

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL JURISDICTION**

**No. 41 of 2002**

**BETWEEN**

**MIRIAM DENNY**

**(Plaintiff)**

**AND**

**MAUREEN HARRIS**

**(Defendant)**

**Before the Honourable Madam Justice Margaret Reifer, Judge of the High Court (Ag.)**

**2002: February 7 and 21**

**March 14**

**April 3**

**Miss Jacqueline Cornelius for the Plaintiff**

**Miss Vonda Pile for the Defendant.**

**DECISION/JUDGMENT**

This is an application brought by the plaintiff Miriam Denny, as Administratrix and personal representative of the Estate of George Wilfred Denny, deceased, filed by way of Originating Summons on 11th January, 2002. The application is made under Order 92 Rule 1 of the Rules of the Supreme Court of Barbados 1982 which provides that:

“Where a person claims possession of land which he alleges is occupied solely by a person or persons, (not being a tenant or tenants holding over after the termination of the tenancy), who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the [1] proceedings may be brought by originating summons in accordance with the provisions of this Order”

Rule 3 provides that this application must be supported by an affidavit filed by the plaintiff showing (a) his interest in the land and (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises.

The plaintiff has filed two affidavits on January 11, 2002 and February 21, 2002 respectively. Therein the plaintiff alleges a right to possession by virtue of her being the grantee of Letters of Administration to the Estate of George Wilfred Denny issued on the 10th day of July, 2000. The said George Denny as shown by conveyance exhibited to the said affidavit, was the owner of a property situate at Lot 3, Industry Road in the parish of Saint Michael which is mortgaged to Barclays Bank Plc.

The plaintiff deposes in her affidavit that the defendant occupied the said premises by virtue of the licence or consent of the deceased George Denny with whom she lived for about seven (7) years

prior to his death. The deceased died intestate and Letters of Administration were taken out by the plaintiff on behalf of the deceased's beneficiaries, his children Beverly Orlanda Denny, George Athelstone Ifill and George Wilfred Holder.

By letter dated July 31, 2000 the plaintiff in her capacity as Administratrix purported to determine the licence under which the defendant had possession of the subject property. The defendant responded through her attorney-at-law by letter dated August 29, 2000 claiming entitlement as a creditor and having an equitable interest in [2] the property. By letter dated September 13, 2000 she was invited by the attorney-at-law for the plaintiff to submit her claim as creditor as well as the details of the alleged equitable interest but to date has not done so.

The defendant's affidavit filed herein on March 7, 2002 in essence confirms the allegation of the plaintiff that she occupied the subject premises under a licence or consent granted by the deceased George Denny. She however alleges by way of challenge to paragraph 3 of the plaintiff's affidavit that she lived with the deceased for approximately seventeen (17) years. No claims are made therein as to the defendant's entitlement in law or equity.

Order 28 of the Rules of the Supreme Court 1982 which enunciates the procedure to be followed by the Court on the hearing of Originating Summons provides at Rule 4(3) as follows:

“... the Court shall at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact ....”

I find that there is no dispute between the parties as to the relevant facts, namely, that, the defendant was NOT a tenant or tenant holding over after the termination of the tenancy but a person in occupation with the licence or consent of Mr. George Denny which said licence the Plaintiff purported to determine.

In urging the Court to dismiss the application, Counsel for the defendant made two main points:

(1) That Ms. Harris entered and remained in occupation with the licence and consent of the deceased whenever revoked the same and that [3] this has been admitted by the plaintiff Mrs. Denny. She refers to Bristol Corporation vs Persons Unknown in support of this argument; and

(2) Citing the obiter dicta of Pennycuik VC in the said Bristol Corporation v Persons Unknown she states that Order 92 is not the proper procedure where occupation or possession has been for a substantial period, namely, seventeen (17) years as alleged by the defendant.

The matter in my opinion is dependent upon the interpretation of Order 92. In the Barbadian case of Nall v Cox No. 718 of 1987 the parameters of this provision were clearly outlined by Chief Justice, Sir Denys Williams when he stated therein as follows:-

“It was held by Pennycuik VC in Bristol Corporation v Persons Unknown [1974] 1 AER 593 that the corresponding orders in the English Rules of the Supreme Court Order 113, covers two distinct states of fact, the first being that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his and the second being that of the person who entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in such occupation without licence or consent of the person entitled to possession or any predecessor in title.”

The facts of this case fall squarely within the second category of facts. Ms. Harris's lawful possession or occupation came to an end when the person now entitled to possession, namely the lawful administratrix of the estate of George Wilfred Denny by letter dated July 31, 2000 lawfully terminated said licence by demanding possession and thereby making Ms. Harris, a trespasser after the [4] expiration of a reasonable notice period. There is no evidence or argument that this was an irrevocable licence.

In *Terunnanse v Terunnanse* [1968] AC at page 1086 the Privy Council stated in circumstances where a licensee remained in occupation after the death of the original licensor, that ... “a revocable licence is automatically determined by the death of the licensor or by the assignment of the land over which the licence is exercised.” Lord Devlin at page 1095. The case of *Greater London Council v Jenkins* [1975] 1 AER 354 unequivocally settles the two arguments made by Counsel for the defendant. One of the issues to be determined by the Court in that case where the facts indicated a licence had been granted for a substantial period, was whether the Court has a discretion to prevent use of summary procedure where a licensee holds over after termination of the licence. The Court of Appeal held in that case that where an applicant who brought proceedings for possession succeeded in establishing that the respondent had been let into possession of land belonging to the applicant under a licence but had remained in occupation after the licence had been terminated without the applicant's consent, the Court has no discretion to refuse to allow the summary procedure to be used. Even where the respondent had been in occupation under the licence for a substantial period, it was bound to grant an order for possession in such circumstances.

Lord Diplock at Page 356 of the judgment in this case strongly rejected the notion that the period of occupation should in any way fetter the Court when he states as follows: [5]

“In the course of his judgment in that case Pennycuik VC did suggest that the Judge or the Court had a discretion whether to permit this summary procedure to be used in cases where there had been as in this case clearly, a licence to occupy originally. For my part, I am unable to see that the Court has any discretion to prevent a plaintiff using this procedure where the circumstances are those described in the rule. So, while agreeing, as I do, with Pennycuik's V.C's construction of the rule, I personally would disagree that the Court has any discretion to prevent the use of this procedure where circumstances are such as to bring them within its terms.”

Having found as a fact that the defendant was a licensee who remained in occupation after the licence had been terminated, I have no option but to grant an Order for Possession in the form prescribed by the Order 6 (2) of Order 92 in the following terms:

Upon hearing Ms. Jacqueline Cornelius, attorney-at-law for the applicant and Ms. Vonda Pile, attorney-at-law for the defendant and upon reading the affidavits filed herein, it is ordered that the plaintiff Miriam Denny do recover possession of the land described in the originating summons as Lot 3 Industry Road, Bank Hall in the parish of St. Michael and that the defendant Maureen Harris do pay the plaintiff \$1,500.00 costs. [6]

Margaret Reifer

Judge of the High Court (Ag.)