

Uriel Augustus Greaves

Appellant

v.

Eric R. Field

Respondent

FROM  
THE COURT OF APPEAL OF TRINIDAD AND  
TOBAGO

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER 1986

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*Present at the Hearing:*

LORD KEITH OF KINKEL  
LORD MACKAY OF CLASHFERN  
LORD ACKNER  
LORD OLIVER OF AYLERTON  
SIR IVOR RICHARDSON

*[Delivered by Lord Ackner]*

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This appeal from the judgment of the Court of Appeal of Trinidad and Tobago given on 1st March 1982 concerns the right to possession of premises known as 73 Cipriani Boulevard, Port of Spain. The relevant facts can be stated quite shortly. Sometime prior to February 1946 the premises were let by a Winnifred Gill to Walter Hahn. It was an oral monthly tenancy. Their Lordships are unaware of any other terms of the agreement. The clear inference is that the contemplated user was for commercial purposes because in February 1946, on an application made by Mr. Hahn to the Rent Assessment Board pursuant to section 8 of the Rent Restriction Act of 1941 of Trinidad and Tobago, the standard rent of the premises, described as a "commercial building" was fixed at \$30 a month. In 1950 Mr. Hahn died. His widow Mrs. Hahn remained in the premises using them solely for residential purposes. On 8th January 1978 Mrs. Hahn died, whereupon the tenancy became vested in the appellant, her sole executor, who is a house agent.

On 17th February 1978 the appellant wrote to the then owner, Miss Cumberbatch, having telephoned her about the failure of her agent Mr. Field, the

respondent to this appeal, to collect the rent of the premises for the month ending 31st January 1978, as he had previously done during the lifetime of Mrs. Hahn. The appellant informed Miss Cumberbatch that he had collected the rent, as Mrs. Hahn had previously done, from Miss Mohammed, the sub-tenant, that he had made this up to \$30, the rent of the whole of the premises, and had left this with Miss Mohammed to be collected by Mr. Field. He then concluded the letter of 17th February 1978 in these terms:-

"Having failed to see your agent I hereby forward to you by Postal Order, \$30.00 for January Rent and in the circumstances I will have no further dealings with the tenancy, unless I am specifically instructed by you to do so, in the meantime however, I shall pay to the sub-tenant one half of the rent of the premises during such time that items which forms part of the estate of the deceased remain thereon."

On 22nd February 1978 the \$30 was returned to the appellant and thereafter no further rent was offered by him. On 11th August 1978 notice to quit was given by the respondent on behalf of the owner to the appellant and a fortnight later an agreement to sell the premises was entered into by the respondent on behalf of the owner with a Mr. Harding. After the service of the notice to quit but before it expired on 30th September, the appellant registered the business name of Home-Overseas and Agencies, giving as its address 73 Cipriani Boulevard and put up a sign at the premises.

On 1st October 1978 the respondent, in his capacity as agent for the owner, filed an ejectment complaint in the Port of Spain Magistrate's Court relying upon a breach of the tenancy agreement, namely the use of the premises for residential purposes (section 14(1)(a) of the Act) and further that the appellant had given notice to quit in consequence whereof the respondent, on behalf of the owner, had contracted to sell the premises (section 14(1)(d) of the Act). At the hearing before the Magistrate only the respondent and Mr. Harding gave evidence. The Court made an order for possession on the ground that there had been a breach of the tenancy agreement because the premises had been used "strictly for residence from 1950 to 1978".

#### The decision of the Court of Appeal

The appellant appealed to the Court of Appeal and on 1st March 1982 the order of the Magistrate was upheld and the appeal dismissed. Giving the judgment of the Court, Sir Isaacs Hyatali C.J. said:-

" There is no evidence before the Court as to what Mrs. Hahn, the widow of Mr. Hahn, used the premises for. There is no evidence before the Court that when rent was accepted, if accepted, from Mrs. Hahn, it was accepted with the intention of waiving any breach in the original use. The case is starved of evidence."

However the Magistrate had found as a fact that from the death of Mr. Hahn in 1950 until 8th January 1978 when Mrs. Hahn died, no business was carried on at the premises. She found that during that period the premises were used "strictly for residence".

The learned Chief Justice continued:-

"So the true question before the learned magistrate when she came to decide the matter was whether the premises were being used at that time for commercial purposes or not. That letter that Mr. Greaves wrote clearly showed that the premises were being put to no commercial use at all. It clearly admitted that he was staying on in the premises because the belongings of the deceased were there and he was going to continue paying the rent so long as the belongings of the deceased were there, though clearly one must infer from that letter that there was non-user of the premises.

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So we hold that notwithstanding the unsatisfactory nature of the reasons given by the learned magistrate in these proceedings, she came to the right conclusion on the evidence; that these premises were no longer being used for commercial purposes, which was the original purpose for which it was rented, and in fact the appellant had manifested a clear intention to quit those premises as soon as the belongings of the deceased had been removed therefrom.

Counsel for the appellant in reply to the Court stated that the appellant inherited a contractual tenancy and is entitled to remain in possession by reason of his status as executor of the deceased tenant. That status is one on which he cannot now rely because he has been given notice to quit and on its expiry he became a statutory tenant."

It appears from the excerpts of the judgment set out above that the Court of Appeal was not satisfied that there had been a breach of the tenancy agreement but upheld the Magistrate's decision on the ground that the appellant had lost his entitlement to remain in possession of the premises by reason of "non-user of the premises".

Breach of the tenancy agreement

As to the issue of breach of the tenancy agreement, their Lordships respectfully agree with the observation of the learned Chief Justice, namely that "the case is starved of evidence". There is no evidence that it was a term of the agreement that the premises should only be used for commercial purposes. That this was the contemplated user, is of course supported by the application to the Rent Assessment Board to fix the standard rent for the premises as a "commercial building". Their Lordships have no information as to the nature of the premises either at the time they were let or following the death, some four years or so later, of Mr. Hahn. That the premises were suitable for use as a residence, either wholly or in part, is clearly established by the fact that for nearly 30 years, following the death of Mr. Hahn they were used "strictly for residence". There was no suggestion in the evidence that such user was unknown either to the owners or their agents.

Mr. Walter, on behalf of the appellant, has contended that although the original contemplated user was for commercial purposes, this does not result in a term being implied into the tenancy agreement that the premises may only be lawfully used for commercial purposes and for no other purpose. He relies upon the decision of the Court of Appeal in *Wolfe v. Hogan* [1949] 2 K.B. 194 and in particular upon the following observations of Evershed L.J. at pages 199 and 200:-

"The learned judge treated the contract as being in the terms I have stated, namely, merely a letting of premises described as a shop, and has come to the conclusion that there should be implied in the contract a covenant against user otherwise than as a shop. For my part, I confess I find difficulty in accepting the view that one should, in a case of this kind, imply a restrictive covenant of that nature. No doubt these lettings are very informal and it is legitimate to try to extract from the simple and informal transaction what the real intention was; but I think, as at present advised, it would need more than we have here to justify a conclusion that there was an implied covenant of which Miss Hogan could be said to be in breach."

*Wolfe v. Hogan* was followed by the Court of Appeal of Trinidad and Tobago in *Solomon v. Khan* [1962] 5 W.I.R. 132. Wooding C.J. aptly observed at page 134:-

"In our judgment, there is a clear distinction between a user in breach of the tenancy agreement, which is a breach of covenant, and a mere departure from the user contemplated by a tenancy agreement. It is quite true that the

premises in question here were let as a dwelling-house, but there is no suggestion that at the time of the letting there was any express covenant or prohibition against their user for any other purpose."

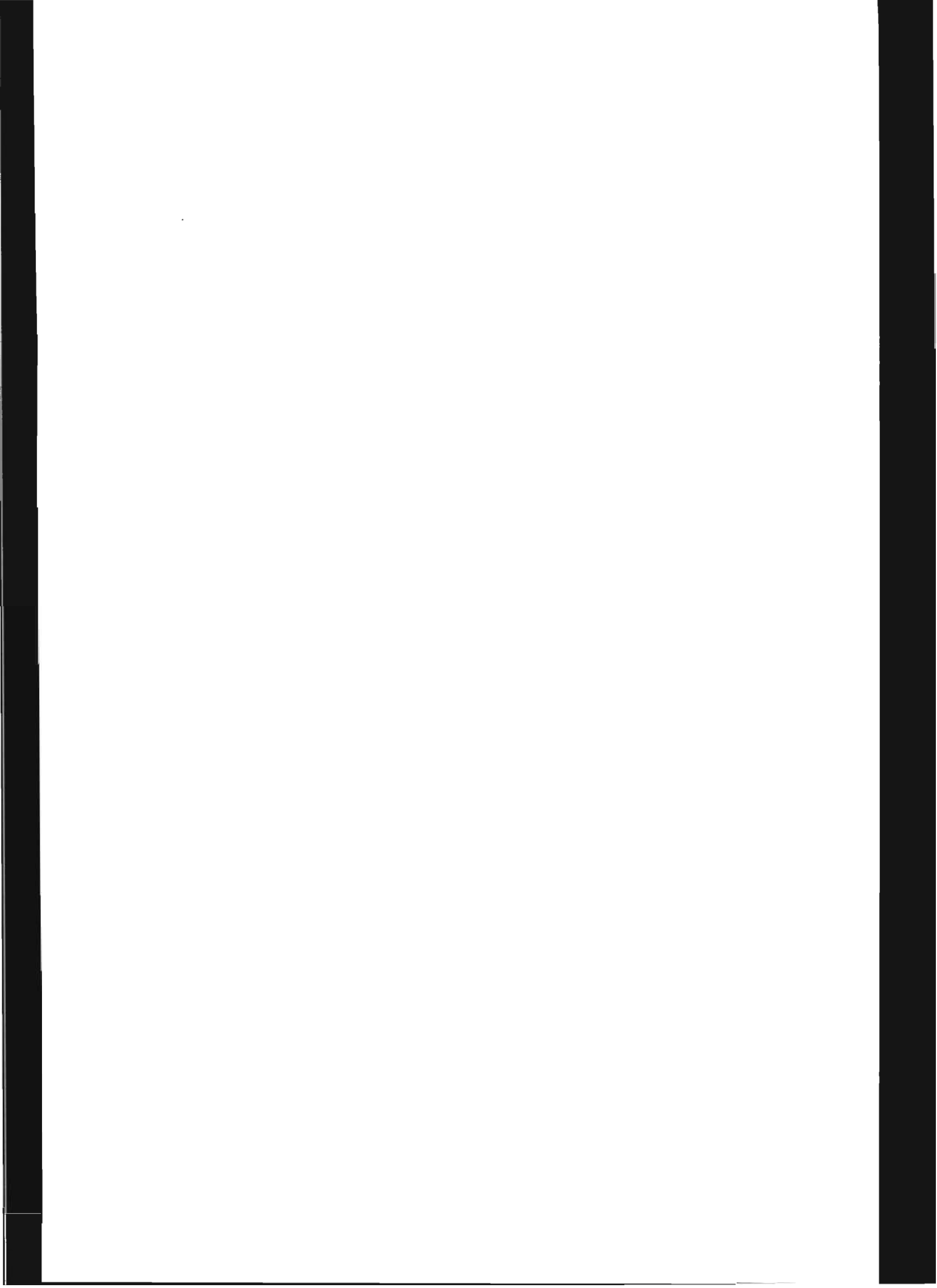
Their Lordships are satisfied that having regard to the paucity of the evidence, both as to the nature of the premises and the terms of the tenancy agreement, it would be quite wrong to imply a prohibition against their use for any other purpose than a commercial purpose.

#### Non-user of the premises

As to the basis upon which it appears to their Lordships that the Court of Appeal upheld the decision of the Magistrate, namely non-user of the premises, this in itself is not one of the grounds specified in section 14 for the recovery of premises to which the Rent Restriction Act applies. Mr. Strachan for the respondent, in his able submissions, has sought to support the decision of the Court of Appeal by the following argument. He submits that the Court of Appeal were wrong in finding that on the expiration of the notice to quit the appellant became a statutory tenant. He invited their Lordships' attention to the decision of the Court of Appeal in *Thompson v. Ward* [1953] 2 Q.B. 153 and in particular to the judgment of Sir Raymond Evershed M.R. at pages 159-161 in which he referred to the well known judgment of Asquith L.J. in *Brown v. Brash* [1948] 2 K.B. 247 at page 254 analysing the position of a "statutory tenant" and defining the principles whereby a "non-occupying" tenant may forfeit his status as a statutory tenant. But that case and the cases to which reference is there made are concerned, not with the failure ever to achieve the status of a "statutory tenant", but with the subsequent loss of that protected status by an absence, sufficiently prolonged or continuous, to compel the inference of a cesser of possession or occupation. In this action proceedings were commenced on the very day following the expiration of the contractual tenancy, viz. 1st October 1978. Thus no question of a protracted absence following the determination of the contractual tenancy arose. As at 1st October the appellant was using the premises to house the possessions of Mrs. Hahn deceased and as the address of a new business he had registered a few days previously and whose sign was erected outside the premises. These were deliberate symbols of continued possession and occupation, following the determination of the contractual tenancy. Accordingly the appellant became a statutory tenant and was thus entitled to the protection of the Act.

For these reasons their Lordships allow the appeal with costs, set aside the judgment of the Court of Appeal and dismiss the respondent's ejectment complaint.





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