

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

24/7/2007

civil

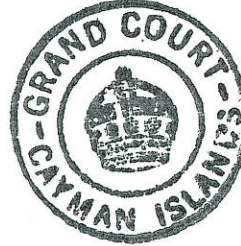
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CAUSE NO. 216 OF 2004

BETWEEN: **JOE'S DOWNTOWN LIMITED**

Plaintiff

AND: (1) GOLDIE PANTON  
(2) PRENTICE PANTON  
(3) STANLY PANTON  
(4) DANNY SOTO  
(5) SHERRLYN SOTO



Defendants

**RULING**

**Appearances:** Mr. Stephen Hall-Jones instructed by Mr. Scott Wilson of Diamond Law Associates for the Plaintiff and the Third Party  
Mr. Norman Hill Q.C. instructed by Ms. Keva Reid of McKinney Reid & Company for the Defendants

**Before:** Hon. Justice Henderson

**Heard:** July 23 & 24, 2007



1. The plaintiff, Joe's Downtown Ltd., to which I will refer herein as "the company", sues for wrongful distraint and eviction from certain premises.
2. The company was incorporated in February 2003. It is the alter ego of Mr. Joelle McCrae, the third party. He is its sole shareholder and director. The sole purpose of the company is,

and always has been, to operate a restaurant at certain premises on Mary Street in George Town.

3. In October 2002, prior to the incorporation of the company, Mr. McCrae entered into an agreement with the defendant, Danny Soto, to rent the premises in question. Mr. Soto was, at all material times, acting for and on behalf of all five of the defendants who are the owners of the property.
4. No written agreement was ever executed by the parties. Mr. McCrae paid his \$6,000 in rent on a monthly basis. For several months he did so by presenting cheques drawn on a personal bank account, a joint account with his wife, Beth McCrae.
5. In July 2003, after the company had been incorporated, Mr. McCrae paid rent by presenting cheques drawn on the corporate bank account. There was no discussion at this point as to why the company, rather than Mr. McCrae personally, was paying the rent.
6. The question (which I have treated as a preliminary issue) on this trial is whether the plaintiff was ever a tenant with the right to advance the claims pleaded. The position of the defendants is that the only tenant at any material time was Joelle McCrae in his personal capacity. I have heard evidence on this preliminary issue from Mr. McCrae, Mr. Danny Soto and Mr. Stanley Panton.

7. Mr. McCrae testified to the circumstances of his meetings with Danny Soto in October 2002. He asserted in his sworn testimony that he explained to Mr. Soto that he was setting up an Italian restaurant. He said he gave the name of the restaurant to Mr. Soto as "Joe's Downtown". Mr. McCrae swore that he told Mr. Soto the company had not been incorporated yet but "my attorney would do it". That was a reference to the company which was eventually incorporated in February 2003. He said that he told Danny Soto the tenant would be Joe's Downtown, a company which had not yet been formed. He said the restaurant did not open until June 2003 because of planning difficulties. By that time, he said, "we had received our company license". The first rent cheque paid by the corporation was dated July 28th, 2003.
8. Danny Soto testified that he considered Joelle McCrae to be the tenant. He said that there was never any discussion about the company at the time the agreement was made. He also said, in cross-examination, "I didn't think it mattered who paid the rent". "When I accepted the company cheques I didn't think about who the payor was".
9. Mr. Panton did not give any evidence which I considered useful or important on this issue.
10. I must determine who the tenant was at the time the agreement was entered into in October 2002. There can only be one answer to that. The tenant was Joelle McCrae personally. The company had not been incorporated by that point, so it had no capacity to enter into a contract. In addition, I doubt that the defendants would have agreed to enter into a lease of

this sort with a corporate entity without at least insisting on a personal guarantee from the person owning and operating the company.

11. That, however, is not the end of the matter. Clearly, it was always Mr. McCrae's intention to incorporate a company and to have that company operate the restaurant. He intended that the company would take the benefit and assume the liabilities under the lease to the extent possible. There was no assignment of the lease and no permission for assignment was ever requested of the landlords.
  
12. After the incorporation of the company and after the company began to pay the rent, the company became a co-tenant, together with Joelle McCrae personally. From July 28th, 2003 onwards there were two tenants: Mr. McCrae and his company. It follows that the corporate entity, Joe's Downtown Limited, does have standing to advance a claim for unlawful distraint and eviction.

Dated this 24<sup>th</sup> day of July, 2007

*Henderson, J.*

Henderson, J.  
Judge of the Grand Court

