

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0028

BETWEEN

SUZETTE GRANT HINDS
of Old Montrose

CLAIMANT

and

SHALMA LYSCOTT
of Old Montrose

DEFENDANT

Consolidated with:

SVGHCV2014/0029

BETWEEN

SUZETTE GRANT HINDS
of Old Montrose

CLAIMANT

and

SEYMOUR DELPESCHE
of Old Montrose

DEFENDANT

Consolidated with:

SVGHCV2014/0030

BETWEEN

SUZETTE GRANT HINDS
of Old Montrose

CLAIMANT

and

REANNA COLE
of Old Montrose

DEFENDANT

Appearances:

Ms. Sheena Williams for the claimant.

Defendants Seymour Delpesche, Shalma Lyscott and Reanna Cole unrepresented.

2018: Mar. 21
Apr. 11

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Ms. Suzette Grant Hinds is the daughter of Mr. David George deceased. The late Mr. George gifted his apartment building at Old Montrose to Ms. Grant Hinds by will. After his death in 2013, Ms. Grant Hinds obtained probate of his will having been appointed sole executrix in it. She transferred the property to herself by Deed of Assent No. 318 of 2014.
- [2] At that time, Mr. Seymour Delpesche, Ms. Shalma Lyscott and Ms. Reanna Cole occupied the premises as tenants. Ms. Grant Hinds testified that she wrote to them after her father's demise and instructed them to pay the rent to her with effect from April 2013. She complained that they failed to do so, as a result of which she sent each of them a notice to quit in November 2013. Mr. Delpesche, Ms. Lyscott and Ms. Cole remained in the premises after the expiry of the notices on December 31st 2013.
- [3] By separate fixed date claims in February 2014¹, Ms. Grant Hinds brought legal proceedings against Mr. Delpesche, Ms. Lyscott and Ms. Cole to recover possession of the respective apartments, arrears of rent, damages, an injunction to restrain them from remaining in the

¹ Filed on 7th February.

apartments and costs. Although they filed Defences and ancillary claims in which they denied the claim, they did not file witness statements and they proffered no evidence. Ms. Grant Hinds testified at the summary trial² and was cross-examined by Mr. Delpesche. Ms. Lyscott and Ms. Cole absented themselves from the hearing although they were served with notices of the hearing³. Mr. Delpesche. Ms. Lyscott and Ms. Cole have been found liable for the reasons set out in this judgment.

ISSUES

- [4] The issues which arose for consideration are:
- (1) Whether the notices to quit were valid? and
 - (2) To what relief is Suzette Grant Hinds entitled?

ANALYSIS

Issue 1 – Were the notices to quit valid?

- [5] Ms. Grant Hinds was the only witness. She gave uncontroverted evidence and supplied copies of the referenced Grant of Probate and Deed of Assent authenticated in accordance with the applicable law⁴. I am satisfied that Ms. Grant Hinds was at the material times, executrix of her father's estate and is now the registered owner of the subject property at Old Montrose as successor in title to her deceased father.
- [6] Ms. Grant Hinds testified that her father '... rented apartments to the following tenants: one Shalma Lyscott, Seymour Delpesche, and Reanna Cole, the Defendants in the instant suit.' She stated that Shalma Lyscott, Seymour Delpesche, and Reanna Cole paid him a monthly rent of \$270.00 for their respective apartments. Ms. Grant Hinds did not produce any documentary proof of the basis on which they occupied the premises. Neither did Mr. Delpesche, Ms. Lyscott or Ms. Cole.

² As outlined in her amended witness statement filed on 2nd October 2017 and orally.

³ As attested to by Bailiff Rolton Bobb.

⁴ Registration of Documents Act, Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines 2009, ss. 21 and 22; and the Evidence Act Cap 220 of the Revised Laws of Saint Vincent and the Grenadines 2009, ss. 51 and 55 and the relevant rules.

- [7] It was not disputed that they enjoyed exclusive possession of the respective apartments, for a specific agreed period and paid rent referable to the period of the tenancy. The presence of these factors supports a finding that a tenancy existed⁵. I therefore accept Ms. Grant Hinds' account on all counts and find that Mr. Delpesche, Ms. Lyscott and Ms. Cole were monthly tenants of Mr. George.
- [8] Immediately on Mr. George's death Ms. Grant Hinds became the new lessor, in her capacity as executrix. In this regard, the Administration of Estates Act⁶ ('the Act') provides that interests in real property pass to the personal representative of a deceased person and remain so vested, until distributed in accordance with the deceased's will or the Act. An executrix is the legal personal representative of a deceased person who left a valid will.
- [9] The law provides that a landlord/tenant relationship is created between a tenant and the new owner of leasehold property as soon as a change in ownership is registered or otherwise effected. That relationship subsists with the new owner-*cum*-lessor, for the remainder of the unexpired portion of the lease. In other words, the law recognizes as between the new owner and the lessee, the continuation of the privity that existed between the original parties to the lease.⁷
- [10] This legal principle is enshrined in 4 & 5 Anne⁸ which is part of the law of Saint Vincent and the Grenadines. It follows that Ms. Grant Hinds remained the lessor after the subject property was transferred to her by Deed of Assent. From that time, she held the property as owner in her own right, subject only to a deficiency in her claim to ownership.
- [11] Mr. Delpesche, Ms. Lyscott and Ms. Cole all filed Defences and Counterclaims⁹ which were almost

⁵ See *Street v Mountford* [1985] AC 809.

⁶ Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines 2009, section 4.

⁷ Per Swinfed Eady LJ in *Wedd v Porter* [1914 W. 918] – [1916] 2 K.B. 91.

⁸ That legislation is retained in the laws of Saint Vincent and the Grenadines under the Application of English Law Act. (It should be noted that the statute is erroneously named in one small respect: the Schedule refers to c.3 instead of c.16. Presumably a reference to section 3 which is often cited.)

⁹ Respectively on 11th and 13th March 2014.

identical. They denied owing rent. They also asserted that they occupied the subject apartments as Mr. George's tenants and paid rent to David Browne's wife who issued receipts for the same.

[12] They alleged further that legal proceedings were ongoing to determine the rightful legal representative of David George's estate. They averred that they had continued to pay rent to his wife Mrs. Thelma George. They claimed that they had incurred legal expenses in defending the instant suit. They sought orders for damages, interest and costs.

[13] By judgment made on March 1st 2017¹⁰, it was determined that Mr. George's will was validly made. Consequently, the challenge to Ms. Grant Hinds' authority to function as executrix and to inherit the subject property was effectively resolved. She testified that she wrote to Mr. Delpesche, Ms. Lyscott and Ms. Cole by letter dated 5th April 2013 informing them that she was the executrix of her father's estate and directing them to pay all future rents to her. She thereby acknowledged the existence of the tenancy and signified her intention that it remain in place. Ms. Grant Hinds said that none of the three tenants paid her any rent.

[14] It is trite law that a lessee is obligated by law to pay rent to the lessor. Breach of the covenant to pay rent renders the defaulting tenant liable to eviction. Failure by the tenants in the case at bar constituted a breach of their individual tenancy agreements.

[15] Deed of Assent No. 318 of 2014 reflected that Ms. Grant Hinds became the owner of the subject property on February 4th 2014. She said that on 15th November 2013, she issued a written notice to quit to Mr. Delpesche, Ms. Lyscott and Ms. Cole directing them to vacate the premises by 31st December 2013. They did not. Ms. Grant Hinds exhibited a copy of the letter. It did not identify any breach allegedly committed by the lessees. Ms. Grant Hinds initiated the present claim approximately five weeks after expiration of the notice period. By then she had become the owner of the property. She had issued the notices to quit in the capacity of executrix.

[16] Ms. Grant Hinds submitted that the notice to quit was valid. She contended that the learned authors of Halsbury's Laws of England support this contention. She quoted from the text as follows:

¹⁰ In civil claim SVGHPB2014/0001 – Thelma George et al v Suzette Grant Hinds, David Browne and Berisford Phillips. (unreported)

‘... 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.’¹¹

[17] It is established that a periodic tenancy is determinable by notice to quit which:

1. expires at the end of a complete period of the tenancy; and
2. is equivalent to the length of such period.¹²

This means that a monthly tenancy is terminable by a notice to quit which covers an entire month and ends at the end of that month. The learned authors of Halsbury’s Laws of England declare that questions as to ‘validity of the notice may be avoided by giving it in general form, ... to quit at the end of the next complete week or four weeks, as the case may be, of the tenancy after the date of the notice.’¹²

[18] The tenancy agreement between Mr. Delpesche, Ms. Lyscott and Ms. Cole on the one hand and Mr. George/Ms. Grant Hinds on the other, appears to have been made orally. Ms. Grant Hinds did not specify and she provided no documentary evidence to the contrary. Mr. Delpesche did not seek to elicit any information from her and he made no representations on this aspect of the case. Neither he nor Ms. Lyscott or Ms. Cole denied owing rent as alleged.

[19] I infer from all of the surrounding circumstances that an oral tenancy agreement existed in each case, which was determinable for failure to pay rent. I also accept Ms. Grants Hinds’ testimony that Mr. Delpesche, Ms. Lyscott and Ms. Cole did not pay her any rent in respect of the rented accommodation. She was therefore entitled to terminate each tenancy.

[20] She purported to give notice to quit which spanned half of November 2013 and the entire month of December 2013. Although the notices to quit did not indicate the basis on which they were issued, I harbor no doubt that Mr. Delpesche, Ms. Lyscott and Ms. Cole appreciated that their non-payment of rent was unsustainable and a deal breaker which would ultimately result in their tenancy being ended. The notices to quit provided the requisite notice of termination. In my opinion, Mr. Delpesche, Ms. Lyscott and Ms. Cole would have had no doubt why they were being evicted. In

¹¹ Halsbury’s Laws of England 2016, Vol. 62 Para 228.

¹² Halsbury’s Laws of England 2006 reissue Vol. 27(1) 4th ed. Para 222.

light of the foregoing, I am satisfied that Ms. Grant Hinds had the requisite authority to issue the notices to quit. I therefore hold that the notices to quit were valid.

Issue 2 – To what relief is Suzette Grant Hinds entitled?

Vacant Possession and Injunction

[21] It cannot be gainsaid that Ms. Grant Hinds is entitled to recover possession of the apartments from Mr. Delpesche, Ms. Lyscott and Ms. Cole, if they have remained in possession. Ms. Grant Hinds did not indicate in her testimony whether the tenants have left the premises. However, Mr. Delpesche did inform the court that he no longer resides at the subject property. Ms. Grant Hinds did not refute his unsworn statement.

[22] She acknowledged (on the date of delivery of this decision) that Ms. Lyscott and Ms. Cole have also vacated the referenced apartments. It has therefore become unnecessary for the court to make an order for vacant possession. I make none. Likewise, it is pointless to grant a permanent or any injunction restraining Mr. Delpesche, Ms. Lyscott or Ms. Cole from remaining in the subject property. I refrain from doing so.

Arrears of Rent

[23] It is trite law that a tenant remains liable to pay rent to the landlord during the currency of a tenancy. Once a valid notice to quit has been issued, such payments are converted to (become known as) *mesne profits* and are payable at the rental rate. Although she would have been entitled to receive rents from the date of her father's death in January 2013, Ms. Grant Hinds claimed arrears of rent only from May 1st 2013. She has established on a balance of probabilities that Mr. Delpesche, Ms. Lyscott and Ms. Cole are indebted to her for the monthly rent of \$270.00 from 1st May 2013 to 31st December 2013 - a total of \$2,160.00.

[24] Thereafter, *mesne profits* at the same rate are payable by each of them. It is not possible to calculate that sum in the absence of details about the dates they vacated the premises. Ms. Grant Hinds' claimed in her amended witness statement that Mr. Delpesche, Ms. Lyscott and Ms. Cole were still residing in the apartments at Old Montrose in October 2017. I accept that they were.

[25] Ms. Grant Hinds has thereby established that she is entitled to recover *mesne profits* from 1st January 2014 to 31st October 2017, an aggregate sum of \$12,420.00. Accordingly, I find that Mr. Delpesche, Ms. Lyscott and Ms. Cole are each liable to pay Ms. Grant Hinds the sum of \$12,420.00 as *mesne profits* for that period. Ms. Grant Hinds is required to file and serve on or before 18th May 2018, an application for assessment of any additional amounts for *mesne profits* which might have accrued after that date.

Damages

[26] Ms. Grant Hinds contended that there are no reasonable grounds to ‘... believe that by her actions or inactions that anyone was acting as her agent.’ She reasoned that she is therefore ‘... entitled to damages in the form of unpaid rent from 1st May 2013 until possession is given up’. It seems that Ms. Grant Hinds has conflated the notion of damages with *mesne profits*. It is unnecessary to explore this topic as those matters have been addressed in preceding paragraphs.

Costs

[27] Ms. Grant Hinds has submitted that she should recover costs on the prescribed costs scale pursuant to part 65.5 of the Civil Procedure Rules 2000. She argued that her claim was for an unspecified sum. I note that the total sum recoverable by Ms. Grant Hinds’ from Mr. Delpesche, Ms. Lyscott or Ms. Cole for rental arrears and *mesne profits*, does not exceed \$18,000.00.

[28] I am cognizant that the Magistrate’s Court has the requisite jurisdiction to adjudicate over claims for recovery of rent and possession of rented property where the annual rent or rental arrears is less than \$18,000.00¹³. It was therefore quite unnecessary for Ms. Grant Hinds to commence her claim in the High Court. She would have probably obtained the same results in a more expeditious manner if she had lodged her claim in the Magistrate’s Court.

[29] In the premises, it would be inimical to good administration in the justice system to reward her for electing to bring her claim in this forum. I consider it just to make an order for her to receive costs

¹³ Recovery of Possession Act Cap. 131 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 3 (as amended by the Recovery of Possession (Amendment) Act No. 3 of 2011 See also the Rent Recovery Act, Cap. 133 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 4 (2) (as amended by the Rent Recovery (Amendment) Act No. 9 of 2012.

based on the Magistrate's Courts' scale. Accordingly, Mr. Delpesche, Ms. Lyscott and Ms. Cole are each to pay costs to Ms. Suzette Grant Hinds costs of \$50.00.

ORDER

[30] Accordingly, it is ordered that:

1. Mr. Seymour Delpesche, Ms. Shalma Lyscott and Ms. Reanna Cole shall each pay to Ms. Suzette Grant Hinds \$2,160.00 being arrears of rent for the period 1st May 2013 to 31st December 2013.
2. Mr. Seymour Delpesche, Ms. Shalma Lyscott and Ms. Reanna Cole shall each pay to Ms. Suzette Grant Hinds \$12,420.00 being *mesne profits* for the period 1st January 2014 to 31st October 2017.
3. Ms. Suzette Grant Hinds shall file and serve on or before 18th May 2018, an application and supporting affidavit, for assessment of any additional *mesne profits* which might have accrued after 31st October 2017.
4. Ms. Suzette Grant Hinds' claim for an injunction and damages is dismissed.
5. Mr. Seymour Delpesche, Ms. Shalma Lyscott and Ms. Reanna Cole shall each pay to Ms. Suzette Grant Hinds costs of \$50.00, based on the Magistrate's Courts' scale¹⁴.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

¹⁴ Magistrates' Courts Act, Cap 30 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 42 and Table A, item 15 (b) and Table D, item 10. See also section 3 (1) (c) and (2) of the Small Debts Act, Cap. 134 of the Revised Laws of Saint Vincent and the Grenadines, 2009.