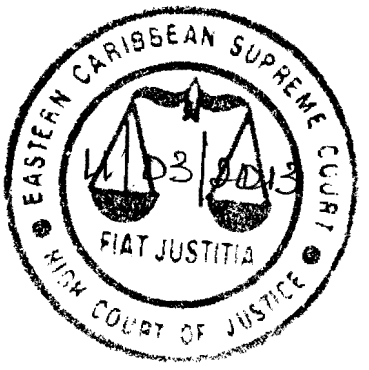
THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE



CLAIM NO. SVGHCV2009/0094

BETWEEN:

[1] POMME-GRANATE LTD.
formerly (CPCTI (SVG) Ltd.
(acting through its director
INGRID PUNNETT

Claimant/Applicant

and

[1] GREGORY BROWNE
[2] SHELLY-ANN SUTHERLAND

Defendants/Respondents

Appearances:
Mr. Ronald Marks and Mrs. Patricia Marks for the Claimant
Mr. Carlyle Dougan for the Defendants

2012: November 11
2013: March 11

JUDGMENT

[1] **THOM, J:** The Claimant/Applicant and First Respondent/First Defendant entered into a lease agreement on May 31, 2002 for a parcel of land situate at Belvedere. The lease was for a period of three years. On January 23, 2006 the Applicant and the Respondents agreed to a lease for a period of three years commencing from January 1, 2006 at a rent of $5,000.00 payable at the commencement of the lease. They agreed that the other conditions of the May 2002 lease would be applicable.

[2] The Applicant contends that on July 1, 2008 notice to quit and deliver up, vacate possession of the land on the expiration of the lease on December 31, 2008 was duly served on Mr. Browne and Ms. Sutherland by a Bailiff of the High Court. The Respondents having refused to give up possession of the land, the Applicant instituted these proceedings seeking recovery of possession of the land and mense profit of $416.07 per month until judgment.

[3] The Respondents in their defence admit that the 1st Respondent entered into a lease agreement dated May 31, 2002 with the Applicant and paid the rent stipulated in the lease. The Respondents also admit that they both signed the letter dated July 23, agreeing to a lease of the said property for a period of three years. The Respondents in their defence contend that the Applicant is not the legal owner of the land, and the notice to quit was unsigned. The Respondents also counterclaimed that the Applicant's Deed No 299 of 2001 should be cancelled since the Applicant's predecessor in title did not legally own the land thus they also contend the predecessor's Deed should also be cancelled. They also claim repayment of the sum of $8,000.00 and damages for misrepresentation.

[4] The Applicant made this application to strike out the Defence and Counterclaim pursuant to CPR 26.2 (1), and 26.3 (1) (b) and (c) on the grounds that:

(a) the defendants seek to repudiate the title of the Claimant as landlord, and
(b) the Counterclaim is for the repayment of sums paid to the Claimant as rent and cancellation of the Claimant's deed.

SUBMISSIONS

[5] Mr. Marks for the Applicant submitted that the Defendants have acknowledged the Applicant as landlord and having paid rent to the Applicant and having had exclusive possession of the land, there was a clear relationship of landlord and tenant. It is settled law that a tenant cannot assert title adverse, to his landlord whether it be for himself or for a third party. **Halsbury Laws of England** 4th ed. Vol 27 (1) paragraph 605, and **Wisbech St. Mary Parish Council v Lilley [1956] 1 W.L.R.**

[6] Mr. Marks also submitted that the notice to quit was a valid notice. The test applicable is outlined in **Halsbury's Law of England** Vol. 27 (1) paragraph 222. The notice served on the Respondents was very clear that the lease would expire on December 31, 2008 and would not be renewed.

[7] Mr. Marks also submitted that there is no real prospect of the success and urged the court to strike out the Defence and Counterclaim bearing in mind that the overriding objective of CPR 2000 is to deal with cases justly by saving unnecessary expenses and ensuring timely and expeditious disposal of cases.

[8] Mr. Carlyle Dougan Q.C. for the Respondents submitted that in order to recover possession of land a valid notice to quit must be served on the lessee. The notice served on the Respondents was unsigned, therefore it was not a valid notice. The Applicant ought to have had a memorandum of service endorsed on the duplicate of the notice at the time the notice was served.

[9] Mr. Dougan Q.C. further submitted that the affidavit in support of the application shows that the Director of the Applicant regarded the property as her own. Also the affidavit is badly drafted in that it refers to matters of law, it makes reference to the case of **Wisebech**.

[10] Mr. Dougan Q.C. also submitted that the Applicant did not give an estimate of the property in the claim form as required by CPR 8:7 (4). Further the Claim Form referred to the land as situate at Belvedere while in the Statement of Claim the land is referred to as situate at Prospect.

[11] Mr. Dougan Q.C. also submitted that striking out is a draconian step, the court should apply the principles expounded in **Michael Wilson and Partners Ltd. Temujin International et al BVIHCV2006/0307.**

FINDINGS

[12] Under the provisions of CPR 26.3 (1) the court may strike out a statement of case or part of a statement of case where

> "(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings.

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
(c) the statement of case or the part to be struck out is an abuse of process of the court or is likely to disrupt the just disposal of the proceedings; or
(d) the statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[13] The Applicant seeks leave to have the Defence and Counterclaim struck out pursuant to paragraphs (b) and (c).

[14] The phrase "no reasonable ground for bringing or defending the claim" simply means that the statement of case or part to be struck out cannot succeed even if all of the allegations were true or it cannot succeed as a matter of law. The court will consider the statement of case to determine whether the pleadings establish a cause of action known to the law. The court is not required to consider the prospect of success of the statement of case.

[15] It is generally accepted that striking out is a draconian step and one which the court will use sparingly. It is to be used only in plain and obvious cases. In **Robert Convich v Ann VanDer Elst. AXAHCV2001/002 Rawlins J** (as he then was) in considering an application to strike out stated:

> *"It is only where a statement of case does not amount to a viable claim or defence, or is beyond cure that the court may strike out,"*

[16] In **Citco Global Custody v Y2K Finance BVICVA No. 22/2008 Edwards JA** after referring to Blackstone's Civil Practice 2009 identified the governing principles when determining whether to strike out a statement of case as follows:

> *"the following circumstances are identified as providing reason for not striking out: where the argument involves a substantive point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully developed. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and the ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross-examination often change the complexion of a case. Also before using CPR 26:3 (1) to dispose of "side issues", one should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally in deciding whether to strike out, the judge should consider the effect of the order or any parallel proceedings and the power of the court in any application must be exercised in*

accordance with the overriding objective of dealing with cases justly."

[17] An examination of the defence shows that the Respondents' defence is firstly, the notice was unsigned, and secondly the Applicant is not the legal owner of the land.

NOTICE

[18] A notice to quit need not be in any specific form. The Learned Authors of **Halsbury Laws of England 4th ed.** and volume 27 (1) paragraph stated:

> *'Subject to any term of the tenancy, and to any statutory requirements, a notice to quit need not be in any particular form, nor need it be addressed to the tenant by name, provided that it is properly served on him."*

[19] A similar view was expressed in **Hill and Redman's Law of Landlord and Tenant** at paragraph 368, it reads:

> ***'Form of notice to quit** - The form of notice is immaterial provided it indicates in substance and with reasonable clearness and certainty an intention on the part of the person giving it, to determine the existing tenancy at a certain time, and the party to whom it is given could not be misled as to the intention given, though the language is ambiguous and lame. The notice need not be addressed to the tenant by name, provided it is properly served on him; and if the tenancy was created orally, the notice may be given orally. Errors in the description of the premises, or as to the christian name of the tenant will not invalidate the notice if the tenant is not misled by them. In the absence of an express or statutory power to resume possession of part of the premises, it must be a notice to quit the whole; a notice to quit a part only is void. The notice need not state to whom the premises are to be given up; though if this is stated it should be stated with certainty; but the notice must indicate when the premises are to be given up, and it must be expressed unequivocally."*

[21] The above learning suggest that the lack of the signature of the landlord or his agent will not invalidate a notice to quit. The footnote at (2) of paragraph 222 of **Halsbury's Laws** and (a) of paragraph 368 of **Hill and Redman** states *"if it is in writing, signature is apparently not essential* ***(Carlton v Herbert (1886) 14 W.R. p.772.*** What is important is that the notice must state clearly that the lease would be determined at a definite time.

[22] The notice to quit clearly stated the notice was being given by the Applicant. It was addressed to the Respondents at the address of the land. It clearly stated the lease would not be renewed at the end of the lease period being December 31, 2008. This was a plain and simple notice to quit. The Respondents could not have been misled by it. Further the lease was for a fixed period of three years commencing from January 1, 2006 to December 31, 2008. On December 31, 2008 the lease came to an end by effuxion of time.

TITLE TO PROPERTY

[23] The principle in the case of **Wisebech** is that where a tenant claims a title in himself that is adverse to the landlord, or he permits a third part to have possession of the leased premises for the purpose of enabling the third party to set up a title that is adverse to the landlord then such an act of the tenant would amount to a repudiation of the landlord's title and would result in a forfeiture of the lease.

[24] In this case the Respondents do not assert any title in the land nor have they caused any third party to claim a title adverse to the Applicant. Throughout the lease period they acknowledged the Applicant as landlord. They were put into possession by the Applicant and paid rent to the Applicant. The Respondents simply contend that the Applicant is not the legal owner of the land because its predecessor in title was not the legal owner of the land and therefore could not convey legal title to the Applicant. The Respondents do not contend that they have any legal right to remain in possession of the land. In my opinion the Respondents simply have no legal basis to challenge the Applicant's title to the land which is vested in it by Deed No. 299 of 2001.

COUNTERCLAIM

[25] Deed No. 298 of 2001 is the deed which Ms. Ingrid Punnett vest title to the land in Deed No. 299 of 2001 is the deed which vests title in the land to the Applicant by Ms. Punnett. Ms. Punnett is not a party to this action thus no order can be made in relation to the validity of her deed. The Respondents have not shown that they have any legal basis for challenging the Deeds. They do not claim to be legally entitled to possession of the land or that they have any interest in the land.

Repayment of the sum of $8000.00

[26] The sum of $8000.00 represents rent which the Respondents acknowledge they paid to the Applicant for the period they occupied the land pursuant to the lease. They also acknowledged that they have been in occupation of the property for the period stipulated in the lease.

Damages for misrepresentation

[27] The Respondents alleged that in 2002 the wrong parcel of land was identified by the Applicant as the land subject of the lease and the Respondents incurred expenditure in clearing the land. This claim would be statute barred pursuant to the Limitation Act since the counterclaim was filed on April 30, 2009.

[28] The Respondents also allege misrepresentation in that the Applicant represented that it owned the land the subject of the lease, and offered to sell the property to the Respondents. The Respondents agree that no contract of sale was entered into by the Respondents and the Applicant. The basic facts must be pleaded to establish a cause of action in misrepresentation - firstly, that an untrue statement was made, secondly the statement must be a statement of fact not mere opinion, and thirdly the statement must have induced the innocent party to enter the contract. This part of the counterclaim also does not disclose any reasonable ground for bringing a claim.

[29] In conclusion, while I agree that striking out is a draconian step in that the party whose statement of claim is struck out is thereby deprived of a right to a trial, where there is no viable defence or claim or it cannot be cured the court ought to strike it out. This is a claim for possession of land. The lease was for a fixed period. The period has expired. The Respondents do not contend that they have any interest in the land or are entitled to possession of the land. This is a plain and obvious case where there is no reasonable ground for defending the claim or for bringing a counterclaim.

[30] It is ordered that:

(1) The defence and counterclaim is hereby struck out.

(2) The Respondents shall pay the Claimant cost in the sum of $1,100.00.

(3) The matter is adjourned to April 24, 2013.

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Gertel Thom

HIGH COURT JUDGE