IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO: 558

	(Angel Moralez	**Claimant**
	(	
BETWEEN	**(AND**	
	(Emy Gilhharry Ramirez	**1st Defendant**
	(Hearts International Limited	
	((A Company duly incorporated in Belize)	**2nd Defendant**

Coram: Hon. Justice Sir John Muria

Hearing: 26 October 2007
Ruling: 29 October 2007

***Mr. O. Sabido S.C.* for Claimant**
***Mr. M. Williams* for Defendants**

RULING (No.2)

MURIA J.: This application is by the defendants seeking to restrain the claimant from executing or carrying out any works or repairs to Parcels 161 and 162 at Corozal Commercial Free Zone, together with all buildings standing thereon and known as "Gina's Plaza" until trial or further order. The application is protected on Clause 4 to the Lease Agreement dated 1 September 2002 between the parties.

In basic terms, the defendants say that the claimant has been effecting alterations or additions to the premises without consulting them. This is contended by the defendants to be in violation of Clause 4 of the said Agreement.

Paragraph 5 of the first defendant's affidavit sworn to on 19 October 2007 deposed that the claimant had "embarked on a program of works and appears to be making subdivisions to the demised premised with a view to sub-letting," contrary to the Lease Agreement and without consulting the first defendant. Further, the first defendant relied on Exhibit "EG1" attached to the said affidavit, which states that the claimant had effected repairs to the building (Gina's Plaza) inconsistent with the original layout and design of the building. More particularly, the defendants are saying that the claimant has altered the Facade of the building by replacing the glass fillings with cement blocks. This, Counsel submitted, is in breach, not only of Clause 4 but also of Clause 8 of the said Agreement.

Mr. Sabido, on the other hand, contended that the claimant has not carried out any alterations, additions or improvements on the building. The claimant had only done temporary repairs on the building to keep the rain out from getting into the building. It is submitted by Counsel that, such temporary repairs was necessary because the merchandise at the front of the building gets wet whenever it rains.

The Facade, the windows, the large metal and canvass awning at the front of the building, the light fixtures, the signs and the glass panels at the front of the building were all damaged by *Hurricane Dean* recently. These repairs have become necessary, argued Counsel for the claimant.

There is no question that the Gina's Plaza sustained some damage as a result of *Hurricane Dean*. There is no question also, that Gina's Plaza is in need of repairs so as to make good the damages it sustained as a result of *Hurricane Dean*. The claimant agrees he had carried out some works on the building to fix some of the damages done to the building. The question to be determined is whether the works done by the claimant are ***"repairs"*** or alterations or additions to the building. This is a question of facts to a large extent. It is also, however, a question of law, to determine the meaning of the words used in Clause 4 of the Agreement between the parties.

The terms of Clause 4 are as follows:

> ***"4. The Tenant shall keep the demised premises in good condition, and shall redecorate, paint and renovate the said premises as may be necessary to keep them in repair and good appearance. The tenant***

> ***shall quit and surrender the premises at the end of the demised term in as good condition as the reasonable use thereof will permit. The Tenant shall not make any alterations, additions or improvements to the said premises without the prior written consent of the Landlord. All erections, alterations, additions and improvements, whether temporary or permanent in character, which may be upon the premises either by the Landlord or the Tenant, except furniture or movable trade fixtures installed at the expense of the Tenant, shall be the property of the Landlord and shall remain upon and be surrendered with the premises as part thereof at the termination of this Lease, without compensation to the Tenant."***

The language used in this Clause, permits the tenant to redecorate, paint and renovate so as to keep the premises in repair and good appearance, so that the end of the term of the lease, the premises will be delivered up to the Landlord ***"in as good condition as the reasonable use thereof will permit."*** Clause 4, however, does not permit the tenant to make ***"any alterations, additions or improvements"*** to the said premises without the landlord's consent.

In my view the overriding objective of the repair clause (Clause 4) is to ensure that the demised premises is kept in repair and good condition. In order for the tenant to fulfill that objective, he is entitled to carry out generally, works on the premises so as to keep it in repair and have it yielded up in that condition. See ***Stanley -v- Towgood*** (1836) 3 Bing N.C. 4; See also ***Lurcott -v- Wakely and Wheeler*** [1911] 1KB 905, 916; ***Anstruther – Gough – Calthorpe -v- MC Oscar*** [1924] 1KB 716 at 722 , 723.

It is important to note that the tenant's (claimant) obligation to keep the premises in repair and good condition under Clause 4 having regard to the nature and state of the premises at the time he took the lease of the property. ***Harris -v- Jones*** (1832) 1 Mood & R 173; ***Lurcott -v- Wakely and Wheeler*** (above). That being the case, Clause 4 does not appear to apply to a premises which suffers deterioration or dilapidation as a result of natural disasters or old age. The obligation of the tenant in such a situation would be, not to keep the premises in repair and good condition, but rather to keep the premises in a habitable condition. Any repair to be done in such a situation is to ensure that the premises is kept in a habitable condition. In ***Jones -v- Joseph*** (1918) 87 LJ KB 510, the court held that the tenant's covenant to repair includes the obligation not to allow vermin to infest the premises.

In the present case, the damage suffered by the Gina's Plaza were a result of the damages caused by Hurricane Dean. The primary obligation of restoring the premises whether by repairing, alterations, improvements or otherwise lies, not with the tenant/claimant under Clause 4 or Clause 8 of the Agreement but upon the Landlord under Clause 7 which requires the Landlord ***"to make such repairs, additions or alterations as it shall deemed necessary for the safety, preservation or restoration of the improvements or for the safety or convenience of the occupants or users thereof."*** Any such repair works to be undertaken on the premises following the damage caused by the natural disaster of *Hurricane Dean*, is the obligation of the Landlord/defendants.

I said, the *primary obligation* is on the Landlord to effect repairs in such situation because the tenants still carries his general obligation to repair even where damages to the premises were caused by natural disasters or old age of the building. It is therefore within the application of Clause 4 of the Agreement for the claimant to repair or replace any parts of the premises, including the roof, floors or walls (external or internal) which had become defective or dangerous as a result of the effect of *Hurricane Dean*. See ***Lurcott -v- Wakely and Wheeler***

(above); ***Re London Corporation, London Corporation -v- Great Western and Metropolitan Railways*** [1910] 2 Ch. 314.

In the circumstances of this case, not only that the claimant/tenant is acting under his general obligation to repair, when he did what was complained of here, he was also undertaking the primary obligation of the Landlord/defendant. It would therefore not right and proper to order the claimant to desist from what he is doing, lest the premises be allowed to deteriorate, in which case, not only the premises suffers, but the claimant, defendants and all the other tenants in the building will also suffer.

All that the claimant is doing is to make good the defects arising from the damage suffered by the premises as a result of *Hurricane Dean*. That must be within the definition of "***repair"*** or "***renovate"*** which is short of reconstruction, additions, alterations or improvements. The latter actions must be done by the defendant or by the claimant with the consent of the first defendant.

The defendants' present application, however, must be refused in the circumstances of this case.

No order as to costs.

Order:

1. Defendants' application refused.
2. No order as to costs.

(Justice Sir John Muria)