

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUITS NOS. 265 & 428 OF 1994 CONSOLIDATED

BETWEEN:

JAMES AMBROSE

Plaintiff

and

RENRIK JOHN

Defendant

Appearances:

AF Williams Esq for the Plaintiff

J Delves Esq for the Defendant

1999: November 18

2000: February 2, 22

JUDGMENT

[1] **MITCHELL, J:** These were two suits consolidated by order made on 16 April 1997. The earlier suit was a claim for arrears of rent of \$12,270.00. The defence was as follows. The Defendant had rented a store at Union Island in the Grenadines from the Plaintiff on or about 15 April 1993. The rental agreement required a deposit of \$2,000.00, or two and a half months' rent, which the Defendant paid but for which he received no receipt. The Defendant also worked for the Plaintiff. He paid personal bills of the Plaintiff out of the rent money. The Defendant paid the Plaintiff over \$9,500.00 under the rent agreement. The Plaintiff's claim for rent was bogus.

[2] The second suit was a claim for \$8,000.00 being the price of goods sold and delivered by the Plaintiff to the Defendant, and for interest. To this claim the Defendant pleaded in his Amended Defence as follows. The Defendant had rented a store in Union Island from the Plaintiff. Certain of the stock in the store had gone with the store. The Defendant was to pay some money up front, and the balance was on credit terms. The payments were to be made to the Plaintiff's bank account. The Defendant was to return to the Plaintiff any goods he was unable to sell. The Defendant paid a deposit of \$2,000.00. The Defendant had faithfully honoured the agreements and deposited monies into the Plaintiff's bank account. In addition, the Defendant made other payments to the Plaintiff, but received no receipts. The Defendant also paid numerous bills for the Plaintiff. The Plaintiff was away in Canada and would telephone the Defendant from time to time and instruct him to pay the bills. The Defendant returned unsold goods to the Plaintiff. The Plaintiff had signed the Defendant's business book on or about 15 June 1994 acknowledging that no further money was due. In his reply the Plaintiff pleaded that the rent was \$800.00 per month for the first two and a half months, and \$1,000.00 thereafter. The goods the Plaintiff supplied the Defendant were to be sold and the proceeds split 60% for the Plaintiff and 40% in favour of the Defendant. The Plaintiff also operated a business in the island of Canouan, another of the Grenadines. He left the Defendant to overlook the business, to collect the proceeds of sales from the Plaintiff's business in Canouan, and deposit the proceeds to his bank account. The Defendant was also left in charge of the Plaintiffs' rental properties, and was to collect the rents, pay the Plaintiff's bills, and deposit the balance to the Plaintiff's account. The Defendant had made some payments to the bank account. The Plaintiff had asked the Defendant about the proceeds from the sales from stock. The Defendant had told him he was having domestic problems and had had to use the money belonging to the Plaintiff, but as soon as he had received a loan from the Credit Union he would repay the Plaintiff. When the Plaintiff had signed the book of the Defendant, it was only to acknowledge that the Defendant had no more goods for him.

[3] At the trial the Plaintiff and the Defendant gave evidence. There were no other witnesses. In addition, the Defendant put in by consent his records and books relating to the transactions that formed the basis of the law suits. Principal among these were a copy of the rental agreement dated 15 April 1993, copies of correspondence to and from the Plaintiff over the years 1992-3, and 3 books of account.

[4] The facts as I find them are as follows. The Plaintiff is a businessman of Canouan and a real estate agent in Toronto, Canada. The Defendant is a primary school teacher of Union Island in the Grenadines. In 1991, the Plaintiff had three small dry goods shops, one in Canouan, and two in Union Island. One of the Union Island shops was at Ashton and the other at Clifton. The turnover of all these businesses combined never amounted to more than a few hundred dollars a month. The Plaintiff also owned a number of low-income rental houses in Canouan and Union Island. The tenants of these houses frequently gave trouble over paying the rents. The Plaintiff had had problems with managers before. He needed someone trustworthy to collect his rents, pay minor utility and other bills, and oversee and pay the employees in the shops, and collect and bank the small proceeds of these tiny shops. He was also in the process of repairing his home. The shops too needed repairing and maintaining. The rental houses needed repairing and maintaining from time to time. He needed a manager to arrange to purchase for him various building materials to be used for the repair of his home, the rental properties, and the shops. The repair work had to be contracted and supervised. The Plaintiff and the Defendant both belonged to the same Seventh Day Adventist church in Union Island. The Defendant knew of the problems the Plaintiff was having with the management of his businesses and properties in the Grenadines. He agreed to work for the Plaintiff part-time to supplement his income and to help his brother in the church. He agreed to be paid a token salary of EC\$150.00 per month. For over a year the Defendant carried out his duties towards the Plaintiff on this informal, unwritten agreement.

[5] Sometime in 1993 the Defendant approached the Plaintiff with a proposition. The Plaintiff had by now closed the business at Clifton, while still keeping the shops at Canouan and Ashton open. The Defendant suggested that he might rent the shop at Ashton and sell goods sent by the Plaintiff from Canada on consignment. He would continue to manage the Plaintiff's shop at Canouan and the rental properties, and attend to paying the Plaintiff's bills. The parties agreed and prepared and signed a handwritten agreement dated 15 April 1993. By this agreement, the Defendant agreed to rent the store at Clifton for a monthly rent of \$800.00 for the first two and a half months. The rent would increase to \$1,000.00 per month for one year from 1st July. The rent would increase by 10% if the Defendant chose to continue. The Defendant also agreed to purchase the Plaintiff's stock in the building at an agreed value of \$3,782.00 to be paid for in 6 months. The agreement could be terminated by the Defendant on 3 months' notice and by the Plaintiff by 6 months' notice. The written agreement related solely to the rent of the Union Island shop. The agreement to sell the dry goods on consignment, to act as agent for the rental houses, and as manager for the Plaintiff's shop at Canouan, and general manager of the Plaintiff's affairs, was entirely in writing. No accounting system or bookkeeping system was agreed to or by the parties. The Defendant was to account to the Plaintiff as best he could.

[6] The parties signed the agreement and the Defendant went into occupation of the Clifton shop. He continued to provide the various miscellaneous services to the Plaintiff for the agreed salary. The Plaintiff sent goods from Canada to the Defendant on consignment from time to time. Almost immediately, business began to fail. The accounts produced by the Defendant and sent to the Plaintiff from time to time over the short period of the relationship show very low turnover at the shop in Canouan. The levels of stock in both of the shops was always low. When goods were sent from Canada, the prices were too high and the quality too low. Sales in the Plaintiff's shop in Canouan were so slow that the Defendant was barely able to pay the employee of the Plaintiff. He was certainly not able to pay himself his monthly salary. The shops were badly in need of repair. There was no

money to pay for the repairs. The income was not sufficient to meet the bills of the Plaintiff.

[7] In September 1993, after barely 5 months of the new business arrangement, the Plaintiff returned home from Canada. He spoke to the Defendant about the Defendant's failure to pay the agreed rent. Again, in January 1994 the Plaintiff returned home and spoke to the Defendant. The Defendant at this time paid a small amount of \$730.00. The Plaintiff accepted this sum on account of one month's rent of \$1,000.00. He gave the Defendant a receipt showing a balance of \$220.00, instead of the correct balance of \$270.00. This mathematical error was typical of the sloppy and unbusinesslike way the Plaintiff conducted his affairs. During the January 1994 visit, the Plaintiff gave the Defendant notice to quit, and the Defendant agreed to leave in June

[8] The Plaintiff's evidence was that the Defendant owed him \$8,000.00 for goods supplied to him between April 1993 and January 1994. The Plaintiff had kept no account of the goods supplied to or of payments received from the Defendant from time to time. The businesses were in fact inadequate to generate any profit. The Defendant did his best to account in writing to the Plaintiff. He was no bookkeeper. At the conclusion of the relationship, the Plaintiff and the Defendant did a final stocktaking. The Defendant kept some of the stock, and the Plaintiff took the greater part, both of the original stock still unsold, and of the more recently sent stock. They signed the Defendant's book as to their agreement. The Plaintiff accepted the figures of the Defendant. He accepted the goods in satisfaction of all monies owing to him. He later changed his mind and decided that the Defendant owed him money. Hence the law suit. I find no balance owing to the Plaintiff from the Defendant on the goods supplied to the Defendant. Suit 428/1994 is dismissed with costs to the Defendant.

[9] The position with suit 265/1994 is quite different. The Plaintiff claimed that the Defendant owed him arrears of rent for the shop premises at Union Island for 12

months at \$1,000.00 per month plus the balance of \$270.00, to a total of \$12,270.00. The Defendant claimed that he had accounted to the Plaintiff for all the rent he owed for the shop premises. He had no balance for the Plaintiff. He had paid some of the rent into the bank account. Some of the rent had gone to pay miscellaneous bills of the Plaintiff. Other rent had been paid directly to the Plaintiff. Neither of the parties kept any sort of rent book or rent account. The oral evidence of the parties was conflicting. I am, however, satisfied that the Defendant did not pay the monthly rent as he claims. The reason for the failure to pay rent was that the business, which was to generate the income from which the rent was to be paid, was not profitable. The Defendant's shop was, like the Plaintiff's business at Canouan, beset with stocking, pricing and quality problems. It did not generate enough income to break even, far less to pay the rent. The Defendant had other financial problems. He was at the time building his house. He had a loan from the Teachers' Credit Union that he was having difficulty paying. He had to refinance the loan. On top of that, he found he had made a bad business deal with the Plaintiff. He was using some of his private money to keep the businesses going. He could not pay the rent. He considered that the Plaintiff had taken advantage of him in the agreement.

[10] The conclusive evidence that there was a balance of rent owing is to be found in the statement prepared by the Defendant in June 1994 at the parting of the ways. In the Defendant's account book in evidence, just before the account relating to the goods supplied to the Defendant by the Plaintiff, the Defendant prepared in his own handwriting a statement of the balance of the rent due to the Plaintiff up to 15 June 1994, the date when the Defendant gave up the shop. This statement shows that the monthly rent had been reduced to \$950.00. The Plaintiff had originally pleaded this, but he had altered his pleadings at trial to claim the original rent. The Plaintiff did not sign this page of the Defendant's account specifically. I am satisfied that this page dealing with the balance of the rent formed a part of the final negotiations between the parties. The Plaintiff, due to his lack of records has claimed a balance of \$12,270.00. The Defendant proved that he had paid some

rent. I am satisfied that the Plaintiff received payments of rent amounting to \$3,430.00, as per the account of June 1994. The balance of rent due to the Plaintiff as shown on the Defendant's account is \$8,444.94. That figure is binding on the Defendant. The Plaintiff did not satisfy me that the figure for arrears of rent that he gave was correct. I have considered the question of awarding interest to the Plaintiff as he asks. This arrangement between the parties was so unbusinesslike that an award of interest would be unjust. There will be judgment for the Plaintiff for \$8,444.94 with costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge