

2011

NO. 38/S

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

BLANCH LYNCH and BRIDGET MAXIUS

herein represented by their duly

constituted Attorney FERN JONES

agreeably with Power of Attorney

dated the 8th day of December, 2010,

and numbered 8043/2010.

Plaintiffs

-and-

HENRY SINGH

Defendant

Ms. L. Charles for the plaintiffs

Mr. S. Satram for the defendant

RULING on merits of Affidavit of Defence

There is evidence from the receipts and licences attached that the plaintiffs were in occupation and possession of the stall when they were in Guyana and thereafter by Mortley Duke.

Orin Duke was never the owner of the stall and had no authority given to him by the plaintiffs to rent the stall. The rental of the stall

did not give the defendant Henry Singh any permission to carry out renovations on the stall which the defendant did at his own risk.

Even if the plaintiffs were only licences because of the permission received from the Mayor and Town Council of Linden, that licence was never terminated and the plaintiffs remained in possession and Occupation through Mortimer Duke.

When Mortimer Duke gave his son Orin Duke the stall to run he did so on behalf of the plaintiffs who never relinquished their rights to possession and occupation. Orin Duke never obtained permission from the plaintiffs to rent the stall nor was he ever the person to whom the licence was granted. Orin Duke's authority was only to continue to manage the stall but at no time did he take possession and control from the plaintiffs who never gave up possession and control which they would have had to do and the land would have reverted to the Mayor and Town Council and the licence would have been terminated, in which case the Mayor and Town Council could then transfer it to anyone else.

This was not done, and it is quite clear that the plaintiffs never gave up control and possession of the land and stall nor did they give up the licence . The plaintiffs paid the rates and had always done so and then it was paid by Mortimer Duke on their behalf. When Mortimer Duke put Orin Duke in control it was with the intention that he would do so on behalf of the plaintiffs. There was no transfer of the licence

to Orin Duke who therefore had no authority to rent the stall to the defendant.

The defendant said he spent \$8,000,000 which he did at his own risk. He never had permission to renovate the stall. He rented the stall from Orin Duke. He did not purchase the stall, so it was never his to carry out extensive renovations. If he wishes to reclaim the money he spent he cannot do so from the plaintiffs because they never rented the stall to him nor did they give him permission to do any renovations on the stall.

The defendant admitted at paragraph 11 of his affidavit of defence that he had only a written tenancy agreement. The plaintiffs never acquiesced in the renovations and never encouraged the defendant to do so. The plaintiffs never rented the stall to the defendant, nor gave him permission to do any works.

The principle of a tenancy by estoppels does not arise since the plaintiffs never rented the property and Orin Duke was never an agent of the plaintiffs nor was he authorized to rent the stall to the defendant. The defendant has acquired no proprietary right or interest to the said stall since he cannot show that the plaintiffs rented the stall to him or authorized anyone to do so, nor can he show that the plaintiffs encouraged him to expend moneys on the stall. What the defendant did , he did at his own risk.

The Oxford Dictionary of Law defines an agent as “a person appointed by another (the principal) to act on his behalf. Orin Duke was asked to take care of the stall for the plaintiffs for their benefit and he was their agent only for the specific purpose of taking care of the stall. Orin Duke went outside the scope of his authority and rented the stall to the defendant without the permission and consent of his principals and Orin Duke is personally liable for his actions.

Cheshire and Burns in the Text Modern Law of Real Property 18th ed. Page 786 states thus:

“possessory titles usually arise out of claims by squatters and also occasionally where a documentary is lodged which is too weak for a better kind of title but not deserving of outright rejection”.

Judith Ann Mackenzie and Mary Phillips in a Practical Approach to Land Law 7th ed. Page 41 further states”

“...possessory titles are registered in cases in which the ownership of the estate is evidenced purely by the fact that the estate owner is in occupation of the land or that he is in receipt of the rents and profits from the occupant.”

This principle cannot be relied on by the defendant. Orin Duke was in occupation of the stall with the first named plaintiff’s permission. The defendant could not have obtained a possessory title since the first named plaintiff has a better title having been in possession of

the property since 1990. Orin Duke is not the estate owner and is not entitled to the rent the defendant claims he pays to him under the unlawful tenancy agreement. The defendant also claims that a tenancy by estoppel has arisen in his favour as a result of the tenancy agreement between him and Orin Duke and as a result he has acquired a possessory interest.

Gilbert Kodilinye in **Commonwealth Caribbean Property Law** (2000) at page 21 states:

“If L purports to grant a lease of land to T but L has no title to the land, L is stopped from repudiating the tenancy and T is also estopped from denying L’s title and the tenancy’s existence. In such a case, there arises a “tenancy by estoppels” which is invalid vis a vis third parties is binding on L and T and, as between them has the attributes of a true tenancy.”

The defendant cannot rely on the principle of a tenancy by estoppels as against the plaintiffs since the tenancy agreement was made between himself and Orin Duke without the authority of the plaintiffs.

The defendant also claims that the plaintiffs abandoned the stall when they migrated.

The Oxford Dictionary of Law states that abandonment may be defined as:

“the act of giving up a legal right, particularly a right of ownership of property. Property that has been abandoned is a thing belonging to no-one. An Item is regarded as abandoned when it can be established that the original owner had discarded it.”

The fact that the plaintiff’s agent Mortley Duke neglected to pay the statutory rates payable to the Mayor and Town Council is not an act of abandonment. Furthermore the defendant admits that Orin Duke was the plaintiff’s agent and in doing so he refutes his own argument of abandonment. If there is an agent in control and possession of the stall on behalf of the plaintiffs then they cannot be said to have abandoned the stall. The defendant’s arguments are contradictory.

In any event this court finds that Orin Duke was only put there to manage the stall for the plaintiffs and had no authority to do more than that, and in this case the plaintiffs could not have abandoned the stall. They had placed Orin Duke in charge of it, to manage it for their benefit.

The defendant also claims that the plaintiffs have only a bare licence. This is not the case. The plaintiffs have paid valuable consideration for the use of the land, and have paid rates for the stall on a yearly basis. They built a stall and operated a business on the land.

In Gilbert Kodilinye on **Commonwelath Caribbean Property Law**

(2000) at page 101 states:

“A bare licence is one granted otherwise than for valuable consideration . It amounts to a mere psermission to enter the licensor’s land.”

The plaintiffs had more than a bare licence.

AS to the defendant’s counterclaim, firstly the agreement of tenancy is unlawful and the defendant cannot justify altering the stall to such an extent since the agreement does not give him any psermission to do what he did. He acted on his own accord and cannot make any claims against the plaintiffs for the amount he invested in the stall.

The defendant is a trespasser since he has no lawful authority to be there on the land. He also committed acts of trespass when he did unauthorized repairs to the stall.

Halsbury’s Laws of England 4th ed vol. 45 at paragraph 1384 defines what constitutes trespass as :

“Every unlawful entry by one person on land in possession of another is trespass, for which an action lies, even though no actual

damage is done. A person trespasses on land if he wrongly sets foot on it...or takes possession of it or expels the person in possession.”

The defendant entered into an unlawful tenancy agreement with Orin Duke who had no authority to do so, and cannot claim possession when he himself admits that he knew that Orin Duke was the plaintiff’s agent.

In Civil Appeal No. 98/1996 **Patrick Murray et al v Verly Murray**, Singh JA as he then was stated at page 7:

“ It is elementary and trite that the tort of trespass concerns an injury to possession and not an injury to title.”

And in **Smith v Clarke** (1941) LRBG at page 165 the court observed:

“Trespass to land is a possessory action founded merely on possession and it is not at all necessary that the right to the land should come in question.”

The plaintiffs have established a better possessory right to the stall than the defendant.

In **Ramsden v Dyson** (1866) LR 1HL 129, at 170 Lord Kingsdown states:

“ The rule of law applicable to the case appears to me to be this. If a man, under a verbal agreement with a landlord for a certain

interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him lays out money upon the land, a court of equities will compel the landlord to give effect to such promise or expectation.”

Similarly in **Inwards and Baker** (1965) 2 QB 29 at 37 Lord Denning MR said:

“It is an equity well recognized in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there.”

In this case the plaintiffs never authorized the renting of the stall to the defendant, nor did they lead the defendant to believe that he will acquire an interest in it, nor did they encourage him to expend money on it in expectation of an interest.”

In the circumstances I find that the defendant’s affidavit of defence discloses no triable issue and is hereby struck out and judgment granted for the plaintiff.

Vacant possession is therefore granted to the plaintiff of stall No.
0730 situate at Washer Pond Road, Mackenzie, Linden.

No order as to costs.

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Diana F. Insanally

Dated this 17th January 2013.