



In The Supreme Court of Bermuda
Appellate Jurisdiction
2007 No. 18

BETWEEN:

BERNARD SIMMONS

Appellant

-and-

CAROLINE LAPSLEY

Respondent

Date of Hearing: Friday the 13th day of July 2007

Appellant in person;
Mr C. Rothwell for the Respondent.

JUDGMENT
(Extempore)

1. This appeal by Mr Bernard Simmons concerns his tenant Caroline Lapsley and it concerns two summonses before the Magistrates' Court. I am going to deal with them separately.
2. First listed on the Notice of Appeal is 07CV00444. That summons simply said that the tenant owes rent for February 2007 - \$1,600 for rent and \$65 for water. It appears that the Magistrate dismissed that summons on the basis that, by the time the matter came on for hearing, that rent had been paid, and the receipts validate that. They show that the rent for February was in fact paid on 4th March. This matter came on for hearing on 13th April.
3. There is also a procedure set out in the lease that requires the service of a notice to vacate after a failure to pay rent, and it does not appear that any such notice was served in respect of the February rent (and I am only dealing now with the February rent). The Magistrate was, therefore, entitled to take the position that he did and dismiss that summons in respect of the rent.
4. As to the \$65 for water, I have been shown a judgment by Wor. Wolffe relating to this tenancy, in which he held that payment for the water was due only every other month. That judgment binds the parties unless and until it is set aside on appeal, which it has not been. It has been demonstrated to me that water had been paid in January and was paid in March.

5. So, on that summons (07CV00444) there were no grounds on which the learned magistrate could award possession. I should also note that the summons does not actually claim possession, but just claims the rent. But by the time that came on for hearing it was dead in the water, because that rent had been paid. I therefore dismiss so much of this appeal as relates to that summons.

6. The other summons (07C451) was on a different basis. On the 8th December 2006 the landlord served a notice to vacate to take effect on the 31st January on the grounds that he required possession to carry out major renovations and improvements (which he listed as windows, walls, kitchen cabinets and doors at the apartment) which could not be carried out with the respondent in the apartment. It is not apparent that she served a counter notice. In respect of that the learned Magistrate held, and wrote on the summons –

“I am not satisfied that Mr Simmons genuinely required these premises for major renovations. Possession application dismissed.”

7. It is unclear on what basis he came to that conclusion because there is no indication before me in the Court Record that he took any evidence on that application. Instead he appears to have had a dialogue with the parties in which he was told something about the renovations and he also appears to have referred to a letter of complaint which Mr Simmons has separately addressed to me about the state of the premises. But that letter is not actually in evidence: I do not see it in the bundle as an exhibit. But in any event, in respect of that application the Magistrate should have sworn Mr Simmons and taken his evidence on oath; recorded it, either on the CourtSmart recording system or manually; and permitted cross-examination. He should thereafter have asked for any other evidence that Mr Simmons wished to call, including evidence from a contractor if he wished to call one, as to the extent of the work to be done and the need to remove the tenants. When Mr Simmons had called all his evidence, the learned acting Magistrate should then have offered the tenant a chance to give evidence to say why these renovations were not of such character as to require the premises to be vacated. When he had taken all the evidence he should have considered that evidence in a judicial manner and made findings of fact as to what renovations it was intended to carry out, and as to the degree of necessity that the tenant vacate. Having made those finding of fact he should then have exercised his judicial discretion upon them as to whether the requirements of the statute were made out.

8. It also seems that he took into account the hardship that it would cause the tenant. It is not immediately apparent to me that he should have done that if the statutory preconditions had been made out, but I express no view on that at this stage as it has not been argued. Indeed it does not arise, because the matter never really got to that stage.

9. So, there needs to be a proper hearing in the Magistrates' Court on that summons (07C451), and on that one only, and I remit the matter to the Magistrates' Court to conduct that hearing. I remit it to Magistrates' Court Number 3, on Friday 20th July 2007 at 2:30pm for the sitting Magistrate either to hear it or to give directions for a hearing. I am remitting it so the matter can be tried properly on evidence, on oath or affirmation. I also direct that it should go before a different Magistrate, and if Wor. Williams is acting next Friday he should give directions for trial and put it before a different Magistrate.

10. No order as to the costs of the appeal.

Dated this 13th day July 2007

Richard Ground.
Chief Justice