

COKER v. TAYLOR WOODROW (SIERRA LEONE), LTD.

SUPREME COURT (Browne-Marke, J.): February 5th, 1967
(Civil Case No. 290/66)

- [1] **Contract—conditions and warranties—waiver—when conduct constitutes waiver:** If one party to a contract by his conduct leads another party to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict rights when it would be inequitable for him to do so, and he will be taken to have waived performance of the relevant condition of the contract (page 42, lines 21-24, 27-33). 5 10
- [2] **Landlord and Tenant—duration of tenancy—holding over—not made wrongful by demand for possession delivered after date named for possession:** Where a tenant remains in occupation upon the expiry of the term of the lease and the landlord asks him whether he intends to exercise an option for renewal which the lease confers, the tenant's occupation is not wrongful; and it is not made so by a demand for possession delivered after the date for giving up possession named in the demand (page 39, lines 21-38; page 42, lines 33-34). 15
- [3] **Landlord and Tenant—duration of tenancy—holding over—not wrongful after lessor invites lessee to exercise renewal option:** See [2] above. 20
- [4] **Landlord and Tenant—fixtures—removal—fixtures affixed by tenant not generally severable without landlord's consent:** The general rule regarding fixtures is that when a tenant affixes anything to the demised premises he cannot sever it without the consent of the landlord (page 42, lines 13-17). 25
- [5] **Landlord and Tenant—fixtures—removal—time for removal—overholding tenant in lawful possession may remove fixtures which are by agreement removable only before expiry of term:** Tenant's fixtures, by agreement removable only before the lease expires, may be removed after it expires by a tenant holding over in such circumstances that his possession is not wrongful (page 41, lines 18-21; page 42, lines 33-37). 30
- [6] **Landlord and Tenant—possession—demand for possession—ineffective if delivered after date named for possession:** See [2] above. 35
- [7] **Landlord and Tenant—renewal of tenancy—conditions for renewal—time-limit for renewal option waived by landlord's subsequent invitation to treat acted on by tenant:** Where a lease contains a covenant to renew on the request of the tenant made before the term expires and no such request is made, but upon the expiry of the term the landlord asks the tenant, who remains in occupation, whether he intends to take a renewal and the tenant requests one, this amounts to a waiver of the condition regarding the time for requesting a 40

renewal (page 39, lines 35-38; page 40, lines 3-5; page 42, lines 21-24).

5 The plaintiff claimed possession of land leased by him to the defendants and of buildings erected by the defendants on the land, damages and injunctions.

10 The plaintiff leased land to the defendants for a term of five years from July 1st, 1961. He covenanted to renew the lease for a further five years on the defendants' written request made three months before the expiry of the original term. He also covenanted to permit the defendants to erect temporary buildings on the land and remove them before the expiry of the original term, provided that if the lease were renewed, then at the expiry of the further term he should have an option to purchase the buildings.

15 The defendants went into possession and erected buildings. In April 1966, the plaintiff left Sierra Leone without the defendants' having requested a renewal. There was no evidence that he instructed anybody to act on his behalf with reference to the lease during his absence. He returned at the beginning of August, when he visited the defendants' office and saw the secretary. He asked
20 whether the defendants wished to take a renewal of the lease and, if not, whether they would allow him to purchase the buildings, and was told that the buildings were for sale. The plaintiff's solicitor then commenced a correspondence with the defendants, in the course of which the defendants asked for a renewal of the lease with a
25 variation of the times for payment of rent. Subsequently, a letter to the defendants, dated August 18th, but received on August 25th, stated that the tenancy had expired and called on them to give up possession of the land and buildings on August 22nd. In reply, the defendants asked for consideration of their request for a renewal.
30 Service of the writ followed. The defendants had paid no rent since the end of June.

35 The plaintiff alleged that the defendants were in unlawful occupation upon the expiry of the term granted by the lease and had refused to give up possession on demand. The defendants denied these allegations, pleaded the provisions of the lease regarding the erection, removal and purchase of temporary buildings and counterclaimed for a declaration that they were entitled to remove the buildings and that the plaintiff was entitled to a sum of money
40 for their occupation of the land.

The plaintiff contended that the defendants had remained in possession without his consent on the expiry of the term; that the

correspondence did not disclose any negotiations for a renewal; and that the buildings were not tenant's fixtures and therefore the defendants could not remove them.

The defendants contended that the plaintiff's absence from Sierra Leone before the lease expired had precluded any request at that time for its renewal; that the correspondence showed that the parties were negotiating when the writ was issued and the plaintiff had waived the condition that the renewal should be requested three months before the expiry of the term; that the letter dated August 18th was not a demand for possession; and that the buildings were tenant's fixtures which they were still entitled to remove.

During for the plaintiff;
D.E.F. Luke for the defendants.

BROWNE-MARKE, J.:

The plaintiff in this action, Elkanah Erastus Coker, claimed against the defendant, Taylor Woodrow (Sierra Leone), Ltd.—

1. Recovery of possession of pieces or parcels of land situate off York Road, Sussex Village, in the Western Area of Sierra Leone with the buildings thereon referred to in the statement of claim.

2. Damages for wrongful occupation and use.

3. An injunction restraining the defendant company, its agents and servants from entering the said pieces or parcels of land.

4. An injunction restraining the defendant company, its agents and servants from removing or interfering in any manner whatsoever with the buildings on the said pieces or parcels of land.

In his statement of claim, the plaintiff alleged that the defendants wrongfully occupied the premises despite the expiration of the term granted under a lease and that they had refused to give up possession of the premises to the plaintiff in spite of his, the plaintiff's, demand.

The lease is for a term of five years as from July 1st, 1961, with an option for a further term of five years on written request of the defendants made three calendar months before the expiration of the original term. The defendant company contended in its defence that temporary buildings erected on the demised premises were its personal chattels and that it was a term of the agreement that at no time would any temporary buildings erected on the demised premises by the defendant company accrue to the plaintiff unless and until the defendant company had exercised the option to renew contained in the lease and had enjoyed the demised premises for a

further term of five years, when at the end of the tenth year the plaintiff should have the option to purchase the buildings at a price to be agreed upon before the expiration of the further term. The defendants denied that the plaintiff was entitled to the possession of the premises as alleged or the defendants were wrongfully occupying the premises or had refused to give up possession despite any lawful or reasonable demand made by the plaintiff. The defendants counterclaimed for a declaration that—

(a) on a true construction of the lease the defendants were entitled to remove their buildings from the plaintiff's land, and

(b) the plaintiff was entitled to recover from the defendants the sum of Le41.60 payable by the defendants to the plaintiff for the defendants' use and occupation of the premises.

In a reply and defence to the counterclaim, the plaintiff joined issue with the defendants upon the defence and denied the allegations contained in the counterclaim.

The plaintiff gave evidence in which he said that he was the owner of the land described in the indenture of lease, Exhibit A, and that he had asked the defendants to give up possession. Certain correspondence between his solicitor and the defendants was produced and marked Exhibits B, C, D and E. He thought that there were about five permanent buildings on the land, but said that the defendants made no application to him for an extra term as required by the lease and that he did not give his consent to any negotiations concerning the sale of the buildings. The defendants, he said, were still occupying the land without his consent and no rents had been paid to him after the expiration of five years.

In cross-examination, the plaintiff agreed that the defendants could have removed the buildings before the end of five years. At first he said that such removal should be with his consent, but later he withdrew that condition. He said that his last visit to the offices of the defendant company was early in August last, when he returned from the United States. He did not meet the managing director, but held a conversation with Mr. Garner, secretary to the company. In connection with this conversation, the plaintiff said:

"I introduced myself to Mr. Garner as the owner of land at Sussex. I said I had not heard from them and no application had been made for the renewal of the lease. Mr. Garner told me that they were winding up the business. I told him that if they decided to sell they should offer me the buildings first. I was not annoyed, but was surprised, when Mr. Garner told

me that they had almost completed arrangements to wind up. I did not enquire as to the price for the buildings earlier in the year. I left Sierra Leone in the second week in April and returned on August 3rd or 4th last."

In his view, cl. 3(2) of the lease refers to the first five-year term.

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Mr. John David Garner, secretary to the defendant company, gave evidence for the defence. He said that the managing director, Mr. Lionel Edwards, was in Ghana on leave and that he (Mr. Garner) was authorised to represent the company and appear on its behalf. He agreed that cl. 3(3) of the lease made provision for the exercise of the option by the company and cl. 3(2) for acquisition by the landlord of the temporary buildings, but said that in his view the plaintiff was not entitled to the demised premises with the buildings thereon and, further, that the company was not wrongfully occupying the said premises. He explained that as the company was still negotiating with the plaintiff for a further term it could not be said that the company refused to give up the demised premises. If negotiations failed, the company was prepared to give up possession of the land but the plaintiff would not automatically be entitled to the buildings.

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Mr. Garner pointed out that Exhibit D, although dated August 18th, 1966, was received on August 25th, 1966. At para. 4 of that letter the plaintiff's solicitor wrote:

"I am instructed to demand that you give up possession of the said premises with the buildings thereon not later than Monday the 22nd instant, failing which necessary legal action would be taken for recovery of possession of the said premises with buildings thereon, which you now wrongfully occupy."

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Mr. Garner contended that it was impossible for the company to comply with the demand when the letter was received after August 22nd. The date of receipt was not challenged by the plaintiff, and there was no positive evidence of the date Exhibit D was posted. Mr. Garner said further that the company did not pay rents after July 1st, 1966, because negotiations were in progress, particularly in regard to the manner in which the rents should be paid. He confirmed that the plaintiff called at the company's offices in late July or early August. On that occasion, he said, the plaintiff inquired whether the company intended to renew the lease and whether consideration would be given to allowing him to purchase the buildings. He told the plaintiff the buildings were for sale at £1,000 each for the three erected by the company. He wrote a

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letter, Exhibit E, in reply to Exhibit D, on August 26th, 1966. Portion of this letter reads as follows:

“May we enquire whether your client is prepared to consider our request to continue leasing the property by making rental payments annually?”

You will appreciate that the terms of the lease provide Mr. Coker with an option to purchase the buildings in the event of our taking a further term of lease.

We are anxious to effect a mutually satisfactory arrangement and look forward to receiving an early reply.”

In continuing his evidence Mr. Garner said:

“I did not get a reply from the plaintiff’s solicitor, and so I telephoned Mr. During. He told me over the phone that he could not reply to my letter because he had still to consult his client. I did not get any reply subsequently. The next thing that happened was that I received the writ.”

He said that the company was in the process of selling 22 buildings erected, including those on the plaintiff’s land, to prospective purchasers, but the contracts had not been settled.

In cross-examination, Mr. Garner agreed that the buildings were affixed to the land and that the defendants did not give the required notice for renewal of the lease. He said he regarded Exhibit E as a continuation of negotiations.

Mr. Ken During addressed the court on behalf of the plaintiff, in the course of which he said that the evidence had established that:

(a) the term granted to the defendants had expired;

(b) the defendants had held on to the piece of land without the consent of the plaintiff;

(c) a notice to exercise the right of option was not given and exhibits did not disclose negotiations before the writ was issued;

(d) demand was made for delivery of possession and the defendants had refused to give up possession; and

(e) the tenancy had expired on July 1st, 1966.

He referred to cl. 3(2) of Exhibit A, which provides for the defendants to erect temporary buildings on the demised land and to remove the same before the expiration of the said term. He argued that only tenant’s fixtures could be removed and that the temporary buildings could not be regarded as being in that category. He quoted authorities in support of the plaintiff’s case which I will deal with later.

Mr. Desmond Luke addressed the court on behalf of the defendant company. He argued that Exhibits B to E are negotiations and that Exhibit D was written out of context. He pointed out that, in spite of para. 3 of Exhibit D, the plaintiff denied in evidence that he ever spoke to the manager. The relevant paragraph reads: 5
“Your tenancy under the lease granted to you has expired and my client informs me that your manager told him that you are winding up business in Sierra Leone.”

Mr. Luke further said the plaintiff knew the lease had expired before he wrote Exhibit B on August 9th. In his submission Exhibit 10
D is not a notice to quit. He referred to para. 7 of the statement of defence. He contended that the phrase “before expiration of term had been judically considered” did not mean the exact term. He submitted that the plaintiff was not in the territory on July 1st when the lease expired and no action could possibly have been taken. 15
He also referred to several authorities in support of the defence and counterclaim.

Clauses 3(2) and 3(3) of Exhibit A provide as follows:

“(2) To permit the tenant to erect temporary buildings on the demised land and to remove the same before the expiration 20
of the said term hereby created. Provided that in the event of the tenant having taken a further term of five years in pursuance of the option hereinafter contained then at the expiration of such further term of five years the landlord shall have the option to purchase the said buildings at a 25
price to be agreed upon before the expiration of the said further term of five years and in default of agreement at a price fixed by arbitration in accordance with the provisions of the Arbitration Act or any statutory substitution or modification thereof for the time being in force. 30

(3) That the landlord will on the written request of the tenant made three calendar months before the expiration of the term hereby created and if there shall not at the time of such request be existing any breach or non-observance of any of the covenants on the part of the tenant hereinbefore contained 35
at the expense of the tenant grant to it a lease of the demised land for a further term of five years from the expiration of the said term at a rent to be agreed upon by the parties and if the parties cannot agree then at a rent to be determined by arbitration in accordance with the Arbitration Act or any 40
statutory substitution or modification thereof for the time

being in force and otherwise containing the title covenants and provisions as are herein contained with the exception of the present covenant for renewal."

5 In para. 2 of the statement of claim it is said that the defendants wrongfully occupied the premises despite the expiration of the term granted under the lease and have refused to give up possession of the premises despite demands made by the plaintiff.

10 The defendant company denied that the plaintiff was entitled to possession and that the company was wrongfully occupying the premises or had refused to give up possession despite any lawful or reasonable demand.

15 One of the points raised by Mr. Ken During in his address was that the buildings could not be termed "tenant's fixtures." The general rule of law is that whenever a tenant has affixed any thing to the demised premises he can never again sever it without the consent of the landlord. In this case the tenant has a right to remove the buildings before the expiration of the term. It is however to be observed that in every case in which there is a right of removing a thing affixed to demised premises it would be
20 considered as an exception to the general rule.

In my view the correspondence between the plaintiff's solicitor and the defendant company was a waiver of the condition that three months' notice should be given before the expiry of the five-year term to exercise the option under the lease. Added to this, the
25 plaintiff was not in this territory when the lease expired and I find no evidence that he instructed another person to act on his behalf in his absence with reference to this particular transaction. The principle of waiver is simply this: If one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards
30 be allowed to insist on the strict rights when it would be inequitable for him to do so. The defendants could not be said to be wrongfully occupying the demised premises.

35 I order as follows:

1. That the defendant company remove the buildings from the plaintiff's land forthwith or before February 28th, 1967.

2. That the defendant company pay to the plaintiff a year's rent for the land at the rate agreed on in Exhibit A, to be calculated as
40 from the date of expiration of the five-year term.

3. That the defendant company hand over to the plaintiff in a fit

and proper condition the said land after removal of the said buildings.

Order accordingly.

SAHID v. ALHARAZIM and OTHERS

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Dove-Edwin and Marcus-Jones, JJ.A): February 13th, 1967
(Civil App. No. 22/66)

[1] **Employment—termination—summary determination—by employer—single instance of grave dereliction of duty may be ground:** Where by the terms of his employment an employee may be suspended or discharged from his employment for disregard of his duty, a single instance of grave dereliction of duty may be good ground for his dismissal without notice (page 46, lines 29-37; page 48, lines 16-21).

The respondents brought an action in the Supreme Court claiming declarations that the appellant had been lawfully discharged from the office of priest of a mosque and that he had ceased to be a priest of the mosque, and an injunction.

The parties were trustees of a mosque in Freetown and the appellant was the imam or senior priest of the mosque. Among the appellant's duties, he was to permit all Moslem worshippers to have full access to the mosque at all times for the purpose of performing their religious rites. By the trust deed under which the mosque was held, the trustees and the annual assembly of the mosque were empowered to investigate any charges preferred against a priest of the mosque deemed negligent of duty and, after notifying him of the charge and considering his defence, if any, to determine the charge and if necessary suspend or discharge him from his office.

One of the trustees told the appellant that the mosque was required for a funeral ceremony to be performed by another priest, the appellant's assistant. When the time for the ceremony came, the appellant and others prevented the use of the mosque; and in consequence, and to prevent a breach of the peace, the ceremony was held on private premises, to the humiliation of the deceased's family.

The trustee complained to the trustees that the appellant had caused the mosque to be closed and so prevented the ceremony from being held there. The complaint alleged that the appellant admitted responsibility for the closing of the mosque to prevent the other