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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

ON
BEFORE THE HON. THE CHIEF JUSTICE

CAUSE # 13 OF 1992

BETWEEN	CHARLES RAINERO	PLAINTIFF
AND	PENNY A. M. CUMBER T/A CAYMAN RENT-A-VILLAS	DEFENDANT
AND	JOHN STEWART	THIRD PARTY

Mrs. Messer	for the	Defendant
Mr. Giglioli	for the	Third Party

MALONE C.J. JUDGMENT

Before I consider the principles applicable, I think it is desirable to state the meaning of the agreements that were made. The first agreement is an agreement for the rental of the third party's property at Cayman Kai to the plaintiff. The parties to that agreement were the plaintiff and the defendant acting as agent of the third party an undisclosed principal. The full rent was paid in advance to the defendant and was paid by her to the third party. The second agreement was also made by the defendant with the plaintiff but in that instance the defendant acted on her own and not as the agent of the third party. Under that agreement the defendant refunded the sum of \$5,000.00 to the plaintiff immediately and promised to pay the balance of \$4,510.00 on the 2nd January 1992 but failed to do so. The second agreement is related and connected to the first as the \$5,000.00 and \$4,510.00 represented the \$10,410.00 paid as rent less a deduction of \$900.00 for three nights accommodation at \$300.00 per night. The refund of \$9,510.00 was claimed by the plaintiff on the ground that the property he had rented was not in the condition it should have been. The third party it is said by the defendant, was the person responsible for ensuring that the property was in rentable condition.

Prima facie if an agent carries on a business for a principal he or she is entitled, in the absence of special circumstances, to a full indemnity (*Britain v Lloyd* 14 N & W 762) and conversely he or she is bound to account for every profit (*Boston Deep Sea Fishing & Ice Co. v Ansell* 39 Ch D 339). Consequently an agent who is placed by his principal in a position in which he becomes liable to pay, and does pay, money to a third party, is entitled to be indemnified in respect of that payment, notwithstanding that the principal may not thereby have been relieved from a liability. (*Adams v Morgan & Company Limited* (1913) 2 K.B. 234.

Applying those principles to the facts it follows, I think, that if the responsibility for maintaining the property was the third party's and by failing to maintain it as he should have he placed the defendant in a position in which she became liable to pay and did pay money to the plaintiff, she is entitled to be indemnified by the third party. In those circumstances the entitlement of the defendant to be indemnified is not affected by the fact that she was not acting as agent of the third party when she made the second agreement.

As the action by the plaintiff was based on the second agreement which does not give rise to a right of indemnity counsel for the third party submitted that third party proceedings did not arise out of the plaintiff's action. To my mind the submission is not a sound one. It is plain from the plaintiff's statement of claim that the second agreement, as I have earlier stated, is related and connected to the first agreement and when one turns to the third party notice it is apparent that it pleads matters relating to the first agreement as it pleads the circumstances under which the property was rented.

The application is made under Order 18 r 19 to strike out the Third Party notice on the ground that:

- *(a) it discloses no reasonable cause of action; and

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- (b) it is scandalous, frivolous and/or vexatious; and
 - (c) it is otherwise an abuse of process of this Honourable Court"

and to dismiss the defendant's action. For the reasons I have given I am satisfied that the defendant's claim does disclose a reasonable cause of action and is not scandalous, frivolous and/or vexatious or otherwise an abuse of the process of the Court. The application is dismissed with costs to the defendant.

Sir Denis Malone

20th May 1992.