

THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 2018-00801

BETWEEN

BEVERLEY NURSE

Claimant

And

CUTHBERT FULLERTON

First Defendant

And

DENNIS BAIRD

Second Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: February 10, 2021.

Appearances:

1. Ms. Sally-Ann King-Solomon, Attorney-at-law for the Claimant.
2. Mr. Ronald Dowlath and Mr. Ramraj Sookhansingh, Attorneys-at-law for the Defendant.

ORAL DECISION REDUCED INTO WRITING:

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 9th March 2018 by virtue of which the Claimant sought, *inter alia*, damages, interest and costs.

Claimant's facts:

2. The Claimant's case is that she was previously a cook/supervisor of the First Defendant. Her case is premised namely upon three agreements. The Court notes that the first agreement between the Claimant and the First Defendant regarding the transfer of a motor

vehicle registration number PCD 757 is no longer a live issue as the vehicle was transferred to the Claimant.

3. The second oral agreement was made around 1st February 2017 where by oral agreement and the Claimant agreed to rent from the First Defendant the building situate at Southern Main Road, Point Fortin for a period of three years commencing 1st February 2017. It is the Claimant's case that she had to get preparatory work done on the place and get the requisite approvals before she could operate her food business and made all payments of rent for same. According to the Claimant, this agreement was breached by the First Defendant when after collecting rent from her on 27th January 2018, he indicated to her from the 30th January that she was no longer to operate on the premises. Subsequent to that, the First Defendant had the Second Defendant make intimidating phone calls to her, removed the meter from the premises and had the Second Defendant evict her on the 1st March 2018, without notice.
4. The third oral agreement was effected on or about the 27th July 2017 whereby the Claimant agreed to rent from the First Defendant the downstairs area of the building situate at No. 49 Main Road, Point Fortin for an initial period of four months. Relying on the First Defendant's representations that the building would soon be his, the Claimant entered into the contract and made all payments on the agreement. However, in breach of the agreement, the Claimant and her husband was illegally evicted from the premises on 20th November 2017 in the course of which her husband suffered medical injuries.
5. With respect to these breaches the Claimant claimed damages.

The Defendants' facts:

6. The First Defendant's case is that he is still the owner of "D Eatery". The First Defendant denied the Claimant's version of facts and pleaded that on the 3rd March 2016 he entered into a lease agreement with Mr. Lennox Shade for the rental of property situate at Central

Main Road, Point Fortin for a two year period from the 3rd March 2016 to 2nd March 2018 at a monthly rent of \$10,000.00.

7. The First Defendant discovered he had a medical condition in December 2016 and began receiving treatment. In May 2017 he left to go abroad to receive treatment and entrusted to the Claimant the responsibility to operate the business and the Claimant would assist in paying a weekly rent of \$2,500.00 and keeping all profits for herself. There was no oral or written agreement with the Claimant to rent the property for any period. However, it was always an agreement between the Claimant and First Defendant that on his return to Trinidad and Tobago, he would resume operation of his business.
8. On the 1st March 2018 the First Defendant retained the services of the Second Defendant to receive his equipment since the lease was about to expire and he wanted to collect his deposit from his landlord. He pleaded that the Claimant was not his tenant but a bare licensee.
9. The Second Defendant pleaded in his Defence that he has been a licensed bailiff for the last 18 years and that he was retained by the First Defendant to retrieve possession of the business place situate at Central Roundabout. The Second Defendant's evidence is that he met with the Claimant and her husband on the 9th February 2018 and informed them that he was acting as agent for the First Defendant and that he intended to take possession of the items such as an oven, stove, refrigerators, warmers and other accessories. Written authorization was obtained on 16th February 2018 and on 1st March 2018 the Second Defendant attended "D Eatery", which is the name of the food establishment operating at the location, and served the Claimant with a copy of the authorization.
10. The claim therefore essentially involves the two properties which the Claimant says were subject to the oral agreements which she had with the First Defendant.

11. In support of the Claimant's case the Claimant testified as did her husband, they both having filed witness statements. The First Defendant testified as did the Second Defendant, Mr. Dennis Baird.
12. The primary issues that the Court had to determine in this matter was essentially as follows: whether the Claimant and the First Defendant had an oral agreement for the Claimant to operate her food business from each of the two locations namely 49 Main Road, Point Fortin and Central Roundabout, Point Fortin and the duration of those agreements if they did in fact exist.
13. The First Defendant stated that the arrangement as it relates to Central Roundabout, Point Fortin was not an arrangement for fixed three-year period as the Claimant contends, but that there was an agreement premised on the friendship they shared that the Claimant would operate Central Roundabout, Point Fortin until the First Defendant returned from medical treatment.
14. The Court also identified as it relates to the Second Defendant that it had to determine whether or not the Second Defendant, as a bailiff was empowered under the legislation namely the Bailiffs Act Ch. 4:61 to undertake the actions which he did in relation to roundabout property.
15. The Claimant pleaded in relation to the No. 49 Main Road, Point Fortin property that she entered into an agreement for an initial period of four months. She began operating from 27th July 2017 and the First Defendant removed her on or about the 20th of November 2017.
16. In the course of her cross-examination, the Claimant indicated that she understood that the arrangement would initially be for four months and that certain issues had to be sorted out and the intention was that once they were, the occupation of the premises could continue beyond the four month period. The Claimant accepted that at on or about the 20th November 2017 her items were removed from the No. 49 Main Road location and transported to the Central Roundabout property.

17. In relation to the Central Roundabout property the Claimant asserted that the oral arrangement or agreement provided for a three year time period during which she would operate from that location. Her case is that she commenced operation at that location from the 1st February 2017 and the First Defendant removed her on 1st March 2018. The First Defendant's evidence is that on the 3rd of March 2016 he had entered into a two year written agreement with Mr. Lennox Shade the purported owner of the property to pay a monthly rent of \$10,000.00. He contends therefore that due to this two year arrangement, it is unlikely and improbable to conclude that he would have entered into a three year arrangement with the Claimant. He contends that the arrangement was that he would permit her or allow her to operate from the location until he returned from medical treatment and was able to resume the operation of his business. The Claimant in cross-examination indicated that she was not aware as to whether the First Defendant was the owner of the building.
18. However, the First Defendant in his cross-examination indicated that even while the Claimant was under his employ it must have been clear to her that any repairs which needed to be effected on the building would be done by Mr. Shade and that he would be called to address any issues.
19. The Claimant's evidence suggests that on or about 27th of January 2018 the First Defendant notified her that she would no longer be allowed to operate the business and the Second Defendant then contacted her from early February and proceeded on or about the 1st March 2018 to enter the premises and removed items from the said premises.
20. The Claimant paid the last rent for the roundabout property on the 16th of February 2018.
21. The Court on the hearing the evidence of both the Claimant and the First Defendant did not form the view that either witness was intentionally dishonest or deceptive. It is evident to the Court and the Court finds as a fact that these parties shared a friendship beyond the normal employer - employee relationship and that the First Defendant extended a lot of facilities to help the Claimant along her life's journey. That was evident by the fact that an

arrangement was also made with respect to the motor vehicle which has now been transferred to her.

22. The Court formed the view that because of the closeness of their relationship, their transactions with respect to the two properties did not proceed on a strict business type platform and they would have had discussions about moving forward. Those discussions however in the view of the Court, may not have been clearly articulated so that certain perceptions may have been formed by the parties which may not have been consistent with the perception of the arrangement shared by other party.
23. In relation to the No. 49 Main Road property the Court is of the view that based on the Claimant's own acceptance that the initial arrangement was for four months that there can be no basis upon which a claim can be pursued as it relates to any wrongful termination with respect to her occupation of that particular location. With respect to the Central Roundabout property the Court is of the view that the Claimant did operate under the impression that she would have use of that premises for a period which exceeded the one-year period of the remaining duration of the tenancy.
24. The First Defendant during cross-examination accepted and stated in response to a question posed by this Court that he never discussed the duration of his lease with the Claimant. He never provided her with a copy of same and in the absence of it being clearly communicated to her, whether she understood that he did not own the property or not, there is no evidence to suggest that she knew that the lease was coming to an end in 2018.
25. Secondly, the arrangement as outlined by the First Defendant as to his coming back from medical treatment was also covered with a degree of uncertainty because there was no clear timeline as to when he would come back and more importantly if he would be in a position, physically having undergone his medical treatment, to assume the full operation of the location. In the circumstances, the Court finds that it is more probable to conclude that the Claimant formed the view based on the oral discussions that her use of that property would

be on a more long term basis and the Court is inclined to accept her evidence as it relates to the assertion that the rental or arrangement was for a period of up to three years.

26. That then leaves the issue as to the events which transpired with the removal of her property from both locations. The Court had regard to the provisions of the Bailiffs Act Chap. 4:61 and noted in particular Section 9(1) and (2) thereof as well as Section 10.
27. During cross examination the Second Defendant indicated and was adamant that there was no requirement for him to have a court order to exercise his duties as a bailiff.
28. This Court considered the role and function of a bailiff under Section 9 of the Bailiffs Act. Firstly, the Court wants to point out that the remedy of self-help was not open in relation to either rental location. The remedy of self-help, which this Court endorsed in **CV2012-01670 Steve Chairman v Samuel Saunders**, can be exercised in circumstances where there has been an immediate act of trespass or recent interference with the owner's occupation and possession of premises.
29. The Claimant was not a trespasser, she did not just open up locks and enter into building or premises which was under the First Defendant's remit. She entered both premises with the consent of the First Defendant and pursuant to an arrangement. If she continued in occupation after the termination of the arrangement as contemplated by the First Defendant, the remedy of self-help was not available. If the law allows that, it can lend itself to a significant measure of chaos and infringement of potential rights of many citizens. That is why there is a process recognized by the law which enables the owner to regain possession of premises if persons continue to retain possession after the termination of the lawful arrangement by virtue of which they entered into possession.
30. When one considers Section 9 of the Bailiffs Act and the Court looked at the mischief which Parliament intended to correct, it noted that at the Second Reading on 29th August 2000 at page 824 of the Hansard the then Attorney-General stated, "*Essentially, the problem experienced with private bailiffs goes back to the lack of regulation and*

supervision of their activities. Unfortunately the lack of control has led to several allegations: that there has been abuse and misuse of power by private bailiffs, and some of our citizens have complained that they have suffered great injustice.”

31. The Hon. Attorney-General on commenting on Section 9 stated at page 825, “*Clause 9 sets out definitely the functions and duties of bailiffs for the benefit of both the bailiffs and members of the public. **A bailiff may carry out these functions and only these functions.** A bailiff may levy execution in accordance with a judgment of a judge of the Petty Civil Court; serve documents from a court of summary jurisdiction; levy tenant’s goods for arrears of rent as provided for under the Landlord and Tenant Ordinance; and repossess goods under hire purchase in accordance with the Hire Purchase Act...”*

32. In **CV2012-02080 Shanazar Persaud v Ashmed Tajmool** Jones J (as she then was) stated at page 31:

“...This Act seeks to regulate and licence bailiffs for the purpose of performing the functions as identified by section 9 of the Act. It is with respect to those functions that a licensed bailiff can claim the immunities provided for the bailiff’s protection under the Petty Civil Court Act. **With respect to acts outside of the ambit of section 9 a bailiff, whether licensed or not, has no special protection or immunity...**”

(Emphasis Court’s)

33. From the Second Defendant’s evidence the Court notes that the Claimant was not present while the exercise was ongoing and she was not shown either his license or a certified copy of the document upon which he purported to have the authority to perform his functions on 1st March 2018, this course was inconsistent with Section 10(1) of the Bailiffs Act.

34. The Court considered that under the Landlord and Tenant Ordinance Ch. 27 No. 16 provision is made for the self-help remedy of levying distress at section 8 which provides as follows:

“Every person having any rent in arrear and due to him upon any grant, lease, demise, or contract whatsoever, shall have the same remedy by distress for the recovery of such rent as is given by the law of England in the like case”.

35. In **CV2016- 03282 Frank Martineau, Spektakula Promotions International Limited v. Jean Harper, Kevin Lewis, Caribbean Finance Company Limited**, the court at paragraph 26 cited Halsbury’s Laws of England 4th ed. Vol 13 para 207 page 110 – “*In order that the right to distrain for rent upon a demise may arise the relation of landlord and tenant must exist, both when the rent becomes due and when the distress is levied, and the rent must be in arrear*”.

36. The scope of Section 9(1) of the Bailiffs Act is divided between public service bailiffs and any other bailiffs. The Second Defendant can only logically fall within the category of Section 9(c) since there was no court order in this instance and there were no goods on hire purchase. Notably, he said he was there to repossess the First Defendant’s goods. Clearly, those goods were not sold to the Claimant on a hire purchase arrangement. The evidence does not suggest that the bailiff attended those premises for the levying for any arrears of rent. Therefore, this Court is of the view having regard to the provisions of Section 9 that the Second Defendant acted outside the remit and authority given, by the legislation, to bailiffs.

37. The very situation which the legislation sought to address unfortunately continues even after the passage of the relevant legislation. With regrettable frequency bailiffs exceed the remit of the authority and act outside the four statutory conditions outlined under Section 9. Very often they are seen at sites of demolition without court orders accompanying landowners and circumstances where the remedy of self-help is not available as they evict persons so as to regain possession or to destroy structures which may have been affixed to land. Such action is unlawful, unauthorized and has to cease.

38. The Court is therefore of the view that the action undertaken by the Second Defendant on 1st March of 2018 ought not to have been engaged. If it was the First Defendant’s view that

the Claimant's permission to occupy had expired, then the appropriate action required the institution of a fixed date claim to recover possession.

39. The difficulty that now arises is that the Claimant failed to properly discharge the evidential burden which rests upon any litigant to specifically prove damage. In the absence of clear evidence in support of the items of loss pleaded, the Court is restricted to make an award of nominal damages.

40. As it relates to the No. 49 Main Road property no award of damages is made. The Claimant knew that the arrangement was for four months and that she had to move out if the arrangements were not renewed. The Court is of the view that the way that the situation unfolded in relation to that property, the First Defendant was very kind to the Claimant and helped her and no award is made with respect to the Main Road property.

41. In relation to the Roundabout property, the Court declares that the Claimant was evicted from those premises without due process and the Court hereby orders an award of nominal damages in the sum of \$15,000.00.

42. The factual matrix in this case underscores the fact that persons who share friendships or familial relationships which transcend into business arrangements, should exercise care and caution. The obtaining of proper legal advice should be actively pursued and the arrangements should be reduced into writing. It is very unfortunate that the business arrangement which existed between the parties in this case, soured what was almost a father-daughter type relationship. It is regrettable that these types of relationships can become coloured and soured because of improper business arrangements.

43. For the reasons which have been outlined the Court hereby orders that the Defendants are to pay to the Claimant the sum of \$15,000.00 by way of nominal damages. Having regard to the quantum of the Court's order and bearing in mind the jurisdiction of the High Court in terms of the award of damages, the Court holds the view that in furtherance of the

overriding objective, the most appropriate cost order in the circumstances of this case is that each party is to be their respective legal costs.

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FRANK SEEPERSAD
JUDGE