

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No: 1772 of 2015

BETWEEN

RENALDO ROMEL WHITE

CLAIMANT/PLAINTIFF

AND

KIRAN HOLDINGS LTD.

DEFENDANT

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

2017: January 23

2019: January 25

Appearances:

Mr. Lalu Hanuman, Attorney-at-Law on behalf of the Claimant

Mr. C.E. Lashley, Q.C. in association with Ms. Honor Chase, Attorneys-at-Law on behalf of the Defendant

DECISION

INTRODUCTION

[1] The Claimant/Plaintiff in these proceedings seeks redress under the Landlord and Tenant Registration of Tenancies Act, Cap. 230A (“the Act”) on the grounds that the Defendant has failed to register the

rental promises in question and is in criminal breach of section 12(1)(a)(b) and (c) of the said Act.

FACTUAL BACKGROUND

- [2] The Claimant was a tenant in respect of premises situated at 43 Swan Street, St. Michael, owned by the Defendant. The Claimant contends that he occupied the said business premises under a lease from February 2011 until February 2014 when he was given a Notice to Quit, whereas the Defendant states that the tenancy commenced on the 30 December, 2010.
- [3] According to the Defendant the terms of the agreement were that the basic rent was \$40,000.00 per month inclusive of VAT and electricity up to a maximum of \$40,000.00 per month and water rates were to be paid by the Defendant. On the 30 May, 2013 the parties renegotiated the terms of the tenancy agreement and the basic rent was reduced to \$20,000.00 plus VAT and electricity.
- [4] The Claimant fell into arrears of rent in the sum of \$110,950.00, this was communicated from the Defendant to him and a proposal was made to satisfy this sum.
- [5] Thereafter the Claimant issued a number of cheques to the Defendant which was subsequently dishonoured. As a result the matter was

- reported to the Royal Barbados Police Force and the appropriate criminal charges were brought against the Claimant.
- [6] The Claimant then approached the Defendant and by letter dated the 20 October, 2015 made an offer of \$8,000.00 to be paid on the 28 October, 2015, then \$1,400.00 every ten (10) business days beginning 11 November, 2015.
- [7] The Defendant countered by making a demand to the Claimant for the outstanding sum of \$57,000.00, however it is the Defendant's position that the Claimant wanted them to withdraw the criminal charges before payment of any monies would be made.
- [8] The Claimant however maintained that he paid the rent promptly and faithfully until the island wide recession when he ran into difficulty and agreed with the Defendant to give him post-dated cheques which were only to be tendered at the bank when he indicated so to do. In breach of their agreement the Defendant submitted these cheques to the bank before the Claimant had enough money in the bank to cover them.
- [9] The Defendant then brought criminal proceedings against the Claimant for the full sum of \$57,000.00.
- [10] The Claimant believes that since the building at No. 43 Swan Street was not registered as required by the Act, he contends that there is no

legally enforceable liability chargeable against him for rents during any period when the Defendant failed to register the said premises pursuant to the Act. Furthermore that the sum of \$40,000.00 paid as a deposit by him to the Defendant must be returned to him since the money was not in law, rent.

THE ISSUE(S)

- [11] (1) Whether the Defendant is in criminal breach of the provision of section 12(1)(a)(b) and (c) of the Act and therefore liable to the penalties contained therein.
- (2) Whether the Claimant is entitled to recover all rents paid under the tenancy due to the Defendant's failure to register the business premises.

THE LAW

- [12] **Section 12** of the Act deals with offences and provides that it is an offence punishable on summary conviction by a fine of \$2,500.00 or 12 months imprisonment or both for a person –

- “(a) To receive rent in respect of premises that are not registered;
- (b) Knowingly to supply false information to the Collector of Taxes;
- (c) To fail to give to the Collector any information which he is required to give by virtue of the Act;
- (d) To contravene or fail to comply with any other provision of the Act;
- (e) To fail to provide or keep rent books as required by the Act; or

(f) Fraudulently to act in collusion with another person to avoid the operation of the Act.”

[13] The Claimant’s case is that the business premises were not registered and therefore he should recover all rents paid under the tenancy due to the Defendant’s failure to register the business premises.

[14] This issue was raised in the case of *Gulf Rentals Ltd. v. Evelyn and Carvalho (trading as Buccaneer Restaurant) BB 1983 HC 31* where it was stated that “money is property within the meaning of **sections 11 and 16(1)** of the Constitution and is therefore protected, therefore for a landlord to be deprived of his right to rents would be a deprivation of the property of the landlord.

[15] The court went on to hold that **section 14** of the Act was not only arbitrary and excessive, but that it was confiscatory, not regulatory and therefore violated the constitution. The Act was subsequently amended following the severing of that provision.

[16] The reasoning behind this decision was stated by **Williams CJ** at page 7 as follows:

- (1) The Act is a taxing Act, in other words, a revenue measure
- (2) It is aimed at full disclosure of rents received by the landlords which would assist in the administration of income tax and tax on companies
- (3) The Act is not a measure for the protection of tenants

- (4) It is not a rent control Act or an Act giving security of tenure to tenants.

[17] Based on the above even if it is established that the Defendant is in breach of **section 12** of the Act, the appropriate authority or agency to seek recovery would be those deprived of the benefit of these taxes and not the Claimant.

[18] The Claimant having occupied the premises during the tenancy and having failed to pay the stipulated rent, cannot be allowed to deprive the Defendant of their property, even if it were accepted that the Defendant had fail to comply with some of the provisions of the Act.

DISPOSAL

[19] The court can find no merit in this application and it is therefore dismiss with costs to the Defendant to be agreed or assessed.

PAMELA A. BECKLES
Judge of the High Court