

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.14 OF 1999

BETWEEN:

LEVI ASHTON

Plaintiff

and

KENUTE LEACOCK

Defendant

Appearances:

Arthur Williams for the Plaintiff

Colin Williams for the Defendant

2000: September 21, 25

JUDGMENT

[1] **MITCHELL, J:** This is a dispute between a landlord and a tenant arising out of the forcible eviction of the tenant by the landlord. Giving evidence for the Plaintiff was his girlfriend, Catherine John. The Plaintiff did not give evidence at the trial, as he has found work since last December in the island of Barbados and has been unable to return to testify. The Defendant himself was in the USA and unable to be present to testify. His agent for the rental premises, Sharon Dougan, gave evidence.

[2] The facts are not seriously in dispute. It appears that sometime in the year 1998 Dextron Ashton and her brother the Plaintiff entered into an agreement with Sharon Dougan to rent the partially furnished two-bedroom house of the Defendant at Evesham in St Vincent. The rent was \$250.00 per month. The case

for the Defendant was that only Dextron Ashton and not the Plaintiff was the tenant. The suggestion was that the Plaintiff had been a mere trespasser. The rent receipts had been issued by the Defendant's agent in Dextron Ashton's name alone. But, there was no denial that the premises were occupied without objection by the Defendant from the start of the tenancy to its termination by the Plaintiff. The evidence indicated that the Defendant's agent had accepted throughout the tenancy that Dextron and her brother the Plaintiff were to live in the premises. The witness for the Defendant denied that the Plaintiff had throughout the tenancy paid one half of the rent, but the Plaintiff was an employed carpenter at the time and I am quite satisfied that he paid half the rent for the premises, and that the agent knew so. The Plaintiff was no trespasser, but, equally with his sister, a tenant of the premises of the Defendant. Sometime after the tenancy commenced, Catherine John, the girlfriend of the Plaintiff, had moved into the house with the Plaintiff and his sister Dextron Ashton. She brought their baby with her. There is no suggestion that this had been contrary to the rental agreement or that the sister Dextron Ashton had originally objected to her brother's girlfriend and child moving into the house. Not unusually in such cases, Dextron Ashton eventually became uncomfortable with the situation. On or about 22 December 1998 she left the premises and went to live elsewhere. It was only after Dextron Ashton had left the premises that the Defendant through his agent objected to the Plaintiff occupying the premises.

- [3] One day shortly after Dextron Ashton left the rented premises, on or about the 4th January 1999, Kenute Leacock, the landlord and Defendant in this case, came to the premises in question and asked the Plaintiff and his girlfriend to leave by the 9th, ie, in 5 days time. There had been no dispute between the Plaintiff and the Defendant up to that date. No rent was in arrears, not had any covenant of the tenancy been broken by the Plaintiff. No lawful notice to quit had been served on the Plaintiff. No court order had been obtained by the Defendant ordering the Plaintiff to vacate the premises and authorizing the Bailiffs to break down the door and evict the Plaintiff. The Defendant through his witness had no explanation to

give to the court for the summary verbal notice to quit or the action that he subsequently took. Sharon Dougan said in evidence that she had told the Plaintiff and his girlfriend on a number of occasions after Dextron Ashton had left the premises that the Defendant was coming back to St Vincent and wanted the premises to repair. That allegation was not put to the Plaintiff's witness when she was being cross-examined, and in any event, even if true, was no justification for what the Defendant subsequently did. In the event, the Plaintiff and his girlfriend did not vacate the premises as a result of the summary notice of 4th January. When the Defendant came back to the rental premises on the 9th of January, he came with 2 of his brothers at about 7 am, before the Plaintiff had left for work. With his 2 brothers backing him up, the Defendant ordered the Plaintiff and his girlfriend and young baby to leave the premises immediately failing which he said he would "break down the place" and force them out. Faced with this threat of violence, the Plaintiff left for the nearest Police Station, which was a short distance away in the town of Mesopotamia, to seek assistance. The girlfriend secured the premises by locking the door, and went with her baby to the house of a friend some one hundred yards away to await his return. The Plaintiff was, according to the testimony of his girlfriend, unable to persuade a police officer to come with him to prevent the Defendant from carrying out his threats. The police apparently informed him that they could not assist him, that it was a private matter and he would have to get a lawyer to help him.

- [4] It should hardly be necessary to observe that it is not only in England that a man's home is his castle. In St Vincent and the Grenadines, too, a man is entitled to the full protection of the law when he is peacefully occupying his home. It matters not whether that home is the most luxurious mansion or the simplest of chattel houses. Nor does it matter in law whether the home is held in fee simple or is merely rented premises. No landlord is permitted to visit the premises he has rented out and threaten the tenant with forcible eviction. This is so even if the tenant is holding over or is in breach of some covenant in the lease or tenancy agreement. In this case, the Plaintiff was not in breach of any covenant in the

tenancy agreement. If a landlord uses force to evict a tenant he becomes a trespasser on his own property. A man is entitled to use all reasonable and necessary force to protect his home and to shield his family from being forced out into the street. That force may even in appropriate if exceptional cases extend to lethal force. By comparison, force may be used by a landlord to evict a tenant, no matter how seriously the tenant may have breached the lease, only as a result of an order of a court authorizing the use of force. Under no circumstances may a landlord in St Vincent ever, without the sanction of a court order to that effect, attend at the rented premises and throw the possessions of his tenant out of the rooms in which the tenant has placed them. Any landlord who breaks that rule is guilty of the tort of trespass and must pay damages and compensation for the loss and harm that he has caused. That has been the rule in St Vincent, as it has been in England, for centuries. Such an act by a landlord has even been made a criminal offence in England, punishable with imprisonment for up to 6 months, though the House of Assembly has not yet seen it fit to extend such protection to tenants in St Vincent and the Grenadines.

- [5] While it is true that the police are not expected to get involved in disputes over private property, the situation changes when the information given to the police makes it apparent that a breach of the peace may occur. It is the clear duty of the police to take all necessary steps to prevent a threatened breach of the peace from occurring. Since a tenant is entitled to use all reasonable force, up to and including lethal force in exceptional cases if necessary as previously mentioned, to protect his premises from forcible entry and eviction, it has always been the rule that when the police learn that a landlord is about to use unlawful force to evict a tenant they will hasten, no, rush at full speed, to the premises in question to warn the landlord, restraining him by arrest if necessary, and thus prevent the inevitable breach of the peace from occurring. This court finds it difficult to comprehend how and why, if the story given by the Plaintiff's witness is true, the police at the Mesopotamia Police Station could have reacted to the report made to them with the nonchalance and insouciance that they allegedly did on this occasion.

Fortunately for all concerned, the Plaintiff was an incredibly peaceful and law-abiding citizen and did not resort to the self-help that the law permits him in these circumstances.

[6] By the time that the Plaintiff and his girlfriend got back to the premises, which was at about midday, the Defendant and his helpers had already removed the possessions of the Plaintiff and his girlfriend from the inside of the house and placed them on the outside. The Defendant and his helpers were inside the house and the Plaintiff and his girlfriend could not reenter. They found the garbage from the house mixed in with their clothes and other possessions outside on the porch. The Plaintiff and his girlfriend left the premises to seek alternative accommodation. At about 9 pm that night, they retrieved their possessions from the exterior of the rental house where they had been placed by the Defendant and his brothers and took them to the new accommodation. Inevitably, some of their possessions were damaged and others were missing. It was put to the Plaintiff's witness that their claim for the loss and damage is false. The claim for loss and damage was strenuously and credibly repeated in the evidence of Catherine John. I believe the witness and accept the claim as proved. Even if a tenant in these circumstances engages in creative loss reporting, which I do not believe happened in this case, that is a risk that a landlord takes in using unlawful force to evict a tenant he no longer wants. He may end up having to pay compensation that exceeds the actual loss and damage he caused. That is another reason, if one were needed, why a sensible landlord would never use unauthorised force to evict a tenant.

[7] There is a counterclaim by the Defendant for amounts alleged to have been owing by the Plaintiff for use of water and electricity at the termination of the tenancy. These amounts had never been claimed of the Plaintiff prior to the filing of the counterclaim. No utility bills had ever been shown to the Plaintiff before the trial. No bills were produced in court. The witness for the Defendant had never herself seen the bills.

[8] In the circumstances, there will be judgment for the Plaintiff. The question arises as to suitable sums to be awarded. Counsel for the Plaintiff has asked that, in addition to general damages, the principle in the case of **Valentine v Rampersad (1970) 17 WIR 12** be followed and that there be an award of exemplary damages of \$5,000.00. That is a fraction of the sum that he might reasonably have requested on the Plaintiff's behalf in the circumstances of this case, and I have no hesitation in awarding so modest a sum to the Plaintiff by way of exemplary damages for the unlawful violence done by the Defendant to the Plaintiff and his family in the peaceful enjoyment of their home. The Plaintiff is also entitled to an amount of general damages, and I consider the sum of \$5,000.00 to be a suitable token that the Defendant should pay to him by way of compensation for the trespass. In the result, the Defendant shall pay to the Plaintiff special damages of \$6,099.78, general damages of \$5,000.00 and exemplary damages of \$5,000.00, to a total of \$16,099.78. The Plaintiff shall also have his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge