

IN THE GRAND COURT OF THE CAYMAN ISLANDS
GRAND COURT



18-02-11

CAUSE NO: 3 OF 2011

BETWEEN:

ESSO STANDARD OIL

Plaintiff

AND

PSB LTD

Defendant

Coram: The Hon. Mr. Justice Angus Foster

Appearances: Plaintiff – Mr. Lee Freeman of Priestleys
Defendant – Mr. Stuart Diamond of DLA

Heard: Friday, 18th February 2011

EX TEMPORE RULING

This is my decision in relation to the application by the plaintiff ("Esso") for summary judgment on its statement of claim of 5 January 2011 seeking possession of the premises known as Delworth's Esso, currently occupied and operated by the defendant ("PSB") and also in relation to PSB's application for a stay of these proceedings pending determination of the issues in dispute between the parties by arbitration. This is not and is not meant to be a fully reasoned and detailed ruling or a complete statement of the reasons for my decision and should not be treated as such. In view of the urgency of this matter I thought it would be helpful to the parties to have my decision now rather than later.

By way of brief explanation I should say that summary judgment means judgment without a trial of the issues in the case and is therefore a strong remedy. The authorities make it clear that it should only be granted where a defendant is clearly unable to set up a bona fide defence or to raise an issue against the plaintiff's claim which ought to be tried in the usual way. In other words the power under GCR O.14 enables the Court to dispose summarily of a defence or proposed defence which has no real prospect of being successful. On the other hand, the power to grant summary judgment is not intended to dispense with the need for a trial where


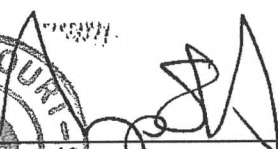
there are issues which should be investigated at a trial and it is also not appropriate, on such an application, for the judge to conduct a mini trial in deciding whether the defendant only has a fanciful as opposed to a realistic prospect of successfully defending the action.

In the circumstances I am satisfied that there are bona fide issues in this case which ought to be tried. In particular I consider that it is clear that there is a genuine dispute over whether, in all the circumstances, the periodic tenancy under which, it is agreed, PSB continues to occupy and operate Delworth's Esso, is a monthly or a yearly tenancy. This is in part as a result of conflicting interpretations of the relevant lease documents and accompanying correspondence but also, in my view, may also turn upon relevant evidence of the surrounding circumstances which may be admissible. In my opinion this is not a case in which it can undoubtedly be said that PSB is unable to set up a bona fide defence or to raise an issue against Esso's claim which ought to be tried. It seems to me that there is at least one, and arguably more than one, clearly significant and determinative arguable point raised by PSB. I am therefore not satisfied that it can justifiably be said that PSB has no real prospect of successfully defending Esso's claim. Accordingly I exercise my discretion to decline to grant summary judgment in this case.

Furthermore, whether or not it is the conditions in the lease agreement entered into by the parties in November 2006 or the conditions in the lease agreement, the validity of which is disputed by Esso but nonetheless signed by Esso in 2010, which govern the terms of PSB's periodic tenancy, it is clear that both these documents provide that any dispute between the parties "concerning the construction, effect or application of [the relevant document] or any alleged breach thereof" is to be referred to arbitration in accordance with the Arbitration Law (1996 Revision). It seems to me that the nature of the dispute between the parties does indeed amount to a dispute concerning the construction, effect or application of one or other or both of those documents and that accordingly the dispute is required to be referred to arbitration as contended on behalf of PSB. In this context I note that the relevant documents were drafted and produced by Esso's attorneys. In the circumstances it seems to me that the parties have clearly agreed, at the instigation of Esso, that the dispute between them should be referred to arbitration and I therefore grant PSB's application for a stay of these proceedings until further order pending the outcome of such arbitration.

I will hear now the parties' attorneys further on the matter of the interim mandatory injunction granted on 28 January 2011 and on the question of costs.

18th February 2011

The seal of the Grand Court of the Cayman Islands is circular, featuring a central emblem with a crown and a shield, surrounded by the text "GRAND COURT" at the top and "CAYMAN ISLANDS" at the bottom.

The Hon. Mr. Justice Angus Foster
Judge of the of Grand Court