

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 38/2016

[2018] SCSC 193

NAIDU VENKATESAN

Plaintiff

versus

THEMAVAI SELVI MUTHARASU

Defendant

Heard: 30 October 2017, Submissions 24 November 2017

Counsel: Mr. Elvis Chetty for plaintiff

Mr. France Bonte for defendant

Delivered: 26 February 2018

JUDGMENT

M. TWOMEY, CJ

[1] The Plaintiff sues the Defendant for the breach of a lease agreement in relation to Parcels S2192 and S2197 in which he had been granted a shop unit by the previous landowner for a period of five years commencing on 1 September 2010 and ending on 31 August 2015.

- [2] On 4 November 2014, the previous landlord, one David Surnam sold the property in issue to the Defendant. At the making of the Plaintiff, the Plaintiff averred that the Defendant was attempting to cancel the lease and illegally evict him and had even issued him with a written notice. Bu the time the case was heard eviction had taken place.
- [3] In his Statement of Defence, the Defendant avers in *limine litis* that he is not party to the lease and therefore not bound by it. His defence on the merit is a general traverse of the material facts.
- [4] In his evidence the Plaintiff testified that he was a businessman in the retail business and had signed a commercial lease agreement with David Surnam (Exhibit P1). He paid SR15, 000 monthly. He explained that although he paid the rent for the months of 2010 and 2011 he did not gain access to the premises until February 2011. Subsequently on 21 November 2014, the Defendant informed him that he was the new owner and asked him to vacate the premises on or before 30 November 2014 as he intended to turn the premises into luxury apartments.
- [5] It was his evidence that the Defendant harassed him for weeks threatening and taunting him and eventually forcefully ejected him from the premises, which included the shop and his home at the top. They cut his locks and put new locks on the door. They put all his goods and stock outside the shop. He had to put them in his friends' store at Cascade. He stated that he had been making a profit of about SR150, 000 monthly but in cross-examination agreed that that taxes, salaries and rent payments had to be deducted from this sum.
- [6] The Defendant also testified. She stated that she did have a lease with the Plaintiff but did send him the letter asking him to vacate the premises she had purchased. David Surman showed him the lease but only the Plaintiff had signed it. It was her evidence that the Plaintiff vacated the premises on 12 January 2015 leaving the premises in a very bad state.
- [7] In cross-examination, she admitted that very shortly after buying the premises she advertised for the lease of the whole building. The Plaintiff was in India but the notice to quit the premises was posted to him.

[8] The issues arising in this case are the following: 1. whether a lease agreement concluded by a landlord and his tenant binds the landlord's successor and 2. if it does, what damages are then due to the tenant who has been evicted.

[9] In his closing address, Mr. Bonte for the Defendant has submitted that in view of the rules of privity of contract, the legal relationship between the Plaintiff and the previous landowner does not bind a third party, namely the Defendant.

[10] In this respect, it is important to bring clause 23 of the lease agreement between the Plaintiff and David Surnam. It states:

“The provisions of this Agreement shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns”
(emphasis added).

[11] In the same regard and in addition to the said clause, Article 1718 of the Civil Code of Seychelles provides in relevant part:

“1. An agreement for a lease shall only confer personal rights upon the parties to it. It shall be binding upon a buyer of the property unless the landlord, by the terms of the agreement, has reserved the right to terminate it upon the sale of the property. However, if the seller has not reserved that right and if the buyer could not reasonably be expected to know of the tenancy, the latter shall be entitled to demand a reduction of the price corresponding to the loss.”

[12] In answer to the first issue therefore, the answer is in the affirmative – since the previous owner did not reserve the right to terminate the lease on the sale of the property, the lease is binding on the Defendant. She is therefore liable for the ejection of the Plaintiff which was done unlawfully. In addition she was aware of the lease agreement which she referred to in her evidence and in any case the Plaintiff was in occupation when she purchased it.

[13] With respect to the quantum of damages, little evidence was brought about the loss suffered by the Plaintiff. At the time of his ejection, his lease still had seven months to

run. However, the lease mentions that notice of two months could be given by either party to terminate the lease.

- [14] He states that he was making about SR150, 000 from a turnover of about SR500, 000 monthly. He has brought no supporting documentation but admitted that he had to make deductions for taxes and other bills including rent and salaries.
- [15] The Goods and Services Tax although mentioned by the Plaintiff in his evidence was replaced by Valued Added Tax (VAT) since 2012 and is levied at 15% on standard rated goods supplied. There are certain supplies that are exempt from VAT but I have no evidence of the same. I have warned parties on many occasions before that the Court cannot of its own pluck figures from the sky. I have not been provided with any details of exempt supplies and therefore must make an arbitrary calculation.
- [16] I estimate that after salaries, rent, utility bills and taxes that a profit of SR95, 000 was being made monthly. I have no idea whether the stock salvaged was sold or whether the Plaintiff continued to trade elsewhere. I must however make a deduction for the same, which I estimate at SR50, 000.
- [17] There is no distinction made between moral damages and damages arising from the breach of the lease agreement. In the circumstances and in view of the paucity of evidence I grant the Plaintiff the sum of SR90, 000 for the loss of profit for two months and SR20, 000 for moral damages. The whole with interest and costs.

Signed, dated and delivered at Ile du Port on 26 February 2018.

M. TWOMEY
Chief Justice