ANTIGUA and BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 19 OF 2002

BETWEEN:

STANFORD INTERNATIONAL BANK Ltd.

Appellant

and

AUSTIN LAPPS

Respondents

Before:

The Hon. Mr. Albert Redhead — Justice of Appeal
The Hon. Mr. Adrian Saunders — Justice of Appeal
The Hon. Mr. Ephraim Georges — Justice of Appeal [Ag.]

Appearances:

Dr. Errol Cort for the Appellant
Mr. Dane Hamilton for the Respondent

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2003: May 29
September 16
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JUDGMENT

[1] REDHEAD J.A. This is an appeal against the judgment of Mitchell J. in which he awarded damages to the respondent in the sum of $270,000 and costs of $17,500.

[2] The appellant commenced proceedings against the respondent in 1996 seeking an order that the respondent give up possession of a lot of land known and described as parcel 384 Registration Section Barnes Hill and Coolidge, Block 41 2694 A. The respondent counterclaimed. The respondent claimed three heads of special damages – loss of use of

apartments for 2 years, loss of use of 6 apartments for 3 years, and rent for occupation for 3 years, costs of repairing fence, lumber and steel taken from his land.

[3] The appellant on 19th July 1996 was granted a 99 years lease of parcel 384 by the crown. The lease was not registered until November 1996. In about the year 1966 the respondent began a car rental business on an area of land sold to him by the government and situate close to V.C. Bird International Airport. In about the year 1970 he was permitted to use an area about 0.6 of an acre of crown land adjacent to his car rental business. He occupied that openly and with the consent of the government.

[4] During the cadastral survey in 1976, this 0.6-acre of land was surveyed as part of Crown lands and now forms part of parcel 384 and is the land in dispute.

[5] What is significant is that before the lease was granted to the appellant in an effort to gain control of the land in dispute it's servants and agents trespassed unto the land cut down the respondent's fence, removed his materials which were on the land and occupied the said for at least one year before it was granted the lease.

[6] The learned trial judge dismissed the appellant's claim and awarded the respondent damages on the counterclaim.

[7] The appellant is dissatisfied with the judgment of the learned trial Judge and appeals to this court.

[8] In making the award of general damages the learned trial judge took into account the oppressive and violent manner in which the appellant evicted the respondent without warning, the complete absence of any right to possession by the appellant by way of a registered lease at the time when the eviction by the appellant took place; the length of time that the respondent had been occupying the land, and his expectation that if the Crown was not going to lease him the land but lease it to another, that he be given reasonable notice that his tenancy of the land was being brought to an end, which the

learned trial judge assessed to be one year's notice; the fact that the appellant is a rich and powerful banking institution which appeared to have used its wealth and its access to uniformed police officers of the Police Department to assist it in its unlawful eviction of the respondent to bully its feeble neighbour the respondent, and, the continued acts of the appellant over the years following 1995 when it wrongfully continued to exercise by force its claim to a right to possess the portion of parcel 384 occupied by the respondent, including its removal from the site after Hurricane Luis of the respondent's building materials which were needed for the extension of his hotel.

[9] Finally the learned trial judge also took into consideration the failure of the respondent to mitigate his loss by reclaiming the goods from the appellant, which he said were available to him to reclaim at all times if he had wanted to ask for them".

[10] I interpret what the learned trial judge was saying to mean that the respondent did not mitigate his loss because he did not make a request from the appellant for the return of his goods which were available for him to reclaim and that amounts to failure to mitigate.

[11] There are nine grounds or sub-heads in this appeal. Under ground 3 (a), the appellant argued that having found that the respondent at the material time was a tenant at will, the learned trial judge erred in failing to consider and/or determine the precise points at which the respondent's tenancy 'was determined.

(b) The learned trial judge erred and was wrong in law in finding that the notice period of at least one year was required as a condition precedent to terminating a tenancy at will-

(c) Further and/or in the alternative the learned trial judge erred and was wrong in law in finding that a notice period of at least one year was required as a condition precedent to determining the respondent's tenancy, the learned trial judge, already having found that the respondent's tenancy was a tenancy at will.

(d) The learned trial judge erred and was wrong in law in applying the strict rules governing a notice to quit to a tenancy at will and the learned trial judge further erred in failing to find a tenancy at will may be determined by anything (expressed, or implied or otherwise)

which amounts to a demand of possession including where the lesser does acts inconsistency with his tenancy and those acts are brought to the attention of the tenant.

(e) The learned trial judge erred and was wrong in law to find that the respondent's tenancy at will (or other interest) was determined on or around 25th July, 1996 when the respondent was formally notified in writing by the appellant solicitors of the appellant's registered leasehold interest in parcel 384, inclusive of that portion of land which was being occupied by the respondent or alternatively, that the said tenancy (or other interest) was determined at the very least in September, 1998 after the commencment of legal proceedings by the appellant against the respondent.

(f) The learned trial judge erred and was wrong in law in failing to find that the respondent was trespasser on the disputed land after the respondent had received due notice of the appellant's leasehold interest over the said land on 26th July 1996 or at the very least in September, 1996 after the commencement of legal proceedings for possession by the appellant against the respondent.

(g) The learned trial judge erred and was wrong in law in finding that the appellant had unlawfully evicted the respondent from the disputed land.

(h) The learned trial judge erred and was wrong in law in failing to consider and apply the provisions of section 136(5) (a) of the Registered Act. Cap 374 of 1992 of the Revised Laws of Antigua & Barbuda.

(i) The learned trial judge erred and was wrong in law in finding that the appellant's registered leasehold interest in Parcel 384 was subject to an overriding interest of the respondent.

(j) The learned trial judge erred and was wrong in law in awarding general damages and cost to the respondent. In the alternative, the quantum of general damages awarded by the learned trial judge was very excessive and/or was based on or took into account incorrect and/or improper and/or unsupported findings of fact and law.

[12] I now examine the judge's findings in order to see whether they support his legal conclusions. The facts as found by the learned trial judge are:

[13] The appellant is a foreign company carrying on business at its premises at the Boulevard at the Airport which was acquired from the Crown. Its premises is neighborly to the respondent's.

[14] In or about the year 1966 the respondent commenced a Car Rental business on an area of land sold to him by the Government and is situated close to the V.C. Bird International Airport. In or about the year 1970 the respondent was allowed to use an additional area of about 0.6 of an acre of Crown Land adjacent to his Car Rental Agency. He occupied the property openly and with the consent of the Government acknowledging the title of the crown to the land and constituting himself a tenant with the property. During the Cadastral survey of 1976, this 0.6 acres of land was surveyed as part of crown lands in the area, and it now forms part of Parcel 384 and is the land in dispute. The defendant initially used it as a parking lot for his car Rental business. Around the time of the Cadastral survey in Antigua in the years 1976, he approached Government Minister's with a proposal to purchase the 0.6 acres of crown land that he was occupying.

[15] The respondent was told to wait the completion of the airport expansion project then in progress, so that government could ascertain whether it needed the use of the land. In the year 1984, he again approached Government Ministers to discuss acquiring the land. Shortly, thereafter, he commenced construction of his hotel on the land that he had earlier acquired from the crown and the hotel opened for business in 1987. In 1991 he again approached government with a proposal to purchase the part of parcel 384 that he was occupying as a parking area. He stated that various politicians, the Prime Minister and Minister Hilroy Humphreys in particular, told him that he would get a 99- year lease of the land.

[16] Dr Cort in his written skeleton arguments submitted that if one accepted the learned trial judge's finding that the appellant had wrongfully occupied the disputed land from September, then the period of wrongful occupation by the appellant would at best be approximately one year. On the other hand the respondent would have wrongfully

occupied the disputed land for a period of approximately six years from 1996 to September 2002 when judgment was given by the court.

[17] Learned Counsel contended that the appellant is at least entitled to general damages in the net amount of $4,500.00 having deducted therefrom general damages to the respondent for one year's wrongful occupation (which is denied) by the appellant. Learned counsel also argued that the respondent did not prove special, aggravated or exemplary damages and no award was made in any of these categories.

[18] He contended that in the circumstances this court should allow the appeal rescind the award of general damages and costs to the respondent and award general damages and costs to the appellant.

[19] Mr. Hamilton, learned counsel for the respondent, in his skeleton arguments contended that on Friday 6th September, 1996 the appellant's men with trucks, a crane, hoist, a grader, a front end loader accompanied by a police escort entered the land in dispute. They cut down the respondent's fence, took up and removed from the site building materials which were to be used for the expansion of the respondent's Hotel from 12 rooms to 40 rooms. As a result the respondent's construction schedule was disrupted.

[20] On 11th November, 1996 the appellant in defiance of the order of the court once more sent its servants and agents unto the land removed the respondent's building material and fencing and threw them unto the road.

[21] There is not even an attempt by the appellant to deny these serious allegations. In fact the learned trial judge said at paragraph 3 of his judgment that the claimant [appellant] admitted entering a portion of Parcel 384 on around 30th August 1996, but denied removing any construction material.

[22] I agree with all the factors taken into consideration by the learned trial in assessing damages including "bully its feebler neighbour the defendant".

[23] What is sinister about this is the appellant bullying the respondent to surrender the disputed land on which at the time the respondent was in lawful occupation. He had occupied it for 25 years with a promise from Ministers of Government that he would be given a 99-year lease.

[24] The attitude of the appellant demonstrated a callous disregard for the laws of the country because while the injunction was in force the appellant with unbridled arrogance scoffed at our hallowed institution defied the order of our court and repeated its acts which is was enjoined not to do.

[25] The respondent is not only blind but also suffers from ill health, I hold the view that the appellant's thinking was that if sufficient pressure was applied the respondent would sell his hotel and move out. I am fortified in that view because the appellant whose premises is neighbourly to respondent's, through its agents in 1995 approached the respondent with offers to purchase his hotel. He refused to sell.

[26] Dr Cort referred us to Martinali v Ramuz and another 1953 2 A ER 892. At page 893 Denning L.J. as he then said:

> " It is elementary that tenancy at will is determined by a demand for possession, not by a notice to quit."

[27] I do not think that the law is in any doubt. However the demand must come from or through some action of the landlord.

[28] In any event in my view it is unarguable that the appellant was in unlawful possession of the disputed land for about one year.

[29] Dr. Cort's argument is to the effect that the market rental value of the land in dispute was $900.00 per year and therefore damages should be limited to that amount. I agree with Mr. Hamilton that damages are not confined to the rental value of the property. The respondent in his witness statement said that the appellant throughout acted to prevent

his utilization not only of the disputed land but also acts designed to disrupt the legitimate business of his hotel, such as, the installation of a high capacity standby electricity generator within close proximity of his hotel's 6 apartments which butt and bound the appellant's land. The noise level was so extremely loud that no one could occupy these rooms. He estimated to have lost income over the years in excess of $100,000.00

[30] In Clerk & Lindsell on Torts 15th Edition at paragraph 21-103, the learned authors opined :

> "Though aggravated damages may be awarded for the circumstances of a conversion it is not permissible to award vindictive or exemplary damages unless it is necessary to teach a wrongdoer that tort does not pay". Lord Devlin has thus expressed the principle: "Where a defendant with a cynical disregard for a plaintiff rights hss calculated that the money to be made out of his wrong doing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category(of cases) is not confined to money making in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object-perhaps some property which he covets which either he could not obtain except at a price greater than he wants to put down". (Rookes v Bernard 1964 Ac. 1129 at 1137)

[31] The above quoted passage is very apt to the present case, in my view that had the plea be made, I would have had no hesitation in awarding punitive damages.

[32] The appeal is dismissed. Costs agreed in the sum of $10,000.00 to the respondent.

A.J. Redhead
Justice of Appeal

I concur

Adrian Saunders
Justice of Appeal

I concur

Ephraim Georges
Justice of Appeal [Ag.]