

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 84/89

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A.

BETWEEN VERNE GRANBURG DEFENDANT/APPELLANT

AND ELINOR INGLIS PLAINTIFF/RESPONDENT

Mr. Enos Grant for the Appellant

Messrs. Dennis Goffe & Douglas Leys
for the Respondent

February 26, 1990

ROWE, P.:

Gentlemen, in this matter the appellant, Mr. Granburg, is seeking leave to appeal to Her Majesty in Council and the Notice of Motion contains a number of points. Firstly, the application is on the ground that the matters in dispute are in excess of a thousand dollars; more importantly, that the matter is of great general or public importance in that all practitioners in the field of the law of partnership and or landlord and tenant are interested in knowing whether a partner is entitled to set off sums advanced to the partnership without the taking of the partnership accounts. A further ground is whether, where under a lease, a landlord has exercised his right of re-entry for breaches of the covenants of the lease, the tenant has the right of set off of sums spent by the tenant -

- (a) on the leased premises contrary to the terms of the lease and without the authority of the landlord;
- (b) to satisfy the landlord's personal debts.

Two other grounds were whether the tenant's claim for a set off affects the right of re-entry for breaches of covenants other than the covenant to pay rent; and, whether, having regard to the claim by the plaintiff for damages and the evidence adduced by her as to the quantifiable damages, she is entitled to an interim injunction on the basis that damages is not an adequate remedy.

When these grounds are looked at, we, at first, thought that the applicant was asking the Privy Council to say whether the right of set off does exist in circumstances such as this. But before us, what we understand Mr. Grant to be arguing is that the Privy Council is going to be asked whether, on the authority of Jamculture vs. Black River Upper Morass Development Co, Ltd et al S.C.C.A. 13/89 delivered 24th May, 1989, this Court ought not to have said that damages were not an adequate remedy. Mr. Goffe puts it this way: that what Mr. Grant is asking us to certify, as a matter of great public importance, is whether or not the court exercised its discretion correctly in saying that, on the balance of convenience, the injunction should be issued and, if that is so, it would plainly be not a matter of even public importance, much more of great public importance, sufficient to warrant a further appeal at this interlocutory stage.

We are of the view that, in so far as the Court decided the Jamculture (supra) case, it was on the basis of the facts of that case and in so far as the decision in

Inglis was concerned it was the same principle of law being applied on the facts of the case and consequently it is not clear to us, by any means, that there is this great conflict of law as to warrant us granting leave to appeal to Her Majesty in Council on those grounds.

Mr. Grant did mention the question of stare decisis and suggested that this probably was the sort of case in which the principle enunciated by the Courts in Thorpe and Molyneaux should be taken to the Privy Council for their approval or otherwise.

We do not think that merely to take a matter to the Privy Council to see if it is going to agree with us, is a matter on which the Court ought to grant leave. Stare decisis does not really arise, in our view, in this particular case. Consequently, we are of the view that the motion for leave to appeal to Her Majesty in Council ought to be refused and we so order. The respondent is entitled to costs to be agreed or taxed.