

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1497 of 2020

[Total Parco Pakistan Limited & another versus C.A.A. and 02 others]

Plaintiff 1	:	Total Parco Pakistan Limited through Mr. Abraiz Ali Khan, Advocate.
Plaintiff 2	:	M/s. Friends Enterprises Ltd., through Mr. M.M. Aqil Awan, Advocate.
Defendants 1-2	:	Pakistan Civil Aviation Authority and another through M/s. Amna Warsi and Ayesha Warsi, Advocates alongwith Mr. Muhammad Farooq Afzal, Joint Director Legal, CAA.
Defendant 3	:	Nemo.
Applicant/Intervener	:	M/s. Stanley House Industries (Pvt.) Ltd., through Mr. Rizwan Ahmed Siddiqui, Advocate.
Dates of hearing	:	08-02-2022 and 21-03-2022
Date of decision	:	16-11-2022

ORDER

Adnan Iqbal Chaudhry J. - The dispute is over the lease of a petrol pump site at Star Gate, Shahrah-e-Faisal, near Jinnah International Airport, Karachi [**demised premises**], vesting in the Defendant No.1 [CAA], who had renewed the lease of the same in favor of Caltex (Pvt.) Ltd. for a period of 30 years commencing 19-07-1989 and expiring on 18-07-2019. By the time the renewed lease was reduced in writing and registered on 23-04-2013, Caltex (Pvt.) Ltd. had become Chevron Pakistan Ltd. The Plaintiff No.1 claims to be the successor/assignee of the latter regards the demised premises. The Plaintiff No.2 was the dealer/agent of the Plaintiff No.1 at the demised premises. It was subsequently added as party to the suit but confined to an amended title of the suit.

2. Before expiry of the lease deed dated 23-04-2013, the Plaintiff No.1 addressed a letter dated 06-03-2019 to the Defendant No.3, the Additional Director Estates of the CAA, requesting renewal of the lease expiring on 18-07-2019. By letter dated 18-03-2019, the Defendant No.3 replied as under:

"2. It is informed that in pursuant to CAA Board's decision taken in its 175th meeting held on 17th April, 2018, necessary directions/approval is hereby conveyed for grant of renewal in lease period for another term of 30

years from the date of expired period i.e. 18-07-2019 in respect of M/s Total Parco Pakistan Ltd for their existing outlet situated at Stargate main Shahrah-e-Faisal JIAP Karachi considering the rate of Rs.65,000/- per sq yd under CAA Land Lease Policy 2012, subject to the following terms & conditions:-

.....

4. *M/s Total Parco is requested to deposit the following amount to CAA as per CAA Land Lease Policy 2012:-*

.....

5. *All codal formalities with regard to execution of addendum for renewal/extension of lead period for another term of 30 years commencing from the date of expiry of lease deed under CAA Land Lease Policy 2012 be completed with the office of Airport Manager CAA JIAP Karachi after making all requisite payments by M/s Total Parco. Moreover, the lease deed should also be got registered from the office of Registrar of the concerned District on non-judicial stamp papers of appropriate value at the expense of the lessee."*

Thereafter, the Plaintiff No.1 claims to have made payments to the CAA *vide* cheques dated 26-08-2019 and 13-11-2019 towards the land premium and ground rent.

3. It is averred by the Plaintiff No.1 that while it was waiting for a draft of the renewed lease deed for execution, it was shocked on 31-01-2020 when the CAA evicted the Plaintiffs by force, sealed the demised premises, and handed to the Plaintiffs a termination notice dated 31-01-2020 as under:

"TERMINATION NOTICE

*M/S TOTAL PARCO (PVT) LTD PETROL PUMP NEAR STARGATE
AT JIAP KARACHI*

1. *You are hereby informed that the Lease Deed executed between CAA and you for the subject pump stands expired and according to Clause 6 of the said lease agreement the Lessee shall without delay hand over the premises with all fitting and fixture etc. to CAA on its expiry. Therefore, the letter No. HQCAA/2833/87/7/Est/206 dated 18.03.2019 issued in this regard stands cancelled.*

2. *Therefore, it is advised to vacate peacefully the premises in accordance with Clause 6 of the executed lease agreement and handover the subject site to CAA."*

4. To challenge the aforesaid termination notice and eviction from the demised premises, the Plaintiff No.1 filed C.P. No. D-750/2020 before this Court. By an interim order dated 04-02-2020 the termination notice was suspended, and as per the Plaintiff No.1, possession was restored to it. However, the petition was eventually dismissed by a learned Division

Bench by a short order dated 09-10-2020, and on the same day the CAA again evicted the Plaintiffs and sealed the demised premises. The reasons that followed for dismissing C.P. No. D-750/2020 stated essentially that after the lease of the demised premises had expired the petitioner/Plaintiff No.1 had no vested right to be in possession, but since it was being asserted by it that there was a contract between the parties for renewing the lease, which assertion was disputed by the CAA, the petitioner/Plaintiff No.1 was left to a suit for specific performance of the alleged contract; hence this suit.

5. It is the case of the Plaintiff No.1 that the proposal made by it for renewing the lease of the demised premises was accepted by the CAA by letter dated 18-03-2019; that the Plaintiff No.1 also paid the agreed consideration which was accepted by the CAA without demur; hence there was a concluded contract between the parties for renewing the lease of the demised premises and the Plaintiff No.1 was entitled to its specific performance. Mr. Abraiz Ali Khan and Mr. M.M. Aquil Awan, learned counsel for the Plaintiffs further submitted that clause 5 of the expiring lease deed dated 23-04-2013 was a covenant to renew the lease on its expiry, and the CAA was bound to do so as held in the case of *State of U.P. v. Laljit Tandon*, (2004) 1 SCC 1; that CAA's contention that the renewal letter dated 18-03-2019 had not been authorized by its Board, was an after-thought, and in any case hit by the doctrine of indoor management. Without prejudice to that, learned counsel submitted that since the CAA had accepted lease rentals after expiry of the lease, the Plaintiff No.1 was in the very least a lessee holding-over under section 116 of the Transfer of Property Act, 1882 and could only have been evicted after prior notice and by way of a suit for eviction. Mr. Rizwan Ahmed, learned counsel for the Intervenor also adopted these submissions.

6. On the other hand, it is the case of the CAA that the Plaintiff No.1 had no *locus standi* to seek renewal of the lease as the demised premises had been leased to Chevron Pakistan Ltd., not to the Plaintiff No.1; that in terms of the lease, the former could not have assigned the lease to the Plaintiff No.1 without permission of the CAA; that the Board of the CAA had never approved renewal of the lease; that as per the Land Lease Policy of the CAA, commercial leases could only be granted through open auction; that

the Defendant No. 3 had connived with the Plaintiff No.1 against the CAA as he was never authorized to issue the renewal letter dated 18-03-2019. Ms. Amna Warsi, learned counsel for the CAA further submitted that the rate for renewing the lease mentioned in the letter dated 18-03-2019 had also not been approved by the Board; that the Defendant No. 3 was not authorized to accept any lease rentals on behalf of the CAA; that he was suspended from service after a departmental inquiry *albeit* a stay order is operating in his favor; that by virtue of section 11(5) of the Civil Aviation Authority Ordinance, 1982, the provisions of the Federal Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 were applicable to the land and buildings of the CAA, and section 3 of the Ordinance of 1965 had empowered the CAA to enter upon the demised premises on expiry of the lease to recover possession from the Plaintiffs. Learned counsel informed that after dismissal of C.P. No. D-750/2020 in October 2020, the CAA had issued a cheque of Rs. 20,581,609/- to refund the unadjusted lease rentals but the same was refused by the Plaintiff No.1.

7. Heard the learned counsel and perused the record.

CMA No. 11287/2020, application for rejection of plaint:

8. It was urged by learned counsel for the CAA that the suit was barred by section 42 of the Specific Relief Act inasmuch as the declaration sought that the Plaintiff No.1 has a right to renewal of the lease, is not a declaration 'to any legal character' or to 'any right to property'. Without dwelling on that submission and as discussed in more detail *infra*, the suit is essentially for specific performance of an agreement to lease. To that end, the Plaintiff No.1 has made an independent prayer in clause (iv) of the prayer clause. Therefore, even assuming for the sake of argument that the declaration sought is not envisaged by section 42 of the Specific Relief Act, the plaint can still not be rejected. The application is therefore misconceived.

CMA No. 6514/2021, application under Order I Rule 10 CPC:

9. Stanley House Industries (Pvt.) Ltd. prays for addition as party to the suit. Said Intervenor was operating a CNG Filling Station at the demised premises pursuant to an agreement with the predecessor of the Plaintiff No.1. As per clause 1.4 of such agreement, the Intervenor was only

a licensee of the lessee at the demised premises *"having no vested right, authority and interest therein to remain as such in use of occupation thereof, without the written approval, consent of the company (lessee)"*. Since the Intervenor has no independent right to the demised premises except under authority from the Plaintiff No.1, its addition to this suit will not serve any purpose to it, nor will it in any way facilitate the Court in determining the suit. The Intervenor is therefore neither a necessary nor a proper party to the suit.

CMA No. 10625/2020, contempt application:

10. By an interim order dated 12-10-2020 the CAA was restrained from creating third party interest and from taking coercive action against the Plaintiff No.1. Per the Plaintiff No.1, such order entailed that the demised premises be de-sealed by the CAA and the Plaintiff No.1 be permitted to enter and recommence operations; hence the contempt application. In my view, had the intent of the interim order been to put the Plaintiff No.1 back in possession of the demised premises, the order would have stated so categorically. In fact, the CMA on which such interim order was passed had not even prayed for restoration of possession. Therefore, there is no contempt of court.

CMA No. 10331/2020 & CMA No. 1590/2020, injunction applications:

11. By the first injunction application the Plaintiff No.1 prayed for suspension of the termination notice dated 31-01-2020; for restraining the CAA from creating third-party interest in the demised premises; and from taking coercive action against the Plaintiff No.1. By the second injunction application the Plaintiff No.1 prays for possession of the demised premises.

12. CAA's argument that the Plaintiff No.1 has no *locus standi* to seek renewal of the lease, proceeds on the premise that the lease deed dated 23-04-2013 was with Chevron Pakistan Ltd. and not the Plaintiff No.1. Per learned counsel for the Plaintiff No.1, it was in possession of the demised premises as successor of Chevron Pakistan Ltd. Though order dated 16-01-2018 in J.C.M. No. 19/2017, on which the Plaintiff No.1 places reliance, does not relate to Chevron Pakistan Ltd., such order does recite the fact that the business of Chevron Pakistan Ltd. and been acquired by the Plaintiff No.1. In any case, there is nothing to show that prior to the dispute

the CAA had ever taken issue to the presence/business of the Plaintiff No.1 at the demised premises. Therefore, for the present, CAA's objection to the *locus standi* of the Plaintiff No.1 does not have much force.

13. It is not disputed that the lease of the demised premises expired on 18-07-2019, and under the first part of clause 5 of the expiring lease read with section 108(q) of the Transfer of Property Act, 1882, the Plaintiff No.1 was then bound to deliver vacant possession of the demised premises to the CAA. Apparently, by the time this suit was filed on 12-10-2020, the Plaintiffs had already been evicted by the CAA on 09-10-2020 *albeit* by use of force. Though the CAA relies on section 3 of the Federal Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 to justify such eviction, which provision is applicable to the land of the CAA by virtue of section 11(5) of the Civil Aviation Authority Ordinance, 1982, it will be pointless to advert to that aspect of the matter when the plaintiff does not challenge the act of eviction. It appears that the decision not to challenge the eviction *per se* was conscious, inasmuch as the judgment in C.P. No. D-750/2020 had already held that after expiry of the lease the Plaintiff No.1 had no right to be in possession of the demised premises, and in case it relied on a contract arrived to renew the lease, it could seek possession only through a suit for specific performance of such contract. The suit is therefore primarily for specific performance of an 'agreement to renew a lease' as distinct from a lease deed, which agreement per the Plaintiff No.1, had been arrived at when the CAA accepted the proposal to renew the lease *vide* letter dated 18-03-2019. The Plaintiff No.2 of course being the dealer/agent of the Plaintiff No.1 with no privity of contract with the CAA, has no separate case and none has been so pleaded.

14. The letter dated 18-03-2019 communicating to the Plaintiff No.1 that its proposal to renew the lease had been accepted, was written by the Additional Director Estates of the CAA (Defendant No.3) who held-out that the Board of the CAA had approved the renewal in its 175th meeting held on 17-04-2018. But the minutes of that meeting placed on the record by the CAA do not show any such approval, and hence CAA's submission that the acceptance letter dated 18-03-2019 issued by the Defendant No.3 was unauthorized and collusive. The argument then on behalf of the Plaintiff No.1 was that once the acceptance letter dated 18-03-2019 had been issued

to the Plaintiff No.1 by an officer of the CAA, whether that was or was not backed by an approval of the CAA Board, was a matter pertaining to the indoor management of the CAA and cannot be set-up as a defense.

15. The rule of indoor management was explained by the Supreme Court in *Muhammad Siddiq Muhammad Umar v. Australasia Bank Ltd.* (PLD 1966 SC 685), and followed in *Rahat and Company v. Trading Corporation of Pakistan* (PLD 2020 SC 366) as follows:

“According to this rule persons dealing with a company are bound to read the public documents of a company, i.e. its Memorandum and Articles of Association, and to satisfy themselves that the transaction entered into or proposed to be entered into is not inconsistent therewith, but they are not bound to do more, nor are they required to enquire into the regularity of the internal proceedings or what has been called ‘the indoor management of the company’, for, they are entitled to assume that all other things have been done regularly.”

Therefore, the doctrine of indoor management assumes that the outsider dealing with the corporate entity had in the very least satisfied himself that the transaction was not inconsistent with the public document that governed the corporate entity.

16. The letter dated 06-03-2019 written by the Plaintiff No.1 to the Defendant No.3 requesting renewal of the lease was as follows:

“The lease agreement of Star Gate Service Station commenced from 19th July, 1989 and is due to end on 18th July, 2019. In this regard, we request your support to process our case before the date of completion of specified period of lease i.e. 18th July, 2019 in accordance with CAA Land Lease Policy”. (underlining supplied for emphasis)

From the above it is apparent that while seeking renewal of the lease the Plaintiff No.1 was cognizant of the Land Lease Policy of the CAA, rather it had sought renewal “in accordance with” such Policy. Therefore, for the Plaintiff No.1, the Land Lease Policy was not a matter of the indoor management of the CAA.

17. The Land Lease Policy of the CAA in vogue at the time was the one dated 01-03-2012. The policy of 2019 is not relevant for present purposes as

it came into effect later on 03-09-2019. The Land Lease Policy, 2012 provided *inter alia* that :

"D2. PERIOD OF LEASE

D2.1 The renewal of lease after completion of 30 years should not be on the basis of mutual consent. The same should be on current market rate and after normal bidding process. However, first preference should be given to the original lessee if he agrees to pay the highest amount of open bidding subject to performance of lessee.

D3. MARKET VALUE OF THE LAND

D3.1. The market value of the land shall be assessed as per following procedure:

D3.1.1 Value of land shall be assessed by local revenue authorities which shall be used as baseline.

D3.1.2 The Valuation of land shall be obtained from 3 State Bank approved valuers and select the highest estimate.

D3.1.3 The Real Estate Agents to be verified by association of builders and developers (ABAD), having sound reputation and performed lease transactions of the substantial value in the vicinity be registered with CAA and market value of land be also obtained from them in addition to existing sources and maximum value be taken as base price instead of average price.

D3.1.4A Comparison of land price with similar leases in the area shall be carried out.

D3.1.5 Area to be leased shall be visited by Price Evaluation Committee (D4 below) to ascertain exact land requirement.

D3.1.6 Based on above, reserve price shall be fixed by the Price Evaluation Committee for inviting tenders.

D12. PRIVATE TREATY

D12.1 Executive Committee may decide to dispense with the auction for lease and may instead cause the site to be leased by Private Treaty on such terms and conditions as may be recommended by the respective Committee and approve by the Executive Committee/competent authority. The proposals under private treaty be rationalized and such proposals should have strong justifications.

D12.2 The Private Treaty is to be restored to sparingly and be restricted to the following:

D12.2.1 Airlines, aviation related training institutes and services, and flying clubs

D12.2.2 Govt./Semi Govt. agencies only for official purposes.

D12.3 Leasing at the concessional premium through Private Treaty for place of worship or amenity purpose has been abolished.

D12.4 All Private Treaties shall be subject to the approval of CAA Board."

18. Thus, under the erstwhile Land Lease Policy of the CAA, a lease expiring after 30 years was not to be renewed by mutual consent, but the premises was to be leased after open bidding *albeit* with a preference to the previous lessee if it matched the highest bid. Though the Policy also envisaged a lease by private treaty, such was restricted to airlines, aviation related training institutes and services, flying clubs, and government/semi-government agencies for official purposes. Clearly, the Plaintiff No.1 was not amongst such entities so as to be leased the demised premises without a process of open bidding. Per the letter dated 18-03-2019 issued by the Defendant No.3, the demised premises had been valued at Rs. 65,000/- per square yard, but despite the methodology provided in the Policy for fixing value of land proposed to be leased, there is nothing to show how the value of the demised premises had been fixed. Therefore, the purported renewal of the lease was not in accord with the Land Lease Policy, and since the Plaintiff No.1 itself had sought renewal under such Policy, it cannot attribute want of knowledge of the violation to the doctrine of indoor management.

19. Consequently, where the Board of the CAA had never approved renewal of the lease, and where it was, or ought to have been in the knowledge of the Plaintiff No.1 that a further lease of the demised premises could only be granted in line with the Land Lease Policy, the letter dated 18-03-2019 issued by the Defendant No.3 did not constitute a contract for renewing the lease of the demised premises.

20. The other leg of the Plaintiffs submission was that the proviso to clause 5 of the lease deed dated 23-04-2013 was a covenant to renew the lease on its expiry and binds the CAA to such renewal. That clause-5 read as follows:

"5. On the expiry of the tenure of the lease hereby created or on sooner determination of the lease in the event of breach if any of the condition as mentioned above, the Lessee shall without delay peacefully vacate the premises and shall hand over to the Lessor free of all costs such buildings, on the said land. Provided further that on expiry of period agreed here in above at the option of the Tenant, Landlord shall grant to the tenant lease of the Rented Land for further renewal option on the terms and conditions mutually agreed upon between the parties."

21. Firstly, the proviso to clause 5 only envisaged a further lease if the parties “mutually agreed” and did not by itself constitute an agreement to renew the lease. In *Heysons Commercial & Industrial Corporation Ltd. v. Trustees of the Port of Karachi* (1987 CLC 591) it was held by this Court that the word ‘mutual’ signified that there had to be consensus between the parties on the terms for renewing the lease, and until there is such consensus it cannot be presumed that both parties agreed or complied with the renewal clause. The case of *State of U.P. v. Laljit Tandon* cited by Mr. Abraiz Khan Advocate is of no help to the Plaintiff No.1. There, the renewal clause in contrast was that upon the lessee exercising the option for renewal before expiry of the lease “the lessor shall act upon forthwith and execute and deliver to the lessee upon his duly executing a counter part or renew the lease for the said premises.....”. Secondly, in seeking renewal of the lease, the Plaintiff No.1 had never invoked the proviso to clause 5 of the lease deed dated 23-04-2013. Instead, it had invoked the Land Lease Policy of the CAA as manifest in the Plaintiff No.1’s letter dated 06-03-2019. In other words, the parties were *ad idem* that any renewal of lease could only be under the Land Lease Policy of the CAA. Therefore, the second limb of the Plaintiffs’ argument also fails.

22. The fall-back position taken by learned counsel for the Plaintiffs was that even if the lease was not being renewed, the Plaintiff No.1 was a lessee holding-over within the meaning of section 116 of the Transfer of Property Act, 1882, and could not have been evicted except by way of a suit. But as already noted above, the objection to the eviction, which could have included the ground that the Plaintiff No.1 was a lessee holding-over, was not pleaded by the Plaintiff No.1 and was not the case set-up by it to begin with.

23. For reasons discussed in paras 8 to 10 above, CMA No. 11287/2020 for rejection of the plaint, CMA No. 6514/2021 by the Intervenor, and CMA No. 10625/2020 being the contempt application, stand dismissed. Since the Plaintiff No.1 was not able to demonstrate that there was a contract between it and the CAA for renewing the lease of the demised premises, it does not have a *prima facie* case for the grant of a temporary injunction. Resultantly, CMA No. 10331/2020 and CMA No. 1590/2020 are also dismissed while directing the CAA to deposit with the Nazir of this Court

the amount of Rs. 20,581,609/- that it had earlier offered for return to the Plaintiff No.1. If that amount is not collected by the Plaintiff No.1 from the Nazir within 20 days, same shall be invested by the Nazir in a government profit bearing scheme. However, nothing herein shall prejudice any further monetary claim that the Plaintiff No.1 may have against the CAA.

JUDGE

Karachi
Dated: 16-11-2022