

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 12/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN PROPERTY MANAGEMENT & SERVICES LTD. APPELLANTS
A N D NICKI VALENTINE & JOHN ELLIOTT RESPONDENTS

Mr. Gerald Whyte, Managing Director for Defendants/Appellants

No appearance for 1st Respondent

Mr. Lance Hylton for 2nd Respondent

September 29, 1988

MORGAN, J.A.:

This is an appeal against the judgment of the Resident Magistrate, St. Andrew on the 20th of January, 1988. The plaintiff's claim was in respect of water rates due from both defendants for the period January 1986 to May 1987. Very briefly, the facts are, that both defendants rented premises from the plaintiff, one in July, the other in August 1985 for \$500.00 and \$450.00 per month respectively. Both said that the rental included water rates. The plaintiff said that that was not so. Inasmuch as their rentals commenced in 1985, it is observed that they have been sued for arrears commencing only from January 1986. The defendants said that they were told by the plaintiff that the National Water Commission had increased the rate as at January and that they should pay an extra \$20.00 per month for water. They refused.

Section 20(2) of the Rent Restriction Act says in effect that the transfer to the tenant of a liability hitherto borne by the landlord shall be treated as an alteration of the rental if less favourable to the

- 2 -

tenant and is deemed to be an increase of rent. The learned Resident Magistrate found that there was no agreement that the rent excluded an amount for water.

The issue was a question of fact for the learned Resident Magistrate and his findings that it was a liability hitherto borne by the landlord and was deemed to be an increase of rent is consistent with the evidence. In those circumstances, I would dismiss the appeal.

FORTE, J.A.:

I listened to the judgment of my learned sister and I agree with her reasoning and the conclusions that she has arrived at. I have nothing further to add.

CAREY, P. (Ag.):

I propose to add a postscript mainly because the appellant in this case choose to appear without legal representation and it appears that this is the beginning of a series of trials which involve the same point. The notes of the Resident Magistrate show -

"Plaintiff and defendants agreed that these two cases should be test cases and will abide by outcome of these two trials."

Morgan J.A. has made it quite clear that this whole matter is one of fact, that is, for the learned Resident Magistrate to consider very carefully the demeanour of the persons who gave evidence before him. As was pointed out, on one hand the landlord was saying that the tenancy agreement between himself and his tenants excluded water-rates while they on the other hand were saying the rental which they were required to pay, included water-rate. That conflict was resolved in one way and this Court, in the light of the evidence before us and bearing in mind that we must give full effect to the fact that the Resident Magistrate both heard and saw the witnesses, I have no reason to disagree with the conclusion at which the learned Resident Magistrate arrived.

Insofar as Section 20(2) of the Act is concerned, I agree entirely with what my Lady has said and I have nothing further to add.

In the result, the appeal is dismissed, the judgment of the Court below is affirmed, and the costs of the appeal will be fixed at \$250.00.