

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV2018/0025

In the matter of an order for possession of
land and the payment of arrears of rent
and mesne profits

BETWEEN

OLD ROAD INVESTMENT COMPANY LIMITED

Claimant

AND

ORIEL WATTS

Defendant

APPEARANCES

Mr Jean Kelsick for the claimant.

The defendant was unrepresented

2019: OCTOBER 11
OCTOBER 15

JUDGMENT

Seeking an order to vacate land and to pay rent owing

- 1 **Morley J:** I am asked to order land vacated with structures removed, and that \$8416.66ec in unpaid rent is paid, with costs. The case turns on its simple facts, not on complications of law.
- 2 There was a trial on 11.10.19, with evidence received from Cedric Osborne being a director of the claimant Old Road, and in person from Watts¹. Watts is 58, a farmer and butcher,

¹ The parties will be referred to by their names, for ease of reading, and no disrespect is intended by not writing out the legalese of whether claimants or defendants.

hardworking but not a learned man, who entered a verbal lease in about 2003 that he would rent plot 11/04/67 from Old Road for annually \$2000ec. Most of his dealings were with Frank Edwards, now sadly deceased. Osborne fairly admitted he did not know what rent monies were unpaid, but he wanted the land back. Watts agreed in court he would vacate the land by 30.11.19, and remove livestock, plus any structures, including buildings and fencing, and that he would not return. This being agreed, the court can order by consent the land vacated in these terms.

- 3 Where argument has arisen has been on the costs and unpaid rent. Historically, what happened is that after settling on the land, over time other farmers and sandminers had damaged Watts' fencing and quiet enjoyment, so that crops were damaged, his butchery work was impaired, and livestock escaped to his loss. He had retained Counsel Warren Cassell to assist in his claims arising, who he says he paid \$8000ec rent, but who in the noughties it seems never paid it to Old Road, (the court noting Cassell was investigated for fraud at this time so that his finances may have declined). Eventually Watts was sued by Old Road for the unpaid rent and it seems in late 2016 received a court order to pay \$9808ec, and in fairness to him obediently did so. However, after paying, he then on 10.05.17 received a notice to quit the land by 30.06.17, which affronted him. He retained Counsel David Brandt, who posited Watts should have at least six months' notice. Upset at how he perceived he was being treated, Watts refused to budge, and so Old Road sought order he vacate the land in a fixed date claim form filed on 21.06.18. In response, Watts with Counsel Brandt on 22.11.18 filed a counterclaim for \$437430ec arising from damage he suffered over the years to his crops and livestock (calculating 331 goats, 187 sheep, and 600 birds) arising from the actions of other farmers and sandminers who he believed had been permitted by Old Road to behave so.
- 4 Concerning unpaid rent, Watts accepted in court he owes \$2000ec for 2018/19. Further, he explained he gave Counsel Brandt \$2000ec for 2017/18, as part of his argument rent should be withheld pending settlement of damages owing to him, but this rent money seems now irrecoverable as Brandt is currently in custody awaiting trial on unrelated matters. As to 2016/17 or earlier, he believes he paid this rent as part of his settlement of the court order in late 2016, as it is paid yearly in advance, and as mentioned Osborne does not say otherwise

as he does not know. It follows, the burden being on Old Road to prove what rent is owing, the only rent shown to be owing is \$4000ec for 2017-19, as agreed by Watts.

- 5 At this juncture, it would be right to note the court has some sympathy for Watts, as he is unrepresented, having lost Counsel Brandt to custody in June 2019. The case was fixed on 10.12.18 for trial on 28.03.19, with modest trial bundles prepared, but on 27.03.19 the counterclaim was discontinued (for want of offering any detailed evidence) and the parties set about negotiation so that the trial date was vacated. Formal notice of counterclaim discontinuance was filed on 03.04.19. Then on 05.04.19, it was said no settlement could be reached, there would have to be a trial, and Watts wished to pursue his counterclaim, which is not permitted under **rule 37.5.2 Civil Procedure Rules 2000**, which instead requires the consent of the defending party to allow the counterclaim to be resurrected, which understandably Old Road will not give; moreover, if Watts wishes to start a fresh claim, then he may first have to pay any costs on the discontinued counterclaim, per **rule 37.8.1.c supra**. On 05.04.19, the case was re-fixed for trial on 04.10.19, though delayed to 11.10.19 for Watts to find new counsel, which he reported unsatisfactorily he had failed to do on 16, 23 and 28.09.19, so when the trial came on as required he was unrepresented.
- 6 What all this means is that this case has twice been prepared for trial – for 28.03.19 and for 11.10.19, which has cost Old Road money paid to Counsel Kelsick. On the argument for vacation of the land and unpaid rent of \$8416.66, Counsel Kelsick seeks \$7500ec costs. Worse, for the discontinued counterclaim, given how costs can be calculated against the value of it, namely \$437430ec, he could claim a further \$36724.10ec, but will settle for \$5000ec.
- 7 It is clear to the court that on the evidence received, on his own case, after receiving the notice to quit on 10.05.17, Watts should have left the land by January 2018, being six months after, and being six months before the claim began on 21.06.18. It has cost Old Road money to get him to leave, and exploring it in evidence with Watts he knows this. In addition, he accepts he owes \$4000ec rent for 2017-19 which he has withheld for what is now a discontinued counterclaim.

- 8 Considering the counterclaim, I am not persuaded there was significant work required to prepare to resist it as the case papers never offered any detailed supporting evidence in Watts' cursory half-page witness statement filed on 22.03.19. As such, in my discretion, I will make no order as to costs concerning the counterclaim.
- 9 Considering the unpaid rent, I will order it is paid in the sum of \$4000ec plus interest as appropriate, within six months, with a penal notice attached. I am most unhappy Watts may not be able to recover his \$2000ec from Counsel Brandt, but can do nothing about this: the money remains owing to Old Road. I am conscious Counsel Kelsick had sought to recover more, and so I am of the view his costs as sought ought to be reduced, but not erased, as he did have to prepare twice for trial. In the circumstances, I will reduce the costs to \$5000ec, to be paid by Watts. While this means he must pay more costs than has been recovered in rent, it must be borne in mind there have been two trial listings, and the court opines there would likely have been no costly legal action had Watts simply left the land in January 2018 pursuant to the notice to quit.
- 10 As such, on the evidence received, concerning Watts, the orders of the court are:
- a. By consent, plot 11/04/67 shall be vacated by Watts by 30.11.19, as to livestock and crops, with all structures removed, including buildings and fencing, with an injunction upon him not to return to occupy it.
 - b. Watts shall pay to Old Road unpaid rent of \$4000ec, plus interest as appropriate, by 15.04.20.
 - c. He shall pay costs in the sum of \$5000ec.
 - d. He shall pay no costs on the counterclaim.
 - e. The settled order is to be supported by a penal notice.

The Hon. Mr. Justice Iain Morley QC

High Court judge

15 October 2019