

17. 2. 2004



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

3
4 CAUSE NO: 93/04

Civl.

5
6 BETWEEN: ANN MARIE LOGAN PLAINTIFF
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8 AND: LIGHTHOUSE PROPERTIES LTD. DEFENDANT
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11 Appearances:
12 Mr. Hector Robinson of Quin & Hampson for the plaintiff
13 Ms. Miki Jaffa Bodden for the defendant
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15 RULING
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17 The plaintiff is the lessee of shop premises part of a shopping mall located along the
18 waterfront of George Town harbour. From within these premises, she carries on her
19 business trading as Annie's Beauty Center. The business is said to be the plaintiff's only
20 source of income.

21 The premises are demised under a lease to her for a term of 5 years. The lease is
22 registered under the Registered Land Law and governed by the provisions of that Law
23 ("the RLL").

24 From the evidence filed in support of this, her application for mandatory or restorative
25 injunctive relief; there appears to be acrimony between the plaintiff and those who act as
26 agents for the lessor, the defendant.

27 There are allegations and counter-allegations of various breaches of covenant, including -
28 on her allegations - earlier and repeated breaches of her right to quiet enjoyment and, on
29 the defendant's allegations - non-payment of rent by her, among other breaches.

30 On Friday morning last (the 13th February 2004); the plaintiff arrived at the premises
31 where she was confronted with a notice posted on the door of the shop informing her and

1 in plain terms for all the world to see; that she was evicted and barred from the premises.
2 The locks to the door had been changed. The plaintiff and her staff were unable to gain
3 entry. Her business was effectively shut down, the state of affairs which has continued
4 since then and which led to the filing of this action seeking injunctive relief or relief from
5 forfeiture of the lease and damages for breach of the lease.
6 The provisions of the R.L.L relevant for present purposes, are in sections 55, 56 and 57.
7 They are in my view, clear in terms, meaning and effect.
8 Subject to other provisions which may be provided in a lease, a lessor shall have the right
9 to forfeit a lease if the lessee falls afoul of any of the provisions of subsection 55 (1) (a),
10 (b) or (c). Unsurprisingly, these include any breach of or omission to perform any
11 agreement or condition on the lessee's part, expressed or implied in the lease.
12 By subsection 55 (2); the right to forfeiture may however be exercised directly by the
13 lessor, only where the lessee or person claiming through the lessee is not in occupation of
14 the premises or, where the lessee is in occupation, only by action through the Courts.
15 This is the provision which I find to be most relevant to the immediate situation.
16 Under subsection 55 (3), the right to forfeit may be taken as waived by the lessor, if the
17 breach alleged was non-payment of rent and the rent was subsequently tendered by the
18 lessee and accepted by the lessor.
19 That is asserted by the plaintiff to have occurred here, but the defendant disputes it,
20 asserting in turn that the plaintiff's payment, tendered by cheque for rent past due, has not
21 been accepted.
22 Be that as it may, it is not an issue necessarily to be resolved now in determining whether
23 injunctive relief should be granted. The present determination must be reached having

1 regard to the nature of the plaintiff's complaint and whether injunctive relief is
2 appropriate in all the circumstances. In this regard, further consideration of the statutory
3 provisions is required.

4 Section 56 of the R.L.L. provides in summary, that the right to forfeit a lease may not be
5 exercised by a lessor until after notice has been served upon the lessee, specifying the
6 nature of the breach and affording a reasonable time to remedy the breach and/or pay
7 compensation for any damage arising from the breach.

8 Section 57 seeks to ensure that a lessee upon whom a notice of breach of the lease has
9 been served, or against whom the lessor is proceeding to exercise the right of forfeiture
10 by way of action or re-entry - (if the latter, it follows from section 55 (2); only in the
11 case of unoccupied premises) – may be able to apply to the Court for relief against the
12 notice.

13 The provisions of the R.L.L. our Courts have time and again declared, are a compendious
14 mandatory code governing the disposition of rights in relation to all registered land in the
15 Cayman Islands. And by the clear terms of section 37, no right of a proprietor in or over
16 his land, lease or charge registered under the R.L.L is capable of being disposed of except
17 in accordance with the R.L.L. See Paradise Manor Ltd v BNS 1985 CILR 437 where the
18 Court of Appeal confirmed the general compulsory nature of that section of the R.L.L.

19 The compulsory nature of the particular provisions of section 55, 56 and 57 of the R.L.L
20 under consideration here, was itself explained by the Court of Appeal in English Shoppe
21 Limited v Cayman Arms (1982) Limited 1994-95 CILR 139.

22 These provisions are there to protect the rights of both lessor and lessee.

1 Of particular application here, the Court of Appeal held that section 55 (2) (a) of the
2 R.L.L did not create a separate and distinct right of forfeiture for a lessor, but was
3 designed to ensure that direct re-entry in exercise of the right created by section 55 (1) or
4 by the lease itself; was only allowed where the land was unoccupied, and in other cases
5 was enforceable only by means of action through the Courts.

6 In the present case, I consider it to be manifestly clear on the evidence even at this
7 interlocutory stage; that the unilateral and direct actions of the lessor in retaking
8 possession of the leased premises, would abrogate at least two important rights of the
9 lessee, the protection of which the R.L.L. mandates.

10 The first is the right - as a person in lawful occupation of demised premises - to have the
11 Court determine whether or not she should be evicted.

12 The second related to the first and assuming notice pursuant to section 56 has been
13 properly served upon her - to apply to the Court pursuant to section 57 (1) of the R.L.L.,
14 for relief from enforcement of that notice by way of forfeiture of the lease.

15 The abrogation of these rights by her eviction by the lessor are substantive breaches of
16 statutory rights, for which no adequate compensation may be made by way of damages.

17 The loss contemplated here is not to be measured only in monetary terms, as, for
18 instance, if it were to transpire that her business has also suffered damage. The complaint
19 is of the loss of the right to the protection of the proper processes of the Law.

20 These, to my mind, are most significant factors to be borne in mind when considering
21 whether the discretionary equitable relief by way of a mandatory or restorative
22 injunction, should be granted. In this particular context, the remedy which the grant of
23 the injunction would bring would be restorative. The plaintiff's ability to insist upon the

1 proper procedures and protections of the R.L.L., before she might be called upon to forfeit
2 her rights under the lease and be evicted from the premises; would be restored.

3 The obvious policy of the R.L.L is to prevent lessors from acting in a high handed,
4 draconian or unfair manner by means of the type of action taken here - what Mr.
5 Robinson describes euphemistically as “self help”. Indeed, the policy would extend to
6 prevent either side from “stealing a march” upon the other or from evading the
7 jurisdiction of the Court.

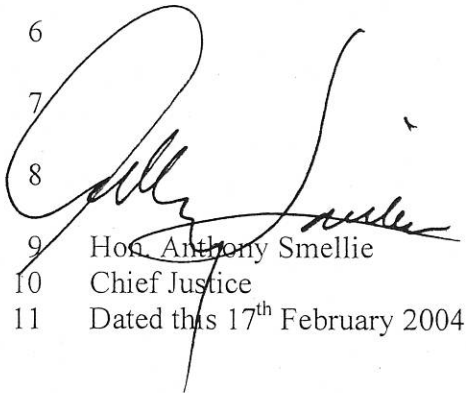
8 These are all concerns which have found expression in the case law by judges who
9 granted or who would grant mandatory injunctive relief in circumstances where
10 otherwise just such types of abusive behaviour would have gone unchecked by the
11 Courts. See for instance, Colls v Home and Colonial Stores Ltd [1943] AC 179, 193 per
12 Lord Macnaghten. As was discussed in that case, the remedy of the mandatory
13 injunction, its radical nature notwithstanding – requiring as it does positive action to
14 change, restore or reverse a state of affairs rather than to simply preserve it – will be
15 necessary and appropriate in exceptional circumstances where it may properly be used to
16 do justice between the parties and as a warning to others.

17 And, of course, as in the case of the injunctive order which simply restrains the taking of
18 action or preserves the status quo; suitable understandings in damages can be required to
19 protect a respondent who may incur loss as the result of having been improperly required
20 to comply with a mandatory injunctive order.

21 The present, to my mind, are circumstances clearly requiring this Court to use its
22 equitable powers in recognition and enforcement of the objectives of the R.L.L.

1 The injunction is granted requiring the defendant to restore the plaintiff to occupation of
2 the premises with immediate effect and until further order of the Court in these or any
3 other proceedings which the defendant may itself bring, for enforcement of its rights
4 under the lease. If not already removed, the notice found by the plaintiff posted on the
5 door to the shop on 13th February 2004, must also be immediately removed.

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Hon. Anthony Smellie
Chief Justice
Dated this 17th February 2004

