IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Restitutio-in-Integrum and Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/RII/46/2024

D.C. Colombo Case No :
DRE (S)/37/2023

1. Ceynor Foundation Limited
   No. 90, (335), D.R. Wijewardena Mawatha,
   Colombo 10.

Plaintiff

-Vs-

1. Orient Pearl Hotels Limited
   No.42, Barns Place,
   Colombo 07.

Defendant

AND NOW BETWEEN

1. Orient Pearl Hotels Limited
   No.42, Barns Place,
   Colombo 07.

Defendant-Petitioner

-Vs-

1. Ceynor Foundation Limited
   No.90 (335), D.R. Wijewardena Mawatha,
   Colombo 10.

Plaintiff-Respondent

Before: Hon. D.N. Samarakoon, J.

Counsel: Upul Jayasuriya P.C. with P. Radhakrishnan for the Defendant-Petitioner.

Faizer Musthapha P. C. with Saheeda Barrie, Hiran Careem and Amila Perera for the Plaintiff-Respondent.

Argued on: 26.04.2024

Written submission tendered on: tendered by 03.05.2024

Decided on: 10·05.2024

D. N. Samarakoon J.,

There is no dispute, that, the defendant petitioner has been the tenant of the plaintiff respondent for some time.

The defendant petitioner is Orient Pearl Hotels Limited.

The plaintiff respondent is Ceynor Foundation Limited.

Case No. DRE (S) 37 2023 has been instituted on 24.07.2023.

That is on the Recovery of Possession of Premises Given on Lease Act No. 1 of 2023.

The petitioner says, that,

(i) During the pendency of the case, the respondent wrote A.17 dated 03.11.2023

That letter says,

"Regarding the New Lease agreement between Ceynor Foundation and Ceynor Seafood Restaurant

This letter is reference to the letter dated 06.10.2023.
After evaluating the proposal sent by you, we are agreed to lease you the land for 33 years based on the lease agreement. As you have agreed, the amount of Rs.7,560,000/= should be deposited to our Account and sent the payment receipt before 06th November 2023 (Monday) at 12.00 PM. We will only be able to make the New Agreement once we received the payment receipt from you. Further, you should be able to pay the calculated penalty amount (Rs.5000/- per day) right before signing the Agreement. Please note that the new Agreement will be enforced with effect from 01st December 2023.

Moreover, I would like to state that we have come to this decision of extending the lease agreement with you, based on your prediction which denoted that you have involved in the tourism industry which directly contributes to strengthen the Economic sector of Sri Lanka. Accordingly, depending on that factor, we will lease the land based on the Government valuation instead of Commercial valuation. [Emphasis added in this judgment].

Furthermore, please note that we are able to lease the land, if you continue your business adhering to the conditions included in previous Agreement signed between Ceynor Foundation and Orient Pearl Hotels

Ltd. If we ever found that you have violated the prevailing conditions and existing laws, the board of directors have the power to take a decision to terminate the Agreement.

Kindly note that, if you are unable to response[1] for this letter by 06th November 2023 (Monday) at 12.00 PM, we will continue legal proceedings against you, by considering that you have disregarded this letter".

(ii) The position of the petitioner is that this offer was accepted by letter A.18 dated 06.11.2023.

It said,

"Re: Payment of rental arrears and Proposal for further Development of the project and the continuation of the possession in the Premises under the terms of the new agreement and by leave and license of your Company.

We are in receipt of Your Letter dated 19/09/2023 subsequent to the discussions and agreement between us and your respective institution.

We are pleased to accept the offer to consider us as the lessee for a further periodand decision to receive the arrears of the rental for the premises and thus We are grateful for the opportunity to be considered as the lessee for an extended period and consequently, we remain in possession of the land under the terms of the new agreement and by leave and license of your Company.

[1] This word appears so in A.17

We are in the continued to be in the possession[2] on the land by virtue of new agreement.

In this connection we also wish to inform your good office that we will agree to pay the full amount of arrears of rent of Rs 7.5 Million as offered by you in letter dated 19/09/2023 within one week but We are not willing to pay the penalty amount as we are paying the full rent amount.

However, along with the settlement of arrears of rent, as for the future we wish to sign a fresh Lease Agreement for a period of 25 years. In this regard we are prepared to offer Rs. 300,000/- which is double the present rental value for the initial five years. We are would be[3] agreeable to increase the said rent to a sum of Rs. 450,000/- during the period commencing from the 5th to 10th years and to increase the same up to Rs. 600,000/- during the period of 10th to 15 years and there after".

A. 17 has been signed by the Chairman of the Ceynor Foundation Limited.

A. 18 has been signed by the Director of the Orient Pearl Hotels Limited.

The petitioner says that in the meantime a new Chairman was appointed and the petitionercame to know that the writ is going to be executed.

Attention is drawn to sections 20(1) and 20(2) of the Act.

Surrender of possession of the premises by the defendant, & c

20. (1) Where the defendant appears in Court in response to the decree nisi and agrees to surrender the possession of the premises or to

[2] This phrase appears so in A.18
[3] As appear in A.18

> settle the arrears of lease rentals, service charges and liquidated damages, as the case may be, on such terms and conditions that may be agreed upon by the parties, the decree nisi shall be made absolute subject to such terms and conditions as agreed upon by the parties before the Court.
>
> (2) Notwithstanding anything to the contrary contained in the succeeding provisions of this Act, the decree absolute referred to in subsection (1) shall operate as a stay of execution of proceedings as agreed to by the parties, provided that the defendant shall not act in breach of any of the terms and conditions of settlement. Where the defendant acts in breach of such terms and conditions, the plaintiff shall be entitled to execute such decree absolute.

The petitioner in its written submissions having referred to the above A.17 and A.18 submits, that, a valid offer and acceptance was reached on 09.11.2023 and the arrears of rental of Rs. 7,560,000/- was paid by the petitioner at the plaintiff respondent's office, which was accepted without any objection.

It is also submitted, that, the plaintiff failed to divulge the same to the District Court and to this Court which the petitioner alleges as suppression.

It is also submitted, that, whilst obtaining government valuation and finalizing the New Draft Lease Agreement, the petitioner paid the monthly lease rentals for months subsequent to December 2023, that is, January, February and March of 2024 at the rate of Rs. 158,533/- per month as it was

paid under the previous lease agreement which the plaintiff respondent accepted. The receipts are marked as A 20a to A 20d.

The petitioner further submits, that,

> "16. It is respectfully submitted whilst the Petitioner was awaiting the signingof the new LeaseAgreement a new Chairman was appointed to the Petitioner-Respondent (CeynorFoundation Limited), and whereupon the Petitioner wasmade to understand that thePlaintift-Respondent is taking steps to execute writ to eject the Petitioner having notdisclosed to the District Court any of the above terms and conditions of settlementalready reached between the parties. specifically having not disclosed the fact that a sum of Rs.7,560,000/ was paid on 09.11.2023 and the subsequent monthly rentals ofRs.158,533/ per month for January to March 2024 was also paid by the Petitioner in termsof Offer A17 and Acceptance A1 and A19". [It appears that the intended reference was to A.18, among other things].

The reply to the above contention, that, there was an agreement; and hence a contract, either materialized in law, or in contemplation, of the plaintiff respondent as contained in oral and written submissions, is that,

(i) A.18 did not respond to A.17 but to a letter dated 19.09.2023 which is A.14

(ii) A.18 agreed to pay a sum of Rs. 7,560,000/- as monthly rental arrears within one week

(iii) A.18 refused to pay the penalty amount of Rs. 9,495,000/-

The respondent further submits that the position of the petitioner was that reference to the letter dated 19.09.2023 was a typographical error.

The respondent further says that the learned President's Counsel for the petitioner took up the position that it was an erroneous reference to a non

existent letter whereas it is A.14 and hence the petitioner attempted to mislead this Court.

The letter A. 14 is tendered to court by the petitioner. It is a letter addressed to the petitioner on arrears of rental. In A.18 while accepting the offer made on behalf of the respondent, the petitioner was referring to arrears of rental too.

As it is seen, A. 18 says,

> "…we will agree to pay the full amount of arrears of rent of Rs. 7.5 million…."

Hence the reference to A.14 was natural.

But the important factor is that, A. 18, notwithstanding

(a) Its non reference to A. 17 and
(b) Its reference to A. 14 also says, that,

"We are pleased to accept the offer to consider us as the lessee for a further period…."

The respondent quotes Weeramantry "The Law of Contract" volume I page 128 which, it has been said, stated, that,

> "The acceptance must correspond directly with the term of the offer. An acceptance which does not correspond with the terms of the offer is ineffectual to conclude a contract."

There is no rule as above.

The simplicity of contract formation is a keystone of commercial efficacy, underpinned by legal principles that have been developed over centuries. A contract is formed when certain fundamental components are in place: offer, acceptance, consideration, and an intention to create legal relations. The landmark case of **Carlill vs. Carbolic Smoke Ball Company [1893] 1 Q.B. 256**, a decision that had a profound influence on English contract law,

alongside other authoritative cases that have helped to shape the doctrine of contract formationwill be referred to here briefly, to represent certain basic principles of English law of simple contracts.

Offer and Acceptance

The bedrock of a simple contract is the agreement, which is typically formed through an offer by one party and its acceptance by another. The case of Carlill v. Carbolic Smoke Ball Company illuminates this principle distinctly. In this case, the Carbolic Smoke Ball Company advertised that they would pay £100 to anyone who contracted influenza after using their smoke ball according to the instructions provided. Mrs. Carlill did just this and claimed the reward after contracting influenza. The Court of Appeal held that the advertisement was not mere puffery but a unilateral offer to the world at large which was accepted by Mrs. Carlill through her performance of the act.

> "The Court further found that: the advert's own claim to sincerity negated the company's assertion of lacking intent; an offer could indeed be made to the world; **wording need only be reasonably clear to imply terms rather than entirely clear**; and consideration was identifiable in the use of the balls[4]."

The ruling in Carlill established that offers could be made to the entire world and acceptance need not always be communicated directly, especially in cases of unilateral offers. It affirmed that performing the stipulated action can signify acceptance, a principle also supported in other cases such as **Brogden v Metropolitan Railway Company [1877] 2 App.Cas. 666**, which illustrates acceptance by conduct when the parties acted on the terms of an agreement despite the formal contract not being signed.

> "The complainants, Brogden, were suppliers of coal to the defendant, Metropolitan Railway. They completed business dealings regarding the

[4]https://www.lawteacher.net/cas"s/carlill-v-carbolic-smoke-ball-co.php

coal frequently for a number of years, on an informal basis. There was no written contract between the complainant and the defendant. However, the parties decided that it would be best for a formal contract to be written for their future business dealings. The Metropolitan Railway made a draft contract and sent this to Brogden to review. The complainant made some minor amendments to this draft and filled in some blanks that were left. He sent this amended document back to the defendant. Metropolitan Railway filed this document, but they never communicated their acceptance of this amended contract to the complainants. During this time, business deals continued and Brogden continued to supply coal to the Metropolitan Railway[5]."

"The House of Lords held that there was a valid contract between suppliers, Brogden and the Metropolitan Railway. The draft contract that was amended constituted a counter offer, which was accepted by the conduct of the parties. The prices agreed in the draft contract were paid and coal was delivered. Although there had been no communication of acceptance, performing the contract without any objections was enough[6]."

Consideration

A simple contract also requires 'consideration,' which was definitively encapsulated in **Currie v Misa [1875] LR 10 Ex 153** where consideration was described as either a detriment to the promisee or a benefit to the promisor. In Carlill's case, her parting with money to purchase the product and the act of using it as prescribed was adequate consideration for the company's promise to pay.

[5]https://www.lawteacher.net/cases/brogden-v-metropolitan.php
[6]https://www.lawteacher.net/cases/brogden-v-metropolitan.php

In **Currie vs. Misa, 11th February 1875**(the above citation is correct) in the Exchequer Chamber, Lush[7] J., with Quain J., (who did not agree with all the reasoning of the former, page 165) decided that,

> "The title of a creditor to a negotiable security given to him on account of a pre existing debt, and received by him bona fide and without notice of any infirmity of title on the part of the debtor, is indefeasible, whether that security be payable at a future time or on demand". (page 153).

Lord Coleridge C. J., dissented.

The position on consideration was spotlighted in **Thomas v Thomas [1842] 2 QB 851**, where the executors of an estate permitted the widow to stay in her deceased husband's house for a nominal annual rent of £1. This "peppercorn rent," though negligible, was deemed sufficient consideration. However, the evolution of the concept of consideration can be observed in more recent cases such as **Williams v Roffey Bros & Nicholls (Contractors) Ltd [1991] 1 QB 1**, where the courts recognised that performing an existing duty could constitute good consideration if it confers a practical benefit.

In the earlier case, which is **Eleanor Thomas vs. Benjamin Thomas, Saturday, February 5th, 1842** (The English Law Reports Volume CXIV, King's Bench Division XLIII, page 330), the facts were,

> "Declaration for non-performance of an agreement stated to be, that defendantwhen required, should convey a certain house and premises to plaintiff for herlife, and that plaintiff, at all times during her possession thereof, should paydefendant and S. T. (since deceased), their executors,

[7] Who displayed his sagacity and cleverness in Theatre de Luxe (Halifax) Limited vs. Gledhill [1915] 2 K. B. 49 not to follow the decision in London County Council vs. Bermondsey Bioscope Co. [1911] 1 K. B. 445 although claiming that he was bound by the latter. These two are cinematography cases, just as Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223; and I have said in my judgment in C. A. Tax 27 2021 dated 15.12.2023, that, had English administrative law followed the "Theatre de Luxe reasonability" instead of "Wednesbury unreasonability" (that Bench order of Grene M. R.) proportionality could have been an express ground of judicial review in England, without waiting nearly a century to import it from the continent. The decision I referred to in Theatre de Luxe mainly was that of Rowlatt J.

&e., 11. yearly towards theground rent payable in respect of the said house and other premises, and keepthe bouse in repair".

The judges said, that,

"Lord Denman C.J. There is nothing in this case but a great deal ofingenuity,and a little wilful blindness to the actual terms of the instrument itself.There is nothing whatever to shew that the ground rent was payable to a superiorlandlord; and the stipulation for the payment of it is not a mere proviso, but anexpress agreement. (His Lordship here read the proviso.) This is in terms on the moral feeling which disposed the executors to enter into such a contract. Mr.Williams's definition of consideration is too large: the word causa in the passagereferred to means one which confers what the law considers a benefit on the party.Then the obligation to repair is one which might impose chargesheavier than the value of the life estate.

Patteson J. It would be giving to causa too large a construction if we were to adopt the view urged for the defendant: it would be confounding consideration with motive (a). Motive is not the same thing with consideration. Consideration means something which is of some value in the eye of the law, moving from the plaintiff: it may be some benefit to the plaintiff, or some detriment to the defendant ; but at allevents it must be moving from the plaintiff. Now that which is suggested as the consideration here, & pious respect for the wishes of the testator, does not in any way move from the plaintiff; it moves from the testator;therefore, legally speaking, it forms no part of the consideration. Then it is said that, if that be so, there is no consideration at all, it is a mere voluntarygift : but when we lookat the agreementwe find that this is not a mere proviso that the doneeshall take the gift with theburthens; but it is an express agreement to pay what seems to be a fresh apportionment of a ground rent, and which is made payable not to a

superior landlord but to the executors. So that this rent is clearly not something incident to the assignmentof the bouse; for in that case, instead of being payable to the executors, it would have been payable to the landlord. Then as to the repairs: these houses may very possiblybe held under a lease containing covenants to repair; but we now nothing about it; for any thing that appears, the liability to repair is first created by this instrument. The proviso certainly struck me at first as Mr. Williams put it, that the rent andrepairs were merely attached to the gift by the donors; and, had the instrument beenexecuted by the donors only, there might have been some ground for that construction:but the fact is not so. Then it is suggested that this would be held to be a merevoluntary conveyance as against a subsequent purchaser for value: possibly thatmight be: but suppose it would: the plaintiff contracts to take it, and does take itwhatever it is, for better for worse: perhaps a bonå fide purchaser for a valuable consideration might override it; but that cannot be helped.

Coleridge J. The concessions made in the course of the argument have, in fact.disposed of the case. It is conceded that mere motive need not be stated: and wearenot obliged to look for the legal consideration in any particular part of the instrument,merely becausethe consideration is usually stated in some particular part: ut res magis valeat[8], we may look to any part. In this instrument, in the part where itis usual to state the consideration, nothing certainly is expressed but a wish to fulfilthe intentions of the testator: but in another part we find an express agreement topay an annual sum for a particular purpose; and also a distinct agreement to repair.If these had occurred in the first part of the

[8]The maxim 'ut res magis valeat quampereat' is an important principle of interpretation of statutes which literally means: "It may rather become operative than null." The effect of this maxim is that an enacting provision or a statute has to be so construed to make it effective and operative.https://blog.ipleaders.in/ut-res-magis-valeat-quam-pereat-legal-maxim/#:~:text=The%20maxim%20%E2%80%98ut%20res%20magis%20valeat%20quam%20pereat%E2%80%99,so%20construed%20to%20make%20it%20effective%20and%20operativ

instrument, it could hardly have beenargued that the declaration was not well drawn, and supported by the evidence. As to the suggestion of this being a voluntary conveyance, my impression is that thispayment of 11 annually is more than a good consideration: it is a valuable consideration: it is clearly a thing newly created, and not part of the old ground rent". (pages 333 and 334).

In the 23rd November 1989 case of **Williams vs. Roffey Bros. & Nicholls (Contractors) Ltd., [1991] 1 Q. B. 1**, the summary of the judgment of the Court of Appeal said,

"On appeal by the defendants:

Held, dismissing the appeal, (1) that where a party to acontract promised tomake an additional payment in return forthe other party's promise to perform his existing contractualobligations and as a result secured a benefit or avoided adetriment, the advantage secured by the promise to make theadditional payment was capable of constituting considerationtherefor., provided that it was not secured by economic duressor fraud: that the defendants' promise to pay the plaintiff theadditional sum of £10,300, in return for the plaintiff's promiseto perform his existing contractual obligations on time, resultedin a commercial advantage to the defendants; that the benefitaccruing to the defendants provided sufficient consideration tosupport the defendants' promise to pay the additional sum; andthat, accordingly, the agreement for payment of the additionalsum was enforceable". (page 01)

Intention to Create Legal Relations

The intention to create legal relations is another fundamental tenet of the contract formation. This subjective intent is usually inferred from the circumstances. In **Balfour v Balfour [1919] 2 KB 571**, it was established that

not all agreements between parties are contracts, particularly when there is no intention to be legally bound, as in domestic arrangements.

> "The plaintiff sued the defendant (her husband) for money due underan alleged verbal agreement, whereby he undertook to allow her 30 l., a month inconsideration of her agreeing to support herself withoutcalling upon him for any further maintenance. The parties were marriedin 1900. The husband was resident in Ceylon, where he held a Government appointment. The plaintiff accompanied him to Ceylon, butin 1915 they returned to England, he being on leave. In 1916 hewent back to Ceylon, leaving her in England, where she had to remaintemporarily under medical advice. The plaintiff alleged that thedefendant before returning to Ceylon entered into the above agreement.The parties remaining apart, the plaintiff subsequently obtained adecree nisi for restitution of conjugal rights, and an order for alimony:–
>
> Held, that the alleged agreement did not constitute a legal contract,but was only an ordinary domestic arrangement which could not besued upon. Mutual promises made in the ordinary domestic relationshipof husband and wife do not of necessity give cause for action on a contract.
>
> Decision of Sargant J. reversed."

Contrastingly, in **Edwards v Skyways Ltd [1964] 1 WLR 349**, an ex gratia payment promised to an employee was enforceable as the surrounding context indicated a business environment where legal relationships are presumed.

It was decided in this case, that,

> "Held, (1) that where, as here, an agreement was reached in thecourse of business relations, and there was an intention to agree,there was a heavy onus on the party alleging that it was notintended to give rise to legal obligations (post, p. 355).

Rose and Frank Co. v. J. R. Crompton & Bros. Ltd. [1923]2K.B. 261 considered.

> (2) That the words “ex gratia” in a promise to make a payment, although indicating that pre-existing legal liability was notadmitted, did not carry a necessary or even probable implication that the promise was intended to be without legal effect (post, p. 356); and, there beingno special circumstances whereby such an implication could be given to the words, the company had failed to establish that the parties affirmatively intended not to enter into legal relations in respect of the company’s promise to pay (post, p.357). The plaintiff therefore was entitled to recover the contributions paid by the company to the fund for him.”

More recent case law continues to shape contract formation. In **RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Company KG [2010] UKSC 14**, the Supreme Court highlighted the importance of a "meeting of the minds", but also acknowledged that contracts can be binding even where certain terms remain to be agreed, provided that there is a clear enough 'intention to contract'.

Hence the formation of a simple contract, although seemingly straightforward, is a composite of several doctrines and interpretations. But on A.17 and A.18, it appears to this Court that there was a meeting of minds, consensus ad idem, and a contract had come into existence.

The flexibility and simplicity, as it was said that promotes commercial efficacy, is the characteristic of English law of contracts thatbenefits the global community facilitating the smooth running of the underlying machinery. The above survey of cases on English contract law was done using resources available online and also checking the original English reports of all those cases, except the last one in 2010 which was not available in the judges’ library.

Hence the plaintiff cannot eject the defendant in this case.

The orders X.7 (A.7) and X.24 (A.24) are set aside.

The petitioner is entitled to withdraw Rs. 13,650,000/- (the amount deposited as per the order of this Court in this case dated 10.04.2024.)

There is no order on costs.

Judge of the Court of Appeal.