

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC08/2018

[2018] SCSC 297

MARQUISE DAVID

Plaintiff

versus

SYLVAIN MORTIER

Defendant

Heard: 12 March 2018

Counsel: Mr. Anthony Juliette for plaintiff
Mr. Bernard Georges for defendant

Delivered: 26 March 2018

JUDGMENT

M. TWOMEY, CJ

[1] The Applicant applied for a writ *habere facias possessionem* against the Respondent on the grounds that she was the owner of Parcel H1880 on which stands a “dive centre” illegally occupied by the Respondent.

- [2] In an affidavit in support, she avers that she signed a 3-year lease with the Respondent and that it expired in December 2015 and on the expiry of the same he became a statutory tenant.
- [3] In June 2017, the Respondent was given six months' notice for the termination of the lease. Further correspondence then ensued between the parties and the Respondent was asked to remove his belongings from the premises. He was informed of physical damage he had caused to the Applicant's other premises on the property, namely her tourism business, Clef des Isles.
- [4] Further, in November 2017 he was notified of the disturbance, smell and noise pollution continually being caused by his operation and informed that he had failed to mitigate any of the nuisances despite being informed of them.
- [5] Payment for the rent of the premises was accepted by the Applicant under the statutory tenancy up to December 2017 and he was issued with a letter of termination of occupancy on 10 December 2017 as the Applicant indicated that she was to begin demolition works of the premises he occupied.
- [6] In a letter in response on 10 December 2017, the Respondent indicated that he had found alternative premises but needed an extra eight months to vacate. The Applicant refused his application and to accept further payments of rent from him. On 4 January 2018, the Respondent informed the Applicant that he was a statutory tenant and would defend his rights including a claim for damages if his occupation of the premises was not peaceful.
- [7] In February 2018, the Applicant wrote to the Respondent's lawyer stating that no payment for cheques would be accepted despite them being posted to her. She further informed the Respondent that demolition work on the premises was urgent as was supported by correspondence with the Planning Authority. A letter from the Planning Authority attached to the affidavit dated 9 February underscores the Ministry of Environment's concern about the "urgent need to rehabilitate the place in view of the coming equinox high tides."

- [8] In his affidavit in response, the Respondent admitted that he had had a three-year lease with the Respondent that had expired in March 2011 but could not remember if he had signed another. He further admitted being given notice to quit as averred by the Applicant but denied that the Applicant had attempted a peaceful entry onto the premises at the expiration of the notice to quit. Instead he averred that she had attempted repossession in an aggressive manner. He further averred that he was a statutory tenant overholding the premises and had a right to continue occupying the same.
- [9] He further averred that he had found alternative premises which construction needed time for completion and that if he left immediately he would lose his business and his employees would lose their job. In a further affidavit, the Applicant has averred that the Respondent has already obtained alternative premises at Eden Island.
- [10] Some of the facts outlined above have little relevance in terms of the issue in this matter, that is, whether the Respondent is a statutory tenant with the protection of the Control of Rent and Tenancy Agreements Act (The Act). If such a relationship exists between the parties, it would offer a legal avenue under the Act for both the Appellant and the Respondent and would trump the availability of an equitable remedy such as that provided in a writ *habere facias possessionem*
- [11] Sections 12 and 13 of the Act provide in relevant part:

12. (1) A lessee who under the provisions of this Act retains possession of any dwelling house shall so long as he retains possession observe and be entitled to the benefit of all the terms expressed or implied in the original contract of letting so far as the same are consistent with the provisions of this Act.

...

Application to business premises

13. (1) This Act shall apply to any premises used for business, trade or professional purposes or for the public service as it applied to a dwelling house

and as though references to a "dwelling house", "house" and "dwelling" includes references to any such premises...

- [12] Further, section 9 of the same Act precludes the Supreme Court from ejecting a tenant without the application having been entertained in the Rent Board. There is also authority that the ejectment of a statutory tenant is the exclusive jurisdiction of the Rent Board (see *Hadee v Moutia* (1978) SLR 189).
- [13] In the present case, the Applicant maintains that the statutory tenancy came to an end by virtue of the fact that she did not accept the Respondent remaining as tenant, nor payment from him after he had been served a six month notice to vacate the premises. This she submits makes his occupation illegal as he no longer meets the statutory definition of lessee and therefore falls outside the jurisdiction of the Rent Board.
- [14] In response, the Respondent has submitted that the issues raised by the Applicant, namely non-payment of rent, or occupation of the premises are those that may only be appreciated by the Rent Board.
- [15] The Act does not specifically provide for termination of statutory tenancies but it is trite that where a lessee's permission to remain is withdrawn he ceases to be a statutory tenant. In *Hadee (supra)*, Sauzier J held that a lease does not *ipso facto* become void but must be declared so. In *Casino des Seychelles v Compagnie des Seychelles (Pty) Ltd SCA* (1994) SLR 28 the Court of Appeal stated that "for section 12 of the [Act] to be applicable there must be a lessee." It further held that a tenant retains that status until the annulment of the tenancy. Similarly, while I am prepared to hold that a tenancy after its term continues as a statutory tenancy, I am not prepared to hold that a statutory tenancy or the relationship of a lessor and lessee subsists indefinitely even if the permission of the lessor is withheld. I am also not prepared to hold that only the Rent Board can declare on a lessee/lessor relationship.
- [16] In *Delphinus Turistica Maritama S.A. v Villebrod* (1978) SLR 121, a contract for hire of a yacht had also come to an end and Sauzier J found that once that had occurred the defendant had no title as a lessee and granted the writ *habere*. In the present matter after

the Respondent, a statutory tenant, was given notice to quit and accepted so to do he cannot avail of the protection of the Act. To find otherwise would mean that a statutory tenancy is never at an end until and unless the Rent Board so pronounces. That was not the intention of the Act. The facts in the present case indicate that the tenancy and statutory tenancy were both at an end and in the circumstances the jurisdiction of the Rent Board is not in issue.

[17] Having found that the Respondent has ceased to be a statutory tenant, I must also consider whether there is any other legal remedy available to the applicant under the laws of Seychelles before the equitable remedy of the writ *habere* can be available.

[18] I have considered therefore whether a petititory action might also be available. However as the Court of Appeal found in *Nolin v Nolin* (SCA 04/2014) [2016] SCCA 1, an action *en revendication* is an action where two aspirant owners are competing in title to the same property. The present action is not a realty claim of proprietorship by one competing aspirant owner against the aspirant owner. It is therefore not a legal remedy available to the Applicant. There is in the circumstances no equivalent legal remedy available to the Applicant.

[19] Finally, I must consider whether the process under Article 806-811 of the French Code of Civil Procedure preserved by section 327 of the Seychelles Code of Civil Procedure is available in the present circumstances.

[20] Doctrine provides that:

“Le juge des référés est compétent pour prononcer en cas d’urgence, l’expulsion d’un locataire,...dont le bail est résilié .. ou dont la jouissance est expirée...”(Encyclopedie Dalloz Supplement au repertoire pratique 97-2).

[21] Further, as stated in *Tamboo v Pillay and Anor* (MC [2016] SCSC 48:

“A writ habere facias possessionem is a quick executive remedy available to an owner of property to evict a squatter. The suit for such a remedy brought under the old French Civil Procedure Code, articles 806-811 (la procédure de référé) is

the fastest way, entailing little proceedings to bring an action where a remedy is urgently required.”

[22] The circumstances of the case do indicate that the remedy is urgently required. There is no serious legal defence put up by the Respondent and no equivalent legal remedy to the writ available to the Applicant. Therefore the writ *habere facias possessionem* must issue.

[23] In the circumstances, I hereby order the Respondent to quit, leave and vacate forthwith the premises on Title H1880 he presently occupies, failing which a writ *habere facias possessionem* shall issue forthwith against him. The whole with costs.

Signed, dated and delivered at Ile du Port on 26 Mach 2018.

M. TWOMEY
Chief Justice