IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 7 OF 1989
(High Court Civil Action No. 114 of 1988)

BETWEEN:

RAM PRASAD	APPELLANT
-and-	
DR. B. R. LOMALOMA DIRECTOR OF LANDS ATTORNEY GENERAL OF FIJI	RESPONDENTS

Dr. Sahu Khan for the Appellant
Mr. G. P. Shankar for the Respondents

Date of Hearing	:	17th May, 1993
Date of Delivery of Judgment	:	20th May, 1993

JUDGMENT OF THE COURT

From October 1975 until the end of February 1988 the plaintiff ran a canteen in a room at the Lautoka Hospital. On or shortly after that date he left, or was evicted - in the view that we take it does not matter which. He commenced an action in the High Court on 25th March 1988. He sought declarations and an injunction in effect upon the basis that he was entitled to continue to occupy the room and run the canteen. He also sought damages. On 3rd March 1989 the trial Judge dismissed the plaintiffs action. From that he has appealed.

The facts are very straightforward. On 16th October 1975 the plaintiff appellant entered into a written agreement between himself and the Director of Lands, the second defendant and

respondent. It was called a "Special Licence", and it gave the plaintiff "the sole right to operate Canteen Services" at the Lautoka Hospital from 8th September 1975 to 31st December 1976 "at a monthly rental" (specified) payable in advance. It required the plaintiff to provide canteen services "and for that purpose shall have full licence and authority to enter upon the room appropriated for the purpose of a canteen situated in the new wing..." There were a number of conditions imposing restrictions and requirements as to what the plaintiff could and could not do. Although we do not believe it is relevant, the licensor was not to allow any other canteen to be carried on within the Hospital Buildings.

We do not believe that we need to set out any of the terms of the agreement in these reasons for judgment. They limited what the licensee was entitled to do, the hours of operation and other matters pertaining to the operation of a canteen within a hospital.. They gave no right of exclusive possession and the agreement was referred to as a licence throughout, with the parties as licensor and licensee. Quite clearly it was a licence, as, in the circumstances anyone would expect it to be, and the contrary was never suggested until these proceedings were begun.

The evidence discloses that after the expiry of the term specified in the agreement the

month basis (record p.103). By letter dated 10th January 1978, the licensee sought a renewal of his present contract, and was told he had to tender. Whether that happened or not, in September 1979 the licensee was given an extension for one year from 1st January 1979 upon the same terms and conditions (record pp.86, 103). He was given a notice to vacate on 11th March 1980 but appears to have still been there in October 1981, when there was an invitation to tender for the licence published in the press. He tendered, and was issued with a new license for a two year period from 1st September 1981. In all relevant aspects that license was identical with its predecessor (record pp.78, 94, 77, 99). There were further renewals or extensions up to 1986. On 21st March 1986 there was another public notice, the plaintiff tendered and was successful; it is probable that this license expired on 31st December 1986 because in October 1986 there was a further public notice and the plaintiff lodged a tender; he must have obtained a license or extension, because monthly amounts in respect of his occupation were received in the office of the Director in 1987. There was a further public notice on 29th October 1987. The plaintiff put in a tender on 9th November 1987; it is clear that his tender was not accepted, and the evidence is that he was so advised (record pp.92, 83, 82, 69). It is also clear that he paid amounts for the periods 1st December 1987 to 31st December, 1st January 1988 to 31st January 1988 and 1st February 1988 to 29th February 1988 (record pp.66,

67, 90,91 - there are some errors in dates, but it is quite clear what happened).

By letter dated 2nd February 1988 the plaintiff was requested by the medical superintendant of the Hospital to vacate by 6th February 1988. A further letter dated 17th February 1988 indicated that the medical superintendant had been made aware of the February payment of rent, and the plaintiff was requested to vacate by 1st March 1988 (record pp.69, 70, 82, 84).

In his evidence the plaintiff complained that army personnel had either been called to the premises or there was a threat to call them in order to ensure his vacation. The medical superintendant says he got the police because the plaintiff refused to give him the keys. We do not believe the matter is relevant.

There was also a claim by the plaintiff that the licensor had been in breach of the clause of the license that he would not permit or suffer any person to carry on any other canteen service within the Hospital Buildings.

Now the simple facts of the matter are, if they are relevant, which we believe is not the case, that the hospital wanted the room in which the canteen was being operated by the plaintiff for use for the purpose of storing records. It

therefore constructed a canteen building in the grounds of the hospital which was intended to be brought into operation after the plaintiff had ceased to occupy the room. For this or other reasons it may not have accepted the plaintiff's tender - there is no evidence.

There is evidence that it was not in operation until 1st March 1988 or perhaps later (record p.18), and there is a dispute as to whether, if it was, that would amount to a breach of the condition referred to. It may be that the plaintiff is claiming that because he was wrongly put out of occupation there was such a breach. We do not believe the matter is relevant.

Upon vacation of the premises the plaintiff left behind all his stores and equipment. He claims by way of damages for the value of these together with loss of earnings.

Should it have any bearing on the matter at all, and we do not think it was, the receipt form used by the Department of Lands make provision for particulars to be filed in as follows:

Received from...

On amount of Lease No....

in respect of land....

On each of the receipts in evidence the portion for making reference to the lease is blank, and the land is recorded as "Lautoka Hospital Canteen".

The Judge dismissed the plaintiff's claim with costs.

The appeal seems to be based on two claims (i) that the plaintiff was a lessee and his lease had not been lawfully terminated (ii) that his right of occupation had not been lawfully terminated.

The first matter is the legal nature of the plaintiff's occupancy. It is plain almost beyond argument that the plaintiff was a licensee. All the documents say so. There is no evidence of exclusive possession. There is a reference to the plaintiff having keys to the premises. Of course he had keys; his stock and equipment were there. The times and days upon which he was allowed to operate were specified, as was what he could do there and could not do there. The licence did not give the plaintiff a right to occupy the premises - not that this would be conclusive in the circumstances - it gave him the sole right to operate the canteen services at the hospital; the premises were described as "the room appropriated for the purposes of a canteen", which the plaintiff was entitled "to enter upon and use" - not even to occupy. In addition, the surrounding circumstances were such that applying

expect a canteen operator to be a lessee. The documents make it clear that he was not.

We have not overlooked the use of the words "monthly rental" in the licence agreement, nor the receipts for payment of the monthly sums which are on a form entitled "Fiji Crown Land Rent Receipt". It does not surprise us in the slightest that the word `rent' has not been crossed out and the words "license fee" substituted. It does not affect the overall position.

So far as the matter of notice to vacate is concerned, we have no doubt that when the periods of the license specified in the two licence agreements ran out, the plaintiff continued to occupy for periods of a month at a time upon the same conditions as those specified in the agreements. But during such periods he was still a licensee. We have been referred to no provison in the law of Fiji that requires a person holding over at the conclusion of a licence, or, if there is such a thing, a person occupying under a license from month to month, to be given any notice to bring his licence to an end at the conclusion of a period of license. We know of no such requirement elsewhere. If any notice is required, it would be a reasonable notice, and it has never been suggested in this case that a notice given on 17th February 1988 was not reasonable for a canteeen operator to vacate by 1st March in the circumstances of this case.

If no notice was required, or reasonable notice was given, then at the end of the period the licensee becomes a trespasser. He can be ejected by anyone having the right to do so. The Hospital held the so called Crown Lease here and had the right. It could not have prevented and did not prevent the plaintiff from removing his stock and equipment. If he did not choose to do so, that was unfortunate for him. The Hospital would have the right to put it out.

Various matters were raised in submissions made on behalf of the plaintiff, even if they were properly raised before the Judge and on appeal. He did not specifically deal with them, and justifyably so. One was estoppel. There is no basis for it to apply in this case, and certainly not to be raised by the plaintiff in the circumstances. One was legitimate expectation, which if present, seems to require an authority acting contrary to the interests of a person adversely affected to give that person notice and an opportunity to be heard. Without even embarking on a discussion of that principle, it is perfectly clear that it did not apply here. The plaintiff knew he had to put in a tender, had done so before, did so again, and was not accepted. Caedit questio. The Judge ignored it - rightly. Damages cannot arise in the circumstances of this case.

Although the matter was not mentioned to the Judge, nor to

regulatory provision that apply. Pursuant to s.10 of the Crown Lands Act Cap 132, the Director of Lands is entitled to grant leases or licenses, there is also power to make regulations. Under the relevant regulations, Part II is devoted to leases, Part III to licenses. Different forms for both are prescribed. The license in this case follows the form prescribed for licences. Both the form prescribed for leases and the provisions of the Act relating to leases are totally inappropriate to the present case. We do not see how what was entered into as a license agreement by the Director under statutory provisions can somehow be converted into a lease, which is governed by statutory provisions. It quite clearly was not.

The appeal will be dismissed with costs.

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Mr. Justice Michael M. Helsham
President Fiji Court Appeal

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Sir Mari Kapi
Judge of Appeal

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Sir Edward Williams