

IN THE SUPREME COURT OF BELIZE, A.D. 2004

ACTION NO. 471 OF 2002

GHAN SHYAM CHAINANI

Plaintiff

AND

MIGUEL VALENCIA

Defendant

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. E. Andrew Marshalleck for the Plaintiff.
Mr. Aldo Salazar for the Defendant.

JUDGMENT

1. The facts of this case are fairly straightforward.
2. The Plaintiff, Mr. Chainani, is seeking an order of specific performance from this Court to get the Defendant, Mr. Valencia, to execute a lease for five years of premises he Mr. Chainani occupies in Albert Street in Belize City from whence he conducts his business as a merchant and also stores his goods. This Mr. Chainani says he is entitled to pursuant to an oral agreement made between him and Mr. Valencia on or about 19th February 2001.
3. From the evidence, some relationship of landlord and tenant had subsisted between both Mr. Valencia and Mr. Chainani since 1987 when the latter occupied premises in Queen Street in Belize City.
4. From the evidence also it would appear that the premises in question in the case, that is the shop and warehouse at the back, were first occupied by Mr. Chainani on the footing of a three-way

partnership between himself, Mr. Valencia and the brother-in-law of Mr. Chainani, a Mr. Manwani.

5. The partnership was constituted by the goods Mr. Chainani would bring in for sale, and Mr. Valencia's contribution was the premises (comprising both the shop in front and the warehouse at the back) and Mr. Manwani's own contribution would be his assistance in running the enterprise.
6. Somehow this arrangement did not work well, in particular, Mr. Valencia did not receive his expected take from the venture, given variously as \$50,000.00 per annum (according to Mr. Chainani) or \$75,000.00 to \$100,000.00 (according to Mr. Valencia).
7. The partnership lasted for only nine months and was brought to an end on 19 February 2001.
8. On the evidence thereafter it was agreed between Mr. Chainani and Mr. Valencia that the premises should be let to the former.
9. The exact terms and what was included in this arrangement are the cause of this dispute.
10. Mr. Chainani however was left in possession of the premises and evidently continued the business. According to him, he stated that it was agreed that as from March 2001, he would pay Mr. Valencia the sum of \$4,000.00 per month as rent for the premises and that this would continue for five years. For this Mr. Chainani now seeks an order for specific performance.
11. Mr. Valencia on the other hand, denied there was any agreement to let the premises for five years and that in fact, it was only the front portion of the premises comprising some 400 sq. ft. that he agreed to let to Mr. Chainani. Furthermore, in his Defence and counterclaim and in his testimony, Mr. Valencia states that the

warehouse at the back of the shop, and comprising some 1800 sq. ft. was not let out to Mr. Chainani and that in fact he was in wrongful occupation.

12. From the evidence in this case, and having seen and listened carefully to both Mr. Chainani and Mr. Valencia, and in view of the surrounding circumstances of the arrangement between the parties, I am inclined to prefer the testimony of Mr. Chainani. This is so because I don't think he Mr. Chainani could have only have agreed to rent the shop and not the warehouse which were all part of the premises for the partnership, for the brief period it was in existence.
13. Secondly also, there is abundant evidence that Mr. Valencia accepted payment of rent from Mr. Chainani in respect of the premises despite having at some times refused to do so.
14. Thirdly, since the dissolution of the partnership if I may so describe it, and Mr. Chainani going into possession of the premises on his own account in March 2001, it was not until September 2002 that Mr. Valencia moved attorneys to give notice to quit to Mr. Chainani.
15. Moreover, it may well be the practice of Mr. Valencia not to give long leases to his tenants and to only have them on a monthly basis, this does not however negate the claim by Mr. Chainani that it was agreed at the end of the short-lived partnership, to take the premises on a five year lease. In any event I think it would be an imprudent merchant who would take a store on a monthly basis with all the uncertainty this may entail for the continuation and success of her business.
16. Therefore, I do not accept Mr. Valencia's counterclaim as I am convinced on the evidence and facts of this case that Mr. Chainani was lawfully in possession of the premises in question.

17. Accordingly, I enter judgment for Mr. Chainani. He is entitled to the order he seeks from this Court. The advertence to unclean hands sought to be pinned on him does not in the circumstances find favour with me: from the facts I do not think he is disentitled to equitable remedy of specific performance he seeks by this action.
18. I therefore enter judgment for the Plaintiff and order that a lease commencing March 2001 for years be executed in favour Mr. Chainani concerning the premises at 25 Albert Street, Belize City between Mr. Valencia and Mr. Chainani at the rental of \$4,000.00 per month.
19. Mr. Chainani will however bear the costs for the preparation, execution and registration of the lease.
20. I also award the costs of these proceedings in the sum of \$3,000.00 to the plaintiff, Mr. Chainani.

A. O. CONTEH
Chief Justice

DATED: 18th October, 2004.