

Anscombe v Indian Ocean Tuna Limited

(2010) SLR 9

Antony DERJACQUES for the plaintiff

Pesi PARDIWALLA for the defendant

Judgment delivered on 10 May 2010 by

KARUNAKARAN J: The plaintiff in this matter claims the sum of R 92,032.30 from the defendant towards loss and damage which the plaintiff suffered as a result an alleged breach by the defendant of an lease agreement the parties had entered into in respect of a dwelling-house situated at Belonie, Mahe, owned by the plaintiff and leased out to the defendant.

It is not in dispute that the plaintiff, who was at all material times a resident of the United Kingdom, had leased out the said house (hereinafter referred to as the "premises") to the defendant company, for use and occupation of its expatriate workers, under a lease agreement dated 1 December 2003 (in exhibit P1) for a period of two years on a monthly rent of R 14,000. As per the terms and conditions of the agreement, either party could terminate the lease by giving one month's notice to the other. Also it was a term of the agreement that the tenant, namely the defendant, during the tenure should keep all fixtures and fittings on the premises in good, tenantable repair and condition but subject to reasonable wear and tear and damage by fire or force majeure. In this respect, clause 4(a) of the lease agreement, inter alia, reads -

...for the avoidance of doubt, the expression reasonable wear and tear shall include but not limited to the deterioration and degradation to the premises....

It was also a term of the agreement that upon the expiry of the lease, the parties shall carry out a joint inspection of the premises, the furniture and the household effects. It is also not in dispute that on 27 November 2004, the defendant terminated the lease by giving one month's notice to the plaintiff, in accordance with the terms of the lease agreement. According to Mr Guy Khan (DW1), the Commercial Manager of the defendant company (IOT), since the plaintiff was living abroad, she requested the defendant company not to leave the premises unattended or unoccupied and keep possession of them for security reasons, until her return to Seychelles in January 2005. The testimony of Mr Khan in this respects runs as follows:

She (the plaintiff) telephoned me and asked me personally. Since we were moving out and she did not have any representative in the country, we keep a token force, some people there for security purposes. At this point in time, we had already rented a house from Fonseka at St Louis at R 15,000 effective from 15 December 2005 to put our employees there. She asked me because I know her. We being a proper company, agreed to keep a token force of some workers for security purposes in the house. When she did not come back in

January we could not move out because she asked me personally and when she came back in February, we agreed to pay her another R 7,000. At this point in time we had already got an agreement and contract to put the workers from her place to Fonseca at St Louis.

According to Mr Khan, following the expiry of the lease and after giving due notice of termination to the plaintiff within the stipulated period, the defendant was ready and willing to return the premises to the plaintiff. However, it was the plaintiff who was not ready to take back possession of the premises, as she was then overseas. Hence, she requested the defendant to continue in possession of the premises until her return in January 2005 and for the meantime, she agreed or promised to accept a reduced rent of R 7,000 - half the amount of the original rent. But again the plaintiff delayed her return and the defendant had to continue possession and kept some of its workers in the premises for security reasons. Therefore, the defendant had to postpone the cleaning of the premises and minor repair works on the premises until the end of February 2005. After the plaintiff's return, the defendant completed cleaning, replaced some items, restored the premises to good tenable repair and condition at the cost of R 12,000 and delivered possession to the plaintiff on 25 February 2005. The defendant also agreed in good faith to pay rent even for February 2005 at R 7,000 in addition to R 7, 000 which sum had already been paid to the plaintiff as rent for the month of January 2005. After her inspection of the premises on 22 February 2005, the plaintiff wrote a letter requesting the defendant to replace certain items in the premises, quoting a total of R 14,082. In response, the defendant wrote back to the plaintiff on 11 April 2005 offering in good faith to pay the sum of R 6,885.65 as compensation for certain damaged items that apparently required replacement like door locks, shower curtains etc as the defendant felt that the plaintiff's claim had on the face of it been exaggerated. The plaintiff however, declined to accept the defendant's offer as she was not satisfied with the repair works carried out and the items replaced by the defendant in the premises. Therefore, the plaintiff has come before this Court claiming consequential loss and damages from the defendant as follows:

For materials replaced inclusive of labour charge	R14,032.30
Economic/ rental loss from January to February 23 and for one month's notice at R 14,000 monthly	R30,000.00
Economic /rental loss for two months required to repair damages	R28,000.00
Moral damage for distress, depression, humiliation	R28,000.00
<u>Total</u>	<u>R92,032.30</u>

The plaintiff testified in essence, that she had agreed/promised to accept the reduction of rent from R 14, 000 to R 7,000 because she had no other choice. She also testified that when she inspected the premises, she noticed there were broken

locks, a broken door, and a missing mirror. She replaced the mirror for the wardrobe at a cost of R 490 and five shower roses each at a cost of R 100. She also had to replace shower curtains at the cost of R 300, ceiling fans at R 1,366, and a hand wash basin at R 200. She paid a carpenter R 2,500 towards labour costs. Although the plaintiff was not able to substantiate in her testimony each and every claim pleaded in the plaint for the materials, she concluded that she had to spend the total sum of R 14,032.30, for which the defendant was liable. Since she had to carry out those repairs, she sustained a loss of rental earning for two months totalling R 28,000. Moreover, she claims that the defendant is liable to pay rent at the rate of R 14,000 for January and February 2005. Besides, she claims moral damages in the sum of R 20,000 alleging that she suffered inconvenience, distress and unhappiness as a result of the breach of the lease agreement by the defendant. Hence, the plaintiff prays this court to enter judgment in her favour and against the defendant in the sum of R 92,032.30 with interest and costs.

I meticulously examined the evidence adduced by the parties in this matter. I diligently considered the submissions made by counsel on both sides for and against the plaintiff's claim.

First of all, on the question of credibility I believe DW1, Mr Guy Khan, the Commercial Manager of IOT, in every aspect of his testimony. I find on evidence that since the plaintiff was admittedly, not in the country to take back possession of the premises immediately upon termination of the lease, she had requested the defendant to continue possession until her return from overseas. The plaintiff also had agreed to reduce the monthly rent to half and accept only R 7,000 for the intervening period. The defendant accordingly relied and acted upon the plaintiff's promise and continued in possession of the premises obviously out of goodwill, and also the defendant generously agreed to pay rent at a reduced rate even for February 2005. It is therefore evident that it was the plaintiff's inability to take possession of the premises on time that has triggered the whole turn of events and procrastination. Hence, I find that the defendant was not at fault nor was it responsible for the delay in handing over possession of the demised premises to the plaintiff. In the circumstances, I hold that the defendant is not liable to pay rent more than what had been verbally agreed upon by the plaintiff, who indeed, promised to accept only half rent for the intervening period. By the same token, the defendant cannot be held responsible for any consequential loss the plaintiff allegedly suffered on account of rental or economic loss for any period subsequent to the termination of lease. Indeed, the plaintiff is now estopped from going back to the original terms of the lease agreement and claim a monthly rent at R 14,000 since she had verbally agreed or promised to accept a reduced rent at the rate of R 7,000 per month for the intervening period. Thus, a promise was made by the lessor (the plaintiff) to accept a reduced rent, which was obviously intended to create legal relations and which, to the knowledge of the person who made the promise, was going to be acted on by the person (the defendant) to whom it was made, and which was in fact so acted on. That is, the defendant acted upon the promise of reduced rent and continued to keep possession until the plaintiff's return to the country. In such cases, the courts have said that the promise must be honoured... And such a promise gives rise to an estoppel - a "promissory estoppel" - a landmark doctrine formulated by Lord Denning in the *High Trees* case (*vide Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130), which reaffirmed the doctrine of promissory estoppel in contract law. The facts of *High Trees* are quite simple. During the Second World War many

people left London owing to the bombing. Flats were empty. In one block, where the flats were let on 99 year leases at £2,500 a year, the landlord had agreed to reduce it to half and accept only £1,250 for the intervening period. When the bombings were over and the tenants came back, the landlord went back to the original lease term and sought to recover the full rent of £2,500 a year. Denning J held that promissory estoppel applies in such circumstances and the landlord could not recover full rent for the time when the flats were empty, but only half rent as was promised and agreed upon by the parties. Lord Denning stated:

If I were to consider this matter without regard to recent developments in law, there is no doubt that had the plaintiffs claimed it, they would have been entitled to recover full rent at the rate of £2,500 - a year... since the lease under which it was payable... which, according to the old common law, could not be varied by an agreement by parol, but only by a deed. Equity, however, stepped in... there are cases in which, a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on. In such cases, the courts have said that the promise must be honoured...As I have said they are not cases of estoppel in the strict sense. They are really promises-promises intended to be binding, intended to be acted on and in fact, acted on.... And such a promise gives rise to an estoppel.

In the instant case, the plaintiff promised to accept a reduced rent, which was intended to create legal relations and which, to the knowledge of the person who made the promise, was going to be acted on by the defendant to whom it was made and which was in fact so acted on by the defendant. For all legal intents and purposes, the premises remained empty since the termination of the lease by the defendant company. Hence, I find that the plaintiff is estopped from claiming rent at R 14,000 per month for any period subsequent to the termination of the lease. She is legally entitled to claim only the reduced rent at R 7,000 per month. Since, the plaintiff has admittedly received the rent for January 2005 at R 7,000, the balance of rent remains due only for February 2005, which she is entitled to claim at the same rate, that is R 7,000 per month.

As regards the plaintiff's claim for repairs, replacement of materials and labour, I find on a balance of probabilities that although the defendant during the tenure had kept all fixtures and fittings on the premises reasonably in good tenantable repair and condition, some of the items in the premises appear to have been missing or damaged beyond reasonable wear and tear but not by fire or force majeure. Taking all relevant circumstances into account, in this respect, I award the plaintiff a global sum of R 8,000 as compensation for those missing and replaced materials and labour costs. Regarding economic or rental loss claimed by the plaintiff for two months, I find on the evidence that the nature and extent of repair works complained of, at any rate, would not require more than one month for completion. Hence, I hold that the defendant is liable to pay only R 7,000, the reduced rent, to the plaintiff under this particular head since "promissory estoppel" is activated against the plaintiff's claim at the rate of R 14,000 per month. As regards the plaintiff's claim for moral damages, the amount claimed appears to be exorbitant and unreasonable. Having regard to the entire circumstances of the case, I award the sum of R 5,000

as moral damages.

In summing up, I award the following sums for the plaintiff:

Rent payable by the defendant and due for February 2005	R7,000
For repairs and replacement of materials including labour	R8,000
Rental loss for repair period of one month	R7,000
Moral damages	R5,000
Total	<u>R27,000</u>

In the final analysis and for the reasons stated hereinbefore, I enter judgment for the plaintiff and against the defendant in the total sum of R 27,000 with interest on the said sum at 4% per annum (the legal rate) as from the date of plaint and with costs of this action.

Record: Civil Side No 203 of 2005