

30.9.96

Seen & A. See. 506 4/11. Law School (?)  
See Case 4/11/96.  
JOB 4.11.96  
See Ryan



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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE # 349/95

**BETWEEN**            **ALBERT JACKSON**                            **PLAINTIFF**  
**AND**                    **MICHAEL THOMAS EBANKS**            **DEFENDANT**

Mr. Steven Roy for the Plaintiff.  
Defendant in person.

**JUDGMENT**

The plaintiff brings this action by writ to recover unpaid rents and damages to the rental property.

The defendant commenced the tenancy in 1984 at a rent of CI\$450 per month which was increased to CI\$500 per month and eventually to CI\$600 per month in or around 1989.

The plaintiff was for much of the tenancy an absentee landlord by reason of having been incarcerated in 1987.

From the evidence, the tenancy relationship proceeded well and it seems the rental was generally paid in time and in full until 1993.

In that year, of the total rent payable CI\$5600 was actually acknowledged as paid, leaving arrears of \$1600.

39 Those arrears are a matter of record having been the subject of  
40 correspondence between the parties. In that respect the plaintiff, in his  
41 evidence, states that he asked the defendant to vacate the premises because  
42 he had failed to pay.

43  
44 I accept that evidence and find that there were arrears accumulated from  
45 1991, of \$1600.

46  
47 The rest of the evidence as to arrears is not so recorded and is not as  
48 straightforward.

49  
50 The plaintiff appears to have kept a record of the details given to him, while  
51 he was incarcerated, as to the payments. But to a large extent that record is  
52 hearsay. That is so in particular as the recorded details would have  
53 depended on what the plaintiff was told by his brother who acted as his  
54 agent for the purposes of collecting rent from the defendant.

55  
56 The plaintiff's brother did not give evidence. Instead the plaintiff relied on  
57 his own written record that he kept in prison, of the information reaching  
58 him there.

59  
60 The defendant also failed to give evidence. He admitted, in the course of  
61 his own cross-examination of the plaintiff, to owing arrears of rent. But in  
62 the course of exchanges between himself and the plaintiff and by way of  
63 suggestions and responses during his closing arguments, he cited his own  
64 inability to recollect the amounts and the alleged loss of records which he  
65 once had. He also said that there were several months when he made  
66 payments to the plaintiff's wife and brother but got no receipt. Eventually,  
67 he said in his closing argument, he would estimate that he owed \$1000 for  
68 unpaid rent.

69  
70 The plaintiff stoutly denied the suggestion that the defendant would have  
71 paid any amounts to his wife and such payments not be accounted for. I  
72 accept the plaintiff's evidence on this - it is clear as he also asserted, that he  
73 had instructed the defendant not to make any further payments to his wife  
74 and that no such payments would have been made during the time in  
75 question, 1991 - 1993.

76

77 There is however some doubt as to what may have been paid to the  
78 plaintiff's brother and I so find as regards the year 1992.

79  
80 On an examination of the plaintiff's records kept while incarcerated, it is  
81 noted that payments were made to his brother in 1992 as well as to the Bank  
82 and to the plaintiff's lawyer.

83  
84 Arrears of \$2950 are claimed for 1992.

85  
86 On a balance of probabilities I am prepared to hold in favour of the  
87 defendant that he might have paid as much as one-half that amount and not  
88 receive or retained proof of payment from the plaintiff's brother.

89  
90 That sum of \$1475 or approximately two and one-half months rent, I will  
91 deduct from the sum claimed.

92  
93 I take this approach on the basis that payments made to the Bank (\$1900)  
94 and to the plaintiff's lawyer (\$1200) in 1992 would have been strictly  
95 accounted for and on the basis that the plaintiff's record was a faithful and  
96 correct record of those payments.

97  
98 Thus, the only area for discrepancy to my way of approaching the case, is as  
99 to the payments to the plaintiff's brother. Thus, to that extent I give the  
100 defendant the benefit of half the arrears for 1992 and award the other half  
101 by way of a quantum merit to the plaintiff.

102  
103 This approach to the matter does not however avail the defendant for 1993.  
104 In that year the plaintiff's record does not show a single payment to his  
105 brother. All recorded payments were instead made to the Bank (\$2700) and  
106 to the lawyer's office (\$2000).

107  
108 The defendant was unable to assert a single payment to the brother in 1993

109  
110 Notwithstanding his assertion that his own records were lost, he declined to  
111 give evidence and was not cross-examined.

112  
113 In circumstances where his first 5 payments for 1993 were to the lawyer's  
114 office and the next two to the Bank, I had no difficulty concluding,

115 particularly in the absence of any clear assertion to the contrary from him,  
116 that he failed to make any payment to the plaintiff's brother at all in 1993.

117  
118 I therefore find that he owes arrears for 1993 in the amount of \$1900.

119  
120 This give a total arrears of rent due of \$4975. From this must be deducted  
121 the amount of \$1000 agreed to have been paid by the defendant.

122  
123 The plaintiff also claims damages for exceptional wear and tear and for  
124 various missing items of furniture.

125  
126 In this area the plaintiff's evidence is entirely hearsay and I can find no  
127 independent basis for acting upon it.

128  
129 The defendant did not vacate the premises by handing the keys over to the  
130 plaintiff as one would normally expect.

131  
132 Instead he suggested in cross-examination of the plaintiff that when he  
133 proffered the keys to his brother and wife they refused to take it because  
134 there had, it seems, been some disagreement amongst the family about the  
135 property.

136  
137 Because the defendant did not give evidence, it was never established  
138 whether and if so when he gave over the keys. The plaintiff testified that  
139 the defendant had handed the keys over to a neighbour's grandson but that,  
140 taken with the rest of the evidence as to the state of the premises when the  
141 defendant vacated, was all hearsay.

142  
143 I simply have no proper basis on which to base a conclusion on the claim  
144 for damages.

145  
146 In the result that claim failed.

147  
148 Accordingly I enter judgment for the plaintiff in the amount of \$3975 for  
149 arrears of rent due and payable plus interest on that amount in the amount  
150 of 8% simple interest to be calculated from the end of 1993 until the  
151 judgment debt is fully paid.

152



153 Costs to the plaintiff to be taxed if not agreed.

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161

*A. Smellie*  
A. Smellie Q.C.  
Judge of the Grand Court

Dated this 30th day of September 1996