

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CLW302/1991

| | | |
|----------------|-------------------------------|------------------|
| BETWEEN | RUSSELL GEORGE WALLACE | PLAINTIFF |
| A N D | PHILMORE SCOTT | DEFENDANT |

Ransford Braham for Plaintiff

Miss Nancy Anderson and Miss Michelle Brown for Defendant

Heard: April 21, 22 and June 11, 1998.

CORAM: WOLFE C.J.

On the 25th day of April, 1991, the plaintiff and the defendant entered into a lease agreement, made in writing, whereby the defendant agreed to let to the plaintiff:

"The entire ground floor of building situate at Lot 103 with parking area at the front of the said building together with Lot 10A all being a part of Dairy Subdivision, Main Street, Discovery Bay in the parish of St. Ann."

In addition thereto, the plaintiff purchased from the defendant all the stock in trade contained at Scott's Hardware, owned and operated by the defendant.

Subsequent to the execution of the lease, the plaintiff entered into possession and the relationship of landlord and tenant went well until the notice

dated August 19, 1991, whereby the defendant purported to terminate the plaintiff's lease as of September 1991.

September arrived and the plaintiff continued in possession and on the 1st day of December, 1991, he was rudely awakened from his sleep by two persons who gave him some information. He hurried to his business place, arriving there by about 7.00 a.m. On arrival he saw a group of persons assembled. Included among the persons assembled were persons employed to the defendant. The people assembled were in a boisterous mood. At the same time a celebration party was in progress. People were drinking and making merry.

The perimeter fence, enclosing the premises on which the hardware store is sited, had been removed. There was no prior discussion with the plaintiff, by anyone, about the removal of the fence.

The removal of the fence, the plaintiff contends, exposed his business to great risk and eventually resulted in extensive loss to him. Three factors gave rise to the loss, viz.

- (i) As a result of the defendant's action the plaintiff's business place had to be closed from 2.12.91 to 6.12.91.

Breach of quiet enjoyment.

- (ii) The removal of the fence caused the plaintiff's goods which were stored outdoors on the premises to be stolen.

- (iii) As a result of the Breach of Quiet Enjoyment of the leased premises the plaintiff suffered loss of profit due to the closure of his business.

The defendant in answer to the plaintiff's claims admitted pulling down the fence but said he did so after discussing the matter with the plaintiff. He denied that the plaintiff lost any goods as a result of the removal of the fence. The defendant counter claimed to recover \$394,670.00 as loss sustained due to the action of the plaintiff.

The Counter Claim, I must say, was not seriously pursued and absolutely no evidence was adduced in support thereof.

On the evidence adduced, I find as a fact that the defendant removed the perimeter fencing without the permission of the plaintiff and that in so doing he left the area leased to the defendant unprotected against intruders.

I further accept the evidence of the plaintiff that following the removal of the fence on the Sunday, there were hostile persons at the premises thereby causing the plaintiff to seek legal advice and that the plaintiff was only able to resume possession of the premises after he obtained an injunction from the court restraining the defendant from any further molestation of the plaintiff.

I am also satisfied that for four (4) days the plaintiff was unable to open his business place and this resulted in the loss of income.

The Court accepts the plaintiff's evidence that the undermentioned stock was lost as a result of the removal of the fence.

| | | | |
|----|---|---|---------------------|
| 1. | 308 bags of cement at \$83.00 per bag | = | \$ 25,564.00 |
| 2. | 8774 sq. ft. of lumber at \$18.50 per sq. ft. | = | 162,319.00 |
| 3. | 49 sheets of ply board at \$295.00 per sheet | = | 14,455.00 |
| 4. | 298.68 sq.ft. of clinker board at \$14.50 per sq. ft. | = | 4,330.00 |
| 5. | 1 water hose | = | 315.00 |
| 6. | 4 Tons 1/2" steel at \$11,040.00 per ton | = | 44,160.00 |
| 7. | 100 bundles of Canadian Shingle at 625.00 per bundle | = | <u>62,500.00</u> |
| | | | \$313,643.86 |

The plaintiff testified that the per diem sale was \$60,000

and the place remained closed from the Monday -

2.12.91 until 5.12.91 - four (4) days - **\$240,000.00**

Re damage to Motor Car

The defendant admitted damaging the vehicle but contests the cost of repairs.

From the evidence, I find that the damage was minimal and that the sum of \$35,000.00 claimed is exorbitant. Had the damage been extensive the plaintiff would have had the car repaired but up to the time of trial no repairs had been effected to the vehicle. I allow an amount of \$15,000 for repairs

\$15,000.00

The claims for refund made to customers, electricity used by defendant, loss of use and the four padlocks are all refused as no evidence was adduced in proof of these claims.

The claim for an injunction was not pursued as the plaintiff gave up possession of the leased premises prior to the trial of the action.

The claim for damages for breach of covenant of quiet enjoyment, breach of contract and trespass would in my view, attract an award of nominal damages only. I say this because the real claim is for loss of profit owing to the breaches referred to above. A substantial award, having been made under the heading, loss of profit, I would therefore refrain from making any award under the above mentioned heads.

Accordingly, there will be judgment for the plaintiff in the sum of \$568,643.86 with costs to be taxed, if not agreed.