J A M A I C A

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL NO. 23/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Ag.)

BETWEEN	ELLEN CHAMBERS	PLAINTIFF
AND	EMANUEL RASHFORD	DEFENDANT

December 1, 2, 1965 and
February 18, 1966

J U D G M E N T

MOODY, J.A.,

The plaintiff/respondent brought an action against the defendant/appellant to recover possession of a square chain of land with a house thereon, situated at Catadupa in the parish of St. James and for arrears of rent £17.10/-.

The learned Resident Magistrate made an order on the 18th September, 1964, for the plaintiff to have possession on or before the 31st December, 1964, and gave judgment for the plaintiff for arrears of rent £17.10/- with costs £8.8/-. It is from this order and judgment that the defendant/appellant appeals.

The facts were not seriously disputed. The respondent by an oral agreement rented the appellant a square chain of land with a house thereon at Catadupa in St. James, the annual value of which did not exceed £36. At the time the action was brought, the appellant owed £17.10/- for rent. The house and land were owned by Wilfred Atkinson, the respondent's son-in-law, who is residing in England. The respondent did not disclose this fact to the appellant when she arranged to rent him the land nor did she disclose that she was acting as an agent. The record does not disclose the date of the agreement nor the date of the letting. Sometime in 1963, after the appellant had been let into possession by the

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respondent, there was a quarrel between the appellant and the respondent over a reduction of the rent. The appellant did not give evidence at the trial so that it is the respondent's version that is now given. She stated that the appellant wanted the rent reduced. She then told him he would have to write to her son-in-law as he is the owner. She wrote her son-in-law and he wrote a Mr. Lebert Grey requesting him to pacify the parties.

Lebert Grey gave evidence for the defence. He stated that he received a letter in 1963 from Wilfred Atkinson, the owner, and in consequence he made an adjustment with the appellant and after that the appellant was told that he should pay the rent to one Alice Atkinson, a sister of the owner. The respondent was advised of this and accepted it. He said further that the respondent had brought him her receipt book and told him that her son-in-law had requested her to approach him with a view to straightening out the rent that appellant owed; and that the appellant was not paying his rent. Two receipts were tendered and admitted in evidence, one dated 25th November, 1963 signed by Grey for Alice Atkinson, the other dated 7th December, 1963 signed only "per Alice Atkinson". Also admitted in evidence was a letter dated 6th March, 1964 signed by the respondent's solicitor addressed to the appellant giving him notice to quit.

Alice Atkinson, after issuing the receipt dated 7th December, 1963, handed back the receipt book to the respondent on the instructions of the owner Wilfred Atkinson.

The only point raised by the appellant at the trial was that the respondent was an agent of the landlord and could not sue in her own right.

The learned Resident Magistrate, in her reasons for judgment, found, inter alia:-

1. That the plaintiff (as landlord) rented the house and land to defendant without disclosing that she was not the owner.

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2. That there was a dispute between the defendant and plaintiff and that plaintiff then disclosed that her son-in-law was the owner.

3. That in November and December, 1963, rent was collected by Alice Atkinson on behalf of the owner but subsequently handed over to the plaintiff on the instructions of the owner.

4. That the defendant was put into possession by the plaintiff, who qua the defendant, is landlord and as such defendant as tenant, is estopped from denying her title.

Counsel for the appellant submitted to us that the only real issue at the trial was whether the respondent was entitled to sue in her own name for the arrears and the recovery of possession.

He further urged that where an agency has been terminated to the knowledge of the agent and the appellant and another agent interposed, the first agent cannot be allowed to sue subsequently when his agency has been restored and so put himself in the original position vis-a-vis the tenant. At the time of the suit, the respondent was not in a position to sue in her own name as then a new agency had come into existence.

Counsel for the appellant complained that the learned Resident Magistrate had made no finding as to whether the agency had been terminated or not.

Counsel for the respondent replied that the appellant in the circumstances of this case could not deny his landlady's title:

that when the rents for November and December, 1963, were collected by Alice Atkinson the contract between respondent and appellant was still subsisting;

that on the facts, the agency had not been determined;

that the respondent was enabled to sue in her own name.

The general rule in cases of this sort is that when an agent makes a contract naming his principal, the contract is made with the principal and not with the agent. But even where the principal is known, a

...contract/

contract in writing may be made by an agent with a third person in such terms that he is personally bound to the fulfilment of it; as if he says, "I for my own self contract" in such a case there is a personal contract by the agent; and he may sue or be sued on it, although the principal may interfere and claim the benefit of it. (Vide Fisher v. Marsh 1865, 6 B & S 411 at 416.) The terms of the contract in Fisher v. Marsh, as in the present case, were not reduced to writing. There was evidence on which the learned Resident Magistrate could reach the conclusion that the respondent had contracted with the appellant in such terms that she was personally bound and so entitled to sue.

As regards the submission by counsel for the appellant that the agency had been determined, such a submission could only arise by way of an inference to be drawn from the evidence.

In our view there was no evidence that could reasonably support such an inference; indeed, there is evidence to the contrary. The respondent in cross-examination says, "My agency was not stopped and handed to Alice Atkinson only until contention between defendant and I cease ... I was not instructed to hand over management of place to Alice Atkinson ... I had power during that period for Alice Atkinson gave me back the rent and book by her brother's instructions." The convincing reason given in the evidence for the collection of the rent for the months of November and December, 1963, by Grey and Alice Atkinson respectively is that there was a dispute between the respondent and appellant as to the amount of money due for rent and as soon as that dispute was resolved, the function of collecting was resumed by the respondent .

It is easy to understand why the learned Resident Magistrate made no finding as to whether the agency had been terminated by the intervention of Mr. Grey in that such a point was never raised at the trial and such defence as was put forward was based on the assertion that the respondent was an agent.

For these reasons the appeal should be dismissed with costs £12.