

IN THE HIGH COURT OF SIERRA LEONE
Commercial and Admiralty Division

FAST TRACK COMMERCIAL COURT

ABDULAI SOW

- PLAINTIFF

V.

EKUNDAYO MORGAN

- DEFENDANT

PRESIDING:

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA

Counsel;

A Fornah for the Plaintiff
Defendant in person

Judgment dated 3rd March 2017

Reginald Sydney Fynn JA

The plaintiff Mr. Abdulai Sow wanted to rent a shop. He got into contact with the defendant who was about to construct a building with shops. The parties negotiated and reached an agreement. The agreement according to the plaintiff was that the plaintiff would pay rent for the shop at \$3,500 per annum for a five (5) year term. The plaintiff was to pay this rent in installments which will coincide with the progress of the construction of the building. It seemed that the construction was going well as in four installments the plaintiff had made the full payment of the rent as agreed. Receipts were given on the payment of each installment and a consolidated receipt was given acknowledging payment of the whole. Exhibit B is the

consolidated receipt and it reads at the top in the defendant's hand "Ekundayo Morgan 1 Regent Road Lumley" it is then filled out in the defendant's hand as follows: "Date 20-6-2016. Received from Abdulai Sow; The sum of seventeen thousand five hundred thousand dollars; Being payment for five years(5 year rent) only; Cash." It is signed by the defendant on its face and also at the back. The defendant's telephone number 077510159 is also at the back. The defendant acknowledged that he had issued this receipt. Exhibit B.

The plaintiff contends that it was further agreed that the shop would be handed over to him by July 2016. The defendant has now completed the shop but has moved into it and is using it for himself refusing to hand it over to the plaintiff.

The defendant's testimony is that when the agreement was first made for the shop the rent agreed was \$2,500 per annum and that they had agreed only for a four year term. And that Mr Sow paid him \$10,000 sometime in May 2015. The defendant testified that he was progressing with the construction when he suddenly lost his wife by death. By this time the plaintiff had paid all the rent agreed. On the loss of his wife the defendant stopped the construction until he had buried his wife and observed the fortieth day obsequies. The defendant testified that he was now hard pressed for cash and so he had to rent out the shop he was occupying to IDO MOBILE. He then moved into the shop which was meant for the plaintiff. At the time he did this he had asked one Daramy (DW2) to explain his difficulties to Mr Sow and to ask Mr. Sow to be patient. At this time the defendant also revised the rent for the shop from \$2,500 per annum to \$ 3,500 for an extended term of five (5) years. Mr. Sow then paid the difference bringing the rent to a total of \$ 17,500 paid as evidenced by "Exhibit B".

The parties are at variance with respect to the currency paid. Mr. Sow contends that he had paid in dollars whilst Mr. Morgan and his witness Mr. Daramy strenuously assert that the money was paid in leones in lieu of the dollars. Considering that Exhibit B was written by Mr. Morgan and it is very clear and does not mention leones anywhere on it, this court will accept that the money was paid fully and in dollars.

Mr. Morgan asserts that he is committed to completing the building construction upon the completion of which he will hand the shop over to Mr. Sow. Mr. Morgan insists that the parties had not fixed a time at which the shop would be handed over. His witness Mr. Daramy in his testimony claims that Mr. Sow had even promised to provide Mr. Morgan with funds to complete his building. I do not believe Mr. Morgan and Mr Daramy on this account.

Mr. Sow is a business man and for business men time is usually crucial. It seems to me that a time was fixed for the handing over of the premises and that the installment payments were used to ensure that the progress of the construction. It was to both monitor and facilitate the completion of the portion of the building relevant to the contract between these parties within

the time that they had agreed. Clearly Mr. Sow was satisfied with the progress of the work that is why he paid up on all the installments.

I find that the loss of Mr. Morgan's wife presented Mr. Morgan with financial difficulties which caused Mr. Morgan to seek a variation of the terms of the agreement he already had with Mr. Sow. In my opinion when the contract was first made there was no contemplation that Mr. Morgan would move out of the shop he was occupying into that which he was getting ready for Mr. Sow. This move only became necessary because Mr. Morgan had suddenly become cash pressed and needed to get extra funds which were sourced by renting out his shop to IDO MoBILE. Extra funds were also got by varying the agreement with Mr. Sow.

Clearly Mr. Sow agreed with the variation of the rent otherwise he would not have paid the balance occasioned by the said variation. He was not obliged to do this as the contract was intact already and he having paid up his consideration under it, in full. Mr. Morgan would have me believe that Mr. Sow also agreed at this time to be patient and to wait until the building is complete before he takes possession of the shop. Mr. Sow denies ever agreeing to this. It seems to me that even if Mr. Sow had agreed to be patient with and bear Mr. Morgan out he would only have agreed to do so for a reasonable period of time.

This was an agreement for a shop. The shop was meant for the tenant to come in and do business. It would make absolutely no sense whatsoever if the shop was not handed over in the reasonably foreseeable future ie if a definite date was not fixed. I do not believe the testimony of Mr. Morgan and Mr. Daramy that Mr. Sow had agreed to be patient till the building was complete. Mr. Sow was not a partner in the construction of the building he was a tenant. In my opinion he went to the Police to get help to get what he had paid for, the very same reason why he has come to this court. I have considered how willingly Mr. Sow accepted the variation of rent when he was not obliged to do so. I find he did so to facilitate getting his shop.

Under cross examination Mr. Morgan accepted that he is occupying the shop which is meant for Mr. Sow and all the witnesses seemed to agree that this was the shop in question. There is absolute certainty therefore as to the subject matter of the action. The parties agree that they had a contract in respect of that shop and I find accordingly. Mr. Morgan agrees that he received rent in respect of said shop in the sum of \$ 17,500 (or its equivalent) and I so find. Mr. Morgan agrees that the rent paid and received was in respect of a five year term and I so find. I find also that Mr. Morgan is currently in possession of the shop subject matter of the action. I find also that the agreement was first entered into sometime in 2015 (around May) and was subsequently revised after a visit to the police station. I am satisfied with the testimony of the plaintiff that it was agreed that the shop would be handed over in July 2016 or a reasonable period thereafter and I so hold. On 21st September 2016 when the writ was filed it was already

more than a year since the first payment was made in 2015 and the plaintiff had already waited two months after the July 2016 date as agreed when the contract was revised.

During the course of the trial I asked Mr. Morgan several times (off the record) when he thought he would be able to hand the shop over to Mr. Sow. On each occasion his reply was the same and it was given in a nonchalant and most cavalier manner. His reply was always that he did not know when he would finish the building project which is a ten storied building project five of which was already done. It is my opinion that Mr. Morgan thinks that as owner and landlord he can do as he pleases. I find that he has abused Mr. Sow's compassion and understanding. It will be grossly unjust and unconscionable to allow Mr. Morgan to deprive Mr. Sow of this shop space in breach of their clear agreement.

Where a contract is found to exist without any uncertainty with regards to its essential parts as I have found in this case the court may order specific performance of the same (see Halsbury's Laws of England 2nd edition at page 382 referred to in *Charaf (trading as CJ Charaf) v. Michell* 1950-56 ALR-SL)

In *Ibrahim v. Solomon* 1950-56 ALR -SL the court took the view that "*Specific Performance is a discretionary remedy which is exercised on well-established principles. For a plaintiff to succeed there must be i) proof of the contract between the parties ii) acts of part performance if the contract is not in writing exclusively referable to the contract set up by the plaintiff.....*" In the instant case there is no doubt that there is a contract between the parties as laid out above. Also there is ample evidence and in writing of complete performance on the plaintiff's part and it remains only for the defendant to fulfill his own part of the bargain.

I am satisfied that the plaintiff has made his case and that he is entitled to have the courts discretion exercised in his favour for the specific performance of his contract with the defendant. I therefore order as follows:

1. That the Mr. Ekundayo Morgan executes forthwith a lease in respect of the shop he presently occupies at 1 Regent Road Lumley Freetown, in favour of Abdulai Sow for a period of 5 (five) years certain to commence no later than 1st April 2017 acknowledging the receipt of consideration for the said term in the sum of \$ 17,500 failing which the Master and Registrar shall execute same pursuant to this order.
2. That the plaintiff shall be granted possession of the said shop no later than 1st April 2017
3. That the plaintiff shall enjoy quiet possession and all other rights due to a tenant whilst the term granted subsist.
4. Costs to the plaintiff in the sum of Le 5,000,000

Reginald Sydney Fynn JA.....

