

IN THE COURT OF APPEAL FOR SIERRA LEONE

PARTIES:-

FAWAZ AYOUB

- APPELLANT

A N D

LUCY MACAULEY

- RESPONDENT

JURAM:-

Hon. Mrs. Justice V.A.D. Wright

- JSC

Hon. Mr. Justice N.D. Alhadi

- JA

Hon. Mr. Justice F.C. Gbow

- JA

R. AWUNOOR-RENNER ESQ., FOR THE APPELLANT

A.F. GERRY-KAMAL ESQ., FOR THE RESPONDENT

JUDGEMENT DELIVERED THIS 9th DAY OF April 2001

WRIGHT J.S.C.

This is an Appeal from the Judgement of the Hon. Justice E. Tolla-Thompson delivered on the 24th March, 1994

The Grounds of Appeal are as follows:-

- i. That the Learned Trial Judge having found as a fact that the Lease required the Defendant to notify the Plaintiff only went on to base its reasoning on the requirement of written consent.
- ii. That the Learned Trial Judge found as a fact that the plaintiff wanted increase in the rents went on to order the forfeiture of the Lease.
- iii. That the Judgement is against the weight of the evidence.

I will not go into the history of the case as my Learned Brother has already done so in his judgement which I had the opportunity of reading but I will point out certain portions of the Statement of Claim which were as follows:-

1. The Plaintiff is owner of land and premises No. 18E Hennessy Street, Kingtom, Freetown.
2. Sometime in late December, 1980 and early 1981 the Plaintiff

orally agreed with the Defendant to lease to him a portion of her land at Hennessy Street, Kingtom. It was agreed that the plaintiff would locate and point out to the defendant the portion leased to him.

3. Before the plaintiff has an opportunity of doing so defendant, on his own carried out a survey of the plaintiff's property without the knowledge or consent of the plaintiff. He thereafter consulted his own solicitor who drew up a lease containing terms not specified by the plaintiff. This was contrary to the spirit and letter of the oral arrangement between the parties as the plaintiff had informed the defendant she would instruct her own solicitor to prepare a Lease for the defendant's account setting forth to terms and conditions under which she would be prepared to let her property.
4. It was agreed between the parties that the defendant would construct an additional substantial building to the land. Instead of doing so the defendant illegally demolished the plaintiff's existing building there.
5. On or about the 27th May 1981 following persistent demands and anxiety about a lease, the defendant induced the plaintiff to execute a tenancy agreement before the site plan was available. The plaintiff subsequently discovered that the defendant had surveyed and appropriated much more land than he was entitled to with the result that a portion of her access road was closed causing the plaintiff considerable inconvenience.
6. The said Tenancy Agreement was prepared and registered by the defendant's own solicitor as No.95/81 at Volume 70 Page 47 in the Books of Leases and contain inter alia covenants by the Tenant.

- (a) Against underletting without notice and consent
- (b) To insure
- (c) To paint every two years
- (d) To erect an additional structure within a year

7. The plaintiff says that the defendant is in breach of the express terms of the said Tenancy Agreement that:-

- (a) He sublet the premises without notifying the plaintiff and securing her consent thereto contrary to Clause 2(c).
- (b) He failed to erect an additional structure in one year at all, contrary to Clause 2(ii)
- (c) He failed to insure the premises contrary to Clause 2(vii)
- (d) He failed to paint the interior of the premise once in every two years contrary to Clause 7.

8. By letter dated 30th March, 1988 the plaintiff caused her Solicitor to give six(6) months' notice to the defendant in accordance with Clause 7(vi) and (vii) of the Tenancy Agreement of the above stated defect and breaches of covenant inviting the plaintiff to remedy them and to pay compensation thereafter. The defendant has ignored these demands.

There were several covenants in the lease which the respondent claimed the appellants were in breach but the Learned Trial Judge found that the appellant was in breach of only Clause 2(a) of Exhibit "D" which reads as follows:-

- (a) NOT to assign underlet or part with the possession of the demised premises or any part thereof without previously informing the Lessor, consent should not be unreasonably withheld in the case of a responsible and respectable person firm company.

The question now is did the respondent give her consent for the premises to ^{be} sublet the premises. She further said that when the building was going up, she complained to her lawyer that the appellant had blocked the access road which she was using and made several attempts to stop him

from constructing the wall.

The Learned Trial Judge in his judgement said that he preferred the evidence of the respondent to that of the appellant in relation to the consent not being given by the respondent to the appellant for the subletting of the premises to one Mr. Jaffa. I do not see how I can interfere with that finding of the Learned Trial Judge since he had the opportunity of hearing both sides of the evidence. He saw the demeanour of both witnesses and rightly came to the conclusion that he preferred the evidence of the respondent to that of the appellant. In Halsbury's Laws of England 4th Edition Page 387 Paragraph 510 on the Role of the Trial Judge.

"He (the judge) will see that the advocates behave themselves seemingly, and keep to the rules seemingly and keep to the rules laid down by law, he will exclude irrelevances and discourage repetition, so that the case will not drag on too long, he will make sure by wise intervention that he follows the points that the advocates are making and can assess their worth and at the end he will make up his mind where the truth lies, and give his judgment according to law".

The Learned Trial Judge with respect in my opinion does not have to give any reason for his preference.

Learned Counsel for the respondent said at the hearing of the appeal that the respondent had complained several times to her former solicitor about her consent not being given to the subletting of the premises and the blocking of the access road long before legal action was taken on the matter. This was not challenged by Counsel for the respondent and therefore it could not be said that she acquiesced to the subletting of the premises. It is rather unfortunate that there was no cross appeal on this matter.

Although the lease did not state that the consent should be given in writing it would have been prudent on the part of the appellant to have obtained the consent in writing.

In Halsbury's Laws of England 3rd Edition Volume 23 Page 449
Paragraph 1050 Under consents necessary it states:-

"If the property to be demised is held under a lease which contains a covenant against underletting without consent the head landlords consent in writing must be obtained by the intending underlandlord before the date when the underlease is to be granted".

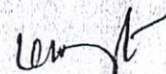
I therefore Concur with the findings of the Trial Judge that consent was not given by the Respondent to the Appellant to sublet the premises.

There is a clause for forfeiture in the Lease Agreement as required by Law. See Halsbury's Laws of England 3rd Edition Volume 23 Page 671 Paragraph 1396 Waiver of Forfeiture and Paragraph 1400 on Page 674.

Before a right of re-entry or forfeiture, under any proviso or stipulation in a lease, for breach of a covenant or condition in the lease can be enforced by action or otherwise, the landlord must, save in certain cases, serve on the tenant a notice specifying the particular breach complained of, and, if the breach is capable of remedy, it; and in any case requiring him to make compensation in money for the breach. If the tenant fails within a reasonable time after service of the notice to remedy the breach, if capable of remedy, and to make reasonable compensation in money, to the satisfaction of the landlord, then the latter can either re-enter or commence an action to recover possession.

The above was approved in the case of Basma Vs. Noureldine 195-1956 ALR SL. In this action Exhibit "C" was written by the Respondent's Solicitor specifying the breach and six months was given for the appellant to remedy such breach. I am satisfied that the breach was not remedied instead the Appellant's Solicitor said consent had given.

I therefore agree with orders given by the Learned Trial Judge and dismiss the appeal.



(Sgd) Hon. Mrs. Justice V.A.D. Wright-JS