

BASMA *v.* NOURELDINE

SUPREME COURT (Beoku-Betts, J.): June 17th, 1952
(Civil Case No. 209/50)

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[1] **Equity—relief against forfeiture—court has wide and unfettered discretion to grant relief:** The court's discretion under s.14 of the Conveyancing Act, 1881 to grant relief against forfeiture is a wide one to be exercised only after consideration of all the circumstances and the conduct of the parties, and should not be fettered by non-statutory limitations (page 237, lines 22–35).

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[2] **Landlord and Tenant—determination of tenancies—forfeiture—relief against forfeiture—court has wide and unfettered discretion to grant relief:** See [1] above.

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The plaintiff brought an action against the defendant to recover possession of premises leased to the defendant.

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The plaintiff leased certain premises to the defendant who covenanted, *inter alia*, to pay and discharge all rates, taxes and other assessments, and to keep the premises in good and tenable repair. The plaintiff subsequently served separate notices on the defendant alleging breach of each covenant and requiring each breach to be remedied. The defendant tendered to the plaintiff the amount due on the rates, which had already been paid by the plaintiff, but he offered no interest for the period between payment and reimbursement. The plaintiff refused the amount tendered but it was paid into his bank account. He instituted the present proceedings against the defendant to recover possession of the premises.

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The plaintiff contended that the defendant was duly served with notice of his breaches of covenant and failed to make compensation, and therefore the lease should be determined and forfeiture awarded. The defendant asked the court to exercise its discretion to grant relief from forfeiture under s.14 of the Conveyancing Act, 1881.

Cases referred to:

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(1) *Hyman v. Rose*, [1912] A.C. 623; [1911–13] All E.R. Rep. 238, *dicta* of Earl Loreburn, L.C. applied.

(2) *Talbot v. Blindell*, [1908] 2 K.B. 114; (1908), 98 L.T. 859.

C.B. Rogers-Wright for the plaintiff;
R.B. Marke for the defendant.

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BEOKU-BETTS, J.:

By a statement of claim in this action, the plaintiff alleges that,

by a lease dated June 21st, 1948, the premises at Nos. 3 and 3(a) Kissy Street, Freetown, were let to the defendant, and by the lease the defendant covenanted to pay and discharge all rates, taxes, duties, etc. assessed, charged or imposed upon the premises, to keep the premises in good and tenantable repair, and at the termination of the lease to give up the premises in good and tenantable condition of repair. It is alleged that by the lease there is a condition for forfeiture upon a breach of any of the covenants of the lease. 5

On May 18th, 1949, as the premises were not kept in good and tenantable condition of repair, the plaintiff served on the defendant a notice specifying certain breaches of the covenant and requiring the defendant to remedy them and make compensation in money for such breaches. It is alleged that a reasonable time was given to the defendant but he failed to do the repairs stated or to pay any compensation. It is also alleged that in or about November 1949 the Freetown City Council imposed on the premises city water and general rates to the sum of £24. 6s. 0d., and that the defendant failed to pay the rates. The plaintiff alleged that on May 24th, 1950 notice was served on the defendant to pay the rates and make compensation, but the defendant failed to make compensation though he offered to pay the rates, which with the poundage was then £26. 18s. 0d. The plaintiff therefore claims (a) possession of the premises; (b) refund of the sum of £26. 18s. 0d. paid for rates; (c) £250 damages for the breaches of the covenant; and (d) mesne profits at the rate of £240 per annum. 10 15 20 25

In his defence, the defendant denies by para. 6 of the defence that he has committed any breach as regards the repair of the premises. On the question of the rates, the defendant alleges that he was out of the jurisdiction at the material time for the payment of the rates, but his wife tendered to the plaintiff the full amount due for the rates and the amount was returned by the plaintiff. The defendant then paid the amount into the bank account of the plaintiff. The defendant in his counterclaim asks the court for relief from forfeiture under s.14 of the Conveyancing Act, 1881, on such terms as the court shall think fit. 30 35

On the allegations of the pleadings, the issues which come up for consideration are:

(a) Whether the defendant has committed a breach of covenant in not keeping the property in good and tenantable condition of repair. 40

(b) Whether there was a breach of covenant in failure to pay the rates.

(c) Whether forfeiture should result from either or both alleged breaches of covenant.

5 (d) Whether this is a case in which relief should be granted. If so, on what conditions.

(e) What compensation or damages, if any, is due to the plaintiff.

10 On the first question, whether there was a breach of covenant in failure to keep the premises in good and tenantable condition of repair, there can be no other conclusion but that the defendant has committed a breach of the covenant. It was clear to me that the defendant was not willing to expend the necessary funds to do the repairs, and left the premises in a bad state of repair.

15 Learned counsel for the defendant at the close of the case abandoned his defence on that point, asked the court to exercise its discretion and urged that Boston, the architect relied upon by the plaintiff, who valued the repairs to be done at £100, should be asked to do the repairs at the expense of the defendant and to his satisfaction. I shall consider this matter later on.

20 On the question of the failure to pay the rates, from the evidence the defendant failed to pay the rates when due; and on May 24th, 1950, the plaintiff gave the defendant notice to pay the rates of £26. 18s. 0d. and compensation before May 27th, 1950. At the time the notice was served I am satisfied the defendant was out of Sierra Leone.
25 The failure to pay the rates was therefore not deliberate. According to the defendant, he (the defendant) left Sierra Leone on March 7th, 1950 for Dakar for medical treatment and returned to Sierra Leone on June 25th, 1950. It is true the defendant should have so arranged his business that all his commitments could be met during his absence, but his failure to anticipate the exact amount due for rates
30 and to arrange about their payment is not a matter of serious default.

Counsel for the defendant stated that the sum of £26. 18s. 0d. for the rates was tendered to the plaintiff's solicitor by the defendant's wife on May 27th, 1950, but was refused. This amount was
35 paid into the bank to the credit of the plaintiff on May 30th, 1950.

There was of course a breach of the covenant if the defendant failed to pay the rates after they were assessed. But the plaintiff could not claim forfeiture until notice of the breach had been given and the defendant given a reasonable time to remedy the breach.
40 Notice was given on May 24th, 1950 to the defendant's wife, while he was out of Sierra Leone. By the notice, the defendant was required

to pay the rates on May 27th, 1950. In other words three days' notice was given, and I do not regard that as a reasonable time. The amount was tendered on May 27th, 1950, the time stipulated by the plaintiff, but acceptance was refused. On May 30th, 1950, the amount was paid into the bank account of the plaintiff. The writ in this action was issued on June 27th, 1950, after the amount had been tendered. I cannot understand what reasonable ground for complaint the plaintiff has in those circumstances. 5

In all the circumstances, I do not think plaintiff can succeed as for forfeiture. Even if grounds for that exist, in view of the circumstances the court should relieve against forfeiture. As regards compensation, I do not consider the plaintiff is entitled to any. It strikes me that this is a case in which the plaintiff was desirous of recovering possession irrespective of the circumstances. It therefore remains the question whether, having found that the defendant has committed a breach of covenant as regards the repairs, the circumstances are such that I should relieve against forfeiture. Under s.14 of the Conveyancing Act, 1881, the granting of relief is at the discretion of the court. 10 15

In *Hyman v. Rose* (1), Earl Loreburn, L.C. set out the law as follows ([1912] A.C. at 631; [1911-13] All E.R. Rep. at 239): 20

"I desire in the first instance to point out that the discretion given by the section is very wide. The Court is to consider all the circumstances and the conduct of the parties. Now it seems to me that when the Act is so express as to provide a wide discretion . . . it is not advisable to lay down any rigid rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present cases are useful maxims in general, and that in general they reflect the point of view from which judges would regard an application for relief. But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise the free discretion given by the statute would be fettered by limitations which have nowhere been enacted." 25 30 35

This proposition is very clear. In this case, the defendant committed a breach of covenant in failing to do repairs which would make the premises in good and tenantable condition. From the evidence, the defendant did not spend even what his architect decided was necessary to do the repairs. When he was required to spend what would be sufficient to meet the repairs, he decided what was 40

sufficient, and as a result the premises were not repaired as was necessary. The defendant tried to gloss over the matter and to hide his neglect, put down a new piece of linoleum, and hurriedly painted part of the property. He did not allow the plaintiff to inspect the property and on the whole was most indiscreet in his attitude. The defendant has however shown complete regret for his action, and learned counsel for the defendant has stated that his client is willing that all the necessary repairs should be done by Boston, the architect to the plaintiff, to the satisfaction of the plaintiff. It is the law that the discretion of the court is such that even where the premises are in a very bad condition of repair the court may still grant relief against forfeiture.

I have carefully considered the whole case and I think this is a case in which I should exercise my discretion in favour of the defendant. I therefore order that the defendant should be relieved from forfeiture on the condition that he employs the architect of the plaintiff to do all the necessary repairs to put the property in a good and tenantable condition of repair. Boston estimates this will cost £100 but I do not propose to limit him to this amount. The architect may spend an amount over £100 for the purpose of the repairs, but before any amount over £100 is expended the matter should be brought to the court for its approval. I award the plaintiff compensation in the sum of £75 in addition to the cost of repairs and order that the defendant pay the cost of the action. I wish to be guided, so far as is relevant, on the law as stated in 20 *Halsbury's Laws of England*, 2nd ed., at 261, and *Talbot v. Blindell* (2). There shall be liberty to apply, and the court shall consider in such application whether there has been any unreasonable delay by the defendant in carrying out this order or any of its terms.

I may add that when the repairs are completed a report should be filed in court and the matter mentioned under the liberty to apply. Finally there is the question of rent or mesne profits. As the tenancy continues, rent in arrears is payable. This could not be paid since the plaintiff's attitude has been that the tenancy between them has ceased to exist. The plaintiff would be entitled to arrears of rent from June 1st, 1949 of £240 subject to the £240 paid. The amount due should be paid into court within three days. The arrears of rates (£26. 18s. 0d.) paid by the defendant to the plaintiff and not accepted is due and payable to the plaintiff and should be paid if with the defendant. The defendant is to pay the cost of the surveyor employed by the plaintiff for inspecting the property.

Order accordingly.