

**IN THE EASTERN CARIBBEAN COURT
HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)**

CLAIM NO. MNIHCV2008/0012

BETWEEN:

**ADRIENNE MARS FOR AND ON BEHALF OF ADRIENNE B MARS
REAL ESTATE TRUST** **1ST CLAIMANT**

BRIAN HOLLANDER **2ND CLAIMANT**

AND

**THE SECRETARY OF STATE FOR THE FOREIGN AND
COMMONWEALTH AFFAIRS** **1ST DEFENDANT**

THE GOVERNOR **2ND DEFENDANT**

Appearances:

Mr. David Brandt for the claimants

Mr. Jean Kelsick for the defendant

2011 October 24

2012 January 19

JUDGMENT

[1] **REDHEAD J.** On 22nd May 2007, Adrienne Mars entered into a lease agreement with the Governor of the island of Montserrat on behalf of the Secretary of State

for Foreign and Commonwealth Affairs. This agreement was for the lease of premises known as "Mars House" for a term of 33 months from 1st June 2007 at US\$6,000 per month. One Mr. Mark Twigg and his wife occupied the Mars House. The former held the position of Head of Governor's Office Montserrat. Mr. Mark Twigg died tragically in a road accident in August 2007, about two months after he went into occupation of the Mars House.

- [2] On 6th November 2007 Ms. Sue McCarty, staff officer in the Governor's Office, wrote to Mr. and Mrs. Hollander in the following terms:

"Tenancy Agreement. "The Mars House"

I am writing to you to give you 90 days formal notice of the office's intention to terminate our lease on the above property under the terms of the tenancy agreement made on 22 May 2007.

As you know, we took the lease on the property as a dwelling house for Mr. and Mrs. Mark Twigg. Due to most unfortunate, unforeseen and extreme circumstances, we are no longer in a position to be able to retain this property".

- [3] Mr. Brian Hollander and Mrs. Dyann Hollander were the agents of Mrs. Adrienne Mars, the owner of the demised premises. The lease was terminated in November 2007 by the second named defendant by giving 90 days formal notice of termination. The reason given for the termination of the lease agreement was that the Mars Home had been rented for Mr. and Mrs. Twigg and due to the most unfortunate and extreme circumstances, the defendants were no longer in a position to retain the property.

- [4] On 6th November 2007, Mrs. Dyann Hollander by e-mail wrote to Ms. Sue McCarthy in the following terms:

"Before I relate your intent of terminating the lease on the Mars property to the owners, can you help me with the reason under which such termination could be validated within the intention(s) of lease witch (sic) was drafted with the intention(s) that the lease could be terminated basically if the position filled by Mark was terminated witch (sic) is not the

case, or a break in the Diplomatic relationship between the UK and Montserrat witch (sic) also is not the case...
I need some help here..Maybe AG could advise.
Warm regards
Dyann”

[5] Ms. McCarthy replied on 16th November 2007 as follows:

“AG has advised that although the termination clause says that the tenancy can be terminated in cases of unforeseen or extreme circumstances such as natural or man made disasters, closure of Governor’s Office etc, it does not mean that the lease agreement can only be terminated in the circumstances listed there. The items listed there are only examples of some circumstances. Any unforeseen or extreme circumstances can be a basis for termination under this clause.

The house was rented with the intention that it would be the residence of Mr. Mark Twigg and his wife, while Mr. Twigg was working with the Governor’s Office. As you know, the Twiggs looked long and hard for the property they liked and this house was selected because the couple loved the house. Mr. Twigg’s sudden and untimely death is an unforeseen circumstance. None of the parties here anticipated that anything like that would happen. For this reason we are seeking to terminate this lease agreement”.

[6] On 14th April 2008, the claimants filed a Statement of Claim against the defendants in which they claim the following reliefs:

- i. A declaration that the lease agreement made in writing between the 1st Defendant and the Claimants made on the 22nd May, 2007 whereby the 1st claimant granted a lease to the defendant upon certain terms of property situated at Woodlands and known as “The Mars House” for a term of 33 months from June 1, 2007 is a valid and subsisting lease is binding upon the defendant.
- ii. An order for specific performance by the defendant to continue to take the lease.
- iii. Damages for a breach of the lease agreement in addition to or in lieu of specific performance or at common law.
- iv. Damages for breach of contract.

- v. Interest on any sum found due at such rate and for such period as the Court shall think fit.
- vi. Further or other relief.

[7] I reproduce hereunder what I consider to be the most important part of the lease agreement.

“A Tenancy Agreement in respect of Premises in Woodlands owned by Mrs. Adrienne Mars

An agreement made May 22, 2007 between Mrs. Adrienne Mars for or on behalf of Adrienne B. Mars Real Estate Trust dated 8/8/89 (Hereinafter called the Landlord) of the one part and Her Excellency the Governor of Montserrat on behalf of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom and Northern Ireland, whose address for the purpose of this agreement is, Office of the Governor, Farara Plaza, Brades, Montserrat (Hereinafter called the Tenant) of the other part.

Whereby it is agreed as follows:

The Landlord lets and the tenant takes the premises known as “The Mars House”...from June 1st 2007...until February 28th 2010, for a period of 33 months at US\$6,000.00...to Dyann and or Brian Hollander (Hereinafter called the Agent representing Mrs. Mars), for the duration of the tenancy with no increases for a total sum of US\$198,000.00

Both parties could agree to extend this lease if necessary.

In cases of unforeseen or extreme circumstances, such as natural or man made disasters, closure of the Governor’s Office or the termination of the Tenant’s position in the Governor’s Office, the tenant may terminate his tenancy agreement by giving a 90 day notice.

[8] The issues that are for determination, in my view, is whether the sudden and premature death of Mr. Twigg can be regarded as an “unforeseen or extreme circumstance” within the meaning of the lease agreement which would entitle the defendants to terminate the lease agreement .

- [9] Mr. Brandt, learned counsel for the claimants , in his written skeleton arguments contended that it is trite law that a tenancy is a contractually binding agreement by which one person gives another person the right to exclusive occupation of land for a fixed or renewable period or periods of term, usually in return for periodic payment of money.
- [10] Mr. Brandt further contended that it is also settled law that a tenancy for a fixed period automatically terminates when the period expires so that there is no need for any notice to quit by the landlord or the tenant.
- [11] Mr. Brandt submitted that a basic characteristic of a fixed term tenancy is that the tenant cannot terminate the tenancy before it has run its course unless (i) a provision within the tenancy agreement provides that the tenancy may be terminated by notice on a given event or (ii) he surrenders the tenancy agreement and such surrender is accepted by the landlord.
- [12] Mr. Brandt contended that the issue number 1, whether the fixed term created by the agreement entered into on May 22, 2007 was validly determined by the defendant by way of the letter dated 6th November, 2007. He submitted that the fixed term tenancy created by this agreement was not terminated upon Mr. Twigg's death.
- [13] Mr. Brandt contended that he is fortified in this submission, in that the claimant's evidence establishes that during the negotiations which culminated in the Agreement, one Mr. David Sharp wished to insert a clause that the tenancy could be terminated for any reason by giving notice. This proposal was rejected because the first named claimant was interested in selling the Mars House and had only agreed in principle to let it to the first named defendant because he was interested in buying it but wished for it to be rented for a fixed period. Mr. Twigg and Mr. Sharp were accordingly informed that "unless tenancy was for 33 months at US\$6,000.00 per month the owner would not rent the house".

[14] In my judgment, this communication which informed Mr. Twigg that the owner was not prepared to rent the demised premises unless the tenancy was for 33 months at US\$6,000.00 does not go anywhere near to the in determination or resolution of the issue which has to be examined in terms of the lease.

[15] Mr. Kelsick in his skeleton submission argued that the defendants were entitled to rely on Mark Twigg's death for terminating the contract, that his death was an unforeseen and/or extreme circumstance. He contended any unforeseen or extreme circumstance permitted the defendants to terminate the contract. The said clause merely provides a number of examples of unforeseen or extreme circumstances. The use of the words "such as" makes it clear that the examples provided are not intended to be exhaustive. I do not agree because although they are not exhaustive, these could not extend to the sudden death of Mr. Twigg, the tenant.

[16] There is also a clause in the lease agreement which provides:

"The tenant shall use the demised premises as a dwelling house for the accommodation of Mr. and Mrs. Mark Twigg (or for some unforeseen reason Mr. Twigg's early replacement) and their visiting guests".

Mr. Kelsick submitted that this clause does not constrain the operation of the termination clause. He argued that the phrase "or for some unforeseen reason Mr. Twigg's early replacement" is ambiguous and poorly drafted and incapable of being understood. I am in total agreement with this argument. In fact, I would say that the clause is nebulous and does not add or subtract anything from the main clause

[17] Mr. Kelsick in his skeleton submissions argued that Brian Hollander does not have locus standi to sue on the contract. Brian Hollander's capacity when he signed the testimonium clause is unclear. However, he is not a party to the contract and any attempt to sign it as such is a nullity according to Mr. Kelsick. Mr. Kelsick referred to the following authorities:

Wragg v Lovett¹

Halsbury's Laws of England²

[18] Paragraph 527 Halsbury's Laws provides:

“Right to enforce contract. Any person who makes a contract in his own name without disclosing the existence of his principal, or who, though disclosing the fact that he is acting as an agent on behalf of principal, renders himself presumably liable on the contract, is entitled to enforce it against the other contracting party, notwithstanding that the principal has renounced the contract. A similar right appears to exist where the agent purports to contract as agent only for an unnamed principal who in fact is non-existent. But the contract expressly as agent on his behalf, he cannot enforce it even though he is the real principal unless the other party has affirmed the contract with knowledge of the fact”.

[19] I have difficulty in appreciating how the above is relevant, as none of the above scenarios is applicable to the case at bar.

[20] In **Wragg v Lovett** (supra), learned counsel referred to paragraph G on page 969, again I have difficulty in appreciating the relevance of this authority to the submission made in the case at bar.

[21] In any event, the argument that Mr. Hollander is not a proper party to the action is more academic than practical. In that, even if I am in agreement that Mr. Hollander is not a proper party to the proceedings and his name is removed, the action survives as it cannot be argued that the other party Adrienne Mars is not a proper party, so the action survives. (See CPR 19.2 (4)).

[22] I am of the view that one of the arguments advanced by the claimants is that in addition to the termination clause in the lease agreement, the claimants claim that they are entitled to rely on “usage” clause. That is, notwithstanding the death

¹ [1998] 2 ALL ER 968

² 3rd Edition Vol paragraph 527

of Mr. Twigg, the defendants should continue the lease agreement in order to house Mr. Twigg's replacement.

[23] In my judgment, where a person chooses to live and dwell is a personal choice which cannot be forced upon anyone. There is evidence that Mr. Twigg was personally involved in the choosing of Mars House and that he personally liked the house. It does not mean that someone else would like the house. His/her personal choice may not coincide with that of Mr. Twigg's. In my judgment, even if Mr. Twigg's successor refused to occupy the house that would not initiate the contract.

[24] In my judgment, the sudden and untimely death of Mr. Twigg could not have been an unforeseen circumstance so far as the contract is concerned. The contract was not between Mr. Twigg and Adrienne Mars, but rather, between Adrienne Mars and the Secretary of State. In My judgment the fixed term created by the agreement of May 22, 2007 could not be validly determined by the defendant by way of a letter dated 6th November 2007. The fixed term created by the agreement was not terminated upon Mr. Twigg's death. Mr. Twigg's death may be regarded as an unforeseen circumstance in so far as his family and relatives are concerned but that has nothing to do with the contract.

[25] The declarations and orders prayed for by the claimants are hereby granted. The Counter –Claim by the Defendant is hereby dismissed. There will be Judgment for the Claimant for the residue of the lease i.e. from the 4th February 2008 to 28th February 2010 as US\$6000.00 per month which is equivalent to US\$150,000.00. Interest on that sum at the rate of 4 percent per annum until date of Judgment i.e. 19th January 2012.

[26] Costs to the claimant on a prescribed costs basis.

A.J. Redhead

High Court Judge