

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL DIVISION**

**Civil Suit No: 1259 of 2017**

**BETWEEN:**

**CYNTHIA OTTLEY**

**CLAIMANT**

**AND**

**EUGENE MULLIN**

**DEEFENDANT**

**Before: The Hon. Madam Justice Shona O. Griffith, Judge of the High Court**

**Dates of Hearing: 2020: 17<sup>th</sup> November  
8<sup>th</sup> December**

**Date of Oral Decision: 2021: 4<sup>th</sup> March**

**Appearances:**

**Ms. Wendy Straker for the Claimant**

**Ms. Diana Douglin for the Defendant**

**REASONS ON JUDGMENT**

**INTRODUCTION**

[1] The Claimant Ms. Cynthia Ottley filed a FDC in August, 2017 seeking possession of a portion of land situate in Church View St. John, which she

says is part of a lot of land belonging to her, but which the Defendant Eugene Mullin (through her predecessors), was permitted to occupy. The Defendant by her predecessors had placed a dwelling house on the portion of land from circa 1994, initially at a rent of \$5 per month. Ms. Ottley says the Defendant was issued with a Notice to Quit sometime in 2006, but had failed to vacate the land. The Claimant says Ms. Mullins had also failed to pay any rent since 2006. The Claimant's brother (now deceased) is said to have instituted proceedings in the Magistrate's Court to remove the Defendant from the land, but those proceedings were never heard or disposed of. The Claimant therefore seeks possession of that portion of land upon which lies dwelling house occupied by the Defendant.

- [2] The Defendant Ms. Mullin answers the claim by contending that she is a qualified tenant within the meaning of the Tenancies Freehold Purchase Act, Cap. 239B and therefore entitled to purchase the portion of land occupied by her. Ms. Mullin also claims that she has always been ready, willing and able to pay the rent for the premises but that the Claimant has refused to accept same. In the event that it is not accepted that the Defendant is a qualified tenant under Cap. 239B, Ms. Mullin by her Counsel contends that the portion of land she occupies falls within the definition of a house spot, under the Security of Tenure of Small Holdings Act, Cap. 237 and that she remains entitled to

occupy the premises as the Claimant has not issued her with a Notice to Quit in conformity with the provisions of the said Cap. 237.

- [3] With respect to the legal status claimed in relation to the Defendant's occupation of the land, Counsel for the Claimant refutes that the Defendant is a qualified tenant firstly on the basis that the portion of land occupied is not a separate lot; but moreover, that the Defendant has failed to pay any rent since sometime in 2004 or in any event within the material time applicable to her eligibility as a qualified tenant under Cap. 239B. Counsel for the Claimant and Defendant respectively referred the Court to the cases of **Ward v Foster (1992) BLR Vol. 28 @ 191**; and **Hood v Edwards BB 2009 CA 8** as **authorities on the operation of Cap. 239B and Cap. 237.**

### **Issues**

- [4] The issues for the Court to determine are as follows:-
- (i) What is the legal status of each party in relation to the land occupied?
  - (ii) Which if any provisions of either Cap. 239B and/or Cap. 237 are applicable to the parties?
  - (iii) What if any remedies or protections are available the parties under the said Acts, or at common law?

## **The Evidence and Findings of Fact**

[5] The land in question forms part of a larger area of land, which according to the Claimant's evidence is subdivided into 12 lots, rented out by the Claimant and her predecessors, to tenants as housing lots. At the time of the filing of the Claim, some lots were occupied whilst others were not. The Claimant presented no formal documents of title in respect of her or her predecessors but did produce a plan of the larger area of land, as subdivided. The Claimant's evidence is that she occupies Lot 1, as shown on the plan and that the Defendant occupies a portion of that Lot 1. The plan produced did not depict the portion of Lot 1 occupied by the Defendant. The Defendant's position is that she occupies a separate lot in the subdivision. The Defendant sought to tender, but was not able to produce any documentary evidence depicting her occupation of the land. The document so tendered was not admitted into evidence on the basis that it formed part of 'without prejudice' correspondence issued by the Claimant during prior negotiations for settlement, and there was no consent by the Claimant to its admission into evidence.

[6] In relation to the evidence before the Court, it is found that:-

- (i) Albeit in the absence of documents of title, the Claimant is for the time being, (also through her predecessors), the person entitled to the

collection of any rents and profits for the wider area of land which is subdivided in 12 Lots. The Defendant's evidence is that the Claimant collected rent from her in respect of the land she occupied, therefore the Claimant is entitled to maintain the claim for possession;

- (ii) The Claimant occupies Lot 1 of the subdivided area and it is accepted that she has occupied the lot for at least 50 years, as there was no challenge to her evidence in that regard;
- (iii) In the absence of any documentary evidence to the contrary (and accepting the Claimant's evidence to this effect), the Defendant occupies a portion of the Claimant's Lot 1, and not a separate lot of land.
- (iv) The house occupied by the Defendant was placed on the land either by one Boysie Welch or his cohabitant, the latter being the Defendant's aunt, Sylvia Brathwaite, it is immaterial to the Court which one. The Defendant entered into occupation of the premises sometime during 1994 after the death of Boysie Welch. The Claimant alleges that the Defendant was permitted to reside in the premises as a temporary arrangement given her dire circumstances of having nowhere to live at the time; the Defendant alleges she rented the premises which had been previously rented by her aunt. The Court finds that the arrangement

between the Claimant and the Defendant by which the Defendant came to occupy the premises was purely oral, but that the Defendant was paid rent in the sum of \$2.50 per week;

- (v) With respect to the payment of rent, the Claimant alleges that she paid rent for only about 2 years, whilst the Defendant alleges that the Claimant refused to accept her rent. At paragraph 20 of her witness statement the Defendant alleges that she was always willing to pay rent and the Claimant refused to accept it. The Defendant did not give any specific evidence of instances of rent refused in her evidence in chief and the Claimant was not cross examined in relation to any specific incident of refusal to accept rent. Under cross-examination however, the Defendant accepted the existence of a cheque tendered in 2006 to the Claimant (the Claimant's brother) for \$180 as arrears of rent. The Defendant also accepted that this payment was tendered by her then attorney as a result of the proceedings instituted against her for recovery of possession. The Court therefore finds that at the time proceedings were instituted against the Defendant for possession in 2006, the Defendant was in arrears of rent for 18 months, based upon her indication that the rent was \$2.50 per week.

(vi) Given that the Defendant was not specific in her evidence in chief (witness statement) in relation to any incident of refusal of rent and given that her Attorney did not cross examine the Claimant on any specific incident of refusal of rent, particularly given the allegation the Defendant made (under cross-examination) about the refusal of the cheque tendered for \$180, the Court does not accept her broad assertion that she was always willing to pay rent but Claimant refused to accept same. Even if the Court were to accept that the cheque for \$180 tendered by the Defendant's attorney, to the Claimant in 2006 had been refused, the Defendant herself accepted in cross-examination that this cheque was what she was referring to when she spoke of rent having been refused. The Defendant continued in possession for 11 years thereafter when the present claim for possession was filed, and has made no assertion of any specific incident of tender of rent to the Claimant and refusal. It is therefore found that certainly subsequent to 2006 the Defendant has been in occupation of the premises without tendering rent.

(vii) The Claimant (by her brother) speaks of the Defendant having been served with notice to remove from the property in 2006. There is no such document before the Court and even if such a notice had been

submitted, it would have been irrelevant for the purposes of the proceedings before the Court. It is therefore found that the Claimant issued no formal notice to the Defendant to quit the premises, prior to instituting the Claim, which is however in line with the Claimant's view that the Defendant has no lawful right to occupy the premises given her failure to pay any rent.

**Issues (i) Legal Status of Parties in relation to Land; and (ii) Applicable Provisions of Cap. 239B or Cap. 237**

- [7] The area of land in question which is divided into 12 lots, tenanted to persons utilizing same as residential house lots, falls within the definition of a tenantry in section 2 of Cap. 239B. Notwithstanding the absence of documentary title, the Claimant's accepted position as a person entitled to collect rents and profits in respect of those lots brings her within the definition of a landlord as defined under section 2 of Cap. 237. The definition of landlord in Cap. 239B merely expands the meaning to apply to the Crown and statutory bodies.
- [8] The Claimant's Lot 1 falls within the definition of a house spot in Cap. 237 as defined in Cap. 237 and it would of course qualify as a lot under Cap. 239. However it has to be determined how the land occupied by the Defendant is to be categorized. The Court has already found that the Defendant occupies a part of the Claimant's land and not a separate assigned lot as shown on the

wider area. The Defendant had no documentary evidence to support her claim that she occupies a separate lot of land. Counsel for the Defendant says that the Defendant occupies a house spot as defined under Cap. 237. The Court disagrees. A house spot is defined as a parcel of land in a contract of tenancy to be used as a dwelling by the tenant. The Court finds that the parties' arrangement would fall under a contract of tenancy as it was a licence to occupy land and there was rent (in terms of a fee) charged for the occupation. However, section 31 of Cap. 237 requires that a landlord cause the boundaries of the land house spot to be clearly marked and failure to do so is thereafter rendered an offence.

[9] There is no evidence in this case of boundaries of the land occupied by the Defendant ever having been marked and as established the portion of land occupied was not established as a separate lot in the subdivision. The Court is well aware that a statute should not be used as a vehicle of fraud, so as to allow the Claimant to take advantage of a failing under the statute that actually amounts to an offence. To the contrary, the Court finds that the absence of marked boundaries within the particular circumstances of the case, are such that support the position that the Defendant was never rented what was intended to be a separate parcel of land, such as to constitute a house spot. The circumstances so termed are (i) the nominal rent of \$5 or \$10 per month (in

1994); the Claimant's evidence that the Defendant was 'in her backyard'; the Claimant's evidence that the Defendant was initially permitted to occupy the land because of sympathy for her difficult circumstances (in this regard the Defendant appeared to have difficulty in adhering to the nominal rent charged);

[10] In the premises of the Court finding that the Defendant is not in occupation of a house spot, it is held that the Defendant is not a tenant under Cap. 237, moreover not a qualified tenant under Cap. 239B. The Defendant is currently trespassing on the Claimant's property and the Claimant is entitled to possession to the portion of land occupied by the Claimant.

**SHONA O. GRIFFITH**  
Judge of the High Court