



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION

SUIT NO C. L. 2000 / D 077

BETWEEN ALTHEA DRUMMOND CLAIMANT
AND CATALINA HAMMOND DEFENDANT

Ms Ingrid Lee Clarke Bennett and Ms Shanna Stephens instructed by Pollard Lee Clarke and Associates for the Claimant.

Ms Jacqueline Cummings instructed by Archer and Cummings for the Defendant.

Trespass to land and chattels – Tenant subletting to another – Tenant vacating property and delivering possession to landlord – Landlord clearing property – Whether trespass to sub-tenant’s chattels therein

BROOKS J (Judgment delivered by Sykes J)

4, 5, 18 and 28 JULY 2011

On 14 January 1997 Miss Althea Drummond sublet from Miss Vivalee Ho Yen a portion of a house located at 48 Great House Circle Kingston 19 in the parish of Saint Andrew. The subletting was, however, without the permission of the landlord, Mrs Catalina Hammond.

The rental which Miss Drummond paid was \$10,000.00 per month. She paid that sum to Miss Ho Yen until the latter vacated the premises, leaving a Mr Paul Collins at the property. Miss Drummond, thereafter, paid the rental to Mr Collins until she left Jamaica in February 1998 leaving, she says, her property in the portion of the house that she occupied. The property consisted of her personal belongings, including a large collection of clothing, as well as equipment for a restaurant which she had previously operated.

Despite her absence from the premises, she says that she continued to pay the rental to Mr Collins through her agent Mr Christopher Coldspring. She did this, she said, until May 1998.

On 28 June 1998 she got a disturbing telephone call from Mr. Coldspring. As a result, she returned to Jamaica on or about 7 July 1998 and went to the premises. On her testimony, she “discovered that there was no furniture or anything else in the apartment”. None of her belongings were in the property. She says she subsequently recovered from Mr Coldspring a stainless steel freezer, a double-door chiller, a four burner electric stove and two chest freezers. These were all items which she had left at the premises. She has not, however, recovered her clothing, jewellery, a stainless steel sink, a commercial mixer and numerous other things connected with her restaurant operation. She said that her loss is in the region of \$3,650,000.00.

She has, however, not proved the value of the loss. She included figures for the various items in her witness statement but she cannot properly prove special damages in that manner. This was a classic case of “throwing figures at the head of the court”, without proof of those figures, as was mentioned in *Bonham-Carter v Hyde Park Hotel Ltd* [1948] 64 TLR 177 at page 178. Learned counsel for Miss Drummond, Mrs Lee Clarke Bennett, submitted that “in the absence of a challenge by the Defendant as to the value of the goods, the Court should award a sum based upon the evidence provided by the Claimant. She cited the case of *Tagro v Cafane and Another* [1991] 1 WLR 379 in support of her submission. In that case it was held that:

“having regard to the first defendant’s failure to adduce expert valuation evidence, the judge had been entitled to accept that proffered by the plaintiff...”

The *Tagro* case does not assist Miss Drummond. In *Tagro* the claimant adduced evidence from an expert witness, a surveyor, who gave his opinion as to the value of the property. The claimant did not attempt to give that evidence herself. That, however, is what Miss Drummond has sought to do. I accept that in the absence of the items, providing expert evidence may be challenging. I also accept that, in appropriate cases, the court will exercise discretion in allowing some departure from the standard of strict proof of special damages. Miss Drummond’s attempt to prove \$3,650,000.00 in special damages by way of her mere “say so” is, however, unpalatable.

Miss Drummond’s difficulty with the proof of her damages was, however, not her only difficulty. Miss Drummond’s major difficulty was that she could not prove, even on a balance of probabilities, that her property was still in the premises on 24th June 1998 when Mrs Hammond, the landlord, broke the locks and entered the premises. She had no personal knowledge of the state of the premises or of the location of her property, after she went to the United States in February 1998. What Miss Drummond also didn’t know, at the time, was that Mr Collins had vacated and delivered-up possession of the premises to Mrs Hammond. This was on the evening before Mrs Hammond entered the premises.

On this evidence, considering that Mrs Hammond has admitted to entering the property once occupied by Miss Drummond there is a *prima facie* case,

however slight, that Miss Hammond may have interfered with Miss Drummond's property. It would be for Mrs Hammond to refute that *prima facie* case with evidence as to what she saw and did at the premises. She did so.

According to Mrs Hammond, Mr Collins, in returning possession of the premises to her, delivered to her a bunch of keys. She says, however, that when she went to the premises on the following day, the keys did not open the locks on the outer doors. She said that she had the locks broken and when she entered the house there was no furniture there but it was filled with garbage and vermin. Being afraid of rats, she said that she did not venture past the living room of the house. She remained outside while the men, who had assisted her in gaining entry to the house, endeavoured to kill the rats which she saw in the house when she had entered it.

She said that she left the house that day, with one of the said men promising to watch the premises overnight, for her. On the following day she went back to the property with the police and in her presence, the police handed over to Miss Drummond's agent, Mr Coldspring, the items which were seen in the property.

Mrs Hammond sought to minimize any prior contact with Miss Drummond. At one stage she said in evidence that she had never seen her before. Mrs Hammond, in so stating, was clearly not being truthful and I reject her evidence in that regard. Indeed, despite her 81 years, Mrs Hammond did not impress the court as being generally truthful. The patent falsehood did not, however, provide the evidential gap in Miss Drummond's case. I find it significant that Mr Collins

was not in occupation of the property when Miss Drummond returned on 7 July. His absence supports Mrs Hammond's evidence that Mr Collins delivered up possession of the property to her. I find that he had delivered up the property to Mrs Hammond and that there was no one in occupation when she broke in on the 24 June 1998.

In this context, I should state that although I accept that Mrs Hammond knew that Miss Drummond was living at the premises, there is nothing to support Miss Drummond's evidence that Mrs Hammond knew that Miss Drummond was paying rental for her occupation. Even, if I am wrong in this regard, a sub-tenancy by Miss Drummond would not have affected Mr Collins' unqualified delivery-up of the premises to Mrs Hammond. I find that there was no tenancy arrangement or agreement between Miss Drummond and Mrs Hammond. There would have been no need for a separate delivery-up of possession by Miss Drummond and that delivery of the keys by Collins constituted delivery-up of the entire premises to the landlord. Miss Drummond, not being present in the premises, cannot assert that the entry by the landlord, thereafter, was unlawful.

In order to succeed in her claim for trespass to property, Miss Drummond has to first prove that Mrs Hammond has directly interfered with Miss Drummond's possession of her items. The interference must involve some kind of physical contact or affectation. (See *Clerk & Lindsell on Tort* 19th Edition paragraph 17-123.)

There should also be some damage in order to justify a claim, but Miss Drummond must not only prove damage and the value of the damage but she

must prove the interference by Mrs Hammond. I find that Miss Drummond has failed to prove the interference and she has failed to prove the value of her loss.

In the circumstances I find that Miss Drummond has failed to prove her claim. I find that, apart from the items delivered to Mr Coldspring, Miss Drummond had no other property in the premises when Miss Hammond properly entered it. I also find that the items, which were there, were handed over to Mr Coldspring, while the garbage was dumped on Mrs Hammond's instructions.

Mrs Lee Clarke Bennett placed much emphasis on evidence given before the Resident Magistrate's Court in respect of a criminal prosecution brought against Mrs Hammond by Miss Drummond. The notes of the evidence taken in that case were ordered, as part of the case management process in the instant case, to be admitted as evidence in this trial. I, however, place little store by that "evidence", which is clearly hearsay. The witnesses did not appear before me and I find that what was said before the learned Resident Magistrate was only relevant to the extent that it could be used to contradict evidence given in the instant trial.

In this case Mr Collins gave no evidence and neither did Mr Coldspring. It is for the claimant Miss Drummond to prove her case and I find that she has not done so, even on a balance of probabilities, which is the appropriate standard of proof.

Judgment for the Defendant with costs to be taxed if not agreed.