

14.7.89 (A)

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Landlord & Tenant

IN CAYMAN ISLANDS COURT OF APPEAL  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
IN CHAMBERS

BEFORE THE HON. THE CHIEF JUSTICE  
SITTING AS SINGLE JUDGE OF APPEAL C. I. C. A. 16/89

BETWEEN: (1) ENGLISH SHOPPE LTD. DEFENDANTS/  
(2) RICHARD ARCH APPELLANTS  
(3) MARGARET ARCH

AND: CAYMAN ARMS (1982) LTD. PLAINTIFF/  
RESPONDENT

Mr. N. Hill Q.C. for the Defendants/Appellants  
Mr. LaMontagne for the Plaintiff/Respondent

COLLETT C.J. JUDGEMENT.

This is an application for stay of execution pending an appeal of the judgement of Harre J. dated 23rd June, 1989 whereby he ordered inter alia that the Appellants/Defendants do surrender forthwith to the Respondent/Plaintiff possession of certain George Town commercial premises leased by the former to the latter which they had purported to re-possess by way of re-entry upon forfeiture for breach of the leasehold terms.

The grounds upon which the Appellants claim a stay should now be granted, in exercise of the jurisdiction vested in a single judge of the Cayman Islands Court of Appeal under rule 24 of the Applicable Rules, is that, unless it is so granted their pending appeal may be rendered nugatory. In support of this submission counsel has referred me to the wording of rule 20(1) which is as follows:

"20. (1) Except so far as the court below or the Court may otherwise direct, -

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal."

These terms are in similar terms to those of O. 59 r. 13 of the English Rules.

Counsel for the Appellants submitted that on a true interpretation of this Rule the recovery of possession by the Respondents under the order of Harre J. would be an "intermediate act" which would not be invalidated by an appeal and, therefore, that even if the Appellants were to succeed in their appeal they would be unable to recover possession of the premises again once having surrendered it now to the Respondents. Counsel for the Respondents on the other hand advanced an interpretation of this rule which would confine 'intermediate act' in context to acts in the court itself.

I am not myself persuaded that either of these interpretations advanced by counsel is correct. In my judgement the intention of the Rule is not to circumscribe the powers of the Court of Appeal at all: indeed those powers are expressly reserved by the wording of the Rule. The intention is rather to prevent the automatic invalidation of intermediate acts or proceedings by whomsoever done or instituted by reason only of the filing of an appeal. There is no substance in the contention that the Court of Appeal would not be able, if it were to quash the order of Harre J. upon the hearing of this appeal, thereupon effectively to order the re-delivery up of possession to the successful Appellants.

In these circumstances it cannot be said that a stay of the judgement of Harre J. is necessary to prevent this appeal from being rendered nugatory. No doubt if the Respondents are put into possession now in the absence of any stay, they will take steps to complete the renovation of the premises as a restaurant with a view to reopening as soon as possible their business which has been closed for the better part of two years. Thus if the Appellant do succeed on the appeal they may eventually recover possession of premises containing renovations which will be of no use to them - possibly even a burden. They would not, of course, be saddled with the cost of those

renovations which the Respondents would have done at their peril but they might be saddled with the cost of tearing them out again.

Against this however must be put the consideration that, if a stay is now granted the Respondents are likely to be kept from re-opening their business for a further 4 - 6 months even if they succeed in resisting the appeal. They will miss the next tourist winter season also. The hardship which that would cause is further compounded because the actual damages which were awarded to them by Harre J. only comprise a set-off of the rent which they would have been liable to pay if the Respondents had not retaken possession from them with nothing to compensate them for consequential damage of loss of business profit.

Accordingly, I have reached the conclusion that this is not a case in which any stay of execution ought to be granted even on terms.

Accordingly the present application is refused.

Dated 14th July, 1989.

CHIEF JUSTICE.