



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. F090 OF 1999

BETWEEN CARLTON FORRESTER CLAIMANT
A N D LORNA THOMPSON DEFENDANT

CONSOLIDATED WITH:

CLAIM NO. C.L. T-118 OF 2001

BETWEEN LORNA THOMPSON CLAIMANT
A N D CARLTON FORRESTER DEFENDANT

CONSOLIDATED WITH:

CLAIM NO. C.L. F066 OF 2001

BETWEEN CARLTON FORRESTER CLAIMANT
A N D LORNA THOMPSON DEFENDANT

Mr. Sheldon Codner for Carlton Forrester Claimant/Defendant
instructed by Taylor-Wright and Company.

Mr. Lawton C. Heywood for Lorna Thompson Defendant/Claimant.

HEARD: 5th, 6th & 7th December, 2007 & 20th November, 2009

CORAM: GAYLE, J

On 20th November 2009, when I gave judgment for the Claimant/Defendant, Mr. Forrester I promised to set out my reasons in writing. This is now in fulfillment of my promise.

THE CLAIMS:

1. Mr. Forrester in Claim C.L. F090 of 1999 is a claim to recover the sum of \$1,111,000 being the amount overpaid as rent during the period 18th December 1992 to July 1998. This claim is brought under section 20 of the Rent Restriction Act and concern his tenancy of 35½ Hagley Park Road, Kingston 10.
2. Mr. Forrester in Claim No. C.L. F066 of 2001 is a claim to recover the sum of \$375,600.00 for repair work done to the rented premises in or about July 1996 at the request of and/or with the consent of the said Defendant and/or her agent Mr. Aaron Thompson.
3. Mrs. Lorna Thompson in Claim No. C.L. T118 of 2001 is a claim to recover the sum of \$1,722,000.00 being arrears of rent for the period July 1998 to December 2001 at a monthly rental of \$42,000.00 per month.

The circumstances leading to these several matters between the parties arise out of a landlord and tenant relationship

The said rental contract was a verbal contract between Mr. Aaron Thompson and Mr. Carlton Forrester.

Mrs. Lorna Thompson and Mr. Aaron Thompson, her deceased husband, owned the premises at 35 ½ Hagley Park Road, Kingston 10 as joint tenant.

Mr. Forrester is contending that he paid the sum of \$4000.00 per month as rent from December 1992 and that the amount agreed at the beginning of the tenancy is the standard rent. That Section 17 of the Rent Restriction Act provided for it.

That in March 1993 the landlord increased the rental to \$8500 and that this increased was made without the conduct of an assessment by the Rent Assessment Board in accordance with the Rent Restriction Act.

Mrs. Thompson is contending that the rental was \$4200.00 per month and that she was not a part of the original rental agreement between her deceased husband and Mr. Forrester and that she is owed the arrears.

THE EVIDENCE

During the course of the trial both parties in support of their respective case gave evidence through witness statements (which were amplified, where necessary) that stood as their examination in chief and through *viva voce* evidence adduced primarily upon cross-examination.

The parties also saw it necessary to have third party witness attend and testify on their behalf.

Mr. Carlton Forrester said that on about the 18th December 1992 he entered into an oral agreement with Mr. Aaron Thompson to rent a part of the premises for the purpose of operating an auto body repair shop. The premises were jointly owned by Aaron Thompson and Lorna Thompson, his wife.

The premises rented was a portion of a yard containing a burnt out building for which he paid \$4000.00 per month. As his business expanded he requested and received permission from Aaron Thompson to effect repair to the said building.

That he install roofing, fencing, a gate, doors, windows, bathroom fixtures, blocked up building to roof height, erected 3 sheds and did electrical works.

That he paid rental to Aaron Thompson from December 1992 to March 1998 and after this in April 1998 he paid rental to Lorna Thompson for the months of April, May and June. He exhibited receipts 1 to 75 which were tendered as exhibit 2.

That during the tenancy Lorna Thompson and her deceased husband, husband effected several increases in the rental; that the increases in rent were at all material times communicated to him by Mrs. Thompson. That on several occasions he spoke to Mr. Thompson about

the increases and his response was that he could not do anything as it was Mrs. Thompson decision.

That from June 1998 to September 1999 he paid no rent because the financial strain created by the last increase, to \$42,000.00 in January 1997, became unbearable and he was unable to pay same. He sought legal advice which indicated that the increases were illegal.

That in October 1999 he was informed by the Rent Board that the premises were not exempt from the control of the Rent Restriction Act and there was a breach of the act by illegally increases in rent above the authorized amount of 7½%.

That on his calculation he had overpaid \$1,042,000.00 being the difference in the total amount paid less the original rent of \$4000.00 per month.

That on April 6, 1999 he was served with a notice to quit and he refused to quit the premises as it was his place of business.

That in August 2000 action for arrears of rental amounting to \$1,596,000.00 for the period July 1998 to September 2001 was brought by Mrs. Thompson.

That Mrs. Thompson subsequently sold the property to a new owner who gave him notice to quit and subsequently bulldozed the premises, hereby, forcing him to vacate the premises, even though he had communicated his costs to Mrs. Thompson.

Letter from the rent board dated 25th October 1999 Exhibit 1.

The estimate of value of work done prepared by Donovan Vassell Exhibit 3.

Mr. Forrester was thoroughly cross-examined by Mr. Heywood. The object of which was to show that Mrs. Lorna Thompson knew nothing of the agreement with Mr. Aaron Thompson.

Mr. Forrester said he had one rental agreement with Mr. Thompson and that he never lived on any part of the premises. He said he has no idea of the area of the property or the area rented but estimates that it was about $\frac{1}{4}$ of the area of the property.

He said that in 1992 Mrs. Thompson did not live on the premises and only visited between 1992 and 1998 and came to live there after Mr. Thompson died.

He said that the first time he spoke to Mrs. Thompson was after her husband died and she took over the premises. And it was the daughter who introduced them.

He said that in April 1998 he complained to her that she was collecting the rent before time and he was being overcharged.

He said that the rent was due on the 18th of the month and that he complained to Mr. Thompson, about being overcharged and did nothing else about it.

He said he tried to find alternative premises to carry on his business but was not successful in doing so and that the rent was too high at other places.

He said that it was not a commercial premises he rented from Mr. Thompson but he rented the premises to carry on his business and not to live there.

He said that Mrs. Thompson came for rent on 10th April 1998 and he told her it was too early.

He said he paid rent to Mrs. Thompson for the first time on the 25th April 1998 and that he remained in occupation after the property was sold.

He said he went to the Rent Board October 1999 to complain about the overcharging.

He said that in 1992 Mr. Thompson gave him permission to improve the rented premises and that Mrs. Thompson was not present when he discussed the improvement with Mr. Thompson.

He said he did improvement and remained in possession when the new owner took possession and that the new owner bulldozed the improvements.

He said that he bought material and paid labour but has no receipts and did not show any to the valuator at the time of the valuation.

He said that the Rent Board told him not to pay any rent to Mrs. Thompson and that he is to pay \$5800.00 per month and gave him documents. To that effect which he took to Mrs. Thompson who refused to take it and he did not sent it to her by registered mail.

He said he remained in occupation of the property after it was sold.

SECOND WITNESS

Donovan Vassell whose report was tendered as Exhibit 3.

On cross examination by Mr. Heywood, he said he did the valuation in May 2001 using the current prices. He said that he could not say if the material used was new or old.

He said that it would have made a difference if he knew that the improvements was done in 1992 to 1993 as the cost of labour and material would have been less and depreciation would have been taken into consideration.

He said that he did not factor that into the calculations.

He said he was not told that the materials used were seconds and that Mrs. Thompson was not present when the valuation was done. That is the case for Mr. Forrester.

MRS. THOMPSON CASE

That she was married to Mr. Aaron Thompson, an air conditioning technician on 10th July 1977. They both acquired 35½ Hagley Park Road in 1978 as joint tenants and resided there with their daughter until 1981 when she went to live elsewhere as the marriage had broken down.

She said that between 1981 to 1998 she was estranged from her husband and they did not speak to each other and had no discussion concerning the property.

That Mr. Thompson died in April 1998 and she took over the property.

That in April 1998 there were five (5) tenants including Mr. Forrester and that she was introduced to him by her daughter. She said she did not know him before that time. That he occupied the back half of the property where he did body repairs and spraying of cars. That he resided on the property in a four room house and used a part of property to store cars.

That it was her daughter who told her the rent paid by the tenants and that Mr. Forrester's monthly rent was \$42,000.00. That he paid rent in April, May and June 1998. That he remained in occupation until the property was sold and paid no further rent.

That Mr. Forrester refused to pay rent and was hostile to her.

That she does not know of the arrangements between Mr. Forrester and her husband concerning the property and that she never had any discussion with him and never a party to any arrangement made with him or any other tenant.

That prior to April 1998 she received no rent from Mr. Forrester and issued no receipt to him. He never complained that he was being

overcharged rent and that she had never been summoned to the Rent Board on any complaint made by him.

That she was not a party to, and does not know of any, agreement made between Mr. Thompson and Mr. Forrester concerning improvements to the property.

That Mr. Forrester never mentioned any improvements he made and that what he claims to have done did not improve the value of the property but caused it to be unsightly and unattractive and depreciated in value.

That Mr. Thompson died intestate and she had not made an application for Letters of Administration in his estate.

That she filed a plaint to recover rent for the period July 1998 to July 1999 in the Resident Magistrate's Court and withdrew them when Mr. Forrester informed the Court of the action taken in the Supreme Court that she had file suit to recover the sum of \$1,722,000.00 being rent owing for the period July 1998 to December 2001.

On cross examination by Mr. Codner; she said she lived at the premises until 1981.

She said the premises is jointly owned by her husband and herself as joint tenants and that she inherited the whole property on his death.

She said she did not collect rent from the tenants who were on the property while she lived there and after she left her husband did not support her.

She said her husband died on the 24th April 1998 and she went to the property on the 25th April 1998 when she was introduced to Mr. Forrester who carried on an auto repair business as did most of the other tenants.

She said she would visit the premises occasionally to see her daughter.

She said she never attended the Rent Board to have the premises assessed.

She said she was never aware of the premises being under the control of the Rent Board.

She said the premises did not receive any exemption from the Rent Board.

She said that when she took over premises in 1998 she notice structural changes and that these changes were to the part Mr. Forrester rented.

She said when she took over the premises she continued with the same arrangement that her husband had with Mr. Forrester.

She said she never pressured Mr. Thompson to increase Mr. Forrester's rent, nor pressured him to pay the rent, nor did she collect rent before it was due. That she first collected rent on 25th April, and collected for the months of April, May and June 1998.

She said Mr. Forrester did not complain that she was collecting the rent too soon and that it was too high.

She said she sold the premises in 2001 and Mr. Forrester was still there. That she was not required to remove him as a condition of the sale.

She said she had no discussion with Mr. Forrester about getting permission to improve the premises and does not know that any improvement was done by him.

MRS. THOMPSON-HENRY

Said she lived at 35½ Hagley Park Road with her parent until her mother left in 1981 and she continued living there until 1987, returned in 1996 and remained there until her father died in 1998. That her parents lived separate and apart from 1981 to 1998.

She met Mr. Forrester in 1989 when he was employed to a gentleman who operated an auto body repair shop on the premises and after he left Mr. Forrester continued to carry on the same business and occupy a part of and one of the houses with his girlfriend.

By 1998 Mr. Forrester was occupying the body repair shop, the shed, part of a house and all of the rest of the yard where he stored cars.

That Mr. Forrester paid the rent to her father and she never heard him complain about it to him or anyone else.

That she was the one who introduced her mother to Mr. Forrester after her father died and she was the one who gave her mother the receipt book used by her father.

That Mr. Forrester paid rent in April, May and June to her mother and did not pay any more up to the time she sold the property in December 2001.

On cross examination by Mr. Codner; she said she collected rent from Mr. Forrester and issued receipts to him.

That Mr. Forrester did not make any improvement to the premises and that the improvements were made but not by him.

That the walls and sheds were there from Mr. Chin's time.

SUBMISSIONS

Mr. Heywood submitted that Mrs. Thompson is not proper party to Claim No. C.L. F090/1999.

That Mr. Thompson was not the person to whom rent was paid to during the period December 1992 to April 1998.

That Mrs. Thompson is not a personal representative of the person to whom rent was paid.

That Mrs. Thompson was not a party to the rental agreement and did not communicate increases to Mr. Forrester.

The Claimant Mr. Forrester has not established the standard rent payable in respect of the premises and he has not established that the sum of \$42,000.00 per month is excessive and exceeds the standard rent.

That in respect of Claim No. C.L. 0266/2001 the repairs, if any, were not effected with the consent or knowledge of Mrs. Thompson and as such she cannot be liable.

In respect of Claim No. C.L. 118/2001 that the Defendant has not demonstrated that the rent of \$42,000.00 exceeds the standard rent and that Judgment should be entered in the sum of entered \$1,722,000.00 with costs.

He further submitted that the common law principles relating to joint tenancy should be rejected by the Court. That Mrs. Thompson cannot be liable for the acts of Mr. Thompson the other joint tenant.

MR. CODNER SUBMISSION

Mr. Codner submits that the standard rent by virtue of section 17 of Rent Restriction Act which provides that the amount agreed at the beginning of the tenancy is the standard rent.

That the increase was made without the consent of an assessment by the Rent Assessment Board in accordance with the Rent Restriction Act, thus rendering the increases illegal.

He further submitted that when one joint tenant receives the rent and profit of the land, it was to the benefit of all because that joint tenant owns the entire land just as the other.

And that in a joint tenant there can be no personal representative and the surviving joint tenant assumes the obligation of the deceased joint tenant which obligation touch and concern the land.

He submitted also that the improvement to the property was done with the consent of Mr. Thompson and as such he would have been unjustly enriched and that Mr. Forrester was entitled to be refunded with interest.

THE LAW

JOINT TENANCY

It is well established that the essence of joint tenancy is that each joint tenant is wholly entitled to the whole of the estate which is the subject of the co-ownership.

In joint tenancy, no joint tenant holds any precise or distinct share himself, but each is, together with the other joint tenant or tenants, vested with the entire interest in the property in question. In the words of Bracton, **“each joint tenant *totum tenet et nihil tenet*: each holds everything and yet holds nothing.”** They hold as one single owner as against the whole world. It is therefore, characterized by the presence of the four unities – unity of time, possession, interest and title.

It has, however, been said that the right of ownership (or *jus accrescendi*) is the “grand and distinguishing incident of joint tenancy.” By the right of ownership, the entitlement of each joint tenant is

eliminated on his death. This right takes precedence over any testamentary disposition made by a joint tenant.

The right of survivorship however, may be destroyed by severance of the joint tenancy during the lifetime of the joint tenants. This would mean a severance of at least one of the essential unities. Where this occurs, the joint tenancy becomes a tenancy in common and each party is entitled to a distinct share. With severance, the right to ownership is totally and irrevocably destroyed.

In the words of Robinson, P in the Jamaican Court of Appeal in **Panton v. Roulstone (1976) 24 WIR 462 at page 469** stated;

“As against third parties, joint tenants are in the position of a single owner, but against each other, each has equal rights. Each has an equal interest in the land. And the interest of each is severable, should he care to do so in his lifetime. It is only if he dies without having in his lifetime severed that interest, that his interest is extinguished and accrues to the survivor.”

In the case of **Pulleu v. Paluier** English Reports on page 72;

“And one joint tenant cannot maintain an action for debt for rent without his companion; and therefore in this avowing, which is the same with an action, he ought to make himself bailiff to his companions, so as they may be privy to the suit, and be entitled to their shares upon his recovery thereof in their right; and his allegiance, that the rent was due to all, doth not mend

the matter, but rather makes it worse, for thereupon the objection doth rise.”

It is clear that the rent belongs to all joint tenants.

Jus accrescendi is the characteristic of joint tenancy whereby on the death of the husband, his interest automatically accrued to the wife.

Therefore, in joint tenancy there can be no personal representative and the surviving Joint Tenant assumes the obligation of the deceased joint tenant which obligation touch and concern the land.

COVENANT WHICH “TOUCHES AND CONCERNS” THE LAND

Where there is privity of contract between the tenant and the landlord, only those parties can be said to be bound by the covenants contained in the lease. This privity of contract normally excludes a third party from suing upon, or from being sued, with respect to a covenant contained in the lease.

However, privity of estate describes the relationship between two parties who respectively hold the same estates as those created by the lease. It arises when the relationship of landlord and tenant exists between them under the lease which contains the covenant in question. Where there is merely privity of estate between the parties, only covenant which “touches and concern” the land are enforceable. The tenant’s covenant to pay rent is a covenant that was said in **Hill v Booth [1930] 1KB 381** to “touch and concern” the land.

Therefore, the rent is paid to the land.

WHO MAY BE CONSIDERED A LANDLORD

Section 2.1 of the Rent Restriction Act defines landlord in this following manner (*emphasis supplied*);

“Landlord, includes any person deriving title under the original landlord and any person who is, or would but for the provisions of this act be, entitled to the possession of the premises, and shall, for the purpose of the enforcement of any provisions of this act whereby any liability is imposed on a landlord, be construed also to include any agent having charge, contract or management of the premises on behalf of the landlord;

The Standard Rent

Section 17 of the Rent Restriction Act which provides that the amount agreed at the beginning of the tenancy is the standard Rent.

The Recovery of Excess Rent

Section 20 (1) and Section 36 of the Rent Restriction Act provides for the recovery of excess rent by the tenant;

Section 36. Order for payment of overdue rent or for refund of excess rent.

Section 36 (1). A Court of competent jurisdiction or a Board, subject to the provision of subsection (2) may –

- (b) on the application of the tenant, where – any rent in excess of the permitted rent has been collected from the tenant of any controlled premises by the landlord, order the landlord to pay to the tenant the amount

which the Court or the Board, as the case may be, is satisfied is, pursuant to such over-collection, refundable to that tenant at the date of the hearing of the application and the amount may, without prejudice to any other matter of recovery, be deducted from any rent or money due or subsequently becoming due from the tenant.

Section 20 (1). This section requires that recovery of rent overpaid be repaid by the person to whom it was paid or his personal representative.

In a Joint Tenancy there can be no personal representative and the surviving Joint Tenant assumes the obligation of the deceased Joint Tenant which obligation "touch and concern" the land.

FINDING AND REASONING

I find as a fact that the rental contract between Aaron Thompson and Carlton Forrester was a verbal contract.

I find as a fact that Mr. Forrester paid the sum of \$4000.00 per month as rent starting in December 1992.

I find as a fact that the standard rent is \$4000.00 per month. The receipts exhibit 2 and in particular receipts dated December 18, 1992 for \$4000.00, January 1993 for \$4000.00 and February 15, 1993 for \$4000.00 supports this fact.

Section 17 of the Rent Restriction Act provides that the amount agreed at the beginning of the tenancy is the standard rent.

I find as a fact that in March 1993 the landlord increased the rental payment to \$8500.00 per month. That in July 1994 the landlord increased the rental to \$16,000.00 per month. That in August 1996 the landlord increased the rental to \$30,000.00 per month. That in January 1997 that landlord increased that rental to \$42,000.00 per month Exhibit 2 support these facts.

I find as a fact that the said increases were made without the conduct of an assessment by the Rent Assessment Board in accordance with the Rent Restriction Act. Mrs. Thompson said in cross examination that no such application for assessment was made.

I find as a fact that no application was made for the premises to be exempt from the control of the Rent Restriction Act. Mrs. Thompson on cross examination by Mr. Codner said no application was made for the premises to be exempt.

I find that the increases by the landlord was illegal. That the increases were not done in accordance with that of a control premises.

The law is that only 7½% per annum increase allowed until an assessment has been made by the Rent Board.

I find as a fact that Mrs. Thompson and her deceased husband were registered as joint tenant of premises located at 35½ Hagley Park Road, Kingston. Mrs. Thompson said on cross examination that the

premises was owned by her and her husband jointly; and that she inherited the premises when Mr. Aaron Thompson died. That she sold the premises in 2001.

I find that a landlord and tenant relationship existed. Mr. Forrester being the tenant and Mrs. Thompson and her deceased husband Mr. Aaron Thompson being the landlord.

The privity of contract in relation to the lease between the husband and the tenant would normally exclude a third party, such as the wife, from being sued under the lease. That is the wife could not normally be sued by the tenant for the excess rent paid.

However, privity of estate describes the relationship between two parties who respectively hold the same estate as those created by the lease. It arises when the relationship of landlord and tenant exists between them under the lease which contains the covenant in question. Where there is merely privity of estate between the parties, only covenants which “touch and concern” the land are enforceable.

The excess rent arose from the tenant’s covenant to pay rent, and this is a covenant which is said to “touch and concern” the land as stated in the case of **Hill v Booth [1930] 1 KB 381**.

Additionally the Rent Restriction Act includes in the definition of “landlord” any person who is or would but for the provisions of the Act, be entitled to possession of the premises. At the time of the making of the lease the husband became landlord, and the wife is considered under

the Act as a landlord, as she was entitled to possession as joint tenant of the property with her husband.

The wife would therefore be liable to repay any excess rent paid by the tenant while the husband was the landlord, and to repay any excess rent received after the husband's death as she became the sole owner of the property and would then be considered the landlord.

IMPROVEMENT

I find that Mr. Forrester made improvement to the premises. There is no evidence before the Court that Mrs. Thompson or Mr. Thompson objected to the improvement.

For similar reasons outlined above the wife would be liable to pay Mr. Forrester for the improvement to the property.

Mr. Vassell's evidence as the only expert in the case, his evidence remained unchallenged. No alternative figures were pleaded or suggested by the defence.

The Court is one of record and pleading cannot provide any such figure.

CONCLUSION

I find that the excess rent paid by Mr. Forrester is recoverable from the wife. Judgment for Claimant.

I find that sum pleaded for improvement done to premises by the tenant is recoverable from the wife. Judgment for Claimant.

I find that Mr. Forrester is not indebted to Mrs. Thompson pleaded by her. Judgment for the Defendant on claim.

REMEDY

- (1) Judgment to the Claimant on Claim No. C.L. F090 of 1999 in the sum of \$1,214,350.00 inclusive of interest according to Bank of Jamaica statistics from the date of writ to the 7th December 2007. Cost to be agreed or taxed.
- (2) Judgment to the Claimant on Claim No. C.L. 066 of 2001 in the sum of \$454,476.00 inclusive of interest according to Bank of Jamaica statistics. Costs to the Claimant to be agreed or taxed.
- (3) Judgment to the Defendant on Claim No. C.L. T118 of 2001. Cost to the Defendant to be agreed or taxed.