

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2011/0237

BETWEEN:

JOHN FARIS

Claimant

and

LEGO DEVELOPMENT LTD

Defendant

Appearances:

Mr. John E. Fuller for the Claimant
Mr. Hugh Marshall Jr. for the Defendant

2014: January 27
 May 6

JUDGMENT

- [1] **Cottle, J.:** The Claimant is a merchant who was a tenant of the Defendant. The Defendant is a company that, among other things, own and leases property. The Claimant was a tenant of the Defendant from 2004.
- [2] In October, 2010, the Claimant was given notice to quit the premises he was leasing from the Defendant, on All Saints Road. There had been issues concerning the timely payment of rent and the amount of rent agreed upon. The Claimant occupied the premises until December, 2010, then he left the island leaving goods in a storeroom on the property. On his return to Antigua, he found the storeroom locked and was unable to access his goods. The Defendant had seized the goods for non-payment of rent. The goods were returned to the Claimant approximately six months later.

The Claimant's Case

- [3] The Claimant has been a tenant of the Defendant since 2004 at which time he paid \$8,000.00 a month. Later in 2004, he increased the amount of space that he rented and his rent increased to \$13,000.00. In 2005, he again increased the space rented and the rent was increased to \$16,000.00. Part of the additional space was used as a storeroom. In July 2010 some of the additional space was given up and the rent decreased to \$11,000.00. The Defendant wanted \$11,500.00, \$10,000.00 rent plus \$1,500.00 Antigua and Barbuda Sales Tax (ABST); however the Claimant agreed to pay \$11,000.00. There was never a written agreement for the rental of the property.
- [4] Throughout the length of the tenancy there was a problem with water leakage from the roof and the Claimant sustained damage to property in the store. He made complaints to the Defendant but nothing was ever done about it.
- [5] On September, 2010, the Claimant received a letter demanding payment for a shortfall in the rent paid for July, August, September; the difference between \$11,000.00 and \$11,500.00, ABST on the \$11,500.00 and monies deducted by the Claimant for a stereo taken by the Defendant from the store of the Claimant.
- [6] On 1st October, 2012, the Claimant received a Notice to Quit before 1st November, 2010.
- [7] The Claimant and David Hadeed, a representative of the Defendant, came to a verbal agreement allowing the Claimant to occupy the premises until the end of December, 2010. There was also an agreement that the Claimant could continue to use the storeroom beyond that period.
- [8] At the end of December, the Claimant moved his goods into the storeroom, locked the area and left the island. In his return at the end of January, he found the lock on the storeroom changed and was unable to access his goods which were valued \$450,000.00. The goods had been impounded by a bailiff levying distress for arrears in rent in the amount of \$60,075.00, which the Claimant did not owe.

[9] The goods were impounded until July, 2011. When they were returned there was extensive damages caused by rodents and water. He was forced to sell that at 50% discount. There was also loss incurred from the inability to sell the goods for the six (6) months that they were impounded.

[10] In his Claim Form the Claimant claimed for:-

- A) An injunction to restrain the Defendant from distraining upon the Claimant's goods.
- B) A declaration that the rent was \$11,000.00 per month when the Claimant's tenancy was terminated by the notice to quit on 1st October, 2010.
- C) Damages for breach of an implied covenant on the part of the defendant to keep the roof in good repair.

[11] In his Statement of Claim, the Claimant claims to:-

- 1) \$130,585.00 (damage to goods).
- 2) \$75,000.00 and continuing at \$25,000.00 per month (loss of business).
- 3) Damages.
- 4) Interest.
- 5) Costs.

The Defendant's Case

[12] The Claimant was a tenant of the Defendant in a building managed and leased by the Defendant. Initially the rent paid by the Claimant was \$16,000.00. At the request of the Claimant a meeting was held in June, 2010; the size of the space rented by the Claimant was reduced and the rent was reduced to \$13,225.00, inclusive of ABST, to be paid on the 1st of the month, effective 1st July, 2010. Prior to this agreement the Claimant's rental rate was exclusive of ABST as it commenced prior to the introduction of ABST.

[13] On or around 15th July, 2010, the Claimant paid the Defendant \$10,000.00. On 28th July, 2010, the Claimant paid \$1,500.00 and said that was all he had.

- [14] There was no payment on 1st August, 2010. On or about 18th August, 2010, the Claimant made a payment on \$11,000.00. He promised to pay the outstanding balance.
- [15] On 20th September, 2010, the Claimant made a payment of \$10,000.00. He said that was all he could afford and the Defendant would have to accept it. As a result the Claimant was issued a notice to quit on 1st October, 2010. The Claimant ignored the notice to quit and remained in the premises until December, 2010. He did not pay rent for the period October to December, 2010, and he did not pay the outstanding balance from July to September, 2010.
- [16] In December, 2010, the Claimant informed the Defendant that he would vacate the property at the end of December, 2010 and he was relocating to the USA. On 125th December, 2010, he returned the keys to the property. After his departure it was discovered that the Claimant had left goods stored on the premises.
- [17] The Claimant returned to Antigua in January. Upon his return he attempted to negotiate for the rental of space from the Defendant and to access his goods. He did not pay his outstanding rent owed of \$60,075.00. He was refused access to the building.
- [18] The Defendant sought the services of a bailiff to levy a distress on the goods. The auction of the goods was stopped by a without notice application for an injunction brought by the Claimant. On 14th July, 2011, the Claimant removed his goods from the premises. At the time of removal no complaint was made about the state of the goods. The bailiff who was present observed no damage to the goods. The Claimant signed a receipt of acknowledgement that he received the goods in good condition.
- [19] It has come to the attention of the Defendant that the Claimant made a claim and received payment from State Insurance Company for damaged goods. The Defendant believes that the claim was for the same goods that the Claimant is claiming for in this claim.

- [20] The Defendant counter claimed for the lost of rental profit between July, 2010 and July, 2011, less the amount actually paid by the Claimant, in the amount of \$126,200.00.
- [21] There is a witness statement from the bailiff stating that there were no damaged goods in the storeroom and that the Claimant signed a receipt stating that the goods were in good condition.
- [22] There are copies of letters exchanged between the parties, pictures of alleged damage submitted by the Claimant, and correspondence from State Insurance Corporation, detailing a payment made to the Claimant for damage to goods.
- [23] It is undisputed that the Claimant was a tenant of the Defendant, and the Claimant owes the Defendant for unpaid rent. The Claimant admits that he did not pay rent, upon advice from his lawyer, for the months of November and December. He admits to paying less than what was due for the month of September, allegedly because the Defendant owed for a stereo. There is a dispute as to the actual rent agreed for the period commencing 1st July, 2010, whether it was \$11,000.00 or \$11,500.00 plus ABST (\$13,225.00).
- [24] The Claimant also does not dispute that he left the island in December, 2010, leaving goods on the premises, but somehow, he claims that he gave up the tenancy at the end of December and therefore owes no rent for the period beyond December, 2010.
- [25] The Claimant claims for:-
- A) An injunction to restrain the Defendant from distraining upon the Claimant's goods. This no longer an issue as the goods have long since been released.
 - B) A declaration that the rent was \$11,000.00 for the period July, 2010 to October, 2010, and that having received a notice to quit effective November, 2010, the Claimant was no longer a tenant after 1st November, 2010: In his witness statement the Claimant admits to discussion of the payment of ABST by the Claimant, which would result in the rent being increased. The Defendant references this discussion as well. This is cited as the reason for the increase in

the rent. However, the Defendant states that the rent was increased to \$11,500.00 plus ABST, therefore the rent was \$13,225.00. The Court is minded to believe the Defendant in this matter. The rent plus the ABST. This serves to highlight the importance of having matters such as these put in writing, to both clarify and document what is agreed and avoid future disagreements. The Claimant would also like the Court to declare that having received a notice to quit effective 1st November, 2010, he is no longer a lease from that date. This would be true if the Claimant had heeded the notice and vacated the premises. But it is inconceivable that the Claimant would expect to remain in possession of the premises but not be liable for rent, by virtue of receiving the notice to quit. The tenancy remained a periodic tenancy and the Claimant is still liable for the rent for that period.

- C) Damages for breach of an implied covenant on the part of the Defendant to keep the roof of the leased premises in repair as a result of which the Claimant has suffered loss and damage. The Claimant does not provide any evidence that he had a problem with a damaged roof prior to the matter of the non-payment of rent and the seizure of his goods. He signed a statement that the goods were in good condition when they were finally released. In 2008, the Claimant received a payment from the State Insurance Cooperation for damaged goods. If there was damage during the course of the tenancy it appears to have been paid for by the insurance company.

Counterclaim

- [26] The Defendant has counterclaimed for rental payments; the shortfall for the period July to October, plus full rent for the period November to June, 2011 at the rate of \$13,225.00. The Court would agree that the Defendant is owed the shortfall in rent, plus full rent for November and December. However, the Defendant seized the property in January, 2011, the Claimant had neither access to occupy or access to remove his goods. The Defendant remained in possession of the goods until June, 2011. The Defendant could have removed the goods and stored them in another location, making the property available for rental. The goods did not occupy the whole premises; they were stored in a room at the rear of the property. The front section of the property could have been rented.

- [27] Having regard to the above analysis it follows that the counterclaim for rent or mesne profits after January, 2011 cannot be granted. The court finds for the Defendant on the counterclaim and awards the Defendant the shortfall in the rental being the difference of the sums actually paid and the rental due which was \$13,225.00 per month. This amounts to \$1,725.00 for the month of July when only \$11,500.00 was paid, \$2,225.00 for August and \$3,225.00 for September. No rent was paid for October, November or December, 2010. The rental unpaid totals \$46,840.00.
- [28] From the evidence before this court it is clear that the Claimant had cause to complain about the Defendant's conduct. I accept the Claimant's position that the goods that were distrained upon were worth far more than the rent which was due but I am constrained to consider only the matters which the Claimant had chosen to plead. I have earlier set out the relief he sought. The question of an injunction is now moot. The goods have already been returned to him. I decline to grant the declaration that the agreed rental was \$11,000.00 per month as I preferred the evidence of the Defendant on that point.
- [29] The third item of loss pleaded by the Claimant concerned damages to his goods caused by an alleged failure to keep the roof in repair. The evidence of the Claimant was that he went into occupation since 2004 and "from almost the very beginning the premises leaked", causing damage to his goods. If this were the case it is unlikely that the Claimant would have continued to do business in the premises without addressing the roof problems. Had the landlord failed he would have fixed the leak himself and deduct the cost from the rental due. The fact that this complaint is only being raised in 2012 leads me to doubt its veracity. Instead I prefer the evidence of Derek Hadeed who says that the Claimant made no complaints about damaged goods from a leak or leaks in the roof.
- [30] It follows that as none of the pleaded items of loss as per the claim form has been established by evidence. The claim is dismissed. The Defendants are entitled to prescribed costs on the award of the counterclaim.

Brian Cottle
High Court Judge