1992 CarswellOnt 1952
Ontario Court of Justice (General Division)

Borges v. Amici Holdings Ltd.

1992 CarswellOnt 1952, 36 A.C.W.S. (3d) 856

Anthony Borges, Applicant (Tenant) and Amici Holdings Limited, Respondent (Landlord)

Stach J.

Oral reasons: July 15, 1992
Docket: Toronto 039474/92

Counsel: *S. Cruikshank, Esq.*, for Borges.
G.B. Cooper, Esq., for Amici Holdings.

Subject: Property
Headnote
Landlord and tenant

***Stack*, O.C.J. (Orally):**

1 On July 3, 1991, the landlord changed all locks on the residential premises which are the subject of this application. Prior to doing so, the landlord removed all of the tenant's possessions from the premises. In this application by the tenant for an order placing him back into possession of the demised premises, the sole issue is whether the tenant had abandoned the premises within the meaning of The Landlord and Tenant Act.

2 Upon hearing the evidence, there will be an order in this case placing the Applicant back into possession of the rear coach house at 1932 Queen Street East in the City of Toronto. Those premises are owned by the landlord, a Limited Company controlled by Harold Weisfeld, the sole shareholder of the corporation and clearly its acting mind.

3 The relationship of landlord and tenant between the parties commenced in August of 1991. The personal relationship between the tenant and Harold Weisfeld predates the tenancy agreement by some years. That personal relationship was marked at one stage by friendship; it was marked as well by the employment of the tenant by Mr. Weisfeld in some of his other business arrangements. Taking into account Mr. Weisfeld's longstanding personal relationship with the tenant, I find that Mr. Weisfeld knew that the tenant was a man of few possessions. Mr. Weisfeld also knew him to be a rough carpenter by trade and that as a consequence, his tools would be important to him.

4 In the situation as it appeared on the 3rd of July 1992, a casual observer could be forgiven for concluding that the premises were vacant. On a more careful examination, however, it is apparent that there was extensive glassware still in the premises; that there remained more than one set of dishes; that there were numerous pots and pans and indeed some of the pots were on the kitchen sink; that there was soiled laundry and clothing owned by the tenant on the floor.

5 I accept the evidence of the tenant that, albeit, there was not a bed in the premises, that he slept on the carpeted floor. I find in addition that, though he may not have been seen by the landlord, the tenant regularly attended at these premises during the day time and on those occasions occupied the premises as his own. To be sure, the tenant spent time at his girlfriend's apartment but as I indicated, I also find on the evidence of the tenant that he slept in the demised premises from time to time. Indeed, all of his tools were also kept there.

6 Equally important, the evidence of John Salmon, the property manager employed by Mr. Weisfeld, was to the effect that, before the locks were changed on the 3rd of July 1991, both Mr. Salmon and Mr. Weisfeld were made aware of the tenant's

stated intention to remain in the premises. Fixed as he was with that knowledge, I have reached the conclusion that the only proper method of pursuing any remedy open to Mr. Weisfeld or to the Limited Company was to make application for a writ of possession on the facts as he then asserted them to be.

7 There was much evidence about the animosity which developed between the parties and the sense of betrayal that each of them feel; and while that is understandable to a point, it did not help this court in the analysis of the fact situation or in a determination of the result.

8 It is apparent also that this determination here today is not an end of the matter. Regrettably, other aspects of this tenancy arrangement are likely to find their way before the courts in still other proceedings. Because such multiplicity of proceedings ought in my view to have been avoided and because so much unnecessary evidence was led, this court makes no order as to costs.

9 Counsel, I propose simply to make an endorsement on the Record. Unfortunately, the only record that the court appears to have on file is a photocopy of the endorsement of Madam Justice Chapnik. I trust that it will suffice for your purposes.

10 Is there anything else?

11 MR. CRUIKSHANK: Not for me, Your Honour.

12 MR. COOPER: Nothing further, Your Honour.

13 THE COURT: The endorsement I have made is:

> For oral reasons given, order to go placing the applicant back into possession of the rear coach house at 1932 Queen Street East in the City of Toronto. No order as to costs.

14 Thank you, counsel.

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