

Lubans

*11/10/2007
Civil*

1 IN CHAMBERS AS OPEN COURT
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No: 434/06

3
4
5 BETWEEN:

6 PETER **KELLEHER**

Plaintiff



8
9 AND:

10 HARRY'S CARIBBEAN BAR LIMITED

First Defendant

11
12 FITZROY MUNROE

Second Defendant

13
14
15 BEFORE: The Honourable Madam Justice Levers

16
17 Appearance:
18 Mr. Robert Jones of Ritch & Conolly for the plaintiff
19 Mr. Harry Cupid in person
20 Mr. Clyde Allen of CHA for the 2nd defendant

21
22 Heard: 6th -7th December 2007

23
24
JUDGMENT



25
26
27 Levers, J.

28
29 In this matter, the Plaintiff obtained Summary Judgment on 30th
30 January 2007, for the sum of \$26,842.37, and costs to be taxed on
31 the basis that the Plaintiff loaned the First Defendant monies.

32
33 A Defence was filed and supported by an affidavit of Anthony Cupid,
34 one of the Directors of the First Defendant. The Summary Judgment

1 application came before the Honourable Chief Justice on 30th
2 January 2007 and the First Defendant's application to strike out the
3 Plaintiff's application for Summary Judgment was dismissed.

4

5 Subsequently, a summons was taken out for directions to be given to
6 the Bailiff in connection with the completion of the execution of the
7 Writ of Fieri Facias dated the 15th May 2007 and for costs to be
8 provided. As a result of the order made on the summons to the
9 Bailiff, an Interpleader Summons was taken out by the Court on
10 behalf of the Bailiff and the Second Defendant, Mr. Fitzroy Munroe
11 was requested to file an affidavit in support of his claim that some of
12 the goods at Harry's Caribbean Bar were his.

13

14 He filed an affidavit in response to the Interpleader Summons and
15 was granted permission to be heard. The evidence from Mr. Monroe
16 was that there was a Lease with a Schedule attached to it, which
17 identified the items that he leased to Harry's Caribbean Bar Ltd. That
18 although those goods were replaced, as a result of being damaged
19 during hurricane Ivan, they still remained his.

20

1 Mr. Munroe claimed that a list of the goods was identified in the
2 Schedule but unfortunately, the Schedule attached to the lease was
3 missing although the lease itself was exhibited.

4

5 It is now a question for this court to adjudicate on the merits of Mr.
6 Munroe's claim whether in fact the goods belonged to Mr. Munroe or
7 Harry's Caribbean Bar Ltd. There is not a scintilla of evidence
8 (documentary) save and except for an affidavit claiming the goods by
9 Mr. Munroe. The Court has to adjudicate on whether it can hold that
10 certain items must have been in place when the lease was signed
11 and the Court is being asked to speculate that any Schedule
12 contained the items claimed by Mr. Munroe. Mr. Munroe has
13 produced a Customs Import form for restaurant equipment dated
14 1997. It bears no details as to the goods imported. All it says is that
15 it was restaurant equipment.

16

17 The following is a list of the items claimed by Mr. Monroe:

18

19 **(a) Dining Area**
20 5 Booths
21 8 Tables
22 7 Televisions

1 1 Karaoke Machine and Speaker for Alvin Babb

2

3 **(b) Bar**

4 1 Cooler

5 1 Cash Register

6 1 A/C Unit

7 1 Refrigerator

8

9 **(c) Serving Area**

10 1 Cash Register

11 1 Fax Machine

12 1 Cooler

13

14 **(d) Kitchen**

15 3 Microwaves

16 1 Vulcan Oven

17 1 Deep Fryer

18 1 Imperial 12 Burner Stove with one Oven

19 1 Grill

20 1 Freezer

21 1 Refrigerator

22 31 Chafing Pans

23 1 Imperial Single Stove

24

25 Mr. Munroe, by his attorney, accepts that he does not himself claim
26 the Karaoke machine. The Bailiff also has a list. Mr. Munroe's list
27 has seven televisions. I order that any televisions manufactured after
28 1997 are to be taken by the Bailiff. Mr. Munroe identifies 2 coolers.
29 The Bailiff can therefore leave two coolers and take all the other
30 coolers that he found in the premises. The Bailiff can leave 1 large
31 speaker and take all the other speakers in the premises. The Bailiff is
32 permitted to take all the tables and all the chairs, save and except for

1 8 tables. The Bailiff is permitted to take the digital satellite receiver,
2 the wall clock, 2 speakers, the indoor air conditioning unit
3 manufactured in 2000, the two mini coolers, the ice storage sink, the
4 triple sink, and the dual door oven and the three section sink, the
5 meat slicer, the 3 fridges at items 36, 37, and 38. The cash register
6 at item 41, the glass door cooler, the credit card machine and the
7 triple sink, the oversize umbrella and the Jerk stand miscellaneous
8 and chairs and tables outside. I accept Mr. Munroe's word that there
9 was a bar which was replaced and that would destroy the premises, if
10 taken. Mr. Munroe does not claim anything in the office and storage
11 room at the premises and the Bailiff is permitted to take the items in
12 those areas. Further, Mr. Munroe does not claim any glasses, the
13 satellite dish, the bar sign, the security cameras and the window
14 furnishings.

15

16 I therefore, feel that those items should be the only one's taken from
17 the premises, including all liquor bottles and all food items that can be
18 sold.

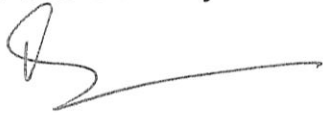
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1 to the items can intervene and defend the person against whom
2 judgment was entered is not a happy situation. I therefore have no
3 alternative but to award costs against Mr. Munroe in this matter. He
4 has prolonged the issue, taken points to set aside the default
5 judgment which was not possible by him and has wasted the Court's
6 time and incurred unnecessary administrative costs. Costs to be
7 taxed or agreed.

8

9 Dated this 11th day of December 2007

10



11 Judge of the Grand Court

