

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

DELROY JACOBS

Plaintiff

-and-

1. IVAN DOUGLAS

2. LEVI DOUGLAS

Defendants
Jointly & Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Charles S. Ramson for the Plaintiff

Mr. Trenton Lake for the Defendants

Delivered February 17th 2020

RULING

The Plaintiff sublet a building situate at 21 First Avenue, Bartica, Essequibo from Lashley Gomes sometime in the year 2011 for the sum of \$60,000.00 per month, who, at the time was occupying the building pursuant to a lease from the Defendants.

Upon the expiration of Lashley Gomes' contract, the Defendants leased the said building to the Plaintiff on January 6th 2014 by a contract in writing for a period of twelve months at the same rental of \$60,000.00 per month. [**Exhibit "B1 - B2"**]

This contract specifically provided for written notice to be sent by either party to the contract for renewal or termination as the case may be four weeks prior to the expiration of the said contract.

The Defendants notified the Plaintiff by notice dated September 30th 2014 that the contract would not be renewed. [**Exhibit “D”**]

The Plaintiff did not, at any time, write to the Defendants indicating a desire to renew the contract.

Instead, on December 19th 2014, days before the expiration of the contract, the Plaintiff instituted this High Court Action against the Defendants.

ISSUE I

In the Writ of Summons, the Plaintiff claims a Declaration that he is entitled to possession of the property situate at 21 First Avenue, Bartica, Essequibo, this was further expanded in the Statement of Claim [filed on March 5th 2015] to include a claim for a Declaration that the Defendants are not the owners of the building situate at 21 First Avenue, Bartica, Essequibo.

With respect to the ownership of the building, the Plaintiff did not present any evidence to dispute the Defendants ownership of the building situate at 21 First Avenue, Bartica, Essequibo.

The first argument advanced by Counsel for the Plaintiff in addressing this issue in his closing address is simply that the Defendants have no legal right to occupy the land where the building is situated.

This is wholly irrelevant as to any purported issue of ownership of the building.

Further, it is the Plaintiff's evidence that he rented the building, first, from Lashley Gomes who was renting from the Defendants and then from the Defendants directly.

It appears from his closing submissions that the second argument with regards to this purported issue that Counsel for the Plaintiff is advancing is the proposition that the building that was at 21 First Avenue, Bartica, Essequibo has essentially physically been replaced by Plaintiff. This was never pleaded nor was any evidence led to establish such a claim.

In any event it would indeed be nothing short of ludicrous to assert that while renting a property a person rebuilds it and so therefore disentitled the owner.

Based on the evidence presented to the Court, the Plaintiff is not entitled to a Declaration that the Defendants are not the owners of the building situate at 21 First Avenue, Bartica, Essequibo.

Further, based on the undisputed fact that the Plaintiff did not exercise his right in accordance with the contract [**Exhibit "B1 - B2"**] to renew the contract, the Plaintiff is not entitled to a Declaration that he is entitled to be in possession of the property situate at 21 First Avenue, Bartica, Essequibo.

ISSUE II

The Plaintiff claims damages for deceit and damages for misrepresentation against the Defendants.

Both claims stem, according to the Plaintiff's pleadings, from the same allegation, that the Defendants held themselves out to be the owners of the land situate at 21

First Avenue, Bartica, Essequibo thereby inducing the Plaintiff to pay them rent and expending monies to improve the property.

Firstly, according to the Plaintiff's evidence, he expended the sum of \$1,175,000.00 [for which no documentary evidence was tendered] after he began leasing the building from Lashley Gomes but before he began leasing the building from the Defendants [Paragraph 3 of **Exhibit "E1"**].

Under cross examination the Plaintiff testified that he did works up to this year, however, his estimate of monies expended remained the same as pleaded in his Statement of Claim in March 2015.

In this regard the Court found the Claimant to be an incredible witness.

Under cross examination the Plaintiff accepted that the Defendants did not "encourage" him to do any work on the property.

It is therefore patently obvious that if the Plaintiff indeed expended monies on the improvement of the property, he did so sometime before he even spoke with the Defendants about the property and so certainly such expenditure could not have been influenced by the Defendants and absolutely not as a result of the contract [**Exhibit "B1 - B2"**] as Counsel for the Plaintiff sought to assert in his closing address.

The Court must further comment on the statement by Counsel for the Plaintiff in his closing address that *"It is quite plausible that if the Defendants had told the Plaintiff that they did not have permission to operate the building as a business then the Plaintiff would not have entered into the agreement."*

This is improper speculation based on a gross misrepresentation of the evidence since it is the Plaintiff's position in his pleadings and evidence that he began renting the boathouse from Lashley Gomes, not the Defendants, since 2011.

In the circumstances the Plaintiff is not entitled to damages for either deceit or misrepresentation.

ISSUE III

The Plaintiff claims "damages" for works and repairs done to the property.

Presumably, the Plaintiff by this claim is claiming a reimbursement of monies he claims to have spent on improving the property.

The Plaintiff has not established to the satisfaction of this Court that he did in fact expend any monies on improving the property.

In any event, by his own testimony, any monies that he did expend was not expended with the knowledge or permission of the Defendants and in fact was expended before he contracted with the Defendants.

In the circumstances the Plaintiff is not entitled to "damages" for work and repairs done to the property.

ISSUE IV

The Plaintiff seeks a Declaration that the contract dated January 6th 2014 is unlawful, a nullity and unenforceable.

It appears that the basis for this relief is that the Defendants are not the owners of the building situate at 21 First Avenue, Bartica, Essequibo and/ or on the issues canvassed in **ISSUE I** above.

Interestingly, Counsel for the Plaintiff also submitted in his closing address that since the Defendants delivered a notice to quit to the Plaintiff, the Plaintiff is now a statutory tenant under the **Rent Restriction Act; CAP 36:23** of the Laws of Guyana, which logically must be from him supposedly holding over from the same contract since the notice to quit was based on that contract.

Based on all of the foregoing the Plaintiff is not entitled to a Declaration that the contract dated January 6th 2014 is unlawful, a nullity and unenforceable.

ISSUE V

The Plaintiff claims damages against the Defendants for trespass.

There is no allegation of trespass in the pleadings nor evidence of trespass.

Counsel for the Plaintiff in his closing address, states, “*The Defendants admit that they entered the property on a number of occasions without notice and without invitation or consent by the Plaintiff ...*”.

This Court has been unable to find such evidence in the record.

In the circumstances the Plaintiff is not entitled to damages for trespass.

Based on the foregoing the Plaintiff’s claims as enumerated in his Statement of Claim are dismissed.

By way of Counterclaim the Defendants seek an order for possession of the property situate at 21 First Avenue, Bartica, Essequibo against the Plaintiff.

Counsel for the Plaintiff asserts that this Court has no jurisdiction to entertain this claim since the Plaintiff is a statutory tenant, which is clearly a proposition of recent vintage since the Plaintiff's entire claim/ case was grounded in disputing the Defendants ability to be the Plaintiff's landlord.

As long as a case has properly engaged the High Court all issues arising therein can and must be determined by that tribunal.

In fact **section 26 of the Rent Restriction Act** permits the claims under that Act to be instituted in the High Court if an equitable remedy is also sought which demonstrates that these types of claims can be heard and determined by the High Court provided it is properly raised before the High Court.

In the interest and judicial economy this Court must be able to deal, as far as is legally permissible, with all issues arising in a trial before it.

The Court finds that the commercial contract entered into between the Plaintiff and the Defendants on January 6th 2014 expired on December 31st 2014 and the Defendants were entitled to possession immediately thereafter.

The Court finds that even if the Plaintiff's occupation of the property was subject to the terms of the **Rent Restriction Act**, such a tenancy was properly terminated and in any event the Plaintiff has not advanced any defence to the termination of the tenancy.

The Defendants were therefore entitled to possession of the building situate at 21 First Avenue, Bartica, Essequibo as of January 1st 2015.

The Plaintiff testified that he last paid rent under the contract in November 2014.

The Court finds that the Defendants are entitled to the monthly rental due for the month of December 2014 as per the said contract and mesne profits for the period January 1st 2015 to February 17th 2020

The Court orders the Plaintiff to deliver up vacant possession of the property situate at 21 First Avenue, Bartica, Essequibo to the Defendants forthwith.

The Court awards judgment in the sum of \$60,000.00 to the Defendants against the Plaintiff as and for rent due for the month of December 2014.

The Court awards judgment in the sum of \$3,720,000.00 to the Defendants against the Plaintiff as and for mesne profits.

The Court awards interest at the rate of 4 % per annum on the aforementioned sums from February 17th 2020 until fully paid.

The Court awards costs to each Defendant against the Plaintiff in the sum of \$150,000.00.

Justice N. A. Singh

