IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 37 of 1982

Between:

GANGA DEI
d/o Ram Tahal — Appellant

and

1. GURMEL SINGH
s/o Kundan Singh
2. GURNAM SINGH
s/o Kundan Singh — Respondents

J.G. Singh with B.K. Bali for the Appellant
F.S. Lateef for the Respondent

Date of Hearing: 18th November, 1982
Delivery of Judgment: 26th November, 1982

JUDGMENT OF THE COURT

Spring, J.A.

This is an appeal from an Order made by the Supreme Court of Fiji at Suva on 8th June, 1982, in favour of the respondent giving vacant possession of premises occupied by appellant at Ratu Mara Road, Suva, and comprised in Crown Lease No. 1620.

The respondents are registered proprietors as lessees of Crown Lease 1620; and erected on the land comprised in the lease are 6 flats and 5 shops; the respondent occupies one of the shops at a rental of $70 per month.

A notice to quit purporting to terminate appellant's tenancy was served upon her on 29th October, 1981. Appellant did not comply with the notice and proceedings were issued out of the Supreme Court on 11th March, 1982, pursuant to section 169 of the Land Transfer Act calling upon appellant to appear and show cause why she should not give up possession of the premises to the respondents.

The appellant and respondents furnished affidavits to the Supreme Court. Appellant alleged (inter alia) that the notice to quit was invalid as the address of the premises referred to therein were described as being situated at No. 147 Ratu Mara Road whereas the correct address of such premises was 134 Ratu Mara Road. The property situated at No. 147 Ratu Mara Road was, in fact, owned by appellant herself under Crown Lease No. 813. The learned judge in the Supreme Court after hearing the parties, and considering the affidavits, made an Order for possession in favour of the respondents and said :

> " The plaintiffs' premises are apparently not at 147 Ratu Mara Road but the summons and affidavit in support clearly refer to Crown Lease 1620. The affidavit in support in addition refers to the defendant's tenancy of shop premises.
>
> I am in no doubt that the defendant was not misled and was well aware that the plaintiffs were seeking possession of premises which she occupied as tenant of the plaintiffs and it is those premises which are the subject of the plaintiffs application.
> .....
>
> The tenancy, being a monthly one of commercial premises, could be terminated by one month's notice. No objection has been taken to the form of the notice which appears to be in proper form.
>
> The tenancy was duly terminated by the plaintiffs on the 30th November, 1981, and they are entitled to an order for possession.
>
> I accordingly order that the defendant vacate and deliver up possession of the premises to the plaintiffs forthwith. "

The appellant appeals to this Court against the Order so made; the following ground of appeal was argued :

" THE learned trial judge erred in law and in fact in holding that no objection was taken as regards the form of the notice when in fact the affidavit of the Appellant quite clearly shows that the notice to quit was not a proper one and as a result the learned judge further erred in law and in fact in holding that the Respondents terminated the tenancy on the 30th day of November, 1981. "

The other grounds of appeal stated in the notice were abandoned.

The notice to quit reads as follows :

"29 October 1981

Mrs Ganga Dei
Trading as Brenda Furniture Industries
C/- Mr. Balram Narayan
Ratu Mara Road
SUVA

Dear Madam

re: GURMEL SINGH & GURNAM SINGH (S/O KUNDAN SINGH) CL1620

Your landlords Messrs Gurmel Singh and Gurnam Singh have instructed us to give you notice, which we hereby do, to quit and deliver up vacant possession of the premises now occupied by you as tenant at 147 Ratu Mara Road, Suva on the 30th day of November 1981 or on the expiration of one month of the tenancy next which will expire after one month from the date of service of this notice on you.

You have continuously failed to pay the rent of the said premises and the Landlords have had to distrain for rent periodically.

Our clients hope that you will vacate the premises and thus render any further action unnecessary.

Yours faithfully
LATEEF & LATEEF

PER: ....."

It was conceded by respondents that the correct address of the demised premises was 134 Ratu Mara Road,

Suva, but due to a clerical error the address given in the notice to quit was incorrect; however the notice to quit contained a reference to "C.L. 1620" which was the correct legal description of the respondents' land part of which was rented by appellant at 134 Ratu Mara Road.

Counsel for appellant submitted that it was mandatory that the notice to quit be clearly expressed and correctly describe the premises to which it related. In support of his argument he referred to Hankey v. Clavering /1942/ 2 K.B. 326 in which case under the terms of a lease for 21 years from 25th December 1934 either party could determine same at the end of 7 years on giving six months notice. The landlord gave to the lessee's solicitors a notice as from 21st June 1941, which purported to determine the lease on 21st December 1941. The solicitors subsequently acknowledged the receipt of this notice and that it had been properly served. It was held by the Court of Appeal that the notice, although the mistake as to date was obviously due to a slip on the part of the landlord, was invalid and that the acceptance of its service by the solicitors did not cure the defect.

Lord Greene M.R. said :

" By his letter of January 15, 1940, the plaintiff, on the face of it, was purporting to determine the lease by notice on December 21, 1941. The whole thing was obviously a slip on his part, and there is a natural temptation to put a strained construction on language in aid of people who have been unfortunate enough to make slips. That, however, is a temptation which must be resisted, because documents are not to be strained and principles of construction are not to be outraged in order to do what may appear to be fair in an individual case. .....
.....

That takes me back to the real point, namely, whether or not the notice was good, in the sense that it had the effect of terminating the lease on December 25, 1941. Notices of this kind are documents of a technical nature, technical because they are not consensual documents, but, if they are in proper form, they have of their own force

> without any assent by the recipient the effect of bringing the demise to an end. They must on their face and on a fair and reasonable construction do what the lease provides that they are to do. "

In this case the address of the premises were misdescribed as No. 147 Ratu Mara Road instead of No. 134 Ratu Mara Road. In Halsbury's Laws of England 4th Edition Vol. 27, paragraph 190 it is stated -

> "errors in the description of the premises will not invalidate the notice if the tenant is not misled by them. "

In Doe d. Armstrong v. Wilkinson (1840) 12 Ad. & E. 743 the headnote reads :

> " Notice, to a yearly tenant, to quit that messuage, farm, etc., situated at D., in the country of York, which you now hold under me as tenant from 'year to year'. The premises were not situated at D. but at H. D. and H. were adjoining parishes. It was held on motion for nonsuit, after verdict in an action of ejectment, not a material variance, the tenant not having shown that he held more than one farm under the lessor of the plaintiff, or that he was misled by the notice, and not having desired to have any question on this last point submitted to the jury. "

That is the effect, we think, of the judgment of Lord Denman C.J.

Again in Doe d. Cox v. Roe (1802) 4 Esp. 185 a notice to quit provided -

> "Take notice that you are to quit the premises which you hold of me situated etc. commonly called or known by the name of the Waterman's Arms. "

The premises for which the ejectment was brought was a public house called the "Bricklayers Arms". It was

contended that the notice was bad as not being a proper description of the premises held by the defendant. But it proved that there was no house of the sign of the Waterma..'s Arms in the parish and that the defendant did not h ld an other premises to the plaintiff as lessor. Lord Ellenborough said :

> "If the defendant was misled by the notice, the plaintiff ought to be turned round: but the notice being to quit certain premises, with the words 'which you hold of me' (186) there could, therefore, be no dispute, nor doubt of the identity of the premises; and the notice was sufficient to entitle the plaintiff to recover. "

In both of the last two cases the notices to quit contained a mistake as to the description of the property held by the tenant, but the Court held in each case that it was obvious that the notice was referring to property which was held by the tenant from the landlord; the tenant in fact in both cases holding no other p opert under lease from the party seeking ejectment.

Neither of these cases were discussed by Lord Greene M.R. in Hankey v. Clavering (supra) and it does not appear that they were cited in argument.

Counsel for respondents referred to the case of Carradine Properties Ltd. v. Aslam /1976/ 1 W.L.R. 442 the headnote to which reads :

> "Clause 5 of a lease for a 21 year term from September 27, 1968, provided for its earlier determination by either party to the lease at the end of the first 7 or 14 years on 12 months' previous notice in writing. A notice by the landlords dated September 6, 1974, served on the tenant stated: '.... we hereby give you notice that we intend to determine the term created by the lease on September 27, 1973, and that we require you to quit and deliver up possession ..... on that date.' The date named in the notice should have been September 27, 1975.

On the question whether the notice to quit was invalidated by the giving of an incorrect date for determination of the lease :

Held, that applying legal principles to the landlords' notice and adopting a benevolent approach, the court would treat the giving of a date past for termination of the lease as a slip which would be obvious to a reasonable tenant reading the notice and knowing the terms of the lease; that therefore the notice would be interpreted as an intention on the part of the landlords to determine the lease on September 27, 1975, and accordingly, subject to Part II of the Landlord and Tenant Act, 1954, the notice to quit was valid. "

Mr. Justice Goulding in his judgment discussed the judgment in Hankey v. Clavering (supra) and held that in the Carradine case a benevolent approach could be applied to the notice because reasonably read by a reasonable tenant the mistake was obvious on the fact of it because the tenant receiving the notice and knowing the terms of the lease must have seen there was a mistake as it would not recite the year "1973" in the year "1974". The learned judge went on and said "In no ordinary circumstances would a reasonable tenant knowing the terms of the lease take the notice as being other than for year 1975." In referring to Hankey's case Mr. Justice Goulding said at p.446 :

"If the condition includes the giving of a particular notice, it seems to me that the logical first approach is to interpret the notice, looking at the words and applying legal principles to their construction, and then ask whether it complies with the strict requirements as to exercise of the option. If that is right, I think a benevolent approach could be applied in this case, as in the Duke of Bedford's case (1796) 7 Term Rep. 63, because reasonably read by a reasonable tenant the mistake is obvious on the face of it, and there is no doubt what the mistake was. Therefore one interprets the notice as asserting an intention to determine in 1975. It is true that if whoever made the mistake had typed 1976 instead of 1973, the error would probably have been incurable because although the tenant might

> suspect there was a slip, it might be that the landlord did intend 1976, not knowing or understanding his rights under the lease. In such a case the tenant would be entitled to disregard the notice but because a past date was given in the notice it is insensible and therefore an authority such as the Duke of Bedford's case is in point. "

Returning to Hankey's case (supra) Lord Greene M R. sa d :

> "It is perfectly true that in construing such a document, as in construing all documents, the court in a case of ambiguity will lean in favour of reading the document in such a way as to give it validity. "

In the instant appeal the respondents' solicitors had admittedly shown the address of the premises incorrectly; but they had also given the correct legal description - Crown Lease - No. 1620. Attached to one of appellant's affidavits is a copy of the Suva City Council rate demand in respect of the property owned by her at No. 147 Ratu Mara Road which gives the legal description of her land as Crown Lease No. 813. In paragraph 3 of her affidavit of 13th May, 1982, she stated :

> "THAT the Plaintiffs are not the registered proprietors of the piece of land situate at 147 Ratu Mara Road, Suva, but I am the registered proprietor of the said property which is comprised in Crown Lease Number 813 and not in Crown Lease Number 1620 as stated by the Plaintiffs in their affidavit. A copy of Crown Lease Number 813 is annexed hereto and marked with the letter 'A' together with a Suva City Council Rate Demand notice which is annexed hereto and marked with the letter 'B' and which notice is further evidence of my ownership of the property situated at 147 Ratu Mara Road, Suva. "

Paragraph 5 of her affidavit stated :

> "THAT I am occupying a room on certain premises of the Plaintiffs' situate at 134 Ratu Mara Road (hereinafter referred to as 'the said room') as a tenant, but no notice to quit has ever been served on me in relation to the said room on the said premises. "

In Sunrose Ltd. v. Gould /1962/ 1 W.L.R. 20

the facts were that the landlord of business premises to which Landlord & Tenant Act, 1954, Part 2, applied, gave notice under section 25 of that Act to terminate the tenancy in the form prescribed by the Landlord & Tenant (Notices) Regulations, 1957. The notice was dated January 12, 1961, and was correctly filled in except that the year in which the tenancy was to be terminated was left blank. From Note 1 on the back of the form relating to the length of notice required by section 25(2) of the Act, it was clear that the intended year of termination must be 1961: Held: the notice was valid since there was no erroneous statement, but, at most, an ambiguity which could be resolved by reference to Note 1 on the back of the form.

Davies L.J. in the Sunrose case said at p.24-25 :

"In my judgment this case is entirely different from the class of case of which Hankey v.Clavering is an example.

What was being sought there was to correct a positive error in the notice. Here that is not so. Here what the judge has decided, and what this court is deciding, is that when there is a lacuna or ambiguity in one part of the notice, that lacuna can be filled in by reference to the notes on the back.

Had this notice in the material part specified 1960 or 1962, it might well have fallen within the principles of Hankey v. Clavering. But on the facts it seems to me that this case is precisely within the words of Lord Greene M.R. in that case, when he said: 'It is perfectly true that in construing such a document, as in construing all documents, the court in a case of ambiguity will lean in favour of reading the document in such a way as to give it validity, ...' that is to say, by applying the well-known principle that that is certain which, by reference to all the parts of the document itself, can be rendered certain. "

In Barclays Bank Ltd. v. Ascott /1961/ 1 All E.R.

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782 Barry J. said :

> " .... the question which the court really has to consider is whether the notice given by the landlord has given such information to the tenant as will enable the tenant to deal, in a proper way, with the situation (whatever it may be) referred to in the notice. It is clear, I think, from the authorities which have been cited to me that this notice should be construed liberally, and provided that it does give the real substance of the information required, then the mere omission of certain details, or the failure to embody in the notice the full provisions of the section of the Act referred to, will not in fact invalidate the notice. However, no authority has been cited to me which indicates, or which would even tend to indicate, that a notice should be construed otherwise than in accordance with the ordinary rules of construction, or that the court would be entitled to give to it a meaning which it does not in fact bear under the ordinary rules of grammar or construction. "

Bearing the above principles in mind the question for our determination is one of interpretation. Upon its fair and reasonable construction what does the notice to quit dated 29th October, 1981, mean? Is the tenant left by its terms in any doubt as to its intended effect? The tenant is clearly called upon to "quit and deliver up" vacant possession of premises occupied by her as tenant of which the respondents are the landlords.

Hankey's case was discussed in Frankland v. Capstick /1959/ 1 W.L.R. 204 where Sellars L.J. considered that the notice was in the category of being ambiguous. It clearly stated that the notice to quit was given on behalf of the landlord, but it mis-stated the name of the landlord. Sellars L.J. in giving judgment said :

> "The question, as it appears to me, that has to be decided is whether, approaching the question on the principles which I have read, this is an ambiguity which can be complained of by the tenant, constituting, as it is alleged, an invalid notice. ..... But this case, I think, leaves it clear that the notice is one given on behalf of the landlord,

and there is no indication in the case - in fact I do not think the arbitrator was asked to make any finding of fact about it - that the widow was in any way deceived by this or was under any misapprehension as to who the landlord was. .....
There cannot have been any mistake about it. It is a technical error: it is indeed a slip which I think in no way affected the widow, her rights, or her understanding of what the proceedings were and her obligations thereunder.

For these re-sons I think that the county court judge has misconstrued this document and that, on the principles which have been established, it was quite an adequate, although unfortunately an ambiguous, notice. I would allow this appeal. "

The appellant, we are advised from the Bar, held only the one property from the respondents as tenant - viz 134 Ratu Mara Road. Was the notice to quit expressed in clear terms to a reasonably minded tenant reading it? Was it plain that the tenant could not be misled by it? It would in our opinion be obvious to the appellant that a slip had occurred in inserting the number "147". The correct legal description - Crown Lease No. 1620 - was inserted. It is manifestly clear that the appellant knew Crown Lease No. 813 referred to her property at 147 Ratu Mara Road. The document sent by respondents to appellant gave notice in clear terms to quit and deliver up vacant possession of the premises held by her as tenant of respondents; in our view applying the liberal rules of construction the notice to quit was capable of producing the necessary legal consequences, because in this instant case the respondents, unlike the landlord in Hankey' case, were not attempting to do something they were not empowered to do. In Hankey's case Lord Greene M.R. said at p. 330 :

"By the clear wording of this notice the plaintiff purported to bring the lease to an end on December 21, 1941. In so doing he was attempting to do something which he had no power to do, and, however much the recipient might guess, or however certain he might be, that it was a mere slip, that would not cure the defect because the document was never capable on its face of producing the necessary legal consequence. "

There was no possibility on the face of the notice to quit that the tenant would not understand its purpose. It was not a case of a tenant not being able to make head nor tail of the document; it was not a case of the tenant having difficulty in understanding what was required of her. She had all the information that she ought to have to face the situation brought into being by the service of the notice.

In our opinion, the appellant was in no way misled by the notice or under any mistaken belief as to its purport and legal consequences. It was a technical error, but in our opinion the slip in no way affected the appellant, her rights, or her understanding of what the proceedings were and her obligations thereunder.

We think it would be wrong to introduce, on the facts of this particular case, so technical an approach to the notice to quit as urged upon us by counsel for appellant.

We conclude that the appellant was not in any way misled by the notice to quit and agree with the learned judge in the court below when he said :

> "I am in no doubt that the defendant was not misled and was well aware that the plaintiffs were seeking possession of premises which she occupied as tenant of the plaintiffs and it is those premises which are the subject of the plaintiffs application. "

Accordingly the appeal is dismissed, with costs to be fixed by the Chief Registrar if not agreed.

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Vice President

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Judge of Appeal

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Judge of Appeal