JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL No. 22/1974

BEFORE: The Hon. Mr. Justice Luckhoo, Ag.P.(Presiding).
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Zacca, J.A.(Ag.).

INEZ MINOTT v. RAINFORD W. SMART

Dr. A. Edwards for the appellant.

W. Bentley Brown for the respondent.

July 2, 31, 1974

LUCKHOO, Ag.P.:

This is an appeal by the appellant Inez Minott from the judgment of a resident magistrate for the parish of St. Andrew who awarded the respondent Rainford Smart the sum of $135 with costs to be agreed or taxed on a claim alleging trespass and breach of covenant for quiet enjoyment on the part of the appellant between the month of December, 1971 and May 30, 1972 in relation to the respondent's occupation as a monthly tenant of premises situate at Rock Hall in the parish of St. Andrew.

The acts alleged as constituting trespass and breach of covenant for quiet enjoyment are as follows -

(a) the unauthorised deposit on part of the demised premises in or about the month of December, 1971 of a quantity of sand resulting in a nuisance to the respondent which had to be abated by the respondent;

(b) the wrongful procurement by the appellant of the removal of the water meter from the demised premises on or about May 30, 1972, whereby the respondent was deprived of the water supply to the demised premises from that date until June 7, 1972;

(c) the wrongful procurement by the appellant of the withdrawal of the supply of electricity to the demised premises on or about May 30, 1972, which withdrawal continued from that date until June 2, 1972 when the respondent was able to have the supply of electricity to the demised premises restored.

The learned resident magistrate found these latter two alleged acts had been wrongfully caused or procured by the appellant, that the relationship of landlord and tenant existed at all material times between the appellant and the respondent and that the appellant was therefore in breach of an implied covenant for quiet enjoyment by the respondent of the demised premises.

The learned resident magistrate's decision has been challenged as being erroneous in point of law under two main heads, namely,

(i) that in any event it was not competent for the learned resident magistrate to hold that the appellant committed a breach of covenant for quiet enjoyment as the appellant was not at any time shown to be the respondent's landlord it having been specifically stated by the respondent in the further and better particulars of his claim supplied at the request of the appellant that at the time of the oral agreement for rental by the respondent of the demised premises the appellant had represented herself to the respondent as being the agent of one Henry Lewis the owner of the premises;

(ii) that there was no evidence upon which the learned magistrate could find that the acts complained of by the respondent were caused or procured by the appellant.

The appellant's first contention is well founded. Not only did the further and better particulars supplied in respect of the respondent's claim assert that in concluding the agreement of tenancy with the respondent the appellant was acting as agent for Henry Lewis but the respondent's common law wife who testified in support of the respondent's claim also supported this assertion. The learned resident magistrate must clearly have overlooked these matters in finding as she did that the relationship of landlord and tenant existed at the material times between the parties. Her judgment therefore cannot be supported on the basis of a breach on the part of the appellant of a covenant for quiet enjoyment for such a claim can only properly be brought against the landlord.

The question is - can the respondent's claim for damages be supported on any other basis if it were held that the appellant's second main contention is not well founded? I think that it can be supported on the basis that the acts of procuring the interruption of the water and electricity services in the circumstances of this case would constitute the procurement of a breach of contract. The learned resident magistrate's judgment would in those circumstances be sustainable by reason of the provisions of s. 190 and of the first proviso to s.251 of the Judicature (Resident Magistrates) Law, Cap.179 which provide as follows -

> "190. The Magistrate may at all times amend all defects and errors in any proceeding, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the Magistrate may seem fit, and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made.
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> First proviso to s.251:
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> Provided always, that no judgment, decree, or order of a Court shall be altered, reversed, or remitted, where the effect of the judgment shall be to do substantial justice between the parties to the cause."

Before ascertaining whether the learned resident magistrate's finding that the acts complained of were caused or procured by the appellant can be supported having regard to the evidence it is necessary to refer to the nature of the tort of procurement of a breach of contract. A convenient starting point is the case of Lumley v Gye (1853) 2 E. & B. 216 in which it was held that it was tortious for a person to procure one of the parties to a contract to break it or not to perform it. Thereafter, in Quinn v. Leathem (1901) A.C. 495 it was held that each of the parties to a contract has a right to have his "contractual relations" with the other observed and that it was "a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference" - per Lord Macnaghten at p.510. Bowen v. Hall (1881) 6 Q.B.D. 333 had already established that intentionally and without lawful justification to induce or procure anyone to break a contract made by him

with another is a tort actionable at the suit of that other if damage resulted to him. In Jasperson v. Dominion Tobacco Co. (1923) A.C.709 the principle was extended to cover deliberate and direct interference with the execution of a contract without that causing any breach. In D.C. Thomson v. Deakin (1952) Ch. 646 the tort was thus described by Evershed, M.R. - "The intervenor knowing of the existence of a contract between A and B and acting with the object of procuring its breach by A to the damage of B will be liable not only (1) if he directly intervenes by persuading A to break it, but also (2) if he intervenes by the commission of some act wrongful in itself so as to prevent A from in fact performing his contract and also (3) if he persuades a third party to do an act in itself wrongful or not legitimate so as to render, as was intended, impossible A's performance of his contract with B." In that case the defendants escaped liability on the ground that although they brought about a breach of the contract they had not done so by direct intervention and it was not proved that they had done so by unlawful means. It was considered that where direct persuasion is concerned the use of unlawful means is not required but otherwise it is a necessary ingredient in order to constitute the tort. I am not able to see the logic or necessity for such a requirement in the case of indirect persuasion. However, in the instant case this distinction is of little moment for as will now be shown that ingredient is indeed present.

Turning now to the evidence in the instant case it is not disputed that it was a term of the agreement of tenancy that the supply of water to the respondent's premises would be paid for and maintained by the landlord and that the supply of electricity to those premises would be maintained by the landlord provided that the respondent paid the cost of the electricity supplied him. Water and electricity were supplied by the respective utilities to the landlord on the usual terms. The difficulties between the appellant and the respondent began in December 1971 some six months after the commencement of the tenancy when some workmen deposited a quantity of sand on the demised premises in front of the verandah of the house occupied by the respondent. There were building operations going on on the adjoining land which was owned by the respondent's landlord Lewis. When the wind blew from time to time the sand was scattered and entered the

appellant's house and caused him much inconvenience. In short the sand was a nuisance and despite the respondent's request of the appellant's husband to have the sand removed nothing was done to abate the nuisance. Apparently the appellant's husband was overseeing the construction next door. The respondent caused the sand to be removed to another part of the demised premises whereupon the appellant became annoyed and served a notice upon the respondent to quit and deliver up possession of the premises on January 1, 1972. The respondent ignored the notice to quit. The appellant later refused to receive payment of the rental from the hand of the respondent who as a result had to send the rental to her by registered post. On May 19, 1972, the supply of water to the demised premises was cut off. The respondent made enquiries of the "Hydraulic Department" presumably of the Water Commission and then made a report to the Chief Public Health Inspector. The respondent accompanied by a public health inspector sought out the appellant. The inspector told the appellant that he had received reports that she had requested the Hydraulic Department to lock off the water supply to the premises on the ground that no one was residing there. He told her that this was in breach of the Public Health Law to which the appellant replied "Him teck set in my bredda house and him wont come out. Let him tan deh nyam his shit and drink him piss." The inspector then handed the appellant a document and informed her that it was a notice addressed to her to have the water supply restored within 24 hours upon failure to do which she would be prosecuted. The water supply was only restored to the premises a fortnight later. On May 30, 1972, the respondent's electricity supply was cut off resulting in spoilage of some foodstuffs he had stored in his refrigerator on the demised premises. The respondent accused the appellant of having procured the cutting off of the electricity supply to which accusation she replied "Boy go way from me. That dey meter in a Lewis name it no name Smart." Subsequently the respondent was able to get the Jamaica Public Service Co., the suppliers of electricity, to restore the electricity supply to the demised premises. There was no suggestion that the electricity supply had been cut off for failure to pay the electricity account.

The learned resident magistrate accepted the respondent's account of the matters above stated and rejected the appellant's denials in that regard. On the state of the evidence which the learned resident magistrate accepted it is clear that her finding that the appellant caused the water and electric supplies to be cut off and that damage to the respondent resulted thereby cannot be successfully impeached. In respect of the nuisance caused by the unauthorised deposit of sand on the demised premises it is not shown that it was the appellant rather than her husband who caused the sand to be so deposited. It is not clear from the learned resident magistrate's reasons for decision or from her note made at the time she gave judgment that she made any finding or made any award in respect of trespass or nuisance caused by the unauthorised deposit of sand. She did specifically make a finding adverse to the appellant in respect of the cutting off of the water and electricity supplies. She totted up three sums namely, $21.00, $64.00 and $50.00 amounting to $135 as damages without indicating in respect of which portions of the claim she made those awards. I think that it is reasonable to conclude that the sum of $21 relates to the value of the foodstuffs spoilt as a result of the cutting off of the electricity supply, the other two sums being general damages in respect of the cutting off of the water and electricity supplies.

In each case there was a tortious act on the part of the appellant in that, she knowing of the existence of the contract of tenancy (and its terms) between the landlord and the respondent, acted with the object of procuring its breach by the landlord to the damage of the respondent by persuading the Hydraulic Department in the one case and the Jamaica Public Service Co. Ltd., in the other case to do an act which was in itself wrongful or not legitimate so as to render, as was intended, impossible the landlord's performance of his contract with the respondent. The appellant thereby was guilty of procuring in each case a breach of the landlord's contract with the respondent.

I would hold that the learned resident magistrate's award should be upheld though on a different basis from that on which she made the award, the respondent's claim being amended in the appropriate manner. Such an amendment made at this stage would cause no injustice to the appellant.

I would dismiss the appeal with costs to the respondent $50 affirming the judgment for $135 with costs to be agreed or taxed in the court below.

ROBINSON, J.A.:

I agree.

ZACCA, J.A.(ag.):

I agree.