

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

GRENADA

CLAIM NO. GDAHCV 2008/0612

BETWEEN:

JEAN BAPTISTE
(Administratrix of the Estate of Lincoln Edmond (also spelt Edmund) "Jack"
Baptiste (trading as Sea Change Book and Gift Shop)
Claimant

and

JONAS BROWNE & HUBBARD (G'DA) LIMITED
ALLAN BIERZYNSKI
Defendants

Appearances:

Dr. Francis Alexis, Q.C and Mr. Ashley Bernadine for the Claimant
Ms. Kim George for the Defendants

2013: April 10, May 28
July 31

JUDGMENT

- [1] **MOHAMMED, J.:** The Sea Change Book and Gift Shop ("the Sea Change") is an old establishment in Grenada. It has been occupying premises ("the premises") owned by the First Defendant since 1968 situate at the picturesque Carenage, St George's, Grenada. The continued occupation by the Sea Change of the First Defendant's premises and indeed the relationship between the parties in this

matter have been strained for some time and have been the subject of several High Court actions.

- [2] Sometime between the evening of Friday 14th November 2008 and on the morning of Saturday 15th November 2008 the doors to the Sea Change were removed, leaving its merchandise exposed to the elements. These events precipitated the Claimant instituting the instant action against the Defendants where she claimed damages for trespass and injunctive relief stopping the Defendants from doing any acts which interfere with her quiet enjoyment of the premises.
- [3] The Defendants have denied that the Claimant is entitled to the occupation and quiet enjoyment of the premises on the basis that she is not a tenant, statutory tenant nor a licensee. They have also denied committing the alleged acts of trespass. While Counsel for the Defendants in her closing submission has asked the Court to dismiss the Claimant's action and to give judgment for the Defendants, I have noted that there was no counterclaim pleaded by the Defendants for possession of the premises nor for damages.
- [4] There are two issues for determination by the Court in this matter :
- (a) Is the Claimant in lawful occupation of the premises and entitled to its quiet enjoyment ? and
 - (b) Has the Claimant proven that the acts of trespass complained off were committed by the First and/ or Second Defendants their servants and or agents?
- [5] I have found that the Claimant is not a tenant, statutory tenant nor licensee of the Defendants. She is not in lawful occupation of the premises and by extension she is not entitled to the quiet enjoyment of it. Secondly, the Claimant has failed miserably to discharge the burden of proving that the acts of trespass complained off were committed by the Defendants. I therefore dismiss the Claimant's action. Parties agree that each party is to bear its own costs.

Is the Claimant in lawful occupation of the premises and entitled to its quiet enjoyment ?

- [6] A trespass to land has been described by the authors of **Clerk & Lindsell on Torts 17th ed** as “any unjustifiable intrusion by one person upon land in the possession of another”¹. However, the law limits the persons who can bring an action in trespass to persons who are lawfully in possession of the premises.
- [7] The Claimant alleged that the estate of her husband Jack Baptiste is in lawful occupation of the premises. She pleaded that during the lifetime of Jack Baptiste, he became a statutory tenant of the First Defendant and that after his death as the administratrix of the estate of Jack Baptiste, Deceased, (“the Deceased”) his rights acquired as a statutory tenant of the premises devolved to her. While the date and circumstances surrounding the Deceased’s statutory tenancy are in dispute, the fact of the Deceased’s statutory tenancy has been admitted by the Defendants. However, the Defendants have disputed the right of the Deceased to transfer this statutory tenancy during his lifetime and/or upon his death. The Defendants contended that upon the death of the Deceased on 4th July 2004, his rights as a statutory tenant were extinguished and that subsequent to his death the Claimant and/or any other person, in this case, Rita Buckmire’s occupation of the premises have been unlawful.
- [8] A statutory tenancy has been described as

“ A statutory tenancy is not really a tenancy at all in the common law sense of the word: the tenant has no estate or interest in the land, but instead a mere personal right to occupation which has been termed a “status of

¹ Page 837

irremovability". The tenant cannot dispose of his interest by assignment or by will, and it will not vest in his trustee in bankruptcy."²

- [9] In the Caribbean context the right of the statutory tenant has been described in **Guyadeen v Glasgow**³ as:

"The [statutory tenant] merely has, so long as he retains possession, a personal right of occupation as against the Landlord and anyone claiming under him ... Thus, any purported assignment or transfer of his personal right, which by its very nature is incapable of being passed to a third person, will vest exactly nothing in the alleged assignee or transferee ..."

- [10] Section 3 of the Rent Restriction Act, Chapter 286 of the Laws of Grenada ("the Act") states that the Act applies to residential, public buildings and commercial premises. However, there is no provision in the Act which allows for the transfer of a statutory tenant's rights as in the UK as submitted by Counsel for the Claimant.

- [11] While I agree with the Claimant that the status of Sea Change has been regulated by the Act, there is nothing in the Act which gives a statutory tenant the right to pass on his rights as such after death. I therefore agree with the Defendants' position that as a statutory tenant, the Deceased could not transfer any right to occupy the premises to his administratrix or anyone either during his lifetime or by devolution upon his death. I therefore find that the Claimant's right to continue to occupy the First Defendant's premises could not have been devolved from the Deceased and it follows that the Claimant was not in lawful possession of the premises at the time of the alleged acts of trespass.

- [12] In any event, it was not part of the Claimant's pleaded case that there was a subsequent tenancy arrangement between the Claimant and the First Defendant after the passing of the Deceased, neither was it pleaded that the Claimant has

² Megarry and Wade's Law of Real Property 6th ed. Para 22-186

³ (1963) 6 WIR 477 at 480

continued in the occupation of the premises as a licensee. I therefore find that the Defendants were will within their rights to call upon Ms Buckmire to vacate the premises by a certain time⁴ after the death of the Deceased.

Has the Claimant proven that the acts of trespass complained of were committed by the First and/or Second Defendants their servants and or agents?

[13] The Claimant called three witnesses to prove her claim; the Claimant, her son Lincoln Baptiste Jnr. and Ms. Rita Buckmire, an employee of the Sea Change. However, none of them were able to give any direct evidence that they observed the Defendants and or their servants and or agents committing the alleged acts of trespass.

[14] Mrs. Jean Baptiste stated in her witness statement:

"On or about Friday night, 14th November or early Saturday 15th November 2008, Hubbards by its agents, servants, employees or assigns; and Bierzynski by himself or by his agents, servants to employees, committed the following unlawful acts against the Sea Change, namely the Defendant:-

- (1) Trespassed on the premises; and
- (2) Unlawfully removed from the premises the front and back doors of the building constituting the premises, thus leaving the Sea Change's equipment and merchandize exposed to the elements (weather) and the public.⁵"

[15] Under cross-examination she admitted that she suffers with senile dementia and she had difficulty remembering and that she did not recall anything which gave rise to a letter dated 12th November, 2008. Mrs Baptiste's claim of suffering with senile dementia was without any medical basis and while I considered her evidence with a

⁴ Letter dated 7th November 2008

⁵ Paragraph 19 of witness statement of Jean Baptiste filed 23rd November 2009.

great degree of caution, I still attached no weight to it. She failed to give any direct evidence of the alleged acts of trespass and she could not recall aspects of her case.

[16] My position with the evidence of Lincoln Baptiste was no different. According to him, on the morning of Saturday 15th November 2008, at approximately 8:00 am he drove by the Sea Change and observed that the front and back doors had been removed.⁶ He reported the matter to the police, he spoke to Rita Buckmire who assured him that she had secured the premises the previous evening and he then boarded up the premises for the weekend. He said that while he was on the premises, the Second Defendant passed by and told him that "it does not matter what you put up, it could be metal, he will tear it down". Again, there was no evidence that Lincoln Baptiste Jnr. witnessed the Defendants, their servants and or agents tearing down the doors. He arrived after the doors had been removed and I find that there was no direct evidence from him that he witnessed the alleged acts of trespass.

[17] Rita Buckmire also arrived at the Sea Change on the morning of 15th November, 2008 where she said the doors had already been removed. This witness who was elderly was unable to assist the Court since she failed both in her evidence-in-chief and her cross-examination to give any direct evidence on the allegations of trespass. I therefore attached no weight to her evidence

[18] The Claimant's witnesses having failed to prove the alleged acts of trespass I need not go any further but find that the Claimant failed to prove her case. While the Second Defendant alone gave evidence for the Defendants, his evidence was consistent with their case and his denial of committing the alleged acts of trespass was not challenged under cross-examination.

⁶ Paragraphs 4 and 5 of witness statement of Lincoln Baptiste Jnr filed 23rd November 2009.

⁷ Paragraph 12 of the witness statement of Lincoln Baptiste Jnr filed 23rd November 2009.

Order

[19] The claim is dismissed. Parties agree that each party is to bear its own costs .

Margaret Y Mohammed
Margaret Y Mohammed
Judge