



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2016 No: 153

BETWEEN:

GLENN ENVOY ROBINSON

(by his joint receivers John Johnston and Rachelle Frisby)

Plaintiff

And

TANYA TUCKER SIMMONS

Defendant

JUDGMENT (EX TEMPORE)

Date of Trial: Tuesday 6 June 2017

Date of Judgment: Tuesday 6 June 2017

Plaintiff: Rhys Williams, Conyers Dill & Pearman Limited

Defendant: Eugene Johnston, J2 Chambers (not in attendance)

Claim for Liquidated sum in Rental Arrears

RULING of Registrar S. Subair Williams

Introductory

1. The Plaintiff in this case appears through his Court-appointed Joint Receivers. This matter started as a writ action for the liquidated sum of \$31,000 in rental arrears. In the alternative, the Plaintiff claimed \$31,000.00 in damages for the said sum. On the supporting affidavit evidence before the Court, the Plaintiff sought to amend the claim to the reduced sum of \$28,000. However, the Plaintiff now pursues judgment in the further reduced sum of \$25,000 in addition to interest and costs.
2. The parties entered a lease agreement dated 15 February 2013 (“the Original Lease”) in relation to property owned by the Plaintiff situate in Warwick Parish (“the Property”). The agreed rental sum under the Original Lease was \$5,000.00 per month. Clause 11, however, reads:

“The landlord agrees to have the roof cleaned and the swimming (pool) repaired and working properly within three months of the start of the lease agreement dated February 15th or March 1st 2013. If the Landlord is not able to have the roof cleaned and swimming pool repaired within the three months, the monthly rent will be reduced to \$4,500.00 per month until the roof is cleaned and (the) pool (is) repaired.”
3. An unsigned and undated lease agreement with a year mark of 2014 was also exhibited under the Plaintiff’s affidavit evidence filed with the Court. This agreement refers to the Property and specifies a sum of \$4,000.00 for the monthly rental payments due to the Landlord. On the Plaintiff’s pleaded case, the Defendant agreed to pay rent to the Plaintiff in the sum of \$4,000.00 per calendar month under this new lease agreement.
4. The claim was initially defended through pleadings asserting that the parties entered a written agreement for the payment of \$4,000.00 in rent per month subject to a monthly reduction of \$500.00 for each month that the Plaintiff failed to clean the roof and repair the swimming pool on the Property. The issue of contention on the pleadings came down whether the parties agreed that the sum of \$500.00 would be deducted from the new agreement of \$4000 per month in rent.
5. On the pleadings, the Defendant admitted to her non-payment of rental sums owed but claimed a set off against her counterclaim for losses incurred as a result of inflated electricity charges for the wrongful connection of her electricity supply to the water pump which serviced the common area where the swimming pool is located.

Background

6. The Plaintiff's Specially Indorsed Writ of Summons was filed on 19 April 2016. The Defence and Counterclaim was filed on 22 June 2016 and the Plaintiff's Reply was filed on 21 July 2016
7. By Order of the learned Chief Justice, Ian Kawaley, dated 25 August 2016 directions were given for the exchange of affidavit evidence from witnesses of fact. A subsequent Unless Order was issued by the learned Justice Stephen Hellman on 10 November 2016 providing for the exchange of affidavit evidence, failing which the Defendant would be prohibited from adducing any evidence of fact.

The Non-Appearance of Counsel for the Defendant

8. The Court was informed by Mr. Williams that the Defendant's Counsel, through email communication sent on Friday 2 June 2017, attempted to resolve this matter out of court. Mr. Williams, however, advised that a response was provided without further follow up from Mr. Johnson until the morning of trial. Mr. Johnston sent an email to Mr. Williams which was read aloud to the Court:

"Good Morning,

Our Clients, the Defendants, agree to pay \$25,000 in full and final settlement of this action. In addition she agrees to pay her Client's reasonable legal fees to be taxed if not agreed upon. The Defendant will require time to pay and therefore a payment schedule will have to be worked out. In light of this, I will not attend Court this morning. Instead, I ask that you ask the Court to adjourn the matter to the next available Thursday Chambers hearing when we can place before the Court an agreed order.

Sincerely..."

9. Mr. Williams instead invited the Court to grant judgment in what he described as the 'agreed sum' of \$25,000 without the need for the parties to reappear. Additionally, Mr. Williams asked for costs and for an award of judgment interest.

Decision

10. Judgment is granted to the Plaintiff in the sum of \$25,000.00 on the basis of the agreed position between the parties. Alternatively, the Plaintiff has leave to enter judgment for the sum of \$25,000.00 on the basis of the Plaintiff's uncontested evidence before the Court which establishes the Defendant's liability on a balance of probabilities in my view.
11. The Defendant's Counterclaim is struck out.
12. Costs to follow the event in favour of the Plaintiff, to be taxed if not agreed.
13. Judgment interest at statutory rate.

Dated this 6th day of June 2017

SHADE SUBAIR WILLIAMS
REGISTRAR OF THE SUPREME COURT