

## **WHEN THE LAW CONTRADICTS ITSELF ... OR MAYBE NOT? UNDERSTANDING SPOLIATION RELIEF.**

Owning property is reflective of one's rise up the wealth ladder. After all, it is acquired through hard earned money. For this reason, the law has safeguards in place to protect ownership, and seeks to punish those who attempt to deprive others of their possessions.

But what happens when the tables are turned and seemingly more rights are accorded to third parties at the peril of the property owner? Is such a scenario even fathomable? Is it legally possible for a mere possessor of property - a lessee, squatter, or even a thief, to have more legal protection in their possession of an asset, than the true owner? The simple answer to this disturbing question is, YES!

### **UNDERSTANDING THE PUZZLE – SPOLIATION**

As a general rule, the law accords property occupants protection and assistance, not only in retaining physical control of the property, but also in regaining same when it is dispossessed. In such instances, the aggrieved (despoiled) party is entitled to institute spoliation proceedings against the alleged wrongdoer (spoliator) for the return of the property. This remedy is open to any despoiled person who, prior to the spoliation, exercised physical control over the property (whether legitimately or illegitimately), with the intention of deriving some benefit from it. At the heart of this legal principle, is the notion that no one may take the law into their own hands, even if the spoliator owns the property in question.

### **HOW DOES IT WORK?**

To succeed in a spoliation action, the despoiled party merely needs to prove that he was in peaceful and undisturbed possession of the property prior to spoliation and that he was unlawfully deprived of possession of the property. The remedy is robust in operation and serves only to return to the prevailing status quo prior to the spoliation. Only then can any determination be made as to whether in fact, the despoiled party had a legitimate right to possess the property in the first place.

It is not a competent defence in spoliation proceedings, for the spoliator to claim to have better title to possess the property eg. via ownership, than the despoiled or that the despoiled's prior possession was illegal or vicious, as such defences would require a determination of merits of the case.

The effect of the above is that a bank for example, cannot repossess motor vehicles, merely because the customer is in arrears. The bank would need to ask the customer to voluntarily surrender the vehicle and if this fails, institute repossession proceedings to obtain a Court Order to that effect. Similarly a home owner cannot evict a tenant from the property for any reason, without a Court Order authorising same.

### **IN CONCLUSION**

Property owners often resort to self help measures in order to achieve restoration of their property from *mala fide* possessors e.g. thieves, out of frustration. But, the broader tenets of justice require members of society to shy away from taking the law into their own hands.

In the writer's opinion, private justice, no matter the circumstances, does more harm than good and should not to be countenanced. It is in this light that as we prepare for the Christmas season, a season often marred with increases in theft cases, we must all remember to do the right thing by reporting thefts/robberies to competent officials rather than to resort to private justice.

Happy Holidays!

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