

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv 2284 of 1996

BETWEEN

MICAL RAYMOND MAUGE

PLAINTIFF

AND

KNOLLY MONIQUETTE

LEONIZA MONIQUETTE

(as Legal Personal Representative of the Estate
of Eugene Moniquette deceased)

DEFENDANTS

BEFORE THE HONOURABLE MR. JUSTICE STOLLMAYER

Appearances:

Mr. Y. Ahmed for the Plaintiff (and the Plaintiff in person)

Mr. D. Bissoondatt for the defendants.

JUDGMENT

There are two principal issues which fall for determination in these proceedings. The first relates to the terms of the licence granted to the Plaintiff in or about January 1993 and the second is whether an assault was committed on the Plaintiff in the course of the events which took place on 22nd June, 1996.

It is not in contention that the Plaintiff was granted a licence on certain terms with respect to the house, and the parcel of land immediately surrounding that house situate at Lamp-Pole 1001, Paria Main Road, Toco and that the licence was non-exclusive in favour of the Plaintiff. Additionally, the licence was oral and was granted to him by Knolly Moniquette (“the First Defendant”). As to whether the First Defendant did so purportedly as owner of those premises or as the agent of Leoniza Moniquette (“The Second Defendant”) is not in the final analysis a contentious issue nor of momentous importance. The Second Defendant admits that the First Defendant acted as her servant and/or agent at all material times in relation to these premises so that the correct individuals were before the court at the trial in their various capacities.

The fact remains that the First Defendant came to an arrangement with the Plaintiff and with great insouciance did not reduce any part of it into writing - and how he has come to rue the day.

The nature of the relationship which the Plaintiff entered into is - or was - commonplace in instances where an owner of property cannot be physically present to look after its safety, security, maintenance and upkeep. The owner allows someone into non-exclusive occupation or possession in return for that person performing those very functions which the owner, through physical absence, could not. Occasionally, but not always, in fact

seldom was the case, that the person allowed into occupation would be paid some form of fee or remuneration. The consideration for the provision of his services would be physical accommodation and, also, where the property warranted it, some use or enjoyment of the agricultural produce of the property. Again occasionally, some form of cultivation, usually for home consumption, might be permitted.

This caretaker arrangement, as the Plaintiff himself described it, was the nature of the arrangement which the Moniquette family previously had with Terry Onardy and which the First Defendant sought to put into place with the Plaintiff.

Turning to the terms and condition of the licence, there are some further, albeit perhaps minor, areas of consensus as between the parties. First, the Plaintiff was to keep the immediate cutilage of the house clean and free of overgrowth. Second, he was to keep the house itself clean and secure, and free of vandals and trespassers. These terms can be discerned from the pleadings and the evidence without difficulty. Also from the evidence, even if denied by the Plaintiff in his Reply, I have concluded that the licence could be terminated immediately if he was in default of any of his agreed terms or conditions. The Plaintiff himself said during the course of cross-examination that, *‘I don’t recall the First Defendant telling me my permission to occupy could be revoked at anytime by him telling me so’* when the

agreement was being formulated in January 1993. In response to the very next question, he responded *“It is correct that the defendant told me he could revoke the licence orally if I breached the terms”*. There was no attempt at rehabilitation in re-examination. Further, on the subject of termination/revocation, and the Plaintiff’s plea that it was an implied term of the agreement that any notice to vacate would have to be of at least eight months duration, the Plaintiff said, while being cross-examined as to his asking for time to leave after receiving the notice of quit of 15th May, 1996, *“ I asked him for time to reap my crops. He said he did not want to hear anything. The time I asked for was the time implied or expressed in the oral agreement. I asked for 7-10, 7-12, 10-12 months. I don’t recall asking for 8 months specifically. I formed the view 8 months was reasonable notice. I did not specifically asked the First Defendant for 8 months.”*

In brief, the Plaintiff’s evidence failed to support his own pleading as to the 8 month notice period, and supports the First Defendant’s pleading that the licence could be terminated orally if the Plaintiff breached its terms.

The Plaintiff’s evidence also supports another plea of the defendants, initially denied in their Replies, that the Plaintiff would not interfere with or be a nuisance to the Owner (being, in effect, the Second Defendant), her guests and/or licencees during their use of the premises. In cross-examination the

Plaintiff said *“It is correct that I was told not to do anything to interfere with them when they visited”*.

I make specific mention of these issues at this juncture for two reasons. First, they are all based on the evidence of the Plaintiff himself and when the evidence of the defendants is considered, his position in terms of proving his claim worsen perceptibly. Second, all of this evidence was taken during the time when the Plaintiff had the benefit of an attorney-at-law acting for him. After the Plaintiff’s case was closed, during which time Mr. Ahmed had appeared for the Plaintiff, a break was taken in the proceeding. On resumption, and after a lengthy delay, Mr. Ahmed informed the court that he was in an embarrassing position and that he could not continue to act on behalf of the Plaintiff. He was unable, or unwilling, to provide the details of that difficulty, he said, because it might affect the Plaintiff adversely during the continuation of the trial. The Plaintiff confirmed that he no longer wished Mr. Ahmed to act for him and the hearing of the trial was then adjourned to enable the Plaintiff to retain alternative representation. When the trial eventually resumed some four weeks later, the Plaintiff indicated that he was unable to retain another attorney but was prepared to continue the trial on his own, having received certain advice. He did so, with assistance from certain individuals who were in court with him. What must be stressed, however, is that the evidence in support of his pleadings, and his case, was

given with the full benefit of legal advice and representation but that despite this there were serious shortcomings in the evidence in support of the Plaintiff's pleadings.

Returning to the issues of fact which require a determination to establish the terms of the licence, there is the question of whether the Plaintiff's plea that there was an express agreement that he would be allowed to have occasional short term and long term visits by his wife, Patsy Mauge. An examination of the evidence in this regard leads me to the conclusion that, when the agreement was formulated in January 1993, the Plaintiff was not at that time married to Patsy Mauge. The Plaintiff himself appeared uncertain on occasions while giving his evidence in relation to this (and other) issues and, in my view, the evidence of Patsy Mauge was in the main purely intended to support that of her husband and not to provide an unbiased recollection of the events which took place. In the result, however, the Plaintiff has failed to satisfy me that they were married at the time and, consequently, it could not be a term of the agreement that she, as his wife, would be allowed to visit - whether it be visits of a short-term, long-term or other duration.

The Plaintiff also alleged that as a term of the agreement he was to effect certain installations to the external wiring and to carry out certain necessary plumbing repairs. While there may be evidence to support his having

carried out these works, I am not satisfied on the evidence before me that doing so was a term of the licence. It would to my mind be improbable that this would be a term of the licence, or of any arrangement of this nature, without there being specific agreement to this effect and having regard to my findings in relation to certain other terms of the licence, I do not accept that the Plaintiff was to carry out these works. I find it far more probable that the Plaintiff was, as the defendants alleged, to notify the Second Defendant and/or her agents of all repairs which became necessary for the premises.

The Plaintiff also alleged that as a term of the licence he was to pay all rates, taxes charges and outgoings in relation to the property. The evidence does not support this. The Plaintiff apparently made efforts to pay certain of the electricity bills and, indeed, says that he did in fact paid some of them. He also said in his evidence said that he attempted to pay the Land and Building Taxes. There is, however, no evidence whatever that he paid any of these expenses/outgoings.

The Plaintiff also alleged that he was to be allowed to cultivate a wide variety of crops on the property generally, not just enjoy the house itself and the area immediately surrounding it, and that these crops were to include watermelon, peas, ochro, cassava, pumpkin, peppers, string beans, ginger, dasheen and corn. In support of this, his evidence was that he was to enjoy the premises on the same basis as had Terry Onardy, the latter being the

previous caretaker of the property. While agreeing that the Plaintiff's enjoyment to the property would be on the same basis as that of Onardy, the First Defendant denied strenuously that this extended to the cultivation of crops and said further, that all the Plaintiff was permitted to do was to pick and keep for his own use, coconut, coffee and citrus growing on the rest of the property.

Cecil Kinoo, who gave evidence on behalf of the defendants, said that he lived on the property adjoining that of the Moniquette's; that he knew the property; and that he knew Terry Onardy, the previous caretaker. Kinoo also said that Onardy planted things while he was the caretaker of the Moniquette's property like plantain, fig and breadfruit, as well as a pomerac tree and "*citrus fruits which Mr. Moniquette brought to the property*". He gave this evidence in cross-examination and there was no mention of any other form of cultivation or crops. Further, he said that he never saw any form of cultivation by the Plaintiff until perhaps around May or June of 1996 when the Plaintiff had come to him asking him to keep his (Kinoo's) fowls penned up because the Plaintiff wanted to put down some peas and corn. In the circumstances, my finding is that there was no such term of the licence as the Plaintiff alleges and I am fortified in this finding by the Plaintiff's admission that the notice periods he claimed for reaping the crop were not in fact agreed upon.

Having arrived at these findings, and based upon the evidence relating to the other issues touching on the terms of this licence, there are certain matters which become readily apparent. First, the licence did not permit cultivation as the Plaintiff alleges, either as to the crops he claims he was permitted to plant and reap or as to the use of the property generally for that purpose.

Second, the Plaintiff was not permitted to have anyone sleep on the premises or stay there with him. Third, the Plaintiff was to occupy the back bedroom of the house and that, although he was to have the non-exclusive use of other areas of the house, the use of the front bedroom was reserved for the use of the owner (being the Second Defendant) and whomsoever else she may have so authorised.

Fourth, the licence granted to the Plaintiff could be revoked or terminated orally if he were to breach any of the terms or conditions of the licence.

Fifth, the licence was to be of indefinite duration, but quite apart from revocation/determination for breach, it was revocable/determinable by the defendants, and determinable by the Plaintiff, at anytime upon reasonable notice being given.

As to the nature of the licence granted, it is clearly one which can be described properly as a contractual licence. There is consideration given for the grant of the licence, namely, the provision of services in taking care of the property. It is not, at the same time, a licence which is distinct or

separate from the contract which brings it into existence. That contract is for the provision of caretaker services and the licence to occupy is just one of the provisions of the contract between the parties.

The licence granted in the instant case is not coupled with the grant of an interest in the subject property and is therefore revocable. This is clear from the terms of the licence as I have found them.

The holder of a revocable licence is entitled to any period of notice which may have been agreed between the parties or, if no such notice has been agreed, to a reasonable period of notice. Even if a notice specifies an unreasonably short period of time for the holder of the licence to vacate the premises in question, that notice may nevertheless be effective in revoking the licence, although it cannot be enforced until a reasonable period of time has been elapsed. And, of course, if the revocation of the licence is in breach of the terms of the contract, then the licensee can recover damages for the breach.

A notice revoking or terminating a revocable licence may either be written or oral, depending upon the circumstances of the particular case. In the instant case it was submitted for the Defendants that the Second Defendant properly and effectively revoked the licence orally in February 1996 but I do not agree with that submission. The Second Defendant said in her evidence *'I told him [the Plaintiff] I did not want anybody inside the*

house and you must get out and go. I don't want to see you again in this house when I return". But this I think was said in a moment of anger when the Second Defendant found Patsy Mauge in the house and herself obliged to share a room with Patsy, more than with a view to bringing the arrangement with the Plaintiff to an end. The Second Defendant did not return to the property and, although she spoke to the First Defendant about the matter she *"..... did not do anything at all when the Plaintiff did not leave the premises after that weekend in February 1996"*. I am therefore not satisfied that this was a proper and effective termination of the licence.

The letter of May 15, 1996 is, however, in my view a proper and effective revocation/termination of the Plaintiff's licence and it matters not in my view that it is signed by the First Defendant as "Proprietor". The intention is clear. The licence is being revoked either by or on behalf of the grantor. Further, the notice period of one month is in my view sufficient in all the circumstances.

As to the issue of whether an assault was committed by the Second Defendant on the 22nd of June, 1996, Mr. Bissoondath submitted that this claim by the Plaintiff had not been properly pleaded, there being no allegation or averment that the acts of the First Defendant on that date were intentional or deliberate.

First, I will say that any defect in the pleadings (at paragraph 14 of the statement of claim) is capable of remedy by way of amendment, even at this stage of the proceedings, and I would allow such an amendment if the evidence justified it. Second, there is no doubt on the evidence that the First Defendant behaved in a grossly untoward fashion on the day in question. In my view he set out to bully or coerce the Plaintiff into leaving the premises and desisted only when he realised that physical force would be required to eject the Plaintiff and Patsy Mauge. As to whether he desisted because he knew and feared the consequences of so doing is not a matter for this court to decide. The fact of the matter is that he, wisely, withdrew and went to the police station where he made a report.

Third, I am not in the circumstances persuaded on the evidence that the First Defendant had the necessary or required intention to commit violence, but there remains the question of whether the Plaintiff was placed in a mental or physical position where he experienced a fear of violence to his person. The Plaintiff says that the First Defendant used threats and abusive language; that his behaviour “*was vulgar and out of proportion*”. Patsy Mauge was decidedly more graphic in her account of the events which took place, but in the final analysis I am not persuaded that there was in fact this fear of violence in the mind of the Plaintiff. If there was, why did he not

report the matter to the police immediately? Particularly given that the First Defendant himself went to the police station.

I have therefore come to the conclusion that the Plaintiff's action must fail and that there must be judgment for the Second Defendant on her counterclaim. There is, however, no evidence before me as to the quantum of damages which might be awarded to her and in the circumstances I make the following orders:

- (1) the Plaintiff is to deliver to the Second Defendant, her servants and/or agents possession of the entire property situate at Lamp Pole 1001, Paria Main Road, Toco.
- (2) the Plaintiff will pay to the Second Defendant damages for the use and occupation of the said property in the amount of \$50.00 per month from the 15th day of June 1996 until delivery to her of full, free and vacant or possession of the subject premises as set out at paragraph (1) above.
- (3) the Plaintiff will pay the defendants costs of the action;
- (4) Writ of Possession not to issue before thirty days after today's date.

Dated this 14th day of July, 1998.

.....
C.V.H. Stollmeyer,
Judge.