

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0077

BETWEEN

ORTON KING

of Union Vale, Bequia

CLAIMANT

and

RANDY GIBBS

of Port Elizabeth, Bequia

DEFENDANT

Appearances:

Mr. Richard Williams and Ms. Dannielle France for the claimant.

Mrs. Kay Bacchus-Baptiste for the defendant.

2017: Jun. 15

Oct. 11

Oct. 19

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Orton King and Randy Gibbs are residents of Bequia, a picturesque island within the State of Saint Vincent and the Grenadines. Mr. King claimed that he rented land¹ on Bequia from

¹ Referred to in this judgment as the 'disputed land', 'disputed property', 'subject land' or 'subject property'.

one Ester Jarvis. He testified that he subsequently constructed a building on the land. He alleged further that he rented the building to Caribbean Schooner's Ltd. and that Mr. Gibbs trespassed on and forcefully took possession of the property, as a result of which the tenancy with Caribbean Schooners was terminated.

[2] Mr. King seeks damages for trespass; \$14,400.00 as rental value of the premises; possession of the property; \$100,000.00 being the value of the property; rent of \$800.00 per month until delivery of possession and an injunction restraining Mr. Gibbs from further trespass or interference with his possession.

[3] Mr. Gibbs denied all claims of loss made by Mr. King. He contended in his defence, that Ester Jarvis had no land to rent to Mr. Gibbs and that Mr. King did not construct any building as alleged. He asserted that the subject property was owned by his grandfather Meenan Jarvis who was Ester Jarvis' husband. Mr. Jarvis pre-deceased her. He claimed that Ester Jarvis enjoyed merely a life interest in the subject property and that a rental agreement between her and Mr. King would have ended on her death.

[4] Mr. Gibbs pleaded further that Meenan Jarvis devised the subject property to his eleven children by will. He alleged further that his mother Neveska Jarvis is one of the beneficiaries of Meenan Jarvis' estate. The court has found that while Randy Gibbs is not liable for trespass, he is owns a beneficial interest in the referenced building for which he is entitled to compensation from Mr. Gibbs.

ISSUE

[5] The issues are whether:

- (1) Randy Gibbs trespassed on the subject property? and
- (2) To what relief is Orton King entitled?

Preliminary Observations

[6] Mr. Gibbs filed no witness statements or summaries and he did not attend the trial. The case was originally scheduled for trial on 15th June, 2017. Notices of hearing were duly served on the parties.

Mr. Gibbs was absent. His legal practitioner on record, Mrs. Kay Bacchus-Baptiste represented orally that she was unable to contact him. She requested an adjournment to enable her to renew her efforts to make contact with her client. The trial proceeded in his absence. After the claimant testified, the case was adjourned to a date to be fixed by the registrar in the new law term, to enable Mr. Gibbs' legal practitioner to attempt to contact him. Cross-examination of Mr. King was deferred to the adjourned date.

- [7] Mr. Gibbs did not show up on the date set for resumption of the trial. An oral application by his legal practitioner for an adjournment was denied and the trial resumed in his absence. The court noted that litigants have a duty to maintain contact with their lawyers and to keep informed about the progress of proceedings. In the absence of evidence to the contrary, the court was satisfied that Mr. Gibbs had not complied with his duty to do so and under the circumstances that an adjournment would be unfair and unjust to Mr. King.

ANALYSIS

Issue 1 – Did Randy Gibbs trespass on the subject property?

- [8] Orton King was the only witness in this matter. His testimony is therefore uncontroverted. Mr. Gibbs' contentions arise solely from his defence and submissions. They are rehearsed in this decision for comparison and contrast with Mr. King's account. Justice is advanced by articulating and evaluating the defendant's case in this manner. Furthermore, to the extent that Mr. King's testimony coincides with Mr. Gibbs' allegations they are relevant and probative to a determination of the issues.
- [9] Mr. King testified that he rented a parcel of land from Ester Jarvis in or about 1982 for \$200.00 per month. He indicated that Mrs. Jarvis never gave him any receipts in respect of the rent payments. However, he said that he received receipts from the lady whom Mrs. Jarvis 'left to collect the rent.' He produced no such receipts and when asked why not, he responded that this was the first time he was being asked for receipts.

- [10] He claimed that he constructed a concrete and wooden building on the subject property with Mrs. Jarvis' permission. He operated a restaurant from those premises known as King Fisher Café, which he later rented to Caribbean Schooners in or about 2006/2007 at a rent of \$800.00 per month. He produced no lease or other documentary proof of his relationship with Caribbean Schooners.
- [11] Mr. King stated that Randy Gibbs first contacted him in June or July 2014 by telephone, claiming to be Randy Jarvis. He explained that Randy Gibbs and Randy Jarvis is one and the same person. According to him, Mr. Gibbs told him that he owned the shop and asked that he hand over the keys, to which he responded that he never heard of him before, was not in possession of keys belonging to anyone and that the building belonged to him.
- [12] The following day Mr. Gibbs met him and told him that he was the person who called. He (Mr. King) recalled telling Mr. Gibbs that he did not know him and he cannot give the keys to him. He denied receiving any letter written on Mr. Gibbs' or any beneficiary's behalf.
- [13] Under cross-examination, he asserted that he was dispossessed in September 2014. Mr. King testified that Mr. Gibbs went to the subject premises on or about 25th September, 2014, placed a padlock on the door, thereby locking Caribbean Schooners out. He recollected that he (Mr. King) gained access to the building on 27th September, 2014 with the assistance of his nephew who cut off the padlock with a grinder. He explained that despite his efforts to salvage the lease agreement with Caribbean Schooners, they opted to terminate that arrangement.
- [14] Mr. King testified that Mr. Gibbs again trespassed on the subject premises between late December 2014 and early January 2015 by removing the door from the building, replacing it with one of his, installing burglar bars and locks on the door and completely blocking his (Mr. King's) access to the premises. He said that Mr. Gibbs carried out further works on the property and on 7th September, 2015, commenced operating a restaurant from the building.
- [15] Mr. King alleged that he has suffered loss and damage including the actual value of the building and its rental value of \$800.00 per month from September 2014 to present. Under cross-examination

he acknowledged that he was aware that Meenan Jarvis owned the subject lands and that he left a will in which Refus Jarvis is named as executor. He acknowledged too that Ester Jarvis enjoyed a life interest in the subject property as outlined in the will. He stated that she is deceased but could not say when she passed away. He accepted that based on Meenan Jarvis' will, Ester Jarvis had only a life interest in the disputed property.

[16] Mr. King stated that when he leased the property from Ester Jarvis, her husband Meenan Jarvis was already dead. He indicated that he had no documentary evidence to show that he leased the subject property from Ester Jarvis. He did not produce a written lease or other documentation supporting his assertion that he held a tenancy of the subject property. He did not any other records to substantiate that claim.

[17] Mr. Gibbs pleaded - 'The beneficiaries of the estate gave the claimant notice to quit many times'. He denied that his entry on the subject property and eviction of Mr. King was unlawful. He pleaded further: 'the defendant is the son of one of the beneficiaries Neveska Jarvis and has the administrator's Refus Jarvis consent.' He did not indicate expressly what he had consent to do. From the pleadings in their totality it is reasonable to conclude that he was referring to Mr. King's contentions that he acted unlawfully by placing padlock on the building, installing a steel door thereby barring Mr. King's access and forcefully taking possession.

[18] Mr. King submitted that it does not matter whether Ester Jarvis was alive or dead. He maintained that he was in possession of the property and is the owner of the building. He argued further that Mr. Gibbs was not the owner or beneficiary and therefore had no authority to dispossess him. He reasoned that he was wrongfully dispossessed.

[19] Mr. Gibbs contended that Mr. King provided no credible evidence that a lease existed, that he paid rent or what was the value of the rental. He submitted that Mr. King is incapable of proving his claim and did not prove that he is entitled to damages. That was the extent of the submissions by the parties. He was essentially denying that he took unlawful action to evict Mr. King from the premises.

- [20] There is no dispute between the parties that Mr. King occupied the property. I am satisfied that he did and that he paid rent to Mrs. Jarvis. This is a reasonable inference to draw from the fact that Mrs. Jarvis permitted him to erect a concrete building which he occupied while she was alive. I accept Mr. King's testimony that he rented the property from Mrs. Jarvis. Although, he provided no documentary proof of payment of rent, I believe that he had a rental agreement with her, under which he contracted to pay a monthly rent of \$200.00 for use of the subject land.
- [21] I am also satisfied that he constructed a concrete building on the property with her consent, which she had the authority to give by virtue of her life interest. It follows that Mr. King was in occupation of the property up to her death pursuant to that lease agreement. He therefore had exclusive possession of the property during that time. Taking into account that rent was payable monthly and that Mrs. Jarvis had only a life interest, I deduce that he had an agreement with her for a monthly tenancy only. On her death, the monthly tenancy would have been determined by operation of law and converted to a tenancy at will with the executor's consent or at sufferance without such permission.
- [22] Until the person(s) entitled to the subject property took action to realize their interests, Mr. King would have been able to remain in possession and exert a superior right to the property against any third party. He could even have accrued a beneficial interest by adverse possession against the person(s) entitled to ownership if they failed to act promptly to exert their rights. However, he does not claim right to title by adverse possession and would not have been able to do so unless the registered owner or his estate was joined as a party to this claim.
- [23] Mr. Gibbs does not claim to be the owner or entitled to ownership of the land. He asserts a beneficial interest in the building. Mr. King does assert however that he was in lawful possession of the premises when he was unceremoniously dispossessed. Mr. Gibbs pleads to the contrary. His assertions imply that although in possession, Mr. King was an unlawful occupant of the property.
- [24] Mr. King supplied no evidence to disprove Mr. Gibbs assertion. The court is not positioned to determine whether Mr. Gibbs has such beneficial interest or acted as agent for the executor or heirs of Mr. Jarvis' estate when he blockaded the subject premises and evicted Mr. King.

[25] By acknowledging that Meenan Jarvis owned the subject lands and that he left a will in which Refus Jarvis is named as executor, Mr. King demonstrated that he was aware that he was not the legal owner of the subject property. His acknowledgement that Ester Jarvis was entitled only to a life interest in the subject property amounts to a concession that Meenan Jarvis' executor and heirs have a superior title to his. However, he states categorically that he does not know Randy Gibbs and never heard of him.

[26] There is no satisfactory evidence linking Randy Gibbs to the testator Meenan Jarvis or any of the beneficiaries named in his will, nor is there any evidence debunking such claims. The court cannot ignore the existence of the will and the executor or Mr. Gibbs' assertion that his mother Neveska Jarvis is named in the will. Furthermore, there is no evidentiary basis on which the court can determine when Ester Jarvis' life interest was determined. However, in resolving this matter in an equitable and just manner, the court must have regard to any third party interests which arise on the facts. In doing so, it must seek to ensure that such interests are duly recognized and preserved, for the benefit of other persons who seem to have an interest in the outcome of this case.

[27] In this regard, I note that the will names 10 beneficiaries as equal owners of the testator's properties, which include the disputed land. The beneficiaries are described as his (the testator's) children, one of whom is Neveska Jarvis. Neither party in the case at bar sought to join the executor or any of the named beneficiaries in this claim. Their interest in the subject property cannot be overlooked. In deciding whether Mr. King was in legal possession when he was evicted, the court must apply the applicable legal principles to the facts. I now do so.

[28] 'Possession' has been defined as 'generally the occupation or physical control of land...'² It has also been said that 'proof of ownership is prima facie proof of possession.'² A paper title owner is deemed by law to be in possession of land unless someone else can establish a better title.

[29] As explained by Slade J in **Powell v McFarlane**³:

² Clerk & Lindsell on Torts, 20th ed. paragraph 19-10.

‘In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.’

Similarly, a lessee or tenant is recognized as being in possession unless and until the tenancy is determined. However, such possession is superseded by the paper title owner’s superior title.

[30] On the one hand, Mr. King contended that he was in possession of the subject property when Mr. Gibbs forcibly took over control and occupation. He claimed to derive his right to possession from Ester Jarvis who possessed a life interest. On the other hand, Mr. Gibbs alleged that Mr. King’s possession had already ended by notice to quit from the beneficiaries. A relevant consideration is for how long Mrs. Jarvis’ life interest subsisted.

[31] It is established in law that a tenant for life has merely a beneficial interest in the real property which ends on her death.⁴ Moreover, she can only dispose of or transfer nothing more than the interest which is vested in her. As a tenant for life therefore, Mr. King was permitted by law to lease only for a period which did not extend beyond Mrs. Jarvis’ lifespan. As her lessee Mr. King was legally entitled to take a term which was liable to be determined by Mrs. Jarvis’ death. On her death, that beneficial interest immediately ended. The legal title became vested in the person or persons entitled to the remaining interests, rights and title to the land, subject always to any overriding interest which might have accrued to Mr. King in the meantime.

[32] Since Meena Jarvis’ estate is the paper title owner of the subject property, it follows that possession would revert to his estate on his death and vest in his executor until the estate is administered. However, if Mr. King remained on the land with or without the executor’s knowledge and consent or acquiescence he would be able to establish that he was in possession either as a tenant at will or sufferance.

³ (1977) 38 P & CR 470.

⁴ Halsbury’s Laws of England, Vol. 87 (2017) para.144.

- [33] Someone who occupies land lawfully and who after his title has ended remains in possession without obtaining consent from the person with legal title, is deemed to be a tenant at sufferance.⁵ Such a tenancy arises by implication of law and creates a sound legal basis on which the tenant at sufferance can bring a claim in trespass.⁶ Where such former tenant remains on the land with the consent of the paper title owner, he becomes a tenant at will.⁸
- [34] There is no evidence that Mr. King remained in occupation of the property with Refus Jarvis' permission. I find therefore that he was not a tenant at will. From the factual matrix outlined, it seems that he stayed on the subject land without such consent, either expressed or implicit. He thereby became either a tenant at sufferance or a trespasser. He would have become a trespasser if he was given notice to quit and refused to leave. There is no evidence that this happened. I find that it did not. Instead, Mr. King was in actuality deemed to be a tenant at sufferance.
- [35] Under a tenancy at sufferance it is not necessary for the landlord or owner to serve a notice to determine it. Such a tenancy is determinable by the landlord's or his agent's re-entry or by the tenant leaving the premises. Refus Jarvis as executor is deemed to be the landlord in the instant case. He stands in the testator's shoes until the estate is fully administered and distributed to the beneficiaries. He did not re-enter and take possession of the subject land. Mr. Gibbs did so. He has not established by what authority he purported to take such action. Mr. King did not prove that he had no such authority.
- [36] Mr. King did not disavow that Mr. Gibbs is Neveska Gibbs' son and potentially one of the persons entitled to share in Meenan Jarvis' estate. He also did not refute Mr. Gibbs' contention that he acted with the executor's consent when he took possession of the subject lands and building. If he acted pursuant to such consent, his actions would be those of the executor's duly constituted agent and be protected as the act of a person with title, right and claim superior to Mr. King's. They would not be unlawful, since the law permitted him to evict without notice, provided that he did not cause Mr. King to suffer loss to any beneficial interest he might have acquired.

⁵ Halsbury's Laws of England Vol. 62 (2016), para. 200.

⁶ Halsbury's Laws of England Vol. 62 (2016), para. 201.

[37] Mr. King could have attempted to acquire title to the land by adverse possession. Without evidence as to the date of Ester Jarvis' death there is no factual basis on which to find he could establish adverse possession. In any event, he could not legally invoke such an interest as the claimant in the case at bar, because adverse possession is available only as a defence and not as a cause of action. In addition, it does not arise as on the pleadings in this case.

[38] Mr. King had the evidentiary burden to establish his claim on a balance of probabilities. Accordingly, the onus was on him to prove that Mr. Gibbs' contentions were unfounded and do not constitute a valid legal defence. He has not satisfactorily established that:

1. Mr. Gibbs did not have the executor's permission to evict him from the subject land and was not acting under such authority when he forcibly entered and took up occupation;
2. he has a superior title to Mr. Gibbs;
3. Mr. Gibbs has no interest in the property as he alleged or at all;

In fact, Mr. King corroborated Mr. Gibbs 'claims' in material respects, as rehearsed previously.

[39] Mr. King has not claimed that he is the owner of the subject property, only the building. I have no difficulty finding therefore that at all material times up until Ester Jarvis' death, he occupied and possessed the disputed property pursuant to the rental agreement with Mrs. Jarvis. Thereafter, as a tenant at sufferance, he had no right to notice, subject however to the courtesy of being afforded an opportunity to secure and collect his personal property and to obtain compensation for any beneficial interest in the real property.

[40] In lodging this case, Mr. King had the burden of proof against Mr. Gibbs. He had the onus of proving that Mr., Gibbs had no superior title to his and no interest in the property which would justify him taking action to evict him. By failing to disprove Mr. Gibbs' assertions, Mr. King has also failed to supply the factual basis on which I can find that Mr. Gibbs trespassed on his property. I make no such finding.

[41] After Ester Jarvis' death, his right to remain on the subject property became subverted to that of the title owner's estate including the beneficiaries, subject to his entitlement to receive compensation for any overriding interest he acquired in the building. I make no finding that Mr. King was lawfully

in possession when Mr. Gibbs took over occupation of the property. I find that he was a tenant as sufferance whose tenancy was likely determined by the referenced notices to quit which Mr. Gibbs mentioned in his defence. In any event, Mr. King has not proved his claim of trespass against Mr. Gibbs. That aspect of his case is dismissed.

- [42] There may or may not be any truth to Mr. Gibbs's contentions that he was authorized by Meenan Jarvis' executor to take such action. There is inadequate evidence to make a finding of fact one way or the other. I therefore make no finding that Mr. Gibbs was a trespasser when he did so. I am satisfied that the legal estate in the subject property remains vested in Meenan Jarvis' estate subject to Mr. King's beneficial interest in the building.

Issue 2 – To what relief is Orton King entitled?

- [43] A successful claimant who establishes trespass against a defendant is entitled to recover damages. He may also secure declaratory and injunctive relief in appropriate cases. Having failed to establish his claim in trespass, Mr. King's claims for related damages, possession of the subject property and injunction are denied.
- [44] In respect of his claim for a declaration and in light of my earlier findings, it is declared that Meenan Jarvis' estate is the legal owner of the subject property located at Union Vale, Bequia, on which Mr. King constructed a building, which at one time housed the King Fisher Café and the business operated by Caribbean Schooners. Mr. Orton King is the beneficial owner of the said concrete and wooden building on the said property. Mr. King would have retained a beneficial interest in the building, based on the sums he expended in constructing it. The legal interest owned by Meenan Jarvis' estate is therefore subject to Mr. King's beneficial interests.
- [45] At common law, a person entitled to immediate possession of land may retake possession and expel an intruder. He must however use no more force than reasonably necessary ⁷. This is so even if the trespasser entered the land peaceably.⁸ Such re-entry and eviction is justifiable only if

⁷ Vol. 97 Halsbury's Laws of England, (2015), para. 589.

⁸ Hall v Davis (1825) 2 C & P 33.

the person carrying out the eviction is in possession or acts under the authority of the person in possession.⁹ I find that Mr. Gibbs' actions were highhanded and excessive in the circumstances, even if he had the executor's authority to evict Mr. King.

[46] At the very least he should have sent a formal notice and given Mr. King reasonable opportunity to leave peaceably. Mr. Gibbs had a duty to take care in terminating Mr. King's occupation of the subject property. He did not do so. He is therefore liable to Mr. King for any damage and loss occasioned to Mr. King's interest in the building and contents as a result of his actions to evict him.

[47] Mr. King is entitled to be compensated for loss suffered by being deprived of the value of the building and contents and its rental value. He is also entitled to recover rent in respect of the building, from the date of eviction until he is fully compensated. Mr. King shall file and serve on or before 29th December 2017 an application for assessment of such loss.

Costs

[48] The general rule is that a successful party is entitled to his costs. Mr. King is the successful party. Therefore, Mr. Gibbs is to pay to Mr. King prescribed costs pursuant to CPR 65.5 based on the value of the monetary award made at the assessment stage.

ORDER

[49] It is accordingly declared and ordered:

1. Meenan Jarvis' estate is the legal owner of the subject property located at Union Vale, Bequia, on which Mr. King constructed a building, which at one time housed the King Fisher Café and the business operated by Caribbean Schooners. Mr. Orton King is the beneficial owner of the said concrete and wooden building on the said property. The legal interest owned by Meenan Jarvis' estate is subject to Mr. King's beneficial interests.
2. Judgment is entered for Orton King in respect of his claim for the value of the said building and the rental value. Mr. King's claim in trespass is dismissed.

⁹ *Monks v Dykes (1839) 4 M & W 567.*

3. Mr. Gibbs shall pay to Mr. King compensation in respect of the value of the building and contents as at 25th September 2014.
4. Mr. King is to file and serve on or before 29th December 2017, an application for assessment of for loss and damage sustained by him, in respect of
 - (a) his interest in the said building and contents; and
 - (b) the rental value of the building from 25th September 2014, until full payment is made for the value of the building.
5. Mr. Gibbs is to pay to Mr. King statutory interest¹⁰ at the rate of 6% per annum on the said sums from the date of judgment until full satisfaction.
6. Mr. Gibbs is to pay to Mr. King prescribed costs pursuant to CPR 65.5, based on the value of the monetary award made at the assessment stage.

Postscript

[50] Mr. Gibbs did not provide a certified copy of the will or probate in Meenan Jarvis' estate. His legal practitioner undertook to make a certified copy available to the court but inexplicably has not done so. The court remains mindful that probate and letters of administration are court records of which the court must take judicial notice. It is for this reason why the court requested the court clerk to obtain the relevant probate file for the court's attention. It contains the original will and reflected that Letters of Administration was granted on 16th March 1992 and duly delivered. The copy of the will exhibited to Mr. Gibbs' defence is an exact replica of the original will.

[51] The failure by Mr. Gibbs' counsel to submit the certified copy of the will in accordance with the Evidence Act¹¹ as she undertook to do is unprofessional, discourteous and inimical to the efficient and effective administration of justice. It deprived her client of the minimum level of service he

¹⁰ Pursuant to section 4 of the Interest Act, Cap. 27 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹¹ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

should have expected and imposed a duty on the court which falls outside its remit. This conduct is to be discouraged.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar