

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 288 OF 2000

BETWEEN:

LUCENE THORNE

Claimant

v

MAG SAM

Defendant

Appearances:

Mr. Samuel Commissiong for Claimant

Mr. Arthur Williams and Ms. Roxann Knights for Defendant

2003: January 21
2003: September 24th

JUDGMENT

- [1] **BRUCE-LYLE, J:** By a writ of summons filed and dated 7th July 2000, the claimant commenced action in this matter. The claimant, an adult female going by the name Lucene Thorne, was the owner of the goods which form the subject matter of these proceedings. She resided abroad, and had employed the defendant Mag Sam on a weekly basis as a domestic helper in her home at Mt. Bentick where her mother Mrs. Leonora Thorne resided.
- [2] As caretaker, the defendant's principle duty was to care for Mrs. Leonora Thorne, the aged mother of the claimant. Her duties required her to clean the house of Leonora Thorne, prepare her meals and attend to her personal hygiene.
- [3] In one of the bedrooms in the home at Mt. Bentick, the claimant had stored some valuable goods she had been purchasing over the years at bargain sales and auction sales in New

York, USA. After purchasing same, she would bring or ship them to Saint Vincent and the Grenadines and store them in the home at Mt. Bentick.

[4] Sometime during her employment with the claimant the defendant clandestinely broke into the storage room in the claimant's home at Mt. Bentick and stole various items as mentioned in the claimant's statement of claim, amounting in the total sum of \$8,787.00 US.

[5] It is admitted by the defendant herself and by way of exhibits pertaining to the defendant's record of conviction from the Magistrates Court, Georgetown, that the defendant was convicted on 10th August 1998 for stealing various goods which formed part of the larger amount of like goods referred to in paragraph 4 of the statement of claim. She was fined \$600.00 to be paid within three months, i.e. by 9th October 1998 or be imprisoned for three months.

[6] The claimant in her evidence stated that she never gave the defendant authority to remove the said goods, and that, which the defendant admitted to in her evidence, the defendant wrongfully broke the lock to the said room and removed the said goods therefrom and has retained same in spite of the claimant's repeated demands for their return. The claimant further contended that the defendant converted the said goods to her use without the consent of the claimant. The claimant therefore posited that in breach of the claimant's trust, the defendant wrongfully removed and converted the said goods to her use, fraudulently and with intent permanently to deprive the claimant of same.

[7] The claimant therefore claimed the sum of \$8,787.00 any other relief as to the court may seem just, plus costs.

[8] This case really turns on issues of credibility and common deductions. The defendant admitted to breaking into the said room at the house in Mt. Bentick by breaking the lock to the said door, removing certain items specifically sweet soap, and then just pulling shut the door as the lock was destroyed. She insisted that the only items she took were the items

to which she pleaded guilty to in the Georgetown Magistrates Court and for which she was fined \$600.00. For those items, the defendant was ordered to pay the value amounting to the sum of \$1,616.00 U.S. as judgment for part of the claim by Mitchell, J on the 2nd November 2000.

[9] The claimant now goes further to claim the sum of \$8,787.00 US being the value of the items she stated were taken from her home at Mt. Bentick. This presupposes that she is convinced the defendant should be held responsible for that amount and the loss of the items.

[10] It is clear from the claimant's evidence that her sister and one other person had keys to the said room where these items were kept. It is also clear from the evidence that these two persons hardly accessed this room, or had no need to access that room on a regular basis, as everything required for the caretaking of Mrs. Leonora Thorne was in adequate supply and therefore there was no need for any of the key holders to access that room. There is no evidence that any of those two persons broke into that room. It is my view that if they had keys to this room there would have been no need for them to have broken the lock to this room. I find it highly unlikely that any of those two persons would have broken the lock to access that room.

[11] Having thus found, this leaves the court with the evidence of the defendant to determine as to credibility. The defendant was employed in a position of trust. She was defacto in charge of the house of Leonora Thorne every other weekend. She was specifically told not to go into that room. There were two key holders to the lock of that door in the house. She has categorically stated that she did not see Mr. Neil Henry, one of the key holders at any time when she was so employed. In fact she stated in her evidence that she did not know Mr. Neil Henry. There is no evidence either from the defendant that the other key holder frequently visited the said house. I have already held that I find it inconceivable that these two key holders would have broken into the said room, or even accessed the said room to steal the items mentioned in the statement of claim.

[12] Instead, what we have is an admission from the defendant that she did break into the said room to take her employer's soap. To my mind, and in agreement with learned counsel for the claimant, this is an asinine explanation for breaking the lock to the room. The fact is, she broke the lock, accessed the room, and left the room unsecured. She admitted before the Magistrates Court that she took other items, but not from that room. Frankly, taking into consideration the whole of the evidence, and on a balance of probabilities, I am more than convinced and do find as a fact that that admission to the Magistrates Court goes further than the specific items before that Court.

[13] I find on the totality of the evidence, that the defendant is responsible for the theft of all the items mentioned in paragraph 4 of the claimant's statement of claim, there being no evidence to suggest that someone else accessed that room, and bearing in mind that she broke the lock and left the room unsecured.

[14] The defendant really has no defence to this claim and I order that the claimant's claim succeeds in the amount of \$8,787.00 US which includes the \$1,616.00 US ordered as part payment of this claim by Mitchell, J as mentioned earlier. I also order that the defendant is to pay the claimant's costs in the sum of \$7,000 e.c.

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Frederick V. Bruce-Lyle
HIGH COURT JUDGE