



[2016] JMSC Civ. 207

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2016 HCV 01527**

<b>BETWEEN</b>	<b>MIKE BACCHAS</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>MARCIA BACCHAS</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>BARBARA WILKINS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>LLOYD OSWALD KIRVEN</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

**Roger Davis, of counsel, for the Claimants**

**Carlton Williams, instructed by Williams, McKoy and Palmer, for the Defendants**

**Heard: November 4, 2016 and November 18, 2016**

**LEASE AGREEMENT FOR FIXED TERM – EXPIRY OF FIXED TERM – DEFENDANTS WISHING TO REPOSSESS LEASED PREMISES FOR BUSINESS PURPOSES – SECTIONS 25 AND 26 OF THE RENT RESTRICTION ACT – RELATIONSHIP BETWEEN SECTIONS 25 AND 26 OF RENT RESTRICTION ACT**

**ANDERSON, K. J**

[1] When this matter came up for hearing before this court, on November 4, 2016, I had made orders, amongst which was that the claimants shall vacate the premises referred to in this order, within one week of the date of this order, being

the gas station premises in Little London, Westmoreland and that the defendants shall be able to recover possession of that premises.

- [2]** As the presiding Judge, I had then promised to briefly put my reasons in writing, for that order and it is in fulfillment of that promise, that I now do so.
- [3]** The defendants are the registered owners of the gas station premises (the disputed property) and the claimants were the occupiers of the disputed property, pursuant to a lease agreement which they entered into, with the defendants.
- [4]** That lease agreement was in writing and was for a term of six (6) years, between: April 15, 2010 and April 14, 2016.
- [5]** The claimants were served with a notice to quit the disputed property. That notice (the first notice) was delivered to Marcia Bacchas (the 2<sup>nd</sup> claimant), who accepted same on behalf of herself and her husband (the 1<sup>st</sup> claimant). The first notice was so delivered on November 20, 2014.
- [6]** The claimants failed to give up possession of the disputed property at the end of the term of the lease agreement. That was so, even though the lease agreement did not afford the claimants any option to renew same.
- [7]** Arising from the claimants' failure to give up possession of the disputed property, a notice to quit the disputed property on July 31, 2016 was served on the claimants on June 30, 2016.
- [8]** The defendants have provided to this court, affidavit evidence, deposed to by, the 1<sup>st</sup> defendant, stating that, 'we require the premises for our own use and purpose and to carry out extensive refurbishing thereof, in order to fulfill our lifeline goal of operating an efficient, productive and competitive gas station, at this stage.'
- [9]** The claimants have disputed that assertion of the defendants as to the use that they now desire to make, of the disputed property. It is instead, the claimants'

contention, as addressed by them, in affidavit evidence which has been deponed to, by Mike and Marcia Bacchas, as well as by Errol Edwards, that the defendants wish to regain possession of the disputed property and for the claimants to quit the premises, so as to lease same to another gas station operator.

- [10] If even the claimants are correct in that contention of theirs, that being a matter of fact, which this court has not, at this stage of these court proceedings, been properly able to determine, since only affidavit evidence has been provided and deponents have not been cross-examined in respect thereof, it would still mean that the defendants require the disputed property, on which there is a gas station built and being utilized by the claimants for their benefit, 'for business purposes', as per **section 25 (1) (e) (ii) of the Rent Restriction Act**.
- [11] The claimants have disputed, in their claim against the defendant, which is as regards the disputed property, whether any of the notices to quit same, which were delivered to, or in other words, served upon them, are valid.
- [12] That matters not. The tenancy was for a fixed term, with no option to renew. In the circumstances, the tenancy expired as of April 14, 2016 and it is no longer open to the claimants to remain in occupation of the disputed property and to essentially, be seeking to force the defendants to continue to lease same to them, while they (the claimants) go about, as part and parcel of this claim, challenging the validity of the notices to quit, which were admittedly, duly served upon them.
- [13] This court is entitled to make an order for recovery of possession of any controlled premises under the **Rent Restriction Act**, pursuant to **section 25 (1) (b) of that Act**, if: *'some other obligation of the tenancy (whether express or implied and whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed and, in the case of the non-performance of any such obligation by the*

*tenant, the tenant has been in default for at least thirty days.'* Also, if the defendants wish to use the disputed property, 'for business purposes' it is open to this court to make an order for recovery of possession.

[14] This court has made an order for recovery of possession, pursuant to the defendants' amended application for court orders, which was filed on October 14, 2016, and came before this court, at the hearing over which I had presided, on November 4, 2016. This court did so, pursuant to the provisions of either or both, **section 25 (1) (e) (ii) and section 25 (1) (b) of the Rent Restriction Act**. Upon the hearing over which I had presided though, I had only, in giving brief oral reasons for my order that the defendants are to recover possession of the disputed property, referred to the applicability of **section 25 (1) (e) (ii) of that Act**. Upon having more carefully considered this matter subsequently, it is now my belief that **section 25 (1) (b)** is also applicable and since I had promised to put my reasons in writing, the same are now more fully expressing all of my reasons for the orders which I made, upon the defendants' application for court orders, which had sought, *inter alia*, recovery of possession of the disputed property, pursuant to a court order.

[15] This court, having given careful consideration to the facts of this case, as disputed and as agreed, respectively and having given consideration to the applicable law, is of the view that less hardship would be caused to the claimants than the defendants if this court were to order the claimants to quit possession of the disputed property.

[16] The claimants are not utilizing the disputed property, as a residential address, for their personal occupation. It is instead, being used to operate a gas station. The disputed property is owned by the defendants. They wish to use it for business purposes which clearly, do not involve the claimants. For a long time, in advance of this court having made the order for the tenants (claimants) to quit possession of the disputed property, the claimants knew that the defendants wished to regain possession of same. They (the claimants) wish to remain in use of the disputed

property, causing significant hardship to the defendants, above and beyond the hardship that they will experience in having to quit possession of same, in circumstances wherein, they would have known, from the onset of the lease agreement, that they would have been expected to quit possession of same, within six (6) years of the commencement of the lease. That six (6) years, expired as of April 14, 2016.

- [17] This court has stated what it has, at paragraphs 15 and 16 of these written reasons, in order to comply with the *proviso* to **section 25 of the Rent Restriction Act**, which stipulates – *‘Provided that an order or judgment shall not be made or given on any ground specified in paragraph (e), (f) or (h) unless the court is also satisfied that, having regard to all the circumstances of the case, less hardship would be caused by granting the order or judgment than by refusing to grant it ....’*
- [18] That proviso, it should be noted therefore, has no applicability whatsoever, in circumstances wherein an order for recovery of possession of a controlled premises is made, pursuant to the provisions of **section 25 (1) (b) of the Rent Restriction Act**.
- [19] **Section 25 of the Rent Restriction Act** is expressly stated in the statute, to be subject to **section 26**. It is to be noted carefully, that **section 26** as now exists in that statute, was not in the original statute, when it was passed into law, in 1944.
- [20] The Act was passed into law in 1944, not only to restrict the rent which could properly be charged, but also, to protect the occupation by tenants of – rented accommodation. That latter protection was achieved by preventing landlords from recovering possession upon the expiration of the contractual tenancy, unless and until they could satisfy certain specified requirements laid down by the Act. **Section 25** provides the foundation of that protection.

- [21] **Section 26** came into law, by means of an amendment to the Act, in 1960 – **Law 41 of 1960**. The history of the Act, was set out in great detail by Carberry, J.A in the unreported case – **Golden Star Manufacturing Co. Ltd. v Jamaica Frozen Foods Ltd.** – R.M.C.A 13 of 1986.
- [22] As was stated by Carberry, J.A in that case – *‘it is of course still open for a landlord of commercial premises to proceed under **section 25 simpliciter**, for any of the reasons set out there’* viz, without incorporating the requirement that a notice complying with **section 26 (2)** must first have been served and expired. In the case – **Marcos Dabdoub T/A Marc’s v Eli Saba and Carole Saba Co. (Jamaica)** [1991] UKPC 12 (21 March 1991) PC, their Lordships determined that this is the correct view.
- [23] According to the Privy Council in the **Dabdoub case** (*op. cit.*), when the Legislative, in 1979, deleted **section 26 (9)** and inserted into the Act, a new **section 31**, the overall effect of those provisions, taking into account also, the amendment to **section 31** which came into law, in 1983, was that **section 26** had become, for all material purposes, ‘a dead letter’.
- [24] In any event though, even prior to the passage into law, of those amendments in 1979, the landlord had an option as to whether to utilize the provisions of **section 25 or 26 of the Act** in notifying the tenant that he (the tenant) should quit possession of the rented premises. The landlord could obtain speedily, under **section 25**, an order for possession, with the risk that he might not be able to satisfy the court that he qualified under one or the other of the various grounds specified in **section 25**. Alternatively he could follow the more leisurely, but more certain course, then offered by **section 26**. With the amendments made to **section 26** though, the effect has been that essentially, as stated by the Privy Council in the **Dabdoub case** (*op. cit.*), landlords will not likely proceed under **section 26**, in seeking to recover possession of leased premises. **Section 26** is now, ‘a dead letter’.

**[25]** It is therefore, for these reasons, that this court made the order that the claimants shall vacate the gas station premises in Little London, Westmoreland and that the defendants shall be entitled to recover possession of that premises, within one week of the date of that order.

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**Hon. K. Anderson, J.**