IN THE SUPRME COURT OF BELIZE, .A.D. 2010

CLAIM NO. 699 OF 2008

	(BRUCE SANCHEZ	**CLAIMANT**
	(	
BETWEEN	**(AND**	
	(	
	(PAMELA ROBATEAU MARTINEZ	**DEFENDANT**

Before: Hon Justice Sir John Muria

1 March 2010

Counsel:

Mr. E. Flowers SC for the Claimant
Ms. A. Segura-Gillett for the Defendant

J U D G M E N T

CLAIM – contract – agreement to lease business – land tenancy principles not applicable – alleged signing of contract of employment, not business contract – defence of non est factum – principles applicable

MURIA J.: This claim by the claimant arose out of a business lease agreement entered into between the claimant and defendant on 12th July 2007. The business concern that was the subject of the business lease agreement was called Radiance Jewelry and ABC Framing. The claimant's claim is for the sum of $39,905.79 being money payable by the defendant to the claimant for goods supplied to the defendant. The claim is denied by the defendant.

Brief background

The claimant is the owner of the jewelry and framing business known as Radiance Jewelry and ABC Framing located in the Commercial Centre building in Belize City. Previously the claimant leased his same jewelry and framing businesses to other previous lessees until June 2007. Then on 12th July 2007, the claimant entered into another lease agreement over his Radiance Jewelry and ABC Framing business. This time, it was with the defendant who was the lessee.

It was a term of the agreement that the claimant would supply to the defendant all the merchandise to be sold in the business and the defendant would pay for them as per the invoices and at certain discount percentages. The claimant subsequently sold and delivered to the defendant merchandise invoiced in the sum of $109, 649.02. The defendant, however, pursuant to the lease agreement issued a six months termination notice on 1st October 2007 to the claimant.

The Claimant's Case

The claimant's case is that this was a business agreement between himself (dab RADIANCE JEWELLERY and ABC FRAMING) and the defendant whereby the business of Radiance Jewelry and ABC Framing was leased to the defendant "as a going concern" upon the terms and conditions set out in the agreement. The terms and conditions of the business lease include, but not limited to, the "taking over of the furniture and fixtures, stock-in-trade, trade license, accounts receivable of the said business."

Shortly after the signing of the agreement, the defendant went into possession of the business, received merchandise from the claimant and commenced reselling the said merchandise. The defendant gave notice on 1st October 2007 to terminate the agreement which notice expired on 31st March 2008.

Consequently as per the invoices, the claimant informed the defendant that she owed the claimant the sum of $109, 694.02 which sum was later reduced to $106, 752.52. An inventory of the unsold merchandise was taken, which found that $66, 846.73 worth of merchandise still left in the business. The

balance now remained outstanding was $39, 905.79 which is now the amount claimed by the claimant in this case.

The claimant's case is simply that this was a business agreement hereby the claimant supplied the goods to the defendant at a certain price and the defendant would sell them at whatever price she decided on.

The Defendant's Case

The defendant, on the other hand, says that she does not owe the claimant $39, 905.79 or any sums at all. The basis for that denial is that, as she claims, she was at all times an employee of the claimant.

In addition to her claim that she was only an employee, the defendant also claimed that she did not intend to sign a business agreement, raising the defence of "*non est factum*." In her witness statement, the defendant said that she was taken to the office of the JP to sign only the signature page of the document.

It is also further claimed by the defendant that the agreement was void for undue influence, misrepresentation, unconscionable bargains, and inequality

of bargaining power. The defendant claimed that the claimant and his wife had exerted influence on her because she was their servant and agent.

As to the claim of misrepresentation, the defendant said that she signed the agreement on the basis that she was employed by the claimant. The unconscionability and inequality of bargaining power stemmed from the claim that she (defendant) had no benefit of experience in legal and business matters, whereas the claimant is an experienced business man and who had the benefit of legal representation as well.

Finally, the defendant's last straw is her claim that the lease was invalid. Two reasons are given, first, there was no right to exclusive possession given, and secondly, the duration of the lease was uncertain. Coupled with those allegations, the defendant says that the claimant had no interest in the premises to pass on to the defendant under the lease agreement.

Business lease, not a land tenancy.

At the outset, I feel it is necessary to point out that the lease agreement with which we are concerned in these proceedings is the lease of the business of the claimant to the defendant in ***Radiance Jewelry and ABC Framing***

which was operating out of the Commercial Centre, in Belize City. The claimant and defendant in this case are parties to that business lease agreement.

This is not a case of a lease of tenancy under the Law of Landlord and Tenant. As such the principles applicable to landlord tenant relationship do not apply in this case. The argument by Counsel for defendant that the claimant failed to fulfill the requirements of a valid lease, namely, we exclusive possession and certainty of duration, and the authorities cited in support of that argument are misconceived.

The case of ***Street -v- Mountford*** [1985] 2 All ER 289 strongly relied upon by the defendant does not help the defendant's case. The defendant in the present case was not a 'service occupier' nor a tenant. She was a 'lessee' of a business going concern leased to her by the claimant, the owner of that business going concern.

The other argument by the defendant concerns the right of the claimant to convey on interest in land to the defendant as tenant. The argument being that the claimant had no interest in the premises capable of being demised to

the defendant. With respect, the defendant's argument is misconceived as the case before the court is not concerned with a lease of land/premises. The landlord/tenant relationship is of no moment in these proceedings. Respectfully, the authorities ***Hill & Redman's Law of Landlord and Tenant*** and ***National Westminster Bank Ltd -v- Hart & Another*** [1983] QB 773 cited by Counsel for the defendant do not apply and do not assist the defendant's case.

There can be no doubt that the document executed on July 12th, 2007, by the claimant and the defendant constitutes a perfectly valid business agreement between them. The next question to be determined is whether the defence of *non est factum* set up by the defendant can be sustained. It is to that defence that I will now turn.

Defence of non est factum

The defence of *non est factum* appears to be the hub of the defendant's case in this claim. It ties in with the defendant's further assertion that she was only an employee of the claimant and not a lessee.

The defence of *non est factum* is a special defence in the law of contracts. If established, the defence allows a party relying on it, to completely avoid being bound by a contract. The burden, of course, of establishing the defence is a heavy one on the person who seeks to avail himself of it. The authorities on this proposition of law are many and varied.

In considering the defence of *non est factum* in the present case, I feel it is useful to begin with the statement of the principles of law stated in ***Chitty on Contracts,*** Thirteen Edition Vol. 1 para. 5-101 pp. 484-485, referred to and relied upon by Ms. Segura-Gillett of Counsel for the defendant in her written submission. The learned author states as follows:

> "The general rule is that a person is estopped by his or her deed, and although there is no such estoppels in the case of ordinary signed documents, a party of full age and understanding is normally bound by his signature to a document, whether he reads or understands it or not. If, however, a party has been misled into executing a deed or signing a document essentially different from that which he intended to execute or sign, he can plead non est factum in an action against him. The deed or writing is completely void in whosoever hands it may come. In most of the cases in which non est factum has been successfully pleaded, the

> mistake has been induced by fraud. But the presence of fraud is probably not a necessary factor. As Byles J. said in ***Foster v Mackinnon*****: '**it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.'

Likewise, Mr. Flowers SC, on behalf of the claimant, referred the court to a similar passage in ***Halsbury's Laws of England***, 4th Ed. Re-Issue Vol. 13 para. 69 page 48 where it states:

> "The plea of non est factum on the ground mistake as to contents appear originally to have been allowed in favour of those who were unable to read owing to blindness or illiteracy and who therefore had to trust someone to tell them what they were executing. It is also now allowed to those who are permanently or temporarily unable, through no fault of their own, to have any real understanding, without explanation, of the purport of the particular document, whether their inability arises from defective education, illness or innate incapacity."

One can see that the general principle is that a person of full age and understanding is bound by his or her signature to a document whether he reads or understands it or not, unless he or she is misled into executing a deed or signing a document which is essentially different from that which he or she intended to execute or sign. In the latter situation the person so executing or signing the document can be permitted to rely on the defence of *non est factum*.

The case law authorities referred to by both counsel have succinctly demonstrated that one aspect of the doctrine of *non est factum* that has consistently been applied by the courts is that "the plea of non est factum must be kept within narrow limits:" ***Muskham Finance Ltd. -v- Howard*** [1963] 1QB 904 at 912 per Donovan LJ. This is because, as Lord Donovn LJ continued:

> "much confusion and uncertainty would result in the field of contract and elsewhere if a man were permitted to try to disown his signature simply by asserting that he did not understand that which he had signed."

In the present case, the defendant asserted that she thought she was signing an employment contract instead of a contract to lease the claimant's business. In other words, she claimed that she had signed a document totally different from the one she believed it to be, the position relied upon by the defendant in ***Saunders -v- Anglia Building Society*** [1970] 3 All ER 961; 11971] AC 1004. The Court of Appeal and House of Lords rejected the defence of *non est factum* in that case.

Briefly ***Saunders -v- Anglia Building Society*** (sub nom ***Gallie -v- Lee***) concerns one Mrs. Gallie, a 78 year old widow who made a will leaving her house to her nephew, Parkin. One Lee who was a good friend of Parkin and who was heavily in debt, discussed with Parkin how to raise money on the house. A document was prepared and in the presence of Parkin, Lee put the document before Mrs. Gallie, telling her that it was a deed of gift of the house to Parkin. The deed was in fact a deed of sale of the house to Lee. With the deed, Lee mortgaged the house of Anglia Building Society for a loan of £2,000.00. Lee defaulted in payments and the Building Society sued for possession of the house. Mrs. Gallie pleaded the defence of *non est factum*. She said that her intention was to give the house to her nephew, Parkin, and that she signed the deed to give effect to her intention.

In rejecting the Mrs. Gallie's plea of *non est factum*, the House of Lord held the plea of non est factum can only rarely be established by a person of fall capacity, and that although it is not confined to blind and illiterate, any extension of the scope of the plea of non est factum must be kept with narrow limits. The House of Lords made it plain that it is unlikely that the plea would be available to a person who signed a document without informing himself of its meaning. It is pertinent to note the remarks made by Lord Hodson as follows:

> "To take an example, the man who in the course of his business signs a pile of documents without checking them takes the responsibility for them by appending his signature. It would be surprising if he was allowed to repudiate one of those documents on the ground of non est factum.
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> ……
>
> Want of care on the part of the person who signs a document which he afterwards seeks to disown is relevant. The burden of proving non est factum is on the party disowning his signature; this includes proof that he or she took care. There is no burden on the opposite party to prove want of care."

The case for the defendant in support of her defence of *non est factum* is that the claimant asked her to manage his jewelry and framing business, to which she agreed at a monthly salary of $2,000.00. She stated that following their discussions she went into Radiance Jewelry and commenced work. The defendant further stated in her witness statement that on 12 July 2007 the claimant asked her to follow him to the work place of Mr. Scott Haylock, a Justice of the Peace, to sign her employment contract. At Mr. Haylock's work place, the document was simply presented to her (defendant) at the signature page and told to sign it. She said she did sign it believing it to be an employment contract embodying the terms earlier orally agreed to between the claimant and herself. (See paragraphs 13 and 14 of Defendant's Witness Statement). In cross-examination by Mr. Flowers SC, she said that she signed the document without reading it.

The defendant further instanced that she would officially request permission before leaving the store, see for example "PR 3 (b)" which is a Letter dated 29th February, 2008 to claimant seeking permission to leave store. In view of the Agreement, the claimant quite properly ignored that notice, as he said in his evidence in cross-examination in that the defendant was attempting to get away from her position as a lessee.

I think I should also mention that in her evidence in chief, the defendant stated that she made notations at page 5 of the Agreement in respect of items Nos. 5, 11 and 21 in First Schedule to the Agreement. In re-examination she added that she made the notation at the end of September 2007.

I have to say, that the above scenario is the classic situation where the court is unlikely to permit a party to rely on the plea of non est factum as laid down in ***Saunders -v- Anglia Building Society***. The defendant chose not to read the document before signing it. There was no evidence to suggest that she was tricked into signing the agreement nor was there any evidence to show that at the time of signing before the Justice of the Peace, she raised any issue about the document before signing it. There was clearly no evidence of any form of incapacity affecting the defendant at the time. In fact, the defendant was an intelligent and educated person with business experience or to adopt the description used by Mr. Flowers SC "the defendant is a seasoned businesswoman". She had been in jewelry business at the Diamonds International prior to taking on the claimant's business. In this regard, defendant is clearly in a much difference position to the defendant in ***Foster -v- Machinnon*** (1869) LR 4CP 704 where the defendant

was an elderly gentleman who was induced to sign a bill of exchange on a false representation that it was a guarantee similar to the one he signed previously.

In this case the defendant is a person of full age and understanding who can read and write, and who signed a document that was intended to have legal consequences on her. If she did not take the trouble to read it, but simply signed it relying on the word of another (the claimant, as she said) as to the nature of the document, then in my judgment she cannot be heard to say that it is not her document. By her action in signing it, she represented to the world at large, and especially to those in whose hands it may come, that it is her document. She cannot now go back on it and disavow her signature, and say that the document is not hers.

On the facts of this case and for the above reasons, the defence of *non est factum* must fail.

Whether the defendant owes the claimant $39, 905.79

On the issue of whether the defendant is indebted to the claimant in the sum claimed, the evidence presented is less troublesome. On the evidence from

both the claimant and defendant, it is plainly obvious that the defendant received jewelry from the claimant and his wife. The jewelry items were invoiced to the defendant who was to pay the claimant for jewelry items. That only makes sense since the jewelry business was at the time in the hands of the defendant.

Whilst the defendant gave the reason for terminating the agreement was because she realized it was not an employment contract as she believed it to be, she acknowledged being bound by the terms of the said Agreement by giving the required notice of termination pursuant to Clause 10 of the agreement. The contents of the notice of termination 1st October, 2007, made no mention of the allegation that the contract was different from the one the defendant believed it to be:

> "Dear Mr. & Mrs. Sanchez,
>
> This letter serves as my official notice of termination; due to unforeseen matters beyond my control, effective immediately giving you six months notice as per contract.
>
> Sincerely,
> Pamela Robateau "

Far from the reason given by the defendant for terminating the agreement, the real reason, in my view, was that the business was not making enough money to pay the claimant for the jewelry supplied and invoiced to the defendant. (See paragraph 24 of Defendant's witness statement).

Faced with the financial difficulty experienced by the business, the defendant as lessee, agreed to return the business to the claimant with all merchandised left in the business to be sold back to the claimant. That is clearly shown by the proposal signed by the defendant on January 15, 2008 and effective as from February 2, 2008 as follows:

> "I, Pamela Martinez Robateau, of Ladyville, Belize District, Belize; the lessee of **Radiance Jewelry** and **ABC Framing,** hereby proposes:
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> 1. Agree to return business known as **Radiance Jewelry** and **ABC Framing**, handing over all claim as lessee, effective: Feb. 02, 2008.
> 2. All Stock (merchandize) in store will be sold to previous owner: Bruce Sanchez at selling price less a percentage of: per attached Schedule.

Signed: (Defendant's Signature)
Pamela Martinez Robateau

Witness : ----------
Sheryl Augustus "

The evidence from both the claimant and defendant goes on to show that faced with the demand for the payment of invoiced jewelry in the sum of $109,694.02, supplied to the defendant, she insisted that an inventory of the stock be taken. The claimant eventually agreed to the inventory to be conducted on 16 and 17 July 2008. See paragraphs 33-35 of the defendant's witness statement and confirmed in her sworn oral evidence in Court.

As a result of the inventory taken, both parties agreed that shown in their evidence that the remaining merchandise valued at $66,846.73 were to be returned to the claimant. A further sum of $2,941.50 was also taken into account, leaving the balance of $39,905.79 due and outstanding from the defendant. For the jewelry supplied and invoiced to her.

There is no dispute from the defendant in her evidence that the claimant invoiced here for jewelry supplied to her. In her own evidence at the trial, she insisted on an inventory to determine whether the amount of $109,694.02, initially claimed by the claimant was as per the invoices issued. The inventory exercised had been done resulting in her paying back $66,846.73 to the claimant in the value of the remaining stock. Taking into account a further sum of $2941.50, the balance outstanding and owing must be $39,905.79. There is no other evidence to support the defendant's contention that she did not owe the claimant that sum of $39,905.79. It is a futile exercise on her part to insist that she did not owe that amount to the claimant for jewelry supplied to her in the course of leasing the claimant's business in Radiance Jewelry and ABC Framing.

On the evidence, I am satisfied that the claimant has established his claim against the defendant in the sum of $39,905.79 for jewelry supplied to the defendant and remains outstanding and owing.

Judgment is given to the claimant in the sum of $39,905.79 together with costs to be taxed, if not agreed.

Order Accordingly

Hon. Justice Sir John Muria

Musa & Balderamos, Attorneys-at-Law for the Claimant
Arnold & Co., Attorneys-at-Law for the Defendant

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