

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. 2002/0454

BETWEEN:

JOYCELYN FLAVIUS

Claimant

AND

NATIONAL DEVELOPMENT CORPORATION

Defendant

Appearances:

Mr. Andre Arthur for Claimant

Mr. Peter Foster and Renee St. Rose for Defendant

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2008: September 29
October 10
October 23
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JUDGMENT

[1] COTTLE, J: The parties signed a Lease Agreement which commenced on November 24th 1997. The agreement was for an unspecified term but provided that it could be terminated by either party upon two (2) months notice in writing. In December 1997 the Lease Agreement was modified. In the original agreement Ms. Flavius was to operate a

mobile cart inside the Point Seraphine Duty Free Shopping Complex. In the modified agreement the cart was to be relocated to the courtyard of the Complex. As the cart would now be outdoors. Ms. Flavius was to be permitted to modify the cart with suitable covering to withstand the elements. The term of the lease agreement remained unchanged as did the provision for notice to terminate.

[2] The parties had discussions about the proposed modification required to cover the cart. Meanwhile Ms. Flavius continued to operate the cart at its original location inside the building.

[3] By letter of 22nd November, 1999, the Defendant wrote to Ms. Flavius in the following terms:

Ms. Joycelyn Flavius,

Operator,

Cart No. 12,

Point Seraphine

Dear Ms. Flavius,

Re: Relocation Agreement

We refer to the above-mentioned agreement of December 2, 1997.

Subsequent to the said agreement , you were informed that your Cart will now be located to the front of the Main Terminal under the awning covering.

As you are aware, the delay in relocating was a result of the construction of the berth. We are pleased to inform you that the construction phase has been completed and the berth is in operation.

You are, therefore requested to complete all necessary arrangements for relocation by Tuesday November 30, 1999. You are expected at your new location from December 1, 1999.

All other terms and conditions of the Relocation Agreement remains the same. Attached is a copy for ease of reference.

Thanks for your cooperation.

Yours faithfully.

NATIONAL DEVELOPMENT CORPORATION

Martha Fontenelle (Mrs)

Liaison Officer,

Duty Free Pointe Seraphine

CC: Chairman, NDC

Corporate Secretary, NDC

[4] Ms. Flavius responded by letter of 29th November, 1999. She pointed out that she considered the location under the awning outside the main building to be unsuitable for the cart which had not yet been modified. She did not agree to the new proposed location which was not in the courtyard of the complex as had been agreed in the 1997 written lease agreement as amended.

[5] On or about 4th December, 1999 while the Claimant was abroad, the cart was moved to the location outside the main building under the awning. This move was effected by the Defendants. The Claimant says that her new location rendered her business less profitable as her goods were now exposed to the elements and dust from the adjacent car park covered them. The cart was now out of the view of the tourist, off the cruise ships which used the complex, and who were her main customers. Ms Flavius none the less continued to operate at the assigned location.

[6] In September 2000, on a Saturday morning Ms. Flavius commenced erecting a structure in the courtyard of the complex. She intended this free standing structure to serve as a weather proof cover for the cart. She intended to move the cart to the courtyard under the structure she was building. The Defendant prevented her workmen from completing the structure. The partly built cover has dismantled and removed. Ms. Flavius says it was completely destroyed in the process.

[7] The Defendant wrote to Ms. Flavius on 27th September, 2000. She received the letter on 28th September, 2000. They ordered her to quit the complex entirely by 29th September, 2000 at 9:00 a.m. She was denied access to the complex after this date. She has not

been able to operate her cart. The Point Seraphine Duty Free Shopping Complex is the only one of its kind in St. Lucia. The goods that Mr. Flavius offered for sale are the kinds of souvenir items rarely purchased by locals but much beloved by visitors.

[8] Ms. Flavius was only able to access her cart in June 2001. She says by then it had been broken into. Her stock had been stolen and damaged. She hired an accountant who has prepared a report setting out what he considers to have been her loss of stock and loss of profit. The Defendants deny that they are at fault. They say that by her action of attempting to erect an unauthorized structure in the courtyard, Ms. Flavius entirely repudiated the lease agreement. They therefore accepted that repudiation, considered that the contract was at an end and required Ms. Flavius to forthwith remove her personal effects from the defendant corporation's cart in the presence of a security guard. When Ms. Flavius failed to comply the Defendants removed the cart. They say that they stored it in a secure location. Ms. Flavius says that when she eventually was permitted access, the cart was in a yard to which the gardeners of the complex enjoyed access.

[9] At the trial Ms. Flavius and her accountant gave evidence. The present manager of the Defendant gave evidence.

[10] From the testimony and the exhibits in this case I am satisfied that Ms. Flavius cannot recover for the loss of the weatherproof cover she attempted to erect. She had no authority or agreement to build such a structure she was not able to show that the design or location of the structure had been approved by the Defendants. In her testimony she explained that she had seen another tenant erect a similar structure in the courtyard

without objection by the Defendants. I believe that thus caused her to think that she too would be allowed to build. The Defendants were justified, on grounds of safety and aesthetics in taking action to immediately remove the offending structure.

[11] I do not consider this action by Ms. Flavius however, to amount to such a breach of the contract of lease as to justify its immediate termination. By their action in removing the structure, the Defendants had remedied the breach. In fact in the notice to quit the Defendants alleged arrears of rent and indicated that Ms. Flavius was becoming a nuisance to other tenants and operations at the complex. No particulars of the alleged nuisance were provided. No opportunity was afforded to abate any nuisance or to pay the arrears. In fact the Claimant denies being in arrears at all.

[12] I consider that the true reason for the eviction was the effort to erect the unauthorized structure. The agreement provided for termination a two (2) month written notice. The Defendant failed to give notice. They thereby breached the lease agreement.

[13] The notice to quit also reflects the Defendant's mistaken belief that they still owned the cart. This is why they detained it and continue to do so. However the agreement of 2nd December, 1997 clearly shows that the Defendants had passed ownership of the cart itself to Ms. Flavius.

[14] I conclude that Ms. Flavius is entitled to be compensated for her detained goods which have now been completely lost.

Measure of Damages

- [15] Ms. Flavius retained Mr. John Lucas to provide an account of her loss. Mr. Lucas says that he was provided with the purchase records of the business. He saw the daily purchase and sale records beginning in 1998 at the start of the year up to the termination of the business in September 2000. He saw information for the last two (2) months of 1997 as well. There were stock value computations at the end of December 1999 and at the end of June 2001.
- [16] From those detailed records Mr. Lucas has compiled a report setting out the value of the stock in the cart at the time it was seized.
- [17] The Defendants say that despite their offer to Ms. Flavius, no physical court of the stock was taken. They say that the Claimant has failed to prove that she had goods on the cart to the value claimed. They object to Mr. Lucas's valuation because he did not ask her for receipts to substantiate the daily purchase and sale records which Ms. Flavius kept in her stock register notebook.
- [18] I am content to accept Mr. Lucas' valuation. The court saw the stock notebooks. It would be incredible that Ms. Flavius would have anticipated the events which occurred and have fabricated entries into her records of sale and purchases which she made on a daily basis. Mr. Lucas saw no need to ask for receipts. Ms. Flavius says that he done so she would have provided him with receipts as well. I award the Claimant \$37,517.93 for stock lost.

Loss of Profit

[19] The Defendant were entitled to terminate the agreement on two (2) months notice. I therefore award the Claimant two (2) months loss of profit. Mr. Lucas has calculated the loss of profit for nine (9) months at \$8,638.53.00. This represents the difference in what she earned when operating outside the main building as opposed to when she operated inside, over the period January 2000 – September 2000.

[20] I award \$1,919.67 under this head. I also award the sum of \$1,350.00 being the cost of preparing Mr. Lucas' report and the refund of the deposit of \$1,000.00 paid at the beginning of the lease agreement.

[21] The total award for the Claimant is thus **\$41,787.60**. I award the Claimant prescribed costs in the sum of **\$11,946.90**. **Interest is awarded at 6% from judgment until payment.**

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BRIAN S. COTTLE
HIGH COURT JUDGE