

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C-577 OF 1991

BETWEEN CENTURY NATIONAL BANK LIMITED PLAINTIFF
A N D NEGRIL INVESTMENTS COMPANY LIMITED DEFENDANT

Mr. A. Rattray and Mr. Andre Earle instructed by Messrs. Rattray, Patterson, Rattray for plaintiff.

Mr. C. Honeywell instructed by Messrs. Clinton Hart & Company for defendant.

HEARD: JANUARY 20, 1992

REID, J.

The plaintiff, a commercial bank, operates a branch on premises of the Negril Hotel which is owned by the defendant company. Negotiations for the siting had been conducted by Mr. Donovan Crawford, Chairman and Managing Director of the bank on the one hand and on behalf of the defendant company by one Mr. John Sinclair who in his own affidavit erroneously describes himself as 'the defendant'. He refers to the bank's incumbency as a 'licence to occupy' granted upon the request of Mr. Crawford, a personal friend and banker of Mr. Sinclair's. The amicable climate changed dramatically and towards the end of August 1991, the Bank filed a writ claiming damages from the defendant, averring the subsistence of a lease and that the defendant was in breach, inter alia, of a covenant for quiet enjoyment. The writ further seeks a declaration that there is a valid and subsisting lease and also contains a prayer for an injunction. On 20th January, 1991, an interlocutory injunction was granted but leave given to the defendant to appeal the making of the order.

Mr. Crawford in an affidavit deposed that the lease to the bank was secured by an annual rental of One Hundred and Forty-four Thousand Dollars (\$144,000.00). This, he said, includes also the rental of an apartment in the hotel for branch manager occupation.

The incumbent manager's apprehension of eviction by Mr. Sinclair was communicated to Mr. Crawford who with his affidavit in these proceedings exhibited an unsigned notice to the branch manager to give up possession of the suite at the expiration of one month. That notice referred to a 'monthly tenancy' and purported to come from the "Attorneys for the Landlord". Also an exhibit was a written lease agreement, incomplete in parts, but which purported to have been transmitted by the defendant. Mr. Sinclair filed an affidavit in response and denied that the defendant had ever entered into an agreement to grant a lease. The bank's occupation, says he, was a temporary one; moreover it was not until nearly two years later that the payment of rental began. Mr. Crawford by a further affidavit explained the delay and exhibited facsimiles of cheques representing payments under a lease also an invoice-billing from the defendant specifying

"Rental For:

Eight months Apartment Furnished
Bank Space
All utilities (Electricity and water)"

Since the proceedings for an interlocutory injunction in no wise seek to resolve the facts in issue, the preceding summary should suffice to set the stage for the background to this summons.

Mr. Honeywell for the defendant submitted that Mr. Sinclair's affidavit is unchallenged where it avers that the present branch manager became resident only in 1990. Moreover, says he, the plaintiff has failed to show prima facie or otherwise that the agreement of the parties related to the specific suite the manager occupies. The essence of a lease, he submitted, is that the tenant should be given the right of exclusive possession and it made no difference that the parties might have executed a formal agreement purporting to be a lease which designated them landlord and tenant; the test is one of fact not form.

Whatever would have been the merits had such an issue stood in isolation, it is clear from the preceding summary that the plaintiff has demonstrated by exhibits attached that there is a

serious question to be tried. The balance of convenience becomes the next important question in determining whether or not the interlocutory injunction is proper. Would the plaintiff, in the event of his success at the trial, be adequately compensated by damages for any loss caused by the refusal to grant an injunction?

In Mr. Crawford's affidavit of 28th November, 1991 at paragraph 20 he alluded to a willingness on the part of the defendant to enter into discussions for time to be given to the bank to vacate the premises after the expiry of the 'alleged notice to quit'. Frederick Bennett the branch manager in an affidavit refers to the 'great dislocation' to the plaintiff's business of banking which would result from steps by the defendant to take possession. No specific averment is made of anticipated difficulty in seeking alternative accommodation for the manager, nor the extent, if any, to which the present accommodation facility conduces to the bank's efficient operation.

On the other hand, the affidavit in response merely avers that 'damages would adequately compensate the plaintiff for any loss as may be occasioned if they were obligated to demit the defendant's two premises...'

Inasmuch as the accommodation of the manager might be integral to the efficiency of the bank's operation, the unquantifiable damages which might arise from a refusal of the injunction might not be adequately compensated by defendant's undertaking. The balance of convenience appears, therefore, to favour the grant of the interlocutory injunction.

These considerations notwithstanding, leave to appeal the making of the order is granted.