

JERSEY / JUDGMENT

Charles House -v- Primal Properties [2012] JRC 230 (13 December 2012)

[2012] JRC 230

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judgment

the bailiff: 1. This application raises a short point of construction in relation to the Royal Court (Possession Orders) (Jersey) Law 1998 . 2. Both parties were content essentially to rest on their written submissions although these were supplemented by short oral submissions and questioning by the Court. The factual background 3. On 24th December, 2007, the plaintiff leased part of Charles House, 45/47 Bath Street to the first defendant ("Primal") for a period of nine years at a rent which exceeded £15,000 per annum. The second defendant guaranteed the performance of the lease by Primal. 4. Primal fell into arrears of rent and on 1st October, 2012, the plaintiff brought an Order of Justice seeking cancellation of the lease, judgment for arrears of rent and service charge in the sum of £36,390.06, interest upon that sum and costs. Initially the matter was adjourned for two weeks at the request of the second defendant as he had indicated that a cheque for £25,000 would be forthcoming; but this did not occur. 5. On 12th October the second defendant made an application for a Remise des Biens , which was later granted. 6. These proceedings came back before the Court on 26th October and on that occasion the plaintiff obtained judgment against both defendants in accordance with the prayer in the Order of Justice, namely cancellation of the lease, judgment for the arrears of rent, interest thereon and costs. Advocate Habin and the second defendant were present in court when judgment was obtained. 7. Following the hearing, the defendants were requested by e-mail that same day to offer up vacant possession and their proposals were invited. However, no response was received. On 8th November the plaintiff issued a summons against both defendants seeking an order for possession. The summons purported to be in the same proceedings as those instituted by Order of Justice (in that the summons contained the same file reference) and had a return date of 16th November. 8. On that occasion the matter was adjourned for one week for the parties to consider the jurisdictional issue. On 23rd November, the Deputy Bailiff adjourned the summons for a further week until 30th November for full argument. It did not prove possible to consider the matter on 30th November and it accordingly came before us last Friday afternoon. The issue 9. The issue can be shortly stated. Advocate Habin argued that, the Court having made no possession order on 26th October when it cancelled the lease, it now has no jurisdiction to make such an order. The sole court with jurisdiction to grant possession in these circumstances is the Petty Debts Court. 10. Historically, this was undoubtedly true. In *Forster-v-Harbours and Airports*

Committee

[1990] JLR 1, the Court of Appeal confirmed that, under the Loi

(1946) concernant l'expulsion des locataires réfractaires ("the 1946 Law"), the Royal Court had no jurisdiction and the Petty Debts Court had exclusive jurisdiction to make an expulsion order (by which was meant a possession order i.e. an order granting possession of the premises to the landlord and authorising the eviction of the tenant by the Viscount if need be.) We shall use the expression 'possession order' in that sense in the remainder of this judgment. 11. The decision in Forster had the unfortunate result that in many cases the landlord had to take two sets of proceedings. He had first to obtain an order cancelling the lease from the Royal Court and then, having obtained this, he had to institute further proceedings in the Petty Debts Court to obtain a possession order. 12. This was commented on in the Second Interim Report of the Jersey Judicial and Legal Services Review Committee under the chairmanship of Sir Godfray Le Quesne (RC24/90) ("the Le Quesne Report") and para 9.16 of that Report recommended:- "The Royal Court should have power to make an order for possession, immediate or delayed, when it decides to cancel a lease, using the same criteria as at present apply in the Petty Debts Court." 13. Pursuant to that recommendation, the States enacted the Royal Court (Possession Orders) (Jersey) Law 1998 ("the 1998 Law"). The relevant provision is Article 1 which is in the following terms:- "(1) Notwithstanding the provisions of the Loi (1946) concernant l'expulsion des locataires réfractaires, ("the Law of 1946"), where the Royal Court:- (a) is exercising its jurisdiction in proceedings for the cancellation (résolution) of a contract of lease of an immovable; and

(b) orders the cancellation of that lease, it shall have the power to make an order for possession of the immovable.

(2) The power in paragraph (1) of this Article may be exercised to grant -

(a) immediate possession of the immovable; or

(b) possession at a later date of the immovable, in accordance with Article 3(3) and 3A of the Law of 1946 as if the provisions of that Law applied to the Royal Court." [Emphasis supplied].

14. The other change since the decision in Forster is that, since 2000 the Petty Debts Court has had jurisdiction to cancel paper leases where the annual rent does not exceed £15,000. Jurisdiction to cancel a contract lease remains vested solely in the Royal Court. This is the effect of Article 1(2) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000 which provides as follows:- "(2) The Petty Debts Court shall have jurisdiction in respect of any proceedings which may be brought in the Royal Court to pronounce the cancellation (résolution) of a contract (other than a contrat passé devant Justice) of lease (location) of an immovable or any interest in an immovable if the rent payable in respect of the immovable assessed annually at the time of the institution of the proceedings does not exceed £15,000."

15. The effect of these various amendments is clear in most cases. In the case of a contract lease or a paper lease where the annual rent exceeds £15,000, proceedings to cancel the

lease must be brought in the Royal Court and that Court may in those proceedings also make a possession order where it cancels the lease. In the case of a paper lease where the annual rental is less than £15,000, proceedings should be brought in the Petty Debts Court which may cancel the lease and also grant a possession order. 16. Advocate Habin submitted that the Royal Court has no jurisdiction to make a possession order in respect of a paper lease and that this jurisdiction is vested exclusively in the Petty Debts Court. In our judgment that submission is quite inconsistent with the statutory provisions we have described above and we reject it. 17. But more significantly, Advocate Habin submitted that the jurisdiction of the Royal Court to grant a possession order is only available at the time that the lease is cancelled and is certainly not available in separate subsequent proceedings. He made the following submissions in support. 18. First, he referred to the wording of Article 1(1)(a) of the 1998 Law where the draftsman uses the phrase 'is exercising'. The use of the present tense, he said, excluded cases where the Royal Court had previously exercised its jurisdiction to cancel a lease. 19. Secondly, he referred to the Report to the States which accompanied the draft 1998 Law where the following passage is to be found:- "The purpose of the draft Law is to make provision that where the Royal Court exercises its jurisdiction in proceedings to cancel a lease of an immovable, it should at the same time have the power to make an order for possession of the immovable, so that the plaintiff would not thereafter be required to institute separate proceedings for possession before the Petty Debts Court." [Emphasis supplied] 20. Thirdly, he pointed out that, if the plaintiff was right and the simple issuing of a summons was sufficient to bring the question of a possession order before the Royal Court, the need for personal service (which was mandatory under the 1946 Law and in proceedings for cancellation of a lease because these had to be by Order of Justice) would be avoided. It could not be right that a person could be subject to a possession order and the threat of being evicted without personal service upon him. 21. In summary, he said that the Royal Court had exercised its jurisdiction to cancel the lease on 26th October. Those proceedings had been concluded and there was nothing in the 1998 Law which allowed a landlord to bring stand-alone proceedings for eviction where a lease had been cancelled. Exclusive jurisdiction therefore vested in the Petty Debts Court under the pre-existing law. 22. Advocate Fogarty submitted that, when read as a whole and in the context of the intention to address the recommendation in the Le Quesne Report, the purpose of the enactment was to put the Royal Court on the same footing as the Petty Debts Court in so far as the power to order possession of immovables was concerned. It could not reasonably have been the intention of the legislature that, where an order for possession was sought on the same occasion as the order for cancellation, it could all be done by the Royal Court but that where the order for possession was not sought on the same occasion, separate proceedings had to be brought in the Petty Debts Court. This would lead to an illogical and unsatisfactory outcome. 23. She referred also to Bennion on Statutory Interpretation (5th Edition) at 1190 where, in connection with the use of tenses in legislation, the following passages are found:- "Where the present tense is used this may indicate that the relevant time is not the time when the Court is considering the matter but the time when the relevant action was initiated. In some cases the context may indicate that a reference to the present

tense is not to be taken literally." [original emphasis]. 24. She also referred to the passage on page 1191 as follows:- "Continuum Use of a particular tense may denote a continuum in that tense rather than an instant of time." Decision 25. One starts from the position that, prior to the enactment of the 1998 Law, the Royal Court had no jurisdiction to grant a possession order in respect of a lease even where it had cancelled the lease (per Forster). It follows that any jurisdiction which the Royal Court now has to grant a possession order has to be found in the 1998 Law. 26. On turning to Article 1(1)(a) of that Law, the power to grant a possession order is conferred upon the Royal Court where it " is exercising its jurisdiction in proceedings for the cancellation of a ... lease ...". In our judgment, the natural meaning of those words is that the power to grant a possession order can only be exercised in the same proceedings as the Court makes the cancellation order. It cannot be exercised in separate proceedings. This is consistent with the Explanatory Note which accompanied the draft of the 1998 Law presented to the States which reads:- "The purpose of this Law is to enable the Royal Court to make orders for the possession of an immovable in proceedings where it orders the cancellation of a contract of lease of that immovable. This removes the anomaly whereby at present the order for possession can only be made in separate proceedings before the Petty Debts Court pursuant to the Loi (1946) concernant l'expulsion des locataires réfractaires." 27. The difficulty in this case is that the possession order is not being sought in the same proceedings as the cancellation order. The Order of Justice seeking cancellation of the lease was specific in the relief it sought and did not include a possession order. On 26th October the Royal Court granted final judgment in respect of the proceedings brought by Order of Justice. It granted the plaintiff every item of relief sought in those proceedings. Those proceedings came to an end when the Court granted a final judgment in accordance with the prayer of the Order of Justice. 28. Advocate Fogarty submitted that the summons issued on 8th November was a summons in the original Order of Justice proceedings because it carried the same court file reference. However, this was something done by the plaintiff. As a matter of law, we do not consider that the summons was in the same proceedings as the proceedings brought by Order of Justice because those had come to an end following the judgment of 26th October. It follows that the Royal Court has no jurisdiction to grant a possession order in these separate proceedings. 29. We do not think that such a ruling is contrary to the clear intention of the 1998 Law. Because the plaintiff did not ask for a possession order in the original proceedings seeking cancellation, it has had to bring further proceedings in any event. It really does not make any material difference in terms of inconvenience etc if, where a plaintiff has omitted to obtain a possession order when obtaining cancellation of a lease, he has to bring those new proceedings in the Petty Debts Court rather than the Royal Court. The inconvenience is in the bringing of additional proceedings, no matter which Court they are brought in. 30. We also wish to emphasise that, contrary to what was inferred during submissions by Advocate Habin, the possession order does not have to be made at the same time as the cancellation (in the sense of at the same instant). In this respect the Report referred to at para 19 goes too far. In our judgment it is entirely consistent with the legislation if, in proceedings where a plaintiff seeks both a cancellation order and a possession order, the question of possession (and in particular the

period of suspension of any possession order) is adjourned for consideration at a date after the Court has made the cancellation order. Provided that a possession order has been sought in the original proceedings, any such order will be made in those proceedings and in our judgment will be made in proceedings where the Court "is exercising" its jurisdiction to order cancellation. 31. The solution for avoiding the difficulty which the plaintiff has got itself into in this case therefore lies in practitioners' hands. When a plaintiff brings proceedings by Order of Justice seeking cancellation of a lease in the Royal Court, the prayer should ask not only for a cancellation order but also for a possession order with the accompanying authority for the Viscount to evict the tenant. If that is done, the difficulty which has arisen in the present case will not arise even if, for any reason, the Court considers the question of possession at a later date than it considers the issue of cancellation. 32. However that was not done in this case and it follows that the plaintiff will now have to institute proceedings in the Petty Debts Court seeking a possession order. Discretion 33. We were addressed on the question of the period of suspension of any possession order in case the Court should have found that it had jurisdiction to make such an order. In case we are wrong in our decision as to jurisdiction, we propose to give the decision which we would have reached on the question of delay. On behalf of the defendants, Advocate Habin sought a delay until the end of February 2013 on the basis that there were people working in the business. The plaintiff sought possession by 31st December, 2012. 34. In our judgment, the appropriate date would have been 7th January. This is a lease in respect of commercial premises. There are substantial arrears of rent (some £36,000 up to the date of judgment) and further arrears will have accrued since then. We were given no evidence of any prospect of the defendant paying the rent. 35. In the case of commercial premises, it is usually appropriate to give immediate or almost immediate possession. However, in this case the beneficial owner of the plaintiff and the second defendant are known to each other and the plaintiff is content to defer possession until 31st December. In the particular circumstances of this case, we think a marginal extension on that offered by the plaintiff is appropriate in order to allow the New Year to have passed. Authorities Royal Court (Possession Orders) (Jersey) Law 1998. Forster-v-Harbours and Airports Committee

[1990] JLR 1 . Loi (1946) concernant l'expulsion des locataires réfractaires. Petty Debts Court (Miscellaneous Provisions)(Jersey) Law 2000. Bennion on Statutory Interpretation (5th Edition). Page Last Updated: 13 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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