

- 1. Rent
- 2. Jurisdiction of Mag. to deal with rent.

BETWEEN: 1. BEBE AZEEZA RAMKISSOON represented herein by her duly constituted attorney PAUL BISSOON RAMKISSOON, agreeably with power of attorney numbered 986\95 of the 9th day of February 1995, and deposited in the Deeds Registry at Georgetown, Demerara Guyana, on the 15th day of February, 1995.

*Prabha Pasaub*

2. PAUL BISSOON RAMKISSOON  
PLAINTIFFS

and

1. MUNIR MOHAMED  
2. JIRAJH LALL  
DEFENDANTS  
Jointly and Severally.

S. Fraser for the Plaintiffs

C. Ranjattan for the Defendants.

BETWEEN: TAPESREE CHOW

PLAINTIFF

and

PETER REID

DEFENDANT

R. Poonai for the Plaintiff.

C. Ranjattan for the Defendant.

*Consolidated Action*

ng, J. (ag)

These matters are being considered together with the consent of all the parties involved, since the issue to be determined is identical in relation to each of them. Each claim is one of rent due under agreements of tenancy. When these matters were called in Bail Court, C. Ranjattan who appears for the Defendants in both matters indicated that he wished to make objection in limine with respect to the Jurisdiction of the Court to hear the Plaintiffs' claim.

urging me to strike out these claims, Mr. Ramjattan submitted, that these claims are both concerned with rent yielding tenancies and that by virtue of the provisions of section 26 (1) of the Rent Restriction Act, Chapter 36:23 of the Laws of Guyana, the High Court is without jurisdiction to hear these claims.

Section 26(1) provides as follows:

" Subject to section 3(3) of the Summary Jurisdiction (Petty Debt) Act, any claim or other proceedings (not being proceedings under the Summary Jurisdiction Acts ) arising out of this Act shall be made or instituted in a magistrate's court: ✓

Provided that where an equitable remedy is sought ( whether or not in conjunction with any other remedy ) such claim or other proceedings may be made or instituted in the High Court. "

In so submitting, Mr. Ramjattan placed heavy reliance upon the dictum of George, J (as he then was) in the case of *ETWARIA v BELLAMY* (1967) G.L.R 385. At page 389 of the report, the learned Judge said " I am of the opinion that the whole scheme of the Rent Restriction Legislation, both of Guyana and Trinidad and Tobago, makes it abundantly clear " that the Legislature contemplated that it was dealing solely with rent yielding tenancies and not at all with rent free tenancies of any kind. "

Counsel for the Defendants also referred me to the decision of Phillips, J in the case of *LEE-HONG-GAT et anor v HARDEEN* (1956) L R B G 158. In this case, the Plaintiffs had sued the defendant, their landlord, for the sum of \$718.77, as excess rent paid by them in respect of premises occupied by them . The claim was instituted in the Supreme Court where an objection in limine with regard to the jurisdiction of the Supreme Court to hear the claim was taken by Counsel for the defendant. The Court held that the provisions of section 26(1) of the Rent Restriction Ordinance of British Guiana (which is expressed in identical language as section 26(1) of the Rent Restriction Act, Chapter 36:23 of the Laws of Guyana) were mandatory and since the claim was one within the purview of "any claim or other proceedings arising out of the Ordinance" the claim should have been instituted in the magistrate's court.

It is the further submission of Counsel for the Defendants' that these claims should properly have been instituted in the magistrate's court.

On the other hand, both Mr. Fraser and Mr. Poonai, for the Plaintiffs have urged me to find that these claims are properly before the Court. They contend that the claims are for rent due, owing and payable by the defendants under contractual tenancies and that the claims can therefore be made upon Specially Indorsed Writs under the provisions of Order 1, Rule 6 (a) (1) of the Rules of the High Court, Chapter 3:02. ✓

Order 6, Rule 6 (a) (1) provides as follows:

In actions -

- (a) where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest,.....
- (i) upon a contract, express or implied, (as for instance on a bill of exchange, promissory note or cheque, or other simple contract debt;...

In order to determine the force and merit of the submissions by Counsel for the Plaintiffs, I looked carefully at the Statements of Claim in both matters. I shall deal first with Action No. 1821 of 1995.

Paragraph 1 of the Statement of Claim reads as follows:

"By a lease dated 18th day of June 1993, the Plaintiffs' predecessor in title, Ashraf Ali, deceased, let to the defendants the premises situate at East 1\2 123 Regent Street, Lacytown, Georgetown, Demerara, Guyana. The defendants have remained in possession under the terms of the said agreement."

And paragraph 3 states:

"The plaintiffs became the owners of the said property by transport numbered 1218\94 of the 9th November, 1994."

The question then to be determined is what was the nature of the defendants' tenancy on the 9th November, 1994, when there was a conveyance of the property to the plaintiffs? On this date, the defendants, by operation of law, became statutory tenants of the plaintiffs. In the circumstances, the Plaintiffs are enjoined to bring their claim for rent in the magistrate's court. Since the claim for rent is an incident of and arises out of the tenancy, the provisions of section 26(1) of Chapter 36:23 will apply. There is no other procedure for the recovery of rent in such circumstances. The language of the section is imperative and must be complied with.

In the circumstances, I cannot agree with Counsel for the plaintiffs that the claim for rent in this case is in the nature of a claim for a simple contract debt arising from a contractual tenancy. Having found that the tenancy is statutory in nature, I hold that this Court is without jurisdiction to hear the plaintiffs' claim and it is accordingly struck out.

I now consider Action No. 2929 of 1995. Mr. Ramjattan submits that the tenancy here is a rent yielding tenancy and that following the dictum of George J in *ETWARIA v BELLAMY* (supra) this claim should have been brought in the magistrate's court. It is apposite to note that there are two types of rent yielding tenancies, that is to say, statutory rent yielding tenancies and contractual rent yielding tenancies. There is nothing on the record in this matter

Note

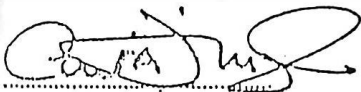
to show that the tenancy here is one to which the Rent Restriction Act applies, as Mr. Ramjattan contends. If indeed this was so, and was evident on the face of the record, the Court ex meromotu would have considered its jurisdiction to hear the case. Viscount Simon, LC in the case of WESTMINSTER BANK LTD. v EDWARDS (1942) 1 All E. R. 470 at page 473,

explained that the general rule is that "the Court itself not only may but should take objection where the absence of jurisdiction is apparent on the face of the proceedings." \*

It is my view that there is no basis upon which these submissions on behalf of the defendant, in relation to the issue of the Court's jurisdiction to hear this claim could be upheld, and they are accordingly overruled.

Given the jurisdictional issues which fell to be determined in these matters, I think it opportune to set out when and where a claim for rent may be commenced and I would attempt to do so now:

1. Where the tenancy is contractual, if the claim for rent is for an amount which is not in excess of a sum recoverable in the magistrate's court, the claim should be instituted in the magistrate's court.
2. Where the tenancy is contractual, if the claim for rent is for an amount which exceeds a sum recoverable in the magistrate's court, the claim should be brought in the High Court under the provisions of Order 4, rule 6(a) (1).
3. Where the tenancy is one to which the Rent Restriction Act clearly applies, then irrespective of the amount claimed, such claim MUST be instituted in the magistrate's court, unless the claim for rent in these circumstances is coupled with a claim for some form of equitable relief, in which case the claim may be instituted in the High Court..



Carl A. Singh

Puisne Judge (ag)

18th October 1995.

\* *Phillips v. Copping* [1935] 1 KB 15  
104 L.J.K.B. 78  
152 L.T. 175

(A Court of Appeal ~~case~~ Landlord & Tenant Case)  
Scrutton LJ (at 104 L.J.K.B. at p. 81)  
stated:

• It is the duty of the Court, when asked to give a judgment which is contrary to a statute, to take the point - although the litigant may not take it.

See also: *Salter v. Lask* (No. 1) [1924] 1 K.B. 794  
130 L.T. 323

• *Barton v. Fincham* [1921] 2 K.B. 291

• *Lefevre v. Hirst* (1931) 100 L.J.K.B. 733

• *Smith v. Poulter* [1947] K.B. 339