NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006 HCV 00955

BETWEEN	**RENFORD TOOMER**	**CLAIMANT**
AND	**HERBERT HAMILTON**	**FIRST DEFENDANT**
AND	**RONALD SULLIVAN**	**SECOND DEFENDANT**

Mrs. Angela Cousins-Robinson for the Claimant instructed by Robinson & Clarke Attorneys at Law.

Mr. Codner for the first Defendant instructed by Lightbourne & Hamilton Attorneys at Law.

Raphael Codlin for the second Defendant instructed by Raphael Codlin & Co.

Land – Tenancy Agreement – Termination of tenancy – Purchaser acquiring land whether purchaser and vendor liable for trespassing

HEARD ON: 18th, 19th, 20th, 21st & 22nd of May 2009 and 24th of July 2009

BROWN J. (Ag):

The Claimant brought an action seeking damages for breach of contract, trespass to land, trespass to goods and malicious destruction of property. He described himself as a 'champion farmer' for the parish of St. Mary and the island of Jamaica.

The first Defendant is an attorney at law who had owned the land that is the subject matter of the dispute.

The second Defendant is a foreign citizen who along with his wife purchased the land from the first Defendant.

The Claimant alleged that he had leased lands known as 'Cow Pen' for nearly thirty (30) years. He cultivated crops such as: plantains, bananas, pumpkins, cabbages, yams, peppers and cocos. He paid rent to the first Defendant calculated at Seven Hundred dollars ($700.00) per acre amounting to Two Thousand One Hundred dollars ($2,100.00) per year.

In October 2004, the first Defendant served a notice terminating his tenancy with immediate effect. It is the Claimant's contention that the first Defendant wrongfully terminated his yearly tenancy as:

(a) he was not in arrears with his rent and;

(b) The requisite notice of six (6) months was not given, which is in breach of both the Rent Restriction Act and the Agricultural Small Holdings Act.

He suffered damages as he was unable to reap his crops which were subsequently destroyed.

The first Defendant denied that the Claimant was a yearly tenant but was instead a trespasser or a tenant at will. It was his contention that the Claimant had no crops to reap and, therefore, suffered no loss. He had offered to sell or lease the land to the Claimant who rejected the offer on the premise that it was unsuitable for agricultural purposes.

The property was sold to the second Defendant and his wife. They took possession after the Claimant had quit. He contended that he was a *bona fide* purchaser for value without notice. He was the owner in fee simple and was entitled to any crops growing on the land and could not be

held liable for any damage suffered by the Claimant. The second Defendant also contended that there were no crops growing on the land.

The law is settled that for a lease (a periodic tenancy) there must be exclusive possession, rent (consideration), certainty of duration and a certain commencement date. Whenever these factors are present there is a presumption of a tenancy:

> *"To constitute a tenancy the occupier must be granted exclusive possession for a fixed or periodic term certain in consideration of a premium or periodic payment."* Per Lord Templeman in **Street v Mountford** [1985] 2 ALL ER 289, at page 293.

In this case, the Claimant said that the first Defendant had fixed the rent at Seven Hundred Dollars ($700.00) per acre to be paid yearly which he paid and was accepted. He relied on the receipts he received from the first Defendant or his servant to corroborate his case that a yearly tenancy existed.

The law is settled that if the rent is contractually assessed on a yearly basis and there is payment and acceptance of that rent then there is a presumption that the parties intended to establish a yearly tenancy. Chambre, J. in **Richardson v Langride** (1811), 4 Taunt. 128 said:

> *"If he accepts yearly rent, or rent measured by an aliquot part of a year, the courts have said that is evidence of a taking for a year."*

The first Defendant sought to rebut the presumption that the parties had ever concluded an agreement. The first Defendant acquired 'Cow Pen' from his uncle Roderick Hamilton for Five Hundred Dollars ($500.00) as exhibited by the Instrument of Conveyance dated the 7th February 1984. The land consisted of approximately three acres. The land was surveyed on the 10th February 2000 and was brought under the Registration of Titles Act on 28th October 2003.

He had purchased the property without inspecting or visiting it. He obtained information that the Claimant was occupying and renting several parcels of his land including 'Cow Pen' without his permission. As a result he dispatched a letter dated 25th May 2000 to the Claimant. It reads:

Dear Mr. Toomer,

Re Rental of Property – Louisiana, Cow Pen

On my last visit to Louisiana I met a Mr. Wellesley Walker who told me that you rented out my property at Louisiana, and that you had been collecting rent from him since 1993 amounting to Two Thousand Two Hundred dollars ($2,200.00). Mr. Walker tells me that when he spoke to you after my visit, you said you would contact me.

You must be aware it is a criminal offence to collect money under false pretences and for that I assume that you would have made urgent attempts to contact me. Please regard this as a formal notice to pay over within fourteen (14) days from the receipt of his letter, all the sums collected as rent failing which the matter will be dealt with in another way.

I am advised that you also occupy five (5) lots including the yard building, and 'Cow Pen' for which you have not been paying any rent. Please pay the rent outstanding to Mr. Antonie Whyte without further delay or steps will be taken to terminate your tenancy.

Be further advised that if you wish to continue occupying 'Cow Pen', the rental commencing this year will be One Thousand dollars ($1,000.00) per acre.

Yours truly,

Herbert A Hamilton

The first Defendant had not received any rent from the Claimant since he purchased the property in 1985 but was willing to continue the Claimant as a yearly tenant. He sought to increase the rent to Three Thousand Dollars ($3,000.00). Mr. Toomer responded to the letter by visiting the first Defendant at his office in Kingston and discussed the proposed increase in the rent.

The Claimant said he rejected the first Defendant's offer. He said in his written statement at paragraph 14-16:

> "I *told him that I could not agree to the increase unless it was across the board because there were another 20 farmers to whom various lots were leased. He told me he would consult them and get back to me.*
>
> *(15) That he eventually increased it to Seven Hundred dollars ($700.00) per year instead of the One Thousand ($1,000.00) he had intended in his letter to me.*
>
> *(16) That I began paying my rental for 'Cow Pen' and 'Louisiana' to him. I paid the rental to his office. On some occasions he signed the receipt and on other occasions his secretary signed it and I exhibit hereto receipt dated 4th September 2003 signed by Mr. Hamilton. I also exhibit receipt for 2004 signed by his secretary."*

The first Defendant denied the assertions made by the Claimant that he had fixed the rental of 'Cow Pen' at Seven Hundred Dollars ($700.00) per acre. A close examination of the receipts showed a fundamental weakness in the Claimant's case and strengthened the first Defendant's.

The receipt of the 4th September 2003 shows that the landlord expected to be paid Three Thousand Dollars ($3,000.00) in accordance with his letter of the 25th May 2000. The Claimant paid Twenty Five Hundred Dollars ($2,500.00). The receipt reads:

> *"Received from Renford Toomer, the sum $2500.00 for rental/lease for 'Cow Pen' – balance of $500.00"*

On the 30th August 2004 the Claimant paid only One Thousand Four Hundred Dollars ($1,400.00) and not Two Thousand One Hundred Dollars ($2,100.00), that is, Seven Hundred Dollars ($700.00) per acre for three (3) acres as he now sought to advance. In fact, he exhibited no receipt that displayed that rental. In addition, why would the first Defendant await four (4) years to advise him of his decision to accept Seven Hundred Dollars ($700.00) per acre? He was now interested in selling the land.

I am satisfied that the first Defendant's offer to continue the tenancy at a rental of One Thousand Dollars ($1,000.00) per acre was refused. He made no other offer to the Claimant. The receipts he produced and exhibited showed that he never paid the rent as demanded but continued to occupy the land. He paid rent at a rate that he determined. It was, however, clear that the first Defendant expected to be paid Three Thousand Dollars ($3,000.00) when he collected Two Thousand Five Hundred Dollars ($2,500.00) balance due, Five Hundred Dollars ($500.00).

The conduct of the Claimant showed that there was no *consensus ad idem.* There was no agreement as to the rent to be paid. Rent must be certain or capable of being calculated with certainty at the date when payment becomes due. An uncertain agreement cannot be enforced.

In the circumstances, I hold that the Claimant failed to establish that he was indeed a yearly tenant.

It was submitted on behalf of the first Defendant that the Claimant was either a squatter or a tenant at will and, therefore, the notice was indeed valid. The Claimant was in occupation of the land prior to the first Defendant's acquisition. He continued in possession with his knowledge and consent. He, therefore, cannot be a squatter. The parties did not agree to the rent. He was a tenant at will.

The Claimant was aware that the first Defendant was seeking to sell the property. By letter dated the 21st October 2004, the first Defendant terminated the Claimant's tenancy, the letter reads:

"Dear Mr. Toomer,

Re Rental of Property – Louisiana, Cow Pen

You will recall our conversation (Hamilton/Toomer) when you confirmed that you were not interested in purchasing/leasing the captioned property because nothing could be grown on it.

This is to advise you that the property has now been sold and you should therefore cease to use the property for any purpose whatsoever."

A tenancy at will may be determined by the parties or if either party dies or assigns his interest. The tenant is however entitled to re-enter the land and reap the crops he has sown if the landlord determines the tenancy before they are ripe. In this case, the first Defendant advised the Claimant that he had sold the land. The Claimant was therefore entitled to reap such crops as they became ripe. He lived beside the land and said he did not exercise this right. He therefore cannot blame the first Defendant for the loss he suffered. In addition, he never sought the permission of the second Defendant to reap any crop. Six months later he was only interested in valuing the crops and suing the first Defendant.

The second Defendant claimed that he was a *bona fide* purchaser for value without notice. This is an absolute, unqualified and unanswerable defence. The burden of proof lies with him. He must establish that:

(1) He acted in good faith

(2) He was a purchaser for value

(3) He acquired some legal estate in the land

(4) He had no notice of the Claimant's interest whether actual, constructive or imputed.

James, L.J., in **Pilcher v Rawlins** (1871), L.R. Ch. App. 259, at page 268 said:

> *"I propose simply to apply myself to the case of a purchaser for valuable consideration, without notice, obtaining, upon the occasion of his purchase, and by means of his purchase deed, some legal estate, some legal right, some legal advantage; and according to my view of the established law of this court, such a purchaser's plea of a purchase for valuable consideration without notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of the court. Such a purchaser, when he has once put in that plea, may be interrogated and tested to any extent as to the valuable consideration which he has given in order to shew the bona fides or mala fides of his purchase, and also the presence or absence of notice; but when once he has gone through that ordeal, and has satisfied the terms of the plea of purchase for valuable consideration without notice, then this court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has obtained whatever it may be. In such a case the purchaser is entitled to hold that which, without breach of duty, he has had conveyed to him."*

In his witness statement, the second Defendant stated:

> *"At the time I purchased the property, Mr. Hurbert Hamilton had not indicated to me, nor did I see any evidence on the property to suggest that someone else was occupying the property ... when I purchased the property I didn't know of the existence of Mr. Toomer."*

His assertion remained unchallenged. He and his wife purchased the property for a sum of Eight Hundred and Fifty Thousand Dollars ($850,000.00). The transfer was duly noted on the Certificate of Title. There was no evidence before the court that the second Defendant knew of the Claimant's claim before they purchased. I am therefore satisfied that he has discharged this burden.

The Claimant abandoned the property before the second Defendant took possession. He made no complaint to the first Defendant about the short notice of termination and his inability to reap his crops. Neither the first nor second Defendant did any act to evict him from the land. By letter dated 22nd March 2005, Robinson, Phillips and Whitehorne, Attorneys-at-Law, advised the

second Defendant that the Claimant intended to retake possession of the property that he has rented. This clearly showed that the second Defendant took possession free of any tenancy that the Claimant may have had. He was the owner of the property and was in possession. The Claimant had no right of action for trespass to the land.

> *"The plaintiff, therefore, can have no right of action for trespass to land against the Defendant who took possession after the tenancy had been determined by Mrs. Francis"* per Adrian Clarke J, **Waite v Scott** (1928) Clarks reports 287, **Corcho and Ferguson v Campbell** (1970) 12 J.L.R. 269.

The Claimant also contended that the crops belong to him and he was not able to reap them. He claimed that he had cultivated plantains, pumpkins, cocos, bananas and sugar cane. These were destroyed in March 2005 and May 2005 by the second Defendant and/or his servants or agents.

In **Elisha Henry v Winnifred Beckford** (1975) 13 J.L.R. 51, the landlord terminated the tenancy; she entered the cultivation and thereby repossessed the land and reaped the crops. It was held that the landlord was not entitled to destroy or otherwise convert to her benefit the crop cultivation which was the exclusive property of the tenant.

Jackson, J.A. in **Kilbourne v Caymanas Estates Limited** (1962) 4 WIR 461, at page 468, said:

> *"It has long been established by authoritative judgments that a person entitled to possession of land as the respondents undoubtedly were, could eject an occupant not so entitled and take possession using no more force than is reasonably necessary for the purpose. This did not give a cause of action in a civil suit. No duty devolves on such ejector to provide storage or to adopt special or any means for the preservation of the goods of the persons ejected. It would be sufficient for him to leave the goods where they were or to put them out of his way but he is not entitled to dispose of those goods or exercise dominion over them whether permanent or temporary."*

It was the second Defendant who had a bulldozer clears the land to construct his house. The first Defendant at no time entered the land to reap or destroy any crops and therefore he cannot be held liable for any damage to the cultivation. The second Defendant was a *bona fide* purchaser for value who took the property free from the Claimant's tenancy. He also cannot be liable for any destruction to the crops.

It was in March 2005 that the Claimant and the second Defendant met for the first time at the former's house. The second Defendant told the Claimant that he had purchased the land and was planning to build on it and was told by the Claimant that he was planning to sue the first Defendant. The second Defendant then enquired as to what the Claimant would have him do in the circumstances. He replied that "*I should go ahead and do what I have to do.*" On the other hand the Claimant said *"the second Defendant told me that he heard I was going to have them valued so he would not destroy them until I had them valued."* He also said:

> *"Mr. Sullivan told me that I was wasting my time and money going to a lawyer because the property was his and he bought it with everything on it and if I want to claim anything I must claim it from the person who sold it to him. That he was going to put up his house and he is not going to wait to suit me."*

The Claimant at this time had abandoned the land and his cultivation. He was no longer a tenant and was not entitled to return to the land without the second Defendant's permission. He was entitled to reap any crops that were ready to be reaped at the time he gave up possession. He had failed to take the opportunity to do so and now cannot complain about the second Defendant's action. In **Corcho and Ferguson v Campbell** (1970) 12 J.L.R. 269, it was held that the purchasers had knowledge of the Plaintiff's right to the undercrops before they purchased the land. The Defendant, having cut those bananas and sold them, was liable for trespass to goods. In the instant case, the second Defendant was an innocent purchaser for value without any

knowledge that the Claimant had been a tenant and had cultivated the land cannot be liable for trespass to goods.

The Defendants on the other hand claimed that the Claimant had no crops on the land. The second Defendant said he saw plantains growing wild. He had a bulldozer clear the land to construct a house.

The first Defendant said he offered to sell or lease the land to the Claimant but he refused, saying: *'Nothing could grow on Cow Pen'.* The Claimant, however, said he offered him One Million Dollars. Interestingly, the land was sold for Eight Hundred and Fifty Thousand Dollars ($850,000.00) to the second Defendant. This certainly defeated the Claimant's contention that the first Defendant's selling price included the value of his cultivation. It however strengthened the first Defendant's case that the Claimant told him no crops could grow on the land.

The Claimant maintained that his cultivation could be seen from the road. He was supported by two residents in the area that they observed his crops. They have not, however, gone on the land.

He had a valuator estimate the damage done to his cultivation on the 10th March and 10th May 2005 respectively. He estimated the damage to be Three Hundred and Eighty Seven Thousand One Hundred and Fifty Dollars ($387,150.00) and Five Hundred and Fifty Three Thousand Five Hundred and Seventy Dollars ($553,570.00) respectively. The valuator said in March he was shown two distinct and separate parcels that had crops destroyed. He valued both which were included in his report. The evidence before the court was in respect of 'Cow Pen' that was destroyed by the second Defendant's servant. Thus, the valuation done on the 10th March 2005

included another parcel that was not the subject of this suit. Secondly, the letter from Robinson, Phillips and Whitehorne dated the 22nd March 2005 stated:

> *"We are instructed that on Monday the 15th day of March 2005 your employee Mr. Stanford Ellis, trespassed in and upon our client's property and commenced chopping down his plantains and other crops."*

The valuator, however, said the valuation exercise was carried out on the 10th March 2005. No explanation was given for this material contradiction. In any event the Claimant did not plead this in his statement claim. This certainly cast a doubt on the damage claimed by the Claimant.

In this case, neither the Rent Restriction Act nor the Agricultural Small Holdings Act was applicable. The land was being used for agricultural purposes. It was not building land as defined under the Rent Restriction Act. It was not in writing as required by the Agricultural Small Holdings Act.

Conclusion

The Claimant occupied the land as a tenant at will due to his failure to agree the rent. His tenancy was terminated when the landlord sold the land and assigned his interest to the second Defendant. At that time he ceased to be a tenant and had failed to take a reasonable opportunity of reaping his crops. The Claimant voluntarily abandoned the land before the second Defendant took possession. He was, therefore, not entitled to succeed against either Defendant on his claim. His claim is therefore dismissed

Judgment to be entered for the Defendants with costs to be agreed or taxed.