

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

**WEST DEMERARA CO-OP
SOCIETY**

-and-

**NARINE aka NARCO and others
named in the schedule attached hereto**

Mr. A. Nandlall for the Plaintiff

Mr. R. Trotman for the defendants

Decision:

The Plaintiff is a registered Co-operative Society and was granted a licence by the Commissioner of lands and Surveys to occupy a portion of Government Land at Leonora, West Coast Demerara.

The Defendants are in possession without the consent and permission of the Plaintiff and claim that the Plaintiff's Licence could not disentitle the Defendants from vending, and that they were in occupation of the said land long before the Plaintiff was granted a Licence.

The Defendants further contend that the Licence does not give the Plaintiff the right to occupy the Railway Embankment to the exclusion of all others.

The Plaintiffs on the other hand, have produced a Licence dated 1st January, 2003, for a period of one year. The Licence itself has not been re-issued yearly from 2003 to the present. However, the Plaintiff has continued to pay the yearly rental and has been issued a receipt therefor, up to and until 2009-2010.

The terms of the Licence give the Licencee the use and occupation of the said portion of land described in the Licence and permission to construct a building to facilitate its use.

The Licence also makes the Licencee liable for any injury or damage to persons on the property in the course of the Licencee's occupation.

The Licence is also liable to be terminated if the Licencee does not carry out the business for which the Licence was granted.

And very importantly, clause 8 states that the Licencee shall not suffer any other person to occupy the aforesaid land, and the licencee shall not use the land for any purpose other than that for which it was granted.

Having reviewed the terms of the Licence it is clear beyond any doubt that the Plaintiff has exclusive occupation of the land subject of the licence, to the exclusion of the defendants.

The terms of the Licence can in no way be interpreted to mean that the defendants are also entitled to occupy the same portion of land along with the Plaintiff.

The defendants' contention that they have been in occupation long before the Plaintiff, has no merit since the Commissioner of Lands and Surveys would have known of their existence when they granted the Licence to the Plaintiff. It therefore seems that the Commissioner of Lands and Surveys being the authority in charge of the said Government Land decided that the defendants had no rights to their occupation and possession of the said portion of Government Land and therefore granted the Licence to the Plaintiff and put the Plaintiff in occupation and possession to the exclusion of the Defendants and not together with the Defendants.

The Licence granted to the Plaintiff was never intended that the Plaintiff and Defendants were to both have possession and occupation. The Commissioner of Lands and Surveys clearly saw the defendants as trespassers and have therefore ousted the defendants from the Land and has given the Plaintiff full rights over the Land.

The defendants contention that clause 4 of the Licence states that the Licencee shall vacate the land immediately on or before the 31st December, 2002 has no merit in light of the fact that the Commissioner of lands and Surveys has continued to accept rent yearly from the Plaintiff.

It is inconceivable that the Plaintiff would have continued to pay rent which has been accepted by the Commissioner of Lands and Surveys, and also vacate the Land because the Licence was not renewed in accordance with Clause 4. The Commissioner of lands and Surveys issued the Licence and the Commissioner of lands and Surveys can determine how and when to renew the said Licence. The defendants cannot determine how and when the Commissioner must renew the licence.

I am of the opinion that the licence has been renewed yearly by the payment and acceptance of rent by the Commissioner of lands and Surveys and that the said terms and conditions of the licence itself have been renewed yearly. The licence has not been terminated by either party and continued to be in force to the present day.

I am also of the view that by the very terms of the licence, in particular paragraph 8, that the Plaintiff has a possessory right enforceable against a third party and that it is not the Commissioner of lands and Surveys who has to exercise the right of possession against the defendants in this instance. The Commissioner of Lands and Surveys has by the terms of the Licence

transferred that right to the Plaintiff. It is the Plaintiff who has, by the Licence conferred on him, the right of possession against the defendants and it is the plaintiff who is entitled to bring this action for possession.

The Licence granted to the Plaintiff has not been revoked by the Commissioner of Lands and Surveys nor has it been terminated, and a term of the Licence is that the Plaintiff must ensure that no one other than himself, or his servants or agents, must occupy the land.

Therefore the Plaintiff cannot call upon the Commissioner to evict the defendants. The Licence gives the Plaintiff the authority to do so. The Licence specifically states the conditions under which it is granted.

Therefore the defendants claim that the Plaintiff has no locus standi to maintain this action against them is also without merit. The defendants are not licencees but trespassers who have no rights, title or interest in and to the land subject of the Licence.

While the general law applicable to licences establishes certain distinguishing features peculiar to the grant of a licence, what we have in this case is a licence that specifies certain terms and conditions upon which the licence is granted. In this case, those terms and conditions determine the parameters of the licence, and while the principle at common law is that a licence does not grant exclusive possession, it is quite evident that the licence granted by the Commissioner does give the licensee exclusive possession over the land subject of the licence and the licensee is liable under clause 8 not to allow or suffer any other person to occupy the said portion of land.

The Guyana Lands and Survey's Commission therefore are not the fit and proper party to bring this action for possession, since the licence compels the licensee to do so, and I do not find on the facts here that the right to enforce

possession of the parcel of land in issue reverted to the Guyana Lands and Survey Commissioner after the 31st December, 2003, since the licence is still in force. The licence has been renewed and is enforceable against third parties.

The defendants who claim that they have been in occupation of the said land in excess of 30 years are entitled to pursue other legal procedures against the Guyana Lands and Surveys Commission to enforce any legal rights they may have, but their claim is not a defence to the Plaintiff's action for possession. The defendants' remedy, if any, may lie in an action against the Guyana Land and Survey's Commission.

I therefore find that the defence raised by the Defendants does not disclose a triable issue or a defence to the Plaintiff's claim.

In the circumstances Judgment is therefore entered for the Plaintiff.

.....

Diana F. Insanally

Puisne Judge

Dated this 7th day of January 2010