

C.C.624/07

2007

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NO. 2

**IN THE HIGH COURT OF SIERRA LEONE**  
**( CIVIL JURISDICTION )**

BETWEEN: -

CAPTAIN (RETIRED) MICHAEL FOWELL SPENCER

DR. LEN GORDON HARRIS

MR. SUBULOKEN LEWIS LEOPOLD

MR. NATHANIEL TAYLOR

(THE CONSTITUTED TRUSTEES OF THE  
GEORGE THEOPHILUS LEWIS TRUST)

- PLAINTIFFS

AND

MR. WORDSWORTH FILO JONES

- DEFENDANT

**C. J. Peacock Esq. for the Plaintiffs**

**N. D. Tejan Cole Esq. for the Defendant**

**JUDGMENT DELIVERED THE 8<sup>th</sup> DAY OF October 2012**

The Plaintiffs herein issued a writ of summons dated 2<sup>nd</sup> August 2007 against the Defendant claiming the following reliefs:

1. Forfeiture of a lease agreement dated 13<sup>th</sup> July 1983 duly registered as No. 106/83 at page 139 in volume 72 of the record Books of Leases kept in the office of the Registrar General, Freetown expressed to be made between **VIBERT EBENEZER ROY-MACAULEY, WILMOT MENDES, SPENDLOVE CLIFFORD WILLIAMS** and **SAMUEL JOHN. FORSTER** of the one part and **WORDSWORTH FILO JONES** of the other part in respect of land situate, lying and being at 21 Walpole Street Freetown.

2. Immediate recovery of possession of the said piece of land at 21 Walpole Street, Freetown.
3. Damages for breach of the Lease Agreement.
4. Special Damages
5. Any other reliefs as the Hon. Court may deem fit and just.
6. Costs of the action.

In their particulars of claim the Plaintiffs alleged that they are the newly constituted Trustees of the **GEORGE THEOPHILUS LEWIS TRUST** by virtue of a Court Order dated 26<sup>th</sup> August 2005. That by a Lease Agreement dated 13<sup>th</sup> July 1983 duly registered as No. 106/83 at page 139 in volume 72 of the record Books of Lease kept in the office of the Registrar General, Freetown expressed to be made between **VIBERT EBENEZER ROY-MACAULEY, WILMOT MENDS, SPENDLOVE CLIFFORD WILLIAMS** and **SAMUEL JOHN FORSTER** of the one part and **WORDSWORTH FILO JONES** of the other part the Defendant became entitled to a Lease of a piece of land situate at 21 Walpole Street, Freetown for a term of 30 years with effect from 1st July 1983 to 30<sup>th</sup> June 2013.

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The Plaintiffs further averred that the executors of the Will of the said **GEORGE THEOPHILUS LEWIS** (Deceased) who executed the said lease have died and that the present Plaintiffs are the newly constituted Trustees in charge of the said property under the said Trust. That probate of the last Will and Testament of the said Deceased was granted to the said executors, the Lessors of the said lease. They further allege that the Defendant has failed to comply with clause 2(c),(d),(e),(f) and(g) and clause 4 of the said Lease Agreement and that he sublet the demised land to one **IBRAHIM SORIE** without the consent of the Plaintiffs. That by letter dated 2<sup>nd</sup> February 2007 addressed to the Defendant; the Plaintiffs' solicitor gave notice to him to remedy the said breaches as well as demanding from him the receipts of payment of rents previously paid. They averred that the Defendant failed to remedy the said breaches and to comply with the said request. By reason of the Defendant's conduct the Plaintiffs allege that they have suffered loss. Particulars of the loss they suffered were given as the cost of hiring a solicitor to litigate assessed at Le5, 000,000. They therefore claimed the reliefs already set out herein.

The Defendant entered appearance and filed a defence in which he averred that he entered into the said lease Agreement as alleged by the Plaintiffs. He further averred that he was not properly informed nor is he aware of the existence of the newly constituted Trustees and that they individually or collectively lack capacity to bring this action under the Rules of the High Court.

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The Defendant also denied that he committed any of the alleged breaches under clause 2(c)(d)(e) and(f) as the lease is current and operative until 30<sup>th</sup> June 2013 when the option for a renewal is to be exercised. He pleaded that in the alternative the Plaintiffs did not comply with the requirement of the law relating to remedy of breaches and never served any notice as required by law.

He further averred that as to the covenant for paying rent he is owing no rents as he had paid rents of Le37,000 outstanding to the Administrator and Registrar General. He also denied subleasing the demised land to and averred that the said **IBRAHIM SORIE** was his caretaker.

The Plaintiffs filed a Reply in which they asserted that the Defendant was duly informed of the newly constituted Trustees and of their control and management of the property by letter dated 2<sup>nd</sup> February 2007. Furthermore he was notified to remedy the said breaches by letter dated 2<sup>nd</sup> February 2008. They further averred that he did sublease the said land to the said **IBRAHIM SORIE** who admitted same to the Plaintiffs solicitor and that he was carrying on business thereon.

An application was made by the Defendant by Notice of Motion dated 21<sup>st</sup> July 2008 that a point of law raised by the Defence be disposed of before the trial, namely, that the Defendant was not duly notified



and was not aware of the existence of the newly constituted Trustees and that if they are individual or collectively they lack the capacity to bring the present action.

Upon the hearing of the said application, an order was made for the amendment of the title of the writ of summons by putting the individual names of Trustees as Plaintiffs.

Directions for the conduct of the trial were given and the matter listed for hearing after due compliance therewith by the solicitors.

At the trial, **CAPTAIN (RTD) MICHAEL F. SPENCER** testified on behalf of the Plaintiffs. He told the court that he is one of the Trustees of the **GEORGE THEOPHILUS LEWIS TRUST** and tendered his witness statement which was used as part of his evidence in chief. He stated therein that the said Trust was duly created under the Last Will and Testament of the said **GEORGE THEOPHILUS LEWIS TRUST** (Deceased) and that probate of the said Will was obtained on 17<sup>th</sup> June 1947. He further testified as to the facts as already set out in their particulars of claim. He asserted that the lease was for a term of 30 years with effect from 1st July 1983 and that the Defendant's first obligation under the lease was to erect a three or four storey building on the land leased to him. He testified that to his knowledge the Defendant had failed to do so and had paid no rent to them since they took over as Trustees. The witness identified the several documents in evidence.

Under cross-examination he told the court that the action was brought against the Defendant for the repossession of the property as the Defendant had failed to comply with the terms of the lease. He further stated that he had failed to pay the rates and assessments imposed on the demised land. He admitted that he had not checked with the Administrator and Registrar General for any rents paid for the said land.

The witness further agreed that the lease period was 30 years with effect from 1<sup>st</sup> July 1983 and that the expiration date is in 2013. He also agreed that the lease had more time to run and stated that it was not possible for the Defendant to comply with clause (c) of the Agreement before the lease expired.

That ended the case for the Plaintiffs.

The Defendant testified on his own behalf. He too made a witness statement which he tendered as Exh P. He admitted knowing **IBRAHIM SORIE** but denied ever subletting the land in issue to him. He told the court that the said **IBRAHIM SORIE** was his caretaker.

The Defendant identified the lease Agreement, Exh F and stated that he indeed signed it and that the lease was for a period of 30 years with an option to renew for a further 30 years.

He explained that he used to pay rent to one of the former Trustees, **MR. WILMOT MENDS** and that after he died, he paid rent to the solicitor of the Estate, **MR. BRIMSLEY JOHNSON** until he too died when he then paid to the Administrator and Registrar General the sum of Le37,000 which was the rent due. He identified the receipt issued to him for the rent, Exh M. He stated that he did not owe any rent for the said land and that he did not commit any breach of the terms of the lease.

The Defendant agreed that he had not constructed the three or four storey building within the duration of the lease which is still current and operative until 30<sup>th</sup> June, 2013. He told the court that he still has the intention to construct the building within the term of the lease. He stated that he had paid the rent due and that he had not defaulted in any way.

The Defendant was cross-examined on his testimony. He admitted that **IBRAHIM SORIE** built a kiosk on the land with his permission but that the said kiosk has been demolished. He agreed that he did not seek the consent of the lessors to allow him to put up the kiosk. He stated that **IBRAHIM SORIE** did not pay rent to him and was his caretaker. He denied subletting the property to him.

The Defendant also identified the receipt for payment of rent issued by the office of the Administrator and Registrar General, Exh M and agreed that the date thereon is 20<sup>th</sup> September 2007

and that the date of the writ of Summons is 2<sup>nd</sup> August 2007, which meant that he had paid the rent after the writ was issued.

That ended the case for the Defendant.

Both counsel submitted written closing submissions.

The Plaintiffs' claim principally is for the forfeiture of the Lease Agreement on the ground of the Defendant's alleged breaches of covenants contained therein. The alleged breaches are claimed to be those set out in clauses 2(c),(d),e) and(g) and 4 of the said Lease. Clause 2(c) and (f) relate to the erection of a three or four storey building at a cost between Le150,000 and Le200,000 principally for commercial purpose but not excluding residential facilities. Clause 2 (d) specifies that the building is to conform with building regulations and 2 (e) stipulates that on its completion the building is to be insured against fire and storm. Clause 2 (f) contains the usual covenant to keep the building in tenantable repair throughout the term.

Now there is clear evidence that the Defendant had not commenced the construction of the building at the date of the writ of summons nor even at the date he testified before the court. He himself acknowledged that he had not yet constructed the said structure but told the court that he had the intention to do so during the period of the lease.



Counsel for the Plaintiffs contention is that according to the Lease, the Defendant only has a period of 30 years certain and nothing more and the Defendant's submission that he has a further term of 30 years on expiration of the existing lease is most misleading and untenable. With all due respect to counsel for the Plaintiffs, the lease clearly provides for a term of 30 years commencing from 1<sup>st</sup> July 1983 to 30<sup>th</sup> June 2013 with an option for 30 years after the expiration of the present term provided there has been no breach of covenant.

Counsel for the Plaintiff has also argued that even if the court grants the Defendant relief from forfeiture of the lease, it would be an act in futility as the Defendant cannot within this short spell of time build a three or four storey building before the expiration of the lease on 30<sup>th</sup> June, 2013.

It is my view that the issue here is: was any specified time given for the Defendant to put up the said building? It is clear from a reading of clause 2(c) that no time frame has been given within which to construct the said building within the term of the lease Agreement. The term of the lease is 30 years from 1<sup>st</sup> July 1983 with an option to renew for another 30 years after the expiration of the present term. The Lease Agreement is therefore still current and operational. As counsel for the Defendant has submitted there is more than ample time to fulfil the Defendant's obligation which he himself had indicated to the court that he has every intention to fulfil.

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In my judgment therefore the Defendant cannot be said to be in breach of the covenant to erect the said building until he fails to fulfil the said obligation at the expiration of the term of 30 years.

The next alleged breach is of clause 2(g) of the said Lease which provides that the Defendant is not to assign or part with the possession of the demised premises without the prior consent in writing of the Lessors. The Plaintiffs alleged that the Defendant subleased the demised land to one **IBRAHIM SORIE** without the consent of the Plaintiffs which said act the Plaintiffs protested against. As proof of this, the Plaintiffs tendered a letter dated 14<sup>th</sup> August 2006, Exh H written by **CAPTAIN SPENCER** addressed to the said **IBRAHIM SORIE**.

Counsel for the Defendant submitted that there is no privity of contract between a lessor and a sub-lessee and the said letter Exh H has no legal basis and is of no evidential value and ought to be discountenanced.

I believe the issue to be established is whether or not the Defendant subleased the demised land to the said **IBRAHIM SORIE**. The Plaintiffs have alleged that the said **IBRAHIM SORIE** erected a kiosk on the said land and was operating a commercial enterprise therein. What is the evidence in support of the allegation that the Defendant assigned the lease or parted with possession of the land?

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The Defendant testified that the said **IBRAHIM SORIE** was his caretaker and that he was on the land on his instruction. That piece of evidence has not been controverted nor has any evidence been produced to establish that the Defendant assigned the lease to the said **IBRAHIM SORIE**. I agree with counsel for the Defendant in his submission that admissible evidence is mandatory to prove that a lessee subleased demised premises without the consent of the Lessor. No such evidence has been produced in this case.

With regard the notice to remedy the breach of covenants required by law to be served on the Lessee, the Plaintiffs rely on their solicitor's letter dated 2<sup>nd</sup> February 2007 addressed to the Lessee, the Defendant. The letter Exh C specified two alleged breaches which are the failure to erect the said building and subletting the said land to the said **IBRAHIM SORIE**.

Counsel for the Defendant has contended that the covenant to pay the rent was not pleaded or alleged as a breach of the Lease Agreement. I agree. Nothing has been said about breach of payment of rent in the letter, Exh C giving the Defendant notice to remedy the breach. In the circumstance the non payment or otherwise of rent cannot be considered a breach warranting forfeiture of the lease.

In addition there is no claim for the payment of rent in the statement of claim.

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The Defendant has testified that he has paid the rent due and owes no rent. He has produced his receipt, Exh M to substantiate it. The Plaintiffs have not shown evidence to contradict his assertion. There is also no evidence of the amount of rent owed produced by the Plaintiffs before the court to necessitate invoking clause 4 of the said Lease Agreement.

The Plaintiffs have therefore failed to establish that the Defendant has breached the covenants or failed to pay rent as alleged. The Plaintiffs claim for forfeiture of the Lease Agreement and other reliefs therefore fails and is dismissed. The Defendant to have the costs of the action to be taxed if not agreed upon.

*A. Showers*  
**SIGNED: - A. SHOWERS**  
**JUSTICE OF COURT OF APPEAL**

*8/10/2012*