

**IN THE SUPREME COURT OF BELIZE, A.D. 2006
CLAIM NO: 558**

(Angel Morales **Claimant**
(
BETWEEN (AND

(Emy Gilharry Ramirez **1st Defendant**
(Hearts International Limited
((A Company duly incorporated in Belize)
2nd Defendant

Coram: Hon. Justice Sir John Muria

Hearing: 4 October 2007

Ruling: 26 October 2007

Mr. O. Sabido S.C. for Claimant

Mr. M. Williams for Defendants

RULING (No.1)

MURIA J: The claimant applies for injunction restraining the defendants from demanding for and collecting moneys due and payable under Insurance Corporation of Belize –Policy No. PPROP/0002968. The allegation against the defendants is that they had demanded insurance payment from the said Insurance Company contrary to and in breach of the Lease Agreement dated September 1st, 2002 between the parties in this case.

The claimant is a tenant of the first and second defendants who are the landlord and owners of the building known as “Gina’s Plaza” at the Corozal Free Zone. The lease is for 25 years from September 1st, 2002 expiring on October 1st, 2027.

The claimant operates his business in the “Gina’s Plaza.” However it appears that some repairs are needed to be done on the premises following damages on the premises caused by *Hurricane Dean*. The claimant wants repairs to be done but he needs the fund of \$59, 174.00 to do the repair works. The claimant’s position is that he does not want the defendants to claim and collect that money from the Insurance, hence his application to restrain them from doing so.

The claimant says that the money should be paid to him to effect the repairs on the premises. He says the building is in need of desperate repair.

The Insurance Company “assessed the damage and loss to the amount of \$59, 174.00 and is willing to pay (see paragraph 12 of Applicant/Claimant’s Affidavit sworn to on 18 September 2007 in support of his application). This is usual for the Insurance Company to do as

insurance companies want to be sure of what they should pay in insurance claim.

The question is who has the right to claim insurance payment in this case?

In Paragraph 13 of the Claimant/Applicant's affidavit, he says that the money should be paid to him and that the first defendant is refusing to give her consent for the Insurance to pay the sum of \$54, 174.00 to him.

To answer the question, just posed, quickly, the person who has the right to claim the insurance money is the policy holder. In the present case, the first defendant is the policy holder and as such she has the right to file an insurance claim in order to receive the money from the insurance.

It is, of course, possible that having received the claim from the policy holder, the Insurance Company may decide to pay out the money to the policy holder or directly to some other person designated by the policy holder, for example, a contractor engaged to carry out repairs to the damaged premises.

Clause 8 of the Lease Agreement creates an obligation on the claimant to insure the demised premises in the name of the Landlord. The terms of Clause 8 are:

“8. The Tenant shall insure and keep insured the demised premises to the full value thereof in a responsible insurance office to be approved in writing by the Landlord in the name of the landlord against loss or damaged by fire and such other risks as may from time to time be required in writing by the landlord and upon the request of the Landlord or his agent to produce the policy or such insurance and the receipt For the last premium and the cause al sums received in respect of such insurance to be forthwith laid out and expended in rebuilding or repairing or otherwise reinstating the demised premises in accordance with the present plan and elevation thereof or otherwise as may be approved in writing by the Landlord and to make up any deficiency in such sums out of his own moneys.”

Clearly the paragraph does not confer any obligation on the Insurance Company to pay insurance claim over to the claimant nor does it confer an

entitlement on the claimant to receive the same. It may well be, that the policy holder, after receiving the funds from the Insurance Company, decides to pay the same to the claimant for “rebuilding or repairing or otherwise reinstating the demised premises.” That is another matter for the parties to deal with.

The application of Clause 8 is subject to approval of the Landlord. The Court had encouraged the parties to resolve this matter over the insurance payment by negotiation. That of course did not materialize.

As to the claimant’s application for restraining order against the defendant, that application cannot succeed in the light of the clause 8 of the Lease Agreement. The claimant is seeking to restrain the first defendant from doing what she is entitled to under the insurance policy issued in her name. That would not be right.

No doubt, the claimant has the concern for the states of the premises which is in need of repair. Clearly, it is in the interest of both parties that a way is found to ensure that insurance release the fund so that the premises can be repaired.

As to the application to restrain the first defendant as sought, that cannot succeed and must be refused.

No order as to costs in this application.

(Justice Sir John Mura)