JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 84/89

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Downer, J.A.

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| BETWEEN | ELINOR INGLIS | 1ST DEFENDANT/APPELLANT |
| AND | WILLIAM McCABE | 2ND DEFENDANT/APPELLANT |
| AND | VERNE GRANBURG | PLAINTIFF/RESPONDENT |

Messrs. Dennis Goffe and Douglas Leys for the Appellants

Mr. Enos Grant for the Respondent

January 29, 1990

ROWE, P.:

Gentlemen, in this matter we have had a chance to review the submissions made and the record and it seems, from the evidence, firstly, that the relationship of lessor and lessee existed between the respondent and the appellant; secondly, that there was a partnership agreement which existed between the parties and related to the operation of the guest house. It appears from the record that the parties agreed that the appellant would pay certain debts owed by the respondent prior to the 1st April, 1989; that the respondent would do certain acts to repair the villa, its furnishings and fittings, that the appellant should advance money for the payment of those repairs and refurbishings and that the respondent would reimburse the appellant for the sums so expended. It is clear from the letter of the respondent of July 5, 1989, that he expressly accepted that he was liable

to pay to the appellant a sum in excess of J$50,000.00, which sum formed no part of the partnership, of the sharing account, and was also separate from what the respondent termed "sums we put in an abeyance account."

It seems to us that on the authority of British Anjani Felixstoe Ltd. vs. International Marine Management (U.K.) Ltd. (1979) 2 All E.R. at 1063 and B.I.C.C. plc. vs. Burndy Corp and another (1985) 1 All E.R. 417, that the appellant would be entitled to set-off sums owed to her by the respondent against her liability for rent. It follows, therefore, that on the 4th August, 1989, when the respondent purported to re-enter and take possession of the villa, in all probability he had no legal right so to do and consequently his entry was highly likely to be in breach of the covenant for quiet enjoyment contained in Clause 3 of the Lease Agreement of the 28th March, 1989. Of course, these are matters which will actually be decided by the Court at trial.

In our view, the appellant is entitled to protect her right of quiet enjoyment by an injunction. In addition, we are told that the appellant is still in possession of a portion of the premises and, in all circumstances, it is our view, that damages would not, in this case, be an adequate remedy and that on the balance of convenience the status quo should be preserved to enable the appellant to continue in possession. We, therefore, order that the appeal be allowed and we propose the following order in substitution for the order given in the Court below:

(1) that there be an interlocutory injunction that the respondent herein by himself or his servants or howsoever or his agents be restrained until the trial from:

(a) evicting the appellant from premises known as the "White House" registered at Volume 1171 Folio 827 of the registered Book of Titles and,

(b) occupying or attempting to occupy any part or portion of the said premises and,

(c) interfering in any other manner with the quiet enjoyment of the said premises.

This, of course, is on the assurance that the appellant will undertake to indemnify the respondent for any loss that may be occasioned as a result of the order. We also think that we should make an order for a speedy trial, although this was not one of the things that was specifically requested of us, but we think we should so order. We will, in relation to costs, order that the costs of appeal be costs in the cause as also in the Court below.

At the request of counsel we have agreed to prepare and deliver detailed reasons for judgment at a later date.