

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 504 of 2003

BETWEEN:

**DEBDOR COMPANY LIMITED
(Plaintiff)
AND**

**PROSPECT BAY RESORTS LIMITED
(Defendant)**

Before the Honourable Mr. Justice Carlisle Payne, Judge of the High Court.

2003: September 16

October 30

Mr. Elliott Mottley, Q.C. for the Plaintiff with Ms. Karen Culbard

Mr. Andrew Thornhill for the Defendant with Ms. Nicole Roachford.

Reasons for Decision

[1] The main issue is whether the Defendant is in breach of a lease between the parties.

[2] When the matter first came on Mr. Thornhill submitted that it was more appropriate to be begun by Writ because of several contentious issues, and he sought an order accordingly.

[3] From the affidavits on both sides it appeared to me that the alleged breaches were the carrying out of the works which formed the subject matter of The Chief Town Planner's Enforcement Notice No. 106 of 2002. These were the only breaches or works identified in the application and affidavits. The issues for the court appeared to be whether those works concerned the hotel and grounds named in the lease between the parties dated 16th July, 1999, and whether those works were carried out in breach of the lease. The positions of the parties were set out in their affidavits. There appeared to be no substantial dispute as to the material facts.

[4] The defendant's application was therefore refused.

[5] During the hearing however, the Applicant led oral evidence from the Chief Town Planner of a complaint received by his office in January 2002 from Southern Palms Beach Hotel who owned the adjoining premises, of work carried out by the defendant in close proximity to their boundary. This complaint was investigated by the Chief Town Planner. As a result an Enforcement Notice No. 105 of 2002 was prepared in October 2002, but was sent out on 29th October 2003, the day before the Chief Town Planner gave evidence.

[6] Mr. Thornhill objected to the admission of this evidence from the Chief Town Planner, on the grounds that it formed no part of the Applicant's case as presented in his summons and affidavit, and asked that his earlier application that the matter proceed as if begun by writ to be revisited.

[7] I consider that the evidence concerning Enforcement Notice No. 105 of 2002 raises fresh issues. Further affidavit evidence or oral evidence from the Defendant can now be expected. The court does not know what

theDefendant's position will be.

[8] I therefore revisited my earlier decisionand ordered that the matter proceed as if begun by writ.

[9] I did not have occasion to consider anyconsequential directions or orders, since counsel for the applicant expressedhis disagreement with my decision and announced that he would appeal.

CarlislePayne

High CourtJudge.