

IN THE SUPREME COURT OF SEYCHELLES

TIC TAC SHOP

(Rep. by Frederick Payet)

VS

SRINIVAS COMPLEX

(Rep. by M. Srinivasan Chetty)

Civil Appeal No: 20 of 2010

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Mr. D. Lucas for the Appellant
Mr. B. Hoareau for the Respondent

JUDGMENT

Background

This is an appeal against the decision of the Rent Board delivered on the 16th of November 2010 in the case RB 41/05 that was consolidated with case RB 15/07.

Case of RB 41/05 concerns an application by the Lessor to evict the Lessee for the latter's failure to pay rent and, that the premises was required by the Lessor for business, trade or professional purposes.

Case RB 15/07 was entered by the Lessee requiring the Lessor to repair the premises.

The matter was heard by the Rent Board on 19th, 22nd, 26th January, 2010 and 18th May 2010 and the Rent Board delivered its judgment which is dated 16th November, 2010 in case RB41/05 and the Board deemed it unnecessary to consider the merit of case RB15/07 in view of that judgment.

On 27th July, 2005 an Application was entered by – **“Srinivas Complex represented by the fiduciary, Mr. M. Srinivasan Chetty of Albert Street, Victoria, Mahe”** against the Respondent – **“Tic Tac Shop represented by Mr. Frederick Payet of Srinivas Complex, Market Street, Victoria, Mahe.”** The Applicant prayed as follows:

- (a) Evicting the Respondent from the premises;
- (b) Ordering the Respondent to pay arrears of rent in the sum of SR45,100.00, and all other arrears to date of judgment, and
- (c) Costs.

In response to the above allegations the Respondent averred that he made attempts to pay the rent but was told by the Applicant to pay said rent to the Applicant's attorney and that when he attempted to do so payments were not accepted and the landlord does not require the premises for business or professional purpose. The Respondent also averred that he has always been and is ready and willing to pay the rent to the Applicant.

On 17th January, 2007 the Applicant moved the Rent Board for leave to amend the Application but maintain the same prayers. The amendment pertained to the caption to read **“Mr. M. Srinivasan Chetty in his capacity as fiduciary of the property of Albert Street, Victoria, Mahe.”**

The caption of the above application was further amended on 21st September, 2007 to read –**“Mr. Levi Krishna Chetty, in his capacity as fiduciary of the property of Albert Street, Victoria, Mahe.”**

The Application before the Rent Board in case RB 15/07 was entered on 4th June, 2007 by the Applicant **“Tic Tac Shop represented by Mr. Frederick Payet** of Srinivas Complex, Market Street, Victoria, Mahe, Seychelles” and the Respondent was **“Srinivasan Chetty** of Albert Street, Mahe, Seychelles”. In that Application the Applicant prayed as follows:

- (a) Replace the tiles and repair the damage to the said premises, especially the ceiling of the store.
- (b) Restore water supply to the premises.
- (c) Reduce the rent to the sum of SR5,500.00 or any sum deemed appropriate to the Rent Board in the circumstances of the case.

(d) To order the Respondent to reimburse to the Applicant all of the rent increase ordered by the Rent Board from the 16th of May 2003 to date.

(e) Alternatively make any order that the Rent Board finds fit and just in the circumstance of the case.

The Respondent in answer averred “that it is the duty of the Applicant to maintain the premises in good conditions at all times as per the initial lease agreement and the respondent further avers that it is the responsibility of the applicant to maintain the plumbing and water connection.”

On 11th September, 2008 a fire broke out in the rented premises and thereafter the Lessor took back possession of that premises whereupon the Lessee applied for recovery of possession. The parties were Srinivas Complex as the Applicant and Tic Tac Shop as the Respondent.

There is on record in RB 41/05 a “Ruling on the Application for Recovery of possession of the rented premises by the Lessee (Respondent)” of the Rent Board dated 9th June, 2009 concluded in the following terms:

“It follows in the light of the above finding and in balancing the respective interests of both the Lessor and the Lessee at this stage of the proceedings and the confirmation by the Applicant

that the repairs have already been completed, that the Respondent shall be given back the possession of the rented premises with immediate effect for his contract subsists, until the final disposal of the main case filed on the 25th day of July 2005 by the Applicant and any order as to payment of rent during the period the Respondent was unlawfully deprived of the possession of the rented premises will be taken into consideration in the judgment after completion of the main matter pending before it.”

On 19th June 2009 the Lessor applied for a stay of execution of the above stated decision and entered an appeal against that decision. From the record there is no indication as to what happened to that application.

The Appeal

This is an appeal against the judgment of the Rent Board in cases No. 41 of 2005 and 15 of 2007, which judgment was delivered on 16th November, 2010.

The Appellant has set out 11 grounds of appeal which I will consider them in the same order as set out in the Notice of Appeal.

Learned Counsels for the parties have made very elaborate written submissions dated 28th July 2011 and 25th August, 2011 in respect of this appeal.

In his submissions the Appellant took up grounds 1 and 9 together, grounds 6, 7 and 11 were taken together with ground 2. Learned Counsel for the Appellant did not make any submission with regards to grounds 3, 4, 5, 8 and 10.

Learned Counsel made submissions in respect of each of the grounds of appeal.

The grounds of appeal will now be dealt with.

Ground 1.

The Rent Board erred in ruling that the Appellant Tic Tac was the tenant, in that it contradicted the Rent Board's own prior findings that the tenancy agreement between the Respondent and the partnership of Gonzague Payet and Fredrick Payet, still subsisted.

The judgment of the Rent Board treats Mr. Frederick Payet as the tenant and it made no finding that Tic Tac Shop was the tenant. The Rent Board, on the basis of the evidence, was right to reach the conclusion that Mr. Frederick Payet was the tenant. Indeed Mr. Frederick Payet under cross-examination admitted that he was the one who was personally trading in that shop. The original Lessee with the partnership of Messrs Frederick and his brother Gonzague Payet came to an end with the passing away of the latter.

This ground of appeal has no merit.

Ground 2.

The Rent Board erred in ruling that the lease agreement between the Respondent and the partnership of Gonzague Payet and Fredrick Payet still subsisted when it was clear on the record that the partnership was at an end due to the death of Gonzague Payet.

As stated above, indeed the original the lease agreement between the Respondent and the partnership of Gonzague Payet and Fredrick Payet was at an end due to the death of Gonzague Payet. In its judgment the Rend Board did not make any finding that that agreement was still subsisting. The judgment states clearly –“... at the end of the three year lease as provided for and attested for by exhibit A, the Respondent continued to occupy the rented premises on his own and he then became statutory tenant.”

I do not find any merit in this ground of appeal.

Ground 3

The Rent Board erred in its judgment in that it was clear on the facts that Tic Tac Macouti (Pty) Limited had been accepted by the Respondent as the new tenant, after the expiry of the lease agreement.

The record does not reflect that there is any evidence that the Respondent accepted Tic Tac Macouti (Pty) Limited as the new tenant after the expiry of the original lease agreement. As stated above, after the passing away of the other

partner, Mr. Frederick Payet became the tenant of the premises in issue. Simply by the Landlord accepting a cheque from Tic Tac Macouti (Pty) Limited in payment of rent due does not make the latter the tenant. The Rent Board did not err in its finding.

I find no merit in this ground of appeal

Ground 4

The Rent Board erred in law in giving judgment against the Appellant, Tic Tac Shop, in that the Respondent had failed to establish on the evidence, that the Appellant, Tic Tac Shop, was a legal entity which was capable of being sued or was capable of the status of being a tenant or was the actual tenant.

The judgment of the Rent Board is not against Tic Tac Shop as a legal entity but rather it is against of Mr. Frederick Payet who was the person representing Tic Tac Shop. In case RB15/07 the applicant Mr. Frederick Payet himself stated in his application - "Tic Tac Shop represented by Mr. Frederick Payet".

I find no merit in this ground of appeal.

Ground 5

The Rent Board erred in finding that the Appellant, after payment had been refused by the Respondent, had failed to pay rent because the Appellant should have paid the Rent in Court. The Board failed to take into account that payment

to Court was an option which the Appellant had a discretion to exercise, but is not mandatory.

The evidence shows that the Landlord did not accept the cheques because they were for less than the total amount for rent that was due at the time and Mr. Frederick Payet under cross-examination admitted that. The purport of the reference in the judgment of the Rent Board to payment of rent in Court is not that it was mandatory for the tenant to do so but is made to emphasise that if the tenant in good faith had genuine wish to settle the arrears of rent due, he had the option to make the payment in Court in terms of Article 1257 of Civil Code, a course of action which he did not take. The Rent Board did not state that it was mandatory for the Appellant to abide by the provision of Article 1257 of the CCSeY.

I find no merit in this ground of appeal.

Ground 6

The Rent Board erred in law in ruling that the provision to section 10 (2) of the Control of Rent and Tenancy Agreement Act (Cap 47) did not apply because the lease agreement provided for the Respondent to take immediate possession of the premises without having to take legal steps to that effect.

In its judgment the Rent Board states – “The Board in deciding this matter is guided by the provisions of sections 13(10) as read with the provisions of section

9 and the proviso to section 10(2) of the Control of Rent and Tenancy Agreement Act (Cap 47).

Section 9 of the Control of Rent and Tenancy Agreement Act states thus:

“No lessor shall eject or apply to the Supreme Court or the Magistrates’ Court for the ejectment of or take any step towards the ejectment of his lessee.”

Section 10(2) of the same **Act** states:

10(2). No order for recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a lessee therefrom, shall be made by the Board unless –

- (a) “Any rent lawfully due from the lessee has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act, has been broken or not performed.”

Section 13(1) of that Act makes the above-stated provisions applicable equally to premises used for business.

There is ample evidence on record that sufficiently established that the Respondent, even by his own admission, was the tenant of the rented premises. The Board having concluded that the Respondent was a statutory tenant, the provisions of the Act therefore apply. The Applicant, by entering this Application for arrears of rent and ejectment fall within the provision of the Act. The Applicant could have taken immediate possession of the premises without having to take legal steps to that effect if the original lease agreement was operational. In the circumstances, the finding of the Board on that point is conflicting. However, it is in evidence that the Applicant took possession of the rented premises after it was gutted by fire in order to carry out necessary repairs. The Applicant did not restore the Respondent to its use thereafter. In any event the Board has no jurisdiction to restore the Respondent in the possession and occupation of a premises in virtue of the Control of Rent and Tenancy Agreement Act (Cap 47). The conflict as found has no effect on the final order made by the Board.

This ground of appeal is allowed to the extent that the finding of the Board on that point is conflicting but it has no effect on the final order made by the Board.

Ground 7

The Rent Board erred in ruling that, on the evidence, greater hardship would be caused to the Respondent given that the Appellant had other businesses in the town area, conducting the same business. The Appellant, Tic Tac Shop, on the records, does not have any other business in the town area.

Tic Tac Shop may not have other shop premises in the town area but this is irrelevant as Tic Tac Shop is not the Respondent. It is Mr. Frederick Payet who is the Respondent.

This ground of appeal has no merit.

Ground 8

On the basis of the evidence and the facts of the case, the Rent Board erred in its findings that there were sufficient grounds to enter judgment against the Appellant and to order the Appellant's eviction and payment of arrears of rent within three months of the judgment date when it was apparent, on the record, that the Respondent had refused to accept payment from the Appellant and had caused the arrears of rent.

This issue of the Respondent not accepting payment has been dealt with above. This ground of appeal likewise has no merit.

Ground 9

On the evidence, the Rent Board erred, in making the order of eviction and in giving the Appellant three months to pay the arrears of rent.

There is sufficient evidence on record for the Rent Board to reach the conclusion it did in finding that there are sufficient grounds existed that merit the eviction of

the Appellant. At the time of the hearing by the Board, the Appellant owed the Respondent over half million rupees due as unpaid rent for over 40 months.

There is no merit in this ground of appeal.

Ground 10

The Rent Board erred in ruling that the Appellant was the tenant because the Appellant had not provided proof of the change of tenant.

The Rent Board in its judgment made no finding that Tic Tac Macouti (Pty) Limited or any other party for that matter was the tenant. All along and for good reasons based on evidence, the Board found and treated Mr. Frederick Payet as the tenant. Obviously, if Mr. Frederick Payet had provided proof that it was otherwise the Board would have come to a different conclusion.

This ground of appeal has no merit.

Ground 11

The Rent Board erred in not ruling that the Respondent, in repossessing the premises without an order of the Rent Board, had acted illegally and contrary to the provisions of the Control of Rent and Tenancy Agreement Acts, Cap 47.

As stated earlier the jurisdiction of the Rent Board as set out in Control of Rent and Tenancy Agreement Act (Cap 47) does not include the power to restore a tenant in the possession and occupation of premises.

Conclusion

For reasons enunciated above in respect of each ground of appeal I find that the decision of the Rent Board contained in its judgment cannot be faulted and is hereby upheld. The appeal of the Appellant is hereby dismissed in its entirety with cost to the Respondent.

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B. RENAUD
JUDGE

Dated this 25 May, 2012, at Victoria, Mahe, Seychelles

