

IN THE SUPREME COURT OF BELIZE, A.D. 1999

ACTION NO. 216

(BERNARD PALACIO
(
BETWEEN (AND
(
(DOUGLAS RICHARDSON
(MADALON WITTER
Plaintiff
Defendants

—
BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Bernard Palacio, the plaintiff, in appears in person.
Mr. Dons Waithe for the defendants.

—
JUDGMENT

Background

By this action, Mr. Bernard Palacio, the plaintiff is in the main, seeking possession of some leased land from the defendants. On 28 February 1996, Mr. Bernard Palacio, had granted a lease of land situate in Seine Bight Village in the Stann Creek District to Mr. Mike Hazeltine Fitzgerald and Pamela Hazeltine Fitzgerald (referred to later as Pamela). The defendants, Douglas Richardson and Madalon Witter for their part, say the leased land was assigned to them by Pamela.

The lease was for a term of twenty years with an option to renew the lease itself for a further term of ten years. The lease contained some covenants by Mr. Palacio as landlord and the Hazeltines Fitzgeralds as tenants.

2. For a determination of this case I think it is the covenants (undertakings) given by both Mr. Palacio as landlord/lessor and the Hazeltines Fitzgeralds as tenants/lessees, relating to the assignment of the lease between them, that are of especial significance.

Provisions of the Lease on Assignment

Clause 9 of the lease provides as follows:

“9. *The Tenant shall be allowed to assign or sublet this lease subject to the Landlord approval and only under the said terms and conditions herein and the Tenant shall in writing at least twenty-one (21) days prior to the assignment deliver to the Landlord an undertaking from the assignee that the said assignee shall lease the premises subject to all the provisions of this lease and that the assignee or person to whom the Tenant sublets the premises recognizes that the Landlord herein is his Landlord herein or in the case of subletting that the Landlord herein is the Tenant’s Landlord. The Landlord may acquire the lease if the person to whom it is to be transferred is not acceptable to him and shall pay the penance the market value of the buildings and development on the land. This lease shall go along with the land Upon any upon and transfer, sale or devise of the premises herein and the transferee, purchaser or devise or otherwise to whom the property is disposed of to by the Landlord shall act in accordance with section 15 of the Land and Tenant Act, Chapter 15 of the Laws of Belize, Revised Edition, 1980 (sic)*”.

Clause 5 paragraph (e) provides as follows:

“The Tenant hereby covenants with Landlord ...

(e) To notify the Landlord in writing not later than twenty-one (21) days prior to the assignment or subletting of the lease”.

3. The lease itself was put in evidence as **Exhibit BP 2**, by Mr. Palacio.

How the Lease came to be "assigned"

4. From the evidence in this case, the first defendant Mr. Douglas Richardson owns ten acres of land adjoining the land that is the subject matter of the lease between Mr. Palacio and the Hazeltines-Fitzgeralds, which had been in his possession for a considerable time. He started to build on this land but lived in a camper during construction on his own land. Meanwhile, Mr. Hazeltine-Fitzgerald had started the construction of a hotel later to become the Seine Bight Hotel, on the land leased from Mr. Palacio.

The good neighbourly relationship between Mr. Hazeltine-Fitzgerald and Mr. Richardson bloomed, at least for a time. The latter became involved in the design and construction of the hotel on the leased land of the Hazeltines-Fitzgeralds. They somehow agreed to have constructed on part of Mr. Richardson's adjoining ten acres, the same structures as Hotel Seine Bight on the leased land. The structures would be built, according to Mr. Richardson's testimony, immediately across the boundary line from the leased land in order "to complete the illusion that the units in his (Richardson's) property were part of the Seine Bight Hotel", on the leased land. In fact, the two became structurally connected with framing, deck and planks and wall and a roof, such that, according to Mr. Richardson's testimony, it was not easy to tell that it was not really a single hotel.

According to Mr. Richardson on the completion of the construction, it was agreed that Mr. Hazeltine Fitzgerald would manage the whole as Hotel Seine Bight; he said there were four units constructed on the part of his property adjoining the lease land. It was agreed that Mr. Richardson would have the use of one of the units to stay whenever he was in Belize and that he was to receive 30% of the income generated by the units built on his side of the divide with the leased land.

For a while things worked well as Hotel Seine Bight and the annex, if I may so call it, of the four units built on Mr. Richardson's adjoining land and the restaurant in the establishment became, again, in the words of Mr. Richardson, "an outstanding success" with even a mention in the Los Angeles Times.

But things would not stay that way for long as Mr. Hazeltine-Fitzgerald was not accounting fully to Mr. Richardson and giving him his due share as per their agreement. Mr. Richardson subsequently learnt that the Hazeltines-Fitzgeralds (the lessees of Mr. Palacio), had broken up and Pamela stayed on in charge of Hotel Seine Bight. But, according to Mr. Richardson, the Hazeltines-Fitzgeralds were by then indebted to him in the order of about US\$225,000.00, flowing from the operation of the units on his land as part of Hotel Seine Bight and other advances to them. The police were called in at some stage. Later Mr. Richardson said he agreed to settle for the sum of US\$150,000.00 as the indebtedness of the Hazeltines-Fitzgeralds.

The second defendant Ms. Madalon Witter, so far as is material to this case, entered the scene at this point. According to Mr. Richardson's testimony, which Ms. Witter later confirmed, the latter agreed to take over Hotel Seine Bight for the sum of US\$150,000.00 to offset what was owed by the Hazeltines-Fitzgeralds to Mr. Richardson. Ms. Witter also said she paid US\$5,000.00 for the contents of the hotel. She said in evidence that the hotel was acquired by buying it and assuming the lease of its land from Pamela Hazeltine-Fitzgerald and Mike Hazeltine-Fitzgerald.

All of this transaction was contained in a document entitled, "Sale of Hotel Seine Bight and Assignment of Lease". It is dated 22 March 1999 and signed by Pamela for the Hazeltines-Fitzgeralds and Enterprises Ltd., described as "sellers" and the second defendant, Madalon Witter, described as "buyer" and by first defendant who signed over the statement "Terms accepted" and described as "Creditor".

5. This document was referred to in the testimony of the second defendant as a "Bill of Sale". She tendered it in evidence as **Exhibit MW 1**, and it is at the heart of the defendants' case as the basis of the assignment of the leased land in question.

The Pleadings filed

6. The parties filed extensive pleadings in this case consisting of Mr. Palacio's Statement of Claim dated 1st February 2002, in which he

claims possession of the land he had leased to the Hazeltines-Fitzgeralds, mense profits, a perpetual injunction restraining both defendants and their servants and or agents from entering the land in question, and costs, and a Reply to the defence and Counterclaim of the defendants.

7. The defendants in turn, filed a Defence and Counterclaim dated 15th February 2002, in which they deny, in essence, that Mr. Palacio was entitled to possession of the property and aver that Pamela had assigned the lease to the second defendant and that they were in possession of a valid assignment of the lease; and counterclaimed for a declaration that that assignment is of full legal effect, valid and in full force and entitles them to possession of the suit land; they also claimed damages for trespass, and costs.
8. However, well before this matter finally came on for trial on 14th July 2003, Mr. Palacio had, on 10th January 2000, obtained an interim injunction against the defendants as a result of which they had to vacate the land and the Hotel Seine Bight, at least that part of which was situated on the land leased to the Hazeltines-Fitzgeralds in 1996 by Mr. Palacio and bordering on the first plaintiff's own land.
9. During the trial of this action, both sides desired the Court to visit the land in question. This was done on 27th October 2003, accompanied by Mr. Dons Waithe, the attorney for the defendants and the first defendant, together with Mr. Palacio who represents himself in this action. At the site, both sides agreed on the boundary between the first defendant's adjoining property (which is not the subject of this case) and the leased land. Extensive damage was observed to the property that straddled the boundary, which both sides agreed was the former Hotel Seine Bight but it is now in a sorry state of disrepair and destruction.
10. The first defendant is not really material to a determination of this issue, although the plaintiff has made him a party to this action. This is because the plaintiff said he found him together with the second defendant on the lease land and it was out of the business transaction between him and the Hazeltines-Fitzgeralds that led to the making of the document put in evidence as Exhibit MW 1, which is at the heart of this case. This document dated 22nd March

(Exhibit MW 1) expressly refers to the second defendant as the “buyer” who takes the Hotel and lease free from all encumbrances, and therefore the person to whom the plaintiff’s lease with the Hazeltines-Fitzgeralds was intended to be assigned.

11. This, in fact, is the heart of the defendant’s case, that is, Mr. Palacio’s lease with the Hazeltines-Fitzgeralds was assigned to the second defendant by the execution of the bill of sale (Exhibit MW 1) of the hotel and assignment of the lease to her.
12. Mr. Palacio on the other hand contends that there was no assignment of the lease and that he did not, in fact, agree to the defendants as the assignees.
13. Mr. Palacio’s case is simple: he says that he never consented to the assignment of his lease with the Hazeltines-Fitzgeralds to the defendants and that they, the defendants, were therefore on the property unlawfully. The defendants for their part say that the lease was lawfully assigned and that Mr. Palacio is not entitled to possession.

Determination of issues

14. I now turn to a determination of the issues in this case, the principal one being whether the document tendered in evidence, Exhibit MW 1, was in law an assignment to the second defendant of the lease Mr. Palacio had granted to the Hazeltines-Fitzgeralds in 1996.
15. I have carefully considered the evidence in this case including the testimonies of Mr. Palacio, the plaintiff, and those of Mr. Richardson and Ms. Witter, the defendants, and the documents tendered. I must however confess to some difficulties which make me unable to find or hold that, in law, there was a valid assignment to the defendants of the lease in question, in particular, to the second defendant, in keeping with the notice requirements of the lease regarding its assignment.
16. In the first place, the “Bill of Sale” of Hotel Seine Bight and the Assignment of Land Lease (Exhibit MW 1) was dated 22nd March

1999. However, by clause 5(e) of the lease, reproduced earlier at paragraph 2 above, between Mr. Palacio and the Hazeltines-Fitzgeralds, the latter were required to give twenty-one days notice prior to any assignment to the landlord (Mr. Palacio). Pamela's notice of assignment which was put in evidence by Mr. Richardson the first defendant as Exhibit DR 1, was dated 1st March 1999, exactly twenty-one days to the date of the assignment 22 March as is found in Exhibit MW 1, and if one were to exclude 9th March, which is a legal holiday here in Belize (Baron Bliss Day), this would be only twenty days: a day shy of the covenanted twenty-one days prior notice stipulated in the lease. This perhaps may be discounted as *de minimis*. However, more fundamentally, although Mr. Richardson testified that this notice was faxed to Mr. Palacio, he denied receiving it and objected to its receipt in evidence. I, however, had it put in evidence and said its evidential value or weight would be for the Court to decide. Putting the best construction I could on Exhibit DR 1, I found it implausible that it was ever sent or that Mr. Palacio ever received it. It is on Hotel Seine Bight letterhead and addressed to "Mr. Bernard Palacio, Landlord" and was said to have been transmitted by fax, but there is no facsimile number stated, nor is there anything in evidence of its transmission or receipt. I find therefore there was no prior notice to Mr. Palacio of the supposed assignment by Pamela as is required by clause 5(e) of the lease (Exhibit BP 1).

17. Secondly, the undertaking required by clause 9 of the lease (which I had earlier set out at paragraph 2 above), by which the tenant (here in Hazeltines-Fitzgeralds) in writing twenty-one days prior to the assignment shall convey to the landlord (Mr. Palacio) an undertaking from the assignee accepting the landlord as the landlord of the land and accepting as well all the provisions of the lease, presented me with another difficulty in the light of the evidence in this case as to whether there was a valid assignment in keeping with the terms of the lease between Mr. Palacio and the Hazeltines-Fitzgeralds. Ms. Witter put in evidence Exhibit MW 2: an affirmation of Mr. Palacio as the landlord and expression of intention to take the said lease subject to all its provision. But this document is dated 26 March 1999, some four days after the purported assignment in Exhibit MW 1 (the Bill of Sale of Hotel Seine Bight and Assignment of Land Lease, dated 22 March 1999).

This manifestly was not in keeping with the express stipulation contained in clause 9 of the lease regarding the written undertaking by the prospective assignee.

18. Mr. Palacio for his part objected to this document because he said it was sent after the making of Exhibit MW 1, the sale of Hotel Seine Bight and Assignment of Lease; and not surprising therefore there is no signature on Exhibit MW 2 in place where he is supposed to sign accepting the written undertaking from Ms. Witter as the proposed assignee.

19. I find, on the evidence in this case also, that the conditions for the approval or consent of Mr. Palacio to the assignment were far from being satisfied or met. The time interval between the conclusion of Exhibit MW 1 (the sale of Hotel Seine Bight and Assignment of Lease), 22 March 1996, and when Pamela is said to have left the scene, presumably to go out of the jurisdiction, was such that I don't think it was sufficient to have met the stipulations on notification of proposed assignment, written undertaking by proposed assignee and the exercise of the option by the lessor to acquire the lease, if proposed assignee was not acceptable (see clauses 5(e) and 9 of the lease). According to the evidence Pamela only stayed on for a few days in Hotel Seine Bight after making Exhibit MW 1, then according to Mr. Richardson, she left Belize.

All this gives me the impression that after Pamela had made the hurried composition with their creditor, Mr. Richardson, for that is really what Exhibit MW 1 amounts to, there was scant attention or regard for the stipulations in the lease relating to its assignment, such as the need for notice to and approval of the lessor, Mr. Palacio.

See Halsbury's Laws of England, Vol. 27, 4th Edition at paragraph 383, where it is stated:

“Where a lease requires the licence or consent of the landlord to be obtained to an assignment it is the duty of the vendor who agrees to assign the lease to obtain the necessary licence. If the vendor fails to carry out this duty, he is liable to pay damages to the purchaser. If the

vendor fails to obtain a licence, the agreement to assign is not enforceable ... If the assignment is made without obtaining the required licence, the assignment is not void; it is effectual to vest the term in the assignee, but the landlord may treat the assignment as a case of forfeiture provided, in the case of a covenant against assignment, that the lease contains a proviso for reentry”.

20. On an analysis of the evidence, I find it difficult to find that there was compliance with the stipulations in the lease regarding notice for its assignment and notice of the written notice from the lessees of the undertaking from the proposed or intended assignee.
21. I am therefore driven to conclude that there was not, on the evidence, a valid assignment of the lease to the second defendant by Pamela in keeping with clear stipulations of the lease requiring notice to the lessor, Mr. Palacio, of any assignment of the lease and the written statement forwarding the proposed assignees undertaking.
22. Finally on this point of assignment of the lease and the lessor's consent thereto, I find the decision of the Privy Council in the case of **McEacharn v Colton and Others (1902) A.C. 104**, with respect, of great support on the conclusion I arrive at on this issue in the instant case. The Board decided that a covenant by a lessee not to assign without the lessor's consent runs with the land, and applies to reassignment to the original lessee, and that an injunction will lie on a threat to commit a breach of it. In that case, the appellant was one of two assignees of a lease dated 25 July 1888 and granted by Thomas Martin deceased, to two lessees named Muirhead. The respondents were executors and trustees under Martin's will and registered as proprietors of the land in question. In 1888, the lessees executed with Martin's consent a transfer of the lease to one Robb and the appellant who became the registered proprietors of the land. In 1897, Robb and the appellant reassigned the lease to the former lessees, the Muirheads who executed an acceptance thereof. Martin refused his consent to the reassignment and lodged a caveat with the Registrar forbidding its registration. The respondents in order to prevent the removal of the caveat petitioned the Supreme Court for it to be continued in force as if no proceedings had been taken for

its removal and for an injunction against the proposed reassignment to the Muirheads.

The covenants in that case was in the following terms, *“the lessees shall not, nor will at any time during the continuance of the said term, assign, transfer, demise, sublet, or otherwise by any act or deed part with the possession of the said leased property, or any part or parts thereof, to any person or persons, company or companies, association or associations, without the written consent of the said lessor for that purpose first had and obtained, and shall not do, cause, permit or suffer to be done, any act, deed, matter or thing, either involuntarily or otherwise, whereby by reason or means whereof the said leased property or any part thereof, can or may be assigned, transferred, demised, sublet, set or let, or the possession thereof by the said lessees be parted with. Provided, nevertheless, that the consent of the said lessor before referred to shall not be unreasonably or capriciously withheld”*.

23. Lord Macnaghten delivering the judgment of the Board said:

“The covenant is quite plain. It is that the lessee, the person who for the time being stands in that relationship to the lessor, shall not assign to any person without the lessor’s consent”.

24. I therefore conclude on this point that the provisions in Mr. Palacio’s lease with the Hazeltines-Fitzgeralds, regarding assignment are, with respect, quite plain. They required notification of the assignment to the landlord (Mr. Palacio) not later than twenty-one days prior to the assignment (clause 5(e)); and they required the approval of Mr. Palacio as landlord with a written statement at least twenty-one days prior to the assignment from the tenant (the Hazeltines-Fitzgeralds) that the assignees (presumably the second defendant) undertakes to have the leased property subject to all the provisions of the lease (that is the head lease) and that the assignee recognizes the landlord (Mr. Palacio) as the landlord (clause 9).

25. I find, on the evidence, that neither of these provisions was complied with.

Was the Bill of Sale of Hotel Seine Bight and the Assignment of Land Lease a Deed in law?

26. I now turn to another consideration in this case, which is a legal one. That is, the effect, if any, of **Exhibit MW 1**.

A further difficulty in the way **Exhibit MW 1** (the Bill of Sale and Assignment) is whether in law, it is a “Deed” within the meaning of the Law of Property Act, Chapter 190 of the Laws of Belize 2000, Revised Edition and the General Registry Act, Chapter 327 of the Laws of Belize 2000, Revised Edition, such as to pass on the interest of the Hazeltines-Fitzgeralds in the lease with Mr. Palacio to the second defendant.

27. Both of these Acts, that is, Chapters 190 and 327, define what a “deed” is: Chapter 190 defines it as a writing or instrument written on paper or parchment, signed, sealed and delivered, to prove and testify the agreement of the parties whose deed it is, to the things contained in the deed. And Chapter 327 so far as is material provides in section 70(b) “ *‘deed’ means (b) ... any document ... or an instrument required to be registered under Parts III and I, whether under seal or not, by which estates, interests and rights in or over land may be created, transferred, charged, incumbered or otherwise affected in Belize” (emphasis added). Part III deals with Land Titles Registration and section 13(3)(b) provides for the issuance of certificate of title to land or any estate or interest in land held for terms of ten years and upwards absolute.*

28. More fundamentally however section 15 of the Law of Property Act, Chapter 190, provides:

“15. *Except in respect of national land, title to a legal estate or a legal interest in land shall be evidenced either by a certificate of title issued or by a deed recorded under the General Registry Act”.* (emphasis added).

And section 40 provides:

“40.(1) *From and after the commencement of this Act and except in respect of national land, the legal title to all land or any interest in land shall be created either –*

(a) by registration of the certificate of title thereto under and in accordance with the General Registry Act; or

(b) by recording the title deed thereto under and in accordance with Part VI of the General Registry Act”.

Moreover, section 41(1)(b) also provides:

“41.(1) *From and after the commencement of this Act and except in respect of national land, the creation or transfer in law of –*

(a) ...

(b) a term of years absolute, and

(c) ...

shall be effected –

(i) in case of registered land by the issue of a certificate of title under and in accordance with Part III of the General Registry Act; and

(ii) in the case of unregistered land by the recording of the title deed thereto under and in accordance with Part VI of the General Registry Act:

Provided that a certificate of title shall not be issued in respect of a term of years absolute unless the estate thereby created or transferred is for a term of ten years or upwards”.

I have not been addressed or advised by either side as to whether the land in question is registered land or not in which case subparagraph (i) or (ii) or paragraph (b) will apply. But I don't think this makes any difference to the point under consideration here. That is, it is by the issuance of a certificate of title or registration that land can be transferred (assigned).

Furthermore, by section 71 of the General Registry Act it is provided:

“71. No deed executed after 14 December, 1888, shall have any validity or effect unless it is lodged for record in the office of the Registrar, within one month after the date thereof if executed within Belize, and within three months after the date thereof if executed out of Belize”. (emphasis added)

The proviso to this section is not relevant here.

29. Therefore, even if I am prepared to find that the document in **Exhibit MW 1** was “a deed”, it is however denuded of any effect or validity as it was not lodged with the General Registry in terms of the relevant statutory provisions.
30. Moreover, even if I were again to hold that **Exhibit MW 1** was a “deed”, it is, to my mind, short of or inadequate for a deed in the circumstances of this case to be effective to assign any cognizable interest in law in the lease to Ms. Witter. It is lacking in specifics as to the parties, terms of the assignment and duration. It is to be noted that Pamela signed it for Mike Hazeltine Fitzgerald and herself but signed as well for “Enterprises Ltd.” Quite what this is, is nowhere explained, but “Enterprises Ltd.” was not a party to nor mentioned in the lease between Mr. Palacio and the Hazeltines-Fitzgeralds. I have much hesitation therefore to characterize **Exhibit MW 1** as “deed” for purposes of effecting an assignment of the lease in the circumstances of this case. As stated in

Megarry and Wade Law of Real Property sixth edition, by Charles Harpum (2000, Sweet and Maxwell Ltd.) at page 772:

“Once a legal lease has been validly granted, a deed is required to effect its legal assignment, however short the term may be. Thus the legal assignment of a yearly tenancy can only be made by deed, even if the tenancy was created orally. It follows from this, that a contract to assign such a lease must also be made in writing”.

Also, at page 807:

*“A legal lease, once created, can be transferred inter vivos only by deed in accordance with the general rule ... However, on principles similar to those applicable to the creation of leases, an assignment will be effective in equity as between the assignor and assignee as a contract to assign, provided that it is made in writing and contains all the terms expressly agreed between the parties” – and **Crago v Julian** (1992) 1 WLR 372; **City Permanent Building Society v Miller and Another** (1952) 2 AER 621.*

31. I therefore find on the evidence, and all the materials before me, that **Exhibit MW 1** was in fact not so much as a deed that could effect an assignment as a composition with creditor Mr. Richardson, the first defendant, referring as it is to sale of Hotel Seine Bight as well as the supposed assignment of the lease. It was not of and by itself an assignment of the lease Mr. Palacio had with the Hazeltines-Fitzgeralds.
32. I am prepared to hold as between the second defendant, Ms. Witter and Pamela, that there was, perhaps, a contract to assign that lease; but as between Mr. Palacio and the defendants, there was no valid assignment either by operation of law or under the express terms of the lease between Mr. Palacio and Mike and Pamela Hazeltine Fitzgerald, which the document dated 22 March 1999 (**Exhibit MW 1**) purported to assign; although clause 9 of their lease (**Exhibit BP 1**) entitled them, that is, the Hazeltine-Fitzgeralds, if the conditions stated in the lease were satisfied, to assign or sublet it. I am even prepared to hold, if necessary, that at most **Exhibit MW 1** was or could be a contract to assign the lease

for which specific performance could be obtained as between the second defendant and the Hazeltines-Fitzgeralds. But it was not and could not in law, operate in and by itself, as an assignment of the lease to the defendants.

Conclusion

33. In the light of the reasons I have explained above, I conclude that both as a matter of the interpretation and application of the provisions of the lease – Exhibit BP 1 – between Mr. Palacio and the Hazeltines-Fitzgeralds, there was no proper or valid assignment of the lease by Pamela to the defendants; and by the combined operation of sections 15, 40 and 41 of the Law of Property Act and section 71 of the General Registry Act, there was no assignment of the lease cognizable in law flowing from Exhibit MW 1 to the defendants as a valid assignment of the lease to the second defendant. The defendants cannot therefore, in my view, successfully resist Mr. Palacio's claim to possession of the property referred to in the lease.
34. According, I therefore order that Mr. Palacio is entitled to possession of the leased property.
35. However, with regards to Mr. Palacio's claim for mesne profits based as he says in his Statement of Claim at the rate of twelve thousand dollars per annum from 11th April 1999 to 2nd March 2001, amounting to \$24,000.00 calculated as per the contract for lease he signed with Mr. Windfield Steere on 12th April, 1999, there is no evidence of this before me. Moreover, with the destruction of the Hotel Seine Bight as I had mentioned at paragraph 9 above, coupled with the fact that the defendants had, since January 2000, been enjoined from being on the leased property as a result of the interim injunction obtained against them by Mr. Palacio, I don't think in all the circumstances, I can make an order for mesne profits. It is not the defendants' fault that the interim injunction was only served on them in March 2001. It is reasonable to think that that interim injunction contributed in no small part to the sorry state the hotel was found in on a visit by the Court. I therefore don't think that in all the circumstances this is a proper case to make an award for mesne profits.

36. I however grant the claim of Mr. Palacio for a perpetual injunction against the defendants, their servants or agents from going on or remaining on the land to which Mr. Palacio is by this judgment entitled to possession.
37. I accordingly dismiss the defendants' counterclaim for a declaration that the assignment of the lease is of full legal effect, valid and in full force and that they are entitled to possession of the demised property. I dismiss as well their claim for damages for trespass.
38. Finally, I award the costs of these proceedings to Mr. Palacio, to be taxed if not agreed.
39. In fine, there is in clause 9 of the lease between Mr. Palacio and the Hazeltines-Fitzgeralds a reference to section 15 of the Landlord and Tenant Act, Chapter 189 of the Laws of Belize 2000 Rev. Ed. mistakenly, I think, referred to as Chapter 15 of the 1980 Rev. Ed. in the lease. However, although this was not pleaded, Mr. Dons Waithe of counsel for the defendants, in his address, stated that this provision was not complied with. This section however has in contemplation the forfeiture of a lease by a lessor for the breach by a lessee of a covenant in the lease other than a covenant for the non-payment of rent. I don't think therefore, that this section is applicable to the facts of his case. Mr. Palacio's claim was not for forfeiture of the lease, he based his entire case on the footing that the defendants had no lease with him, either by assignment or otherwise. And as I have found both the facts and the law are in his corner: section 15 could hardly therefore, be prayed in aid of the defendants. It cannot avail them.

A. O. CONTEH
Chief Justice

DATED: 19th March, 2004.