



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. CL 44/23

BETWEEN:

50104/11 SANDY POINT LTD.

PLAINTIFF

-and-

NATALIE NIEWERTH

DEFENDANT

REASONS



Before: The Hon. Mr Justice Anthony S. Gruchot

Appearances: Mr Stephen Wilson KC of GrahamThompson for the Plaintiff

Mr Thomas C Misick of T Chal Misick Associates for the Defendant

Hearing Date: 30 May 2023

Venue: Court 5, Graceway Plaza, Providenciales.

Background

1. This was an application brought under O.113 for summary possession of parcel 50104/22, North Caicos, Turks and Caicos Islands ('the Property') issued by way of Originating Summons in Form 11A, filed on 4th April 2023. The application was

supported by an affidavit sworn on 12th April 2023 by Robin Stoltz Nassif ('Robin'). On 26th May 2023, the Defendant filed an affidavit in answer to the application.

2. The Plaintiff is a company incorporated pursuant to the laws of the Turks and Caicos Islands on 19th October 2000.
3. The Plaintiff has 1 issued share held by East Harbour Nominees Ltd. on trust for Christopher Nassif ('Chris') and Robin as beneficial joint tenants. The company has nominee corporate officers.
4. Chris and Robin were married on 21st June 1986 and have 2 sons Christopher Nassif Jr. ('Christopher Jr.') and Ryan Nassif ('Ryan'). Chris and Robin ceased living together in 2008 but remained married and, according to Robin, maintained a cordial relationship.
5. According to the Defendant, in or about 2009 Chris and she became both romantically and commercially involved. Sadly, Chris passed away on 6th July 2022.
6. On 12th December 2002 the Plaintiff acquired the Property. This acquisition was partially financed by a loan from FirstCaribbean International Bank (Bahamas) Ltd. ('FCIB') in the sum of US\$108,500.00, which loan was secured by way of a legal charge over the Property. It is not clear where the balance of the funds came from for the acquisition (I was not told what the acquisition cost was), but it appears that it was from funds generated by Chris' business interests in the United States of America, principally through his company CRN Management LLC.
7. It appears from the copy of the Land Register for the Property that the FCIB loan was discharged in November 2018 when a further loan was obtained from Meridian Mortgage Corporation Ltd. ('Meridian') in the sum of US\$750,000.00. Robin states that this loan was used to construct a villa on the Property. This is disputed by the Defendant who states that the funds to construct the villa came from her and Chris's combined income. The Defendant makes no reference to borrowing at all, save for a loan of US\$300,000.00 from Chris's sister, to which I return below.

8. The construction of the villa has been completed. It has been fitted out and, offered for short-term rental through organisations such as VRBO and Airbnb. The Defendant states that she set up the short-term rental business, and conversely, states that the villa was her and Chris's home.
9. Mr Wilson KC submits that the villa was built to be a short-term rental business, that is, it was a commercial enterprise. This submission grounds the relief sought by the Defendant in the action, which is detailed below and belies the suggestion the Property was meant to be a home.
10. In June 2021, the Meridian loan was re-financed by M&S Trust Company Limited ('M&S') who continue to hold a 1st charge over the Property. The amount secured by the M&S charge is US\$450,000.00. I am told by Mr Wilson KC that this loan is presently being serviced by payments from Christopher Jr., from his own funds and from income derived from previous short-term rental of the villa.
11. As noted in paragraph 7, mention is also made of a loan of US\$300,000.00 from Chris's sister, Alexis Nassif, which may account for the reduction of the funds borrowed commercially.
12. Following Chris's death, on or about 23rd July 2023, Robin states that she, along with Christopher Jr and Ryan gained access to the Property, changed the locks, set up a security system and began to market the villa for short-term rental. The Defendant alleges that:

*"On or about July 22, 2022, Plaintiff/ Robin Nassif Stoltz ("Stoltz") with the help of Johanna Robin and Marilyn Robinson did unlawfully and without the benefit of a court order, break into the property (sic) and proceeded to lock me out of the Property, this all occurred within days following Chris Nassif's death on the 6th July 2022."*¹

13. On 27 July 2022 the Defendant, in separate proceedings CL72/22, filed an urgent

¹ Paragraph 7 of the Defendant's affidavit.

application for the following injunctive relief²:

"1. An injunction that the Defendants: Robin Nassif, Christopher Paul-Sabin Nassif, Ryan Christopher Nassif and Johanna (Jodi) Robin be restrain until further order in this matter whether by themselves, their servants or agents otherwise howsoever, from preventing or undertaking to prevent the Plaintiff from providing short term rental and management services; to refrain from interfering with the services undertaken to be provided by VRBO, Home Away, AirBnB and the likes in respect of the Residential Villa locally known as Villa Just N Caicos and further describe in the land registry Grand Turk as 50104/1 1, Sandy Point, North Caicos ("the Vila") whatsoever on their behalf or purportedly on their behalf and to cease and desist from doing anything that will prevent the Plaintiff from having unfretted access to the villa, and to continue to carry on operating the villa for short term rental until trial or further order. (Sic)

2. An injunction restraining Robin Nassif, Christopher Paul-Sabin Nassif, Ryan Christopher Nassif and Johanna (Jodi) Robin whether by themselves, their servants or agents or otherwise howsoever, from refusing to remove the new lock that they had installed on the doors, closets, safety deposits and the likes on or about 23 July 2022 until trial or further ordered. (Sic)

3. An injunction restraining Robin Nassif, Christopher Paul-Sabin Nassif, Ryan Christopher Nassif and Johanna (Jodi) Robin whether by their, servants or agents or otherwise howsoever, from refusing to remove the new passwords that they changed on the internet and the video camera monitoring services at the villa on or about the 23 July 2022 until trial or further ordered." (Sic)

² In CL 72/22 Natalie Niewerth -v- 50104/11 Sandy Point Ltd, Robin Nassif, Christopher Paul-Sabin Nassif, Ryan Christopher Nassif, Johanna (Jodi) Robin.

14. The application came before Hylton QC J(Ag) on 27th July 2022 on the papers, at which time, refusing the *ex parte* injunction, he made the following observations:

- i. The summons purports to seek a prohibitory injunction, but in substance, it seeks mandatory injunctions;
- ii. The defendants have already carried out the actions that the plaintiff complains about;
- iii. The summons seeks orders that would force the defendants to reverse those actions; and
- iv. there is no evidence that the defendants intend or threaten to imminently carry out any other actions.

He then went on to make the following directions pursuant to O. 29 r.7(1):

1. The plaintiff should file a writ and statement of claim.
2. The plaintiff should serve the pleadings and the summons on the defendants.
3. The summons should thereafter be listed for an *inter partes* hearing.³

15. On 6th October 2022 the Defendant caused a caution to be registered against the Property in the following terms:

"I, Natalie Niewerth care of T. Chal Misick Associates, Attorneys at Law ... claim an interest as Contributor towards THE DESIGN AND CONSTRUCTION COST OF THE BUILDING LOCATED on the land comprised in the above-mentioned parcels (sic) and forbid the registration of dealings and the making of entries in the registers relating thereto to the following extent ABSOLUTELY without my consent, until this Caution has been withdrawn by me or removed by me or removed by order of the court or of the Registrar."

³ The Defendant asserts at paragraph 25 d. of her affidavit that the Court "... confirmed [her] right to ownership and that [she] was wrongly dispossessed of the Villa ...". On review of the Court order dated 28 July 2022 in CL72/22, this assertion is plainly wrong.

16. On or about 27th January 2023, the Defendant, having made no effort to follow the Court's directions in CL72/22, gained access to the Property and has remained in occupation since. The Defendant explains her actions as:

"In order to protect my legal rights and to stop the plaintiff Stoltz and her accomplices from making a mockery and taking advantage of the situation of Chris's death, on the 27th July 2022, I obtained a certificate of urgency and filed an emergency (sic) or an injunction against Plaintiff Stoltz seeking the court (sic) assistance as it related to the hostile takeover of my home by the plaintiff. After considering the matter on the documents my application was not granted by the court.

After Chris's memorial (which Stoltz did NOT attend) in North Caicos, I returned to California and upon returning to the jurisdiction on or about 23 January 2023; I moved back into the property just to find my newly constructed luxury home, vacant, dilapidated and abandoned.

*From that time onwards, I resumed my ownership and peaceful possession of the Property as of 27th January 2023 and I request to be permitted to continue to do so and I request that this application by the Plaintiff to remove me from my house must in all fairness and equity be denied."*⁴

17. At the time the matter came before me, there had still been no writ and statement of claim filed in CL72/22 and no explanation provided as to why not.

The Plaintiff's Claim

18. The Plaintiff puts its claim simply as:
- a. there is no doubt that the Plaintiff is the legal owner of the Property;
 - b. it wants possession of the Property back in order that it can continue to operate as a short-term villa rental; and

⁴ Paragraphs 8 to 10 of the Defendant's affidavit.

- c. the Defendant entered into possession of the Property without a licence or the consent of the Plaintiff and has no right of occupation.
19. Accordingly, Mr Wilson KC submits that the Defendant, not being a tenant or a tenant holding over after the termination of a tenancy, falls within the “*narrowly confined ... particular circumstances described in [O. 113] r.1.*”⁵ and urges the Court to make the possession order sought.

The Defendant’s Asserted Claim

20. The Defendant’s asserted claim is not cogently articulated, but is contained in some 90 paragraphs of an 18-page affidavit, with 211 pages of exhibits, of which I was referred to only 5.
21. The Defendant asserts, *inter alia* that:
- a. She is an owner in peaceful possession of the property.
 - b. She has a substantial equitable ownership stake in the land and building.
 - c. She and Chris were partners, developers and co-owners of the property.
 - d. She pooled her income with that of Chris for the construction of the villa.
 - e. As a result of Chris and Robin being separated, under California law⁶, Robin has no claim to the income or assets of the other party acquired post separation.
 - f. That there was a ‘legal separation’ between Robin and Chris in 2007.
 - g. Chris executed a Last Will and Testament on 25th September 2021 (‘the Will’) which was prepared in the Turks and Caicos Islands which the Defendant asserts:

⁵ See White Book 1999 O.113 – Note 113/8/2

⁶ Robin and Chris were married in California and the matrimonial home is in California, where Robin still resides.

- i. Give her 75% ownership of the property (with the other 25% going to Chris's sister in the event there is insufficient cash to pay out her loan)⁷.
 - ii. That the Will severs the beneficial joint tenancy shareholding in the Plaintiff.
 - iii. That the Will provides for a payment of US\$50,000.00 for Robin's interest in the shareholding of the Plaintiff.
 - h. She is in the process of probating the Will in California.
 - i. She has been in peaceful possession of the Property since its construction.
 - j. Robin is asserting that she is the legal owner of the Property.
22. Additionally, the Defendant claims that Chris provided instructions to his attorney, Norman Saunders (the principal of Saunders & Co and controlling mind behind the Plaintiff's corporate management company) to transfer Robin's interest in the issued shareholding of the Plaintiff, to the Defendant. She further asserts that Mr Saunders refused to carry out those instructions and instead on Chris's death immediately started working with Robin to remove the Defendant from the Property.

23. Mr Wilson KC submits:

"On her best case, which the Defendant has come nowhere close to proving, she may be entitled to a beneficial interest in the Property; however, at best that would make her a beneficial tenant in common with the Plaintiff and would not give her the right to occupy the Property to the exclusion of the Plaintiff."

Discussion

Joint Tenancy

24. Much of what the Defendant asserts as set out above is not relevant to the matter which was before me. If any of what the Defendant is alleging can be proved, then, I

⁷ There is no provision in the Will of what is to happen to this 25% interest in the event the loan can be paid.

agree with Mr Wilson KC, that she may be able to establish a beneficial interest in the Property under resulting/constructive trust principles; however, she has failed to put forward any such claim.

25. It is beyond peradventure that the Defendant is plainly wrong on a number of matters. The Defendant is not the owner of the Property as she asserts. Neither assisting in the construction of a property nor living in a property gives rise to legal ownership. Similarly, the property was not owned by her and Chris as asserted. The legal ownership of the Property is vested in the proprietor. A proprietor is defined in the Registered Land Ordinance (Cap. 9.01) as “*the person registered under this Ordinance as the owner of land or a lease or a charge*”. The legal owner of the Property is the Plaintiff.
26. As the proprietor is a corporate entity, any lawful physical occupation of the Property by a natural person, has to be with the consent of the Plaintiff, be that by way of licence, or tenancy.
27. The Plaintiff is controlled by its directors. In this case, the directors are East Harbour Directors Ltd. and East Harbour Secretaries Ltd. These are nominee corporate management directors, who ultimately act on the instructions of the beneficial owner(s). The Declaration of Trust with respect to the ownership of the only issued share states that is held on trust by Chris and Robin as joint tenants.
28. Mr Misick submits that on the death of 1 joint tenant, the beneficial interest does not pass automatically to the other joint tenant. I disagree. The learned writers of The Law of Real Property⁸ with respect to joint tenancies state:

“The right of survivorship. This is, above all of this, the distinguishing feature of a joint tenancy. On the death of one joint tenant, his interest in [the land] passes to the other joint tenants by right of survivorship (jus accrescendi). This process continues until there is one survivor, who then

⁸ Megarry & Wade – Sweet and Maxwell 8th Ed. At 13-003

*holds [the land] as sole owner. **A joint tenancy cannot pass under the will or intestacy of a joint tenant.** In each case the right of survivorship takes precedence. It is often said therefore that each joint tenant holds nothing by himself and yet that holds the whole together with the other. Whether he takes everything or nothing depends upon whether or not he is the last joint tenant to survive."*

They go on:

*"The right of survivorship does not mean that a joint tenant cannot dispose of his interest in [the land] independently. He has full power of alienation inter vivos, though if, for example, he conveys his interest, he destroys the joint tenancy by severance and turns his interest into a tenancy in common. But he must act in his lifetime, for **a joint tenancy cannot be severed by will.**" (Emphasis added)*

29. By application of the above, which applies equally to personalty as it does to realty, the 1 issued share held by East Harbour Nominees Ltd., upon Chris's demise, passed to Robin which she now holds absolutely, being the last surviving joint tenant.

The Purported Will

30. Throughout her affidavit, the Defendant refers to the Will left by Chris. The Will was not exhibited to her affidavit, the explanation for which was that the Defendant had only just discovered its whereabouts. I could not accept that explanation as it is belied by her affidavit evidence⁹, where she states she is in the process of having the Will probated in California. Further, the Defendant goes on to describe a notary seal on the Will and, describes what it purports to bequeath in word-for-word detail¹⁰. No explanation was offered as to how she was able to recall such detail if she did not have the Will before her.

⁹ At paragraph 13.

¹⁰ At paragraph 18.

31. Additionally in her affidavit, the Defendants states¹¹ *"I intend to produce the Will at the May 30, 2023 court hearing on this matter for the inspection by the Court as may be requested."* I am of the view she would be unable to make such a statement unless the Will was in her possession or control at the time she swore the affidavit.
32. The Defendant had the Will with her at the Court hearing and Mr Misick provided the Court with copies of the same, a further excuse for its omission from the exhibits being that he had only been able to copy it that morning when the Defendant had brought it with her to Providenciales from North Caicos.
33. I was left with the conclusion that for whatever reason the Will was purposefully not exhibited to the affidavit, and that, as the Defendant had it in her possession, she is not in the process of having the same probated.
34. It was not necessary for me to comment on the likely validity of the Will, which most likely will be challenged as Mr Wilson KC indicated.
35. Mr Misick urged me to give consideration to the provisions of the Will as set out in the Defendant's affidavit, particularly that it purports to:
- a. Pay back the loan to Chris's sister of US\$300,000.00, or alternatively give her a 25% share in the Property;
 - b. Bequeath the remaining 75% share in the Property to the Defendant;
and provides:
 - c. *"For the land rights to 50104/22 Sandcastle Road is owned by myself and Robin Nassif. Robin is to be paid 50 thousand for invested shares by Natalie Niewerth in exchange for her portion of the land. My portion goes to Natalie Niewerth."*
(sic)
36. Mr Misick submits that the effect of the above subparagraphs was to sever the joint tenancy. I do not agree for the reasons set out in paragraphs 24 to 29 above.

¹¹ At paragraph 25 f.

37. Mr Misick sought to suggest that as the Defendant avers that the money used to construct and fit out the villa was provided by just by the Defendant and Chris, that in some way the villa does not form part of the Property and that Robin has no claim against it.
38. The Defendant appears to be of the same opinion that the house built on the land parcel is in some way different from the land itself or that in some way, title to the land was transferred by the construction of the villa. This is demonstrated in her affidavit when she states¹² “*Stoltz and Johanna Robin enlisted the help of Attorney for Sandy Point Ltd (Sandy Point”) which is the company **originally holding title to the vacant land** on which Chris and I built the Villa.*” (Emphasis added)
39. As I have held above, the Property, which for the avoidance of doubt includes the villa built on the land, is in the legal ownership of the Plaintiff. The effect of the sole share being held on trust as joint tenants means that the controlling mind behind the Plaintiff is now Robin alone.

The Separation of Chris and Robin

40. The further argument that is advanced by the Defendant with respect to the funds invested in the construction of the villa is that due to Chris and Robin separating, under the law of California, any funds or assets acquired post-separation are not matrimonial assets and are not taken onto account in the division of matrimonial property.
41. The above is not accepted by Robin who states that as no formal separation agreement or divorce has been finalised then Chris’s income is deemed to be her income also.
42. In my view the argument was academic in respect of the matter that was before me. The Property was not Chris’s. It belongs to the Plaintiff. The Plaintiff is the only entity that can give authority for the Property, and hence the villa, to be occupied.

¹² At paragraph 35.

Conclusion

43. The order that was sought was possession of the Property. The question for me was whether the Defendant had any established legal right to occupy the Property.
44. As explained above, the Property, including the villa constructed thereon is legally owned by the Plaintiff such that the application should be refused.
45. Robin became the controlling mind behind the Plaintiff upon the unfortunate passing of Chris.
46. The Plaintiff was in possession of the Property when the matter came before the Court in CL72/22 on 27th July 2022. The learned Judge refused to make the Orders sought by the *ex parte* application and directed that a writ and statement of claim should be filed.
47. The Defendant has not sought to assert any claim but has taken it upon herself to exercise a self-help remedy. In my judgment, she does not have any right to occupy the Property and when she entered the Property on or around 27th January 2023 she did so as a trespasser, such circumstances falling within the terms of O.113 r.1.
48. The relief available under O.113 is limited to obtaining possession of the Property. Accordingly, I make no findings on the ancillary arguments put forward as they do not, even if they are successful, give rise to a right to occupy.
49. For the above reasons I made an order that the Defendant should vacate the Property within 21 days balancing the period of 5 days from the service of the order for possession required by the Rules against the requested period of 30 days sought by the Defendant. In doing so I took into account there had been open correspondence between the parties, setting out the Plaintiff's claim since 2nd February 2023 and as such the Defendant must have been at least aware that her occupation of the Property was in jeopardy.

50. As the Plaintiff was successful in its application, and there was no good reason that the normal order that costs follow the event should not be applied, I also ordered that the Defendant should pay the costs of the application, to be taxed on the standard basis if not agreed.

5th June 2023

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court

