

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF
BELIZE**

**CCJ Appeal No. CV 005 of 2013
BZ Civil Appeal No. 5 of 2011**

BETWEEN

**ERROL PRATT, DOING BUSINESS
AS TOUCAN HELICOPTER LTD
TOUCAN HELICOPTER LTD**

APPELLANTS

AND

**KARL R. RENZ III
CONTINENTAL HELICOPTERS INC
WAYNE MACAULAY
ATLANTIS HELICOPTERS DE MEXICO
S.A DE C.V.**

RESPONDENTS

JUDGMENT SUMMARY

- [1] This appeal centered on the true nature of a Helicopter Lease/Purchase Agreement for a 1973 Bell Helicopter entered into for the period 30th April 2005 to 30th April 2006 between Karl R Renz III¹ and Errol Pratt. The Respondents as claimants sought an order for repossession of the helicopter and damages after serving a notice of default and notice of termination on the Appellants on 1st May 2006 and 1st June 2006 respectively.
- [2] The Respondents were successful in the Belize High Court, where Muria J ruled that the agreement was a lease or hire arrangement with an option to purchase the helicopter for US\$240,000 and not a contract of sale by instalments. Furthermore, the option to purchase could not be exercised owing to service of valid notices of default and termination upon the defendant Appellants after their failure to make the March and April

¹ The Court noted at [5] that Karl R Reinz III in the title to these proceedings below is Karl R Renz III.

2006 monthly rental payments and to report the total flight hours flown for such months. In addition to making an order for possession, Muria J also ordered the US\$100,000 deposit paid be treated as forfeited, damages by way of rent arrears to be assessed and to be paid to the Respondents as well as costs. This decision was upheld in its entirety by the Court of Appeal.

- [3] Upon appeal to the CCJ the Appellants submitted that the courts below had erred in their assessment of the evidence in concluding that the agreement was a lease/hire arrangement containing an option to purchase instead of being a contract for sale, and in finding that it had been duly terminated by service of valid notices. They also submitted that the order that the deposit be forfeited was an error of law. The Court upheld the order for possession, refusing to disturb the findings of the lower courts as to the true nature of the agreement and its due termination by service of valid notices. While the Court further held that the deposit was not forfeited, the Appellants had to allow the unpaid rent and the damages to be set off against the deposit.
- [4] The orders made were confined to the Appellants and the First Respondent owing to the fact that the Second, Third and Fourth Respondents were strangers to the 2005 lease/purchase agreement, and, indeed, were parties to an entirely different lease of the helicopter for three years from August 1st 2006. The Appellants were, however, jointly and severally liable upon failure of their appeal, having taken no issue with the orders made against Toucan Helicopters Ltd, even though the lease/purchase agreement involved two individuals, the First Respondent, Mr Renz, and the First Appellant, Mr Pratt.
- [5] The Court highlighted that appellate courts will only review concurrent findings of fact by the trial judge and the Court of Appeal in most exceptional circumstances where there is a real possibility of a serious miscarriage of justice, as set out in *Lachana v Arjune*,² holding that no such exceptional circumstances existed in the circumstances of this appeal. It also rejected the argument that the lessor's notices of default and of termination were invalid by virtue of the fact that they were issued and served after the one year lease granted by the agreement had expired on 30th April 2006. The Court emphasised that the termination of a contract, whether by acceptance of a repudiatory breach, by a notice of termination or by effluxion of time, does not prejudice the rights accrued to a party before such termination: *Johnson v Agnew*.³

² [2008] CCJ 12 (AJ) [11]-[14].

³ [1980] AC 367.

- [6] In relation to holding that the US\$100,000 deposit paid in respect of the option to purchase the helicopter for US\$240,000 had not been forfeited, reliance was placed on the Privy Council case, *Workers Trust & Merchant Bank Ltd v Dojap Investments Ltd*,⁴ which had seemingly been overlooked by the lower courts. On the authority of this case a deposit must be treated as an unenforceable penalty where, at the time of the contract, its amount does not represent a genuine pre-estimate of loss likely to be suffered by the innocent party for breach of the contract. The Court held that the US\$100,000 paid by the Appellants was a penalty and as such could not be forfeited, though it was off-settable against the damages.
- [7] The Court made some useful observations on the conduct of civil litigation when pointing out how the Appellants' pleadings flagrantly breached the duty imposed under the Civil Proceedings Rules to set out fully and clearly matters raised by way of defence or counterclaim. It emphasised the need for counsel at the trial stage clearly to make any objection to the reception of particular evidence: once hearsay is admitted in a civil case it is part of the evidence so that thereafter objection can only be made as to its weight. Furthermore, if there is an attempt to make out an exceptional case where this Court is to be asked to rule on findings of fact, a clear written summary of the contentious matter, supplemented by supporting documentation, needs to be before the Court, so that precious time is not taken up at the hearing in an extensive paper-chase trying to find some pieces of paper that may or may not turn out to be relevant.
- [8] The Court ultimately held that the Appellants were in breach of the agreement and that the First Respondent was entitled to possession of the helicopter and US\$12,000 for unpaid rent. The deposit paid by the Appellant was ordered to be returned to the extent, if any, that it was not exceeded by the amount for unpaid rent and any amount of damages found payable to the First Respondent. Damages for breach of the said Agreement were ordered to be assessed by a judge in chambers, with interest thereon at 6% from the date of the issue of the claim to the date of judgment and the Appellants were ordered to pay the costs of the appeal.

⁴ [1993] AC 573, [1993] 2 All ER 370 (PC).