from January 1981 the rental would be \$50 per month.

“It was agreed that the \$1000 for the house would be paid at the end of September 1980, and the \$300. would be paid in October. Mr. Lawrence was to write a letter to the Board stating that he agreed to these figures.”

Subsequent to that meeting, the Defendant paid the Church the sum of \$1000.00 for the old building and was given a receipt by this witness, a copy of which was admitted as Exhibit 5.

Mrs. Clarke also testified that the Defendant was again advised the property could not have been leased to him in a letter written by her on behalf of the Church dated 8th April, 1981. This letter was tendered in evidence as Exhibit 6 and reads as follows:-

“Dear Mr. Lawrence:

I am directed by the Board of Elders of St. Pauls United Church to acknowledge the receipt of your letter of the 4th March 1981.

You have twice made reference in this letter to leasing of the land. It was clearly explained to you at a meeting of the Board, to which you were invited, that a lease of the

land cannot be considered at present. It was made clear to you that the land will be rented to you on a monthly basis in the sum of Twenty Five Dollars (\$25.) per month for the year 1980, and thereafter at Fifty Dollars (\$50) per month, commencing January 1981 for an indefinite period, and that you will not be molested during your occupancy of the premises.

I confirm that the church's lawyers in Kingston have been asked to draw up a rental agreement, which we are still waiting on them to do. As soon as it is received it will be sent to you for signature.

I hope the situation is now quite clear to you.

I have been asked to remind you that the rental outstanding is \$300 for the year 1980, and \$200 for the four months in 1981, and we look forward to the receipt of these amounts."

This witness gave evidence confirming that the Defendant's initial rental was \$25.00 which was to be increased in 1981 to \$50.00 per month. However in 1983, he paid three months rent totalling \$120.00 and she gave him a receipt for that amount as he was complaining about being asked pay \$50.00 per month. That receipt was tendered as Exhibit 7.

In or about June 1987, Mr. Parkinson, an Elder and Chairman of the Presbyterian Committee of the Church along with Mr. Howard Cooke visited the premises occupied by the Defendant and by letter dated 8th June, 1987 Mr. Parkinson wrote to the Defendant on behalf of the Church. That letter was tendered as Exhibit 8 and reads:-

“Dear Mr. Lawrence

Reference is made to the recent visit of the writer – Chairman of the Property Committee and one of our Senior Elder to the premises you now occupy at King Street.

It has been observed that major construction work is being undertaken at these premises and with immediate effect you are hereby requested to cease construction of any kind on the premises.

Also you are kindly requested to produce all documents relating to any rental or lease of the said premises.”

Subsequently, by letter dated 11th August, 1987, Mrs. Clarke wrote to the Defendant on the instructions of the Church by registered mail giving him Notice to Quit the premises due to his breach of the tenancy conditions. This letter was tendered as Exhibit 9 and reads:-

“Dear Sir,

The St. Paul’s United Church Elders Board, acting on behalf of the Corporation, has directed me to advise you that we have noted with concern that you have contravened the conditions under which you have been allowed to occupy the premises at 23 King Street, Montego Bay.

Under the circumstances, we have no alternative but to give you three months notice as from the 1st September, 1987, to remove the building owned by you, and to quit the premises.”

Mrs. Clarke testified that the Plaintiff’s lawyers prepared a Notice to Quit which was issued to the Defendant and by agreement, as with the other Exhibits

previously referred to, this Notice dated 5th July, 1991 was tendered in evidence and marked as Exhibit 10. It instructed the Defendant to vacate the premises on the 31st August, 1991 listing the following three (3) reasons why the premises were required.

1. The premises are required by the Landlord for their own use and occupation.
2. The premises are required for the purposes of being repaired and improved.
3. In breach of covenant of the said lease you have erected buildings thereon without the approval and consent of the Landlord.

For completeness I should mention the final two (2) Exhibits tendered by this witness - a letter dated 21st August, 1991 from the Defendant's Attorney acknowledging receipt of the Notice and claiming compensation for the structure erected thereon, as well as the letter of reply from the Plaintiff's Attorney at law dated 17th December, 1991. These letters were tendered as Exhibits 11 and 12 respectively.

Apart from the documentary evidence tendered by this witness, she also testified that she was closely involved with the details of the agreement between the Church and the Defendant in her capacity as Secretary of the Board. She stated that he was not authorised to erect any structures on the property nor was he promised a lease for a term of years. She admitted that at first the Defendant had requested a lease and this request had been referred to the Head Office of the

Plaintiff Corporation. However, the Defendant was advised that it was not possible to lease the land to him and he was informed that the Plaintiff would rent same to him.

According to this witness, some repairs to the building were contemplated by the Church due to its condition to make it habitable, as it was aware that the Defendant had planned to live there and carry on his tailoring business at the premises. However, no permanent structure was to be constructed on the property. Her evidence is that what the Church had sold to the Defendant was an old wooden building on blocks which could have been removed. She categorically denied that there was any agreement that at the end of the tenancy the Defendant would have been compensated for the building.

With respect to the Notice to Quit – Exhibit 10 - Mrs. Clarke said that the premises were required as it had been willed to the Church to be used as an Eventide home. The Church therefore intended to build a home on the said property for the elderly and it was needed to effect repairs for that purpose.

Under cross examination, she denied that the Church intended to put persons in the house constructed by the Defendant and she testified that the idea was for the Plaintiff to do its own construction.

It is the Plaintiff's contention then that the construction by the Defendant of a concrete structure at the back of the wooden building was done without the

authorisation or permission of the Church and when they became aware of it in 1987, they instructed him to stop.

The Defendant in this matter is a man in the twilight of his years, presently 87 years of age. Prior to moving to his present address, he used to reside and carry on his tailoring business across the road at No. 8 King Street, Montego Bay, St. James.

His evidence is that he had to leave those premises and he learnt that the Church property at No. 23 King Street was available. He stated that he spoke to Mrs. Clarke who was on the Church Board and a Mr. Levy and about three (3) other persons on the Board about purchasing the house for \$1000.00 and leasing the land for forty (40) years and this was agreed by the Church Board.

He testified that Mrs. Clarke was the chief person he dealt with and that he did not get any documentation with respect to this agreed lease, but the Church Board put him into possession of the property. The Defendant admitted that the wooden structure on the property was in a dilapidated condition and stated that he carried out extensive repairs to the building as it had no flooring, windows or doors and he decided to rebuild the house. He further stated that he repaired the board house using his own funds but had to get a loan from the Credit Union for further money as he did not have enough. The Defendant said he spoke to Mrs. Clarke before going to the Credit Union and she gave him the letter which was tendered as Exhibit 3.

The Defendant maintained in his evidence that there was an agreement for him to have the land for forty (40) years and for the purchase of the wooden house for \$1000.00. He further maintained that it was agreed that at the end and of the lease, the Church would pay him for the house.

In spite of the promises made and the agreement arrived at, the Defendant's evidence is that he never received any lease agreement or rental agreement from the Plaintiff to this day, despite his numerous requests. His recollection of the meeting with the Church Board is that they told him he would not be able to get a lease, that he would have to wait – and he is still waiting.

Under cross examination, the Defendant testified that he was never told he could not get the property to lease, as all the Board members had agreed to lease same to him. In so far as rental was concerned, the Defendant agreed that the initial rent was \$25.00 per month, but stated that he had paid three (3) months rent in advance and that at no time did he ever determine what rent was to be paid. The Church told him the amount of rental to be paid.

The Defendant also testified that apart from a gentleman from the Church who went with him to get water and light for the property, no one from the Church visited the property or inspected same until 1987, by which at that time he had finished his construction.

Apart from the repairs to the wooden structure, the Defendant gave evidence that he also put up a kitchen, bathroom and bedroom at the back of the

building made of concrete, which he referred to as the extension. At the time of the visit by the two (2) Church members in 1987, the Defendant stated that construction had been completed, but he was effecting certain repairs to the wooden structure using cement he had left over. However once he got the letter of complaint, he did no further construction. The reason given by the Defendant for using cement to effect repairs was that he had been assured by Mrs. Clarke and others that the lease was coming.

In answer to the Court, the Defendant stated that he started using concrete in his construction after he paid for the house.

The Defendant's wife also gave evidence, but she had no direct dealing with the Church as all discussions were carried out by her husband. She did however tender a Valuation Report on the building dated 7th September, 1995 which was marked as Exhibit 13 and which confirmed to a large extent the nature of repairs carried out on the property. She also confirmed that no inspection of property was carried out by Church until the visit in 1987.

Stripped to its bare bones, the real dispute in this matter is whether the Defendant is entitled to compensation for the building he put on the Plaintiff's property and if so, in what amount. This is reflected in the Defendant's testimony when he said in evidence.

“...when I got Notice to Quit, I say I'm not against leaving the property but I must get pay for the house.”

The issue of the validity of the Notice to Quit, although raised in the Defence was never pursued by the Defendant at trial.

The Court then has to consider carefully the viva voce evidence given on behalf of the respective parties, the demeanour of the witnesses and examine the agreed documentation so as to determine whether it is satisfied on the balance of probabilities to make an Order either in favour of the Plaintiff or the Defendant, as both parties have sought relief by way of Claim and Counterclaim. It is important also to bear in mind that this is a Court of pleading and the evidence led by the respective parties must be looked at within the context of those pleadings.

Having examined the evidence in this matter and after perusing the agreed documentation which form the Exhibits herein, I am of the view that the evidence given on behalf of the Plaintiff is more credible and I accept whenever there is a conflict, the testimony of Mrs. Clarke over that of the Defendant. The Defendant's evidence not only contradicted that of the Plaintiff which is to be expected, but was also plagued with inconsistencies and was not supportive of the pleadings filed.

On the evidence presented in this matter, I find that there was an oral tenancy agreement between the parties made in or about September 1980 for the Plaintiff to rent to the Defendant the premises at 23 King Street, Montego Bay in the parish of St. James initially for the sum of \$25.00 per month.

There is no evidence of any agreement for the lease of the property for a forty (40) year period as alleged by the Defendant, despite his initial testimony in that regard. His own letter of July 24, 1979 tendered as Exhibit 1 contradicts this assertion. In that letter he was asking for a ten (10) year lease and not one for forty (40) years.

Exhibits 4 and 6 set out beyond a shadow of a doubt the position of the Church that a lease of the property was not possible and they confirm the terms of the tenancy arrangement. Nowhere in those documents or in any of Exhibits in this matter is there mention of any agreement for the Plaintiff to pay compensation to the Defendant for the house constructed or to be constructed on the property.

I find therefore that there was no agreement for such compensation as alleged by the Defendant. I accept the evidence of Mrs. Clarke that no permanent structure was to be erected on the Plaintiff's property and that the Defendant was only to have repaired the wooden structure purchased from the Church in order to live and carry on his business at the premises as a tenant.

Counsel for the Defendant argued that the Plaintiff, by allowing the Defendant to erect the concrete extension to the wooden structure without objection, is now estopped from saying he was not authorised to build same. She further argued that the Plaintiff was well aware of the nature and extent of the construction by the Defendant and to support this point, she relied on the Minutes

of the Elders Board meeting of 1st November, 1979 which were tendered as Exhibit 2, to which reference has already been made in this Judgment.

That evidence when looked at in its totality, does not support her contention. There is no dispute that the Defendant was put into possession of the property before the tenancy arrangement was finalised in September, 1980. The unchallenged evidence is that the Defendant paid for the wooden structure on the 1st October, 1980. In answer to the Court, the Defendant admitted that he started using cement in his construction on the property after he paid for the house, which was on October 1, 1980.

The Minutes on which Counsel for the Defendant relied are of a meeting held in November 1979, **before** the Defendant started building with concrete. I am therefore of the view that the repairs referred to in the said Minutes were repairs to the wooden structure, which would have enabled the Defendant to reside on the property and carry out his tailoring business.

What is of importance here also is the fact that despite having been told in clear and unambiguous terms by the Plaintiff at the meeting on 9th September, 1980 that the property could only be rented to him but not leased, the Defendant proceeded thereafter to construct an extension to the wooden building of a bedroom, bathroom and kitchen made out of concrete.

The evidence given on behalf of the Plaintiff is that the Church was not aware of that construction until 1987 at which time they objected, and this

evidence I accept. The letter of the 8th June, 1987 tendered as Exhibit 8 reflects this objection. Both the Defendant and his wife admitted that no one from the Church carried out any inspection of the premises before 1987.

I find that the Defendant has failed to provide any evidence or any credible evidence to show that he was induced by the Plaintiff to enter into the oral tenancy agreement in September, 1980 by means of promises held out to him that he would be granted a long term lease, as pleaded in his Defence. To the contrary, in September 1980 the Plaintiff's position could not have been clearer – no lease was possible, only a tenancy arrangement, and this was accepted by the Defendant.

What is consistent throughout is that the Defendant wanted a lease agreement and although initially contemplated by the Plaintiff, this could not have been agreed by them without the permission of the Head Office. At the time the oral tenancy agreement was arrived at in September 1980, there was no ambiguity – a lease was out of the question and only a tenancy relationship was being contemplated. The evidence of the Defendant disclosed that he clearly knew the difference between leasing and renting.

I find also that there is no merit in the Defendant's contention in his Defence that he bought the old house as a result of the promise of a long lease. The documentary evidence in this matter contradicts such an assertion. It was after the meeting in September, 1980 when the Defendant was told he could not

get a lease that he paid for the old house and not as a consequence of any alleged promise.

Apart from an Order for possession, the Plaintiff also claimed:

- b) An injunction restraining the Defendant from erecting any other building or structure on the said premises;
- c) An injunction compelling the Defendant to forthwith remove the building erected by the Defendant on the said premises;

The wooden building was purchased by the Defendant from the Plaintiff in 1980 and has been repaired by him. The concrete structure however is a permanent addition to the land and therefore forms part of the land. As such the Court is not minded to make any Order for its removal which cannot be complied with.

In light of my findings, Judgment is awarded in favour of Plaintiff on its Claim and on the Defendant's Counterclaim as follows;

- (1) The Defendant is ordered to vacate the premises at 23 King Street, Montego Bay in the parish of St. James on or before the 31st January, 2003.
- (2) Injunction is granted restraining the Defendant from erecting any other building or structure on the said premises.
- (3) Injunction is further granted compelling the Defendant to remove the wooden building from the Plaintiff's said premises on or before the 31st January, 2003.
- (4) Costs awarded to the Plaintiff to be agreed or taxed.