

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2018/0146

BETWEEN:

ANTIGUA HANGARS INC

Claimant/Respondent

And

SFS ANTIGUA OPERATIONS

Applicant/Defendant

2020: November 30th

Appearances:

Ms. Kamilah Roberts Counsel for the Applicant/ Defendant

Ms. Sherrie-Ann Bradshaw for the Respondent/Claimant

Ruling on Application for Discharge of Injunction

- [1] **SMITH, J.:** The Court is being asked to decide whether or not in an inter partes hearing to discharge an interim injunction or whether to order that the injunction remain in place.

The Background

- [2] The defendant/applicant (SFS Antigua Operations Limited) hereinafter referred to as “SFS” obtained an interim injunction against the claimant/respondent (Antigua Hangars Inc.) hereinafter referred to as “AHI” on 14th September, 2020. The application was made without notice pursuant to Rule 17.1 (b) and Rule 17.4 of the Eastern Caribbean Civil Procedure Rules 2000. The relief prayed in the application was as follows:-

(a) that AHI whether by itself or by its directors, servant, agents, employers or otherwise be restrained from entering and taking possession of the leased premises consisting of hangars and office space, both hangars being located on registration section Barnes Hill

and Coolidge, Block 41 2294a Parcel 156 (herein after referred to as the leased premises) pending the parties or further order of the Court.

(b) That AHI whether by itself or by its directors, servants, agents, employees or otherwise be restrained from removing, damaging or otherwise interfering with the property of the SFS, its employees, sub-tenants or customers as located in the leased premises, pending the determination of the pending legal proceedings between the parties or further order of the Court.

(c) That AHI whether by itself or by its directors servants, employees or otherwise be restrained from rejecting the payment of rent for the leased premises from SFS pending the determination of the pending legal proceedings between the parties or further order of the Court.

(d) that AHI whether by itself or by its directors, servants, agents, employees or otherwise be restrained from entering the leased premises without prior notice to the tenant SFS as required by the lease agreement dated August 2014 pending the determination of the pending legal proceedings between the parties or further order of the Court.

otherwise (e) that AHI whether by itself or by its directors servants, agents, employees or otherwise be restrained from harassing the SFS its employees, sub tenants or customers or interfering with the tenant's right to peaceably and quietly hold use and occupy.

otherwise (f) That the AHI whether by itself or by its directors, servants, agents, employees or otherwise be restrained from harassing the tenant, SFS, its employees, subtenants or customers or otherwise interfering with the defendants right to peaceably and quietly hold, use and occupy the leased premises pending the determination of the pending legal proceedings between the parties or further order of the Court.

(g) The costs of the application to be paid by the Antigua Hangars Inc.

[3] The hearing for the discharge of the interim injunction came on before this Court with SFS Antigua stating through Counsel's Submissions that the areas of contention were:-

- (1) That they, SFS had stored a boat on the premises for one weekend prior to the passing of a storm,
- (2) That they, SFS had sublet the premises to Samaritan Purse without the consent of the landlords AHI and that the said consent to sublet was unreasonably withheld by the said landlord AHI,
- (3) The landlord AHI had failed to adhere to the clause of the lease stipulating how a breach of the lease was to be dealt with.

[4] In the substantive matter the Claimant had filed a claim form in March 2018. The claim was for:

1. Possession of airport hangar and associated space on lands situated at the VC Bird International Airport, St. Georges.
2. The Claimants were also seeking an order that the Defendant lease dated 14th August, 2014 should be terminated due to the breach of said lease by the Defendant,
3. Interest,
4. Any further relief as the Court would deem fit; and
5. Costs.

[5] This is what the substantive claim surrounded.

[6] At the hearing for the discharge of the interim injunction SFS Antigua Operations highlighted that Antigua Hangars Inc. had not adhered to the terms of the lease in relation to the procedure to be adopted in the face of an alleged breach. At page 4 clause 13 of the lease agreement the rubric reads:-

Remedies on Default

Termination

In the event of a default the lease may be terminated at the option of the landlord by written notice to the tenant. Whether or not the lease is terminated by the election of landlord or otherwise, the landlord shall be entitled to recover damages from the tenant for the default and landlord may re-enter take possession of the premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for danger and without having accepted a surrender.”

Submissions

- [7] Counsel for SFS argued that the AHI had failed to serve a valid notice of default on her clients thus resulting in a failure to comply with clause 4.3. of the lease. Counsel indicated further admitted to subletting the premises to Samaritan Purse (December 2017) indicating that AHI had unreasonably withheld their consent for them to do so. Also, AHI took issue with the storage of N registered planes being housed on the leased premises.
- [8] Counsel for AHI countered that the SFS had breached the lease agreement in the following ways:-
- 1) They had stored a boat the on the premises for one weekend during the approach of a storm,
 - 2) The tenant had sublet the premises without the consent of her client AHI,
 - 3) The tenant, SFS had failed to carry out important maintenance work on the leased premises.

Discussion

- [9] In applying the principles of the **American Cyanamid**¹ case the Court determines that there are serious issues to be tried. Thus a serious question would be considered to be made as long as it is that SFS's case is not of a frivolous and vexatious nature. This requirement imposes a very low burden as the assessment of the case at this stage does not take into account the relative merits of the case. In the case before the Court it is clear that this is not a frivolous nor vexatious claim. The Court determines that AHI was bound by the terms of the lease and was obligated to give reasonable notice of the breach(s). This was not done.
- [10] Further, Counsel for AHI argued that her client AHI the owner of the premises was entitled to enter upon the premises as she wished. However this re-entering of the premises must be done in accordance with the lease and must not interfere with the tenant's quiet use of the property. This is a basic tenet of the Land Lord and Tenant relationship. There are other serious issues to be determined at trial pertaining to the upkeep and maintenance of the hangars, the subletting issue and the storage of the boat albeit for one weekend and how these issues were to be resolved. These are all serious considerations.

Balance of Convenience

- [11] Here, it is for the Court to weigh the respective inconvenience or loss to each party. The competing factors and weight to be attached to each, varies from case to case and cannot easily be listed but they have been found to include the deprivation of employment; the importance of preserving confidential information; damage to the goodwill of the business and the attitude and conduct of the Defendant. Here, the attitude and conduct of Antigua Hangars is particularly relevant. The Court must find that the granting of the injunction and the decision to extend such injunction lies in favour of the applicant and will do more good than harm
- [12] Lord Diplock, in **American Cyanamid**, concluded that where the other factors appear to be evenly balanced, the court should take such measures as are calculated to preserve the status quo. In business protection cases however, events can move quickly and at what point is the status quo to be judged from? It is the view of this Court that the status quo should be maintained.

Damages are not an adequate remedy

- [13] The Court in arriving at the decision that damages are not an adequate remedy may consider the option which will cause the least amount of irremediable prejudice. The basic principle is that the Court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. The authorities submitted point to the principle that where land is concerned, it is

¹ [1975] AC 396

presumed that damages are not an adequate remedy and no enquiry is ever made in that regard. Justice Brooks in the case of **Nunes vs. Jamaica Redevelopment Foundation Inc**² at paragraph 67 stated:-

“the reason behind that principle is that each parcel of land is said to be “unique” and have a particular and special value” (see page 32 of Specific Performance 2nd Edition by Gareth Jones and William Goodheart) As a result of that reasoning, a money payment could never secure a parcel with all the attributes of that which was originally lost.”

[14] The Counsel for AHI argued that a hangar was to be treated as chattels and that it can be removed and therefore damages are an adequate remedy. The Court does not find favour with this argument. In this case the Court finds that damages will not be an adequate remedy.

[15] Having read the authorities submitted by the counsel for SFS and having listened to the very fulsome submissions of Counsel on both sides I wish to thank them for their industry.

[16] The Court's Order is as follows:-

- I. It is the Court's view that the interim injunction must continue until the determination of the substantive claim at trial.
- II. Further it is ordered that Antigua Hangars Inc. is to receive all outstanding rental payments from SFS Antigua Operations Limited which were previously refused from September 2020.
- III. The Court office will set the date for trial.
- IV. The Antigua Hangars Inc. is to pay the costs of SFS, in the sum of \$800.00 to be paid within 14 days of this Order.

Anne-Marie Smith
High Court Judge

² 2019, 90 WIR 588