

IN THE SUPREME COURT OF BELIZE A.D. 2010

Claim No. 359 of 2010

BETWEEN: DAVID SCHMITT

Claimant/Respondent

AND

ROYAL CARIBBEAN RESORT LTD.

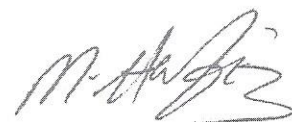
Defendant/Applicant

BEFORE: Madam Justice Minnet Hafiz-Bertram

Appearances: Mr. Ebanks for Claimant
Mr. Pererra for Defendant

DECISION

1. On 16th February, 2012, the court denied an application by the Defendant ("Royal Caribbean Resort") to strike out the claim against the Claimant (Schmitt). I promised to give written reasons for my decision.
2. The Amended Application dated 16th February, 2012 by Royal Caribbean Resort is for the claim to be struck out pursuant to **Rules 26.3 and (c) of the Supreme Court (Civil Procedure) Rules 2005 ("CPR")** and for summary judgment to be entered in their favour. The application is supported by the affidavit of Kareem Elrington dated 6th April, 2011 and the affidavit of Robert Witte.
3. The grounds of the application are:
 - 1) Schmitt has no real prospect of succeeding on the claim for the reason that (a) the paper writing has not been registered and is of no effect; (b) The Royal Caribbean Resort was not competent to enter into a lease or agreement concerning the property of another.
 - 2) The Statement of Claim is an abuse of the Court's process and is likely to obstruct the just disposal of the proceedings; and



3) The Statement of Claim discloses no reasonable ground for bringing the claim.

4. The issues that arose from the arguments are:

1. *Whether Schmitt can maintain his claim for damages against Royal Caribbean relying on the undated 'Agreement for Commercial Lease'.*
2. *Whether a claim can be amended at the hearing of the application to strike out.*
3. *Whether the action can be maintained against Royal Caribbean Resort.*
4. Whether the claim discloses reasonable grounds for bringing the claim

Issue: 1 *Whether Schmitt can maintain his claim for damages against Royal Caribbean Resort relying on the undated 'Agreement for Commercial Lease'.*

5. *Arguments for Royal Caribbean Resort*

Mr. Ebanks argued that Schmitt cannot maintain his claim against Royal Caribbean by relying on the paper writing. Learned Counsel relied on **sections 28 and 49 of the Registered Land Act, Chapter 194** which provides:

28. Subject to section 30, the registration of a person as proprietor of lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and

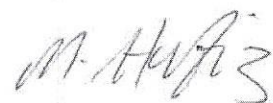
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expressed agreements, liabilities and incidents of the lease ...

49. *A lease for a specified period of or exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, is or exceeds two years, shall be in the prescribed form, and shall be completed by-*
- (a) opening a register in respect of the lease in the name of the lessee;*
 - (b) filing the lease; and*
 - (c) noting the lease in the encumbrances section of the register of the lessor's land or lease.*

6. Learned Counsel contended that by virtue of these provisions there was a failure to create a legal lease by failing to register the lease. That in order to have created legal rights, including the legal right of compensation on which the Schmitt seeks to rely, the lease had to be registered. Mr. Ebanks submitted that in the circumstances Schmitt cannot bring a claim on the basis of a right contained in that paper writing since it was completely ineffectual to pass the leasehold interest described therein including any purported right to compensation.

7. Learned Counsel further contended that even though the case of **Walsh v Lonsdale** is authority for the proposition of an agreement for a lease which is an equitable lease, this is subject to the requirements of the **Registered Lands Act**. That since in the case at bar the land in question is registered land, the lease must be in the prescribed form and registered, failing which the Claimant cannot rely on the principle of an equitable lease. Learned Counsel submitted that the Act must prevail. He relied on the case of **Ada Browne v Belgrove Gregory, Bgregs & Co. Ltd. ANUHCv 2005/0097** in support of his argument



where the Learned Judge Thomas said at paragraph 98 the following:

Walsh v. Lonsdale is authority for the proposition that an agreement for a lease is as good as a lease. This would tend to give some life to the letter 28th December, 2002, but at the same time section 46 of the Registered Land Act prescribes certain conditions with respect to leases or for a period exceeding two years. These include the requirements that such a lease must be on the prescribed form, it must be placed on the Land Register and it must be filed. Added to the foregoing, section 3 of the said Act proscribes any other law, practice or procedure relating to land registered under the Act "so far as it is inconsistent with this Act.

8. Learned Counsel Mr. Ebanks further relying on the **Ada Browne** case submitted that a month to month tenancy existed between Schmitt and Royal Caribbean Resort. Further, the applicable provision is **section 13 (d) of the Landlord and Tenant Act** where it states that *the tenant shall not remove any fixture or building without giving one month's notice in writing to the landlord of his intention to remove it.* That since Schmitt did not comply with section 13(d) of the said Act, he is not entitled to any compensation.

Arguments for Schmitt

9. Learned Counsel Mr. Perrera accepted that Schmitt did not comply with the provisions under the **Registered Land Act** but argued that there is an agreement for a lease between the parties which is binding. Learned Counsel relied on the case of **Walsh v**



Lonsdale, wherein a Landlord agreed in writing to grant to a tenant the lease of a mill for seven years. It was agreed that a deed should be executed containing, among other things, a term that, on demand, the Tenant would pay one year's rent in advance. No deed was executed, but the tenant was let into possession and paid rent for a year and a half thereby becoming a yearly tenant. The landlord demanded the payment of the years rent in advance and commenced distrained for the amount. It was held in this case that a tenant who holds under an agreement for a lease of which specific performance will be decreed is in the same position in relation to the landlord as if a formal lease had been executed. This is all on the premise that equity regards that as done which ought to be done.

10. Learned Counsel in response to paragraph 98 referred to in the **Ada Browne case** argued that it is *obiter* and does not form part of the judgment. Further that paragraph 98 did not address equitable lease.
11. Learned Counsel Mr. Perrera in further arguments referred the court to the case of **Benny's Enterprises Limited v Orlando Castillo Action No 136 of 2000** where the Honourable Justice Awich found that an equitable lease existed in the case of registered land.

Determination

12. The Court refused the application to strike out because there is a binding agreement between the parties which is sufficiently complete to warrant an award of damages in the event it is proven that there was a breach of the terms of the agreement.
13. It is trite law that to be enforceable an agreement for a lease must contain at least the essential terms of the transaction such as, the

Mr. Harjiz

parties, the land to be leased, the term and the rent. I have examined the agreement before the court and it shows the following:

1. The heading of the Agreement is "Agreement for a Commercial Lease".
 2. The Parties are Royal Caribbean Resort and Schmitt;
 3. The Land leased is described as land, "located at the beach adjacent to the pool at RCR in San Pedro Town, Ambergris Caye, Belize";
 4. The term of the lease is 4 years and the commencement and termination date is stated;
 5. The rent is stated as 10 percent of gross sales made each month;
 6. Conditions for Lessor and Lessee stated in the agreement;
 7. Termination clause;
 8. Agreement signed by Director of Royal Caribbean Resort and Schmitt.
14. It can be seen from the paper writing that the parties had agreed on all the essential terms for a lease. However, there was non-compliance with **section 49** of the **Registered Land Act** as the agreement was not in its prescribed form and not registered. As such, the agreement though not a lease fulfils the requirement as an agreement for a lease. **Benny's Enterprises Limited v Orlando Castillo Action No 136 of 2000** and **Wash v Lonsdale** applied.
15. The **Ada Browne** case cited by Learned Counsel Mr. Ebanks can be distinguished from the case at hand as the parties in that case did not execute an agreement. The Judge at paragraph 91 of his judgment said that a letter from the Claimant to the First Defendant contemplates the execution of a new lease but that no new lease was in fact executed. In the case at bar, the parties executed an agreement with



all the essential terms. As for paragraph 98 of the judgment, I agree with Learned Counsel Mr. Perrera's argument that the Judge did not consider equitable lease. I believe this is so because the parties in that case did not reach an agreement on the essential terms for a lease.

Is the agreement for a lease actionable?

16. This brings me to the question as to whether an agreement for a lease is actionable. Schmitt went into occupation of the leased land and he built a restaurant which he operated for many years and paid rent to Royal Caribbean. He is claiming compensation for termination of the agreement. It is clear from **section 40** of the **Registered Land Act** that this unregistered agreement for a lease which is in writing and signed by the parties can operate as a contract and is therefore actionable. **Section 40** provides:

40.-(1) No land, lease or charge registered under this Act shall be capable of being disposed of except in accordance with this Act, and every disposal of such land, lease or charge otherwise than in accordance with this Act shall be incapable of creating, extinguishing, transferring, varying or affecting any estate, right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of land or any interest in land unless the contract upon which such action is brought, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by



some other person lawfully authorised by him. (emphasis added).

17. In the case at bar, since the agreement for the lease is not in its prescribed form and not registered, it will operate as a contract. I find that there is a binding agreement between the parties and Schmitt can maintain his claim for damages against Royal Caribbean relying on the undated agreement for a lease.

Issue 2: Whether a claim can be amended at the hearing of the application to strike out.

18. Mr. Ebanks argued that if the word 'agreement' is added to the claim it would be sufficient but this cannot be done at the hearing of the application to strike out the matter. I respectfully disagree with Learned Counsel Mr. Ebanks as the law is quite clear that a party may be allowed by the court to amend rather than to strike out. See **Blackstone's Civil Practice, Part 33.11.**
19. As shown in issue one above the agreement between the parties is an agreement for a lease which is actionable. However, the statement of case refers to 'lease' instead of 'Agreement for a lease'. The court is of the view that a claim can be amended at the hearing of the strike out application and as such the Claimant was given permission to amend the claim to read 'agreement for a lease'. **Blackstone's Civil Practice, Part 33.11** applied.



Issue 3: Whether the action can be maintained against Royal Caribbean Resort.

20. Learned Counsel Mr. Ebanks argued that Royal Caribbean Resort was not competent to enter into a lease or agreement concerning the property of another. He referred to the affidavit of Mr. Trejo where he deposed at paragraph 15 that Holiday Lands Limited, the legal proprietor of the property, has never entered into any lease agreement with the Claimant and has never given any authority to Royal Caribbean Resort Limited to enter into any such lease.
21. It is disingenuous for Royal Caribbean Resort to take this position when they have been collecting rent from Mr. Schmitt for so many years. They allowed Mr. Schmitt to expend his money to build a restaurant and to do business for many years on the property. To say now that they are not the proprietor of the land in order to absolve themselves is absurd. The claim filed by Schmitt is not for land but compensation for termination of the agreement between Royal Caribbean and Schmitt. As such, I find that the action can be maintained against Royal Caribbean Resort.

Issue 4: Whether the claim discloses reasonable grounds for bringing the claim

22. Mr. Ebanks raised the issue of the termination of the agreement in his application to strike out. He referred to the affidavit of Mr. Trejo at paragraphs 12 to 14 and argued that since the lease was not terminated before its expiration and since the lease actually expired, Schmitt is not entitled to compensation. In my view, this is an issue that has to be determined at trial as there is dispute as to the facts which warrants examination and cross-examination of witnesses. Further, the court has

to interpret the termination clause of the agreement between the parties to determine whether Schmitt is entitled to any compensation. As such, the claim is not an abuse of the court's process and discloses reasonable grounds for bringing the claim.

23. Summary of reasons for dismissing strike out application

Schmitt can maintain his claim for damages against Royal Caribbean Resort relying on the undated paper writing as it is an agreement for a lease which is actionable.

It is proper for the court to grant permission to amend a claim at the hearing of the application to strike out.

The action for damages can be properly maintained against Royal Caribbean Resort as the Defendant as they executed the agreement for a lease and collected rent for many years.

The Statement of Claim is not an abuse of the Court's process and discloses reasonable grounds for bringing the claim as there is dispute as to facts in relation to when the lease was terminated.



Minnet Hafiz-Bertram
Supreme Court Judge

Dated this 28th day of March, 2012.

