

Brief background

The brief background circumstances of the case are that sometime in 1994 the claimant rented out to the defendant's father, Pishu Baxani the premises formerly known as the Sea Rock situate at Princess Margaret Drive, Belize City for the purpose of operating a restaurant business. The rent payable was \$2,000.00 per month. Mr. Pishu Baxani later retired sometime in January 2000 from the restaurant business and took up other business ventures. The defendant, Suraj Baxani, continued to occupy the Sea Rock premises until April 2001.

It would appear that the rents for January to August 2000 had been paid by the defendant. Rental payments for the months of August to December 2000 were made by cheques which were dishonoured, costing the claimant \$480.00 bank charges. No payments of rents were made for months of January to April 2001. Thus a total of nine months rents were due from and unpaid by the defendant. Despite demands made by the claimant for the outstanding rents to be paid, the defendant failed to make any payment at all.

The defendant vacated the Sea Rock premises in April 2001. The claimant retook possession of the premises, repaired it at the cost of \$4,300.00 and then sold it to another person.

Claimant's Case

The case for the claimant is that the defendant's father, Pishu Baxani, rented the claimant's premises in question at the rent of \$2,000.00 per month from 1994 to January 2000 at which time he retired from restaurant business. The defendant then took over the restaurant business and entered into an oral agreement with the claimant for the continued exclusive occupation of the premises. The defendant was to pay rent at \$2,000.00 per month, but he was allowed to do so at two installments, at the 10th and 18th day of each month. The defendant paid the rents as agreed for the period January to August 2000. Apart from the dishonoured cheques for the rent payments for months of August to December 2000, the defendant did not pay the rents for subsequent months up to April 2001.

It is the claimant's case that the oral agreement made in January 2000 was between the claimant and the defendant pursuant to which the defendant continued to use and occupy the said Sea Rock premises, at the monthly rent of \$2000.00 payable bi-monthly. The defendant performed his obligation up to August 2000 but defaulted thereafter.

Defendant's Case

It is submitted on behalf of the defendant, and is set out in his defense, that he had not entered into a lease agreement with the claimant for the continued occupation of the Sea Rock premises. The defendant further contended that the agreement was between his father and the claimant and that he was at all the time only assisting his father in managing the restaurant.

As to the dishonoured cheques, the defendant contended that he signed the cheques on the authority of his father. He further stated that he signed the cheques post-dated, on the understanding that his father who was in India would deposit the funds into the Bank here in Belize to meet the payments.

The defendant is adamant that he did not owe the claimant any money as claimed by the claimant.

The Issues

The claimant raised two issues while the defendant posed four issues for the court's determination. Conveniently, I feel there are only two issues which the court needs to determine in order to resolve this case. First, whether the defendant was the tenant of the Sea Rock property and second, whether the defendant is indebted to the claimant for arrears of rent, bank fees and damages for waste in respect of the Sea Rock premises at Princess Margaret Drive, Belize City. The other matters raised as issues by the parties can be conveniently dealt with under the two issues just mentioned.

Whether defendant a tenant and liable to pay rent

The crucial question in this case is whether the defendant was a *tenant* or not during the material time under consideration. On this, we turn to the *Landlord and Tenant Act* (Cap. 189) of the Law of Belize ("the Act"). Under the Act, a "*tenant*" is defined in section 2 as –

“any person entitled in possession to the land or building under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise.”

The Concise Oxford English Dictionary defines “*tenant*” as –

“a person occupying rented land or property; a person in possession of real property by any right or title.”

In a simple and common language a tenant is one that pays rent to use or occupy land, a building or other property owned by another.

Assuming for the moment that there was no lease agreement whether written or oral between the claimant and defendant, and further assuming that there was only the lease agreement between the claimant and defendant’s father, Pishu Baxani, the defendant was at all material times in possession of the Sea Rock premises,

continuously using and occupying it from January 2000 to April 2001. He paid and accepted by the claimant, monthly rents up to August 2000 but defaulted in doing so thereafter to April 2001. The defendant would clearly be someone who was entitled in possession to the Sea Rock premises under an implied contract to use and occupy it. He is by definition a tenant and as such liable for the payment of the stipulated or reasonable rent for the use and occupation of the Sea Rock premises. See *Gibson v Kirk* (1841) 1 Q.B. 850.

The defendant's case is also that he is the wrong person to be sued and that claim should be brought against his father, Pishu Baxani, who is now in India. However, there is no dispute that the claimant was the owner of the Sea Rock premises at the material time and as such entitled to all the rents due from the defendant for use and occupation of the premises. The claim covers the period of defendant's use and occupancy of the premises. The claimant is therefore entitled to bring these proceedings against the defendant. His father, Pishu Baxani, no longer used or occupied the said premises since January 2000.

Should it be necessary to decide whether a lease agreement existed between the claimant and the defendant, I would be constrained to hold that there was such an agreement, *albeit*, oral. In fulfillment of that agreement, the defendant had exclusive use and occupation of the Sea Rock premises for the consideration of the payment of rents which were paid up to August 2000 and thereafter unpaid up to the time he vacated the premises.

If I may add, the position contended for by the defendant that he is the wrong person to be sued and that the proper defendant should be his father who is now in India is untenable for the reasons which I have already stated earlier in this judgment. In addition, there is no suggestion that the claimant is claiming against the defendant on behalf of his father or over the previous agreement with his father. The claimant brought these proceedings following the arrangement between him and the defendant for the latter's continued use and occupation of the Sea Rock premises.

However, even if the Court were to hold (which I am not prepared to do) that the defendant was using and occupying the said Sea Rock premises under the previous

arrangement entered into between his father and the claimant, the defendant must be taken to have been assigned to him by his father, the use and occupation of the said premises with the consent of the claimant. That consent was by the claimant's acceptance of the rent payments from the defendant. In such a case, the original duties and obligations of the defendant's father ceased and a new agreement had arisen in favour of the defendant in January 2000 for the use and occupation of the premises. That was equally consented to by the claimant through his acceptance of the rent payments: *Walker's case* (1587) 3 Co. Rep. 22a. The defendant now shoulders the responsibilities and obligations arising out of that new agreement. On that basis, the claimant would also be entitled to sue the defendant for arrears of rents.

There is another point which militates against the defendant's argument that he is the wrong party. There has not been any objection taken as to the jurisdiction of this court over the defendant as being the wrong party. Instead the defendant has elected to proceed to defend the claim. He has done so, not at his father's expenses, but at his own expenses. The only sensible conclusion that one can come to is that the defendant is the "*real party*" in this case. He controlled the business of the Sea Rock Restaurant, and stood to benefit from this litigation if he

succeeds. He has personal interest in the litigation as well. The defendant is the proper party to be sued in this case.

There is a further matter raised by the defendant regarding the fixtures and other items alleged to have been left in the premises by the defendant's father when he vacated the premises in early 2001. The fixtures and items were said to be worth a total of \$23,050.00. The defendant's contention is that there was an "agreement" between his father and the claimant that those fixtures and items were to be used to off-set any rent payable by the defendant. There are a number of reasons why the defendant's reliance on the alleged agreement between his father and claimant cannot succeed.

First, there was no basis upon which the defendant could raise or rely on such agreement (if any) entered into between his father and the claimant. The agreement was said to be an oral one. However, no evidence was led on the defendant's part to establish such an agreement. As such the defendant cannot be permitted to rely upon it. See *Richard Ellis Ltd –v- Van Hong Tuon* [1988] LRC (Comm.) 900. Further, the alleged agreement (if there was one at all) was between the claimant

and a third party and unless the defendant can produce evidence of the existence of such agreement, he would be precluded from relying on it also on this basis.

Second, it is trite law that pleadings do not constitute evidence and a defendant who does not give evidence in support of his pleadings is deemed to have accepted the facts adduced by the claimant, notwithstanding the defendant's general traverse, such as that in paragraph 8 of the defendant's amended defence in this case. Such pleadings are just mere averments with no support. See *Federal Capital Development Authority v Alhaji Musa Naibi* (18 May 1990) Supreme Court of Nigeria Suit No. 190/ 1989.

Third, the defendant had failed to perform his duty of disclosure under the Civil Procedure Rules by not disclosing the agreement relied upon or any evidence thereof. On that basis also he would not be permitted to rely on it.

Damages for Waste

The Claimant's claim is for the sum of \$4,300.00 being the costs of repairs alone to the premises. The only evidence on this comes from the Claimant. No rebuttal

evidence was adduced by the Defendant. The Court is only left with the evidence from the Claimant himself. The defendant must be taken to have accepted this limb of the claim also. In those circumstances I have to give judgment to the Claimant also on this claim.

The Claimant is entitled to the sum, of \$4,300.00 and I so order.

Conclusion

This claim turns on two simple issues namely, whether the defendant is a tenant of the Sea Rock premises at the material times, and if so, whether he should pay the claimant rents owing for the period from August 2000 to April 2001. As I have found and for the reasons set out in this judgment, the defendant was the tenant of the Sea Rock premises for the period January 2000 to April 2001 and that he is indebted to the claimant for outstanding rents for the period August 2000 to April 2001.

There will be judgment for the Claimant for the total sum of \$24,780.00 which sum includes \$4,300.00 as damages for waste wrongfully committed by the

defendant on the property concerned, plus interest on the total amount at the rate of 18% per annum from the date when the cause of action arose i.e. 10th August 2000, to the date of judgment.

I order accordingly.

Hon Justice Sir John Muria