

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2015/0422

BETWEEN

LORNA AINSLEY
ATTORNEY FOR MARY ANN MENIES BURLEIGH
CLAIMANT

AND

GILBERT GOMES
DEFENDANT

Appearances:

Ms. Asheen Joseph for the Claimant
Mr. Hugh Marshall for the Defendant

2023: January 31st
February 28th

JUDGMENT

- [1] **FORRESTER, J.: (Ag.)** The Claimant commenced proceedings alleging that she is in a landlord and tenant relationship with the Defendant. The Defendant is alleged to have failed to pay rent as agreed and to give up possession of the chattel house. In light of the same, the Claimant claims for the following relief:
- (a) Recovery of possession of the chattel house
 - (b) Arrears of rent
 - (c) Mesne Profit
 - (d) Fees for Personal service
 - (e) Court fees
 - (f) Fixed costs on issue
 - (g) Prescribed costs
 - (h) Interest pursuant to Section 27 of the Judgment Act CAP 143
- [2] The Defendant disputes the claim. In his Defence, he pleads that he has never been a tenant of the Claimant, has no contract to rent any premises from the Claimant and owes no rent to the Claimant though he did pay rent on behalf of a third party in relation to the premises but has never adopted

the tenancy and never occupied the premises. Further, the Defendant pleads that he does not occupy any property belonging to or under the control of the Claimant. The references to premises in the pleadings are meant to be a chattel house.

- [3] In her Reply, the Claimant pleads that the chattel house was rented to Luz Fernandez Tejada who paid rent to the Claimant on behalf of herself and a woman known to the Claimant as Mercedes. The Claimant avers that the Defendant became the co-tenant with Ms. Tejada on 10th May 2011 when he paid rent along with Ms. Tejada. Ms. Tejada moved out of the Chattel house on 30th August 2012 and handed over her keys to the chambers of Lockhart, Mendes & Co the latter being the Claimant's agents. The Claimant pleads that the Defendant paid the full rent for the chattel house as shown in receipts and that the Defendant allowed Mercedes to continue her occupation. It was also pleaded that the Defendant neither returned the key for the chattel house nor delivered vacant possession of the same to the Claimant. Though there is no written agreement, the Claimant contends that there was an oral agreement and that the foregoing confirms that there was a tenancy agreement between the Claimant and the Defendant.
- [4] At trial, the Claimant called Ms. Laveda Samuel, Mrs. Cecilia Reifer and Mrs. Georgice Mendes-Blackman as witnesses. The sole witness for the Defendant was himself.

Summary of Evidence

Claimant's Evidence

- [5] Mrs. Mendes-Blackman's evidence, as contained in her witness statement, confirms that the firm of Lockhart, Mendes & Co collected rent on behalf of the Claimant from Ms. Tejada. She stated that in 2011, Mr. Gomes asked for his name to be put on the receipt evidencing payment of rent as he was paying half of the rent. She states that Ms. Tejada turned over her key to the premises on 30th August 2012 and that Mr. Gomes came to her office to explain that he would take over the premises and be fully responsible for the rent which proposal she accepted on behalf of the Claimant and that Mr. Gomes continues to be in possession of the premises. Mrs. Mendes-Blackman at trial, amplified her evidence and, indicated that Ms. Tejada shared the rental payment with her cousin Mercedes. Ms. Tejada paid the rent and at some time Mr. Gomes came in and paid the rent and insisted that his name be put on the receipt and asked to pay the entire rent as tenant of the premises as he directly spoke to her. In cross-examination, when asked if Mr. Gomes entered into an agreement with Mrs. Mendes-Blackman, Mrs. Mendes-Blackman clarified that he asked for his name to be put on the receipts as he was paying half of the rent. Further, that it was in August 2012 that Mr. Gomes became the full tenant. Also, when asked if she had any discussions with Mr. Gomes about arrears of rent, Mrs. Mendes-Blackman indicated she did not have that discussion and maintained that there is no document evidencing the tenancy agreement. However, she stated there were receipts issued to Mr. Gomes which showed that he was a tenant and that she spoke to him about paying the rent and took him at his word – this was despite her earlier response that she did not discuss with him paying the rent or at least arrears in rent. Further, Mrs. Mendes-Blackman states that she had no instructions from her client to send Mr. Gomes a demand letter about the rent but, there was a notice to quit issued to Mr. Gomes. When asked by the Court whether she had attended the premises to confirm that Mr. Gomes was in the rental house, Mrs. Mendes-Blackman confirmed that she has not attended the premises but drew inferences to the effect that he was in possession of the house.

- [6] The evidence of Mrs. Cecilia Reifer, as stated in her witness statement, is that she works at Lockhart, Mendes & Co and that her duties include collecting monies and issuing receipts with respect to monies collected. She confirms that she collected rent from Ms. Tejada and issued receipts for the payments. In or about May 2011, Mrs. Reifer states she was instructed to prepare all receipts in the name of Mr. Gomes and Ms. Tejada. She states that Ms. Tejada turned over her key for the premises on 30th August 2012 and subsequent to that, Mr. Gomes came in to the Office, paid two months rent and continued to pay rent thereafter and received receipts issued in his name alone. Further, Mrs. Reifer stated that Mr. Gomes paid no rent after 30th August 2013. In cross-examination, when asked if what she has in her witness statement is information relayed to her by another, Mrs. Reifer answered yes.
- [7] The evidence of Ms. Laveda Samuel, as stated in her witness statement, is that she knows Mr. Gomes to be renting a wooden house from the Claimant, that she saw him at the house daily and that her father Eric Samuel always insisted that there should be parking space left for Mr. Gomes to park. In cross-examination, when Ms. Samuel was asked if she was involved in the rental arrangement with respect to Mr. Gomes, she responded that she was not. Additionally, she confirmed that she knew a lady named Mercedes lived in the small wooden structure and that Mr. Gomes was a regular visitor to that structure practically daily.

Defendant's Evidence

- [8] The evidence of Mr. Gomes, as averred in his witness statement, is that he had a friend who lived in a house in the yard and she paid rent to Lockhart, Mendes & Co. For a long time, he paid his friend's rent and then he was invited to purchase the Claimant's house in the yard as the Claimant was migrating. Between January and February of 2014, he purchased a house in the yard for \$50,000.00 from the Claimant. The Claimant had a nephew, Eric Samuel, who lived in the house that Mr. Gomes purchased on the land but in another unit. After he purchased the house, his relationship with Mr. Samuel deteriorated as Mr. Samuel refused to vacate the house. Thereafter, he received notices to quit and deliver up possession. In cross examination, Mr. Gomes confirmed that his friend was Mercedes and she had family there that she lived with who was called Tana but he did not know Tana's proper name. Mercedes and Tana lived in the house but it was divided in two and both lived individually. He confirmed that he helped Mercedes pay rent. He confirmed that he spoke with Mrs. Blackman about his name being on the receipt, but denied that he went to that house on a daily basis after that and or that there was a space in the yard left for him to park. He clarified that Mrs. Blackman had said there was an arrears saying that he did not pay and that was when he ordered the payment should be in his name and that he told Mrs. Blackman that he wants a receipt with his name on it so he can have a record. Even when Mercedes went to make payment his name was on it. Mr. Gomes stated that they were saying that he did not pay and a few receipts caused her to reduce the bill.
- [9] Under cross-examination, it was made clear by Mr. Gomes that the house he purchased was not the house he was paying rent on for Mercedes. The house he purchased had four bedrooms and a bathroom. He said the yard had a long pink house, a small house on the left which is where Mercedes and Tana lived and a little wooden place that seemed to be a store room. He indicated that Mr. Samuel moved into the bathroom of the house he purchased. However, he did not use the bathroom in the rental unit as the bathroom had no water since Mr. Samuel had cut it off so he never used it.

[10] Further in cross-examination, Mr. Gomes stated that after Tana left, Mrs. Blackman told him he has to pay both rents though the lady was only using one room. The lady was Mercedes. After Mrs. Blackman told him that, he paid the rent at times and Mercedes at other times.

Law

[11] The primary legal issues in this claim are the claim for possession of the chattel house and the claim for the existence of a landlord and tenant relationship which will determine if the Claimant's claims for arrears of rent and mesne profit are viable.

[12] According to Halsbury's Laws of England:

"A relationship of landlord and tenant arises when one person ('the landlord') grants to another ('the tenant') a right to the exclusive possession of land for a term less than that which the landlord has in the land. The grant must be either for a period which is subject to a definite limit originally (as in the case of a lease for a term of years certain) or for a period which, although originally indefinite, may be made subject to a definite limit by either party as of right by that party giving appropriate notice to the other (for example, a tenancy from year to year, which allows each party to determine the tenancy at the end of any year). It is not necessary for the full establishment of the relationship of landlord and tenant that the tenant should have entered on the land."¹

"A contract of tenancy may be created either by conduct, or by writing or orally by any words which express the intention of entering into legal relations and which grant exclusive possession for a fixed or periodic term."²

"If the parties do not intend to enter into legal relations at all, no tenancy can be created, even though the occupier has exclusive occupation for a term and pays a rent or other consideration."³

"Save in exceptional circumstances, an agreement creates the relationship of landlord and tenant, and not that of licensor and licensee, where the following are present:

- (1) there is the grant of exclusive possession;
- (2) the grant is for a fixed or periodic term;

¹ Halsbury's Laws of England > Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957) > 1. Relationship of Landlord and Tenant > (1) Creation of Tenancy > 1. General principles that govern the relationship of landlord and tenant

² Halsbury's Laws of England > Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957) > 1. Relationship of Landlord and Tenant > (1) Creation of Tenancy > 2. Tenancy by contract

³ Halsbury's Laws of England > Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957) > 1. Relationship of Landlord and Tenant > (2) Leases Distinguished from Licences to Occupy Land > 10. Circumstances which negative the presumption of a tenancy

(3) there is consideration of a premium or periodical payments.”⁴

Discussion and Findings

[13] I have given careful consideration to the evidence adduced in this matter and to the submissions of both Learned Counsel.

[14] The Claimant has to establish her claim on a balance of probabilities, and there are many shortfalls in the Claimant’s evidence based on the legal threshold she has to meet to succeed on her Claim and obtain the relief that she seeks.

[15] In relation to the Claimant’s claim for possession, the evidence led by the Claimant gives no conclusive indication that the Defendant is in possession of a chattel house owned by the Claimant and, the Defendant disputes that he is in possession of any such chattel house of the Claimant. The evidence before this Court only confirms that in a yard area, which yard is actually land owned by the Crown, there are three structures. The Claimant sold one structure, the big house in the yard as seen in the pictures provided in the evidence, to the Defendant who confirms that he purchased that structure and now owns the same. There is evidence that Ms Tejada (as known to the Claimant’s witnesses) or Tana (as known to the Defendant) and a lady named Mercedes, who lived in a smaller structure/chattel house owned by the Claimant in the said yard. Ms. Tejada/Tana and Mercedes were tenants of the Claimant. Ms. Tejada/Tana moved out in August 2012 and handed over her keys to Lockhart, Mendes & Co. There is no evidence of when Mercedes moved out, if she did and or what has happened to her since 2012. Further, there is no evidence that the Defendant moved in and or now occupies that smaller structure/chattel house where Ms. Tejada/Tana or Mercedes lived though, the status of Mercedes is unknown from the evidence before this Court - the pleaded case of the Claimant references Mercedes as the tenant.

[16] This Court does not deem that the Defendant visiting Mercedes in the smaller structure/chattel house amounts to him being in possession of the same or even him paying rent in relation to that structure for Mercedes from time to time. This Court accepts the evidence of Mr. Gomes that he sought to have his name included on the receipt for payments because of payment discrepancies that arose so he wanted records in his name to confirm what he paid.

[17] Coupled with the above, none of the witnesses of the Claimant were able to confirm that the Defendant is now in possession of that small structure/chattel house. It is only Mrs. Blackman who asserted in cross-examination that she has drawn the inference that the Defendant is in possession of the house which, is inadequate as possession is a question of fact. Consequently, this Court finds that the Claimant has not established that the Defendant is in possession of the chattel house/smaller structure owned by the Claimant and therefore dismisses the Claimant’s claim against the Defendant for possession of the chattel house.

⁴ Halsbury’s Laws of England > Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957) > 1. Relationship of Landlord and Tenant > (2) Leases Distinguished from Licences to Occupy Land > 9. General principles for determining whether agreement creates lease or licence states

[18] With regards to the Claimant's claim for arrears of rent and or mesne profit, the Claimant must first establish that there is a landlord and tenant relationship in place in keeping with its pleaded case. The land that the chattel house forming the subject matter of this claim is situate on is crown land belonging to the State which, is not a fact in dispute. The dispute arises as to whether the Defendant became a tenant of the Claimant which the Claimant has to establish on a balance of probabilities.

[19] As noted previously, this Court accepts the Defendant's evidence that he paid rent for Mercedes at times and that the reason for him requesting his name be put on receipts arose because there were discrepancies in what he said was paid and what were the records being maintained by Claimant's agents. Consequently, to avoid such further discrepancies, he wanted his name on the receipts so that he could confirm payments, even though he was paying for a third party, Mercedes. The above does not give rise to a legal intention to create the relationship of landlord and tenant, as the Defendant clearly was not seeking to become a tenant, but was seeking to secure records of payments being made as rent for the chattel house after a discrepancy arose. The Claimant presented no evidence that the Defendant was informed that by placing his name on the receipt, that would result in him being deemed a tenant of the Claimant, or that meant he and no longer Mercedes was the Claimant's tenant. Moreover, the Claimant has presented no legal authority to support her contention that placing the Defendant's name on receipts resulted in him becoming a tenant as a matter of law. Even the Defendant's evidence that Mrs. Blackman told him after Ms. Tejada/Tana moved out that rent had to be paid for both rooms and not one, this Court accepts the Defendant's evidence that he was only helping Mercedes pay rent which rent Mercedes paid sometimes and, as far as the evidence before this Court illustrates, Mercedes was the only remaining tenant of the Claimant and what has happened in relation to her is unknown. Further, from a legal perspective, there is not even a rental period pleaded by the Claimant as being applicable to the alleged tenancy arrangement even if it was not in writing. Consequently, this Court deems that the Claimant has failed to establish that there is a landlord and tenant relationship between the Claimant and the Defendant.

[20] Having regard to the foregoing, it is hereby ordered that the Claimant's claim is dismissed in its entirety. Prescribed costs is awarded in favour of the Defendant.

[21] The following authorities were cited and provided to the Court by Counsel for the parties and considered by the Court:

By Counsel for the Claimant:

- (a) Halsbury's Laws of England 1958 Volume 23 pages 407 - 409 — Title by Estoppel
- (b) Laws of Antigua and Barbuda Revised Edition 1992, Volume 8 — Small Tenement Act, 406 Sections 2, 3, 4, 9 and 10
- (c) Laws of Antigua and Barbuda Revised Edition 1992 Volume 8 - Rent Restriction Act, 378 Section 12 (a)
- (d) Laws of Antigua and Barbuda Revised Edition 1992 Volume 8 - Registered Land Act, 374 Section 46
- (e) Eastern Caribbean Supreme Court Civil Procedure Rules 2000 — Part 8.1 (5) (b)
- (f) Eastern Caribbean Supreme Court Civil Procedure Rules 2000 — 32.

By Counsel for the Defendant:

- (a) Halsbury's Law of England > Landlord and Tenant (Volume 62 (2022), Para 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957) > Recovery of Rent and related sums > (1) Recovery of Rent etc; In General
- (b) ANUHCVAP2005/0017 George Knowles v Elaine Knowles

**Justice Dia C Forrester
High Court Judge (Ag.)**

By the Court

Registrar