THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2010/0586

BETWEEN:

GLYNIS RICHARDSON

Claimant

and

FITZROY BARNES SAMUEL

Defendant

Appearances:

Ms. Stacey–Ann Saunders-Osborne for the Claimant
Mr. Steadroy Benjamin for the Defendant

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2012: February 22
June 19

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JUDGMENT

[1] **MICHEL, J.:** This case is about a portion of land at Fort Road in the Parish of Saint John owned by the Claimant and occupied by the Defendant. By fixed date claim instituted by the Claimant on 22nd September 2010, the Claimant sought orders from the Court for the Defendant to give her vacant possession of the land, pay arrears of rent to her, mesne profits, interest and costs.

[2] The evidence in this case came from the witness statements and oral testimony of the Claimant and her witness (Gregson Gloade) and from the Defendant.

[3] In her witness statement, the Claimant alleged that she is the owner of a portion of land registered in the Land Registry as Registration Section: Gambles; Block: 61 1793C; Parcel 230 (hereafter "the land"). The land was formerly owned by her mother, who rented it to the Defendant for $30 per quarter. Her mother died in 1990, leaving a Will devising the land to her. Shortly after her mother's death she went on the land and explained to the Defendant that she had inherited the land from her mother and they agreed that she would continue to rent the land to him and that the rental would be increased to $50 per quarter. It became very difficult for her to collect rent from the Defendant and on numerous occasions when she went to collect the rent he would either tell her that he did not have the rent or that his wife would pay her the rent. Around December 1991, she decided to write-off all arrears the Defendant had owed and, around May 1992, the Defendant paid her $100 rent for the period from January 1992 to June 1992. Then around August 1995 the Defendant paid her $100 for the period from June 1992 to December 1992. She recorded these payments in her "ledger page". After these payments, she visited the land several times to collect the rent from the Defendant, but the Defendant did not have the rent. At times a young man (whom she assumed to be the Defendant's son) would come out to her and tell her that the Defendant was not there, although she could clearly see the Defendant through the doorway.

[4] The Claimant testified that she became so frustrated by this state of affairs that she instructed her lawyers at the time, Messrs Lockhart & DeFreitas, to deal with the Defendant, and they wrote to the Defendant by letter dated 27th August 1998 demanding that he pay the arrears then due (amounting to $1,300). The letter was accompanied by a notice to quit requiring the Defendant to

deliver up vacant possession of the land on 30th November 1998. The Defendant did not comply with the notice to quit, but he did pay rent for the land to her lawyers. He paid $500 on or about 7th September 1998, $400 on or about 12th October 1998 and $300 on or about 25th January 1999. Her lawyers provided her with a statement of account dated 23rd April 1999 which outlined the amounts that they collected from the Defendant on her behalf. The Defendant has not since January 1999 made any further payment towards the rent.

[5] The Claimant alleged that, by letter dated 11th January 2006, she advised the Defendant that she wanted to build on the land and requested that he vacate same on or before 28th February 2006, but he never responded. She then instructed her current lawyers, Henry & Burnette, to demand that the Defendant pay the arrears of rent due and deliver up vacant possession of the land. Henry & Burnette wrote to the Defendant by letter dated 20th July 2010 requiring him to pay the arrears for the period from January 1999 to July 2010 in the sum of $2,317.13. The letter was accompanied by a notice to quit requiring the Defendant to deliver up possession of the land on or before 31st August 2010. She was informed by her lawyers that the letter and notice were delivered to the Defendant personally on 21st July 2010 and that the notice duly terminated the Defendant's tenancy of the land.

[6] The Claimant alleged that her mother's Will was probated in 1992 and in 2007 she was recorded as the registered proprietor of the land.

[7] She alleged that it was only in the Defendant's defence filed on 23rd March 2011 that she learnt for the first time that the Defendant was claiming that there was never a landlord and tenant relationship between them. She alleged though that the Defendant paid rent directly to her and to

her lawyers, so she cannot understand how the Defendant can now say that a tenancy relationship did not exist.

[8] The Claimant asked the Court to give judgment in her favour, order the Defendant to deliver to her possession of the land, pay to her the arrears due on the rental for the land and mesne profits from the date of termination of the tenancy to the date of delivery of possession. She also asked the Court to award her interest and costs.

[9] Under cross-examination by Mr Benjamin, the Claimant testified that her mother died on 5th May 1990, leaving a Will. Her sister, Marilyn Ballantyne Patterson, was named as the executrix of her mother's estate. Between 1990 (when her mother died) and 2007 (when she was registered as the owner of the land) her sister (Marilyn Ballantyne Patterson) lived in New York and had never spoken to the Defendant. She was a beneficiary of her mother's estate. She did not get any written authorization from her sister to go forward and deal with the Defendant on the land. Her sister did not instruct any attorney to write to the Defendant about the land, but she (the Claimant) acted as executrix of the Will in her sister's absence and, since the property was willed to her, she went on to deal with the Defendant on it. She cannot remember whether her sister gave her anything in writing giving her authorization to act for her as executrix.

[10] The Claimant testified that the Defendant lived on the land for about 20 years before her mother died. She believes that the Defendant used to pay $30 per quarter in rent to her mother. Shortly after her mother's death, she did discuss with the Defendant that she had inherited the land from her mother and they did agree that she would continue to rent the land to him at an increased

rental of $50 per quarter. The Defendant had then been living on the land for upwards of 20 years as her mother's tenant.

[11] The Claimant testified that she went to the law firm of Lockhart & DeFreitas about this matter sometime in 1998. She acknowledged paragraph 4 of the letter by Lockhart & DeFreitas dated 27th August 1998. She had given instructions to them as to the kind of tenancy the Defendant had; he was a half yearly tenant and not a quarterly tenant. She acknowledged the notice to quit also dated 27th August 1998 giving the Defendant 3 months' notice.

[12] The Claimant denied that at no time at all was there a landlord and tenant agreement between the Defendant and her. She denied that the Defendant did not pay her rent because he was not her tenant; he did pay her before. She did have a receipt book but it got destroyed in the hurricane. She has no receipts showing that the Defendant ever paid rent to her for the land, but she has her ledger and the written statement of account from Lockhart & DeFreitas. She acknowledged a letter from her to the Defendant dated 11th January 2006 and she maintained that the Defendant never responded to her. She testified that it is not correct that the Defendant never responded to her because he was never a tenant of hers; he was a tenant. In her letter, she gave the Defendant one month's notice; she did not know that it should have been three months. She cannot provide the Court with any document showing that the Defendant got the letter of 11th January or the notice to quit from Lockhart & DeFreitas dated 27th August 1998.

[13] The Claimant acknowledged the letter from Henry & Burnette dated 20th July 2010 and testified that she gave her lawyers the time instructions. She did not tell the Defendant to put his house on the land and the statement to that effect in her lawyers' letter of 20th July is not true. The letter

gave the Defendant one month's notice. She agreed that the Defendant had been a half yearly tenant. She cannot produce to the Court any documentary proof that the Defendant received the notice to quit from her lawyers. She would be surprised if she was told that the Defendant only got the notice to quit of 20th July when he got the fixed date claim form. She does not know that the demand in the notice for the Defendant to vacate the land by 31st August 2010 would be useless if the Defendant got the notice in September.

[14] The Claimant denied several statements put to her by Learned Counsel for the Defendant as he put his client's case to her in concluding his cross-examination of her. She denied that at no time the Defendant was her tenant; that at no time there was any agreement that the Defendant would pay her any money by way of rent for the land; that the Defendant owes her no money for his occupation of the land.

[15] In re-examination, the Claimant testified that when she said that in her sister's absence she was executrix of the Will she meant that whatever was to be done, her sister left her to do it in whatever way.

[16] The other witness for the Claimant was Gregson Gloade – a process server and a teacher. In his witness statement, Mr Gloade alleged that on the instructions of Henry & Burnette he personally served the Defendant with the letter and notice to quit dated 20th July 2010 by handing them to the Defendant at Fort Road in the Parish of Saint John on 21st July 2010 after the Defendant identified himself. On 24th September 2010, he personally served the Defendant with the fixed date claim form, statement of claim and ancillary documents at Fort Road aforesaid. On 23rd February 2011,

he again served these documents on the Defendant, together with a Notice of Hearing filed on 22nd February 2011.

[17] Under cross-examination, Mr Gloade testified that it has not been a general practice of his to have the person who is served with a letter to sign a notebook acknowledging receipt of the document, but he agreed that it would have been good to do that. He denied that it was untrue that he served the Defendant. He conceded that there was no affidavit of service swearing that he served the Defendant with a demand letter or a notice to quit, but he did serve him with these documents. He did file an affidavit of service swearing to his service on the Defendant of the fixed date claim form on 24th September 2010, but he did not know that it was important to have a document to the effect that a notice to quit was served when one serves such a document.

[18] The final witness in the case was the Defendant.

[19] In the witness summary filed on behalf of the Defendant, it is stated that the Defendant admits that on 21st May 2007 the Claimant was registered with absolute title as the proprietor of the land. Prior to that the land was owned by the Claimant's now-deceased mother, Ivy Perry, who left the property to him. At no time was there a landlord/tenant relationship between him and the Claimant; they never entered into any oral agreement in or about May 1990 regarding rental of the land. It is specifically denied that the Claimant agreed to continue letting the land to him at a rent of $50 per quarter. He did not neglect and/or refuse to pay rent to the Claimant because there was no legal obligation upon him that he should do so. He never received a notice to quit from the Claimant dated 20th July 2010 or on any date whatsoever. Indeed, he only became aware of the purported notice to quit dated 20th July 2010 by seeing it attached as exhibit "A" to the fixed date claim form.

He says emphatically that he was never served with a notice to quit by the Claimant or anyone acting on her behalf, nor was he served with the demand letter dated 20th July 2010 and he is completely unaware of the existence of such letter of demand for payment of rent. In fact, there could not lawfully be any demand for rent since there was never any agreement made between him and the Claimant that he would pay rent for his occupation of the land. He continues to reside on the land since his right to occupy it has not been lawfully terminated by the Claimant or anyone else. He specifically denies that he owes rent and mesne profits to the Claimant or that she has suffered loss and damages as a result of his conduct pertaining to his occupation of the land. He asked for the Claimant's claim to be dismissed with costs.

[20] It would be difficult to even attempt to present a full summary of the evidence given by the Defendant under cross-examination, but I will at least give a few selected extracts of his evidence under cross-examination which are material to the issues in dispute between the parties.

[21] When the letter and accompanying notice to quit dated 20th July 2010 were read to the Defendant in court, he testified this was the first occasion when they had been read to him, but he admitted receiving them, telling his wife about them, but not being interested in knowing their contents. He testified that he had never seen Mr Gloade before the day of the trial, then that Mr Gloade came to him once, not three times; that when Mr Gloade came to him, Mr Gloade said that he was looking for Fitzroy Barnes and he told Mr Gloade that his name was Fitzroy Samuel, whereupon Mr Gloade handed him a document and told him that he had to come to court. Mr Gloade never mentioned the Claimant. Then he testified that Mr Gloade came back to him a second time and told him he had to come to court. Then that it was only one time Mr Gloade told him that he had to come to court. Then Mr Gloade came to him one time. Then, having earlier said that Mr Gloade never

mentioned the Claimant, he then denied that he said "chups" when Mr Gloade told him that the documents related to the Claimant.

[22] The Defendant testified that he does not know the Claimant (after she was pointed out to him); he never saw her before. Then he testified that the Claimant told him that the land belonged to her. Then he testified that the only time that the Claimant came to him was one day she came and told him she wants her land "just like that". Then he denied having said earlier that he never saw the Claimant before, and admits that he had seen her before.

[23] The Defendant testified that he had rented the land from the Claimant's mother and had built a wooden house on the land. He agreed that the rental which he paid to the Claimant's mother was $30 per quarter. He agreed that after the death of the Claimant's mother he remained on the land and that he would have to pay somebody else the rent. He did not think that the land belonged to him after the death of the Claimant's mother and he disavows the statement contained in the witness summary filed on his behalf to the effect that the Claimant's mother left the land to him. He agreed that the land belongs to the Claimant; the Claimant had told him so and, indeed, before the Claimant's mother died she had told him that the land belonged to the Claimant.

[24] I found the Defendant's evidence to be wholly unreliable. A few of the instances of his glaring contradictions of his own evidence should suffice to illustrate the patent unreliability of his evidence. First, that he had never before seen the process server, Mr Gregson Gloade; then that he saw him once, not three times; then that he saw him twice – (0, 1, 2, all within about an hour or less of cross-examination). Second, he never saw the Claimant before; then the Claimant had come to him and told him that the land belonged to her; then the only time the Claimant came to

him was one day she came and told him that she wants her land "just like that"; then he denied having earlier said that he had never seen the Claimant before.

[25] In re-examination, Learned Counsel for the Defendant elicited evidence from him that he never went to school and that he could not read and write. Be that as it may, it is clear that the Defendant was aware that he had rented a piece of land from Ivy Perry on which he was permitted to build a chattel house and that he was required to pay her rental of $30 per quarter. He was aware that Ms Perry died in 1990 and that the land had passed to the Claimant. He was aware that his status on the land was that of a tenant and that his obligation to pay rent did not die with Ms Perry. Yet the Defendant asserts that he never paid rent to the Claimant or anyone else for that matter since the death Ms Perry in 1990.

[26] It is noteworthy that the Defendant failed to call his wife as a witness for him, having given evidence that she was the one to whom he brought the documents with which he was served. But then, one might ask, bring his wife to give evidence to what effect, given what appears to be the clear facts of this case, notwithstanding the apparent (if unwitting) attempt by the Defendant to obfuscate them by his contradictory statements and his memory lapses during cross-examination.

[27] Having seen and heard the witnesses, I believe that the Defendant did pay rent to the Claimant after the death of her mother; that he did pay rent to her previous lawyers, Lockhart & DeFreitas, after he had received from them a demand letter and notice to quit on behalf of the Claimant. I believe that he failed to pay any rent after January 1999. I believe that the Claimant did write to the Defendant on 11th January 2006 asking him to vacate the land by 28th February 2006 so that she could build on her land and that he failed to respond to her letter. I believe too that the Defendant

was served by Mr Gloade on 21st July 2010 with the demand letter and notice to quit dated 20th July 2010 demanding that he pay outstanding rental of $2,317.13 and deliver up possession of the land to the Claimant by 31st August 2010. I believe that the Defendant has failed to do comply with the demand letter and the notice to quit, resulting in the institution of these proceedings against him on 22nd September 2010.

[28] As to the validity and efficacy of notice to the Defendant to deliver up vacant possession of the land to the Claimant, the notice given by Lockhart & DeFreitas for the Defendant to do so on 30th November 1998 (Exhibit G.R.8) was vitiated by their acceptance of rent on behalf of the Claimant up to 31st December 1998, which is beyond the termination date of the notice. The letter dated 11th January 2006 from the Claimant to the Defendant (Exhibit G.R.12) - although expressing a desire by the Claimant for the Defendant to vacate the land by 28th February 2006 – did not have the effect of terminating the Defendant's tenancy of the land from 28th February 2006. The notice to quit from Henry & Burnette dated 20th July 2010 and served on the Defendant on 21st July 2010, which gave notice to the Defendant that he is to deliver up possession of the demised premises to the Claimant on or before the 31st day of August 2010, was valid and effective in terminating the Defendant's tenancy as of 31st August 2010; the notice also satisfies the requirements of section 22 (b) of the Small Tenements Act, Cap. 406 of the Revised Laws of Antigua and Barbuda, as having given "a clear month's notice" to terminate a quarterly tenancy.

[29] For the record, I should state that I attach no weight to the concessions extracted from the Claimant under cross-examination to the effect that the tenancy was a half yearly and not a quarterly tenancy and that the Defendant was entitled to three months' notice to terminate the

tenancy. This runs counter to the evidence of both the Claimant and the Defendant and was no more than a slip up induced by skilful cross-examination.

[30] In the circumstances, the Claimant is entitled to the relief which she claims.

[31] The Court is mindful of the fact that the Defendant has had his home on the land for what seems to be over 40 years now (over 20 years before the death of Ivy Perry in 1990 and over 20 years since her death). Although he has been resisting since 1998 the Claimant's attempts to evict him, and although he conceded under cross-examination that his house is a wooden structure on concrete blocks which can be lifted up from the land and moved, it is only fair that the Defendant be given sufficient time to locate alternative, available, affordable land for lease or purchase and to which he can move his house. He will therefore be allowed until the end of this year to do so – a period of just over 6 months. The Defendant will, however have to pay to the Claimant arrears of rent and mesne profits, both at the rate of $50 per quarter, from 1st January 1999 to 31st December 2012, unless he shall have earlier given vacant possession of the land to the Claimant, in which event the mense profits payable for the period from the date of this judgment to the date when he shall have given up possession of the land will be prorated accordingly.

[32] Apart from her entitlement to vacant possession, arrears of rent and mesne profits, the Claimant is also entitled to interest, at least on the arrears of rent, and to costs. As to costs, however, although it was determined by the Court in an order made on 30th September 2011 that "the value to be placed on this case, being a case in respect of which there is no monetary value, is $50,000.00", it was never determined that the successful party will be awarded prescribed costs, whether based on that value or otherwise. The Court retains the discretion given to it in Rule 65.2 of the Civil

Procedure Rules 2000 to determine the amount of costs that it deems to be reasonable, having regard to the work involved in the conduct of this case and to what appears to the Court be fair to both parties.

[33] My order is as follows:

1. The Defendant is hereby ordered to give vacant possession to the Claimant of the portion of land registered in the Land Registry as Registration Section: Gambles; Block 61 1793 C; Parcel 230 on or before the 31st day of December 2012.

2. The Defendant is ordered to pay to the Claimant arrears of the rental due on the land from the 1st day of January 1999 to the 31st day of August 2010 at the rate of $50 per quarter, with interest thereon at the rate of 5% per annum from the due date to the date of this judgment.

3. The Defendant is ordered to pay mesne profits to the Claimant at the rate of $50 per quarter from the 1st day of September 2010 until the Defendant shall have given vacant possession to the Claimant.

4. The Defendant is ordered to pay to the Claimant costs of $3,000.

Mario Michel
High Court Judge