

IN THE SUPREME COURT OF SEYCHELLES

K. SHANNOUGASUNDARAN

Vs

JEAN LOW

Civil Side No: 16 of 2010

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Mr. Rajasundaram for the plaintiff
Mr. Derjacques for the defendant

RULING

The Plaintiff entered a Complaint on 21st January, 2009 praying this Court for various orders in relation to the leasing or renting a property from the Defendant. On the same day the Plaintiff entered a Notice of Motion for an ex-parte interim injunction which the Court granted. The Defendant responded to the ex-parte order and the Court vacated the order on reasonable ground shown.

A further Notice of Motion was entered by the Plaintiff claiming that the Defendant had acted in contempt of the Court order. After hearing the parties, the Court found that the Defendant did not act in contempt of the Court Order. Following the preliminary orders of the Court the Plaintiff deemed it necessary to amend paragraphs 6; 7; 10; 11 and the prayers of his Complaint and moved the Court accordingly.

The Defendant objected to the amendments on the ground they sought to transform the original action into a distinct and separate action and that the

avermment that the Plaintiff is a “statutory tenant” constitutes judicial admissions that the tenancy was lawfully terminated, *inter partes*, and further, that the application is frivolous and vexatious in law.

In the original Plaintiff paragraphs 6; 7; 10; 11 and the prayers are worded as follows:

- “6. *The Plaintiff avers that the premises is still in his possession, duly occupied by his employees as used to be ever since the inception of the lease with the full knowledge of the defendant. The Plaintiff further avers that the defendant is aware of the Plaintiff’s business establishments and the premises was and is meant for the employees of the Plaintiff.*

7. *The Plaintiff avers that as from early January 2000 the defendant is giving out that he would take over the possession of the premises by throwing away the Plaintiff and his employees and dispossess them from the premises. The matter resulted in lodging Police complaints by the Plaintiff and the Police advised the defendant to resort to suitable civil remedies in a court of law.*

10. *The Plaintiff avers that the defendant would use muscle power to throw away the Plaintiff in order to gain entry into the premises so as to obtain unlawful possession. The Plaintiff will be put to serious prejudice and irreparable loss if eviction is allowed to be carried out unlawfully.*

11. *The Plaintiff submits that unless the defendant is deterred by means of permanent injunction in that the Plaintiff's peaceful possession and enjoyment are not to be disturbed and he should not be evicted by unlawful means other than by a due process of law."*

WHEREFORE the Plaintiff prays this Honourable Court for Judgment directing the defendant

- a. Not to dispossess the Plaintiff, his employees from the flat A33 at Revolution Avenue by unlawful means other than by a due process of law.

- b. Not to disturb my peaceful possession of the premises unless and until ordered by the Rent Board.

- c. To pay the costs of this suit and

- d. To pass such other reliefs as this Honourable Court may deem fit and proper.

The **amendments proposed** by the Plaintiff are as follows:

- “6. *The Plaintiff however remained in the possession of the premises, the defendant on or about 29th January, 2010 had unlawfully and illegally thrown the contents of the premises and entered into the premises, thus took over the premises despite the Plaintiff’s status being a statutory tenant.*
7. *The Defendant as threatened in early January 2010 that he would take over the possession of the premises, despite the court’s injunction order thrown the Plaintiff and the contents of the premises thus dispossessed the Plaintiff. The Plaintiff’s police complaints were of futile as the Police referred the Plaintiff to resort to civil action.*
10. *The defendant had used his muscle power and thrown away the Plaintiff thus illegally gained entry to the premises that resulted in serious prejudice and further caused irreparable loss to the Plaintiff.*

11. *The Plaintiff therefore submits that the defendant be directed by a permanent injunction in that the defendant be directed to place the Plaintiff in possession of the premises.”*

In the prayer column

- a. To place the plaintiff and his inmates, employees of the flat A 33 at Revolution Avenue in possession of the premises with immediate effect.
- b. Not to disturb the Plaintiff's possession thereafter unless and until so ordered by the Rent Board.
- c. To pay costs of this suit and
- d. To pass such other reliefs as this Honourable Court may deem fit and proper.

The procedure for amendment of pleadings is set out in **Section 146 of the Seychelles Code of Civil Procedure (Cap.213)** as follows:

“The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that a plaint shall not be

amended so as to convert a suit of one character into a suit of another and substantially different character.”

The principles regarding amendment of plaint are further set out and elaborated in the case of ***Fisherman’s Cove Ltd versus Petit and Dumbelton (1978)***; and also in the case of ***Petit car Hire versus Mandelson (1977) No.20***.

I have carefully analyzed both sets of the pleadings and found that the Plaintiff’s proposed amendments will in my judgment not in any way convert the character of the original suit into a suit of another and substantially different character as the contentions of the Plaintiff is basically the same except that the situation was somewhat changed after the Defendant took certain actions in relation to the suit.

I find that the proposed amendments are necessary for the purpose of determining the real questions in controversy between the parties following the actions taken by the Defendant in relation to the matters in issue as originally pleaded by the Plaintiff. Such actions were taken by the Defendant after Plaint was entered in Court. I find no merit in the first ground of objection and accordingly dismiss it.

The used of the words “statutory tenant” by the Plaintiff in the original Plaint was in relation to the inception of the occupation of the premises by the Plaintiff and can in no way be construed as constituting a judicial admissions that the tenancy was lawfully terminated *inter partes*. The pleadings are indicative that the Plaintiff was in occupation of the premises up to the time the Defendant took

over possession of the premises. Obviously, this contention has to be adjudicated.

The action of the Plaintiff is neither frivolous not vexatious.

For reasons stated above, I overrule the objections raised by the Defendant and allowed the proposed amendments. The Defendant is allowed the opportunity to file amended defence if so advised.

The amended Plaint shall now be formally served by the Plaintiff on the Defendant.

The case shall be mentioned on 1st June, 2012 at 9 a.m. for fixing of hearing date.

I order accordingly.

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**B. RENAUD
JUDGE**

Dated this 18 May, 2012 at Victoria, Mahe, Seychelles