THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2022-00440

BETWEEN

JIAN HUA QIU

Claimant

AND

YEONG KANG CHENG

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 11 March 2022

Appearances:

Mr Winston Seenath Attorney at law for the Claimant

Mr Navindra Ramnanan Attorney at law for the Defendant.

REASONS

1. On the 25 February, 2022 ("the Order") I granted certain interim reliefs against the Defendant who has subsequently appealed the Order. I now reproduce the oral ruling which I delivered at the hearing.

2. The Claimant has applied for certain interim relief in the application filed on 11 February 2022 ("the Claimant's Application"). At the time of the filing of the Claimant's Application, the Claimant also filed a Fixed Date Claim, an

affidavit in support and an affidavit of Vishal Kumar Kalra. In opposition, the Defendant filed an affidavit on 18 February 2022 and the Claimant filed an affidavit in response on 22 February 2022.

3. The legal principles which a Court must consider in granting an injunction are settled. I considered the guidance of Aboud J (as he then was) in **Niquan Energy Trinidad Limited v World GTL Trinidad Limited and others**[1] which in turn had considered the principles in **Jetpak** and **National Commercial Bank v Olint Corp Ltd**[2] . At paragraph 81, Aboud J (as he then was) stated

> "81. In applying these principles, as I understand them, to the facts of this case I must first evaluate the relative strengths of each party's cases as disclosed on the affidavits, paying particular regard to the evidence against which there is no credible dispute, and being cautious, where there is such dispute, to avoid a mini-trial on untested affidavit evidence. All the authorities agree that this first step is a threshold test and a "fail" here on the relative strengths of each party's cases will certainly be fatal. The question to be asked is whether there is a serious issue to be tried. As Lord Hoffman said in Olint, echoing his earlier words in *Films Rover* that were approved by Chief Justice de La Bastide in *Jetpak* (page 370), the court must feel a "high degree of assurance" that the injunction sought at the interlocutory stage will be granted at the trial. I am also guided by the way Sir Robert Megarry V.C put it in *Mother Care Ltd v Robson Books Ltd* [1979] FSR 466:
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> > "The prospects of the plaintiff's success are to be investigated to a limited extent, but they are not to be

[1] CV2013-02699
[2] [2009]UKPC 16

> weighed against his prospects of failure. All that has to be seen is whether the plaintiff has prospects of success which, in substance and reality, exist. Odds against success no longer defeat the plaintiff, unless they are so long that the plaintiff can have no expectation of success, but only a hope. If his prospects of success are so small that they lack substance and reality, then the plaintiff fails, for he can point to no question to be tried which can be called 'serious' and no prospect of success which can be called real."

4. I also took into account the guidance of Kokaram J (as he then was) in **Tricia Brown v Elroy Julien and Anor[3],** where he stated that a Court when exercising its discretion in granting interim orders ought to consider :

   (a) The Court's freedom to do justice at the trial;

   (b) Whether there is a serious issue to be tried is determined upon an evaluation of the relative strength of the parties case;

   (c) The weaknesses of a party's case must be taken into an account;

   (d) The Court should consider the prejudice the Claimant may suffer if no injunction is granted or the Defendant may suffer if it is;

   (e) The likelihood of such prejudice actually occurring;

   (f) The extent to which a party may be compensated by an award of damages or enforcement of the undertaking in damages. However, there is no general rule that if damages are an adequate remedy an injunction will not be granted;

[3] CV2019-00550

(g) The likelihood of whether a party is able to satisfy such an award. However, the indigent ought not to be penalised where there are merits in their claim or in the balance it is just to grant interim relief;

(h) Where the balance of convenience lies;

(i) The likelihood that the injunction will turn out to have been wrongly granted or withheld i.e. the court's view of the relative strengths of the parties' case. This last matter should only be considered if the other matters are evenly balanced or where it is possible to form such a view on facts which are clear or not in dispute;

(j) The overriding objective, which is relevant in the exercise of the power to grant injunctive relief.

5. In my opinion, the modern test in determining applications for interim relief is to focus on where the balance of convenience lie. In order to determine this the totality of the factors outlined by Kokaram J (as he then was) in **Tricia Bowen** are useful.

6. Who has the stronger case based on the issues to be tried? I will first deal with the preliminary point by the Defendant that there is a procedural defect in the Claimant's action, it should be struck out as there is no Statement of Case and in its absence the Defendant is unable to discern if there is any cause of action against him. In my opinion, there is no merit in this submission as the Claimant's cause of action against the Defendant is clearly discernible from the Fixed Date Claim and the Affidavit of the Claimant filed on the said day. By instituting the action by a Fixed Date Claim, as the Claimant's action is for possession, she had the option of filing a Statement of Case or an Affidavit and in the instant case she filed the latter.

7. I will now examine if there are any serious issues to be tried and the relative strengths and weakness of each parties' case. In my opinion, based on the evidence from both parties there are several serious issues to be determined, namely whether the lease can be terminated without cause; whether the clause for negotiation to be conducted for any dispute before recourse to the Court is applicable, where the issue is the termination of the lease or after the lease has been terminated; and whether the Claimant invested the sum of $2,000,000.00 in stock and stock in trade when she executed the lease with the Defendant.

8. Based on the evidence, it is not in dispute that (a) on 18 January 2019 the Claimant and Defendant executed a written lease where the Defendant leased the property situate at 1059 SS Erin Road, Palo Seco Junction, Palo Seco ("the property") for commercial purposes; (b) the Claimant leased and occupied the property exclusively to operate a grocery at a monthly rent of $40,000.00 which the Claimant paid to the Defendant up to December 2021; (c) the Defendant served the Claimant a Notice to Quit dated 5 October 2021 to vacate the property by 5 January 2022 ;(d) the said Notice to Quit did not state any reason; and (e) on 5 February 2022 the Defendant took possession of the property and placed padlocks on the doors.

9. The Claimant asserted that prior to executing the lease she paid the Defendant the sum of $2,000,000.00 for the stock and stock in trade of the grocery on the property. This sum was paid in cash and the Defendant did not provide her with a receipt. As such when she entered into the lease on 18 January 2019 for a 5 year period, she did not receive an empty grocery as it contained the stock and the stock in trade. She stated that the Defendant was aware that she was entering into a five year lease with him as this was the period which she required to operate the grocery to recoup her investment. According to the Claimant, if she did not pay the Defendant the sum of

$2,000,000.00 for the stock and stock in trade the Defendant would have made provisions for this payment in the lease. She tendered rent for the month of January 2022 to the Defendant but he refused to accept it.

10. The Defendant denied that the Claimant paid him $2,000,000.00 for the stock and stock in trade but instead admitted that the Claimant has invested in stock. He asserted that under the lease he can terminate the lease without cause. He asserted further that, he has no duty under the lease to negotiate the termination of the lease with the Claimant before recourse to any Court action; he did not receive a letter from the Claimant's Attorney at law dated 11 Janaury, 2022; and arrangements had been made for the Claimant to remove the stock and perishable items. The failure by the Claimant to remove the stock and perishable items is preventing him from using the property, the Claimant is indebted to him for rent for January 2022 to present and the Claimant has not demonstrated that she can give any meaningful undertaking in damages.

11. In my opinion, at this stage of the action, the scales tip in favour of the Claimant having a stronger case as the termination clause in the lease cannot be read in isolation. It must be interpreted by taking into account the other clauses in the lease such as the term of the lease, and the option to renew. It must also be interpretated taking into account the intention of the parties when they entered into the lease. From the evidence, both parties were aware that the Claimant was leasing the property for commercial purposes, she had invested considerable sums in the business and that she required a period of 5 years to recoup her investment. It is settled law that where there is an option to renew a lease, a party cannot unreasonably withhold its consent to renew but must provide a good reason for doing so. Notably, the Defendant has not stated that the Claimant has breached any term of the

lease save an except his assertion that he has not received rent for January 2022 which the Claimant has stated she offered to pay but he refused.

12. Further, even if the Defendant did not receive the letter dated 11 January 2022 from the Claimant's Attorney at law, his conduct after he issued the Notice to Quit to the Claimant, by ceasing communication with her demonstrated that he did not comply with the clause in the lease which provided for negotiations if any dispute arose.

13. Is damages an adequate remedy? The quantifiable loss to the Claimant is that of the stock and the stock in trade which she has asserted is valued at approximately $2,000,000.00 and was allegedly paid to the Defendant in cash. She has also asserted that she has creditors to pay and she runs the risk of becoming a bad debtor. In my opinion, $2,000,000.00 may be the baseline sum in damages which the Claimant would be seeking to recover at the end of the trial if she succeeds. However, the modern learning is that while this is a factor to be considered it is not the determining factor if interim relief is to be granted or refused.

14. With respect to the Defendant, he has not provided any evidence of his loss . The evidence before the Court is that the Claimant has been paying rent and is willing to pay rent since the beginning of this year but the Defendant has refused to accept this.

15. Has the Claimant provided any meaningful undertaking in damages? It seems to me the Claimant is capable of providing a meaningful undertaking in damages, as her evidence is that she is a businesswoman who was able to pay a monthly rent of $40,000.00 to the Defendant from the execution of the lease. She also agreed in the lease to pay that sum of money as rent for a period of 5 years. She was also able to pay the Defendant $2,000,000.00 in cash for the purchase of the stock and stock in trade. I therefore am of the

view that she has the means to pay damages if she is unsuccessful at the end of the trial. With respect to the submission that the Claimant was out of the jurisdiction from January 2020 to early 2022. In my opinion, this is irrelevant as the Court can take judicial notice that the borders of Trinidad and Tobago were closed for a significant part of this period and in any event, the Claimant as a business woman does not have to be physically present here to operate the business.

16. What is the status quo? The present status quo is the Defendant is the owner of the property and he is in possession of same. However, the relevant status quo is prior to the issuing of the Notice to Quit, the validity of which the Claimant has challenged in these proceedings. At that time the Claimant was operating the grocery on the property.

17. Who will suffer the greater prejudice? There is prejudice to both sides. If the injunction is not granted, the Claimant who executed a lease in 2019 for a period of 5 years and who invested a significant sum in this business would not be able to recoup her investment in circumstances where she has paid her monthly rent and has not breached any of the convenants set out in the lease.

18. On the other hand, if the injunction is granted and the Defendant who is the owner of the property is successful at the trial he would have been kept out of the property. However, it is not as if he would suffer any loss of income, as he would still be in receipt of rent in the sum of $40,000.00 per month from the Claimant . In my opinion, the greater prejudice is to the Claimant if the injunction is not granted.

19. When I considered the totality of all the aforesaid factors, I am of the opinion that the balance of convenience lies in granting the interim reliefs sought.

20. I now turn to the issue of costs.

21. The general rule is that the successful party has the benefit of any costs order. However, Costs is in the discretion of the Court. In the instant application, I have no reason to depart from the general rule. I, therefore, exercise my discretion and order the Defendant to pay the Claimant the costs of the Claimant's Application, to be assessed by the Registrar in default of agreement.

Order

22. Upon the Claimant undertaking by her Attorney at Law to abide by an order this Court may make as to damages in case this Court shall hereafter be of the opinion that the Defendant by reason of this order shall have sustained and which the Claimant ought to pay. It is hereby ordered that:

    (a) The Defendant shall immediately remove the padlocks and/or any restraints placed upon the entrances to the premises situate at 1059 S.S Erin Road, Palo Seco Junction, Palo Seco which prohibits the Claimant and/or her employees from entering thereon and so allow the Claimant to enter into and have exclusive occupation until further order.

    (b) The Defendant whether by himself his servants and/or agents and or otherwise is restrained from engaging in any action which would interfere with the Claimant's use and/or quiet enjoyment of the premises situate at 1059 S.S Erin Road, Palo Seco Junction Palo Seco and/or from doing any act which is designed and/or likely to interfere with the business (supermarket business with a spirit grocers license) being conducted by the Claimant upon the said premises until further order.

IT IS ALSO ORDERED that:

23. The Defendant is to pay the Claimant's costs of the Notice of Application filed on 11 February, 2022. The said cost is to be assessed by a Registrar in default of agreement.

/s/ Margaret Y Mohammed

Judge