

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C302 OF 1994

BETWEEN	CENTURY COMMODITIES COMPANY LIMITED	PLAINTIFF
A N D	CONSOLIDATED HOLDINGS LIMITED	DEFENDANT

Mr. Wentworth Charles for Plaintiff

Mr. John Graham & Mr. Andre Earl instructed by Miss Winsome McGlashan for Defendant.

Heard: October 5, 7, 11, 14, 1994

LANGRIN, J.

This is an application on a Summons for an interlocutory injunction whereby the plaintiff is seeking an Order that:-

- (1) The defendant, its servants and agents be restrained from interfering with the plaintiff's rights to quiet possession of premises 69 - 73 Constant Spring Road, Blaise Industrial Park, Block D, Unit 10 and;
- (2) Preventing the defendant from refusing the plaintiff's entry into the said premises and to allow the said plaintiff to enjoy quiet possession of the same;
- (3) The defendant doth forthwith remove the padlocks and other things placed on the gates and doors of the said premises.
- (4) The plaintiff shall until the trial of the action or termination of the lease which ever occurs earlier hold and enjoy the premises according to the lease without entering into any new lease.

Section 49 (1) of the Judicature (Supreme Court) Act, states the legal basis for the grant of an injunction as follows:

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made"

The principle by which a Court is guided in granting the relief by way of injunction was clearly set out in the American Cyanamid v. Ethicon 1975 1 AER 504 at p.509 by Lord Diplock as follows:-

"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's needs for such protection must be weighed against the corresponding right of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one needs against another and determine where the balance of convenience lies."

Lord Diplock continued at p.511 as follows:-

"It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide different questions of law which call for detailed consideration so unless the material available to the Court at the hearing of the application for interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial at the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

It is against this background that I have to decide and if necessary go on to consider which way the balance of convenience lies.

The affidavits disclose that the plaintiffs entered into a Lease Agreement with the defendant Company on December 1, 1991 for five years with option to renew for a further 5 years. The subject matter of the lease is premises situated at 69 - 73 Constant Spring Road, Blaise Industrial Park, Block D, Unit 10 at a rental of \$17,430.83 per month for the first year with an annual increase of 10%.

The plaintiff which carries on the business of General Hotel and Restaurant Suppliers inclusive of furniture and appliances commenced occupation of the premises on December 1, 1991.

The lease contained the following proviso for re-entry:

4. (b) "That if the rent hereby reserved or any part thereof shall at any time be unpaid for (30 days) thirty days after becoming due (whether legally then and in such event it shall be lawful for the Lessor to re-enter upon the leased premises and thereupon this lease shall absolutely determine"

In breach of this covenant, the plaintiff has been delinquent in paying the rent over a period despite repeated warnings by the defendant. On September 1, 1994 the plaintiff was four months in arrears with its rental payments.

On the 10th September, 1994 the defendant in exercise of its rights of re-entry re-entered and took possession of the premises. The gates leading into the premises were padlocked and armed security guards were placed at the entrance.

A letter dated 14th September 1994 on behalf of the defendant was forwarded to the plaintiff's Attorney Mr. Wentworth Charles and Company. It states as follows:-

"We act for Consolidated Holdings Limited.
We acknowledge and thank you for your letter of September 14, enclosing cheque payable to Consolidated Holdings Limited in the amount of \$104,895.72.

As you are aware, the matter between Consolidated Holdings Limited and your client, is being handled by our Attorneys-at-Law Broderick, Graham and we attach hereto for your information a copy of the letter to you dated September 13, 1994, in case this letter has not been received by you.

In the circumstances, we return to you the cheque for \$104,895.72 and ask that you contact our Attorneys-at-Law in the matter.

With respect to the offer for purchase we will inform Consolidated Holdings Limited, accordingly."

On the 15th September, 1994 a letter was forwarded to Wentworth Charles & Company by John G. Graham which states as follows:-

"Our client's letter of September 14, 1994 did not enclose the cheque for \$104,895.22 in favour of Consolidated Holdings Limited as it was sent in error to us. We now take this opportunity to enclose the cheque along (sic) a copy of our letter to you dated September 13, 1994 which clearly outline our client's position."

Mr. Orrett Hutchinson, General Manager of the defendant, in his affidavit sworn on 3rd October, 1994 depones at paragraph 17 as follows:-

"That the defendant has since entered an agreement to sell the premises. It is a condition of that agreement that the purchaser be allowed to take immediate possession of the premises in order to carry out internal renovations to same. The defendant in entering this agreement has relied on the change of the 'status quo' relative to the premises and will suffer hardship if the plaintiff is allowed to re-enter into possession. This is especially so because it is unlikely that the purchaser will be willing to complete the purchase with the plaintiff still in possession."

The agreement for sale is dated the 14th September, 1994 on the same day that the Managers' cheque for the arrears of rent was received by the defendant.

By a writ in this action dated 15th September, 1994 the lessee (tenants) claims possession of premises and relief against forfeiture. An interim injunction was granted by the Supreme Court on the 16th September, 1994 for a period of 7 days and further extensions have been granted since that time.

At Common Law when a tenant commits a breach of covenant for payment of rent and the lease contains a proviso for forfeiture, the landlord may either wave the breach or determine the lease.

The lease may be determined either by the landlord re-entering the premises in conformity with the proviso for forfeiture or by issuing a writ claiming possession.

The principle which governs the Court in granting relief against forfeiture is that the Court will grant relief only where the Court can give compensation for the forfeiture. In general, therefore, equity granted relief only where the forfeiture in substance was merely security for payment of a monetary sum.

The most important illustration of these principles was the proviso for re-entry contained in a lease. As illustrated in Howard v. Fanshawe 1895 2 Ch. p. 581, Equity would relieve against forfeiture of the lease for non-payment of rent even after a peaceable re-entry by the landlord without the assistance of the Court. Such a proviso was regarded simply as a security for rent.

Statute has intervened to supplement equity with the advent of the Rent Restriction Act but the Minister under the Act is empowered to exempt certain premises from the provisions of the Act. In the instant case the premises were exempt from the Act but the principle of the Common Law still applies.

From the cases cited it is clearly established that the object of the proviso for re-entry is to secure to the landlord the payment of his rent and avoids the necessity for bringing an action for the debt.

Mr. Charles who appeared for the plaintiff conceded that the rent was owing but submitted that because the total sum representing the arrears of rent was tendered, he is entitled to the relief. The plaintiff would experience severe hardship if it is required to obtain alternative accommodation.

Mr. Graham on behalf of the defendant based his submissions on the conduct of the plaintiff relative to the non-payment of the rent coupled with the obligation of the landlord in the contract for sale of the premises.

Based on the authorities and the dispute as to questions of fact there is little doubt that there is a serious question to be tried.

Turning to the question as to where the balance of convenience lies, I have to ask myself this question. Would it hurt the plaintiff more to go without the injunction pending trial than it would hurt the defendant to suffer it? In answering this question I am mindful of the fact that there is no branch of the law more delicate than that which goes to restrain the exercise of a legal right. That jurisdiction rests upon the principle that one party is taking advantage of a forfeiture by exercising rigidly his legal rights thereby creating hardship and great loss and injury while at the same time he may have full benefit of his contractual rights under the Lease where he can be compensated for his loss. The landlord will be relieved of all hardship if he is fully compensated by the tenant of all his rent and expenses.

In so far as the Landlords' Agreement for sale is concerned the Court takes into consideration the fact that the full amount of arrears of rent was tendered to the defendant on the same day when the sale agreement was signed and while the premises were under padlock and manned security.

A Landlord who has elected to enforce his forfeiture in this way remains vulnerable to an application for relief unless and until he obtains a final judgment for possession. The purchaser of the property must be taken to have known and particularly when the lease should have been registered that an application for relief against forfeiture was imminent. The inescapable inference must be that a purchaser in those circumstances would have acquired the premises subject to the plaintiff's equity. Against that background, it is my view that damages would not be an adequate remedy for the plaintiff.

In my judgment the balance of convenience lies in favour of the plaintiff and I so find.

Accordingly, for the foregoing reasons the interlocutory injunction should be granted, in terms of paragraphs 1, 2, 3, and 4 of the Summons as amended dated 23rd September, 1994. But it will be discharged:-

If the plaintiff does not within (7) days from the date hereof pay or tender to the Landlord's Attorney-at-Law or in case of refusal into Court all the arrears of rent. Costs granted to the defendant to be agreed or taxed and to be paid within 21 days from date of agreement or taxation. Certificate for counsel granted. Plaintiff gives usual undertaking as to damages. Leave granted to appeal.