IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E98 OF 1982

BETWEEN	CRAMPAD INTERNATIONAL MARKETING COMPANY LIMITED	
AND	CLOVER TREASURE (nee Brown)	PLAINTIFFS
AND	VAL BENJAMIN THOMAS	DEFENDANT

For Trespass, Conversion, Breach of Contract.

Frankson Q.C. for First-Named Plaintiff

Codlin for Second-Named Plaintiff

Cliff Daley for Defendant.

On 6th July 1984

Vanderpump J.

First named Plaintiff was a company incorporated in 1980. Second-named Plaintiff, was a director of this company(as was also Ronald Brown her father) Defendant was a civil engineer. He and Mr. Brown were friends of some 12 - 13 years standing.

Defendant owned a house at 6 Marvic Close, St. Andrew. Being desirous of migrating to Nigeria he offered to sell this house to his friend, Mr. Brown who agreed to buy it for J$150,000.00. Defendant wanted the U.S.equivalent $1.746 and Mr Codlin refused to so express it in a contract for sale so in due course a lease (Exhibit 1) was drawn up instead and executed - with Defendant as lessor and First-named Plaintiff as lessee. This by Desnoes. It was to commence on the 1st August 1980 for a period of three years with an option to purchase. Second-named Plaintiff took possession of these premises and three months rent was paid. She did so as the nominee of First-named Plaintiff.

Afterwards Defendant and Mr. Brown saw each other on occasion and Defendant told Mr. Brown that as soon as he was leaving finally he would let him know so he could pay for the house.

However it transpired that Defendant seems to have suffered a change of mind. He told Mr. Brown that he was no longer going to Nigeria. He no longer wanted to sell his house and in fact would like to get it back! Mr. Brown expressed surprise, said he would refer it to his lawyer.

A Notice to Quit (Exhibit 2) was duly served on the Plaintiff. It called on First-named Plaintiff to deliver up possession of these premises on the 1st June 1982 in the first instance. That would give the tenant up to midnight to do so.

Cutty v Derby 1975-1802 AER Rep. P520 Newman v. Glade 1926 1 K.B.328, 330

Defendant did not wait until midnight. He arrived at 9.30 in the morning. He was not unaccompanied. He burnt off one of the gate locks, gained entrance to the house where he caused all the belongings of Second-named Plaintiff to be removed and placed else where on the premises. He then proceeded to tell the maid not to return to work the following day as her mistress no longer lived there! He took possession in somewhat of a forcible manner along with a small retinue of men. In the evening this Plaintiff arrived home to find herself locked out. The police were summoned, they too arrived and spoke to Defendant who did not deny anything. He seemed to be labouring under the impression that the Notice had expired. A mistake of law is no defence.

All this was bad enough but worse was yet to come! Second-named Plaintiff said she had missed a lot of articles including a large amount of money and she blamed Defendant! It was of significance that having left this cash in a bathroom drawer under some towels the night before (if indeed she had), that fact was not present to her mind on that night. No word at all about it to the police who were there nor to the Defendant!

On June 10, 1982 Second-named Plaintiff was ordered restored to the house by order of my brother Malcolm in chambers. In that same month of June the option was exercised by First-named Plaintiff who now seeks Specific Performance to compel Defendant to complete.

The Pleadings

A few days after that memorable day, the 1st June 1982, the Writ was filed. It contained no mention of the money as such, no conversion even. It alleged Trespass to land, Trespass to goods and prayed an injunction. No breach of contract, that appeared later as section 12 of the Statement of Claim. This was clearly a new cause of action and was accordingly an irregularity. In his closing address Mr. Daley asked that it be dismissed. He cited Brickfield vs Newton 3 A.E.R. 323, 333-4. What he should have done is to have made application to set aside the irregularity O2 R2. He did not do that. He filed a defence which resulted in a waiver of the irregularity. He cannot now complain.

Statement of Claim

This followed the facts as outlined supra. Paragraph 6 alleged that the Notice Exhibit 2 was defective as did not specify the exact period of its duration nor did it conform with the Rent Restriction Act.

Paragraph 11. In the alternative assuming Notice valid and lease determined, the entry by Defendant constituted a breach of a Statutory duty i.e. section 27 of the Act and 5 Richard II.

Paragraph 10. Goods stolen from premises.

Paragraph 12 dealt with the exercise of the option and paragraph 13 with special damages. It ended by praying damages and Specific Performance.

The Defence

Paragraph 2 stated that Second-named Plaintiff at all material times was the agent of First-named Plaintiff.

Paragraph 6 Denial that Notice was in any way defective. First-named Plaintiff the tenant under the lease not within the protection of the Rent Restriction Act as a Limited Liability Company.

Paragraph 7 by virtue of that Notice lease determined.

Paragraph 8 Defendant retook possession under m.c. 1 (second part)

as Plaintiff did not observe covenant Vii to deliver up the premises on the termination of the lease. This entry was not accompanied by any force. Her belongings were stored for safe keeping.

Paragraph 10 no goods stolen. Paragraph 11 no breach of statutory duty.

Paragraph 12 no option in Plaintiff on the 9th June 1982.

Counter Claim As an alternative Paragraph 17 claimed a right of re-entry presumably under m.c. i (second part) because of the condition of the leased premises and chattels leased therewith, being a breach of covenants express (i and vi and vii) and implied (a) (d) in the lease, presumbly. It is significant that on the night of this entry by Defendant when the police came he did not mention this aspect of the matter but told all and sundry that he had thrown out Second-named Plaintiff as she had disobeyed his Notice to Quit! A perusal of Exhibit 1 by Learned Counsel seems to have lead to the inclusion of this paragraph (as well as paragraph 8) particulars follow as 17(7) (a) to (j) and 17(2) supra. This process of re-entry could not be exercised as a forfeiture of the lease without first giving Second-named Plaintiff an opportunity of remedying this breach. None given her.

Sec. 4 of R.R. Act and first Schedule P315

Landless v. Nicholson 1942 2A.E.R. Ed. Note

Paragraph 18. In obedience to Injunction Defendant vacated premises on 19th June which were left unoccupied until 23rd July when Second-named Plaintiff re-entered. Cost of Security Guards for that period and his expenses follow.

Paragraph 19. Premises now required by Defendant as a residence. First-named Plaintiff told from September 1981 that he proposed to terminate the agreement. No admission made in Reply.

Paragraph 20. Seeks possession, damages for 17 and 18 and Mesne profits. Damages for trespass in respect of fixture and furniture? Sets N.A.V. at $95,000. No admission in Reply. Plaintiff then filed a long and technical Reply, Defence to Counter Claim.

The Lease - Exhibit 1

This was drafted by Eric Desnoes, an Attorney-at-Law. He had received a document, Exhibit 5 from Defendant prepared by Mr. Codlin and that had formed the basis of Exhibit 1 indeed everything came from Exhibit 5. There was very little discussion. He met both parties briefly just to settle it, meaning presumably to settle its terms. He then prepared the basic draft and handed it to his secretary to complete which she did within 24 hours and handed it to one of these parties. He apparently did not see it again until it was shown him in the box! He was surprised to see a schedule of furniture because to his recollection the house was to be let unfurnished. That was Plaintiff's understanding also.

m.c. V "at any time during this Agreement prior to three months before its termination for the consideration of One Dollar ($1.00) the receipt of which sum is hereby acknowledged the Lessor hereby grant (sic) to the Lessee the option to purchase the leased premises at a price or consideration the exchange (sic) in One Hundred and Fifty Dollars (J$150.00) of (sic) the sum of Two Hundred and Sixty Two Thousand Dollars Fifty Cents (US.$262.000.50) and on the Lessee taking up this option the Lessee agrees to pay the amount of ten percent (10%) of the purchase price of the balance within thirty (30) days thereafter.

Phipson 12th Ed. Para.1961

On the face of it the language is peculiar (wording is poor says Desnoes) its application to the facts is ambiguous so extrinsi evidence may be given in explanation and this being a contract evidence may be given of the facts and objects in their joint contemplation. So that evidence by Desnoes that Ja$150.000.00

1967

was the consideration for the premises and no instructions from Brown or Defendant re the other figure, as no intention for it to be in the alternative, would be admissable to explain the figure for the consideration. Exhibit 5 which is a document similar to Exhibit 1 is also extrinsic evidence. That has in $150.000.00 and must be Jamaican currency as Mr. Codlin would have none other in his proposed contract. So that the alternative is surplusage and must be the mistake referred to by Desnoes.

1972

Olley v. Fisher 1909 34 CH 367, 370

If Defendant had been so sold on the idea that there had been a mutual mistake he should have counterclaimed for rectification and proven the mistake by parol evidence. If granted Plaintiff could then obtain Specific Performance on the reformed contract.

The subsequent acts of the parties are admissable for the purpose of showing what the terms of the contract actually were.

rguson v. Dawson 1976 3 A.E.R. 817

2068 Suppl.

The Plaintiff tendered his cheque for 10% of the purchase price i.e. Ja$15,000.00 in accordande with the terms of the option and purported to exercise it. Whereupon Defendant tore the cheque and said not selling the premises again. Not a word about the purchase price.

Defendant said as of 1st June 1982 he did not think he was obliged to sell the property to Brown. Prior to March 1982 he could have acquired it under the option term in the lease. As it is he Defendant admitted in the box that he had not read mutual covenant V that had in the option and the purchase price when he signed Exhibit 1. It was only in December 1981 that he became aware for the first time that the Purchase Price was $150.000Ja!

Supra P4

".....a deed is a man's deed if he attaches his signature with the intention that that which precedes his signature should be taken to be his act and deed". Not necessarily essential that he should know what the document contains (provided he is not mislead, of course as to its contents) Defendant seems to have

Charlisle etc. vs. Bragg 1911 1K.B. 489,495, 496

relied on Desnoes. He had read the draft through, had not noticed any errors so at the time of signing did not make it a matter of concern. He signed it as his act and deed intending to execute that instrument Exhibit 1. He was content to be bound by the provisions as indeed he is sobbound. He cannot be heard to say anything to contradict the fact that the Purchase Price is $150,000.00 Ja. as parol evidence cannot be received to contradict a written agreement (mistake aside).

Cheshire Lifoot Law of Contract 7th Ed. P207

Phip. 1961

Also Mr. Brown cannot be heard to say that he did not rent the house furnished with furniture in the schedule annexed.

Notice - Exhibit 2

Common Law Position

m.c. vi. "If either party wishes to terminate this Agreement at any time before the expiration of the said term he or she shall give the other party not less than SIX MONTHS (6) notice thereof".

This is not the nature of a proviso. 'a lease is often made for a term of years subject to a proviso enabling either (or one) of the parties to determine it at an earlier period by notice".

Woodfall 957

Mr. Frankson has attacked the validity of this covenant for various reasons. It is not an unusual covenant and it is a mutual one i.e. both the Lessor and Lessee mutually agree to it. If they choose to whittle down each other's rights so be it!

Exhibit 2 issued by Defendant's attorneys and presumably drafted by them reads:

> ".....WE HEREBY GIVE YOU NOTICE TO QUIT AND DELIVER UP.....possession of premises at 6 Marvic Close which you hold.....as tenant under the terms of a lease agreement dated 15th August 1980 on the 1st day of June 1982 next or at the end of the complete month of your tenancy which will expire next after the end of six months from the service upon you of this Notice.
>
> .....
>
> Dated the 23rd day of Novemer 1981".

Defendant said he served Exhibit 2 on Second-named Plaintiff as secretary of First-named Plaintiff on 24th November 1981. This was hotly contested by her at first. After consultation Mr. Codlin announced that Second-named Plaintiff would no longer seek to contend that Notice was not so served as stated by Defendant i.e. on 24th November 1981. This although she was not admitting his contention.

Mr. Frankson has submitted with some force that if a Notice is to terminate the lease it must be on a date certain and a date which must be ascertained or ascertainable from looking at the lease itself. Where Lessor got 1st June 1982 from nobody can explain. Reference to the lease shows that the rental is payable quarterly at the begining of each quarter as of the 1st day of August, 1980. The six months could end on the last day of two of these so called quarters. Then the alternative would have some meaning. The alternative in a Notice is put there for a reason namely so that an error as to the specific day mentioned in the first part may not invalidate the Notice. If the computation be wrong the general words in the alternative will save the Notice and make it valid. For instance in a tenancy from year to year in the absence of express stipulation it may be determined by a ½ year's Notice expiring at the end of some year of the tenancy. So that in a Notice of this sort after first mentioning the day which is believed to be the anniversary of the commencement of the tenancy to add these general words: "or at the end of the year of the tenancy which will expire next after the end of one ½ year from the date of the service of this Notice" should in case the date be wrong. Section 16 of the English Rent Act 1957 stipulated that no Notice shall be valied unless given not less than 4 weeks before the date on which it is to take effect. So that as a precaution an alternative could read:

313/1942
2 A.E.R.

23Hals. 3rd Ed. 516, 517,522

11Encyclopedia of forms and precedents 4th Ed.P54

> "or at the expiration of the week of your tenancy which will expire next after the end of four clear weeks from the service upon you of this Notice".

The effect of mutual covenant vi that the tenancy shall be terminable at any time by Notice of not less than 6 months is that such Notice may be given for any date notwithstanding that the date is not an anniversary of the commencement of say a quarter or really two quarters it is not tied to any period of the tenancy. So that an alternative is not necessary here. It confuses the issue and only serves to make it invalid. The term begins on 1st August 1980. So that bytthe alternative it would be six months from the 24th November 1981 plus one month of tenancy which would take First-named Plaintiff to the end of of June. "Although no particular form need be followed there must be plain unambiguous words claiming to determine the existing tenancy at a certain time..... the day of termination must be the right date". Notices of this kind given under powers in leases of this description are documents of a technical nature, technical for this reason that if they are in proper form they have of their own force without any assent by the recipient the effect of bringing the demise to an end. They are not consensual documents".

Phipps vs Rogers 1925 1 KB 14 27

Hankey vs Clavering 1942 2 AER 311,313-14

Here the recipient of Exhibit 2 must be in a quandary. She is confronted with two dates - 1st June 1982 or the 30th June 1982, the latter by calculation, not difficult. Which is the right date? It is not certain. It does not claim to determine the tenancy at a certain time. The time is uncertain, either 1st June or 30th June! So the Notice cannot be valid to determine this lease. I so hold.

Statute

Mr. Daley has always contended that the Rent Restriction Act does not apply to 6 Marvic Close. He says so because of the English Common Law on the subject notably Reidy vs Others. Walker vs Others, referred to as Reidy vs Walker 1933 2 K.B. 266, 270, 272. The Rent and Mortgage Interest Restriction Act

Act 1923 substituted a new section 5 in the 1920 Act and the Court of Appeal there were construing section 5(1)(d) thereof. It reads:-

> "5(1) No order or judgment for the recovery of possession of any dwelling house to which this Act applies or for the ejectment of a tenant therefrom shall be made or given unless -
>
> (d) The dwelling house is reasonably required by the Landlord for occupation as a residence for himself or for any son or daughter of his over 18 years of age or for any person bona fide residing with him or for some person engaged in his whole time employment.....and..... the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards the extent, character and proximity to place of work"

2 K.B.546

> "In 1931 Skinner vs Geary had held that the fundamental principle of the Rent Restriction Acts was to protect a tenant who is residing in the house, a tenant to be entitled to such protection must be in personal occupation or actual possession of the premises in respect of which he seeks that protection..... right of a statutory tenant is a purely personal right to occupy the house as his home".

559

This case was applied in Reidy vs Walker (above) where it was held that a Limited Liability Company could not be a tenant under these Acts as a company could not be described accurately as a tenant who is residing in a house or who is in personal occupation or possession of the premises .. still less that the house is the company's home" as"before a person can become a statutory tenant his occupation must have an essentially domestic quality".

272 ibid

DeBeers vs Howe 1906 AC 455 458

'A company cannot eat or sleep!'

Similarly a legal persona cannot have a family! So that Section 5(1)(d) connotes a living, breathing tenant as such I would say.

On the other hand Section 5(1)(i) ".....unless - the dwelling house consists of or includes premises licensed for

the sale of intoxicating liquor and the tenant has committed an offence as holder of the licence etc." Nothing against a tenant in this subsection being a Limited Liability Company, it seems.

Although this section was repealed in 1933 and replaced by a general section (sec. 3) enabling the court to make such an order if reasonable and suitable alternative accommodation is available, the concept that a Limited Liability Company cannot be a tenant under the Rent Restriction Act still persists in English Law.

Rent & Mortgage Act etc. 3rd schedule

Firstcross Inc. v. East West etc. 1980 255 Estates Gazettes 355 C/A C.L.Y.B. 1981 Para. 1559 (Rent Act 1977.)

Section 25 of the local Act sets out the circumstances in which an order for the recovery of possession of any controlled premises or the ejectment of the tenant thereof can be made.

> 25 "(e) the premises being a dwelling house..... are reasonably required by the Landlord for (i) occupation as a residence for himself or for some person wholly dependant upon him or for any person bona fide residing or to reside with him or for some person in his whole time employment".

It will be seen that this section stops short of the English Section 5(1)(d) of the 1920 Act as amended. It does not have the alternative accommodation suitable to the needs of the tenant and his family provision.

As it stands there is nothing against a Limited Liability Company being a tenant. The decision in Reidy vs Walker could not apply to this section as it is different.

1931 2 K.B. 546,565

In the Court of Appeal in Skinner vs Geary in a minority judgment (agreeing but for a different reason) Greer, J said obiter

> "..... A man may remain in possession in law even if he is not physically upon the premises if he is occupying the premises by a licensee....."

1952 1 K.B. 290, 298

In Errington vs. Errington Denning L J said:

> "..... although a person who is let into exclusive possession is prima facie to be considered to be a tenant nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy..... if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted possession with no interest in the land he will be held to be a licensee only".

Although Second-named Plaintiff had exclusive possession of these premises there was clearly no relationship of Landlord and Tenant between Frist-named and Second-named Plaintiff nor indeed of principal and agent. "(She) had a mere personal privilege to remain there with no right to assign or sublet. As such she had no right at law to remain but only in Equity and Equitable rights now prevail" Exhibit 1 refers to First-named Plaintiff or its nominee being in occupation and covenant 1 to damage done to the .... premises by reason of the default of the Lessee .. his (sic).. agents. Defendant states that she is agent of First-named Plaintiff in the sense that she is its representative. So that Second-named Plaintiff is at once the nominee and representative of First-named Plaintiff in exclusive possession of these premises and can be regarded as a licensee of first-named Plaintiff. So that First-named Plaintiff can be regarded as being in possession through her, its licensee. Greer J. supra. Although obiter it has strong persuasive value and I like and adopt the reasoning.

P.298 ibid

49(j) of Judicature of Supreme Court Act

Cl. 3

Ox. Dict. big, meaning #4

Indeed Acton J at Page 270 of the same Reidy vs. Walker above said:

> ".....The argument advanced that a company may be such a tenant i.e. one which without reference to the authority of the Court of Appeal seems to me speaking for myself to be impeccable. I should have thought that a company may be in possession or in occupation of premises including a dwelling house through the medium of some caretaker or other occupant to whom is entrusted the duty of living and it may be taking care of some house to which the Acts apply..... He (Mr. Morle for Defendants) contendes that for purposes of the Act possession and occupation should be regarded as meaning no more and no less than what such words mean at Common Law"

Sed diis aliter visum!

Of interest is an early case where the 1920 Act was considered by the Court of Appeal and they found nothing wrong with a Limited Liability Company being a tenant, at least they did not say so. Richards vs Dewar and Cadogan Hotel Company

Limited 38 T.L.R. P. 151. In fairness the alternative in Section 5(1) (d) was not yet amended to include family.

The Local Act by Section 3 applies to all dwelling houses.....furnished and unfurnished thus making them controlled premises. Section 4 refers to leases in writing in respect of these premises. Contractual tenancies to which this Act applies have been known as protected tenancies. Those holding over on determination of the contractual tenancy are known as statutory tenants - Section 28. In England Section 2(1)(a) of the Rent Act 1977 provides that the tenant of a dwelling house is a protected tenant, on the termination of that he becomes a statutory tenant as long as he occupies it.

Sec. 31 of Act

> "No notice to quit given by a Landlord to quit any controlled premises shall be valid unless it states the reason for the request to quit".

Exhibit 2 does not have any reason on it so is not a valid notice if the Act applies to this dwelling house. There is no reason why the Act should not apply and I accordingly hold that it does. The Notice is therefore of no effect and the lease still alive on the 10th June and the option exercisable when Plaintiff sought to exercise and did exercise it.

Conclusion

Hill & Redman 16th Ed. Para. 367

Entering as he did on an invalid notice on the 1st June Defendant is liable in Trespass and I so hold.

Sec. 27 of the Act

27(1) "Except under an order or Judgment of a competent court for the recovery of possession of any controlled premises no person shall forcibly remove the tenant from those premises or do any act whether in relation to the premises or otherwise calculated to interfere with the quiet enjoyment of the premises by the tenant or to compel him to deliver up possession of the premises".

Monk vs. Warbey 1934 A.E.R. REP 373, 376.

This Act is clearly designed to protect the tenant by its scope and wording.

> ".....if a person be damaged by the breach of a statute he has a

> right to recover damages from the person who has broken the provisions of the statute unless it can be established... that it was not intended that he should have such a right.....on the contrary it establishes that it was intended that he should have that right because it is clear that the statute was intended for his protection".

On this day the Defendant was not armed with the necessary authority to do what he did i.e. to compel her to deliver up possession of 6 Marvic Close so he is in breach of the statute and liable in damages to Plaintiff.

He is however not guilty of breach of the implied covenant of quiet enjoyment on account of the state of the premises. Landlord implied covenant (s) 2 Rich. 5 only applies to entry lawfully.

Option

Charlesworth Mercantile Law 11th Ed. page 12

An Option is a conditional contract. Here a contract binding upon the Defendant to allow Plaintiff to buy the land within the time and upon the terms stated therein. Defendant in September 1981 changed his mind and purported to revoke this option but Plaintiff could nevertheless (and did) exercise the option and compel Defendant to sell him this house. This he did on the 10th June 1982 by letter bearing date 9th June enclosing a cheque for $15,000.00. Whereupon Defendant tore the cheque and sought to deny the option. This he could not legally do.

Raffety vs Schofield 1897 1 Ch. 937,943-4 34 Hals. 3rd Ed. Para. 345 Clarke v. Ramuz 1891 2 Q.B. 456,463(!)

The option to purchase was thus validly exercised and a binding contract thereby made for the sale and purchase of this house... from that moment the relationship became one of Vendor and Purchaser between the parties. The purchaser is in Equity the owner of the property and he is entitled to say that he desires the existing position of the house and its occupation not to be disturbed pending completion. In other words First-named Plaintiff is entitled to stay at 6 Marvic Close pending completion as it was in possession at the date of the contract of purchase. Technically in possession as its ouster was

Cl. & Lindsell Torts 13th Ed. Para. 1322

unlawful and short lived. The remedy then which a possessor has for an expulsion by a Trespasser is to turn out the intruder and resume upon a possession which she (its nominee) had never lost.

Damages

On the claim - Special

13 (a) Loss of goods valued at $169,893.30.

Mr. Frankson called it c. $200,000.00 in his opening. Details of these should have been expressly pleaded. Loss here means that they were stolen i.e. converted and there was no claim for Conversion in the Writ. There was a claim for Trespass to goods however in that items of furniture and her other personal belongings were moved from one place to another on the premises. Defendant said he moved them for safekeeping.

In the evening of 1st June she could not find her things where she had left them that very morning. She went to an open area to the pool, a wide area where parties were held. There she saw her belongings. Her furniture, clothes, groceries packed on top of one another, just thrown there, jam packed, no space, could not get between them to see.

Was only on the 20th June that she discovered that some of her things were missing. Gold chains, watches, earrings, necklaces, diamond ring, shoes, clothing, clocks, clothes iron, blender, Video, headlamp, front grill, crankshaft bearings plus 4 dogs (1 came back). She had last seen them or some of them on 1st June and some in May. She gave evidence of their value but said she could not give a total as she did not have the value of some of them. Eventually she admitted that she had been guessing the value of them all! Taking the figures she gave I got $14,721.00.

At the very end of the list she put a most important item, not mentioned before in these proceedings. Cash $65,560! Left in a bathroom drawer under some towels the night before the

1st June to do business. Left there as not going to her office on Spanish Town Road the following day. Nevertheless she did not take this money with her then. She did not take it to her Customs Broker for whom it was intended. Although she admitted she knew it was there that morning for had she not put it there the very night before, took up the paper lining the drawer packed with towels and put in the money! The master bedroom and the bathroom doors could be locked but were not locked that morning as not usually done! A maid cleaned those rooms but certainly alright to leave the $65 thousand there!

Lo and behold on the 20th June she saw these towels on the ground with her furniture. Then it was she had a fair idea the money was lost! She did not go into the bathroom to look as the door was locked. Defendant's belongings were in there! Took no steps to get access that day as Defendant not there and did not know where he was! On the 1st June p.m. she knew she had over $65 thousand under towels in the bathroom but she did not go in there and look for the money as she was totally confused! She was not concentrating on the money she had there but on Defendant's behaviour! She told police there then she missed cash. She did not tell them how much because did not know it was necessary! Does not remember if she told them where she had this cash! In her affidavit of the 7th June to get Defendant out of the house she did not mention in the list the $65 thousand. She just put cash. She did not tell Defendant cash was missing. She did not tell the security guards nor the Jamaica Protective Services, no need to! She did not report it to the police. Did not remember if put in her Statement of Claim that money was stolen.

She produced some lists she had prepared. On the first page appeared the date 20th September 1982. She was adamant that she had written that on 20th June 1982. Did not think it important that these missing items should have been reported to Defendant!

It so happened that on 23rd July she found some of the things missing on 20th June! On the former date Defendant's brother Campbell was there. He made notes of what she said were missing of Defendant's things. But she would not be surprised if he had in some of hers. She did not tell him of her own belongings (?) On that day she complained to husband and mother re loss but not to Defendant nor his representative. Indeed Defendant said she did not complain about any loss at any time.

In July she took a piece of paper from her bag wrote the missing items. Must have thrown it away as did not think it necessary to keep it! She eventually typed out two sets of lists on two separate occasions - three pages yellow. She could not give a total list including the cash!

Eurel Campbell gave evidence of going to these premises a year and a half before (the 7th February 1984) and seeing Second-named Plaintiff. Got the impression she had just moved in. The list he made Exhibit 17 did not help any. It had on mirrors, cushions, blender glass. Not missed by her. Defendant called him. In view of her peculiar and roundabout evidence about her loss I do not accept that she lost any articles or money. This on a balance of probabilities.

13(b) Expenditure in procuring alternative accommodation for Second-named Plaintiff. This was not pursued.

General Damages

This is not a case for awarding exemplary damages as Defendant made a bona fide mistake when he entered some hours before he should have i.e. 9 a.m. instead of midnight. And he used no more force than was necessary to do so. The men with him were to carry his effects into the house and move hers for safekeeping.

On Counter Claim

Section 17 dealt with the "deterioration" of the

premises and chattels, presumbly in breach of covenants i , vi and vii and those covenants implied in the lease Section 17(1) dealt with the remedial works necessary as a consequence of this deterioration. There followed several items 17(1)(a) to (j). This damage was seen by Defendant on 24th May and 1st June and by Mr. Williams an architect on 3rd June. Denied by First-named Plaintiff (Mr. Brown) as also Second-named Plaintiff. In this I accept Defendant and his witness on a balance of probabilities.

4 of R.R. Act and first schedule

17(1)(a) was somewhat lengthy. It did not specifically set out the amounts beside each item. It was divided into different house levels. All three levels had in an item for repainting walls and ceilings and cleaning carpets - one level had replacing carpet. Two levels for replacing wall paper in bedrooms and kitchen, one for replacing damaged locks, one for repairing woodwork. The lower level had an item for refitting and making good cabinets in the kitchen whilst the middle level had a similar item for fridge and stove.

Defendant said that the carpets in the dining area, family room and master bedroom not cleaned as in such an objectionable condition would have to be replaced if he lived there. He claimed 5 - 6 thousand! I preferred Mr. Williams - 20 square yards at say $38 a square yard - $760

Cleaning carpet	-	900
Wall paper	-	300
Locks	-	650
Repainting		3,500
Kitchen cabinet	-	1,500
		$7,610

Defendant said for restoration of lawn and grounds he paid - 5,909

$13,519

17(1)(b) and (c) already dealt with

(d) Swimming Pool repaired by First-named Plaintiff (Mr. Brown)

(e)	Bougainvilla plants	$1,000
(f)	Shade tree	100
(g)	Parapet wall	100
(h)	Fridge replaced	3,000
(i)	Stove and oven replaced	2,000
(j)	Badmington court, just washed	-----
17 (2)	Suite recovered	$19,719
18 (i)	Boarding of son	800
(ii)	Guest house July - September	1,500
(iii)	6 Oldgate Drive	
	$1,500 a month furnished	
	October - December	4,500
	Continuing to 9th November 1983	
	in box	13,500
(iv)	Accommodation family in Canada	3,000
(v)	Security Guards	
	19th June - 23rd July 1982	
	24 hours a day $11 an hour -	
	$264 x 39	9,296
		$32,595

Defendant left premises on 19th June 1982 in obedience to Ex parte interim. Injunction served on him at instance of Second-named Plaintiff who nevertheless did not move back until 23rd July 1982. When Defendant left his attorney so informed Second-named Plaintiff. Defendant made arrangements for her to take possession on the 20th June when she attended at the premises but did not do so. It was her duty to persevere and not wait until the 23rd July. Indeed Defendant said he took a letter to her between 20th June and 28th June at her office at Spanish

Town Road informing her that she was free to enter the premises at any time. The Chief Security Guard D/C Brown said he did not prevent her entering. As a matter of fact he only saw her three times - 1st June, 20th June and 22nd July, some attempt has been made by her to say that she was prevented from resuming possession by Defendant. I do not accept that, I accept the Defendant's version as being the more probable.

20. 1. Defendant cannot get possession as Plaintiff in possession as the purchaser pending completion of the sale.

20. 2. Damages paragraph 17 breach of covenants $19,719

Damages paragraph 18(v) Security Guards vs Second-named Plaintiff only 9,296

$29,015

20. 3. No Mesne Profits recoverable as counter claim fails on 20.1. In any case on 22nd October 1982 in the interlocutory proceedings my sister ordered that Plaintiff continue to pay for use and occupation of the premises in the amount specified in the lease.

20. 4. Not recoverable as Plaintiff is not a trespasser. Section 18 1 - iv dealing with losses occasioned by his having to leave the premises on 19th June 1982, not recoverable as Plaintiff succeeds in the action and was justified in seeking and obtaining the Interlocutory Injunction.

The Medinana 1900 P113, 116

c. 89 C.P. C.

On the Claim Judgment for First-named Plaintiff for $500.00 (nominal Damages for infringement of legal right) Defendant not prepared to abide by the exercise of the option and hence not willing to complete. First-named Plaintiff(Mr. Brown) always ready, able and willing to pay the purchase price.

Specific Performance decreed of concluded contract of purchase - (34 Hals. paragraph 345 - supra) with counsel's costs.

Judgment for Second-named Plaintiff for $5,000.00 with counsel's costs. One set of Solicitor's costs for both plaintiffs.

Blank v Footman etc. 1888 39 Ch. 678, 685

On Counter Claim Judgment for Defendant.

vs both Plaintiffs for $19,719.

vs Second-named Plaintiff only for $9,296 with costs.

All costs to be agreed or taxed.

Stay six weeks.