

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 248 OF 2007



BETWEEN:

LEROY LEWIS

Claimant

V

RUDY BAILEY

Respondent

Appearances:

Ms. Nicole Sylvester and Ms. Patina Knights for the claimant
Mr. Andrew Cummings, Q.C. and then Mr. Duane Daniel for the defendant

2009: April 29th
August 25th

JUDGMENT

- [1] **JOSEPH, Monica J.** This is a claim for a declaration that the defendant is not entitled to enter, use or operate the claimant's business known as Master Clean (the demised premises): an order for recovery of possession of the demised premises situate at Rose Place in which the business Master Clean operates: an injunction restraining the defendant by himself or his servants or agents from entering, using or operating the claimant's business known as Master Clean.

ISSUES: On behalf of the claimant

- [2]
1. On what grounds and on what terms may the lease agreement be terminated?
 2. Was the claimant in breach of the lease agreement that justified termination?
 3. Whether the defendant had the authority to seize possession of the said property located at Rose Place which housed Master Clean.
 4. Whether the defendant acted lawfully in taking over the claimant's business.

BACKGROUND

- [3] The contract between claimant Magikleen Inc (lessor) and defendant Leroy Lewis (lessee) was for the lease of the demised premises comprising the ground floor portion of the building situate at Lowe Bay Street Kingstown. On 2nd July 2009, the defendant entered and took possession of the demised premises and operated the cleaning business. The Second Schedule of the lease reads:

“Rent shall be paid on the first day of each and every month during the term of the lease as follows:

In the first year Twelve thousand dollars (\$12,000.00) per month
In the second year Thirteen thousand dollars (\$13,000.00) per month
In the third year Fourteen thousand dollars (\$14,000.00) per month
.....”

- [4] The claimant admitted that rent had not been paid on time in respect of the month of June. He testified:

“Rent due on first day of June in respect of month of June. Offer payment on 1st July. Thirty days have expired. Repossession taken on 2nd July. If payment due on 1st June and repossession on 1st July thirty days have expired. I was in breach of the lease for that particular month. Based on lease the landlord had right to reenter.....”

“It would be prudent for a businessman to pay rent on time. I didn’t know he wanted me out but the rent was not paid by the first of the month.”

- [5] At the close of the case for the claimant, Mr. Daniel for the defendant, elected not to lead any evidence, and indicated that he would make and stand on a submission.

SUBMISSION BY MR. DANIEL FOR THE DEFENDANT

DETERMINATION OF LEASE:

- [6] Mr. Daniel submitted that the claimant’s claim is essentially for recovery of possession of the demised premises which was leased by the defendant to the claimant. Being an interest in land, the parties are bound by the terms of the contract.
- [7] In light of the claimant’s admitted failure to pay rent on time, the defendant is entitled to reenter the demised premises and determine the lease. Counsel referred to paragraph 4

(a) of the Lease Agreement which made provision for reentry for non payment of rent when thirty days have passed: The defendant alleges that the claimant paid half of the rent for May. The claimant denied that he owed rent for May 2006 but was unable to produce receipts or cashed bank cheques. I accept that part of the rent for May has not been paid. Paragraph 4 (a) of the lease reads:

"PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED as follows:

(a) If and whenever during the said term the said rents hereby reserved or made payable or any of them or any part thereof shall be in arrear and unpaid for thirty (30) days next after becoming payable (whether formally demanded or not) or if and whether there shall be any breach or non-performance of any of the agreement, or covenants on the part of the LESSEE herein contained or if the LESSEE (being an individual) shall become bankrupt or if the LESSEE for the time being shall enter into an arrangement or composition for the benefit of the LESSEE'S creditors or shall suffer any distress or execution to be levied on the LESSEE'S goods then in any of these cases it shall be lawful for the lessor at any time thereafter and notwithstanding the waiver of any previous right of reentry to enter into and upon the demised premises or any part thereof in the name of the whole and thereupon the said term shall absolutely cease and determine without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent claim or breach of the covenants herein contained;"

- [8] The defendant does not need to make a formal demand for payment of rent. The wording of the Lease Agreement is clear: if rent is due whether the claimant makes a formal demand or does not make a formal demand, the term of the lease 'shall absolutely cease'. There may be a case where a landlord may not desire to determine a lease so some step must be taken by him to indicate if he intends to exercise his right of reentry. The defendant indicated what his intention was by physical entry. By that act the defendant brought the lease to an end and is entitled to possession. Woodfall on Landlord and Tenant 25th ed. P 983, Para 2108 reads:

".... Provisos for entry in leases are conditions annexed to the term, and are to be construed like other contracts, according to the intent of the parties to be collected from the words used, and not with the strictness of conditions at common law; therefore where here is a proviso in a lease, that on non payment of rent or non performance of any of the lessee's covenants the term shall cease, the lessor and not the lessee, has the option of determining a lease upon a breach made. For the lease to determine upon such proviso the lessor must either actually enter, or

issue and serve a writ for recovery of possession, which is in law equivalent to re-entry."

- [9] Hill and Redman's Law of Landlord and Tenant Eighteenth ed. Vol. 1 Para. 2201.

"Exercise of right of re-entry:

The terms of the proviso require that, if the lessor elects to determine the lease for a forfeiture, he shall do so by re-entry, and in the case of forfeiture for non payment of rent he must first make formal demand of payment, unless this requirement is dispensed with by suitable words in the proviso, or by statute. Usually the formal demand is expressly dispensed with by inserting the words 'whether formally demanded or not,' "

- [10] Paragraph 2 of the lease reads:

"The LESSEE shall pay a deposit of \$36,000.00 equivalent to three months rent \$24,000.00 to be paid prior to the commencement of the lease period and the balance of \$12,000.00 to be paid by June 15th 2006. This shall be refunded upon completion of the lease period and after deduction of any charges for damage to the property or otherwise."

- [11] At the commencement of the lease, the claimant paid \$36,000.00 to the defendant and claims that sum. In cross examination the claimant stated: "of \$36,000.00 I paid only refundable money would have been \$12,000.00 (security deposit)." I accept what the claimant stated, that \$12,000.00 is refundable.

- [12] The claimant claims \$60,000.00 (including lottery sales). His evidence was that he was unable to produce documentation to substantiate what was owned to the Lottery, as the documentation was left on the demised premises to which he had no access. That is not a good excuse as that information could have been requested from the records of the Lottery Office. He admitted that the Lottery has been paid whatever sum was outstanding but he did not state what that sum was. I have no evidence as to how much of the \$60,000.00 was paid to the Lottery and how much remained outstanding to him. I am, therefore, not able to make a finding.

- [13] The claimant claims loss for use of stock in the sum of \$25,000.00 which he said is an estimation of the stock he left on the premises. His evidence was that when he took over the business from the defendant, without any supporting documentation, he paid the defendant \$23,000.00 for stock. I accept that evidence. I think that when the defendant

made re-entry on the demised premises he had a responsibility to have a proper inventory made of what was on the demised premises. This seems not to have been done. The claimant claims \$25,000.00 and I allow that figure.

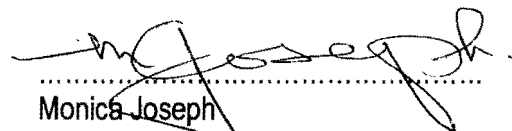
- [14] The claimant claims that he paid electricity bills and other outgoings on behalf of the defendant but produced no supporting documentation. His explanation was that all documents had been left on the demised premises. I think he could have obtained copies of those bills from the entities he paid. In the absence of evidence that he made an attempt to obtain copies of bill, I do not make a finding.

CONCLUSION

- [15] As the claimant failed to pay rent within the thirty days in accordance with the Lease Agreement, the defendant was entitled to make re-entry on the demised premises and take possession. The Court does not allow the claimant's claims (1) for a declaration that the defendant is not entitled to enter the demised premises; (2) for an injunction to restrain the defendant from entering the demised premises; (3) for an order for recovery of possession of the demised premises. The defendant is to pay \$25,000.00 to the claimant for the loss he suffered for use of the stock on the demised premises.

ORDER

- [16] 1. On the claimant's claim: the defendant is to pay \$25,000.00 to the claimant.
2. The defendant is to pay prescribed costs to the claimant.


.....
Monica Joseph
HIGH COURT JUDGE (Ag.)
11th August 2009