THE OFFICIAL RECEIVER AS TRUSTEE IN BANKRUPTCY FOR THE ESTATE OF ABDUL KARIM f/n RAHIM BUKSH

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v.

PETRIE LIMITED

[COURT OF APPEAL, 1998 (Casey, Thompson, Dillon JJA) 11 August]

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Civil Jurisdiction

Land- agricultural landlord and tenant- extension of contract of tenancy by mere fact of continued occupation of the land- Agricultural Landlord and Tenant Act (Cap 270), Section 13 (1).

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The appellant remained in possession of the agricultural land after his already extended tenancy expired. The High Court held that upon expiry of the tenancy he became a trespasser. On appeal the Court of Appeal HELD: allowing the appeal and setting aside the order for possession: there is no absolute legal requirement that a tenant claiming the statutory 20 year extension of his tenancy

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should formally communicate his claim to the landlord. An intention by the tenant to avail himself of the statutory extension may be expressed by the continued occupation and cultivation of the land after the expiry of the tenancy.

Cases cited:

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Eads v. Williams (1854) 4 De G, M & G 674
Firth v. Shipley (1888) 58 LT 481
Mills v. Haywood (1873) 6 Ch.D.196
Milward v. Earl of Thanet (1801) 5 Ves.720
Oriental Inland Steam Co. Ltd v. Briggs (1861) 4 De G, F & J 191

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Williams v. Greatrex [1957] 1 WLR 31

Dr M.S. Sahu Khan for the Appellant
Ram Krishna for the Respondent

Judgment of the Court:

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On 17 July 1979 the appellant commenced proceedings in the High Court seeking a declaration that he was "entitled to a transfer" by the respondent of certain land belonging to the respondent. He pleaded in his statement of claim that in or about 1963 the respondent agreed that he would sell the land at a price of £2,500; he pleaded also that he had paid a deposit of $1,250 and was willing to pay the balance of the purchase price.

On 16 August 1989 the appellant amended his statement of claim so as to claim specific performance of the contract for the sale of the land. The respondent denied having agreed to sell the land and having been paid a deposit by the appellant. It pleaded the Limitation Act (Cap.35) and laches; It counter-

claimed, alleging that the appellant had been a tenant of the land after the alleged sale of the land to him, that in 1972 he had sought a declaration of tenancy from an Agricultural Tribunal under the provisions of the Agricultural Landlord and Tenant Act (Cap.270) ("ALTA"), that in 1976 the Tribunal had extended the tenancy for ten years from 1 January 1974, that the tenancy had expired and that therefore from 1984 onwards he had been a trespasser. The counter-claim was for an order for vacant possession and unpaid rent.

The appellant, in his defence to the counter-claim, said that he was deemed under ALTA to be a tenant but reiterated that the respondent had already agreed to sell the land to him. He did not claim to be entitled to remain in possession of the land as tenant but he did plead that he had received no notice to quit.

Although from the time when the proceedings were commenced the plaintiff was the Official Receiver as trustee of the estate of the bankrupt, Abdul Karim, the references in the pleadings to "the plaintiff" clearly were intended to refer to Abdul Karim. Although the Official Receiver was nominally the plaintiff, Abdul Karim had the carriage of the claim. Dr Sahu Khan informed us that Abdul Karim has now been discharged from bankruptcy and has been responsible for prosecuting this appeal, even though no action has been taken to have him made the appellant in substitution for the Official Receiver. In conformity with the pleadings references in this judgment from this point on are to Abdul Karim.

In the High Court the hearing took place on 25 April 1996; oral evidence was given by the appellant and two other witnesses called on his behalf and by one witness called by the respondent. A number of documents were also received in evidence. Although Lyons J. directed that written submissions were to be filed by the respondent within three weeks and by the appellant within a further three weeks, the respondent's submissions were not filed until 20 August 1996 and the appellant's in the middle of September 1996. Judgment was delivered on 18 April 1997 - 18 years after the proceedings were commenced! The snail's pace at which the proceedings were conducted before trial and the failure to comply with the judge's direction in respect of written submissions reflect poorly on those responsible.

In his judgment Lyons J. found that there had been no sale of the land, that the appellant's tenancy of it expired on 31 December 1983, so that by 1989, when the defence to the amended statement of claim and the counter-claim were filed, the appellant was in possession of the land as a trespasser. He observed that, in any event, the appellant's claim would have been statute-barred by virtue of section 4(3) of the Limitation Act. He ordered the appellant to give the respondent vacant possession of the land and to pay the respondent's costs. He did not award any amount in respect of unpaid rent.

The appellant's grounds of appeal are:

"1. THAT the learned trial Judge erred in law and in fact in making the Order for possession in favour of the Defendant in as much as:

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(a) In any event even if the Plaintiff was a Tenant of the Defendant the original Tenancy expired on the 1st day of January 1974 and by virtue of Section 13(1) of the Agricultural Landlord and Tenant Act the Plaintiff was entitled to a statutory extension of the tenancy for ten years until 1st January 2004.

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(b) The Defendant did not serve any proper notice to terminate the tenancy of the Plaintiff under the provisions of ALTA.

C 2. THAT the learned trial Judge erred in law and in fact in not properly construing and applying the provisions of ALTA particularly Sections 6, 7, 9, 13 and 37 and the effect thereof.

3. THAT the learned trial Judge erred in law and in fact in not properly construing and applying the provisions of the Limitation Act.

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4. THAT the learned trial Judge erred in law and in fact in holding that there was not enough evidence to satisfy the provisions of Section 59 of the Indemnity, Guarantee and Bailment Act.

5. THAT the learned trial Judge erred in law and in fact in not holding

E that in any event there was sufficient evidence to support the principles of part performance to satisfy the provisions of Section 59 of the Indemnity Guarantee and the Bailment Act.

6. THAT the learned trial Judge erred in law and in fact in taking irrelevant matters into consideration in coming to his decision.

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7. THAT the learned trial Judge did not properly and/or adequately evaluate the evidence of the Plaintiff on the one hand and the evidence of the Defendant on the other.

8. THAT the findings and verdict of the learned trial Judge are

G unreasonable and cannot be supported having regard to the evidence as a whole."

We turn first to ground 3. Sections 4 (3) and (7) of the Limitation Act, so far as is relevant in this appeal, provide:

"(3) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.

(7) This section shall not apply to any claim for specific performance ..., except in so far as any provision thereof

> may be applied by the court by analogy in like manner as has, prior to the commencement of this Act [15 April 1971] been applied."

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There is no evidence of any contract for the sale of land under seal; so the action was not upon a specialty but on an alleged simple contract. Section 4(1)(a) imposes a limitation period of six years for actions on such contracts.

Subsection (7), on which Dr Sahu Khan relies, does not necessarily exclude the application of subsection (3) or subsection (1), by analogy. In Firth v. Shipley (1888) 58 LT 481 it was held that, as a contract could not be enforced after the expiration of the period of limitation, it would be unfair to grant specific performance of it after the expiration of that period. The limitation period set for common law purposes was applied by analogy. In practice the courts have often denied specific performance after the expiration of shorter periods. In our view in the present case subsection (1) of section 4 could properly be applied by analogy; as the limitation period set by subsection (3) is longer, the appellant did not suffer by Lyons J. applying that subsection instead of subsection (1). Further, since specific performance is an equitable remedy, the doctrine of laches applies to delay in seeking it. The respondent expressly pleaded such delay. Not only is specific performance an equitable remedy; it is also a discretionary remedy. The courts, when applying the doctrine of laches to claims for specific performance, have generally required a considerable degree of promptitude on the part of the person those seeking the remedy. In Milward v. Earl of Thanet (1801) 5 Ves.720n it was said that he must show himself to be "ready, desirous, prompt and eager". See also Eads v. Williams (1854) 4 De G, M & G 674 and Oriental Inland Steam Co. Ltd v. Briggs (1861) 4 De G, F & J 191. Where a purchaser is let into possession of land before completion on the basis of the contract of sale, that may be accepted as an adequate explanation of delay (Williams v. Greatrex [1957] 1 WLR 31); as Lord Denning M.R. pointed out, by being let into possession the purchaser became the equitable owner of the land. But, where a purchaser is already in possession as tenant, the fact that he continues in possession is not an adequate explanation of delay; the possession must be clearly under the contract of sale (Mills v. Haywood (1873) 6 Ch.D.196). In the present case the appellant was in occupation as tenant in 1963 and remained so, as evidenced by his application to the Agricultural Tribunal in 1972 and its order made in 1976. He did not claim specific performance until 26 years after the alleged agreement of sale and purchase of the land. The delay was not adequately explained. Even if he had claimed that remedy in 1979, when he commenced the action for a declaration and damages, the period of 16 years which had elapsed since the alleged making of the contract was far too long an unexplained delay for him to have been entitled to obtain it. Even, therefore, if by reason of subsection (7) neither subsection (1) nor subsection (3) of section 4 had been applicable, the claim should have been dismissed because of the inordinate delay in making it.

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There is, therefore, no need to consider the other grounds of appeal relating to the dismissal of the appellant's claim. In any event, we can find nothing in them that would have caused us to decide that Lyons J. erred in dismissing the claim. The appeal against that part of the High Court's judgment must be dismissed.

Grounds 1 and 2 can be considered together. Although the appellant in his pleadings did not claim to be entitled to retain possession of the land as tenant, the respondent in its counter-claim asserted that the appellant was in possession of it as a tenant for ten years from 1 January 1974 by virtue of the extension of his tenancy for that period by an Agricultural Tribunal but that, after the expiration of that period, he was on the land as a trespasser. Dr Sahu Khan has submitted in this appeal that the effect of section 13(1) of ALTA was to extend automatically the period of the tenancy by a further 20 years, i.e. to 31 December 2003. That was not pleaded by the appellant but, as it is a question of the law to be applied to the facts admitted by the respondent, there was no need for it to be pleaded.

Section 13 (1), in the terms in which it has been since 1 September 1977 and so far as is relevant in this appeal, reads:

> "13-(1) Subject to the provisions of this Act relating to the termination of a contract of tenancy, a tenant holding under a contract of tenancy created before or extended pursuant to the provisions of this Act in force before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 [1 September 1977], shall be entitled to be granted a single extension (or a further extension, as the case may be) of his contract of tenancy for a period of twenty years, unless -
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> (a) during the term of such contract the tenant has failed to cultivate the land in a manner consistent with the practice of good husbandry; or
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> (b) the contract of tenancy was created before the commencement of this Act and has at the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 an unexpired term of more than thirty years."

It is not in dispute that in 1952 the appellant became a tenant of the land under a contract of tenancy, that it was agricultural land, that in 1971 the respondent gave him notice that it required the land for its own use but that in 1976 the respondent consented to the extension of the tenancy for ten years with effect from 1 January 1974 and an Agricultural Tribunal ordered accordingly. Consequently until 31 December 1983 the appellant was (in terms of section 13(1)) a tenant of the land holding it under a contract of tenancy extended pursuant to the provisions of ALTA in force before the

Agricultural Landlord and Tenant (Amendment) Act came into force. Undoubtedly he was then entitled to be granted a further extension of the contract of tenancy for a period of twenty years, i.e. to 31 December 2003. It is not in dispute that he did not take any action expressly seeking to have the further extension granted.

Dr. Sahu Khan has submitted that section 13(1), in spite of its providing that a tenant is entitled "to be granted" an extension of his tenancy, is to be construed as automatically extending it without any actual grant of the extension being made by anyone. Normally a tenancy is granted by the landlord and any changes to the term of the tenancy are a matter of agreement between them. If they agree that the term of the tenancy is to be extended, the landlord grants the extension. However, in the case of agricultural land ALTA is superimposed on the fundamental contractual relationship between the landlord and the tenant. By virtue of provisions of the Act, a contract of tenancy is to be taken to make provision for a specific minimum term (section 6), restrictions are placed on the termination of it by the landlord (sections 7 and 37), certain conditions and covenants binding the landlord are implied (section 9), there are restrictions on the landlord taking any of the crop as rent (section 11), premiums generally cannot be charged on the extension of a tenancy (section 14) and an Agricultural Tribunal may grant relief against forfeiture for breach of a condition or covenant (section 38). However, the Act also places restrictions on termination of a tenancy by the tenant (sections 7, 36 and 37) and certain conditions and covenants binding on the tenant are implied (section 9). Although it may fairly be said that the Act is intended to benefit tenants of agricultural land, it also imposes some obligations on them. Agricultural Tribunals are established with defined, but relatively broad, functions clearly intended to ensure that the rights and proper interests of landlords and tenants under the Act are protected (sections 5, 22, 23 and 24).

That is the context in which the provisions of section 13(1) must be construed. Even though in 1976 that subsection provided, as it does now, that a tenant was "entitled to be granted" an extension of his tenancy, it would not be proper to infer, from the fact that the Agricultural Tribunal ordered the extension of the appellant's initial contract of tenancy, that application for extension of a contract of tenancy had to be made to an Agricultural Tribunal. The Tribunal made its order in the course of deciding, pursuant to section 22(1)(j) of the Act, a dispute between the appellant and the respondent about whether the respondent had proper grounds for giving notice to terminate the tenancy upon the expiration of its original term.

Prima facie, in the absence of provision in the Act giving the power to anyone else, the landlord is the person to whom a tenant must look for grant of an extension of his tenancy. He is the person with whom the tenant is in a contractual relationship in respect of the tenancy. The tenant is entitled to have him grant the extension. However, the landlord clearly cannot grant it if the tenant does not want the extension; it would not be proper to construe

section 13(1) as having that effect. In any tenancy under the ALT Act both parties have obligations, arising both out of the actual contract of tenancy and out of the terms, conditions and covenants implied by the Act. While probably tenants will generally wish to have their tenancies extended, it cannot be assumed that every one of them will want that. They need to signify to the landlord in some way that they do want it. Undoubtedly the most satisfactory way of doing so is to inform the landlord expressly. However, in the circumstances in which most tenancies of agricultural land are held it would, we are satisfied, be unreasonable to hold that a tenant can communicate it to his landlord only in that manner. If he goes on occupying the land and paying the rent to the landlord or his agent, he is making his intention clear in that way. Provided the communication of his intention is adequate, he is entitled, subject to paragraphs (a) and (b) of section 13(1), to have his contract of tenancy extended; in the absence of the landlord's raising the matter referred to in paragraph (a) and if paragraph (b) is inapplicable, the landlord is obliged to grant the extension and is to be taken, under the *omnia praesumuntur* rule, to have done so. He is estopped from denying having made the grant. If the landlord raises the matter referred to in paragraph (a) and the tenant does not admit it, it is to be determined by an Agricultural Tribunal. The decision of the Tribunal may then be to order the grant of the extension, as it did for the appellant in 1976.

In the present case the appellant did not expressly inform the respondent that he wanted his contract of tenancy to be renewed. Indeed, he was claiming to be the owner of the freehold. However, as Dr Sahu Khan was at pains to stress, that did not prevent him from continuing to be in possession of the land as tenant. By its counterclaim the respondent asserted that it had always treated him as having been a tenant, but nothing more, up to the date of the expiration of the first period of extension of the tenancy, 31 December 1983. So far as the respondent was concerned, therefore, the fact of the appellant's remaining on the land was a clear indication that he wished to continue to occupy it in the same relationship to the respondent as previously. If up to the end of 1983 he had been paying rent in accordance with the terms of the contract of tenancy, his failure thereafter to do so might reasonably have been understood by the respondent as indicating an intention on the appellant's part to communicate that he did not wish the previous relationship to continue and was occupying the land on the basis of the claim he had made in 1979 that it belonged to him. However, it is not in dispute that he had not paid rent for many years before 1984 and that the respondent had not given notice under section 37(1)(c) of ALTA terminating the tenancy. So in the present case the failure to pay rent after 31 December 1983 could not have been understood by the respondent as indicating a decision on the appellant's part to change the nature of what the respondent regarded as their existing relationship.

We have come to the conclusion, therefore, that since 1 January 1984 the

appellant has remained in occupation of the land as tenant under a contract of tenancy extended to 31 December 2003 under the provisions of section 13(1) of ALTA. He has, therefore, not been a trespasser on the land at any time since he became tenant in 1952. Accordingly, the respondent was not entitled to succeed on its counterclaim. The appeal against the judgment on the counterclaim must be allowed.

The appellant did not claim a declaration that he is tenant of the land. Therefore, in spite of our being satisfied that the respondent is to be taken to have extended his tenancy up to 2003, we cannot make any declaration of that.

Each party has succeeded in substantially equal part in this appeal and, as the result of this appeal, in the High Court. We are satisfied that each should bear his or its own costs in both Courts.

Orders

1. The appeal against the dismissal of the appellant's claim by the High Court is dismissed.

2. The appeal against the order of the High Court that the appellant vacate the land is allowed and the order is set aside.

3. The order of the High Court in respect of costs in that Court is set aside.

4. Each party is to bear his or its own costs of this appeal and of the proceedings in the High Court.