

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0486 (formerly GDAHCV2019/0411)

BETWEEN:

[1] HERON BELFON

[2] SHARI BELFON

Claimants

and

JEFFREY REDHEAD

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Pauline Hannibal for the Claimants

Ms. Sandina Date for the Defendant

2023: April 25

RULING

[1] **ACTIE J.:** The claimants in a claim form and statement of claim filed on 6th September 2019 claim against the defendant, inter alia: general damages for breach of the covenant for quiet enjoyment, trespass and pain and suffering due to assault and battery, exemplary damages, special damages, interest; such further or other relief; and costs.

[2] The claimants are siblings. They assert that on 20th December 2018, the defendant through his agent Roland Forsyth entered into a written tenancy agreement with the claimants to rent a two-bedroom apartment, situate at Grand Anse, St. George (hereafter referred to as "the rented premises"). The tenancy was for the period of 1st January 2019 to 31st December 2019.

- [3] On or about 7th April 2019, the claimants aver that the defendant through his agent Kaville Sylvester presented the claimants with a new lease providing for payment of a monthly rent of EC\$900.00 from January 2019 to December 2019.
- [4] The claimants contend that it was an implied term of the tenancy agreement that the claimants would have peaceful and quiet enjoyment of the rented premises during the tenancy. It was also an agreed term in the contract that the landlord gives twenty-four hours' notice of intention to inspect the rented premises.
- [5] During the month of June 2019, the claimants received a notice dated 10th June 2019 on behalf of the defendant that the rented premises were being sold and that they should vacate by 9th July 2019.
- [6] The claimants contend that on 28th June 2019, the defendant and his servants or agents, without the prior knowledge or consent of the claimants walked into the rented premises and demanded to have a key for the rented premises from the first claimant. The first claimant asserts that when she informed the defendant that the claimants had only one key and could not give the defendant, the defendant and his servants or agents assaulted the first claimant by physically pushing past the first claimant and entering the premises. The first claimant contends that the pushing by the defendant caused bruising and pain to the first claimant's arm and shoulder.
- [7] The claimants contend that the defendant and his servants or agents committed trespass by proceeding into every room of the rented premises searching for the key. The first claimant avers that the defendant's agent Patricia Redhead pointed her fingers in the first claimant's face in a threatening manner on departing the premises.
- [8] The claimants also state that on 1st July 2019, the defendant through his servants or agents had a substance called "jeyes fluid" poured around the rented premises, and the pungent odour was unbearable for the claimants. The defendant threatened the first claimant to return the key the next morning, or he would have the doors of the rented premises removed. The first claimant asserts that due to

the threats and fear of the doors being removed, the claimants did not sleep, and were forced to give the key to the defendant on the following morning.

- [9] The claimants contend that they were forced out of the rented premises due to harassment, assault, trespass and fear instilled by the defendant and his agents and moved to other more expensive premises on 1st July 2019. The claimants had to pay rent of \$1,800.00 in the new premises and the defendant failed or refused to return the claimants' security deposit.

Defendant's case

- [10] The defendant states that at the time of the first lease Roland Forsyth was no longer his agent and denies appointing Kaville Sylvester (his daughter) as his agent for the execution of the second lease between the parties.
- [11] The defendant states that on 27th June 2019, he and his wife Patricia Redhead visited the rented premises for the purpose of introducing themselves as the owners of the property and to inquire whether they had received the notice to vacate the premises. The defendant contends that on 28th June 2018, only he and his wife visited the rented premises to inform the occupants that their real estate agent would be visiting the next day in order to carry out an inspection/valuation of the property.
- [12] The defendant states that he enquired of the claimants of a spare key, and the claimants advised the defendant to collect the key that they had in order to obtain a copy. The defendant denies assaulting the first claimant, the allegation of trespass, and the actions complained of his wife Patricia Redhead.
- [13] The defendant states that due to an infestation of ants, centipedes and millipedes, he was forced to use "jeyes fluid" as an insecticide around the rented premises. The defendant denies being indebted to the claimants, and states that the deposit of \$900.00 will be made available to the claimants upon return of the apartment key.

Legal Analysis

Whether the claimants were entitled to the covenant for quiet enjoyment

- [14] The covenant for quiet enjoyment is defined in **Halsbury's Laws of England**¹ as follows:

"It has long been established that, if a landlord demises property to a tenant and does not enter into express covenants for title or for quiet enjoyment, certain promises are implied by him by the use of the word 'demise', namely that he is entitled to grant some term in the demised premises and that the tenant is to have quiet enjoyment of the premises. Such promises are also implied by the use of equivalent words of letting.

In a formal lease, and in an oral letting or an agreement for a lease which operates as a present rather than a future demise, there is implied one single covenant for quiet enjoyment, under which the tenant is entitled to be put into possession of the premises which are leased to him at the outset of his tenancy, and to remain quietly in possession of them throughout the term of the tenancy."

- [15] The defendant denies the claimants' claim of breach of the covenant for quiet enjoyment. The defendant further argues that Roland Forsyth and Kaville Sylvester were not his agents when they executed the leases dated 20th December 2018 and 7th April 2019 respectively.

- [16] The court rejects the defendant's evidence that Roland Forsyth and Kaville Sylvester were not his agents. The tenancy agreement signed by Kaville Sylvester was stated to be made between the defendant, Patricia Redhead and the claimants, and was executed by Kaville Sylvester for the defendant and Patricia Redhead. The tenancy agreement also embodied terms which were introduced and admitted by the defendant, specifically the increase in rent and security deposit to the sum of \$900.00 each.

- [17] **Halsbury's Laws of England** states that a third party dealing in good faith with an agent who acts within the apparent scope of his authority and purports to act as an agent is not prejudiced by the fact that the agent exceeds his authority

¹ Vol 62 5th Edn para 441

provided that the third party did not have notice or ought to have notice of such excess of authority. The contract made by the agent within the scope of his authority on behalf of the principal may be enforced by or against the principal where the principal's name or existence was disclosed to the third party at the time the contract was made.

- [18] On the evidence, the court finds that Kaville Sylvester acted as agent for the defendant in the execution of the lease to the claimants, thereby binding the defendant to the observation of the implied and expressed covenant for quiet enjoyment, and consequently entitling the claimants to same.

Whether the covenant for quiet enjoyment was breached

- [19] An implied covenant for quiet enjoyment is not an absolute covenant protecting a tenant against eviction or interference by anybody but is a qualified covenant protecting the tenant against interference with the tenant's quiet and peaceful possession and enjoyment of the premises by the landlord, or persons claiming through or under the landlord².

- [20] In **Levi Ashton v Kenute Leacock**³ the following was stated by Mitchell J:

"It should hardly be necessary to observe that it is not only in England that a man's home is his castle. In St Vincent and the Grenadines, too, a man is entitled to the full protection of the law when he is peacefully occupying his home. It matters not whether that home is the most luxurious mansion or the simplest of chattel houses. Nor does it matter in law whether the home is held in fee simple or is merely rented premises. No landlord is permitted to visit the premises he has rented out and threaten the tenant with forcible eviction. This is so even if the tenant is holding over or is in breach of some covenant in the lease or tenancy agreement."

- [21] The claimants argue that by the defendant walking into the rented premises without their consent, searching through their belongings, allowing the substance "jeyes fluid" to be poured around the rented premises, and appointing Ferron

² Kenny v Preen [1963] 1 QB 499

³ Suit No. 140 of 1999

Francis to cut the water pipes supplying the rented premises, breached the covenant for quiet enjoyment.

[22] The claimants further argue that the notice to quit did not give the defendant the right to re-enter the rented premises without first giving the agreed twenty-four hours' notice and that they were harassed by the defendant by his threats to remove the doors to the rented premises, forcing them to relocate.

[23] It is the defendant and Patricia Redhead evidence that they arrived in Grenada and the same evening proceeded to the police station to collect spare keys to the apartment which were to have been left there by their agent. The keys were not at the police station, and they accordingly went to the claimants premises to obtain keys. The defendant and his wife in their witness statements both state on arrival on the rented premises were shocked by the pile up of rubbish and infestation of rodents. The defendant stated that his wife knocked on the door and after a while, Sharon Belfon opened the door. Both the defendant and his wife state that upon opening the door the claimant displayed an aggressive, hostile and unwelcoming attitude which was uncharacteristic of the personality she displayed in phone conversations.

[24] The court having heard the evidence is more inclined to believe the claimants evidence that the defendant and his wife made an unauthorised visit to the rented premises banging on her door. The court noted that the defendant at the trial was also quite evasive in his responses in cross examination. When asked about the conduct of his wife and his agent, Ferron Francis during the incident, he responded that he can only speak about himself and not his wife or Mr. Francis. The court notes that Mr. Ferron Francis was not called as a witness with no reasons given by the defendant.

[25] Patricia Redhead in her witness summary states "I advised my husband to insist that she gives him the key to copy. I reminded him that we had travelled over 5000 miles to Grenada at great expense to us and we had limited time. My husband is one of the most gentle and humble souls anyone can come across" .

- [26] At paragraph 17 , Patricia Redhead states “ My husband and I had a heated argument in the car after he had spoken to Ms Belfond. I was very upset by the way he just allowed her to roughshod over him and just refused to allow him to copy the key.” She also conceded spreading “jeyes liquid” on the property due to the infestation of rats and centipedes.
- [27] The court having heard the evidence is more inclined to accept the claimants’ version of facts. The court observed the belligerent demeanour of Mrs. Patricia Redhead and her insistence that the defendant had to obtain the key on the said night. The court accepts the claimants filed transcript of the phone recordings of the heated arguments and threats of Mr. & Mrs Redhead outside the rented premises. The defendant did not refute the contents of the recordings but merely states that it was a recording of private discussions which the claimant did not have a right or permission to record.
- [28] The court accepts that the defendant, his wife and agent acted with hostility towards the claimants with threats to break down the door to obtain access to the premises and spreading offensive smelling liquids around the premises. The defendant and his agents action were in direct breach of the tenancy agreement and covenant for quiet enjoyment.

Whether the defendant and/or his servants or agents committed trespass, assault and battery against the first claimant

- [29] **Halsbury's Laws of England**⁴ sets out the principles concerning trespass as follows:

"A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another."

⁴ (2021) Vol 97A para 161

[30] In addition, **Halsbury's Laws of England**⁵ defines assault and battery as follows:

“Assault is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting an intention to assault will give rise to liability only if there is also a present ability (or perhaps a perceived ability) to carry the threat into execution. An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force.”⁶

And

“A battery is an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent.”⁷

[31] It is the inclination of the court that, having heard and observed the parties, to accept the claimants' version of the facts. The acts performed by the defendant and/or his servants or agents putting the first claimant in imminent fear of an assault and apply force in the unauthorised entry constitutes a battery.

Whether the defendant is liable to the claimants in damages as a result of termination of the tenancy

[32] The claimants argue that they were constrained to rent more expensive premises due to the actions of the defendant and claim for the excess rent they paid up to the end of December 2019. They also claim for damages for pain and suffering, exemplary damages and special damages.

[33] The defendant challenges the sum claimed as special damages on the ground that the claimants failed to plead the said sum in the claim form. It is trite law that special damages must be pleaded, particularized and proved. The claimants in the statement of claim particularized special damage in the sum of \$5,400.00 representing the increased rent for new premises as a result of the defendant's sudden, aggressive attack. The court accepts the defendant's objection that the claimants failed to prove the full amount claimed. The claimants presented a signed lease agreement for the monthly rent of \$1,800.00 for a period of 6 months

⁵ (2021) Vol 97A

⁶ (2021) Vol 97A para 127

⁷ (2021) Vol 97A para 128

but failed to provide receipts to substantiate the actual payments. The claimants were under an obligation to file the receipts in support of the rent paid and the period paid. The court takes notice of the terms of the signed tenancy agreement but is of the view that the claimants should have substantiated the amount claimed by providing the receipts. The court in the circumstances will award a nominal sum of \$3,000.00 which is not out of scale, in keeping with the decision in **Greer v Alstons Engineering Sales & Services Ltd**⁸.

[34] The defendant submits that the first claimant's claim for damages for pain and suffering from assault and battery causing injury to her arm and shoulder is frivolous and unfounded as no medical report was provided to substantiate the claim.

[35] The court agrees with the defendant with respect to the particulars of pain and suffering not being provided however the court is unaware of same being necessary for the award of damages for a battery. Furthermore, though no medical report was submitted on behalf of the first claimant, it was held in **Attorney General of Grenada v Muhammed Ehsan**⁹ that:

"it is well-established that the judge, in seeking to award compensation, must pay particular regard to the evidence that was adduced. Where the evidence is scant or non-existent to support an award of compensation or damages, the judge is usually able to make a nominal award so as to vindicate the person's right."

[36] The court in the circumstances, having found in favour of claimants on the claim for assault and battery, awards a nominal sum of \$500.00.

Exemplary Damages

[37] The claimants seeks exemplary damages. Counsel for the defendant further seeks to rely on the case of **Branchett v Beaney & Ors**¹⁰ for the position that

⁸ (2003) 63 WIR 388

⁹ GDAHCVAP2019/0020

¹⁰ [1992] 3 All ER 910

exemplary damages are not awarded in cases concerning breaches of the covenant for quiet enjoyment. This court disagrees.

[38] In **Branchett v Beaney & Ors**¹¹ it was held that since the object of a covenant for quiet enjoyment in a lease or tenancy agreement cannot be described as being to provide peace of mind or freedom from distress, damages for injured feelings and mental distress are not recoverable for breach of a covenant for quiet enjoyment.

[39] The claimants in this matter are not seeking damages for injured feelings and mental distress, as was the claimant in **Branchett v Beaney & Ors**¹², but exemplary damages. Further in **Levi Ashton v Kenute Leacock**¹³, the claimant who was not in breach of any covenant in the tenancy agreement neither was in arrears of rent or in breach of any covenant of the tenancy was ordered by the defendant for the claimant, his girlfriend and young baby to leave the premises immediately failing which he said he would “break down the place” and force them out. Mitchell J awarded the plaintiff the sum of \$5,000.00 as a suitable token that the Defendant should pay to the claimant by way of compensation for the trespass, and exemplary damages of \$5,000.00.

[40] The court notes that the defendant had issued a notice to quit on the claimants to vacate the property by July 9th unlike the **Leacock** case. However, the defendant and his agents’ invasion of the premises and threat of breaking down the door was outrageous in the circumstances. The defendant’s main intention was to obtain access to facilitate inspection by realtors for the sale of the property. Exemplary damages extend to cases in which the defendant is seeking to gain, at the expense of the claimant some object¹⁴. Accordingly, the court awards a nominal sum of \$500.00 for aggravated damages.

¹¹ [1992] 3 All ER 910

¹² [1992] 3 All ER 910

¹³ Suit No. 140 of 1999

¹⁴ *Rookes v Barnard*. 1964 1 All ER 367

ORDER

[41] For the foregoing reasons, it is accordingly ordered and directed as follows:

- (1) Judgment is entered in favour of the claimants.
- (2) The defendant shall immediately refund the claimants the security deposit of \$900.00 with interest at the rate of 3% per annum from June 2019 until judgment and at the rate of 6% per annum until payment in full.
- (3) The defendant shall pay the claimants:
 - (i) Special damages in the sum of \$3,000.00 for increased rent with interest at the rate of 6% from the date of judgment until payment in full.
 - (ii) General damages for breach of quiet enjoyment in the sum of \$ 5,000 and trespass in the sum of \$ 5000.00.
 - (iii) Exemplary damages in the nominal sum of \$500.00.
 - (iv) A nominal award in the sum of \$500.00 for assault and battery.
- (4) Prescribed Costs on the total sum in accordance pursuant to Part 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar