

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CIVIL CLAIM NO. 227 OF 2007

BETWEEN:

CARDON KNIGHTS

Claimant

V

MICHAEL WILLIAMS
STEPHEN VICTORY

Defendants

Appearances:

Mr. C. Dougan, Q.C., for the Claimant.

Ms. Paula David for the First Defendant.

2011: November 28

2012: March 29

DECISION

- [1] **JOSEPH, Monica J (Ag.):** The Claimant filed an action on 29th June 2007 against the Defendant, for arrears of rent of \$11,380.00 for his garage at Buccament, for the period December 2005 to December 2006, interest at the rate of 6% per annum: unpaid electricity bill totaling \$475.00.
- [2] In a defence and counterclaim filed on 23rd July 2007 the First Defendant denied owing the Claimant arrears of rent or any unpaid electricity bill. He counterclaimed for the return of a security deposit of \$1,000.00 in addition to interest at 6% per annum, paid to the Claimant at the beginning of the tenancy.
- [3] By Order of the Master made on 29th June 2009, Stephen Victory (also known as Graham) (Second Defendant) was joined as a Defendant. There followed the filing of an amended



claim form identical to the original claim, merely adding Stephen Victory as Second Defendant but making no claim against him. The Second Defendant has since died.

WRITTEN SUBMISSIONS - 10th January 2012.

The Claimant's case by learned Queen's Counsel Mr. Dougan:

- [4] The Claimant testified quite clearly that he had orally contracted with the First Defendant to lease the latter his garage at Buccament. He contended that prior to 2006 he never knew the Second Defendant and that shortly after returning from the United Kingdom in 2006 the First Defendant introduced them both (the Claimant and Second Defendant) and said that the Second Defendant was his cousin and had returned to join with him in the garage.
- [5] According to the Claimant, the Second Defendant worked in the garage with the First Defendant for about one year. The First Defendant gave up the garage and, while it appeared that the First Defendant did some of his work elsewhere, he maintained the tenancy of the garage.
- [6] The Claimant finally got the keys to his garage from the Second Defendant since he worked mostly in the garage while the First Defendant fixed broken down vehicles on the road and occasionally in the garage. The garage was locked up for over a month and he was unable to obtain the keys from the Defendants.
- [7] The Claimant's claim was that he had no business transactions with the Second Defendant. He was deceived by the First Defendant, who promised to pay the arrears of rent on several occasions but did not.

The First Defendant's case by counsel Ms. David:

- [8] The First Defendant entered into an oral lease agreement with the Claimant for the rental of a garage, from around 2002 and he surrendered the tenancy around the latter part of 2004. He introduced the claimant to the Second Defendant around the time when he surrendered the tenancy. In the First Defendant's presence, the Claimant and the Second Defendant entered into an oral agreement for the lease of the garage to the Second

Defendant. The First Defendant vacated the garage and the Second Defendant entered the garage as the Claimant's tenant.

- [9] The First Defendant built his own garage in 2005 after purchasing land from Bernard Punnett. From 2004 to 2006 he operated a mobile garage business moving from place to place. He and the Second Defendant operated a similar business, except he did not do recalibration and fuel injection work.

Security deposit:

- [10] Both parties' evidence was that the First Defendant made a \$1000.00 security deposit to the Claimant, in case there was damage to the garage. Both parties also stated that the First Defendant did not ask the Claimant to return the deposit. I accept the evidence that the First Defendant made a \$1000.00 security deposit to the Claimant, in case there was damage to the garage, of which there was no evidence. The Claimant admitted that the First Defendant did not ask him for the return of the deposit. I hold that the Claimant is to pay \$1000.00 to the First Defendant.

Lease agreement:

- [11] Ms. David submits that the most important issue for the court to determine is whether there was a lease agreement between the parties from December 2005 to December 2006. Both parties agree that there was an oral agreement but disagree as to the period of the lease. The First Defendant claims - the Claimant disagrees - that the lease commenced in 2002 and that he (the First Defendant) surrendered the tenancy in 2004. The Claimant claims that the lease ran to 2006.
- [12] I agree with Mr. Dougan Q.C. for the Claimant that a fundamental principle in civil proceedings is that he who alleges must prove his case, on a balance of probabilities. Relative to that principle, Ms. David referred the Court to HCVAP 2007/001 C.A. **Elena Collongues v Andrew Lynch and Olga Mirinskaya Coffee Commodities Ltd, Icaza, Gonzalez-Ruiz v Aleman (BVI) Ltd.** The burden rests on the claimant to prove his case and the standard of proof required is on a balance of probabilities. I consider the evidence to determine if the claimant has proved his case.

[13] At the trial, the Claimant stated: "He (First Defendant) began renting my premises. Can't recall exact time." He was referred to his witness statement and he agreed with the statement he made that "sometime in 2005, I rented my said garage to the First Defendant"

[14] At the trial, the First Defendant presented rental receipts from 22nd May 2002 to 26th November 2004. When shown those receipts, the Claimant agreed that the receipts show that the First Defendant was renting the garage in 2002. He stated that he had copies of receipts he had issued to the Defendant, but had handed them over to his counsel, which were not presented at the trial. Mr. Dougan's submission under the heading 'background' is that sometime in 2002 the Claimant rented the garage to the Defendant by virtue of an oral lease.

[15] There were different lease periods given by the Claimant. The Claimant could not recall the exact time the lease commenced: then he said it was 2005, which was followed by a statement that it was 2002. The kernel of the Claimant's case was the existence of a lease for a stated period. There was an agreement for a lease of the garage, but the evidence regarding the period of the lease does not balance in favour of the Claimant, as the Claimant has stated three different lease periods. Thus, the Claimant has failed to prove, on a balance of probabilities that the period of the lease agreement was from 2005 to 2006. In Hornal v Neuberger Products Ltd. (1956) 3AER 970 at p 978 Morris L.J. had this to say:

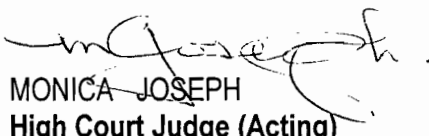
"Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity became a part of the whole range of circumstance which have to be weighed in the scale when deciding as to the balance of probabilities."

Electricity payment:

[16] With respect to the claim of \$475.00 for electricity, the Claimant's evidence was that he did not have a receipt but could obtain one if the court wanted one. It is for the Claimant to prove his case and he has admitted that he could obtain a receipt but he did not. I find that the Claimant has not proved his case on a balance of probabilities and I dismiss his claim.

[17] IT IS ORDERED:

- (1) The Claimant's case is dismissed.
- (2) The counterclaim of the First Defendant succeeds. The Claimant is to pay \$1,000.00 to the First Defendant.
- (3) Submissions on costs to be made in Chambers on 10th May 2012 (twenty minutes).


MONICA JOSEPH
High Court Judge (Acting)
26th March 2012.