

IN THE HIGH COURT OF SWAZILAND

ARCADE CENTRE CO. LIMITED

Plaintiff

V

SWAZILAND NATIONAL COMPUTER COLLEGE & ANOTHER

Defendant CIVIL TRIAL NO. 677/99

Coram S. W. SAPIRE, CJ

For Plaintiff Mr. Hlophe

For Defendant Mr. T. Simelane

JUDGMENT

(13/07/99)

The Plaintiff has sued the two defendants in claiming cancellation of a lease agreement, ejection of the defendant from the premises and payment of E15 570.00 in respect of arrear rentals, together with interest and costs in attorney-client scale. After Service of the summons an appearance to defend was entered. This application for summary judgment was then launched.

The affidavit filed in reply by the defendant claims that all the arrears that are claimed have in fact been paid. In support of this allegation the defendant has attached

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what he refers to as "some of the receipts". What these receipts reveal is that some payments were made subsequent to the issue of summons in April 1999.

This application for summary judgment was launched on the 29th of April, At the date of service of the summons at least to the extent of subsequent payments the amount claimed does not appear to have been paid.

I have some difficulty in regard to the amount of the arrears claimed. Making a calculation from the provisions of the lease a copy of which is attached to the summons, the total rent which would have accrued as at the date of issue of the summons was less than the amount claimed as arrears. This is unexplained and there is accordingly a substantial doubt as to the amount owing to the plaintiff. I accordingly cannot give default judgment in respect of the arrear rental. This will require proof and further explanation.

The claim for ejection still remains valid. It is quite clear that as at the date of the issue of summons the defendant was in arrear and he had not paid the rental at least in the amount of the payments it made subsequent to the issue of summons. The lease provides that if the defendant as lessee does not pay the entire rental on due date and is in arrear then the plaintiff as lessor would be entitled to cancel the lease and eject the defendant from the premises.

The relevant portion of the lease reads as follows:

"In the event of the non-payment of the rental or portion thereof by due date or of the breach of any other terms and conditions of the lease the Lessor shall have the right forthwith to cancel the lease and to re-take vacant possession of the leased premises, without prejudice to any claim which the Lessor may have against the Lessee for rent already due or for any damages which the Lessor may suffer by reason of the early termination of the lease. "

Once it is shown and this is quite clear, that at the date of the service of the summons rental was in arrear, it is the right of the Lessor to cancel the lease and to eject the defendant as Lessor from the premises.

Accordingly it is proper for me at this stage to grant an order of ejectment in terms of prayer 1.2 in the notice of application for summary judgment.

Accordingly the order which I make is that there is an order for ejectment of the defendant from the premises. The 1st defendant is given leave to defend the issue of the amount of arrears. The plaintiff is entitled to the costs of the proceedings thus far in respect of the ejectment claim. There appears to be no case against 2nd Defendant at all and accordingly she is given leave to defend.

S.W. SAPIRE, CJ