IN THE SUPREME COURT OF BELIZE, A. D. 2017

CLAIM NO. 508 OF 2017

	(GLORIA VALDEZ	**CLAIMANT**
	(	
BETWEEN	**(AND**	
	(	
	(SMART COM (BELIZE) LTD	**DEFENDANT**

BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA

Ms. Payal Ghanwani of Estevan Perera & Company LLP for the Claimant/Applicant

Mrs. Melissa Balderamos Mahler of Balderamos Arthurs LLP for the Defendant/Respondent

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J U D G M E N T

Facts

1. This is an application for summary judgment. The substantive claim is a claim for payment of rent in the sum of $18,000 BZ pursuant to a lease of premises in San Pedro Ambergris Caye. The Claimant now seeks summary judgment

pursuant to rule 15.2(b) of the Supreme Court (Civil Procedure) Rules 2005. The grounds of the application are that the Defence filed by Smart Com (Belize) Ltd. ("Smart") discloses no reasonable ground for defending the claim, and that Smart has no real prospect of successfully defending the Claim. The application is supported by an affidavit of Ms. Gloria Valdez, the owner of premises rented by Smart. Smart objects to the application made and filed an affidavit of Mrs. Narda Garcia, Chief Operations Officer of Smart, opposing the application. It is Smart's position that summary judgment should not be entered in this matter, particularly as the Defendant has a valid and proper Counterclaim against the Claimant. The court now considers submissions of both parties and gives its decision.

<u>Legal Submissions on behalf of the Claimant/Applicant for Summary Judgment</u>

2. Ms. Ghanwani submits on behalf of the Applicant/Claimant that summary judgment should be entered on behalf of the Applicant/Claimant. By a written agreement dated 15th July 2013, ("Belize Commercial Agreement") the Claimant agreed to lease rental premises located at Parcel No. 974 Block 7 in San Pedro ("the Rental Property") to the Defendant for an initial term commencing on the 15th day of July 2013 and ending on the 14th day of July

2016 (“the initial term”) for a monthly rental of BZ$4,000.00. The Agreement provided that Smart could renew the term of the lease for an extended term of three years (“the extended term”) by giving Ms. Valdez written notice of not less than 180 days before the expiration of the initial term. The Agreement also provided that if Smart continued to occupy the Rental Property without the written consent of the Claimant after the expiration or other termination of the initial term or the extended term, then without any further written agreement, Smart will have a month-to-month tenancy at a minimum monthly rental equal to twice the monthly rental and subject to all other provisions of the Lease that are applicable to a month-to-month tenancy, and a tenancy from year-to-year will not be created as a matter of law.

3. Smart remained in the Rental Property for an additional four months commencing on the 15th day of July, 2016 and ending on the 7th day of November, 2016 (“the Holdover Months”). Pursuant to the Lease Agreement, the total rental payment for the Holdover Months was BZ$32,000. However, despite numerous requests, Smart has only paid Ms. Valdez the sum of BZ$14,000.00, leaving an outstanding balance of BZ$18, 000, the basis of this present claim. Smart has filed a Defence to this claim,

admitting that the company did remain in the Rental Property for an additional four months after the expiration of the initial term. However, Smart argues that the Lease Agreement is not binding and of no effect, as it did not comply with Section 49 of the Registered Land Act. As such, the lease would operate as a periodic tenancy and where the rent was paid from month-to-month the lease would operate as a monthly tenancy. Learned Counsel for the Applicant/Claimant contends that there is no need for a full trial as the sole issue is a point of law: whether the unregistered Commercial Lease Agreement dated the 15th day of July, 2013 and signed by the parties is enforceable.

4. Ms. Ghanwani cites Rule 15.2 of the Supreme Court (Civil Procedure) Rules ("the CPR") as follows:

> *"15.2 The Court may give summary judgment on the claim or on a particular issue if it considers that*
>
> *(a) the Claimant has no real prospect of succeeding on the claim or the issue; or*
>
> *(b) the Defendant has no real prospect of successfully defending the claim or the issue."*

Learned Counsel relies on the words of Lord Woolf in ***Swain v. Hillman*** [2001] 1 ALLER 91, where His Lordship said that the words "*no real prospect of succeeding*" do not need amplification as they speak for themselves. The test has been confirmed and adopted in the courts of Belize repeatedly as illustrated in ***Social Security Board v. Ida Herrera Civil dba Belmopan Cleaning and Sanitation Services*** Civil Appeal No. 39 of 2010 where Morrison J.A. succinctly summarized the principles as follows:

> *"[30] In the light of these authoritative dicta, I would therefore accept that the appropriate test for the court on an application for summary judgment under rule 15.2 is to determine whether, on the material available to the court at that stage, the party against whom it is sought has a realistic as opposed to a fanciful, prospect of success. If she has no such prospect, then the court should use its power of disposing of the matt*er *summarily. However, in considering such an application, the court should be mindful of the seriousness of the step of disposing of a claim or defence without a trial, and it should decline to do so where the material discloses that there are issues which should be investigated at a trial, after all its attendant preliminaries such as*

witness statements, disclosure, and inspection of documents and the like, have been completed."

Ms. Ghanwani submits that this is an appropriate case where the Court should exercise its powers under Part 15 of the CPR, since on the material available to it, the Defendant has not advanced a defence with any real prospect of success. Looking at the defence, Smart is saying that pursuant to Section 49 of the Registered Land Act ("the RLA"), any lease for a specified period of or exceeding two years, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term which, together with the original term, is or exceeds two years, shall be in the form prescribed under the Act and shall be completed by opening a register in respect of that lease, filing the lease and noting the lease in the encumbrance section of the register. The said RLA provides that any dealings in regards to registered land made contrary to the provisions of the Act shall have no validity and effect. It is on this basis that the Defendant/Respondent now submits that the lease would operate as a periodic tenancy and as the rent was paid from month to month it would operate as a monthly tenancy.

5. Ms. Ghanwani says that while the Claimant concedes that the Commercial Lease dated the 15th day of July, 2013 was not in the prescribed form and was not registered as provided for in Section 49 of the RLA, it is submitted that the defence is unsustainable as the unregistered Commercial Lease is an equitable lease or an agreement for a lease (pursuant to Section 40 of RLA) and it is trite law that an agreement for a lease is as good a lease. Learned Counsel then cites the principle delineated in ***Walsh v Lonsdale*** (1882) 21 Ch. D. 9 wherein a landlord agreed in writing to grant to a tenant the lease of a mill for seven years. It was agreed that a deed should be executed containing, among other things, a term that, on demand, the Tenant would pay one year's rent in advance. No deed was executed, but the tenant was let into possession and paid rent for a year and a half thereby becoming a yearly tenant. The landlord demanded the payment of the year's rent in advance and commenced distress for the amount. It was held that a tenant who holds under an agreement for a lease of which specific performance will be decreed is in the same position in relation to the landlord as if a formal lease had been executed. This is all on the premise that equity regards as done that which ought to be done.

6. The application of this principle in Belizean cases has been seen in cases such as ***Benny's Enterprises Ltd. v Orlando Castillo*** Action No. 136 of 2000 where Awich J (as he then was) found that an equitable lease existed in the case of registered land, and in the case of ***Davis Schmitt v Royal Caribbean Resort Ltd***, where Hafiz J (as she then was) allowed the Claimant to maintain his claim for damages against the Defendant by relying on the undated, unregistered Commercial Lease as it was an equitable lease/agreement for a lease which, having met the requirement of Section 40(2) of the RLA, was actionable. In the *Royal Caribbean* case, Hafiz J said that it is trite law that to be enforceable an agreement for a lease must contain at least the essential terms of the transaction such as, the parties, the land to be leased, the term and the rent. Having examined the Agreement before the court in that case, Her Ladyship stated that it could be seen from the paper writing that the parties had agreed to all the essential terms of a lease. Therefore, despite the non-compliance with Section 49 of the RLA, the Agreement therein fulfilled the requirement as an agreement for a lease.

7. Ms. Ghanwani goes on to point out in her arguments the reasons why she says that the Agreement in the case at bar, while not in the prescribed form and not registered under the RLA, still fulfills the requirement as an

agreement for a lease as the essential terms of the transaction were expressly contained therein as follows:

(a) The heading of the Agreement is "*Belize Commercial Lease Agreement"*;

(b) The Parties are Gloria Selina Valdez(Claimant) and Smart Com(Belize) Ltd(Defendant);

(c) The property leased is described as "*a portion of the Building designated as Parcel 974, Block 7 situated at No. 45 Barrier Reef Drive in San Pedro Town*";

(d) The term of the lease is three years and the commencement date and termination date is stated along with the option to extend the term

(e) The rent is stated as $48,000.00 per year, payable in monthly installments of $4,000.00;

(f) Conditions of the Lessor and Lessee stated in the Agreement, including but not limited to the lessee agreeing to paying a monthly rental equal to twice the monthly rent if he/she remains in the property without the written consent of the Lessor after the expiration of the initial term;

(g) Termination clause; and

(h) The Agreement is signed by the Claimant and the Director/Agent of the First Defendant.

The Claimant submits that the Agreement is actionable as it complies with Section 40 of the RLA which provides as follows:

> *"40. (1) No land, lease or charge registered under this Act shall be capable of being disposed of except in accordance with this Act, and every disposal of such land, lease or charge otherwise than in accordance with this Act shall be incapable of creating, extinguishing, transferring, varying or affecting any estate,, right or interest in the land, lease or charge.*
>
> *2) **<u>Nothing in this section shall be construed as preventing any unregistered instrument from operation as a contract</u>**, but no action may be brought upon any contract for the disposition of land or any interest in land unless the contract upon which such action is brought, or some memorandum or note thereof<u>, is in writing and is signed by the party to be charged or by some other person lawfully authorized by him.</u>*
>
> *Provided that such a contract shall not be unenforceable by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of the contract,*

(a) Has in part performance of the contract taken possession of the property or any part thereof; or

(b) Being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract."

Ms. Ghanwani submits that since the agreement in this case is not in its prescribed form and it is not registered, it will operate as a contract in writing and signed by agent and or director of the Defendant, Mrs. Narda Garcia. Consequently, by signing the unregistered Lease Agreement, the Defendant agreed to the terms contained therein including section 15 which expressly provides that if the Defendant continues to occupy the Rental Property without the written consent of the Claimant, after the expiration of the initial term or extended term, then without any further written agreement, the Defendant will be a month to month tenancy at a minimum monthly rental equal to **twice the monthly rent** and subject to all other provisions of the lease that are applicable to a month-to-month tenancy and a tenancy from year-to year will not be created as a tenancy from year to year as a matter of law. The Claimant submits in conclusion that summary judgment should be granted in favor of the Claimant as the Defendant has no real prospect of

successfully defending the claim or the issue as it is trite law that an agreement for a lease is as good as a lease.

Legal Submissions On Behalf of the Respondent/Defendant

8. Mrs. Balderamos Mahler submits on behalf of the Respondent/Defendant that summary judgment should not be granted to the Applicant/Claimant. She cites Section 49 of the Registered Land Act (the RLA) Chapter 194 of the Laws of Belize as follows:

   49. "A lease for a specified period of or exceeding two years of or exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, is or exceeds two years, shall be in the prescribed form, and shall be completed by-

   (a) Opening a register

   (b) Filing the lease; and

   (c) Noting the lease in the encumbrances section of the register of the lessors land or lease."

Section 11 of the Act provides that:

> *"From the date of any Order made by the Minister under Section 4, all dealings relating to any land in the compulsory registration area named in that Order shall be made in accordance with this Act, and <u>no dealing made otherwise than in accordance with this Act shall have any validity or effect</u>."*

Mrs. Balderamos Mahler argues that as the lease was not registered, the provisions of Section 49 were not complied with, and as such, the lease has no validity or effect. The lease on which the Claimant relies in her claim for additional money from the Defendant is invalid and cannot be relied on for any such claim for money owed. Learned Counsel cites Abel J in ***Villas at Del Rio Ltd et. al. v. Alexandra Hauptli et. al.*** SCA Claim No. 545 of 2013 on the legal position of the parties on an invalid and unenforceable lease:

> *[48] "It does not therefore follow from the non-registration that nothing exists in law or equity. The written instrument may have no validity or effect, but the grant of exclusive possession, coupled with the payment of rent are sufficient to constitute a periodic tenancy."*

Mrs. Balderamos Mahler submits that the lease in the case at bar would operate as a periodic tenancy and as the rent was paid from month to month, would operate as a monthly periodic tenancy. In discussing the Holding Over period of the tenancy, section 54 of the RLA is cited:

> *"54(1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy…*
>
> *(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation, and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of land."*

Mrs. Balderamos Mahler argues that it is a fact that the Defendant's occupation of the premises continued with the consent of the Claimant for an additional four months, particularly as the Claimant received and collected the monthly rental paid by the Defendant. Even if one were to

accept the arguments of the Claimant as it relates to the application of the unregistered lease (which is disputed) section 15 (which provides for double the rent) would only apply if the Defendant remained without the consent of the Claimant. The Claimant continued to accept the rent of $4,000 paid by the Defendant, which pursuant to section 54(2) is evidence of her consent to the Defendant's continued occupation. Section 15 of the lease is premised on the Lessee remaining in occupation without the consent of the Lessor, and could not and would not apply, particularly as the lease is invalid and of no effect. Pursuant to Section 54 of the Act, the legal position is that the Defendant would hold over as a periodic tenant only, with the Defendant liable to pay the same rent as paid during the term of the lease being the sum of $4,000.00 per month, which the Defendant dutifully paid and the Claimant properly received.

9. Mrs. Balderamos Mahler next cites the Supreme Court (Civil Procedure) Rule 15.2 as follows:

   "The court may give summary judgment on the claim or on a particular issue if it considers that –

(a) The Claimant has no real prospect of succeeding on the claim or the issue; or

(b) The Defendant has no real prospect of successfully defending the claim or issue."

Learned Counsel relies on the cases of ***Swain v Hillman*** [2001] 1 All ER 91, ***Royal Brampton Hospital NHS Trust Ltd v Hammon*** (No. 5) EWCA Civ. 550 and ***Three Rivers District Council v Bank of England*** (No. 3) [2001] 2 All ER 513, all of which emphasize the fact that judges should exercise great caution in deciding whether or not to striking out a claim. She urges this court to undertake a true and proper analysis of the law and the evidence of the parties. It is the Defendant's position that there are facts and evidence which need to be explored by the Court. Some of these facts alleged by the Defendant in its evidence include *inter alia* the fact that the parties agreed that the Defendant would continue paying the rent of $4,000 until the Defendant found another place to rent, the fact that the Claimant contacted the Defendant's office on November 2nd, 2016 and asked the Defendant to carry out repairs in order to bring the premises back to its original state, giving the Defendant up to November 7th, 2016 to complete the said repairs, and the fact that the Claimant also held $8,000 as security deposit for the

Defendant and the Defendant having done the repairs requested the deposit became refundable to the Defendant.

10. Finally, Mrs. Balderamos Mahler says that the Claimant is estopped from now disputing the agreement in regards to the rent that was to be paid by the Defendant as she acquiesced in the Defendant remaining on the premises at the monthly rental of $4,000. She refers to a email dated November 6th, 2016 where the Claimant said:

> *"This is to inform you that Guerra's has completed the repairs and painting where required. In regards to the security deposit,* ***I will withhold it until you settle the outstanding arrears of rent****."*

The Defendant took the position, accepted by the Claimant, that as the Defendant had already paid $14,000, a balance of $2,000 was due to the Claimant. The Claimant agreed and proceeded to deduct the outstanding $2,000 from the security deposit and paid the remaining balance of the security deposit to the Defendant, being the sum of $6,000. This is verified in an email from Mrs. Valdez to Smart dated December 8th, 2016:

"Please take note that the security deposit for the amount of six thousand ($6,000) has been deposited in Smart's Belize bank account #695-01-1-064330. Please find attached a copy of the deposit slip."

Mrs. Balderamos Mahler submits that the Claimant in her own words had stated that the security deposit would be refunded upon settlement of any outstanding rent. All outstanding rent was settled and she refunded the security deposit that had originally been paid. As such, the Claimant is now estopped from asserting that any further sums are now due. The Defendant also has a Counterclaim for the payment of$2,456.01 being 50% of the cost of the kitchenette installed on the premises. The Claimant had agreed to reimburse this sum to the Defendant and that sum is now due and payable. As the Claimant has failed to file a Defence to the Counterclaim, Mrs. Balderamos Mahler urges this court to enter judgment in favor of the Defendant on the Counterclaim, and refuse to grant the Claimant's application for summary judgment, with costs to the Defendant. It is submitted that the Defendant has a real prospect of successfully defending this Claim, particularly given the Claimant's actions and a real prospect of succeeding on its counterclaim.

Legal Submissions (In Reply) on behalf of the Claimant

11. Ms. Ghanwani filed written submissions in response to those filed on behalf of the Defendant. She refers to the case of ***Villas Del Rio et al v. Alexandra Hauptli et. al.*** where Abel J in concluding the legal position of the parties found that while a written instrument may have no validity or effect due to non-compliance with the requirements of the RLA, a periodic tenancy will result from the grant of exclusive possession coupled with payment of rent. Learned Counsel submits on behalf of the Claimant that while a lease which does not comply with the necessary statutory formalities is void at law unless a tenancy at will arises, in equity, on the other hand, a lease which fails to conform to the statutory formalities nevertheless takes effect as an agreement for a lease, which if specifically enforceable, will be effective as between the parties. Such informal lease is known as an equitable lease. The case of ***Wash v Lonsdale*** has made it clear that in so far as there was a conflict between the position at law (in which there was a yearly tenancy) and the position in equity (where there was an equitable lease for seven years) the equitable rule prevailed. In the case at bar, the equitable rule should prevail allowing the Claimant to rely on section 15 of the unregistered commercial lease.

12. In response to the Defendant's submissions that under section 54 of the RLA, the acceptance of rent by the Claimant amounts to consent to the Defendant's continued occupation of the rental premises after the expiration of the initial term, Ms. Ghanwani argues that paragraph 21 and 22 of the Claimant's affidavit clearly indicates that she never consented to the Defendant's continued occupation of the rental premises at the same rent. In fact, the Claimant clearly states that she accepted the sums paid by the Defendant up to the date of vacating the premises, but stated both orally to the Defendant's agent and in writing on the receipts provided to the Defendant that the monies collected were part payment towards the outstanding rent and she exhibited copies of the receipts indicating same. The Respondent therefore cannot rely on section 54 of the RLA as the Claimant never consented to the Respondent's continued occupation after the expiration of the initial term and the clear indication on the receipts that the rent was accepted as part payment is sufficient to show that there was no consent by the Claimant. In addition, section 15 of the unregistered commercial lease requires written consent of the Claimant and there is no such written consent.

13. On the issues of estoppel and acquiescence, Ms. Ghanwani submits that the Respondent has failed to provide any evidence to support the facts therein and there is therefore an absence of reality and no realistic possibility of success. She states that the security deposit was repaid to the Defendant because it is trite law that a security deposit is to be used for the cost of repairs in relation to any damage to the premises caused by the Defendant and not to settle the outstanding rent.

14. In response to the Counterclaim filed by the Defendant, Ms. Ghanwani submits that a reply and Defence to that counterclaim was filed but inadvertently not served on the Defendant due to an oversight. She urges the court to make an order to rectify the situation under its case management powers. The Defence of the Claimant is that while both parties agreed the cost of installing the kitchenette on the premises, there was no further agreement that the Respondent would be reimbursed by the Claimant upon the Respondent vacating the premises.

Ruling

15. Having reviewed the submissions for and against this application for summary judgment, I find that the submissions on behalf of the Claimant should prevail. I agree with Ms. Ghanwani's submission that it is indeed trite law that since the ancient case of ***Walsh v Lonsdale*** (1882) 21 Ch. D. 9 an agreement for a lease is as good as a lease, and I find that while the Agreement in the case at bar cannot take effect under the RLA due to non-compliance with its statutory requirements, the Agreement will take effect in equity as an equitable lease where the terms and conditions clearly reflect the intention of the parties which both parties have agreed will govern the tenancy. I also agree with the submission that the receipts submitted by Ms. Valdez clearly show that she accepted the funds paid to her by Smart Com as part payment and not as full payment of the rent. I therefore find that there was no consent by the Claimant to the rental sum of $4,000 monthly for the holding over period as alleged by the Defendant. Having found that the Defence has no reasonable prospect of success, I grant summary judgment in favor of the Claimant. I also find that the Defendant succeeds on its counterclaim based on the Claimant's admission that the parties had agreed to share cost of the kitchenette, and the Claimant is

ordered to pay the Defendant half the cost of installation. Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

Dated this Thursday, 18th day of April, 2019.

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Michelle Arana
Supreme Court Judge