

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2009/0398

BETWEEN:

GENERAL INVESTMENTS LIMITED

Claimant

and

THE ATTORNEY GENERAL

Defendant/Ancillary Claimant

and

JOAN MARQUIS

Defendant/Ancillary Defendant

Appearances:

Ms Cynthia Hinkson Oulah for the Claimant

Ms Brender Portland Reynolds for the Defendant/Ancillary Claimant

Mr Dexter Theodore for the Ancillary Defendant

2011: 19th October
2011: 12th December

DECISION

[1] **BELLE J:** This matter had been scheduled for trial on 19th October, 2011 but the said date the Court made an order vacating the trial date and setting a new trial date of 25th September, 2012.

[2] On 19th October, the Court also made an order that the parties, being the Claimant, the Defendant/Ancillary Claimant, and the Ancillary Defendant “are to file and serve submissions in 14 days on the question:

“What is the effect in law of the fact that the sublease was set to expire on the same or after the head lease?”

Other directions were made for trial.

- [3] The parties filed their submissions but not in time for the Court to deliver a decision of the matter on 30th November, 2011 as originally planned. On 30th November, no party raised any objection to the matter being further adjourned to 12th December, 2011, for the delivery of the decision in light of the fact that the Claimant never filed its submissions until the 30th November, 2011 and the Court never saw any of the other submissions which were filed earlier until the said 30th November, 2011.

The Submissions

- [4] All three parties focused on three main issues. The first issue was whether the applicable law which determine the main issue was the Civil Code of Saint Lucia or the Common Law of England. In that regard the provisions of Article 917A of the Civil Code fell to be construed.
- [5] The Claimant and the Defendant/ Ancillary Claimant were of the view that the common law could not apply. The Claimant thought that the common law could not apply because there were other provisions of the Civil Code which provided a just solution, while the common law position would come into conflict with the Civil Code and lead to an injustice. Counsel for the Claimant argued that the case of **Milmo v Carreras**¹ turned on the reference to the lease being with the landlord. "Landlord" was defined as including "the person or persons" being for the time being entitled to immediately vacate expectant on the term hereby created."
- [6] Counsel for the Claimant also relied on Articles 1515, 1516, and 1530.
- Article 1515 states that:
- "Persons holding real property by sufferance of the owner, without lease are held to be lessees and bound to pay the annual rent value of the property."*
- Article 1516 states:
- "If the lessee remain in possession more than eight days after the expiration of the lease, without any opposition or notice on the part of the lessor, a tacit renewal of lease take place for another year, or on a term, or the term for which the lease was made, if less than a year, and the lessee cannot thereafter leave the premises, or be ejected from them, unless due notice has been given as required by law."*

¹ [1946] 1 All E.R. 288.

Article 1516 states:

"When notice has been given the lessee cannot claim tacit renewal although he has continued in possession."

[7] Counsel also relied on Article 1530 which stimulates that,

"The lessor has a right of action in the ordinary course of law, or by summary proceedings, as prescribed in the Code of Civil Procedure."

And sub-paragraph (2) of the said Article which states:

"To recover possession of the premises leased in all cases where there is a cause for rescission, and where the lessee continues in possession, against the will of the lessor, more than three days after the expiration of the lease, or without paying the rent according to the stipulation of the lease if there be one or according to Article 1515 where there is no lease."

[8] Counsel for the Claimant argued in conclusion that the effect of these provisions is that the head lease was tacitly renewed and the sub-lessor (sublease) could therefore be continued, consequently entitling the Defendant to demand possession of the leased premises from the Ancillary Defendant.

[9] Counsel for the Defendant/ Ancillary Claimant also thought that the Civil Code applied but was of the view that the Ancillary Defendant was a trespasser.

[10] Counsel argued that the Ancillary Defendant's entitlement to occupy the premises was governed by the sub-lease agreement between the Claimant and herself. The terms of the sub-lease stipulated that the agreement was for a period of one year commencing from 1st May 2006. By efflux ion of time the expiration of the lease agreement was 30th April, 2007.

[11] Counsel was also of the view that the lessor/ the Defendant was in the circumstances of the lease under no obligation to issue a notice to quit, to terminate the lease. Counsel replied that proposition on Article 1561 of the Civil Code which provides that the lease if written terminates of course and without notice, at the expiration of the term agreed upon.

[12] Consequently, Counsel argued, the sub-lease validly expired and determined on 30th April, 2007 and the Ancillary Defendant was not thereafter entitled to remain on the

premises. Counsel concluded that the continued occupation by the Ancillary Defendant without the consent of the Crown renders her a trespasser.

[13] The Ancillary Claimant submitted that the Ancillary Defendant could not be a tenant at sufferance. The Law relied upon in this regard is the Civil Code since Article 1515 spoke to the same.

[14] Guidance was provided on the law in the case **King v Duval No. 2935**, Counsel argued. According to counsel, the case established that a tenant at sufferance is a person who occupies with the authority and consent of the owner.

[15] Counsel argued that Salmon CJ (Ag) addressed the issue with reference to Article 1515 which stipulated that “persons holding real property by sufferance of the owner, without lease, are held to be lessees, and bound to pay the annual value of the property.”

[16] Counsel quoted from the cited decision as follows:

“This article corresponds to Article 1608, of the Canadian Civil Code, Mignault, Driot Civil Canadian² discussing the topic of lease and hire, says-

The words “simple tolerance” of Article 1608 excludes the idea of adverse possession by the occupier. It is necessary that the occupier occupies the immovable for the owner and with recognition of this proprietary title.

In effect the owner must have given him permission, at least tacit to enter in the enjoyment of the property, or of continuing this enjoyment; otherwise it cannot be said that the property is occupied by simple tolerance of the owner, and moreover, the third paragraph of Article 1233 (St. Lucia 1163), which is to be read with Article 1608 and completes it, makes it clear that Article 1608 governs the case where immovable are occupied with the permission of the owner.”

[17] Counsel argued that the Ancillary Claimant has consistently sought to have the Ancillary Defendant removed from the premises but to no avail. This clearly demonstrates that the Ancillary Defendant has not remained in occupation of the premises with the permission of the Ancillary Claimant.

² Vol.7 p.246

- [18] Counsel conceded that the Ancillary Claimant is only able to grant a sub-tenancy for a lesser period than that which it holds. The tenancy of the Ancillary Claimant has since expired and the Ancillary Claimant is incapable of acting as landlord. Furthermore, the head lessor has expressed a desire to have the Ancillary Claimant vacate the premises.
- [19] Viewing the provisions of Article 917A in association with Articles 955, and 961-964; Counsel for the Ancillary Claimant claimed as a result of these Articles, it would be impractical and impossible for the Ancillary Claimant to enter into an arrangement that in effect binds the Claimant without the acceptance and intervention of the Claimant.
- [20] Counsel submitted that there is no privity of contract between the Claimant and the Ancillary Defendant. Counsel submitted also that in response to the contention that for an assignment to exist there must be a transfer of all the terms between the parties that the terms and conditions of the head lease are different to those of the sub-lease. The head lease carries a rental term of \$4,400.00 per month, while the rental in the sub-lease is \$100.00 annually.
- [21] Counsel argued that a contract though it may benefit a third party does not mean that the person is entitled to right of action to enforce it. However, having regard to the fact that the consent of the Claimant was at all material times obtained for all requested extensions may translate into an assignment of the lease.
- [22] The Ancillary Claimant's position however is that the Ancillary Defendant is a trespasser by virtue of her failure to vacate the premises on the expiration of the lease or any extensions thereof. This was the second issue raised.
- [23] The Ancillary Defendant relied on the common law position enunciated in **Milmo v Carreras** and argued that the sub-lease between the Ancillary Claimant and Ancillary Defendant was assigned to the Claimant.
- [24] Pursuant to Article 917A (3), the Court has to determine whether there is a contradiction between the Law of England and the Civil Code in so far as an assignment of the lease is concerned. This is the third issue.

- [25] I see no contradiction between the Law of England and the Civil Code on this issue. The Civil Code simply does not deal with the operation of law in relation to a sublease extended to the full length of the term of the head lease. It does deal with the position of a creditor who is affected by the debtor's failure to exercise his rights. See Article 964 of the Code. But this Article gives the creditor a choice.
- [26] At common law the rule of assignment applies only where the tenant creates an interest which is certain to last as long as or longer than his own. This rule goes back as far as **Oxley v James**³. In the case at the bar where the head lease was repeatedly extended the presumption would be that the head lease could outlast the sub-lease.
- [27] **Milmo v Carreras** can be distinguished on the basis that in that case the sublease was extended to the date when the head lease would expire. This would have been in breach of the terms of the head lease.
- [28] In the instant case, the head lessor gave permission to extend the lease after the sub-lessor requested same and therefore the head lease was extended and the subsequent dealings created a tenancy from year to year between the Claimant and the Defendant/ Ancillary Claimant.
- [29] **Milmo v Carreras** would not apply to the circumstances of this case where the operation of the sub-lease up to and beyond the date of the head lease was done with the Claimant lessor's permission.
- [30] The Ancillary Defendant therefore continues to occupy the premises as a trespasser at this time and would have an obligation to pay damages as such.
- [31] This conclusion is not intended to prejudice any other defence which the Ancillary Defendant may have against the Ancillary Claimant's claim.

Francis H V Belle
High Court Judge

³ (1844) 13 M.&W. 209