161

Judgment Book

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. N.048 OF 1991

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| BETWEEN | NATIONAL BUSINESS PRINTING LIMITED | PLAINTIFF |
| A N D | CARIB SPRAY LIMITED | DEFENDANT |

Mr. C. [redacted] and Miss Judith Hanson for the Plaintiff

Mr. P. McDonald for the Defendant.

Heard: 10, 11, 12 October 1994
& ~~16~~ 18 December 1994

SMITH, J.

By a specially endorsed Writ the plaintiff sued the defendants in conversion. The events which led to this action are as follows:

The defendant purchased premises at 5 and 7 Waltham Terrace from the plaintiff in September, 1990. The plaintiff was slow to vacate the premises and was evicted on the 1st February, 1991.

According to Mr. Peter Gregory the Managing Director of the plaintiff company on the day of eviction the bailiff after serving him with the Writ of Possession proceeded to remove from the building on the premises the company's plant, machinery, furniture, fixtures and other things. These were placed in the parking area on the premises.

The plaintiff through its servants and agents made 8 to 10 trips removing these things from Waltham Terrace to its new location on Beechwood Avenue. At the bailiff's request the plaintiff employed someone to remove the heavy equipment.

Mr. Gregory testified that a number of things were not taken out of the building by the bailiff, these were:

1. 4 trouble lamps
2. 2 thermostats
3. 16 rollers
4. 100 printing plates
5. 30 double door lockers
6. 6 panel boxes and brake switches
7. chemicals
8. developing solutions
9. 100 yds. special three phase tubing

Mr. Gregory said that the bailiff and his men did not remove the printing plates because they were in the strong room and he (Mr. Gregory) did not open the door for the bailiff. However, he went on to say that some of the things in the strong room such as chemicals, paints and inks were taken out by members of his staff but the plates were not removed because the van was over loaded. A printing plate he said is a flat thin piece of material; "it is pretty heavy," he said.

The rollers were housed behind the machines. Mr. Gregory thought that the bailiff might have overlooked them. These rollers, he said, were to have been removed along with the machines. The thermostats were in a corner of the factory beside the machine. A thermostat is about the size of a pen. It could have been mere carelessness, why they were not removed, he thought.

The trouble lamps he said were "reasonably small" they were hooked on something near the machine.

On the day of eviction, the parties came to an understanding that the plaintiff would be allowed to return to the premises over a period of days to collect items which the plaintiff still had on the premises. However, the plaintiff claims that on the second day its agents were stopped from removing the items left and thereafter prevented from re-entering the premises despite several requests. All the heavy equipment were moved.

The defendant in his defence asserts that on the date of eviction the court's bailiff specifically requested the plaintiff to remove and secure its possessions but at the request of the plaintiff the defendant consented to allow the plaintiff to re-enter at some later date to remove certain pieces of machinery. Further, the defendant claims that on the 1st February, 1991 and on a subsequent day the plaintiff removed all its goods and the only items claimed by the plaintiff which remained on the premises were the vault door, the lockers and panel boxes with the special 3-phase tubing. These items the defendant claims are fixtures to which the plaintiff is not entitled.

Thus as regards the trouble lamps, the thermostats, the rollers, the printing plates, chemicals and developing solutions (hereinafter referred to as category 'A' items) the defendant is saying they were not left on the premises. In the words of Mr. Tolan, then the Financial Controller of the defendant's company "when I went there there was nothing visible in the building which belonged to National Business Printing Limited" (the plaintiff).

In so far as the lockers, the panel boxes and braker switches with the special 3-phase tubing (hereinafter referred to as category 'B' items) are concerned the defendant admits that they are on the premises but claims that they are fixtures having been annexed to the building.

Category 'A' items

I must therefore determine whether the plaintiff has on a balance of probabilities satisfied me that these items were left on the premises. If the court finds that they were, then the court must go on to determine whether or not the defendant has done an act in relation to such items which constitutes an unjustifiable denial of the plaintiff's title to them.

Were items in Category 'A' left on the Defendant's premises?

According to Mr. Gregory the bailiff and his assistants removed from the building all that they could see. He agreed that his staff assisted them in removing some of the things.

When pressed by Mr. McDonald as to why the bailiff's men did not remove the plates from the strong room and place them in the parking area as they did with other things Mr. Gregory said that the bailiff's men did not remove the plates because he did not open the door to the strong room for them. He went on to say that none of the items he claimed was placed in the court yard "some were in the factory and some in the strong room" he claimed.

Around 8-10 trips were made removing things from the defendant's premises to the new location. No reasonable explanation is given as to why the things in the factory were not removed during that time.

In answer to Counsel for the defendant Mr. Gregory said he took an inventory at Beechwood Avenue within a day after removal. He compared the inventory with one which was taken sometime in January, 1991 and this was the means by which he could say that he did not get the things in question.

He did not return to the building at 5-7 Waltham Terrace after the day of eviction thus he cannot of his own knowledge say whether or not the aforesaid items were left on the premises on the day when Mr. Samuels was prevented from re-entering.

Mr. Samuels said he went to the defendant's premises on three occasions after the eviction. On the first and second occasions he supervised the removal of the printing machines. On the first occasion he said he saw rollers, inks, plates and numbering machines. At first he said he did not attempt to remove them because it was not his job so to do, he later changed his evidence to say that Mr. Spence, the

Managing Director of the defendant's company, stopped him from removing them. He admits that he had begun removing panel boxes from the wall when he was stopped and on the third occasion he was refused entry to the defendant's premises.

Mr. Samuels did not strike me as a credible witness. At one stage he testified that after removing three panel boxes he did not attempt to remove more because it was late about 5:00 p.m. and the guard wanted to lock up. No one, he swore, spoke to him while he was removing the boxes. However, during cross-examination he asserted that he did not remove the rollers from the premises because when he was removing the boxes from the wall Mr. Spence stopped him from removing them. On the third occasion Mr. Samuels was not permitted to enter the premises. Mr. Samuels emphasised more than once that his job was to supervise the removal of heavy equipment and it was not his job to look for and remove the plates, rollers etc.

It is clear that responsibility to remove category 'A' items was not assigned to Mr. Samuels, the "printing engineer." Indeed that is the evidence of Mr. Samuels.

There is not sufficient evidence to satisfy me on the balance of probabilities that at the time when Mr. Samuels was prevented from re-entering premises 5-7 Waltham Terrace that the plates, rollers, thermostats etc. were still on those premises. I say this in light of Mr. Tolan's evidence that apart from the fixture he did not see any of the things the plaintiff claimed and on this matter I prefer Mr. Tolan's evidence to that of Mr. Samuels. Mr. Gregory had no direct knowledge as to what items were left at the premises. His information came from what Mr. Samuels told him and from comparing an inventory which he said was done during the first week in January with one done about a month after. Mr. Gregory did not himself take the inventories.

But even if these items were left on the premises, to succeed in the action brought, the plaintiff must show that the defendant did something in relation to the items which constitutes an unjustifiable denial of the plaintiff's title to them. There must be an intention on the part of the defendant to negative the right of the plaintiff or to assert a right inconsistent with the plaintiff's right.

There is no credible evidence that the defendant's agent or servant detained the items or even that they knew that the items were on the premises. The plaintiff having, in the defendant's view, wrongly interferred with the fixtures

the defendant was entitled to stop him from re-entering the premises.

The plaintiff is claiming that the defendant by not permitting Mr. Samuels to re-enter the premises to remove the items has thereby wrongfully detained them. However, the undisputed evidence is that Mr. Samuels was prevented from re-entering the premises because after removing the heavy equipment he had begun to remove the panel boxes from the wall. Although he did say that Mr. Spence stopped the whole operation he did admit it was not his job to remove the items in question. There is evidence from Mr. Samuels that he was prevented from removing the rollers, printing plates, the trouble lamps, thermostats, but as I have already intimated I am not inclined to accept Mr. Samuel's evidence in this regard as credible. There is no evidence from which it could be inferred that the defendant had refused to deliver them up to the plaintiff. There is no evidence from which it could be inferred that the defendant intended to negative the right of the plaintiff in respect of these items or that the defendant asserted a right inconsistent with the entitlement of the plaintiff. Indeed Mr. Tolan said he did not see any of the items in category 'A' on the premises. What he saw he said were heaps of garbages , paper bags and pieces of board strewn about the place.

Category 'B' Items

The defendant admits that it is in possession of some of the items claimed by the plaintiff viz approximately 100 yards of special 3-phase tubing, approximately 30 lockers and 6 panel boxes.

However the defendant is contending that these items are fixtures and cannot properly be claimed by the plaintiff. The tubes run from the panel boxes to the machines. They carry additional voltage. They are tacked to the wall and can be removed with a pair of pliers. The panel boxes and the brake switches were to regulate power to the machines. Four screws were used to attach each panel box to the wall.

The lockers are made of metal. Mr. Gregory quite frankly admitted some degree of uncertainty as to whether or not the lockers were "free standing" Mr. Tolan said that they are installed against the wall with the wall forming the back of the lockers. They are affixed to the wall by nails and screws. They are used by workmen to store their clothes and personal possession.

The question to be determined is whether the tubes, the panel boxes and the lockers are fixtures.

In Holland v. Hodgson (1872) 7 L.R. (C.P.) 328 at 334 Blackburn J. said:

> "There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land."

Thus any article which if considered by itself would be classed as a chattel but which is attached to the land, becomes a part of the land itself. Such article is considered to be a fixture and the property in the fixture vests in the owner of the land. Accordingly, unless otherwise agreed, on the signing of an agreement for sale of land any article annexed to the land, generally, becomes a part of what is contracted to be bought and sold.

A question which usually arises and does arise in this case for consideration with regard to articles attached to premises is whether the attachment is such that the articles are to be considered as fixtures.

In dealing with this question Blackburn J. at P. 334 (supra) continued:

> "But it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz, the degree of annexation and the object of annexation."

Thus the mere attaching of a chattel to the freehold will not necessarily cause it to lose its character as a chattel and become a fixture. As to whether it remains a chattel or becomes a fixture will depend on the intention of the person annexing the chattel. However in making this decision the court must have regard "only to the intention as appearing from the outward circumstances which may or may not be the real intention of the party concerned" see Hobson v. Gorringe (1897) 1Ch. 182.

It has been stated that "the intention is to be inferred from the nature of the article affixed, the relation and situation (in regard to the freehold) of the party making the annexation, the structure and mode of annexation, and the purpose and use of which the annexation has been made."

It will be helpful, I think, to refer again to the judgment of Blackburn J. in Holland v. Hodgson (supra) at P.335 he said:

> "an article which is affixed to land even slightly is to be considered as part of the land unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

At P.339 after referring to Walmsley v. Milne 7 C.B. (N.S.) 115 Blackburn J. continued:

> "This case and that of Wiltshear v. Cotterill seem authorities for this principle, that where an article is affixed by the owner of the fee, though only affixed by bolts and screws, it is to be considered as part of the land, at all events where the object of setting up the articles is to enhance the value of the premises to which it is annexed for the purpose to which those premises are applied."

Mr. McDonald for the defendant relied on Holland v. Hodgson and submitted that the onus lies on the plaintiff to show that the circumstances demonstrate that it was intended all along that the panel boxes, the tubes (electrical wiring) and the lockers were to remain chattels. To do this he contended, the plaintiff must show that the reason for the affixation in the manner stated was merely for a temporary purpose and for their mere complete enjoyment and use as chattels and not to enchance the value of the premises to which they are annexed.

He submitted that the plaintiff has not discharged this burden.

Mr. Honeywell on the other hand submitted that the panel boxes were intended to facilitate the use of the machines. He referred to the evidence of Mr. Gregory and argued that the panel boxes and the tubing existed in tandem with the machines and could easily be removed without injury to themselves or the premises.

He referred to Halsbury's Laws of England 4th Edition Vol. 27(1) para. 144 and submitted that the plaintiff, has through the evidence of Mr. Gregory shown that the panel boxes and the tubing were there for a temporary purpose and were not intended to enhance the value of the premises.

As regards the lockers Mr. Honeywell argued that they were intended to form a part of the equipment of the building and not to enhance the value of the building itself. It was necessary to annex them to the building, he said, only because they were without backs and therefore had to be placed closely and securely against the wall.

In respect of the panel boxes and the tubing, I have considered "the mode and extent of their annexation "as well as" the object and purpose of the annexation." It seems to me that the panel boxes and the tubes (electrical wires) are essential to the use of the building and were intended to be a part of the permanent equipment of the building. I am therefore of the view that they should be treated as fixtures. In any event the plaintiff has not satisfied me that they were not intended to be fixtures - see Holland v. Hodgson (supra)

In respect of the lockers the evidence is that they were placed in the building for the convenience of the workers. They were tacked to the wall. The building was used as a factory. The plaintiff was the fee simple owner of the building. It is reasonable to conclude that it was the plaintiff who attached the lockers to the building or that the plaintiff bought the building with the lockers in place. If it were the plaintiff who attached the lockers to the building then following Holland v. Hodgson they are to be considered as part of the land, "at all events where the object of setting up the articles is to enhance the value of the premises to which (they are) annexed for the purposes to which those premises are applied." I would venture to think that the position would be the same if the lockers were attached by the plaintiff's predecessor in title.

The conclusion therefore is that the lockers were also intended to be used as part of the permanent equipment of the building or to complete the use of the building. The plaintiff has not shown that they were annexed "merely for a temporary purpose or for the more complete enjoyment and use of the chattel as chattel."

Accordingly, there will be judgment for the Defendant with costs to be taxed if not agreed.

Before parting with this matter I wish to and do commend counsel for their industry, insight and their lucid and attractive submissions.