

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 863 of 2009

**LARRY THORPE
t/a THORPE LTD.**

CLAIMANT

AND

**LAWRENCE WILKINSON
t/a L & L CARE SUPPLY CO. LTD.**

DEFENDANT

Hearings

2010

7th September

5th October

5th November

Mr. Kevin Arthurs for the Claimant.

Mr. Arthur Zaldivar for the Defendant.

LEGALL J.

JUDGMENT

1. The claimant, trading as Thorpe Ltd., is the owner of Lot. 8, Bermudian Landing, Belize District, Belize (the land). In February, 2008, there was a structure on the land, the top of which was a thatched roof and not enclosed. The bottom was made of blocks and enclosed. The structure measured about 27 feet by 20 feet. The

defendant, prior to February 2008, lived and carried on business in Richardson, Texas, U.S.A; but he wanted to establish a business in Belize, selling automotive parts in Belize and the Caribbean, and was interested in a property for this purpose. He said he met the claimant in Texas in the summer of 2007, who invited him to visit Belize to look at the land and structure. The defendant visited Belize in December 2007 and looked at the said land and structure for the purpose of using them for his business.

2. The parties around December 2007 had discussions concerning the use of the land and structure (the property) by the defendant. A lease was prepared around February – March 2008 containing the terms and conditions for the use of the property by the defendant, but the lease was never signed by the defendant, and cannot be used as evidence that the defendant agreed to the terms and conditions stated therein. The claimant asserts that it was agreed orally that the defendant would rent the property from him as a tenant on the terms and conditions of the purported lease; and at the end of the tenancy, on 31st March, 2010, any fixture and material installed on the property by the defendant would remain on the property.
3. Both parties agreed that the structure on the property needed repairs so as to make it suitable for the purpose of the business. In order to effect the repairs, it was orally agreed between the parties that the defendant would deposit monies in the claimant's bank account in Bank of America, U.S.A. and that the monies in that account would be used to repair and renovate the structure. The system agreed to by the

parties was that the defendant, having paid the deposit in the claimant's account in U.S. dollars, would, when he is in Belize, obtain from the claimant the equivalent in Belize dollars, which he would then use to purchase materials to effect the repairs or renovation to the structure.

4. The defendant returned to Belize in February 2008 and the renovation of the structure began and was completed around July or August 2008. The cost of the renovation was paid from monies paid in the claimant's account by the defendant. The claimant admitted that his property increased in value as a result of monies paid by the defendant for the repairs, and that the monies invested were substantial.

5. The main issue in this case is to determine what was the oral agreement between the claimant and the defendant for the use and occupation of the property. The claimant says that the defendant was a tenant of the property at a monthly rental of \$2,500.00 from 1st February 2008 to March 31st, 2010; and that, according to the oral agreement, the defendant was to remodel and renovate the structure, and the resulting fixtures were to remain on the structure at the end of the tenancy. The claimant states that the defendant around 17th October, 2009 began to vacate the property and began to remove fixtures from the structure contrary, says the claimant, to the oral agreement. Because of this alleged behaviour of the defendant, the claimant states that he suffered loss and damage. The claimant brought a claim for relief against the defendant. This is how the relief claimed is drafted in the statement of case –

- “12 (a) General damages at the statutory rate of 6% per annum from the date of breach of contract or until sooner settlement.
- (b) On costs at the statutory rate of 6% per annum.

And the claimant claims:

- (a) Damages.
- (b) Interest under paragraph 12 above to be assessed.
- (c) Any other relief the court may deems fit.
- (d) Costs.”

6. The defendant, on the other hand, denied that he was a tenant, and claimed that there was an agreement between the parties that he would repair and renovate the structure at his own expense, in return for which the defendant would use the property rent free for the period of the renovation and for two years thereafter. At the end of the two year period, he said, he would have had to pay rent. The defendant claimed that in accordance with the oral agreement he spent US\$46,000.00 to renovate and repair the structure which was increased in size to two storeys measuring approximately 50 feet by 40 feet or about double its original size.
7. The defendant said he stayed on the property for approximately nine months and he left because he was being pressured by the claimant to sign a lease, the terms of which he did not agree. He said the pressure came mainly because the claimant wanted him to take out a million dollars insurance policy on the property which he, the defendant, said

was worth about one hundred thousand dollars. He said before leaving the property he took off some fixtures from the structure, and did not carry them away, but left them on the property; and that from his knowledge somebody subsequently put the fixtures back on the structure. He said he found a new place to reside and to carry on his business.

8. The defendant said that he was prevented by the claimant from living on the property rent free for two years after effecting the repairs as agreed, and he suffered loss. He therefore counterclaimed for “restitution of the full value of the improvement made to the claimant property of US \$46,000.00; that the application of the claimant be rejected.” The defendant also claims verbatim the reliefs of the claimant quoted above.

9. The question is who is speaking the truth as to what was orally agreed with respect to the use and occupation of the property. The claimant gave evidence in the witness box that he agreed to formulate the lease in March 2008. But in his affidavit he said that “we then drafted a mutually agreed Lease Agreement dated 1st December, 2007.” Yet he proceeded in his evidence in the witness box to say “that there was a verbal discussion in December 2007,” which I take him to mean a verbal discussion on the lease. Still further the unsigned lease itself attached to the claimant’s affidavit states that it “is made and effective December 1st 2007.”

10. In relation to the defendant, it came out in evidence that he had problems with the IRS in the United States, and that is why he did not want funds to be in his name in a bank account or his name on the lease. He preferred according to the claimant, to be covered or disguised by a corporate entity – his company L & L Care Supply Co. Ltd. – and that is why he did not sign the lease. Further, the defendant said in his counterclaim that he “did not attempt to move away fixtures, only items capable of being classified as chattel.” But in his evidence in court he said he took off the zinc roof and some of the wiring. Then there are the discrepancies in the amount he said he spent on the renovation of the structure.
11. The defendant states in his witness statement that he invested US\$46,000.00 for the renovation, but the photocopies of the cheques and wire transfers exhibited by the defendant to prove this amount fall short. In his evidence in court he said that at the time he moved out of the property he had invested more than \$50,000.00, about \$58,000.00 to \$60,000.00 in renovating the property. Again there is no supporting evidence to support the defendant on this point. But in his counterclaim, the defendant claims US\$46,000.00 for the improvements made to the structure. Moreover in his oral evidence in court he said he spent about US\$35,000.00.
12. But despite the above discrepancies and contradictions, I have seen both the claimant and the defendant testified. I have observed their demeanour and how they answered questions in the witness box. No other witness was called in the case. This is a two witness case. By

looking at the defendant and the claimant in the witness box and observing them give their evidence, and bearing in mind the facts of the case and the contradictions above, I do not believe the claimant when he said that the defendant agreed to the terms and conditions of the purported lease. I do not believe the claimant that the defendant agreed to occupy the property as a tenant or agreed to the rentals mentioned in the purported lease. I believe the defendant when he said that the agreement was that he would, with his own money, repair and renovate the property, in return for which it was agreed that he would live in the property rent free for the period of the repairs and for two years thereafter. At the end of the two year period, the amount of rent and tenancy would then be discussed between them. I believe the defendant expended his own money for the repairs and renovations of the structure and that he left the property for other accommodation after having been pressured by the claimant to sign the purported lease.

13. I accept the evidence that when the defendant came to Belize in February, 2008 he stayed with the permission of the claimant at the claimant's cottage at Lot. 11 Bermudian Landing, a house separate from the property in question. The defendant said he lived at the cottage rent free with the permission of the claimant until about July 2008 when he went to live at the property.
14. Mr. Arthurs, who appeared at the trial in the place of Mr. Lindo SC for the claimant, submitted that on the facts of the case there was an oral contract of tenancy, or at least an agreement for a tenancy,

between the claimant and the defendant, and that the defendant breached that contract of tenancy or agreement for a tenancy. He submitted that neither the contract nor the agreement has to be in writing, since the contract or agreement was for a period of two years, relying on section 7 of the Landlord and Tenant Act, Chapter 189 of the Laws of Belize (the Act).

15. Section 2 of the Act defines a tenant as “any person entitled in possession to the land or building under any contract of tenancy” In Belize, there are several kinds of tenancies – a tenancy for years; tenancy from year to year, tenancy for less than a year, tenancy at will and a tenancy at sufferance. The submission of Mr. Arthurs is that, on the facts, there is no tenancy at will, but it was a tenancy from year to year, and the consideration for the use and occupation of the property, rent in the eyes of the law, according to the submission, was the monies spent by the defendant to improve and repair the structure. According to the claimant, the agreement between the claimant and the defendant was that the monies spent by the defendant to repair and improve the structure were to be exhausted by deducting therefrom an agreed monthly rent until the said monies were exhausted. Therefore, the defendant was a tenant from year to year who had breached his contract of tenancy by removing from the property before the end of the two year period – March 2010 – and by removing the fixtures.
16. It seems to me that in order to determine on the facts of this case, whether or not a tenancy was created, it depends on what was the intention of the parties, which is to be inferred from the facts and

circumstances of the case. In *Isaac v. Hotel de Pais Ltd.* 1960 *A.E.R.* 348, the Privy Council considered the intention of the parties in determining whether a lease or tenancy was created. The court will imply a tenancy where, from the facts and circumstances of the case, it can be inferred that the parties intended to create a tenancy. It must be borne in mind though that rent is not necessary for the creation of a tenancy. In *Ashburn Anstalt v. Arnold* 1988 2 *W.L.R.* 706 the court held that a tenancy was created though no rent was to be paid for possession of the premises.

17. In *Javid v. Agil* 1991 1 *A.E.R.* 243 Nicholls LJ points out “that a tenancy springs from a consensual arrangement between two parties” and that “the law will imply from what was agreed and all the surrounding circumstances, the terms the parties are able to be taken to have intended to apply.”
18. From the facts and circumstances of this case, I do not accept that the claimant and the defendant had the intention or a consensual arrangement or agreement to create a tenancy. In my view, on the facts this case, no tenancy was created between the claimant and defendant. As I said above, I accept the defendant’s evidence that he expended monies in repairing and improving the structure in return for which he was promised to stay rent free at the property for two years, at the expiration of which the parties were to enter into a contract of tenancy. Mr. Arthurs accepted that his case was not based on a tenancy at will.

19. The defendant counterclaimed for the US\$46,000.00 he said he spent to renovate the structure. In his evidence before the court that changed to varying amount as we saw above.
20. The defendant lived on the property rent free from around July 2008 to about 17th October, 2009. The burden is on the defendant to prove his counterclaim on the balance of probabilities. From the evidence, I am not satisfied as to the exact amount he spent on improving the structure. He was not evicted by the claimant, but he made the decision to leave because he said he was pressured.
21. Because of the discrepancies about the amount spent by the defendant for the repairs, I am not satisfied on a balance of probabilities of the exact amount spent by the defendant for the repairs. In the absence of such proof, the court cannot engage in an exercise of guess work or conjecture, with respect to the amount spent.
22. Moreover, the defendant admitted removing fixtures from the structure, including the roof, but said he left them on the property. But should he make some payment out of the monies he spent on the renovation for the resulting damage to the structure by the removal of the fixtures; and how much should that be? I believe he should compensate the claimant for the resulting damage, but there is no evidence of the cost of the damage.
23. I accept the evidence of the claimant that the structure had to be rehabilitated after the defendant left, though it is still not completed;

and the structure, because of the removal of the roof, suffered water damage and he had to hire a watchman to protect other parts of the structure, all of which involved expenditure by the claimant. The above expenditures were caused by the act of the defendant in removing the fixtures; and the claimant ought to be compensated for those expenditures, but again there is no such evidence.

24. For all of the above reasons, I refuse the counterclaim for the cost of the renovations.

25. I therefore make the following orders:

(1) The claims of the claimant are dismissed.

(2) The counterclaims of the defendant are dismissed.

(3) An injunction is granted restraining the defendant, servants or agents from entering, occupying, residing on the property situated at Lot 8 Bermudian Landing, Belize District, Belize and from in any way removing any fittings or fixtures from any building or structure on the said property.

(4) There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
5th November, 2010

