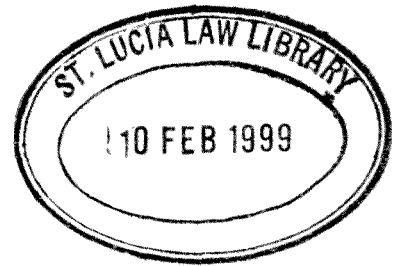


SAINT LUCIA



IN THE HIGH COURT OF JUSTICE (CIVIL) A.D. 1997

SUIT NO: 824 OF 1997

Between:

KEN RATTAN

APPLICANT

AND

- 1. CYNTHIA CHUBB**
- 2. ADELINE CHUBB**

RESPONDENTS

Mr Marcus Peter Foster for the Applicant

Mr Michael Gordon for the Respondents

1997 : OCTOBER 24
 NOVEMBER 07

JUDGEMENT

FARARA J In Chambers

By Affidavit filed 3rd October, 1997 Ken Rattan, applied exparte pursuant to Order 29 Rule 1 of the Rules of the Supreme Court 1970 for a mandatory injunction to order his landladies, the Respondents Cynthia Chubb and Adeline Chubb, to immediately replace certain windows and doors removed from the Applicant's residence at Lot 9 Rodney Bay in the Quarter of Gros-Islet.

On the same day d'Auvergne J granted the injunction in terms returnable 22nd October, 1997.

On 22nd October, 1997 I extended the injunction to 24th October, 1997 pending the outcome of an inter partes hearing.

The Applicant in paragraphs 1 to 6 of his Affidavit deposed that the Respondents are his landladies and on 3rd October, 1997 they came to the tenanted premises with two Special Reserve Policemen and two workers, and informed the Applicant and his family that they are to leave the premises in half an hour or their possessions will be thrown out. The two workers on the instructions of the Respondents then proceeded to remove the front doors, back door, four windows and four bedroom doors of the house and to lock them in a store room at adjoining premises, saying when he pays the rent owed they will replace the said windows and doors. These acts were carried out in the presence of Policemen, including Corporal Savery of the Gros-Islet Police Station, who was unsuccessful in his attempt to stop the Respondents from removing the said windows and doors.

The Applicant also asserts that the area is a high crime belt and he and his family live in dire fear for their lives and in fear for the security of their possessions at the said house which are of approximately \$75,000.00 in value.

Counsel for both parties are agreed that the exparte interim injunction has been fully obeyed by the Respondents.

The first named Respondent Cynthia Chubb, in her Affidavit filed 21st October, 1997 admitted paragraphs 1 to 6 of the Applicant's Affidavit. In other words, she admitted the removal of the windows and doors, their storage in adjoining property and the words spoken by herself and the second named Respondent at the scene.

However, the first named Respondent deposed that the premises was the subject of a lease dated 17th December, 1996 whereby she and her sister (the second named Respondent) leased the said dwelling house to the Applicant and Gyancy Rattan (presumably his wife) at a monthly rental of \$2,000.00. The rent is in arrears totalling \$12,300.00 for the period May 1997 to October 1997; and pursuant to clause 4 (a) of the Lease, she exercised the power of re-entry.

The second named Respondent, Adeline Chubb, in her Affidavit filed 23rd October, 1997 exhibited a copy of a Notice to Quit (AC2) from their Solicitors to Mr and Mrs Rattan dated and served on the Applicant on 1st July, 1997 and contended that the lease was duly determined by the said Notice to Quit on 31st August, 1997 and, as such, the Applicant and his wife "have no right to remain in possession of the said premises".

At the inter partes hearing on 24th October, 1997 Learned Counsel for the Respondents submitted that -

- (1) clause 4(a) of the lease permitted the Lessor in circumstances, inter alia, where the rent was in arrears for in the excess of one month to determine the lease and re-enter forcibly, if necessary, upon the demised premises. In support of this proposition he cited -

Woodfall's Law of Landlord and Tenant 27th edition 1968 paragraph 2110 pages 994 and 995.

In **Edwick v Hawkes (1881) 18 CHD 199 Fry J at 208** stated -

"But according to the construction which I put upon the document, and which, if I have understood them rightly, the Defendants' Counsel put upon it, much more is expressed by this instrument - viz., an authority to eject the Plaintiff without any process of law, and a power for that purpose to enter upon the property, and upon so entering to use all necessary force in putting out the Plaintiff and his family. If so, the document appears to me to be void as being in effect a licence to commit a crime, because the statute of Rich 2 has provided that, even where there is a legal right of entry, no man shall enter with strong hand, nor with multitude of people, but only in a peaceable and easy manner".

(2) The statute of Rich 2 of England does not apply in St. Lucia and there exists no similar statutory provision under the Laws of St. Lucia, (including the Land Registration Act 1984), whereby a Lessee can only be dispossessed, after determination of his lease, by due process of law before the Courts.

(3) A Lessor's right of re-entry is recognized even in England. **Shiloh Spinners Ltd. v Harding (1973) 1AER 90 at 91 Held (i) and (iv).**

In this case the House of Lands found that the right of re-entry in the assignment by the Lessee of a portion of the leased property had been validly reserved, even though the Lessee retained no reversion and that the right of re-entry was capable of subsisting at law in respect of the assignee's covenants even though those covenants were not enforceable after 1965. The House also found that it was the class of case in which the equitable principles relating to relief against forfeiture would apply, but determined that, in the particular circumstances, relief ought not to be granted.

(4) There was no statutory provision in St. Lucia providing for relief against forfeiture and Article 1529 of the Civil Code enables the Lessor to enter upon the demised premises and seize and take away the property of the Lessee thereupon for the non-payment of rent.

- (5) To grant the injunction sought by the Applicant, though negative in form, is pregnant with an affirmative order that the lease (already validly determined) should persist, which juristically is indistinguishable from a decree of specific performance which in respect of that type of contract, the courts have always disclaimed any jurisdiction to grant.

Scandinavian Trading Tanker Co. AB v Flota Petrolera Ecuatoriana (1983) 2 AER 763 per Lord Diplock at 766 h - j.

- (6) The lease having been validly determined on 31st August, 1997 by Notice to Quit for non-payment of rent which, along with mesne profits, amounts to \$12,300.00, the Respondents are entitled to possession and to re-enter upon and evict the Applicant from the demised premises. Furthermore, the Applicant has not come to equity with clean hands and no offer of payment of any portion of the arrears of rent has been tendered.

In his reply Learned Counsel for the Applicant argued that:-

- (a) Exhibit AC2 is not a Notice to Quit in that in order for such a Notice to be valid it has to be addressed to the Court for a Bailiff to serve. However, this submission was not perused by Counsel after he was unable to cite any statutory or other rule or principle to support it.

- (b) The Court is not required, at this stage, to decide upon the validity of the determination of the lease by the Respondents, but whether the injunction ought to be maintained until trial.
- (c) Article 1530 (2) of the Civil Code requires a Lessor to recover possession of the premises by right of action in the ordinary course of law, and when the Lessee has failed to pay rent in accordance with the lease, the Lessor cannot use his own devices to evict the Lessee, but must proceed by Writ of Possession.
- (d) On the basis of the decision of the Court of Appeal in **St. Lucia Civil Appeal No. 4 1993 Caribbean Home Insurance Company Limited v Webbs National Ice Cream**, where the laws of St. Lucia are silent the Court will follow the current law and practice in the United Kingdom including any pertinent statutory provisions. There is no statutory or other provision in St. Lucia relating to forfeiture of a Lessee and re-entry.
- (e) Under current UK laws residential tenants can not lawfully be evicted without an order of the Court (Protection from Eviction Act 1977 section 2). In such cases the landlord's right to make a "peaceful re-entry" is abolished. It is a criminal offence for

any person unlawfully to deprive the residential occupier of his occupation of the premises or any part thereof.

**Cheshire and Burn Modern Law of Real Property
13th Edition pages 460 - 461.**

I am not at all satisfied that the provisions of the Protection from Eviction Act 1977 of the United Kingdom has been or can be imported into the laws of St. Lucia.

- (f) The service of a Writ of Possession is equivalent to the re-entry, but the forfeiture does not become final until the landlord has obtained judgement for possession. **Cheshire and Burn Modern Law of Real Property 13th Edition pages 416 - 417 "Effect of Breach".**

At this stage, no Writ of Possession has been issued by the Respondents and the Applicant and his family remain in possession of the dwelling house the subject of the lease dated 17th December, 1996 the windows and doors having been re-installed in obedience to the exparte order of the Court.

It is not denied that the Applicant is in arrears of rent payable under the lease, although there is no clear admission as to the amount of the arrears. It is also not denied that the Respondents' Solicitors Notice to Quit purporting to determine

the lease (AC2) was served on the Applicant on 1st July, 1997 giving until 31st August, 1997 to pay up the arrears. The validity of that document as a Notice to Quit and whether upon expiration of the stipulated period the lease was validly determined, are matters for full argument and determination by summary proceedings or as preliminary issues.

It is my considered view, that the issue of whether a lessor is entitled under the laws of St. Lucia, to re-enter upon the demised premises and physically evict the lessee whose lease has been determined by notice for non-payment of rent, where such right of re-entry is expressly provided in the lease, is also a matter for full argument and determination at a trial.

Suffice it to be said, for the purpose of deciding this application, I am not satisfied, that under the laws of St. Lucia, a lessor can exercise such right and forcibly evict a lessee without bringing court proceedings for possession (**see Articles 1530, 1531, 1558 and 1559 Civil Code**) or that the equitable principles relating to the granting of relief against forfeiture do not apply in St. Lucia.

In the Trinidad and Tobago case of **Valentine v. Rampersad [1970] 17 WIR 112** a landlord, who had carried out acts similar to those done by the Respondents in the instant matter, was found to have committed various acts of harassment and trespass to tenanted premises, and the tenant was awarded

exemplary damages by the Court of Appeal as the landlord's conduct was found to be oppressive.

In all the circumstances and applying the guiding principles relating to determining applications for interlocutory injunctions set out in **American Cynamid Co v Ethicon Ltd (1995) 1 AER 505** and **Series 5 Software Ltd v Clarke (1996) 1 AER 853** and **Locabail International Finance Ltd v Agro Export (1996) 1 WLR 657 at 663**, I am of the view that there is a serious issue for trial and the Respondents can be adequately compensated in damages. The balance of convenience lies in continuing the injunction and the status quo as outlined above ought to be preserved.

However, the Applicant and his wife ought not to continue with impunity and for no good reason, to not pay the arrears of rent whilst continuing to enjoy the use of the Respondents property.

At the time of making the *ex parte* injunction no orders or directives for the commencement by the Applicant of originating proceedings were made. **[See RSC Order 29 r.1(3)]**.

It is therefore ordered that -

- (1) The interim injunction granted 23rd October, 1997 is extended until determination of an action to be commenced by the Applicant against the Respondents

within seven (7) days failing which this injunction shall lapse and be completely discharged.

- (2) No order as to costs.
- (3) Liberty to apply.



GERARD ST. C. FARARA, QC
HIGH COURT JUDGE (ACTING)