

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 152 OF 2023

BETWEEN:

[1] LORI BROGHAMMER

[2] WILLIAM BROGHAMMER

Claimants

and

[1] NELSON GRIFFITH

Defendant

Appearances:

Mr. Estevan Perera and Ms. Chelsea Sebastian for the Claimants

Mr. Orson J. Elrington for the Defendant

2024 May 31;

November 12

JUDGMENT

[1.] **Nabie J.:** The claimants have brought this breach of contract claim against the defendant regarding a written lease agreement dated 18th November 2021 for the rental of a third floor building for periods amounting to ten months between 6th February 2022 and December 2024. The premises are located at Sandy Feet, Placencia, Stann Creek District, Belize (the premises). The claimants' evidence in support of their pleadings was given by four witnesses. The defendant offered no evidence therefore the matter was decided on the claimants' evidence only. The defendant did however cross examine the witnesses for the claimants. On a balance of probabilities I find that the claimants have proven their case and therefore grant judgment for the claimants. My reasons are set out in this judgment.

Background

Claimants' case

- [2.] The claimants are a married couple who reside in the United States of America. They planned to spend time in Belize as a result of their retirement. Accordingly, they made arrangements with the defendant to lease the premises for certain periods in the aggregate of 10 months from February 2022 to December 2024. The premises were still under construction at the time the agreement was made between the parties. Pursuant to the agreement the claimants made advance payments in the sum of \$40,000.00 USD to the defendant for this accommodation. They claim against the defendant, breach of the said lease agreement as in February 2022 and December 2022, the claimants were unable to use the premises as the construction works were not complete. In February 2022, the claimants had to find alternative accommodation for their stay in Belize. The defendant failed to make good on his promise to reimburse them for the aforesaid alternative accommodation and the rental for that period. The lease agreement contained a clause that there would be a 60 day notice regarding any change of dates and the claimants contend that that clause only applied to them. The claimants further allege that they stored some of their personal belongings with the defendant which have not been returned. The claimants contend that as late as February 2023 the premises were still under construction and incomplete.

Defendant's case

- [3.] The defendant failed to comply with the case management directions and did not file any witness in support of the defence. In the pleadings the defendant admitted that there was an agreement between the parties for a lease of the premises but denied that the dates set out were fixed but that they were tentative and subject to the completion of the third floor. It was pleaded that due to the Covid 19 pandemic that materials were difficult to source and caused delay in completion. The defendant pleads that he complied with the 60 day notice period to indicate that the premises would not be ready for accommodation.

Issues:

- (1) Whether the defendant breached the lease agreement?
- (2) Whether the defendant should reimburse the claimants for their accommodation in February 2022?
- (3) What damages if any are the claimants entitled to?
- (4) Should the defendant return the claimants' belongings?

Lease Agreement

[4.] The lease agreement provided the following terms:

- i) The claimants were to pay an initial amount of \$20,000.00 USD commencing November 20, 2021.
- ii) The claimants were to make a second payment in the amount of \$20,000.00 USD commencing December 10th.
- iii) These payments of \$40,000.00 USD would be the total payment for the claimant's 10 month stay at the premises as follows:
 1. Month one commencing February 6th 2022
 2. Month two- December 2022
 3. Month three- January 2023
 4. Month four- February 2023
 5. Month five- March 2023
 6. Month six- December 2023
 7. Month seven- January 2024
 8. Month eight- February 2024
 9. Month nine- March 2024
 10. Month ten- December 2024
- iv) This was a tentative 10 month schedule, subject to change with 60 day notice.
- v) The claimants were to inform the defendant one month before of date of arrival.

vi) There were other provisions but those were regarding stays post December 2024.

[5.] On the evidence before I am satisfied that the parties entered into a valid contract for a lease of the premises for the 10 months outlined above. All the elements of a valid and binding contract were present. Halsbury Laws of England provides as follows:

“To constitute a valid contract: (1) there must be an agreement between separate and existing parties; (2) those parties must intend to create legal relations as a consequence of their agreement; and (3) the promises made by each party must be supported by consideration, or by some other factor which the law considers sufficient¹”

[6.] The dates set out the periods when the claimants were scheduled to be in Belize. At the time the lease agreement was signed the premises were still under construction that is 18th November 2021. The claimants paid the \$40,000.00 USD in compliance with the lease agreement. The monies were wired in the amounts of \$30,000.00 USD and \$10,000.00 USD on 26th November 2021 and 17th December 2021 respectively to the third parties as per the instructions and directions of the defendant. There was a change in the amounts and dates from the lease agreement due to issues regarding the wiring requirements on the part of the claimants and the instructions on the part of the defendant. This did not amount to any material change in the lease agreement. The receipts of those wire transfers are in evidence. These payments were admitted in the defence.

[7.] The claimants' evidence is that on 16th January 2022, some 22 days before they were due to arrive, they contacted the defendant to inform him of the date of their arrival in Belize. The defendant informed them that the premises were still under construction and they would not have access to same. At this point the claimants had already made their travel arrangement in expectation of the use of the premises. The defendant agreed to reimburse \$4,000.00 USD, the cost of a month rental and

¹ Halsbury's laws of England, Volume 22, Paragraph 3

the expense of alternative accommodation. It is the claimants' evidence that that they never received any reimbursement from the defendant.

[8.] The lease agreement therefore set out four periods- (a) February 2022 (1 month) (b) December 2022 to March 2023 (4 months) (c) December 2023 to March 2024 (4 months) and (d) December 2024 (1 month). Undoubtedly, the claimants expected to have use of the premises for the remainder three periods or nine months.

[9.] It is the Claimants' undisputed evidence that following their return from Belize they were unable to make contact with the defendant until May 2022 when he returned a message. Thereafter, on or about 28th October 2022, the defendant contacted the claimants. The claimants assert that the defendant spoke to them in a hostile and belligerent manner and informed them that the construction of the premises was still incomplete and would not be ready for their stay in December 2022. Therefore, at that time, the claimants having paid the agreed sums of money, never had the use of the premises for the first 2 stays in consonance with the lease agreement because the defendant did not complete construction of the premises.

What does the clause “tentative 10-month Schedule, subject to change with 60-day notice” mean?

[10.] The claimants submitted that they, the claimants had the option to cancel their stay at the premises by giving the 60 day notice to the defendant. The claimants position is that it was never intended that the defendant would be able to change any of the scheduled dates, as the dates in the lease agreement were meant to reflect the claimants' retirement plan and travel dates. It was contended that this would allow the defendant to make alternative rental arrangements for the premises. The claimants relied on the case of **Investors Compensation Scheme v. West Bromwich Building Society**² to support their submission that where there is some ambiguity in the terms of the contract, then the court, after examining the expresses

² [1998] 1 BCLC 493

terms, should assess the parties' intentions objectively and read the contract with common sense and not in a pedantic way.

[11.] Whilst the defendant gave no evidence, counsel for the defendant failed to extricate from the claimants that this clause applied to both parties as expressed in the defence. The defendant argued that this clause also applied to him. It was submitted by the claimants that the court must examine the clause in the context of the lease agreement as a whole.

[12.] Could this have been the intention of the parties? I find that this clause could only have applied to the claimants. Firstly they paid \$40,000.00 USD in advance for the use of the premises. The claimants testified in cross examination that if there were any change of dates, the notice period would alert the defendant to have sufficient time to find alternative occupants for the premises. I find that it was not logical that the defendant would have the option to make a change given the upfront payments made by the claimants. I agree with the submission made by the claimants that this would not make good business sense. Further, I accept the evidence that those dates were fixed to accord with the claimants' retirement plans and travel agenda. It would not make sense that the claimants paid such monies in advance to have the premises completed by the defendant and for him to have the option to cancel the bookings for the dates specified in the lease agreement.

Breach of the Lease Agreement

[13.] Under the lease agreement the defendant was required to have the premises completed for the use of the claimants and to be available by 6th February 2022 and for the other nine months.

- [14.] The claimants submitted that these were implied terms of the lease agreement. They relied on **Chitty on Contracts**:

*“Terms implied in fact are implied in order to give effect to the intention of the parties to the particular contract. The test to be applied in such cases has been expressed at different times in different ways by different courts but the essential idea is that the term sought to be implied is a necessary one which gives to the contract the meaning which the particular parties to the contract intended...”*³

- [15.] The claimants performed their obligations under the contract by making payments amounting to \$40,000.00 USD. The defendant however, failed in his obligation to have the premises available for their use in February 2022 and the second period commencing December 2022.
- [16.] It is undisputed that the defendant failed to complete construction of the premises in time for the first month commencing 6th February 2022. The evidence is that on 16th January 2022, the claimants contacted the defendant to inform him about their arrival in February 2022. The defendant informed them that the premises were incomplete and they could not have access to it. Therefore, even if the 60 day notice clause had applied to the defendant, he would clearly be in breach of same. The claimants’ evidence is that the defendant promised to reimburse the \$4000.00 USD monthly rental and to cover the cost of alternative accommodation.
- [17.] The claimants testified that they were unable to contact the defendant for some time after they returned to the United States. However, the defendant replied to a message in May 2022 and thereafter called the claimants in October 2022 by telephone. The defendant informed them that the premises were still not ready for their use in December 2022 and was still under construction. This meant that the premises were also not available to the claimants for the 4 month period from December 2022 to March 2023. Further, the claimants testified that the defendant was hostile and belligerent towards them. The claimants considered that the contract had come to an end due to the defendant’s non-performance of his

³ Chitty on Contracts; Page 1097; Paragraph 14004

obligations and his hostile conduct towards them. The uncontroverted evidence of claimants is that the defendant agreed to repay the \$40,000.00 USD when he began to make money. The claimants requested this repayment from the defendant by letter dated 10th December 2022. The claimants' witness Tim Putnam confirmed that the premises were still not complete as at 11th February 2023. Mr. Putnam provided evidence through photographs he had taken of the premises.

[18.] I agree with the claimants that the defendant clearly breached the terms of the contract. The defendant was paid in advance the sum of \$40,000. 00 USD for the use of the premises. The defendant did not complete construction of the premises for the first stay of one month commencing 6th February 2022 and thereafter, for the second stay of 4 months commencing December 2022. By October 2022, therefore the claimants did not have access to the premises for 5 of the 10 months under the lease agreement. The actions of the defendant amount to a substantial breach and in those circumstances, the claimants were entitled to repudiate the contract.

Reimbursement for alternative accommodation

[19.] As a result of the defendant's breach of the lease agreement the claimants had to find other accommodation. The evidence of the claimants is that the defendant promised to reimburse them for the month stay from 6th February 2022 and the cost of the alternative accommodation. The claimants stayed at an Airbnb at a cost of \$1516.00 USD. A copy of this receipt was provided.

[20.] I accept this evidence and it is not farfetched that the defendant would have agreed to repay the claimants the cost of the month rental and alternative accommodation in the circumstances. I also accept that such sums were never paid to the claimants and this was not denied in the defence in any event.

[21.] **Chitty on Contracts** provides:

"In an action for damages for breach of contract, the claimant is permitted to claim damages for expenditure which he incurred on his expectation that the Defendant would perform his undertaking".⁴

⁴ Chitty on Contract Vol. I page 1809, Para 26-019

[22.] I therefore find that the claimants are entitled to the sum they paid for the alternative accommodation in February 2022.

Damages

[23.] It has been established that there was substantial breach of the terms and conditions of the lease agreement by the defendant. I now have to consider the issue of damages. The parties relied on the following:

Modern Law of Contract⁵:

“A breach of contract will have a range of consequences. It may entitle the innocent party to seek an order for performance of the contract to claim damages, or to terminate the contract or some combination of these.”

Halsbury's Laws of England states:

*“Where one party fails to perform an obligation under the contract and such failure amounts to a breach, **the innocent party has a right to damages.** The question also arises whether such failure to perform entitles the innocent party to treat himself as discharged from his own obligation to perform.”⁶*

[24.] **Chitty on Contract provides:**

“The victim of a breach of contract has a number of interests which may be protected by an award of damages. First, he may have paid money or conferred some benefit on the other party, and he will have an interest in recovering the money or the value of the benefit conferred. This had been termed the ‘restitution interest’ and there is a very strong moral argument for protecting it, as it represents both a loss to the claimant and a corresponding gain to the defendant. Secondly, the victim may have incurred expense or loss in reliance on the promised performance and which is wasted by the defendant’s breach. This is termed the ‘reliance interest’ of the claimant; and it merits protection because it represents the extent to which the victim is left worst off than before the contract was made. Thirdly, the victim has an expectation interest, i.e. that gains or benefits which he is expected to receive from the completion, but which were in the event prevented by the breach of contract committed by the latter... damages for breach of contract will in principle compensate the victim for

⁵ Modern Law of Contract, 8th Edition , Richard Stone, page 571

⁶ Halsbury's Laws of England; Contract (Volume 22 (2019)); 8. Discharge of Contractual Promises;(4) Discharge by Termination for Breach of Contract; (i) Effect of Failure to Perform Obligation Which Amounts to Breach; Right to terminate contract; Paragraph 344]

loss of expectation, as well as protecting his restitution and reliance interest.”⁷

- [25.] Based on my findings above, it has been established that the claimants paid \$40,000.00 USD for the use of the premises and that the defendant committed a substantial breach of the lease agreement by not completing the construction. The claimants were therefore deprived of the use of the premises for which they had made advance payments.
- [26.] In the circumstances based on the defendant’s non-performance and the conversation between the parties in October 2022, it was clear that there was a breakdown in their relationship. The claimants were entitled to repudiate the contract and are entitled to damages for breach of contract in the sum of \$40,000.00 USD.
- [27.] The claimants mounted an alternative argument of unjust enrichment, in light of my finding I do not find it necessary to delve into those submissions.

Return of claimants’ belongings

- [28.] The claimants’ evidence is that they left some of their belongings in the custody of the defendant. This was corroborated by the witness Olivia Stalker, who was present when these items were delivered to the defendant for storage until the claimants returned to Belize. These items have not been returned to the claimants.

These items are:

- a) Telescopic Spotting scope,
- b) Binoculars,
- c) 4 sets Snorkel gear,
- d) Stir Crazy Popcorn Popper,
- e) Bose Wi-Fi Speaker,
- f) Mini Google,
- g) Alcohol,
- h) Travel Scale,

⁷ Chitty on contract; Page 1809; Paragraph 26-019

- i) 4 Swim Flotation Devices,
- j) Wooden Charcuterie Board,
- k) iPhone Cases, and
- l) Bug spray and sunscreen.

[29.] The claimant rely on the following extract from **Atkins Court Forms** which provides as follows:

“If the bailor has contracted with the bailee for the bailee to supply services, there are statutorily implied terms that the bailee will carry the services out with reasonable care and skill and within a reasonable time. A cause of action for breach of contract will, therefore, arise if the bailee returns the goods in unsatisfactory condition due to the bailee’s failure to exercise reasonable care and skill or fails to provide the contracted services (and thus retains the goods) for an unreasonably long period. The burden of proving breach of contract naturally falls on the bailor, given the bailor is asserting the breach of contract. If, on the other hand, the bailor does not rely on a contract, the bailor’s cause of action will arise in tort: 1 if goods are deposited and the bailee refuses to return them, then there has been a conversion by the bailee, there being an action in conversion by the bailor; or if goods are returned in a damaged state, then the cause of action is based on negligence.”⁸

[30.] The claimants and their witnesses have been found to be witnesses of truth I accept the evidence that these personal items were left with the defendant. The claimants are entitled to have these items returned to them in the circumstances. No evidence was put before me as to the cost of the items, the brands of the items and any particularity with respect to certain items such as alcohol.

[31.] I considered the matter of **Dillon Haynes v. The Attorney General of Trinidad and Tobago**⁹ which stated the governing principles in the award of damages in the circumstances as follows:

“10. On an action in detinue judgment would be for the return of the chattel. Where the chattel is not returned the measure of damages is the value of the chattel at the date of the judgment. Where the goods are returned, the measure of damages is damages for wrongful detention for the period from which the Claimant was deprived of their use. Unless there is proof of the

⁸ Atkins Court Forms; Bailment Vol 6(2); Bailment in general; Paragraph 6

⁹ CV 2008-001274 (Trinidad and Tobago)

specific loss such as in the case of an income earning chattel, damages for the wrongful detention would usually be in a nominal sum.

11. Where the goods detained are, however, income-earning chattel, substantial damages may be awarded for wrongful detention, once the loss is proven.

'Loss of use is not generally regarded as a separate head of damage [from wrongful detention] because the mere capacity for profitable use is part of the value of the item and loss of use would represent pro tanto recovery twice over. Furthermore, loss of use is a species of special damages and '... the onus is therefore on the Claimant to prove strictly not only his losses but also the quantum of it.'

12. Where a Claimant does not prove the quantum of special damages and the Court is satisfied that there is a loss but not as to the quantum, a court may, in the absence of such proof, award nominal damages.

13. Further, where the goods are returned in a damaged state, the Claimant may be entitled to a sum for the depreciation in value of the goods. A Claimant would also be entitled to any other consequential loss which he can prove he suffered as a result of the wrongful detention once it is not too remote.

.....

15. In conversion, a Claimant claims damages from a Defendant on the basis that the goods have been wrongfully dealt with ... Conversion, to put it simple, is premised on the fact that the Claimant abandons his title in the goods and accepts that they have been converted. The measure of damages for conversion is therefore the market value of the goods at the time of conversion and any consequential loss which may flow therefrom."

[32.] The claimants relied on the case of **Roy Usher v Lester Moody**¹⁰ for the position that the court can make an award for reasonable replacement. Having considered the authorities, I award the sum on \$2000.00 BZ for the claimants' personal items if they are not returned to them by the defendant.

¹⁰ Claim no. 116 of 2004

Conclusion

[33.] Although the defendant gave no evidence, the claimants were still required to prove their case. I find that the claimants and their witnesses to be credible and stood up to cross examination. I find that they were not discredited in any way. There is no doubt that the defendant's non-performance went to the root of the contract. In cross examination the defendant tried to discredit Tim Putman by trying to establish that he was not an expert in construction. I find that Mr. Putman is able to say that the premises were incomplete as a matter of fact. Further, Mr. Putnam also took picture of the premises which supported his evidence. I find that as at February 2023 after the claimants repudiated the contract, that the premises were still incomplete. The claimants' other witness Olivia Stalker was unable to give evidence as to the lease agreement. However, she was present when the claimants' personal items were delivered to the defendant for storage.

[34.] The claimants have proven their claim on a balance of probabilities and are entitled to relief.

Disposition:

[35.] I hereby make the following orders:

- (i) A declaration that the Lease Agreement made between the Claimants and the Defendant dated the 18th of November 2021 was breached by the Defendant.
- (ii) Damages are awarded to the Claimants in the amount of \$80,000.00 BZD (USD \$40,000.00) for the breach of contract.
- (iii) Damages are awarded to the claimants in the amount of \$3,032.00 BZD (USD \$1,516.00) for the alternative accommodation.
- (iv) An order directing the Defendant to deliver up and/or return the personal goods of the Claimants namely:
 - a) Telescopic Spotting scope,
 - b) Binoculars,
 - c) 4 sets Snorkel gear,

- d) Stir Crazy Popcorn Popper,
 - e) Bose Wi-Fi Speaker,
 - f) Mini Google,
 - g) Alcohol,
 - h) Travel Scale,
 - i) 4 Swim Flotation Devices,
 - j) Wooden Charcuterie Board,
 - k) iPhone Cases, and
 - l) Bug spray and sunscreen.
- (v) Alternatively that the defendant pay the sum of \$2000.00 BZD in lieu of the return of the aforesaid items at (iv)
- (vi) Interest.
- (vii) Costs are awarded to the Claimants on a prescribed basis.

Nadine Nabie
High Court Judge