

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2007/0597

BETWEEN:

**DOROTHY LAKE as executrix
of the estate of STEWART LAKE**

Claimant

and

BARRY FRANCE

Defendant

Appearances:

Mr. Jason Martin for the Claimant
Mr. D. Raimon Hamilton for the Defendant

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2009: September 22
2010: March 19
.....

JUDGMENT

[1] **MICHEL, J:** By Statement of Claim filed together with a Claim Form on 16th October 2007, the Claimant, Dorothy Lake (as executrix of the estate of Stewart Lake) claimed

against the Defendant, Barry France, arrears of rent of \$18,400, interest at the rate of 5% per annum and costs.

- [2] On 14th November 2007 the Defendant filed a Defence admitting some and disputing other of the allegations made by the Claimant in her Statement of Claim.
- [3] On 15th February 2008 the Claimant filed a Reply joining issue with the Defendant on his Defence.
- [4] The matter went to mediation on 14th July 2008 but the parties did not settle.
- [5] On 21st October 2008 the Claimant filed her List of Documents, while on 18th November 2008 the Defendant filed his List of Documents.
- [6] The Claimant filed her Witness Statement and Pre - Trial Memorandum on 13th May 2009, while the Defendant filed his Witness Statement and Pre - Trial Memorandum on 15th May 2009, along with a Witness Statement of someone who was not called as a witness at the trial.
- [7] The Trial Bundle was filed on 21st September 2009.
- [8] At the trial of the matter on 22nd September 2009, the Claimant and the Defendant each gave evidence on their own behalf and called no witnesses.
- [9] In her Witness Statement, which formed part of her evidence in chief, the Claimant alleged that she is the daughter of Stewart Lake, who died on 10th December 2000, and that on 12th April 2001 she obtained Letters of Probate appointing her as executrix in respect of his estate. That the Defendant was her father's tenant in respect of a dwelling house located on Upper Fort Road, which was initially rented to him by a written lease dated 2nd September 1993, but the Defendant continued to rent the house on the same terms after the lease had expired. That her father collected the rental from the Defendant or, when he

was away, a friend of his, Mr. Horsford Hill, collected the rents on his behalf. That the Defendant initially paid rental of \$1,000. That in or about the year 2000 her father informed her that he had increased the rent to \$1,200. That the Defendant began paying the increased rent from about April 2000 and continued until December 2000, which is reflected in 3 cheques that he had written during that period each of which was in multiples of \$1,200. That after her father died, the Defendant ceased paying the increased rent. That on or about 19th March 2001 she was advised by Mr. Hill that the Defendant had informed him that he would not continue to pay the increased rent until certain repairs were done to the house. That a little later in March 2001 she was advised by the Defendant himself that he would suspend all payments of the increased rent until work that he had requested in respect of the premises was completed. That she told the Defendant that he was obligated to pay the increased rent in any event and she made arrangements for the repairs that the Defendant requested to be done. That in spite of this the Defendant refused to pay the increased rent and thereafter only made payments in multiples of \$1,000 and would not respond to her queries for the balance to reflect the increase in the rent. That he ignored her requests for the arrears. That she engaged the services of Ms. Judith Dublin, an Attorney at Law, to recoup the arrears. That she and the Defendant met at least twice at Ms. Dublin's office to discuss the arrears. That on each occasion the Defendant would complain about outstanding works to be done on the premises. That he never paid the arrears owed or the correct rental amount. That Ms. Dublin wrote at least 2 letters to him on her behalf. That the Defendant left the premises on or about 1st March 2005. That his last payment in respect of rent was by a cheque dated 9th June 2004 in the sum of \$1,000.

- [10] In her testimony in Court, the Claimant testified that there came a time when Mr. Hill stopped collecting rent for the house. That this came about in 2005 when she returned to Antigua from her previous residence in England and took over the responsibility of collecting the rent herself. That to the best of her knowledge Mr. Hill was aware of the increase in the rental. That she and Mr. Hill used to discuss the rental and the arrears. When she was referred to a statement by Mr. Hill that at no time did Mr. Lake tell him about the Defendant's rent being increased and that he collected \$1,000 as normal, she

agreed that this was not in accord with her statement about Mr. Hill knowing of the increased rent. That between April 2000 and January 2001 the Defendant did not pay any cheques in multiples of \$1,000 to Mr. Hill. That during that period the Defendant paid cheques to Mr. Hill in multiples of \$1,200. That she has no knowledge of why Mr. Hill would deny knowledge of the increased rent. That both letters from Ms. Dublin referred to the increased rent. That the Defendant never responded to the letters from Ms. Dublin.

[11] Under cross examination, the Claimant testified that the only evidence she has of arrears of rent is based on bank statements which are not in evidence before the Court. That she cannot tell the Court what conversation the Defendant and her father had about the increased rental. That the evidence she has that there was some sort of agreement to pay the increased rent is the 3 cheques in multiples of \$1,200. That there is a cheque in the Trial Bundle which appears to be a cheque issued in February or March of 2001 and it is the next cheque after the 3 referred to in multiples of \$1,200. That it was for \$1,400. That it is possible that it was part of the sequence of cheques referred to earlier. That her case is based on her interpretation of bank statements and cheques. That the cheques which show payments of \$3,600, \$3,600.00, \$2,400 and \$1,400 (the total of which is a multiple of \$1,000) can merely reflect the Defendant paying off some of his arrears. That without the bank statements she cannot say exactly what these payments reflect.

[12] That was the case for the Claimant.

[13] In his Witness Statement, which formed part of his evidence in chief, the Defendant testified that in September 1993 he rented a two-bedroom concrete house from Mr. Stewart Lake for \$1,000 per month. That his rental of the house was under a written lease for 1 year. That at the end of the year he remained in the house and continued to rent from Mr. Lake on the same terms. That during his tenancy the house was damaged by 3 hurricanes and he always had an issue with Mr. Lake about the repairing of the house. That in the course of his tenancy he was out of work for 8 months and he fell behind in his rent. That he never really caught up and was frequently in arrears of the rent from that time. That because of this he developed the practice of paying more than the monthly

rental when he had enough money to do so. That he did so to catch up on his arrears. That by 2004 he had cleared his arrears. That in 2000, before travelling to England, Mr. Lake left a handwritten note under his (the Defendant's) door saying that he wanted to increase the rent by \$200. That he immediately called Mr. Lake and told him that he did not agree to this increased rent and that he would not agree until Mr. Lake lived up to his obligations to repair the house. That at that time there was still damage to the house from the hurricane in 1995. That Mr. Lake told him that he was going to England in a few days and that they would settle the issues that he had and they would decide about the rent. That Mr. Lake died in England later that year. That in Mr. Lake's absence and after Mr. Lake's death, he continued to pay the rent to Mr. Lake's agent, Mr. Horseford Hill. That Mr. Hill never told him that the rent was increased or that he was short paying the rent. That he is aware that after Mr. Lake's death the Claimant would sometimes come to Antigua to look after his affairs and that during one of her visits she told him that the rent was increased to \$1,500. That he told her that he did not agree to an increase and that he would not agree unless they lived up to their obligations to repair the house. That in 2004 when he went to Mr. Hill to pay rent, he was told that the Claimant had collected everything from Mr. Hill and that he was no longer responsible for the house. That the Claimant never contacted him about alternative arrangements to pay the rent and he did not know how to contact her. That no rent was paid between September 2004 and February 2005 and this money is owed to the Claimant. That in January or February 2005 the Claimant came to the house "making noise about the rent." That she claimed that the rent was \$1,500 and that he owed a substantial amount of rent. That because of her attitude he decided to leave. That he left the house on 15th February 2005, but he accepts that he owes rent for the remainder of the month of February. That after he left the house he received 2 letters from Ms. Dublin, the first one dated 23rd February 2005 and the second one dated 8th March 2005. That in the 2 letters the Claimant claimed different amounts as being the arrears and suggested that he agreed to pay these amounts. That he never agreed to pay any money to the Claimant in 2005. That the only arrears he had was for September 2004 to February 2005.

[14] In his testimony in Court the Defendant testified that, while living in the house which he rented from Mr. Lake, he came home one day and saw a piece of paper under the door on which it was written that his rent is increased by \$200. That he immediately called Mr. Lake and told him that he was not prepared to pay a rent increase because the house was damaged by Hurricane Louis and there was nothing done. That Mr. Lake told him to leave it until he (Mr. Lake) gets back and then they would discuss it. That sometime around February 2005 he received a telephone call from Ms. Dublin in the course of which she told him that she wanted to speak with him and directed him to Mr. Dane Hamilton's office where she was at the time. That he went to see Ms. Dublin and she told him that he did not pay his rent. That he disputed this and she told him that he would have to bring the cheques to show that he had paid. That he immediately went to collect the returned cheques with which he paid the rent and Ms. Dublin told him that he could have embarrassed her if she had brought him to Court for unpaid rent. That the Claimant was present at the meeting with Ms. Dublin. That not too long after that he got the first letter from Ms. Dublin. That he agreed to pay \$7,000. That was the amount owing at the time, because Mr. Hill had stopped collecting the rent and he had nobody to pay it to. That he never met with Ms. Dublin or the Claimant between the first and second letters from Ms. Dublin.

[15] Under cross examination, the Defendant testified that the \$7,000 referred to in the letter of 23rd February 2005 was the amount that was owed by him for rent up to that time. That since February 2005 he has not paid any part of the \$7,000 which he is saying was owed up to then. That in his Defence he said that he owed \$3,500 by way of arrears from October 2004 to 15th February 2005. That this amount was based on his not checking the rent to the end of February 2005 and because he did not include 3 months rent due by him prior to October 2004. That the \$7,000 that he said he owed in February 2005 is what he is now saying that he owes.

[16] At a later stage during the cross examination of the Defendant, he said that, according to his records, all he owed as at February 2005 was \$7,000 (less the deposit of \$1,000)

because when he executed the lease at the office of Mr. John Fuller he paid \$2,000 for the first and last month's rent.

[17] That was the case for the Defendant.

[18] On this state of evidence, the Court is called upon to decide whether it is satisfied on a balance of probabilities that the Defendant is indebted to the Claimant in the sum of \$8,800, representing short payment of the rent by \$200 per month for 44 months from November 2000 to June 2004, and \$9,600, representing unpaid rental at the rate of \$1,200 per month from July 2004 to February 2005.

[19] It is not in dispute that the Defendant was the tenant of Mr. Stewart Lake in respect of a dwelling house at Upper Fort Road from September 1993. It is also not in dispute that the rental of the house to the Claimant was by virtue of a written lease for one year and that the Defendant remained in occupation of the house after the expiration of the lease on the same terms as contained in the written lease. There is no dispute that the monthly rental under the lease agreement was \$1,000 payable in advance on the 1st day of every month. The parties do not dispute that this rental continued in the same amount without contention up until the year 2000, in which year Mr. Lake sought to increase it to \$1,200 monthly.

[20] The dispute then begins.

[21] The Claimant alleges that the Defendant accepted this increase because the next three cheques paid by him towards the rental were all in multiples of \$1,200, unlike the previous rental cheques disclosed by her which were in multiples of \$1,000.

[22] The Defendant alleges that when he found a note under his door in 2000 stating that the rental would be increased by \$200, he immediately telephoned Mr. Lake and told him that he was not in agreement with the increase because of outstanding repair issues and Mr. Lake informed him that he was leaving for England in a few days and that they would discuss it upon his return, but Mr. Lake never returned, having died on that trip to England.

The Defendant further alleges that the 3 cheques in multiples of \$1,200 to which the Claimant referred were for \$3,600, \$3,600 and \$2,400 and were followed by one for \$1,400, which is not in a multiple of \$1,200 and which, when added to the 3 preceding cheques, total an amount which is a multiple of \$1,000.

- [23] Considering that the onus is on the Claimant to prove her case, the Court cannot be satisfied on this state of evidence that the Claimant has done so on a balance of probabilities on the issue of the acceptance by the Defendant of the rental increase. Moreover, the Claimant alleged that the Defendant reverted to payment of the previous rental of \$1,000 after the death of Mr. Lake, but Mr. Lake died on 10th December 2000 and the last of the 3 cheques in multiples of \$1,200 to which the Claimant referred was dated 2nd January 2001, over 3 weeks afterwards. Then too there is the fact that although the Defendant was clearly making payments in multiples of \$1,000 throughout the remainder of 2001, in 2002, in 2003 and in 2004, and thus repudiating any rental increase to \$1,200, the Claimant never at any time served notice to quit on the Defendant and only sent a letter to him concerning rent on 23rd February 2005, after he had in fact left the house.
- [24] Where, as in the present case, there is no provision in the lease agreement for a rental increase, an increase in rental must be by agreement of the parties and the Court is not satisfied, on a balance of probabilities, that the Claimant has proved any such agreement in this case. And, as was held in the English case of **Glossop v Ashley**¹, it cannot be assumed from the mere fact that a tenant remained in possession of premises after receiving notice from the landlord of increase in rent that the tenant assented to the increase of rent.
- [25] Based on this finding, it is not necessary for the Court to consider and determine the applicability of the **Limitation Act 1997** or the **Rent Restriction Act**, Cap. 378 to the facts of this case.

¹ [1921] 2 K.B. 451

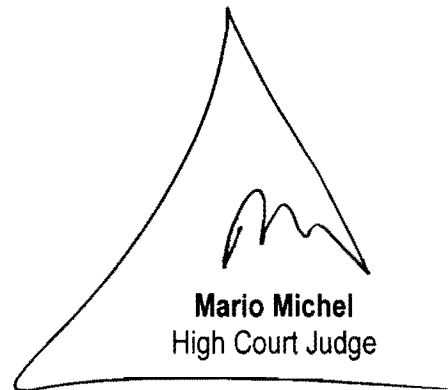
[26] The other issue in dispute between the parties is the number of months for which the Defendant was in arrears of rent at the termination of the lease on 1st March 2005 when he surrendered the keys to the Claimant. The Claimant alleges that it was 8 months from July 2004 to February 2005, the last rental payment having been made by the Defendant in June 2004. The Defendant alleges various things. In his Defence he alleges that it was 4 ½ months from October 2004 to 15th February 2005, less the last month's rent which was paid at the commencement of the lease, yielding a total of \$3,500. In his Witness Statement he alleges that it was 6 months from September 2004 to the end of February 2005. Then in giving evidence before the Court he said that in February 2005 he agreed to pay \$7,000 and that this was the amount owed by him as of February 2005. Then at the end of his evidence under cross examination he then said that all he owes is \$7,000, less the deposit of \$1,000.

[27] The Court finds it to be proved on a balance of probabilities that at the termination of the lease on 1st March 2005 the Defendant owed 8 months rent, less the advance payment of the last month's rent. This is consistent with the claim by the Claimant and consistent also with the Defendant's statement under cross examination that when he had said in his Defence that he owed \$3,500 it was because he had not checked the rental to the end of February 2005 and because he had not included 3 months' rent owed by him prior to October 2004. If one calculates rental of \$1,000 from October 2004 to the end of February 2005 and then adds a further 3 months' rent, the total would amount to \$8,000. It would be reasonable then to conclude that the admission by the Defendant of owing \$7,000 was on account of the deduction of \$1, 000 for the last month's rent.

[28] The Court accordingly orders the Defendant to pay to the Claimant:

1. Arrears of rent in the sum of \$7,000.

2. Interest on the sum of \$7,000 at the rate of 5% per annum from the 1st day of March 2005 to the date of judgment.
3. Costs to be agreed or otherwise assessed.



Mario Michel
High Court Judge