

IN THE SUPREME COURT OF BELIZE A.D., 2008

Claim No. 826 of 2008

BETWEEN

	(HANSRAJ BHOJWANI	CLAIMANT
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AND	(
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	(SUBRAMANIAN VELU	
	(d.b.a. Sumathi Indian Restaurant	DEFENDANT

BEFORE THE: Honourable Justice Minnet Hafiz

**Appearances: Mrs. Liesje Barrow-Chung for the Claimant
Mr. Hubert Elrington for the Defendant**

J U D G M E N T

Introduction

1. This is a Claim for the sum of \$32,500.00 being the arrears of rent due from the Defendant to the Claimant by virtue of an oral agreement made between the Claimant and Defendant. The Defendant Counter Claim against the Claimant for damages for breach of contract.
2. The Claimant, Hansraj Bhojwani leased his property situated at 190 Newton Barracks, Belize City, Belize for the monthly sum of BZ \$2,500.00 to the Defendant, Subramanian Velu doing business as Sumathi Indian Restaurant. The arrears of rent due is for the period, June 2008 to July, 2009.

3. The Defendant denied he owed the rent as claimed. He said that he was requested and authorized by the Claimant to do extensive repairs and renovations to the rented property and to use the rent to pay off the full cost of repairs and renovations. In his Defence he claimed that he spent \$25,000.00 on repairs.
4. The Claimant denied that there was any agreement between himself and the Defendant for the repairs and renovations of the Leasehold property nor did the Claimant agree that the Defendant would use the rent to pay off the full cost of the repairs and renovations.
5. There are three witness statements which were issued in this Claim. One from the Claimant, one from the Defendant and one from Adwa Cain for the Defendant.
6. **Issues to be determined**
 - 1) Whether the Defendant was requested and authorized by the Claimant to do extensive repairs and renovations to the rented property and to use the rent to pay off the full cost of repairs and renovations.
 - 2) Whether the sum of \$32,500.00 is owed to the Claimant for rent.

The Evidence

7. The evidence from the Claimant, Hansraj Bhojwani is that by an oral lease agreement made sometime in 2004, he rented to the Defendant the property known as the Sumathi Indian Restaurant situated at Princess

Margaret Drive, Belize City, Belize at a rent of two thousand dollars (\$2,000.00) per month which was increased to \$2,500.00 per month in October of 2007. At paragraph 2 of his witness statement he stated that he gave the Defendant a book of deposit slips with a preprinted account number for an account at the Bank of Nova Scotia, and instructed the Defendant to deposit the rent into said account by the first day of each month.

8. The Claimant stated that on several occasions, the Defendant failed to make timely deposits of the rent. That on at least two separate occasions, he had to retain a lawyer to send a legal notice to the Defendant requiring him to deposit the rent.
9. At paragraphs 5 and 6 of his witness statement he stated that in June 2008, the Defendant stopped paying rent altogether. That contrary to the Defendant's claims, at no time did he ever make any agreement with him whatsoever to renovate the property in exchange for payment of rent.
10. The Claimant in further examination in chief said that in March of 2008 he did not make any agreement with the Defendant to have the property improved.
11. He further testified that when he communicated with the Defendant that it was always in Hindi.
12. In cross-examination he said that when he first started to rent to the Defendant it could have been at \$1,500.00. That it was a long time ago and so he is not sure. When it was suggested by Mr. Elrington to the Claimant that he first rented to the Defendant in 2001 and in January of 2002 he increased the rent to \$2,000.00, he replied that he is 71 years old and that it was a long time back.

13. In further cross-examination the Claimant, who resides in the United States of America, said that he cannot recall whether any painting was done to the restaurant which he visited during his visits to Belize. He said that when Ready Call Centre became his tenant occupying three floors in the same building as the Defendant, he painted the exterior of the building.
14. He further said that the Restaurant always looked shabby but early this year there was an improvement because there were complaints from clients and citations from the Health Department and City Council.
15. Mr. Elrington asked the Claimant if in the nine years that he collected rent and raised the rent, whether he did any interior improvements or maintenance and he said "*that was not part of the agreement.*" That he does not do anything to the interior.
16. Mr. Elrington suggested to Mr. Bhojwani that when the Defendant approached him to tell him that he put a canopy and a deck outside and asked for a reduction in rent that the Claimant instead increased the rent. The Claimant replied that, "*I don't remember this.*" Mr. Elrington then suggested to the Claimant that the Defendant told him that he spent \$17,000.00 and all he did was to increase the rent. The Claimant said that this is not true.
17. Mr. Elrington further suggested to the Claimant that "*in presence of a witness you told him look, man, do the renovations and you take the money out the rent.*" The Claimant replied that, "*It is not true, it's a big lie.*" Mr. Elrington further suggested to the Claimant that in that same month the Defendant went to borrow the money, did the renovations and started to take the money out the rent. That shortly thereafter the

Claimant went to the Defendant and asked him for his rent. The Claimant replied that:

“No, I never been to him again. It was end of 2007 or early 2008 when I reminded him, rent has not been deposited then he deposited in the month of March or April then after that when I didn’t get the rent, I asked my attorney, Samira to send him the notice.”

18. In re-examination the Claimant testified that, *“With all our tenants’ agreement the tenant every month suppose to deposit rent in my bank account, maintain the properties interior at their own expenses, pay their insurance trade licence and other taxes...”*
19. When asked whether the improvements to the property are done with his approval he said that he has no control of that because whatever they do inside it helps them with their business.
20. He was further asked whether at any point he gave the Defendant permission to take moneys out of the rent or to use the rent to pay back a loan he said, *“Never”*.
21. Mr. Subramanian Velu, The Defendant in his evidence said that he is the tenant of the Claimant and the Claimant is his Landlord. That in or about June of 2001, he began renting the Claimant’s premises and utilized it as a restaurant.
22. At paragraph 3 of his witness statement he said that he has always paid his rent promptly each month until the Claimant and him entered into a parol agreement in March of 2008 in the restaurant and in the presence of Adwa Cain. He stated that under this agreement the Claimant requested

and authorized him to do extensive repairs and renovations to the leasehold property and to use the rent to pay off the full cost of the repairs and renovations.

23. The Defendant stated that he was weary of doing any repairs or renovations to the premises without first receiving a specific and unequivocal undertaking from the Claimant that he would permit him to use the monthly rent to pay for the repairs and renovations. That once before, he had done repairs and renovations on the premises, without obtaining an unequivocal undertaking in the presence of a witness from the Claimant who later refused to acknowledge and honour the said repairs and renovations done to the premises.
24. At paragraph 7 of his witness statement he said that after receiving clear, specific and unequivocal assurance from the Claimant, he was authorized to do the repairs and renovations and that he was authorized to pay for the cost of the repairs and renovations by using the monthly rent, he made a loan of twenty-five thousand dollars (\$25,000.00) from the Atlantic Bank Limited in May of 2008 and did the repairs and renovations between May and June. Further, he said that in accordance with the authorization given to him by the Claimant he started to use the monthly rent to pay down the loan in June of 2008 and that he is still using the monthly rent for that purpose. The Defendant stated that shortly after the repairs and renovations were completed, the Claimant began renegeing on his promise and authorization and began to forcefully and persistently demand that the monthly rent be paid to him.
25. At paragraph 9 of his witness statement he stated that he realized that the Claimant wanted to confer a double benefit upon himself. That he wanted the benefit of the repairs and renovations which totaled twenty five thousand dollars (\$25,000.00), and he also wanted the full rent. The

Defendant further stated that he had taken steps to ensure that the parol agreement and authority were clear and unequivocal and was made in the presence of a witness. Further, he stated that he refused to divert the payment from the bank to the Claimant as requested by him.

26. In cross-examination the Defendant testified that the last time he paid rent was in June 2008. That he obtained a \$20,000.00 loan from Atlantic Bank. Mrs. Chung showed the Defendant a letter from the Atlantic Bank which showed that he obtained a loan for \$96,000 from the Atlantic Bank. The Defendant then said that he had a loan before at the Atlantic Bank and that on the May 21st, he got only \$20,000.00. He said that he got \$20,000.00 to upgrade the Restaurant.
27. In further cross-examination the Defendant testified that he owes the Claimant no rent. That in March, the Claimant went to his restaurant and told him to renovate his place. Also, in 2002 he spent \$17,000.00 to renovate the restaurant. However, at that time he did not want to stop paying rent because the Claimant told him that the renovation was done for his business. Also, that he did not want to leave because he did not have any other business.
28. In further cross-examination, the Defendant said that he will not pay any rent until the \$17,000.00 and the \$20,000.00 has been repaid to him. Interestingly, in further cross-examination, Learned Counsel, Mrs. Chung suggested to the Defendant that there was never an agreement that he should stop paying rent for \$17,000.00 or \$20,000.00 far less \$37,000.00 and he replied that the Claimant did not tell him to stop the rent but “*offer something.*” Later, he said that when he finished the renovations and the Claimant called him, he asked him, “*I need to pay rent or what?*”

29. He was also asked in what language he spoke to the Claimant and he said "*English and Hindi, mixed.*"
30. Mr. Adwa Cain who gave evidence for the Defendant stated in his witness statement that he is a self employed television technician and he occasionally works part time as a delivery man for the Defendant. At paragraph 2 of his witness statement he stated that in or about March of 2008, whilst he was working in the restaurant he overheard the Claimant and the Defendant discussing renovating the restaurant. He stated that the Claimant told the Defendant that if he does the renovations and upgrade the restaurant, he would do more business.
31. He stated that the Defendant told the Claimant that he could not afford to do any further renovations or upgrades to the restaurant. That they continued to discuss the matter, and the Defendant continued to tell Claimant that the idea was a good one but he could not afford to do any renovation or up-grade. He further stated that the Claimant then told the Defendant that he could borrow the money needed to do the renovations and upgrades as the Claimant wanted done, then he could repay the loan using the rent and until the loan was paid he would not have to pay rent to Claimant. He stated that the Defendant told the Claimant he would think about it as he really did not want to get into any further expenses. See paragraphs 3, 4 and 5 of his witness statement.
32. Mr. Cain further stated that when the Claimant left, the Defendant asked his advice and he told him that it was not a good idea, and if he decided to ahead with the renovations and up-grades, he should do a written agreement signed by the Claimant. He stated that the Defendant later advised him that he would do the up-grades and renovations and use the rent to pay off the loan. That, he again advised the Defendant to be careful and get the agreement in writing.

33. Under cross-examination, Mrs. Chung had three questions for Mr. Cain:

Q. Mr. Cain, how many languages do you speak?

A. One, English.

Q. How long have you known Mr. Velu?

A. A little over three and half years.

Q. You regard him as a friend?

A. Yes definitely.

Determination

Issue 1

Whether there was an agreement between the Claimant and the Defendant for the Defendant to do repairs and renovations to the rented property and to use the rent to pay off the full cost of repairs and renovations.

34. There is no dispute that the Defendant did repairs and renovations to the Restaurant. But, the question is whether he was entitled to off set it from the rent money.

35. In this case the rental agreement is not in writing. There are only the words of the parties themselves and the witness for the Defendant, Mr. Cain. The Claimant and the Defendant who are from India both speak Hindi. The Claimant said he spoke Hindi to the Defendant. The Defendant said that the Claimant spoke Hindi and English mixed, to him. It may very well be that when they spoke with each other that it is mainly in Hindi with some English mixed. The fact is that the evidence shows

that the Claimant and the Defendant do not speak just English to each other.

36. Mr. Cain who is the friend of the Defendant speaks only English. I did not find Mr. Cain's evidence credible that whilst working in the restaurant he overheard the Claimant and the Defendant discussing renovating the restaurant. I find Mr. Cain's evidence to be a total fabrication. I reject his testimony.
37. The Defendant's evidence was shaken under cross-examination by Mrs. Barrow Chung. He changed his story many times which caused me to believe that he was lying. The Claimant on the other hand, I find to be truthful. He had problems remembering the exact date the property was rented and the rental at the beginning of the tenancy. But, this did not cause me to find him as an unreliable witness. His evidence that there was no agreement to refund the Defendant for repairs and renovations was unaffected by cross-examination.
38. The Claimant's evidence which I find credible is that he does not do any interior improvements or maintenance to the rental property. This is done by the tenant to suit their business. He repeatedly said that it was the tenants who have to maintain the interior of the properties at their own expense.
39. I find from the evidence that the Defendant changed his answers under cross-examination several times. But, what is most disturbing is the fact that he said that he borrowed \$25,000.00 from Atlantic Bank to do the repairs and renovations and that on another occasion he spent \$17,000.00 on repairs and renovations so he does not owe the Claimant any rent. Nowhere in his Defence or his witness statement did he state that he spent \$17,000.00 for repairs and renovations to which he is

entitled to repayment. I did not believe his story that he did not want to leave the premises at that time because he did not have any other business. The Defendant is very disingenuous to come on the morning of trial when the claim was amended to \$32,500.00, to then say that on a previous occasion that he had also spent \$17,000.00 on renovations. I cannot believe that he would forget such an important detail. Further, I have to agree with Mrs. Barrow Chung that since the Defendant continued to pay rent at the time, when he claimed there was an agreement, clearly supports the Claimant's position that there was no such agreement.

40. Further, in his witness statement at paragraph 7 he said that he made a loan of twenty-five thousand dollars (\$25,000.00) from the Atlantic Bank Limited, in May of 2008, and did the repairs and renovations. However, under cross-examination the Defendant said he obtained a \$20,000.00 loan from Atlantic Bank. This is a difference of \$5,000.00. Mrs. Chung showed the Defendant a letter from the Atlantic Bank which showed that he obtained a loan for \$96,000.00 from the Atlantic Bank. The Defendant then said that he had a loan before at the Atlantic Bank and that on the May 21st, he got only \$20,000.00 to upgrade the Restaurant. There was no documentary evidence to prove whether it was \$25,000.00 or \$20,000.00. The body language of the Defendant raised doubts in my mind. Here again, shows the unreliability of the Defendant.
41. My impression of the Defendant was confirmed when in cross-examination, it was suggested to the Defendant by Mrs. Chung that there was never any agreement that he should stop paying rent and he agreed with the Learned Counsel. Mrs. Chung suggested to the Defendant the following:

“Q. I suggest to you that that’s totally unacceptable that that was not the case. That’s my suggestion that there was never an agreement that you should stop paying rent for \$17,000, or \$20,000 far less \$37,000.

A. He did not tell me to stop the rent. He said, offer something like half to me and pay me- -

Q. Half of?

A. I pay \$2,500 for rent maybe I take out \$1,000 per month and I ask him that time he was in Miami. He said when he come to Belize he talk to me. At that time when he came, he send lawyer notice then I stop paying that.

Q. Have you paid any money as the discounted price for the rent?

A. After I finish pay the- -

Q. Have you paid?

A. No, I noh pay nothing after I finish the tiles

Q. I noh asking you about tiles. I asked if you paid any money at all?

A. No, I noh pay.

Q. Not even the discounted amount?

A. No.”

42. Learned Counsel, Mrs. Barrow Chung in her closing address said that the Defendant indicated that there was an agreement that he would pay a discounted rent and he has not even paid the discounted rent. This further shows that the Defendant’s evidence is unreliable. I agree with Learned Counsel that the uncertainty of the Defendant’s evidence begs the question whether there was in fact any agreement at all.
43. In further cross-examination, the Defendant said that when he finished the renovations and the Claimant called him, he asked him, “*I need to pay rent or what?*” The Defendant had no difficulty changing his story which I find to be untruthful. His demeanor and body language was far from convincing.
44. I have no difficulty in believing the Claimant and finding that he was being truthful when he said that there was no agreement between himself and the Defendant for the Defendant to do repairs and renovations to the rented property and to use the rent to pay off the full cost of repairs and renovations. I find and hold that there was no such agreement.

Issue 2:

Whether the sum of \$32,500.00 is owed to the Claimant for rent.

45. The Court’s finding is that there was no agreement between the Claimant and the Defendant for the Defendant to do repairs and renovations to the rented property and to use the rent to pay off the full cost of repairs and renovations. Since there was no such agreement then the Defendant is

liable to pay the arrears of rent due which is for the period, June 2008 to July, 2009. The monthly rental according to the evidence is \$2,500.00. The rental due is therefore, for 13 months which is \$2,500.00 x 13 totaling \$32,500.00.

46. For these reasons this is the order of the court:

Order

I find that the Claimant is entitled to the sum of \$32,500.00 being the arrears of rent due from the Defendant from June 2008 to July 2009.

Cost to be agreed if not taxed.

Interest at 6% per annum from 11/12/08

Dated this 14th day of October, 2009.

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MINNET HAFIZ
SUPREME COURT JUDGE