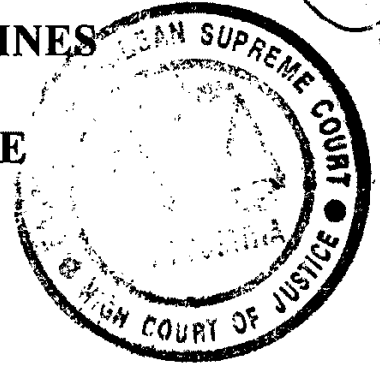


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO: 157 OF 1993



LEON BARNWELL - PLAINTIFF

V

EDWARD GIBSON - FIRST DEFENDANT

YVETTE GIBSON - SECOND DEFENDANT

Mr. A. Saunders for plaintiff

Mr. S. Commissiong for first defendant

Mr. M. Williams for second defendant

DECISION

The plaintiff claims against the defendants mesne profits and/or damages for use and occupation from and in respect of September 1992 until possession is given up at the rate of \$500.00 per month: general damages and an order that possession of the house be forthwith delivered to the plaintiff. On the conclusion of the case for the first defendant, counsel for the second defendant called no evidence and elected to stand on his submission.

There is no dispute that in 1991 the first defendant rented a house at Stoney Ground from the plaintiff at the rate of \$500.00 per month. In October 1991 the first defendant informed the plaintiff that following a court hearing he was no longer responsible for the rent and that the plaintiff must look to the second defendant for rent. The plaintiff told the first defendant that he could not do this as he had not rented the house to her. The first defendant by letter dated 11th October 1991 wrote the plaintiff:

"I wish to inform you that I will no longer be paying the rent for the house effective from the ending of this month. I suggest that you

contact Ms. Yvette Gibson to find out if she will be willing to keep the house".

The first defendant's evidence was that he did not indicate to the plaintiff the period for which he desired to rent the house but that he had told the second defendant that he would pay rent only for a short time as he could not afford to rent 'all the time'. By 'short time' he had in mind as long as he possibly could pay rent but did not have a specific time in mind. If he had no specific time in mind then the plaintiff could not determine how long the first defendant intended to meet rental payments.

The first defendant may have intended the letter of 11th October 1991 to be notice of termination but he did not specifically say so. What he said was that he would not be paying rent for the house and that second defendant should be contacted to see if she would meet the rental payments.

I do not regard this letter as termination notice. It could be regarded as an attempt by the first defendant to get the second defendant to pay rental in his stead. However ^{the plaintiff's} ~~his~~ evidence was that he would not deny that he told the Magistrate's Court that he accepted the letter as termination of tenancy. He admitted that at the end of October he tried to get the second defendant to leave the house.

The second defendant occupied the house until January 1994. On 25th June 1993 in a suit against the defendants a Magistrate ordered the first defendant to pay to the plaintiff arrears of rent of \$5000.00 and \$64.00 costs but the rent thus ordered to be paid has not been paid.

Counsel for the first defendant submitted that except for an allegation in paragraph 2 of the statement of claim there is no allegation against the second defendant.

Paragraph 2 of the statement of claim reads:

The said house was and still is occupied by the second defendant and a child of the first defendant and second defendant. The second defendant and the first defendant were married to each other before divorce proceedings were instituted to dissolve their marriage.

However, one of the prayers is for possession of the house and this claim involves the first defendant. Possession of the house was obtained by the plaintiff when the second defendant vacated the house in January 1994.

Both Counsel for the defendants argued that the plaintiff had elected to forgo the excess rent inasmuch as he claimed only part of the rent due in the Magistrate's Court and that a cause of action is not divisible. The Court was referred to Section 101 of Civil Procedure Code (Cap. 81) and section 4 of Small Debts Act (Cap.95) which enact:

Section 101. "The plaintiff shall not divide any cause of action for the purpose of bringing two more claims, but having cause of action for more than two hundred and forty dollars he may abandon the excess, and thereupon he shall, on proving his case, recover to an amount not exceeding two hundred and forty dollars; and the judgment of the Court upon such claim shall be in full discharge of all demands in respect of such cause of action".

Section 4. "It shall not be lawful for a plaintiff to split or divide any cause of action for the purpose of bringing two or more actions in any of the courts. He may reduce the amount of his claim and thereby abandon his right to recover any further sum".

The evidence was that suit 214/1992 filed in the Kingstown Magistrate's Court and dated 11th May 1992 claimed seven months rent \$3500.00 'up to the present time' owed to the plaintiff. On 26th March 1993, the trial date of that matter, the claim was amended to read ten months rental of \$5000.00, that is from

November, 1991 to August 1992. In fact on the trial date rent in excess of \$5000.00 was due, that is from September 1992 to March 1993. On 8th April 1993 the plaintiff instituted this action for mesne profits from September 1992 until delivery of possession of the premises.

The law is clear that a claim is not divisible. The plaintiff, at the trial before the Magistrate, is deemed to have abandoned rent from September 1992 to March 1993, which was due at that trial date. He cannot therefore recover for that period. However, the same reasoning does not apply for rent due from April 1993 to January 1994 as the plaintiff could not foresee that rent would have been unpaid for that period. I would therefore award mesne profits for those ten months.

The contract for rental of the house was made between the plaintiff and the first defendant for the benefit of the second defendant so that the first defendant is liable for unpaid rent.

Counsel for the first defendant argued that the plaintiff did not own the house which was rented: that he had not produced an authority of the owner to institute legal proceedings for unpaid rent and so cannot succeed. Counsel cited Halsbury's Laws of England Vol.37 para 216 which reads:

“ Plaintiffs generally. Person cannot be a plaintiff unless he has a vested interest in the subject matter of the action.

In an action founded on contract, the proper plaintiff is the person with whom or on whose behalf the contract was made, or in whom the rights under the contract are vested.”

I am of the view that, if the suit had been instituted in the owner's name the plaintiff would have had to produce the owner's authority. However the plaintiff instituted proceedings for recovery of rental of a house based on a contract between him and the first defendant. There is therefore no need to produce authorisation from the owner.

I make the following order:

Mesne profits from September 1993 to January 1994 - ten months at \$500.00 per month = \$5000.00 to be paid by the first defendant to the plaintiff.

Costs to be paid by the first defendant to the plaintiff to be taxed unless agreed.

Agreed \$750.00.

The case against the second defendant is dismissed.

I apologise for the unusual delay in delivering this decision.



Monica Joseph

Puisne Judge

22nd July 1995.