IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1979/J022

BETWEEN JAMAICA INDUSTRIAL DEVELOPMENT CORPORATION PLAINTIFF

A N D VERNICE BITTER DEFENDANT

Dennis Goffe and Michael Hylton instructed by Myers, Fletcher & Gordon for Plaintiff

W.B. Frankson Q.C. and Margaret Forte for Defendants

Heard: 8th, 9th, 10th March, 1982 and 19th, 20th, 21st July, 1982

Delivered: 28th July, 1982

JUDGMENT

Morgan J:

One cannot but remark on the bureaucracy and its bungling which this case has demonstrated. If ever there was ineptness and absurdity in the wake of officialdom it is flagrantly displayed in this case.

The Jamaica Industrial Development Corporation is a Statutory Corporation created by Parliament to promote industrial development, to aid production and increase employment, a crippling area in the Jamaican economy. One special area of need was recognised, that is, to give assistance to small business people to build up small industries. In that spirit the plaintiff provided funds and a complex of small units was built on Duke Street, Kingston to house small businesses. The method of selection for occupancy was that the Small Business Association recommended prospective lesses to the Small Industries Development Division, a division of the Jamaica Industrial Development Corporation. The defendant Miss Vernice Bitter was one such person recommended, for the purpose of

manufacturing garments. Her tenancy commenced on the 1st July, 1976 and on the 9th she executed a tenancy agreement with the plaintiff for a term of five years from 1st July, 1976 at a yearly rental of $1,080.00 payable in instalments of $90.00 monthly in advance on the first day of each month. She was provided a loan to install fixtures. This loan was repayable monthly bringing her monthly payments to $105.48. Miss Bitter was handed her keys on the first payment, then she made a second payment. When her application came up for processing she was badly in arrears, was considered undesirable as a tenant and as a result the plaintiff did not execute her tenancy agreement. In February 1977 with rent still in arrears a demand was made on her with an alternative of withdrawing from her the factory space. But Miss Bitter remained in occupation with no rent being paid, nothing manufactured, no persons employed. A year later in June 1978 with twelve months rent due and owing she was served a notice to quit the premises on or before the 31st July, 1978. It is now four years later, the lease has expired, no rent has been paid, there are still no persons employed, no production is on stream, factory space has not been used for five years nor indeed for the purpose for which it was intended. The plaintiff has brought her before the Court for an Order for Possession, she still occupies the premises, sleeping in it and resists any claim for such an Order.

At the end of the hearing it was conceded on her behalf that the rent claimed as owing was due but it was contended that the Notice to Quit was invalid, that there was a breach of an implied covenant by the plaintiff that the premises were free of inherent defects and that they would keep and maintain the premises in good repair, that there was an expressed

covenant for quiet enjoyment and that the plaintiff had breached these covenants in that:-

a) The plaintiff removed the doors to the premises

b) Prevented entry to the premises by installing padlocks on the doors

c) The plaintiff frequently requested the defendant to vacate and

d) Harassed the defendant's customers and employees

She counter-claimed for damages.

The plaintiff called two witnesses, Mr. Oswald Edwards, their Manager for Properties and Engineering who was at that time the Property Administration Officer in charge of this complex. The other witness was Mr. John Griffiths, the Managing Director of Jamaica Dental Chemical Lab, a tenant of the plaintiff from the inception of the complex.

The defendant gave evidence on her own behalf and called as a witness Mr. Egbert King a security guard employed to Kane's Security Company. This company had a contract with the plaintiff to provide security services nightly, and Mr. King served as a watchman during the nights from its inception until the company's services were terminated. By private arrangement with some of the tenants Mr. King was during that period, employed by them during the day hours.

In respect of the claim the plaintiff is entitled to recover the sum due for rent and mesne profits as amended on the Statement of Claim.

With respect to the Order for Possession, Mr. Frankson's submission was to the effect that the building was a public and commercial building within section 3 of the Rent Restriction Act and fell within the protection of the Act therefore recovery of possession could only be

effected within the provisions of the Act that is in accordance with section 26(2)(b) which reads as follows:

> "In the case of premises leased to the tenant for a fixed term of years, not more than twelve months before the date or expiration of lease."

Therefore he says the clause in the tenancy agreement which speaks of twenty-one days notice to quit is invalid and of no effect.

Mr. Goffe submitted that the tenancy agreement signed by Miss Bitter and dated 9th July, 1976 as also the Notice to Quit were not caught by the amendment to the Act. With this latter submission I find myself in total agreement.

The Rent Restriction Act has undergone several amendments. One of these, Act 29 of 1976 came into force on the 20th July, 1976. By section 3(e) of this Act "public and commercial building let for the first time on or after 1st January, 1975" were excluded from the provisions of the Act. So at the time of the commencement of the defendant's tenancy, the Act was not applicable. The letting was subsequent to 1st January, 1975 and prior to 20th July, 1976, that is, 9th July, 1976. It was only by Act 36 of 1979 which came into effect on December 4, 1979 that these premises were made a part of the Act. Section 3(i) so far as is relevant reads:-

> "This Act shall apply subject to the provisions of section 8 to public and commercial buildings whether in existence or let at the commencement of this Act or erected or let thereafter."

Section 8 here gives power to the Minister to exempt classes of premises, and "the commencement of this Act" is the 9th October, 1944. There follows a proviso to this section as subsection (a) to (e) which lists premises to which the Act does not apply, and the last subsection (e)

deals with public and commercial buildings.

This notice to quit is dated the 26th June, 1978. Between the date of letting [illegible], 1976 and the date of notice 26th June, 1978 the premises the subject of this action were not therefore affected by any Act of Parliament. It follows then that the tenancy agreement signed by the defendant was good and valid and notice given in accordance with its terms, that is, one month, was a sufficient and good notice to quit.

It is true to say, however, that since December 4, 1979 all public and commercial buildings not affected by the proviso in section 3 of Act 36 of 1979 and which were let since October 1944 fall within the ambit of the Act.

No amount having been paid since the filing of the suit and notice having been given in accordance with the agreement, the plaintiff is entitled to an Order for Possession.

Now to the counter-claim of the defendant.

It is common ground that the premises were built by a firm of contractors and that after the liability period had expired and the final payment was made by the plaintiff, rain fell and flooded the defendant's premises; that it was discovered that there was a defect in the building executed by the builders and that since the discovery, the Jamaica Industrial Development Corporation has made several efforts to remedy this defect. The defendant complained that her sewing machines were rusted and that goods she had stored in boxes were spoilt as a result of water seeping through the boxes. She sought damages on the basis that there was an implied covenant that the premises were free of defects. It is questionable whether or not Miss Bitter indeed had her goods spoilt.

If she did, then one presumes she would not have been able to sell them and would therefore have them available. Yet though she produced an exhibit of equal vintage, that is a broken lock, she did not see fit to produce one single bit of item to show a water mark or spoilage. Be that as it may, as far as the legal relationship of lessor and lessee goes there is no implied covenant by a lessor as to repairs, or as to the condition of the leased premises and a lessor is not liable to a tenant for defects which may render the premises unfit for occupation even though the lessor may have constructed the defects himself or may have been aware of their existence; neither is he under a duty to warn the tenant of the defects (see Woodfall on Landlord and Tenant Vol.1 27th Edition para 1491).

In Blake vs Woolf (1891) 2 Q.B. 426 it was held that an overflow of water by reason of defective work to the landlord's water supply by the landlord's contractor which resulted in damage to the tenant's goods was not a breach in a case where the contractor was competent and was employed by the landlord. The landlord was held not to be liable. There is no evidence in this case that the plaintiff erred in its assumption that the contractors they engaged to put up the building were not competent. This common law principle is repeated in the tenancy agreement at clause 1 (d) where the defendant's tenant agrees to "keep the leased factory area in good and substantial repair." There is therefore no breach of an implied covenant in this area.

Agreement

By Clause 2 of the Tenancy the plaintiff covenants that:-

> "During the lease (the lessee shall) quietly enjoy the leased factory area without any interruption by the lessor or any person lawfully claiming under or in trust for it."

The defendant contends there were several breaches. She says her door was taken off and left off for two weeks. It is not disputed that the doors to all the buildings on the complex were considered unsafe and that the plaintiff replaced them with steel doors. Mr. Edwards says there was no time when a door was not in place as the doors were taken off and ready-made doors put in their place on the same day.

Mr. Griffiths has unusual hours 8.00 a.m. to 5.00 p.m. and again 9.00 p.m. to 10.00 p.m. He says that if the defendant's door was removed for a few days he would know. Mr. King her witness knows only of a metal door and a grill door to her area. He has been there since its inception night and day and by all accounts her trusted friend. If ever there was such an occurrence would he have forgotten? I venture to think not. The removal of the door was not done for the express purpose of urging the tenant to leave neither was it done deliberately and neither was it done for intimidation and persecution. In either case it would constitute an invasion of her right to enjoyment of the premises, which would be in all certainty a breach. It was instead done to replace one door with a more secure door. This "two weeks removal" I find is a figment of the imagination of Miss Bitter, a person obviously eccentric and disposed to exaggeration. I find that her door was treated as the doors of the other occupants. Mr. Frankson for defendant has asked the Court to say that she is speaking the truth and that since the plaintiff wanted her out it was easy to see how their reason for leaving the door off could be intimidatory to get her sufficiently fed-up and leave. I daresay it is not an illogical argument but I find Miss Bitter totally unreliable and in the face of substantial evidence to the contrary, I cannot accept her version.

She complains that padlocks were placed on her door preventing her from gaining access to her premises. In this connection I find that the plaintiff was exercising its right to re entry as stated in the tenancy agreement, entry without notice, and significantly the padlocks were removed on each occasion after some payment for rent was made; thereafter allowing her to gain entry. She relates a story of one Junior Williams locking the padlock of a grill door which she had put on and going away with her keys. Even though he was employed by the plaintiff as a handyman it cannot be said that in so doing he was acting as agent of the plaintiff. The act of his running away with her keys, is an act similar in my view to her allegations of persons throwing stones at her and general molestation by gangs and other outsiders. Her nature, her general attitude in the box - consistently rubbing her head, the complaints by the plaintiff of her sleeping, bathing and living on the factory complex, her entire demeanour and the impression of her which I formed from the facts of this case make it easy to see how individuals would perpetrate these insensitive acts and pranks on her, making a joke of her, regardless of the crude nature of their acts. All these I find are acts of strangers and third parties and are independent acts for which the lessor is not responsible.

She says Mr. Edwards kept telling her and others that she was not a tenant there and that she was only kotching. As a tenant she was in arrears of rent and I find was asked to vacate. She said she had the rent moneys but the collector, Mr. Hayles, would not take it or come to her for it. On those occasions when she was locked out for non-payment she made her payments at the Jamaica Industrial Development Corporation's

office at Duke Street, Kingston, the office which issues all rental receipts to her. I find that if she intended to pay the rent she would have done just this on the occasions she complains that Mr. Hayles refused the rent. The fact of the matter is that she did not offer any rent and her refusal to pay was a breach of the tenancy agreement, and to constantly remind her that in such circumstances she was not a tenant I hold is no violation. A challenge to the tenants title is not sufficient to constitute a breach of a covenant for quiet enjoyment (see Kenny vs Preen (1963) 1 Q.B. p.499).

I find that there is no sufficient evidence to justify her complaint of harassment of customers and employees. Mr. King her witness says since he went there she never employed anybody and Mr. Griffiths, the plaintiff's witness, said he never saw any work going on her building. I accept there were no employees and no customers and as such no harrassment of such persons.

It is a question of fact whether the quiet enjoyment has or has not been interrupted and this enjoyment to be breached must be substantially interferred with by the acts physical or direct of the lessor. (Woodfall - Landlord and Tenant Vol. 1, 27th Edition p. 575). This has not been proved and the counter-claim therefore fails.

I find myself forced to make a comment and ask why has taxpayer's moneys been wasted as it has been! This lady who has obviously seen better days did unfortunately have her house burnt down. The shock of this loss appears to have largely affected her mental state and continues to affect her as evidenced by her demeanour as she sat in the witness box constantly squeezing both sides of her head and complaining

of headaches. The evidence of medical [illegible] arising from this loss she sleeps constantly in the factory complex, a single woman, alone in this compound a place not designed for living but built in a commercial area for commercial purposes. Indeed she had the other tenants saying she was mad, so much so that she had, on her evidence, to visit a medical doctor to obtain a certificate to remove that impression from her unenchanted neighbours. She complained of a water flooded room, rusting of her machines, molestation by persons yet she remained there in the flooding waters, slept there, produced nothing and paid no rent! And the Jamaica Industrial Development Corporation a large Corporation owners of the premises which is not being used for the purpose it was intended, not fulfilling its role but rather depriving someone who could have usefully used it for the purpose it was intended to serve, was not sufficiently effective to take steps to have this occupant removed after six years of non-payment of rent and continuing. It is my view that the Corporation has displayed nothing here which indicates even a modicum of urgency in a situation where stirring activity alone could have dispelled this disaster. The delay is absolutely inexcusable. The entire exercise was effected in a most dilatory manner, and there is nothing to commend it.

On these facts there will be judgment for the plaintiff on the claim and counter-claim for $5,400 with costs to be agreed or taxed and an Order for Possession on or before 21st August, 1982 is granted.