

Executive Council passed a resolution on 11th November, 1986 whereby it was agreed that the Government would lease to Flint Blocks Ltd. a parcel of land north of Public Works Department, on Lovers Lane, for three years. Executive Council decision on the matter is embodied in a memorandum (Exhibit J.O. 1) and is in the following terms:-

"IN THE EXECUTIVE COUNCIL ON 11TH NOVEMBER, 1966

MEMORANDUM NO 86/199: Minister for Communi-
cations and Works - Lease of Public Works
Department Stabit Casting Area, Dagenham

Council agreed to the lease of a portion of the Public Works Department stabit casting area to Flint Blocks Limited, subject to the following conditions:

- a) An annual rental of \$1,000 payable in advance, to be reviewed after three years;
- (b) In the event that Public Works Department requires the area for casting stabits, Flint Blocks will move their equipment within one month of receipt of notice to move;
- (c) The lease shall be for a period of three years, in the first instance;
- (d) The lease may be terminated by either party giving three months written notice.

The Governor concurs and directs accordingly

Sgd. C.P. Ryan
Clerk of the Council"

The lease was never executed, although Miss Florence Daley, the Permanent Secretary in the Ministry of Communications and Works, says in evidence that she found a copy of a lease on the file dealing with Flint Blocks Ltd. The company never paid any rent neither was any demanded. The Plaintiff took over the operations of the company sometime in 1988/89

4. Notwithstanding the aforementioned Ex. Co. Decision, no lease was ever granted by the Government to Flint Blocks Ltd. or to any other company or person. The Plaintiff therefore never acquired any legal or equitable right to occupy any area of land owned or occupied by the Crown. Flint Blocks Ltd. entered into occupation of an area of land belonging to the Crown at Lovers Lane adjacent to the Public Works compound.
5. Flint Blocks Ltd. was incorporated on 27th day of August, 1986. The Company was struck off (sic) Register on the 12th day of January, 1989. The Shareholders of the Company were St. Clair Jeffers and Mr. J.S. Barzey.
6. By letter dated 5th January, 1990, the Permanent Secretary, Communications and Works wrote to Flint Blocks Ltd. giving that Company notice of the Crown's intention to repossess the area occupied by Flint Blocks Ltd. at Lovers Lane. The Plaintiff was aware at all material times of the Crown's intention to repossess the site.
7. Despite the absence of the lease, in or about the year 1988 Flint Blocks Ltd. entered into occupation of an area of land on Lovers Lane adjacent to the Public Works compound and carried on a block making operation there. The operation was destroyed by Hurricane Hugo in September 1989 and has never recommenced.

The Defendant admits clearing the site in the month of February, 1990. The mangled machines which were operated by Flint Blocks Ltd. prior to Hurricane Hugo were simply placed to one side where they still lie, trespassing upon the Defendant's land and exposed to the elements

9. If which is denied, the Plaintiff did operate a block making business on the Defendant's land the Defendant will contend that the Plaintiff did so as a trespasser. The Defendant will also contend that the Plaintiff was given adequate notice to remove from the Defendant's land, having regard to the small size of the machine and the accessories

10. If, which is denied the Plaintiff did suffer any loss and/or damage as alleged, or at all, the Defendant will contend that the Plaintiff took not sufficient steps to mitigate his loss and or damage".

It is necessary first of all to determine what interest Flint Blocks Ltd. had in the land in question. Flint Blocks Ltd. had an agreement with the Government for a lease. Although the lease was prepared according to Miss Daley, it was never executed Flint Blocks however went into occupation, but never paid any rent up to the time it ceased operations. Flint Blocks Ltd. therefore had a Tenancy at will

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"A tenancy at will arises whenever a tenant with consent of the owner occupies land as tenant. This kind of tenancy may be created by either expressly or by implication, common examples are where a tenant takes possession under a void lease or under a mere agreement for a lease and has not yet paid rent".

Mrs. Thom submitted that the tenancy at will would have been terminated when the Defendant served letter from Permanent Secretary to Company on 5th January, 1990 requesting the Company to give up possession of the land. I do not agree with the submission the tenancy would have come to an end on 12th January, 1989 when the Company was struck off the Register of Companies. From then on the Company ceased to exist and therefore the tenancy would have been determined.

What therefore was the Plaintiff's position? What interest if any, did he acquire in the said land?

The Plaintiff said:-

"I was given an assurance by Mr. John Osborne and Mr. Jeffers that the area on which the machine was placed was under lease and that I would be able to occupy the area for at least three years. Having given the assurance I began to purchase and move operations on the site".

Mr. Allen, Learned Counsel for the Plaintiff argued that John Osborne went to the Ministry of Communications and Works and notified the Minister of Works and Fitzroy Grant, the then Permanent Secretary of Communications and Works of the sale of operations to the Plaintiff. According to Mr. Allen it is significant that up to that time Government Legal Department whose duty it was to prepare the lease had done nothing about it. Learned Counsel contends that Executive Decision Memorandum (Exhibit J.O. 1) contains no prohibition against assignment of the lease.

Mr. Allen submitted that the Plaintiff cannot be deprived of rights which he may have enjoyed if things were properly done. The right to proper notice. The right to apply for and obtain a renewal of the lease as per clause C in Executive Council Agreement.

The Plaintiff is claiming through Flint Blocks Ltd. and in my view he cannot obtain a better title than Flint Blocks nemo dat quod non habet, moreover Flint Blocks having only a tenancy at will cannot assign any lease to the Plaintiff. In fact even if Flint Blocks was in a position to assign the lease to the Plaintiff it could not be done in the manner suggested by the Plaintiff or there to have been a proper assignment of a lease, it had to be done by a deed.

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"TENANTS AT WILL - DETERMINATION

A tenancy at will also comes to an end when either party does any act incompatible with the continuance of the tenancy... The tenancy is likewise determined if either party dies or assigns his interest in the land"

I therefore hold that there was no assignment by Flint Blocks to the Plaintiff. The Plaintiff operated his block-making business on Defendant's land from about November 1988 to September 1989 that is for almost a period for about 10 months. Florence Daley said in cross examination:

"I was not aware that the Plaintiff was in actual possession, John Osborne told me that the Plaintiff was making blocks there. He did not tell me that he had passed on his operations to the Plaintiff. I believe him that Mr. Ryan was making blocks there. I never say the Plaintiff making blocks there I spoke to the Plaintiff about removing because Mr. Osborne told me that the Plaintiff was making blocks there".

This witness says that John Osborne did not tell her that he had passed on his block-making operations to the Plaintiff yet, she said she spoke to the Plaintiff about removing. I asked the question removing what? In my view it could only be the block-making machine.

Florence Daley said in evidence in chief:-

"I spoke to the Plaintiff in December, 1989 I told him that I learnt that he was using the area Stabit Casting area to make blocks and that we needed the area. So if he had any equipment to move to do so".

John Osborne said in evidence:

"The equipment was situated on a piece of land near to Public Works Department. I notified the Minister of Works, Mr. Chalmers, the Permanent Secretary Mr Fitzroy Grant. I also informed Superintendent of Works Mr. Christopher Lee. It was generally accepted by all that the Plaintiff would continue to use the land as we had".

I therefore find as a fact that the Plaintiff operated his block-making equipment on the Defendant's land with their knowledge and consent. He therefore had a licence to be on the land.

I now turn to consider the question of notice. Florence Daley, the Permanent Secretary in the Ministry of Communications and Works, said in evidence:-

"I wrote to Flint Blocks Ltd. c/o Mr. Clair Jeffers, copy to Junior Barzey and John Osborne. When I went to the file to see who were the operators of Flint Blocks the Plaintiff's name was not on the file".

This letter was written on 5th January, 1990. Miss Daley also said that she gave one month's notice. However, the Plaintiff said that he went to see Miss Daley about the middle of January, 1990. The Plaintiff said:-

"I had occasion to speak to Miss Florence Daley Miss Daley said to me, Mr Ryan, I have some bad news for you. I said what bad news can you have for me, she said to me the place on which you are making the blocks is required. I quickly replied by saying to her, but Miss Daley how can you take it at this time before I was finished. She said to me never mind I will write to you".

From the evidence it is quite clear that Miss Daley did not write to the Plaintiff. It is quite clear to me too that the Plaintiff went to see Miss Daley as a result of the letter which Jeffers received from Daley and Jeffers speaking to the Plaintiff.

The Plaintiff said in evidence that he again spoke with Miss Daley early February, 1990. According to the Plaintiff on that occasion:-

"She said to me what is your problem now. I said to her I am here to talk to you about my block-making machine that has been damaged and the materials on the site that have been disposed of. She said to me, I have no dealings with you. I have business with Flint Blocks. You are a trespassor, you are a squater and we cleared the area. I said to her, Miss Daley, the materials have been damaged, the materials have been dumped thrown away. That is what I am here to talk to you about. She said to me if you have a grievance put it in writing. I left the Office".

The Permanent Secretary never wrote to the Plaintiff.


I accept the Plaintiff's evidence as to the quantity of blocks and block-making materials he had on site before the clearing.

The Plaintiff is claiming loss of profits at \$3,500.00 per month and continuing. I shall allow him loss of profits for one month.

There will therefore be judgment for the Plaintiff as follows:-

Cost of repairing machinery	\$15,000.00
1 heavy duty cable	6,000.00
3000 8" blocks @ \$1.75	5,250.00
3500 6" blocks @ \$1.40	4,900.00
2600 4" blocks @ \$1.15	2,990.00
16 yards of aggregate @ \$80.00 per yard	1,280.00
Transport of aggregate	200.00
2 loads of ghaut sand @ \$200.00 per load	400.00
2 loads of crusher dust	350.00
Loss of month's profits	3,500.00
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	\$39,870.00
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Costs to the Plaintiff to be taxed if not agreed.


Albert J. Redhead
Puisne Judge