

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 553 OF 2004

BETWEEN:

CECELIA QUAMMIE ANDERSON

Applicant

V

PAULINE CUFFY

Respondent

Appearances:

Mrs. Zhing Home Edwards for the Applicant

Mr. Parnell Campbell Q.C. and Mr. McCauley Peters for the Respondent

2006: July 24

2006: September 22

RULING

- [1] **THOM, J:** This is an application for sale of a property owned by the parties as tenants in common and for the payment of occupation rent.
- [2] This application was heard on July 24, 2006. On July 26, 2006 an order was made for the purchase of the property by the Applicant. The claim for occupation rent was dismissed and I advised that I will give my reasons on September 22, 2006. I do so now.
- [3] On the 22nd day of December 2004 the Applicant brought an action against Felix Cuffy seeking an order for sale of property which was owned by the Applicant and the Respondent as tenants in common in equal shares. The parties were in a common law relationship which had ended. Before the matter could be heard, Felix Cuffy died on January 20, 2005.

- [4] By consent order dated October 6, 2005 Master Cottle ordered as follows:
- “That Pauline Cuffy be appointed to represent the estate of the Defendant Felix Cuffy, deceased;
 - That the property be sold by public auction and that the parties are each entitled to one-half share of the net proceeds of sale with liberty to both parties to bid at the public auction;
 - That the Defendant/Respondent have conduct of the sale;
 - That the sale be completed by the 31st day of December 2005; and
 - That there be liberty to both parties to apply.
- [5] The sale did not take place by the 31st day of December 2005 and the Applicant applied to the Court on the 25th day of May 2006 for an order that:
1. The Applicant be permitted to purchase the Respondent's one-half share in the property situate at Cane Garden; or alternatively
 2. The Applicant be given conduct of the auction sale of the said property and the Applicant be permitted to engage the services of Mr. Sebastian Alexander to carry out a valuation of the said property and to act as auctioneer;
 3. The Respondent do pay to the Applicant a reasonable sum in respect of rent for the period from August 2005 to such date as the property is vacated; and
 4. The Respondent do pay the costs of this Application.
- [6] On the hearing of this Application Learned Queens Counsel for the Respondent advised the Court that the Respondent consents to the purchase of the Respondent's one-half share in the property by the Applicant. The parties agreed that the house was not occupied by the Respondent but by a third party with the consent of the Respondent. The parties also agreed that the third party occupied the property rent free.
- [7] The sole issue for the Court to determine is whether the Respondent should pay to the Applicant occupation rent for the period August 2005 to such date as the property is vacated.

[8] Learned Counsel for the Applicant referred the Court to the cases of Dennis v McDonald [1982] 2 AER p. 590; and Re Pavlou (A Bankrupt) [1993] 3 AER p. 955. Learned Counsel submitted that the Applicant's claim is not based on the principle of ouster as explained in Dennis v McDonald but that it is a situation where it is necessary to do equity between the parties as explained in Re Pavlou. The Applicant is being deprived of the opportunity to occupy or use the property (by renting it out) while the third party is occupying it at the instance of the Defendant. The third party who is unknown to the Applicant was put in possession without the knowledge of the Applicant.

[9] Learned Queen's Counsel for the Respondent referred the Court to the cases of M'Mahon v Burchell (1846); Griffies v Griffies (1863) and Farrington v Forrester (1893). On D. 461 Learned Counsel submitted that where one tenant in common resides in the United States and there is no evidence that the other tenant in common collected rent from the property there is no basis upon which the Court can order the tenant in possession to pay occupation rent.

[10] Both parties agree that where parties are tenants in common the general rule is no occupation rent is payable where one tenant in common is in sole occupation of the property but occupation rent is payable where a co-tenant is ousted from the property or where it is necessary to do equity between the parties.

[11] Is it equitable for the Respondent to pay the Applicant occupation rent? The circumstances of this case are:

- (1) The Applicant resides in the United States of America and has so resided before Felix Cuffy died on January 20, 2005. The Applicant has submitted this is not a case of ouster.
- (2) The Respondent the widow of Felix Cuffy does not reside at the property but has permitted a third party to occupy the property rent free.
- (3) Having examined the affidavit of the Applicant, I find that the Applicant choose not to occupy the property voluntarily after the death of Felix Cuffy. The Applicant

stated in paragraph 5 of her affidavit that she only became aware that a third party was in occupation of the property when she was informed by her solicitor that learned Counsel for the Respondent had so advised the Court at the hearing on October 6, 2005.

(4) The Applicant sought to have the property sold. While the application for sale was pending before the Court that the Respondent permitted a third party to occupy the property.

[12] I find that the Applicant had no intention of occupying the property but wanted to have the property sold as evidenced by her application to the Court. I find that having regard to all of the circumstances it would not be equitable to order the Respondent to pay occupation rent.

[13] The claim for occupation rent is dismissed.


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Gertel Thom
HIGH COURT JUDGE