

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 228 OF 2002

BETWEEN:

**EGBERT CHARLES
VERONICA CHARLES**

Claimants

v

ALBERTHA GARDINER

Defendant

APPEARANCES:

Joseph Delves for Claimants

Ronald Marks for Defendant

2003: October 14

2004: January 29

JUDGMENT

[1] **BLENNMAN, J:** Mr. Egbert Charles and Mrs. Veronica Charles (hereafter the Charles) are a married couple. Mrs. Charles inherited the property situated at Mesopotamia in Saint Vincent and the Grenadines from her father Mr. Vincent James by way of Deed of Gift. The property is occupied by Ms. Albertha Gardiner. The Charles are seeking to obtain possession and occupation of the disputed property

[2] This is a claim by the Charles against Ms. Albertha Gardiner for immediate possession of premises situate at Mesopotamia in St. Vincent and the Grenadines and arrears of rent. Alternatively, the Charles claim mesne profits of \$200 monthly against Ms. Gardiner. The Charles contend that on the 24th day of August 2001 they entered into a written agreement with the defendant for the rental of property situate in Mesopotamia which she utilizes as a

cook shop. The monthly rental was \$200 payable on the first day of each month. They further contend that the duration of the agreement was twelve (12) months.

[3] The Charles allege that the defendant failed to pay them any rents at all. As a consequence they issued her with a notice to quit and deliver up the property but that she has failed to vacate the premises.

[4] Ms. Albertha Gardiner, for her part asserts that in 1995 she was put in possession of the property by Mr. Vincent James who was then the owner of the property. She avers that the property was in a state of disrepair and that herself and Mr. Vincent James agreed that she would repair the property utilizing the sum of \$20,000 from a loan and that she would occupy the property rent free until her repayment of the loan was completed. On completion of the loan repayment she would then start to pay Mr. Vincent James \$200.00 per month. In July 2001, Mr. Vincent James indicated to her that he had conveyed the property to the Charles, the latter who confronted her and sought to get her to sign a agreement.

[5] Ms. Gardiner further contends that on 29th day of August 2001 the Charles came to her premises with a document which she signed based on the their indication that it represented the continuation of the agreement she had with Vincent James. She contends that the Agreement which she signed does not reflect her deed. Accordingly, she contends that while she did receive a notice to quit on 4th day of January 2002, she asserts that it was wrongfully issued as she did not agree to the terms of the written Agreement dated 29th August 2001.

[6] There are two issues which must be determined namely -

- (a) Whether Ms. Gardner has acquired an equitable interest in the property?
- (b) Whether or not the defendant entered into an agreement dated the 24th August 2001 for the rental of the property at a sum of \$200 E.C. monthly and if so,

whether she is in breach of the terms of the agreement and is liable to vacate the premises?

EQUITABLE INTEREST

[7] Ms. Gardiner filed a witness statement which was admitted in evidence and upon which she was cross-examined at length. Ms. Gardner stated in her witness statement that she entered into a verbal agreement with Mr. Vincent James the terms of which were

- (a) That she would pay for all repairs and refurbishment to the property and bring it to a condition where it was suitable for rent.
- (b) That she would take out a loan at the St. Vincent Union of Teachers Credit Union to pay for the said repair and refurbishment
- (c) That she would repay the said loan monthly and would be exempt from rent during the time of repayment
- (d) That she would have no claim to any equity in the property after the repayment of the loan
- (e) That rent of two hundred dollars per month would be payable after she had repaid the loan.

[8] Ms. Gardiner called no other witness. During the tendering of the witness statement in evidence, she was quick to disclaim the document without even reading it. Subsequently, she recanted and adopted it as true and correct. However, on cross-examination, she stated that no specific time was stated for the repayment of the loan. She had borrowed the money in 1995 to repair Mr. James' house. In cross-examination she proved to be less than credible. She sought to convince the court that she could not read and write one hundred per cent. Then she immediately said that she could read. In so doing she was hoping to persuade the court that she did not understand the document that she had signed.

[9] Having heard from the witness both in evidence in chief and during her cross-examination the Court is satisfied that initially she had entered into a verbal agreement with Mr. Vincent James to occupy the premises rent free until she would have completed the repayment of the sum of \$20,000 which she had borrowed to repair the property. She borrowed the

money in 1995 and that she had seven years to repay the loan after which she would have had to pay rent to Mr. Vincent James. It is very unlikely that the loan would have been repaid by the end of December 2003 as stated by Ms. Gardiner. The precise date for the repayment is unclear.

- [10] Ms. Gardiner further contends that as a consequence of the agreement between herself and the claimants she acquired an equity in the property. The evidence she led was insufficient in this regard to convince the Court neither did she refer the court to any authority in support of her contention. Accordingly, the Court rejects her contention of the acquisition of an equity in the property and finds that originally she was to occupy the property for seven years rent free and there after she would have been required to pay rent. Accordingly, I am satisfied that she did not acquire an equitable interest in the property.

VALIDITY OF THE AGREEMENT

- [11] The second issue that arises for the Court's determination is whether Ms. Albertha Gardner voluntarily signed the Agreement on the 24th August 1994 between herself and the Charles'.

- [12] The defendant, in her witness statement has stated that she did sign the agreement but contends at paragraph 7 of her witness statement that:

"On the 26th August 2001 the Claimants came to me at the cook shop I was preparing lunch. They explained to me that they wanted me to sign a document confirming that I would pay rent after the loan was repayed. I glanced at the document and saw the sum of three hundred and fifty dollars (\$350.00). I told the first Claimant that the agreed rent after the loan repayment was two hundred dollars (\$200.00). He corrected this in his handwriting and again asked that I sign the document and I could read it later. I did so and kept a copy."

She further contends at paragraph 8 of her witness statement that:

"When I got a chance later that day to peruse the document and saw that it never mentioned the loan and did not take into account my equity in the property. I immediately contacted Mr. James who told me that he had not sold the property to the Claimants and that they had full knowledge of the existence of the loan and the agreement between us and that they had agreed to abide by it."

[13] On the vital issue as to whether Ms. Gardner agreed to the terms of the agreement dated 24th August 2001 her major contention is that she did sign the agreement, but that she did not read it. The term of agreement is that the defendant is to pay the Claimants a monthly rental of \$200 payable on the first day of each month. I do not believe Ms. Gardner when she stated both in her witness statement and in evidence under cross-examination that the claimants agreed to permit her to pay the rent after the loan was repaid. She has not presented any evidence to indicate when the loan is likely to be repaid. I do not accept that the Charles would have entered into any such loose agreement with Ms. Gardiner.

[14] She testified to having received a notice to quit the property and states that she thereupon contacted Mr. James. The question to be asked is why would she contact Mr. James when she knew that he no longer owned the property? In fact, in her evidence she had stated that Mr. James had confirmed to her on or about 1st June 2001 that he had conveyed the property to the Charles. Another important aspect of evidence is that the defendant having received the notice to quit instructed solicitor Theodore Browne who wrote the following letter to Mr. Vincent James:

"I act for Mrs. Albertha Gardiner of Richland Park in this State. According to my instructions, my client is your tenant at the rate of \$325.00 per month. There is no tenant – landlord relationship between her and Egbert Charles and Veronica Charles. As a consequence my client finds it difficult to understand the unreasonable and officious intervention of Egbert and Veronica in a matter, which does not concern them. If they persist in purporting to give her notice, my client will seek redress in the High Court of Justice for an appropriate order and all costs relating thereto. Let them be warned."

This evidence has not been disputed. The clear inference is that Ms. Gardner was aware that she was required to make payments to Vincent James.

[15] Mr. Egbert Charles has filed a witness statement on behalf of the Claimants. Mr. Charles was cross-examined at length. He stated that they had originally told Ms. Gardiner that the rental was to be \$350.00 per month and that she told them that it was too high and they negotiated it down to \$200.00. He was even able to explain how there were differences in the agreement filed on behalf of the claimant and that filed on behalf of the defendant. Mr. Egbert Charles told the truth in saying that he told Ms. Gardiner that it was a lease

agreement he had brought for her to sign and that she read it and after discussions between then the proposed rent was varied from \$350.00 to \$200.00. The documents tendered in evidence are consistent with his testimony.

- [16] Mr. Egbert Charles further testified that on 24th August 2001 they let the property to Ms. Gardiner by way of a written agreement for a monthly rental of \$200 payable on the first day of each month. He was very candid with the court in telling the court that before signing the agreement Ms. Gardiner had mentioned that she had a previous agreement with Mr. Vincent James and that he told her that had nothing to do with him. On this factual circumstances as I find that the Claimant felt that the defendant ought to have paid rents and entered the agreement with her voluntarily.
- [17] Further, under cross-examination Mr. Egbert Charles very candidly admitted that after himself and the defendant had negotiated down the price from \$350 per month to \$200, they were both satisfied with the Agreement.
- [18] I do not believe Mr. Egbert Charles however, when he said that the defendant never told him that she had taken a loan to refurbish the property based on the agreement with Vincent James. I am of the view that she told him of the previous arrangement but that he was concerned to obtain rents for the property from her. I am driven to this conclusion based on the fact that under further cross-examination by counsel for the defendant, he recanted on his earlier position and admitted that Ms. Gardiner had told him that she had taken a loan in order to fix the roof.
- [19] He stated further under cross-examination that he was unaware of the agreement between Ms. Gardiner and Mr. Vincent James until she mentioned it to him. The Charles and Ms. Gardner initially agreed for the rent to be \$350.00 per month this sum was amended to \$200 per month. On the issue of the reason for the change of the rent, I prefer the evidence of Ms. Gardner to that of the claimant when she said that it was based on her request that the reduced the rental be reduced downward from \$350 per month to \$200

monthly because of the fact that she was still repaying the loan at the time of the execution of the Agreement.

- [20] Also in re-examination Mr. Charles admitted once again that at the time of signing the agreement Ms. Gardiner had told him about the agreement she had entered into with Mr. Vincent James to affect repair on the property and that she had obtained a loan in order to affect the repairs, which loan she was repaying.

CONCLUSION

- [21] Having reviewed the evidence and the agreement tendered in evidence, the Court is satisfied that Ms. Gardner agreed to the terms of the agreement and is not expressing the truth when she says that she was busy and did not read it in its entirety. The Charles have been able to satisfy the Court that Ms. Gardiner voluntarily entered into the Agreement on the 29th August 1994. It is not true that the Charles agreed to permit the defendant to occupy the property on a rent-free basis, nor did they in anyway sought to deceive the defendant into signing the agreement. I reject her evidence in relation to the circumstances in which she signed the agreement on the 26th August 2001. Ms. Gardner tried to convince the court that the Charles had a sinister motive for going to her shop during lunch for her to sign the agreement. She said in evidence that later the day after signing the written agreement she perused the document and observed that it did not refer to her equity in the property, neither did it refer to the loan. I am not satisfied that she is credible. I am satisfied that she is not speaking the truth when she contends that she had an agreement with the Charles to live in the premises rent free until her loan was repaid.
- [22] On the date when Ms. Gardiner signed the agreement on the 24th August 2001 she was fully aware of all of the terms of the agreement and consented to all of them. The principle of non est factum therefore has no relevance to this matter. I find as a fact that the defendant has voluntarily entered into the agreement dated 24th August 2001 with the claimants. I do not accept that she did not agree to the terms of the written agreement. Ms. Gardiner has failed to pay any rents and has therefore breached the agreement.

- [23] Having reviewed all of the evidence and submissions in the case, I am of the opinion that the initial agreement between Vincent James and Ms. Albertha Gardner was overtaken by events, namely the Charles having entered into the written agreement dated 24th August 2001 with her. She voluntarily entered the written agreement and cannot properly seek to rely on any principle of equitable estoppel.
- [24] There is nothing unjust or inequitable in seeking to have her enter an agreement in the circumstances which obtained to pay rental of \$200 per month pursuant to the agreement dated 24th August 2001. Since Ms. Gardiner has not paid the Charles any rents whatsoever she is in breach of the Agreement. She has received a valid notice to quit and deliver up the premises. The Charles are therefore entitled to judgment in their favour.
- [25] Accordingly, it is ordered that judgment be entered for Mr. Egbert Charles and Mrs. Veronica Charles (the Claimants) as follows –

That Mrs. Albertha Gardiner do deliver to Mr. Egbert Charles and Mrs. Veronica Charles vacant possession of the property situate at Mesopotamia, St. Vincent and the Grenadines on or before 1st March 2004.

That Ms. Albertha Gardiner do pay to Mr. Egbert Charles and Mrs. Veronica Charles mesne profits in the sum of \$5,800 on or before 1st March 2004.

Costs in the sum of \$2,000 to be paid by Ms. Albertha Gardiner to Mr. Egbert Charles and Mrs. Veronica Charles on or before 1st March 2004.

Lousie Esther Blenman
HIGH COURT JUDGE