

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 429 of 1995

BETWEEN:

TAJ MAHAL LIMITED

Claimant

and

RAINBOW DEVELOPMENT CO.LTD

Defendant

Appearances:

Mr. Dexter Theodore for the Claimant.

Mr. Kenneth Monplaisir QC and Ms. Marcellina John for the Defendant.

2001: December 6

2002: May 27

LEASE AGREEMENT...RENT FELL INTO ARREARS...CLAUSE IN LEASE IN RESPECT OF
POSSESSION BY LESSOR...WRIT OF POSSESSION NOT OBTAINED...LESSOR LOCKED
OUT CLAIMANT AND SECURED DEMISED PREMISES...GOODS IN PREMISES...DAMAGES

JUDGMENT

- [1] HARIPRASHAD-CHARLES J: The Claimant, Taj Mahal Limited entered into a lease agreement on 13th day of May 1994 to lease certain demised premises belonging to the Defendant Company situated at Reduit in the Quarter of Gros Islet. The lease was for a term of five years at a monthly rental of \$6,000.00 payable in advance on the first day of every month. Clause 6 (c) of the Lease Agreement entitled the Defendant to re-enter and take possession of the demised premises if the net rental with respect to any month shall be unpaid after 21 days written notice of such arrears has been given to the Claimant. As

business declined, the Claimant Company could not pay its rent and fell into arrears. Demands were unsuccessfully made.

[2] The Defendant took the Claimant to Court. By a Consent Order dated 30th day of November 1994, the Claimant was ordered to vacate the demised premises by 15th day of December 1994.

[3] What transpired on this auspicious 15th day of December 1994 is crucial to the case. Like so many other cases based on factual evidence, the Claimant painted one picture and the Defendant painted a more colourful one. This is a civil case wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour of, and the evidence given by the Claimant. On the question of credibility, I found the witnesses for the Claimant to be generally witnesses of truth. I believe Mrs. Pearl Cenac and Mr. Linfus Mederick that when they arrived at the said demised premises on the morning of the 15th day of December 1994, they found that the lock had been changed. I also believed Mrs. Cenac when she testified that she was the one who locked up the premises the night before so it was impossible to have left the door unlocked.

[4] I find on the evidence that the Defendant, through its servants or agents was not truthful. Their principal witness, Dr. Alexander Popovic was contradictory in his evidence. Under intense cross-examination by Mr. Theodore, he stated:

“ I went to the premises with Mr. Anthony Bristol on the morning of 15th day of December 1994. I changed the padlock the same morning. I arrived there at about 9.00 – 10.00 a.m. We entered the premises which was unlocked completely and nobody was present. There were lots of things thrown all around the place....All I did was to change the locks and informed my lawyer, Mr. Monplaisir. I changed the lock and put a new padlock... I sent my foreman to buy a new lock and I changed the lock. I bought both a lock and a padlock. I secured the door.”

[5] As a result of the act of the Defendant, the Claimant alleged that its servants and or agents were unable to gain access to the demised premises, the result being that they were wrongfully deprived by the Defendant of their movable property totaling \$76,608.75. It is

worthy of noting that the Claimant did not produce any documentary evidence of the cost of the items as alleged in paragraph 7 of their Statement of Claim.

- [6] The Defendant alleged that the Claimant was entitled to goods contained therein in the Writ of Attachment before judgment which was issued against goods of the said Claimant on the leased premises on 25th day of October 1994 and the said Claimant appointed Mrs. Pearl Cenac as guardian.
- [7] The Defendant next submitted that from 25th day of October 1994 until 15th day of December 1994, the Claimant unlawfully sold some of the goods which were attached as aforesaid and did not pay the Defendant out of the proceeds of the rent due. I found this allegation to be unfounded as there is no evidence to support that goods were sold whilst under the guardianship of Pearl Cenac.
- [8] The Defendant alleged that up to 15th day of December 1994 the Claimant had not settled the Judgment Debt and in order to secure the remaining goods unsold the Defendant secured the premises by changing the locks to prevent the Claimant from unlawfully removing the goods on the premises to sell.
- [9] The Defendant denied that the aforesaid goods are wrongly detained and stated that the Defendant never refused to allow the Claimant to obtain the goods. This, in my view showed a tacit acknowledgement by the Defendant that there were still goods on the premises on the 18th day of December 1994.
- [10] On 21st day of October 1994, the Defendant issued a Praecipe for Writ of Attachment and seized the said goods of the Claimant on premises for rent due. The said goods were advertised for sale in the Saint Lucian Gazette and sold at auction by the Sheriff at a judicial sale for \$27,100.00. A balance of \$8,900.00 is still owing to the Defendant. The Defendant counterclaimed for damage to the leased premises amounting to \$25,000.00.

No evidence was adduced in respect of damages to the Defendant's premises. The counterclaim fails.

CONCLUSION

- [11] On the whole, I find the arguments advanced by Learned Counsel for the Claimant to be more compelling. Indeed, for much of the hearing I was of the view that the Defendant's case, although fully in accord with the merits as I see them, could not be sustained as the Defendant could not without a Writ of Possession unlawfully lock out the Claimant. The act of the Defendant was therefore unlawful and as such damages must flow. The Defendant argued that Pearl Prospere now Cenac was made guardian of the goods and it was her duty to secure the goods. But there is ample evidence to support the finding that she was locked out of the premises.
- [12] But as Learned Queen's Counsel for the Defendant rightly stated, the Court is asked to give a decision on whether \$76,000.00 US is true or not. The Claimant produced no invoices which is rather pathetic. What is however obvious is that there were still goods in the demised premises when Dr. Popovic locked it up on the morning of 15th day of December 1994.
- [13] Mr. Theodore stated that in such a situation, the best-case scenario is for the court to make an award based on the difference between the unsold goods and the goods which were seized. I do not disagree but I reiterate that the Claimant has produced absolutely no invoices. The Court is left to make not an estimate but a guestimate. The Claimant alleged that the value of the unsold goods is \$150,890.76. The value of the goods which were seized and sold at the auction is \$27,100.00, leaving a balance of \$122,790.76. It will be injudicious of me to award this total sum without documentary evidence. I however agree with Mr. Theodore that the Court could still make an award in such a circumstance. The Plaintiff gave an idea of the landed costs of the goods. I will use that as a guide in making an award.

[14] Accordingly, I will make an award of \$ 61,395.38 to the Claimant representing one-half of the goods which were locked up by the Defendant. Both Counsel had previously agreed on Costs of \$15,000.00 to the successful party. I will reinforce such agreement and order that Costs of \$15,000.00 to the Claimant to be paid within six months hereof.

INDRA HARIPRASHAD-CHARLES
High Court Judge