

A **UNION DE TRANSPORTS AERIENS**

v.

**NAROTAM AND ANOTHER**

B [SUPREME COURT, 1964 (Hammett P.J.), 11th, 19th November]

Civil Jurisdiction

*Landlord and tenant—monthly tenant—notice to quit by tenant under three year agreement to lease—error in description of premises common to all parties—evidence admissible to identify premises.*

C *Landlord and tenant—agreement to lease—execution thereof by tenant not essential to enforcement of his rights against third party in possession—execution of agreement by manager on behalf of company—Companies Ordinance (Cap. 185) s.30.*

*Companies—agreement to lease—execution on behalf of company by manager duly authorised—Companies Ordinance (Cap. 185) s.30.*

D The plaintiff company, claiming to be the tenant of certain shop premises under an agreement to lease the same from the owners for the term of three years, gave notice to quit to the defendants, who were occupying the premises as monthly tenants. The defendants resisted the claim by the plaintiff company for possession on the grounds (1) that in the plaintiff company's three year agreement to lease, the premises in question were wrongly described, and (2) that the plaintiff company's agreement to lease was invalid because the execution thereof by the plaintiff company was defective.

F *Held:* 1. That the mistake whereby the premises were described in the agreement to lease by the wrong shop number was one common to all the parties. The premises in question were sufficiently identified in all material documents, and evidence was admissible to explain the mistake.

2. The execution of the agreement to lease by the plaintiff company was not essential to its right to possession, but, under section 30 of the Companies Ordinance, the signature of the plaintiff company's manager, duly authorised, on its behalf, was sufficient.

G Action for possession of premises by tenant under three year tenancy against monthly tenant.

D. M. N. McFarlane for the plaintiff company.

K. C. Ramrakha for the defendants.

H The facts sufficiently appear from the judgment.

HAMMETT P.J.: [19th November, 1964]—

The Plaintiff's claim is for an order for possession of shop premises in Thomson Street, Suva, at present occupied by the Defendants.

The circumstances giving rise to these proceedings are as follows.

In February 1963 Messrs. G. B. Hari and Company Limited purchased the property held under Certificate of Title No. 6437 which abuts on to Renwick Road, Pier Street and Thomson Street in Suva and on which there are buildings occupied by a number of tenants. The Defendants occupied a shop in one of these buildings with a frontage in Thomson Street.

On 19th February, 1963, the solicitors to Messrs. G. B. Hari and Company Limited gave the Defendants notice to quit expiring on 31st March, 1963. At the same time the Defendants were informed that if they wished to take up a new tenancy it would be at the increased rent of £65 a month, the tenant paying rates, and they should indicate their wishes in the matter. The Defendants later discussed the matter with the Managing Director of Messrs. G. B. Hari and Company Limited and on 28th May, 1963, a memorandum was signed setting out the terms on which it was agreed a new monthly tenancy, terminable by one month's notice on either side, should be granted, which, *inter alia*, provided for a rent of £66 a month, the landlord paying all rates.

This memorandum was headed as follows :—

“Memorandum of Monthly Tenancy of  
One Shop No. 26 Thomson Street, Suva.”

On 28th April, 1964, Messrs. G. B. Hari and Company Limited gave the Plaintiff Company an Agreement to Lease this shop for three years with effect from 28th April 1964 and so informed the Defendants by letter dated 29th April 1964, in which the premises were referred to as :—

“Shop No. 26 Thomson Street now  
occupied by you as monthly tenant”.

The rent reserved by this Agreement to Lease was £130 per month.

This Agreement to Lease dated 28th April 1964 referred in Clause 1 to the premises as :—

“ . . . all the office premises on the ground floor of the lessor's building in Thomson Street contained in Certificate of Title 6437 . . . and more particularly known as Shop No. 26 . . . ”

Clauses 8 and 9 of this Agreement read :—

“8. The said premises are at present occupied by D. Narotam & Co., Merchants, as monthly tenants, subject to one (1) month's notice, and rental for the said premises shall be apportioned as at the date hereof.

9. If the lessee shall require vacant possession of the said premises, then it shall be the responsibility of the lessee to terminate the monthly tenancy of the said D. Narotam & Co. and to take all necessary steps to obtain vacant possession of the said premises at its own cost.

On 29th April 1964, the Plaintiffs wrote to the Defendants informing them that they had been granted a lease of this shop and gave them notice to quit expiring on 31st May, 1964. In this letter the premises were referred to as :—

A “Shop No. 26 in Thomson Street at present occupied by you”, and later as

B “Shop No. 26 (now occupied by you) in Thomson Street, Suva, in the building owned by G. B. Hari & Co. Ltd. on the land contained in Certificate of Title No. 6437.”

The Defendants did not comply with this Notice to quit and on 23rd June, 1964, the Plaintiff issued the writ in this action claiming an order for possession of :

C “Shop No. 26 in G. B. Hari & Company Limited’s building in Thomson Street, Suva.”

In paragraphs 2, 3, and 6 of the Statement of Claim the premises were referred to as “Shop No. 26”.

The Defendants, in their Defence, admit receipt of the Notice to Quit and put forward three lines of defence.

D Firstly, they put the Plaintiff to proof of their title to the lease and to their right of possession;

Secondly, they claim that Messrs. G. B. Hari and Company Limited had promised to grant them a lease of the premises;

E Thirdly, they claim that the Plaintiff’s claim is defective because of a misnomer of the premises demised under the Agreement to Lease, which it is alleged is also not a valid Agreement because it was not properly executed by or on behalf of the Plaintiff Company.

I will deal first with the issue of the alleged misnomer of the premises.

F As I have made clear in my Judgment so far all references to the premises by Messrs. G. B. Hari and Company Limited, and the Plaintiff and the Defendants in their correspondence and documents prior to the actual hearing of this action were to “Shop No. 26 Thomson Street, Suva” or words to that effect.

The Defendants similarly referred to the premises in paragraphs 2, 3, 6 and 7 of their defence as “Shop No. 26”.

G At the outset of the hearing Counsel for the Plaintiff said that it had recently come to his notice that in fact the shop occupied by the Defendants was not “No. 26 Thomson Street” but “No. 36 Thomson Street”. Mr. Ramrakha for the Defence agreed that this was so and consented to all the pleadings, i.e. the Statement of Claim, the Defence and the Reply to the Defence being amended by substituting the words “Shop No. 36” for the words “Shop No. 26” wherever they occurred, and this was done.

H During the course of the trial it became clear that the Defence intended to rely in part at least on the fact that the Plaintiff’s title

was derived from their Agreement to Lease in respect of "Shop No. 26" whereas it was now agreed that in fact the Defendants were not occupying "Shop No. 26" but "Shop No. 36". Further, the Defence objected to any evidence being admitted to show that the "Shop No. 26" referred to in this Agreement to Lease did in fact mean or refer to the "Shop No. 36" occupied by the Defendants.

It appeared to me, and I so indicated, that if the shop described in the Agreement to Lease as "Shop No. 26, Thomson Street", was in fact "Shop No. 36 Thomson Street", and this was the result of a mistake by both parties to that Agreement, this mistake could perhaps be rectified by a memorandum endorsed on the Agreement to this effect and signed by both parties. Counsel for the Plaintiff Company did however instead apply for and was granted a further amendment to the Statement of Claim and to the Reply to the Defence by substituting for the words "Shop No. 36" wherever they occurred the words :

"Shop No. 36 also known as Shop No. 26".

The Defendants applied for and were granted leave to amend their Defence accordingly and thereby expressly relied on the misnomer disclosed by the Plaintiff at the beginning of the trial as part of their defence.

On the facts I am abundantly satisfied and hold as fact that the Defendants at all material times have only occupied one shop in Thomson Street, Suva, and that that shop is in the building owned by Messrs. G. B. Hari and Company Limited and was known to all parties, namely Messrs. G. B. Hari and Company Limited, the Plaintiff Company and by the Defendants as "Shop No. 26", whereas it is now agreed it is in fact shop No. 36. In my opinion, the Number by which this shop is called or known and whether it is the correct number or the incorrect number is quite immaterial. I say this because it has in all the material documents, i.e. the memorandum dated 28th May 1963 setting out the terms of the Defendants' monthly tenancy, the two notices to quit, receipt of which was admitted by the Defendants, the agreed correspondence, the Plaintiff's Agreement to Lease and the Statement of Claim, Defence and Reply to the Defence in this action been sufficiently otherwise described so as to be identified beyond any question as the shop in the building owned by Messrs. G. B. Hari and Company Limited in Thomson Street, Suva, in Certificate of Title No. 6437 which was at all material times and is at present occupied by the Defendants, who do not occupy any other shop in Thomson Street, Suva.

In my opinion evidence is admissible to explain the mutual mistake as to the correct number of the shop made by all parties in the several documents and the two agreements produced in evidence during the course of this trial.

In so far as the Defence relies on this mistake or misnomer, it cannot, in my view, succeed.

I next turn to the complaint by the Defence that the Agreement to Lease granted by Messrs. G. B. Hari and Company Limited to the

A Plaintiff Company is not valid by reason of alleged defects in its execution by the Plaintiff Company. In the first place, I am of the opinion that this defence is misconceived. In my view the execution of this document by the Plaintiff Company was not necessary or essential for the grant to it of a lease or Agreement to Lease by Messrs. G. B. Hari and Company Limited.

B The only object of the execution of this Agreement by the Plaintiff Company is to make certain and binding upon it the conditions it has to observe. The only signature or execution of the Agreement to Lease to create, *per se*, a valid Agreement to Lease which would entitle the Plaintiff Company to possession of the premises owned by Messrs. G. B. Hari and Company Limited apart from the right of third parties, is that of Messrs. G. B. Hari and Company Limited. By that execution of the Agreement to Lease, which has been established to my satisfaction and which was not challenged at any time in any way C by the Defence, the Plaintiff Company has been placed in the same position vis-a-vis the Defendants as their original Landlords Messrs. G. B. Hari and Company Limited.

D But quite apart from these considerations the Companies Ordinance, Cap. 185, section 30 makes ample provision for the making of contracts on behalf of a company "by any person acting under its authority express or implied" in the following terms :—

"30. (1) Contracts on behalf of a company may be made as follows —

- E (a) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- F (b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

G (3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made. "

H The Agreement to Lease in this case was signed on behalf of the Plaintiff Company by "Ronald Mowbray Michael" who is therein described as the Plaintiff Company's Manager in Fiji. Mr Michael has been called by the Plaintiff Company as their own witness and has given sworn testimony on behalf of the Plaintiff Company that he is in fact the Plaintiff Company's Manager in Fiji and that he was in fact authorised by the Plaintiff Company, his employer, to sign this Agreement to Lease on its behalf. There is no other evidence before me to contradict this testimony. Mr. Michael appeared to me

to be a witness of truth and I have been given no reason whatever why I should not accept his testimony. I accept his evidence and I hold as fact that Mr. Michael was authorised to sign this agreement to lease by the Plaintiff Company and that he did in fact do so.

I am quite satisfied that the Plaintiff Company was on 28th April 1964 lawfully granted by the owners of the shop occupied by the Defendants, an Agreement to Lease these premises for three years from 28th April 1964. I further hold that on 28th April 1964 the premises were occupied by the Defendants as monthly tenants under the Memorandum of Tenancy dated 28th May, 1963. This tenancy was terminable by one month's notice in writing expiring at the end of any month. I hold that on 29th April 1964, notice to quit was given by the Plaintiff Company to the Defendants which terminated the tenancy on the 31st May, 1964.

The last matter for consideration is the contention by the Defendants that Messrs. G. B. Hari and Company Limited in March 1964 had promised to grant them a lease of the premises. Learned Counsel for the Defence in reply to me conceded that even if such a promise was made, which has been emphatically denied by two directors of Messrs. G. B. Hari and Company Limited, there was no consideration therefore and the Defendants cannot and do not set up any claims to any legal or equitable rights as a result of such a promise. It is submitted, however, that this should be a consideration to be borne in mind by the Court if the Plaintiff succeeds in this action in deciding when possession should be given and in awarding costs.

On the evidence before me I am not satisfied that any such promise was in fact made. It may well have been a hope entertained by the Defendants but they can have had no doubts as to the terms of their agreement with Messrs. G. B. Hari and Company Limited when on 28th May, 1963, i.e. more than two months after the alleged promise was made, they agreed to and signed the memorandum of that date which granted them a monthly tenancy terminable on one month's notice on either side with no provisions whatever for longer renewal or any longer tenancy, agreement or lease.

In these circumstances the Plaintiff Company is, in my view, entitled to succeed in this action.

There will, therefore, be judgment for the Plaintiff Company for an order that the Plaintiff Company do recover possession of Shop No. 36 also known as No. 26 Thomson Street in the building of G. B. Hari and Company Limited built on the land held under Certificate of Title No. 6437 on or before 30th November 1964, together with judgment for £330 being mesne profits as claimed at the rate of £66 per month from 1/6/1964 to 1/11/1964 and for further mesne profits at the same rate from 1/11/1964 until the date possession is recovered. I also award the Plaintiff Company the costs of the action to be taxed.

*Judgment for the plaintiff company.*