

GABRIEL DOE, Petitioner/Appellee, v. **LEE D. MITCHELL** and **HIS HONOUR HALL W. BADIO**, Resident Circuit Judge, Sixth Judicial Circuit,
Respondents/Appellants.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING
THE PETITION FOR A WRIT OF CERTIORARI.

Heard: December 1, 1988. Decided: December 29, 1988.

1. Nonpayment of rent on a lease is no ground for ejection.
2. Nonpayment of rent is not a ground for cancellation of a lease agreement, except where the lease agreement specifically provides for cancellation in the event of nonpayment.
3. Cancellation of a lease may be obtained where a lease has been obtained by fraud, misrepresentation or misinformation.
4. Where a lessee fails to pay rent, the proper cause open to a lessor is an action of debt or an action of damages for breach of contract.
5. A jury trial is not always required in equitable actions such as for cancellation of a lease agreement; it is error for a court to rule that a jury trial is necessary to try the issue of fraud in a suit for cancellation of a deed.
6. Certiorari will issue to correct the error of a trial court.
7. The right to trial by jury does not extend to equity jurisdiction.
8. Certiorari is a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity, or to review an intermediate or interlocutory judgment of a court.
9. A Chambers Justice, in granting a writ or directing an order to a court below, does not have the authority to decide the parent action itself; such writ or order is simply to review and order the errors of the lower tribunal in handling the trial complained of, and thereafter to order that tribunal to proceed according to the proper procedures and rules ascertained by the granting justice.
10. Where a writ is denied by a Chambers Justice, he or she will go no further than allow the trial court to proceed with the original matter along the path it had chosen.

11. The Justice in Chambers does not have the authority to dismiss the main cause of action on a writ of certiorari

12. Where an appellate court is not authorized by the Constitution or statutes, it cannot review the merits of the controversy or review the intrinsic correctness of the questioned order or judgment.

13. Where an appellate court is not authorized by the Constitution or statutes, it has no power to correct a mistake of facts or an erroneous conclusion from the facts even though the interpretation given to the facts or the law by the lower tribunal may have been erroneous.

14. The scope of the review in certiorari does not extend to the merits; ordinarily the action of the inferior body is final and conclusive on every question except jurisdiction and power.

15. Unreasonable delay on the part of a party is inappropriate where the other party may be adversely affected or his or her position changed detrimentally by the delay.

Co-respondent/co-appellant, Lee Mitchell, instituted an action in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for cancellation of a lease agreement and its addendum for, among other reasons, the nonpayment of rent due. After a hearing, the trial judge rendered final judgment, which declared the lease agreement and its addendum cancelled. The petitioner/appellee herein, Gabriel Doe, appealed to the Supreme Court where the decision was reversed and a mandate sent to the trial court to resume jurisdiction, starting with disposition of the law issues and, if the case is ruled to trial, hear evidence consistent with the accepted rules of procedure. The Court's mandate was properly read in the trial court and, after disposition of the law issues, the trial judge ruled the matter to trial. Even though the judge agreed with the contention of the appellee herein that cancellation of the agreement was not the remedy for nonpayment of rent, he refused to dismiss the action on the ground that it involved real property, and the appellee had not rebutted or disputed the nonpayment allegation. Subsequently, another judge was assigned to the court and he proceeded to try the issue of facts before a jury. Thereupon the appellee therein petitioned for a writ of certiorari. The Chambers Justice granted the writ, set aside the judge's ruling, and proceeded to dismiss the underlying action with cost against co-appellant (then respondent) who then appealed to the Supreme Court en banc. In its review of the matter, the Court held that nonpayment of rent is not a valid ground for cancellation of a lease agreement, unless there is a provision in the lease that provides for that action. The Court further held that equitable actions may

not be tried by a jury and that the writ of certiorari does not extend to the merits of the underlying case. The Court then proceeded to confirm the ruling of the Chambers Justice granting the writ of certiorari in view of the fact that the trial judge's ruling was contradictory, inconsistent and prejudicial, and overruled the Chambers Justice's ruling to the extent that it dismissed the underlying action. It instructed the trial court to resume jurisdiction and try the case de novo. It is noteworthy that the decision in this case effectively recalled the ruling in *Shamout Brothers v. The Liberia Electricity Corporation*, 34 LLR 400 (1985), where the full bench of the Supreme Court affirmed the ruling of the Chambers Justice dismissing the main action in response to a petition for a writ of certiorari. Thus, the ruling affirmed with modification.

Nelson W. Broderick for appellants. I. Emmanuel R. Berry for appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On January 29, 1985, Co-respondent/co-appellant Lee D. Mitchell, instituted proceedings in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, for cancellation of a lease agreement with its addendum, for alleged violation of the conditions therein, especially for the nonpayment of rent. Appellee herein filed an answer, and after arguments pro et con, the trial judge rendered final judgment on August 15, 1985, which cancelled the said lease agreement and its addendum and declared it null and void. Appellee herein, respondent then, appealed that ruling to this Court and the appeal was heard and decided in the March Term, A. D. 1986 of this Court. See *Doe v Mitchell*, 34 LLR 210 (1986). This Court reversed the judgment of cancellation with a mandate to the trial court to resume jurisdiction, retry the said case starting with disposition of the law issues, and if the case is ruled to trial, hear evidence in accordance with the accepted rules of procedure. The mandate was read and enforced in the lower court, and after the disposition of the law issues on January 25, 1988, the trial judge ruled the matter to trial, although conceding the contention of the appellee herein that cancellation of a lease agreement is not the proper remedy for default on the payment of rents under a lease agreement, and that cancellation can only obtain in cases of proven fraud or misrepresentation. The judge refused to dismiss the action on the grounds that it involved property rights, and that the appellee herein (then respondent) had neither disputed nor rebutted the allegations of default on the rent payments.

Another judge was next assigned to the said court, and while trying the issues of fact by a jury upon the request of co-appellant Lee Mitchell and over the objections of

appellee, the appellee fled to the Chambers Justice on a petition for a writ of certiorari, contending that the ruling of Judge Badio was paradoxical for conceding appellee's contention that non-payment of rents is no grounds for cancellation of a lease agreement and because cancellation is only granted in cases of fraud and/or misrepresentation on the one hand, and then on the other hand, refused to dismiss the action because "it involves property rights". The arguments of the appellee (petitioner before the Chambers Justice) were sustained by the Justice in Chambers, who proceeded to grant the peremptory writ, set aside the ruling of the trial judge, and then dismissed the basic cause of action with costs against appellants (then respondents). Hence, appellants appeal to the full bench.

In his brief, Co-appellant Mitchell contended, among other things, that a writ of certiorari cannot be granted where it is not filed within thirty days after the ruling it seeks to review, especially considering that appellee waited for almost four (4) months after the ruling before filing his petition for certiorari.

Secondly, that a single Justice in Chambers cannot legally hear and determine a writ of certiorari originating from the enforcement of a prior mandate of the Supreme Court. Thirdly, that the basic action of cancellation of a lease agreement is an equitable action, which requires no jury trial for its determination as the trial judge had proceeded. Fourthly, that the Justice in Chambers had no legal basis for dismissing the basic cause of action. Fifth, that the appellee, having submitted to the jurisdiction of the lower court and participated in the trial below cannot thereafter proceed on a writ of certiorari, as done in this case. And finally, that it is not the office of certiorari to dismiss the basic cause of action or proceedings pending before an inferior court before the latter make a final determination. Hence, from the foregoing contention appellants prayed the court to dismiss the peremptory writ of certiorari and to proceed to hear the case without a jury. However, the appellants have additionally appealed to this Court to recall its opinion in the case of *Shammout Brothers v. Liberia Electricity Corporation (LEC)*, 34 LLR 400 (1986), for the sake of consistency, as the said opinion had erroneously dismissed or abated the main cause of action on a writ of certiorari.

On the other hand, the appellee has maintained that the ruling of the Chambers Justice should be upheld, since cancellation is no remedy for the non-payment of rent under a lease agreement, but instead, an action of debt or breach of contract should be pursued to recover same. Cancellation, appellee maintained, only obtains for fraud or misrepresentation in obtaining the lease.

The foregoing facts of the case have convinced us that the following issues should be resolved for a determination of this matter

1. Whether or not the non-payment of rent is valid grounds for that cancellation of a lease agreement, absent a provision in the said agreement to that effect.
2. Whether or not an equitable relief can legally be tried by jury.
3. What is the office of certiorari; does it make things good which are bad, or does it only declare them bad?

We will resolve these issues starting with the first one: whether or not a lease agreement can be canceled for the failure to pay rent, especially where the agreement did not specifically contain such provision. The answer to this issue is negative. Non-payment of rent on a lease is no grounds for ejectment or cancellation of a lease agreement, except where the said agreement has specifically provided for cancellation in case of nonpayment of rents. Cancellation of the lease agreement can only be obtained where the lease has been obtained by fraud, misrepresentation or misinformation. Where a lessee fails in the payment of his rent, the proper cause open to the lessor is an action of debt or an action of damages for breach of contract in order to obtain his outstanding rents. He cannot proceed on an action of ejectment or for cancellation of the lease agreement simply for non-payment of rent, unless the agreement had particularly made that provision *Tubman v. Wesphal, Stavenon and Co.*, 1 LLR 367 (1900); *Jantzen v. Coleman*, 2 LLR 208 *Nassre and Saleby v. Elias Brothers*, 5 LLR 108 (1936).

As to the second issue, whether or not a jury trial is invariably required for determining equitable actions, we hold that a jury trial is not always required in equitable actions such as for cancellation of a lease agreement. 47 AM JUR. 2d, Jury, §32 at 350-351. As recently as 1978, this Court held that "a writ of certiorari will issue to correct the error of a lower court in ruling that a jury trial is necessary to try the issue of fraud in a suit for cancellation of a deed". *Wilson v. Wilson*, 27 LLR 182 (1978). This Court also held at that time, and we hereby affirm that holding, that "the provisions of the Civil Procedure Law, Rev. Code 1:1.3, abolishing the distinction between actions of law and suits in equity, and the form of those actions and suits heretofore existing, does not require a trial by jury in cases of an equitable nature such as suits for cancellation of a deed." *Id.* This jurisdiction has adopted this procedure in order to achieve speed in the disposition of such matters without the time consuming jury trials. "The right of trial by jury does not extend to cases of

equity jurisdiction, and if it is conceded or clearly shown that a case belongs to the court itself no matter what may be its importance or complexity, equitable actions as such are not within the constitutional provisions that the right of trial by jury shall remain inviolate, or that the right as heretofore enjoyed shall be preserved. Thus such constitutional guarantee are generally construed to give no right to a jury trial in equity cases, unless such cases are especially named." 47 AM JUR.2d, Jury, §32, at 350-351.

We now consider our final issue, what is the office of certiorari, and whether or not it makes good what had been bad or it merely declares it bad and leaves it at that without more. Certiorari is a statutory creature, therefore, we will resort to the appropriate statute to give us the answers, and we will only resort to the common and case laws for reliance where our statute does not address the issue.

The Civil Procedure Law defines "certiorari" as "a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court." (Our emphasis) Civil Procedure Law, Rev. Code 1:16.21. The most important words in that definition are "review" and "correct." The proceeding is a special one merely empowering justices to review and correct decisions of bodies acting in a judicial capacity. The statute also provides that: "If the issue is determined in favor of the petitioner, the justice who issued the writ shall direct such order to the court, judge, administrator, or administrative board or agency below as may be necessary to carry out the ends of substantial justice. If it is decided against the petitioner the writ shall be dismissed, and the original action or proceeding shall continue in the court, board or agency or before the judge or administrator in which or before whom it was pending." Civil Procedure Law, Rev. Code 1:16.23 (6).

Directing such order below as may be necessary to carry out the ends of substantial justice gives no justification to the justice granting the writ to decide the basic or parent action itself, but it simply means to review and identify the errors of the tribunal in handling the trial complained of, and thereafter to order that body to proceed according to the proper procedure and rules ascertained by the granting justice. For this reason, where the writ is denied by the justice, he will go no further than allow the trial court to proceed with the original matter along the path it had chosen:

"Unless authorized by constitutional and statutory provisions, the court on certiorari cannot consider the merits of the controversy or review the intrinsic correctness of the questioned order or judgment, and it has no power to correct a mistake of facts

or an erroneous conclusion from the facts even though the interpretation given to the facts or the law by the governmental agency, or the lower court may have been erroneous. The scope of review does not extend to the merits, ordinarily the action of the inferior body is final and conclusive on every question except jurisdiction and power." 14 AM JUR. 2d., Certiorari, §65 at 831.

Hence, we do not agree with our colleague in Chambers in dismissing the basic action in this matter, and for the same reasons we hereby recall our opinion in the case of Shammout Brothers v. The Liberia Electricity Corporation (LEC), 34 LLR 400 (1986). In that case, the justice who granted the writ also dismissed the basic action pending in the lower court.

Our Civil Procedure Law fails to give a definite time within which the writ of certiorari could be resorted to by a litigant after an adverse ruling, and since we cannot legislate we will not establish a definite time for filing same. However, the law frowns on unreasonable delay where the other party may be adversely affected or his position thereby changed to his detriment.

We also hold that the trial judge could not have properly ruled that the non-payment of rent is no grounds for cancellation of a lease agreement, and at the same time rule to hear the substance of the case without contradicting himself. Therefore, the judge was in error ruling the cause to trial on its merits after conceding that the action of cancellation would not lie for non-payment of rent.

In view of what we have narrated, and the laws cited in support of our holding, the ruling of the Chambers Justice granting the writ of certiorari is confirmed, that indeed the ruling given by the trial judge was contradictory, inconsistent and prejudicial to appellee, with the modification that the portion of the Chambers Justice's ruling dismissing the basic action is overruled. And the Clerk of this Court is ordered to send a mandate to the trial court with instructions to resume jurisdiction and to hear the cancellation proceedings de novo, beginning with the disposition of the law issues and, if the case is ruled to trial, to hear evidence in keeping with the law extent in this jurisdiction. And it is hereby so ordered.

Ruling affirmed with modification.