JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 30/02

BEFORE : THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

BETWEEN	**BURCHELL MELBOURNE**	**PLAINTIFF/APPELLANT**
A N D	**THOMAS ANDERSON** **GERTRUDE ANDERSON**	**DEFENDANT/RESPONDENT**

Raphael Codlin instructed by Raphael Codlin & Co for Appellant

Jacqueline Samuels-Brown instructed by Yvonne Ridguard for the respondents

February 18, 19 & April 11, 2003

PANTON, J.A.

1. On June 3, 2002, His Honour Mr. Bertram Morrison the Resident Magistrate for the parish of Portland entered judgment in this matter in favour of the respondent on the claim and the counterclaim. The claim was for the recovery of possession of land at Whydah, St. Margaret's Bay, Portland, whereas the counterclaim was for –

> (a) a declaration that the respondent had encouraged and acquiesced in the appellant's acts of improving and expending money on the said land on the understanding that the term of the tenancy would have been renewed;

(b) damages for breach of contract;

(c) an injunction to prevent any steps aimed at recovering possession; and

(d) further, or in the alternative, compensation in the sum of $725,247.57 for improvements to and expenditure on the said land.

2. The learned Resident Magistrate found that the appellant had entered into a lease agreement at $40,000 per annum with a provision that he was not to destroy fruit trees or dump the property. The annual payment was increased to $60,000. The appellant did unauthorized extensions to the building, erected a shed without authorization and also did unauthorized dumping of the property. The Resident Magistrate also found that the so-called improvement was neither sanctioned nor necessary. In making these findings the learned Resident Magistrate was particularly impressed and influenced by the "refreshing lucidity candor and forthrightness" of the second respondent, Mrs. Gertrude Anderson.

3. The appellant filed twelve grounds of appeal. However, when Mr. Raphael Codlin rose to his feet before us, he abandoned all grounds except the tenth. On the completion of the arguments on February 19, 2003, we dismissed the appeal, affirmed the Resident Magistrate's order, and awarded costs of $15,000 to the respondents. These are the reasons for our decision.

4. The tenth ground reads:

> "That the learned Resident Magistrate had no jurisdiction at the trial of a counterclaim for any sum over $250,000".

Mr. Codlin, in concentrating his energies on this ground, conceded that, on the claim, there was evidence on which the Resident Magistrate could have made a finding in respect of possession. Learned counsel did not think that the cause of justice would have been served by attempting to "belabour technicalities". ~~He therefore~~ asked the court to consider only the question of the Resident Magistrate's jurisdiction to try the counterclaim, given the quantum claimed in paragraph (d) above.

It bears noting that the appellant was thereby challenging the jurisdiction of the Resident Magistrate to hear and determine the very counterclaim that he the appellant had filed. It is not often that a party has urged the court to exercise jurisdiction, and when the decision has gone against the party, he turns around and pleads that there was a lack of jurisdiction. It smacks of an extreme case of blowing hot and cold.

5. Section 71 of the Judicature (Resident Magistrates) Act sets the jurisdiction of the Court in all common law claims at $250,000. It reads:

> "Each Court shall, within the parish for which the Court is appointed, have jurisdiction in all actions

> at law, whether such actions arise from tort or from contract, or from both if –
> (a) the amount claimed does not exceed two hundred and fifty thousand dollars. ..."

Section 72 of the said Act provides for the consent of the parties to the giving of jurisdiction to the Court in respect of a greater amount. It reads:

> "72. (1) All common law actions, whatever be the amount of debt or damage claimed, wherein both parties shall agree by memorandum, signed by them or their respective solicitors, that any Court named in such memorandum shall have power to try the action, may be heard and determined in like manner by the Court so named.
>
> (2) A judgment delivered pursuant to such hearing shall ~~have~~ the same effect and be enforceable in all respects as a judgment for an amount within the jurisdiction as to amount. ...".

Finally, section 73 provides for the voluntary abandonment of the excess where a plaintiff wishes to bring suit in the Resident Magistrate's Court but the amount is more than $250,000. It reads thus in subsection (2):

> "Any plaintiff having a cause of action for an amount which exceeds two hundred and fifty thousand dollars, for which, but for such excess, a plaint might be lodged under this Act may, subject to subsection (3) abandon the excess and thereupon shall, on proving his case, recover to an amount not exceeding two hundred and fifty thousand dollars".

6. On the basis of the abovementioned statutory provisions, Mr. Codlin boldly submitted that the Resident Magistrate had no jurisdiction as –

1. the amount counterclaimed was far in excess of $250,000;
2. there was no memorandum in writing indicating that there was consent on the part of the parties to the Court hearing the counterclaim for the amount; and
3. there was no indication on the part of the appellant that he was abandoning the excess.

One point to note in all this is that there is a suit pending in the Supreme Court in respect of compensation for the same amount stated in the counterclaim before the Resident Magistrate. In view of the specific findings made by the learned Resident Magistrate, it will be interesting to see how far the appellant will be able to proceed with that claim. These findings by the learned Resident Magistrate, it should be noted, have not been challenged in these proceedings.

7. Mr. Codlin cited two cases ***Blake v. Johnson*** (1964) 8 JLR 561 and ***Isabel Brown v. Walter Cole and R. Burgess*** (1967) 10 JLR 23 as being supportive of his challenge to the jurisdiction of the Resident Magistrate. ***Blake v. Johnson*** was an action for assault. The magistrate therein had heard evidence from the respondent and his witness. At the close of the respondent's case, the appellant moved for judgment on the basis of the respondent's failure to prove geographical jurisdiction. The appellant was put to his election whereupon he chose to give evidence which clearly established the Resident Magistrate's jurisdiction to try the case. On appeal,

it was contended that the Resident Magistrate was not seized of the necessary jurisdiction so was wrong to put the appellant to his election at the end of the respondent's case. It was held (per Duffus, P. and Waddington, J.A) that there was a reasonable inference that the assault had been committed within the Resident Magistrate's jurisdiction, and (per Henriques, J.A.), that the appellant having been put to his election, elected to call evidence and should not now be heard to complain.

Mr. Codlin's reliance on ***Blake v. Johnson*** was clearly misplaced as that case in fact gives support to the view that the appellant herein should not now be heard to complain in respect of jurisdiction, he having chosen to file the counterclaim and having given evidence in support thereof before the learned Resident Magistrate.

In ***Isabel Brown v. Walter Cole and R. Burgess,*** it was held that where a claim, which the court has no jurisdiction to try, is brought in a Resident Magistrate's Court, it is the Resident Magistrate's duty to order the case to be struck out unless the parties consent to the trial thereof. In that case, the defence that was stated at the commencement of the trial included "lack of jurisdiction".

8. Mrs. Samuels-Brown submitted that "there was no jurisdictional fault as the parties were together". It was her contention that the counterclaim was not in common law; it was, she said, a claim for remedies which flow out of the plaintiff's right to possession of land. Since the claim fell under the sections of the Judicature (Resident Magistrates) Act which deal with land, then, she argued, section 72 did not apply. She relied on the following cases:

> ***Rose v. Senior*** (1967) 9 JLR 602;
> ***Bertie Henry v. Samuel Lee*** (1975) 13 JLR 76; and
> ***Aston Lewis v. Victor McLean*** (1982) 19 JLR 56.

It does not appear that the last two mentioned cases are of any relevance to the instant matter. In respect of ***Rose v. Senior*** (supra) the case was defended on its merits and the defendant took no objection to the absence of proof of jurisdiction so far as the parish was concerned. Judgment was given in favour of the plaintiff. On appeal, the defendant took the point that there was no evidence that the Resident Magistrate had jurisdiction to try the case as jurisdiction was never proved. The Court of Appeal held that while there was no express waiver of the jurisdictional point, yet it did seem that in the circumstances that occurred there was an implied waiver of the requirement of proof of jurisdiction, and it would not be proper to allow the defendant to raise the question of absence of proof at this stage.

The implied waiver arose from the fact that the appellant had not only filed a request for further and better particulars with the heading noting the parish in which the case was being heard, but also had actually appeared, pleaded and contested the case on its merits. In the instant case, the appellant behaved in a similar manner, invoking the jurisdiction he claimed that the Court had, and participated fully in the proceedings, seeking a judgment on the merits. Jurisdiction was never in issue, and there was not the slightest hint that jurisdiction would have ever become an issue. On the basis of the decisions in ***Blake v. Johnson, and, Rose v. Senior*** the appellant's submission of lack of jurisdiction was without merit.

9. In looking at the specifics of the counterclaim as set out in paragraph (1) above, it was not doubted by Mr. Codlin that the learned Resident Magistrate had jurisdiction to adjudicate on items (a), (b) and (c) which sought a declaration, damages and an injunction respectively. The challenge was in respect of (d) which was put in the claim as an alternative to the other portions of the claim. In the end, there was no direct adjudication by the Resident Magistrate on the alternative compensation claim of $725,247.57. The findings of fact made by the Resident Magistrate made such an adjudication unnecessary. Those findings militated against the granting of a declaration, an injunction or damages. The appellant had therefore failed on

the substantive portions of the counterclaim. The findings of fact were devastating to the appellant's cause. There has been no challenge to these findings. That being the situation, the question of jurisdiction in respect of the alternative claim is of academic interest only. There was no basis for the Resident Magistrate to consider the quantum of the alternative claim as there was no basis on which a claim of any amount could have been even entertained, given the findings of fact.