

SUIT NO.GJ/0736/2020

VRS.

2. DELALI BREMPONG

On March 4, 2020, the Plaintiff sued the Defendants for the following reliefs:

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- (d) Interests on (c) from November 2019 at the prevailing commercial interest rate till date of final payment;
- (e) Damages against the 1st Defendant for breach of contract,;
- (f) Damages against the 2nd Defendant for misrepresentation;
- (g) Legal costs;
- (h) Such further order(s) as this Honourable Court may deem fit

The Plaintiff's case is that the 1st Defendant rented her property on January 5, 2018, for a period of twelve (12) months commencing on January 5, 2018, for a monthly rent of One Thousand Five Hundred United States Dollars (USD1,500.00), which included a service fee of One Hundred United States Dollars (USD100.00) for security, water, garbage collection and gardening.

Rent was to be paid six (6) months in advance of each rent period for the twelve-month period. The 1st Defendant paid rent for the first six (6) months but was short by an amount of Three Thousand Five Hundred Ghana cedis (GH¢3,500.00), which the 1st Defendant was to pay later. In the meantime, the 1st Defendant was given possession of the Property.

Prior to the expiration of the initial six-month period, the Plaintiff made several demands on the 1st Defendant to pay the outstanding amount of GH¢3,500.00 and to yield vacant possession of the Property, or pay rent for the remaining six months as agreed under the Tenancy Agreement.

The 1st Defendant failed to pay the balance outstanding on the initial rent paid and also failed to vacate the premises. The Plaintiff therefore began proceedings to evict the 1st Defendant from the Property.

In September 2018, the Plaintiff was, however, approached by the 2nd Defendant who introduced himself as a partner of the 1st Defendant. The 2nd Defendant also informed the Plaintiff that he was in the process of arranging for the payment of the balance on the initial rent paid as well as rent accrued for the subsequent six (6) months. The 2nd Defendant also requested that the Plaintiff suspend all efforts at evicting the 1st Defendant from the Property.

The 2nd Defendant paid rent for three (3) months but failed to make further payment on the outstanding rent. Any attempts to compel the 2nd Defendant to pay the remaining rent owed have been futile.

The Plaintiff's case is that the 2nd Defendant knowingly represented to the Plaintiff that he had been making arrangements to pay the outstanding rent when in fact he had made no such arrangements and had no intention of paying the outstanding rent owed.

The Plaintiff also relied on the representations by the 2nd Defendant and suspended all attempts at evicting the 1st Defendant from the Property.

While the rent remained unpaid, the service fee component of the rent was not paid to the management of the estate, who disconnected the water supply to the Property in an attempt to compel the 1st Defendant to pay her service fees. The management of the estate proceeded to lock up the Property when they received no service fees following several demands.

The 1st Defendant eventually vacated the Property in November 2019 without paying the outstanding rent and service charges. The 1st Defendant also left the Property in a state of disrepair. The Plaintiff incurred costs to repair the Property and also lost potential income during the time the 1st Defendant remained on the Property without paying rent.

At the time the 1st Defendant vacated the Property, the rent accrued was Twenty-one Thousand United States Dollars (USD21,000.00) being rent from October 2018 to November 2019. This is in addition to the Three Thousand Five Hundred Ghana Cedis (GH¢3,500) remaining from the initial six months' rent paid.

The Plaintiff, therefore, instructed her Lawyers to bring an action in court for the recovery of the rent owed. Accordingly, a writ of summons and a statement of claim was filed on March 4, 2020, and served on the Defendants. The 1st Defendant admitted to owing Sixteen Thousand Five Hundred United States Dollars (USD16,500.00) ("the Admitted sum") in the Statement of Defence filed on behalf of the Defendants.

Although the Plaintiff obtained judgment on admission against the 1st Defendant for recovery of the Ghana cedi equivalent of the Admitted Sum on January 29, 2021, she has been unable to execute the judgment and recover the judgment debt because the 1st Defendant is unreachable and efforts to get her to appear in court for oral examination have proved futile.

The Plaintiff proceeded with the matter to recover the amount of Four Thousand Five Hundred United States Dollars (USD4,500.00) and Three Thousand Five Hundred Ghana Cedis (GH¢3,500.00) that remain in dispute.

Due to the Defendant's conduct, i.e. their failure to attend Court despite service of hearing notice or file their witness statements, the Court on February 23, 2023, struck out the Statement of Defence filed by the Defendants after the Defendant's failure to file their witness statements contrary to the Court's orders.

At the close of the pleadings, the following issues were set down for trial:

- (a) Whether the 1st Defendant owes the Plaintiff an outstanding rent of Three Thousand Five Hundred Ghana cedis (GH¢3,500.00) as at June 2018.

- (b) Whether the 1st Defendant owes the Plaintiff rent of the Ghana cedi equivalent of Four Thousand five Hundred United States Dollars (USD4,500) from October 2018 to November 2019, being the amount outstanding after the grant of the judgment on admission on January 29, 2021.
- (c) Whether the 1st Defendant breached the terms of the Tenancy Agreement.
- (d) Whether the 2nd Defendant Fraudulently represented to the Plaintiff that he had made arrangements to settle the outstanding rent owed by the 1st Defendant to the Plaintiff in order to induce the Plaintiff not to accelerate the recovery of the outstanding amount and evict the 1st Defendant.
- (e) Whether the Plaintiff is entitled to the reliefs sought.

It would be necessary at this stage to give a brief history of this case. On 23rd February, 2023 the court noted that the Defendants are in in a habit of not complying with the orders of the court. By the orders of the court dated 28th June, 2022 and 1st December, 2022, the Defendants failed to file their Witness Statements and Pre-Trial Checklist. On 31st January, 2023 when the matter was called the Defendants and their Solicitors were absent without excuse or justification and had still not filed their Witness Statements and Pre-Trial Checklist. They were therefore given the last opportunity to do so. However as at 23rd February, 2023, the Defendants had still not filed their Witness Statements and Pre-Trial Checklist and were absent in court without excuse or justification even though their Solicitor was served with a Hearing Notice on 6th February, 2023.

On 13th July, 2023 the court struck out the Defendants' Defence in accordance with **Order 32 Rule 7A (3) (b) of C.I. 47 as amended by the High Court (Civil Procedure) (Amendment) Rules, 2014 (C.I. 87).**

The rules of Court as stated in C.I. 87 is as follows:

"7A. (3) Where a party has failed to comply with any of the directions given at a case management conference or a pretrial review or both the judge may make any of the following orders:

(B) Strike out the defense and counterclaim as the case may be, if the non-complying party is a Defendant".

It should be observed that at the hearing neither the Defendants nor their Counsel appeared though Counsel was duly served with Hearing Notices. No explanation was offered for their absence. This case thus proceeded with the evidence on oath of only the Plaintiff. The Plaintiff testified in relevant terms having regard to her Statement of Claim.

A party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof. This was the holding of the court in the celebrated case of **BANK OF WEST AFRICA LIMITED VRS ACKUN 1963 1 GLR 176**.

The rules of evidence require that the Plaintiff produce sufficient evidence to make out a claim on a preponderance of probabilities. "Preponderance of probabilities" has been defined by **Section 12 (2) of the Evidence Act, 1975 (N.R.C.D. 323)** as "that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence."

Authorities are legion on the established law that the fact that a Defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. In **TEI & ANOTHER VRS. CEIBA INTERCONTINENTAL (2017-2018) 2 SCGLR 906 at 919**, Pwamang JSC stated as follows:-

“It must be remembered that the fact that a Defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the Court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the Defendant at the trial. The absence of the Defendant will aid the Plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim”

In the case of **NARTEY VRS MECHANICAL LLOYD ASSEMBLY PLANT LTD [1987-88] 2GLR 314** Adade JSC stated that a person who comes to Court no matter what the claim is must be able to make a good case for the Court to consider otherwise he must fail.

The testimony of the Plaintiff was that the 1st Defendant was a tenant in her property situated at House Number 3, Kings Cottage, East Legon Extension, Accra (the "Property") until November 2019. The 2nd Defendant is a Ghanaian who resides at No. 3 Luciano Boulevard, Trassaco Valley, Accra and a close companion of the 1st Defendant.

In December 2017, she was approached by the 1st Defendant, who expressed interest in renting the Property for residential purposes. On January 5, 2018, after several discussions between herself and the 1st Defendant, they entered into a tenancy agreement for a period of twelve (12) months, commencing on January 5, 2018 and terminating on January 4, 2019. A copy of the Tenancy "Agreement" was tendered as "Exhibit A".

Per the terms of the Tenancy Agreement, the 1st Defendant was required to pay an amount of One Thousand, Five Hundred United States Dollars (USD1,500.00) a month as rent for a period of twelve (12) months. The amount payable as rent was

inclusive of a service fee of One Hundred United States Dollars (USD100.00) for security for the Property, water, garbage collection and gardening.

The total rent payable for twelve (12) months was the Ghana Cedis equivalent of Eighteen Thousand United States Dollars (USD18,000.00), out of which the 1st Defendant was required to pay in advance, six (6) months' rent upon execution of the Tenancy Agreement.

1st Defendant further agreed to pay rent on time and to ensure that all outstanding bills in respect of all charges, fees and levies accrued were settled at the time of termination of the Tenancy Agreement.

The 1st Defendant paid the six month's advance rent and took possession of the Property.

The 1st Defendant, however, defaulted in payment of rents that subsequently became due after the advance rent was exhausted.

She made several demands on the 1st Defendant to pay the outstanding rent, which at the time was Three Thousand, Five Hundred Ghana Cedis (GH¢3,500.00) and to yield vacant possession of the Property but the 1st Defendant failed to heed to her demands.

On July 5, 2018, after several failed attempts to compel the 1st Defendant to pay the outstanding rent owed, she caused her lawyers to issue a demand letter to the 1st Defendant, demanding payment of the outstanding rent and further request the 1st Defendant vacate the Property by August 9, 2018.

Despite the demand letter, and the several follow-up demands, the 1st Defendant failed to pay the outstanding rent and continued to reside in the Property.

In September 2018, after her persistent demands on the 1st Defendant to pay the outstanding rent and to yield vacant possession of the Property, she was

approached by the 2nd Defendant, who introduced himself to her as the 1st Defendant's partner and proceeded to pay three months accrued rent out of the outstanding rent owed at the time.

The 2nd Defendant requested that she put all attempts at evicting the 1st Defendant on hold and also represented that he was able and in the process of arranging for payment of the outstanding rent due. The 2nd Defendant further indicated that he had supported other people who found themselves in similar situations and could easily arrange the funds needed to cover the 1st Defendant's unpaid rent.

She relied on the representations of the 2nd Defendant and was utterly convinced that he will be able to settle the remainder of the rent in due course and as a result, suspended all attempts at evicting the 1st Defendant from the Property.

After the initial payments made by the 2nd Defendant, she received no further payments and any attempt by her (or any of her representatives) to reach the 2nd Defendant and retrieve the outstanding rent due was met with extreme hostility.

It became clear that the 2nd Defendant never intended to pay the outstanding rent and the representations made by the 2nd Defendant were made fraudulently, in an attempt to persuade her to abandon any and all attempts to evict the 1st Defendant from the Property and recover the outstanding rent owed.

In an attempt to recover the rent owed by the 1st Defendant, she instructed her lawyers to issue another demand letter to the Defendants, to demand payment of the outstanding rent and requesting the 1st Defendant to vacate the Property within seven (7) days of receipt of the letter. A copy of the demand letter dated October 18, 2019 was tendered as "Exhibit B".

On October 25, 2019, the 1st Defendant responded to the demand letter and indicated that she was ready to hand over the keys and to also agree on a payment

plan to settle the rent owed over the period. A copy of the letter sent by the 1st Defendant dated October 25, 2019 was tendered as Exhibit "C". However, since the Defendants were in the habit of delaying payments, she instructed her lawyers to send a letter refusing to accept the 1st Defendant's blanket proposal to pay by installments and insisted that the 1st Defendant take steps to settle the outstanding debt and ensure the Property was in good and tenantable condition prior to vacating the Property. A copy of the letter sent to the 1st Defendant dated October 31, 2019 was tendered as Exhibit "D".

While attempting to recover the outstanding rent, the management of the estate, whose attention had been drawn to the fact that the 1st Defendant had not been paying rent and service charges, disconnected the water pump at the Property in an attempt to compel the 1st Defendant to pay her rent and service charges. When this failed, the management of the estate locked up the premises to prevent her from continuing to reside in the Property.

The 1st Defendant, on realizing that the Property had been locked, threatened the security personnel stationed at the estate, damaging his phone in the process. A complaint was lodged by the affected security personnel but the matter was eventually withdrawn by the security personnel from the police station.

The 1st Defendant finally vacated the Property in November 2019 without paying the outstanding rent. After the 1st Defendant had vacated the Property, she noticed that parts of the Property had been damaged. Due to the extent of the damage, she had to incur additional costs to restore the Property to a good and tenable state. In addition to the costs incurred, she also suffered loss of potential income during the period which the 1st Defendant remained in the Property unlawfully as she was unable to rent the Property out to potential tenants who were interested in renting the Property.

The total rent outstanding from October 2018 to November 2019 when the 1st Defendant finally vacated the Property amounts to Twenty-One Thousand United States Dollars (USD21,000.00) in addition to the Three Thousand, Five Hundred Ghana Cedis (GH¢3,500.00) already due. She therefore instructed her lawyers to institute an action before the Court for recovery of rent owed and a Writ of Summons and Statement of Claim was duly served on the Defendants upon which all necessary processes were filed by the parties thereafter. Reference was made by the Plaintiff to the Writ of Summons and Statement of Claim filed on March 04, 2020.

In the Statement of Defence filed on behalf of the Defendants, the 1st Defendant admitted owing an amount of Sixteen Thousand, Five Hundred United States Dollars (USD16,500.00). On January 29, 2021, the Court awarded Judgment on Admission against the 1st Defendant for recovery of the Ghana Cedi equivalent of the Admitted Sum together with interest at the prevailing commercial bank rate from November 2019 till date of final payment and an Entry of Judgment was filed pursuant to this order. This leaves an amount of Four Thousand, Five Hundred United States Dollars (USD4,500.00) and Three Thousand, Five Hundred Ghana Cedis (GH¢3,500.00) outstanding as at date. Reference was made to the Entry of Judgment filed on February 25, 2021.

After the 1st Defendant was ordered to pay the Judgment Debt and the Entry of Judgment was filed, the 1st Defendant has been unreachable and it became increasingly difficult to determine her whereabouts. It is clear from the Defendants' conduct over the period that if the Court does not compel the Defendants to settle the Debt they would refuse to pay the amount outstanding and will continue to breach the terms of the Tenancy Agreement. She therefore prayed that the Court grants the remaining reliefs contained on the Writ of Summons and accompanying

Statement of Claim dated March 04, 2020 to enable her to recover the full amount owed by the Defendants.

It is well settled that when a party is given the opportunity to lead evidence in support of his stand or in Defence of the allegations against him but he fails to avail himself of that opportunity the court will be entitled to proceed with the trial to conclusion and make findings on the basis of the evidence adduced at the trial. This was the holding of the Court in the case of **IN RE WEST COAST DYEING INDUSTRY LTD; ADAMS VRS TANDOY: [1984-86] 2 GLR 561.**

The Court had no cause to disbelieve the Plaintiff when she mounted the witness box and accepts the unblemished evidence given by her. The law is quite settled that when a party has given evidence and is not cross-examined upon it his opponent is deemed to have admitted the facts stated by that party as the truth. The case of **QUAGRAINE VRS ADAMS [1981] GLR 599** is authority for the point that where a party makes an averment and his opponent fails to cross-examine on it the opponent will be deemed to have acknowledged that averment by the failure to cross-examine. By the failure of the Defendants to controvert the evidence of the Plaintiff through cross-examination they are deemed to have admitted the facts stated by her as the truth.

I am satisfied in the result that the Plaintiff has established her claim and is entitled to succeed in this action.

I hereby enter Judgment in favour of the Plaintiff in the following terms:

- (a) Recovery of the sum of Three thousand, Five Hundred Ghana Cedis (GH¢3,500.00) against the 1st Defendant being the outstanding rent owed to the Plaintiff as at June 2018;

- (b) Interests on (a) from June 2018 at the prevailing commercial interest rate till date of final payment;
- (c) Recovery of the sum of the Ghana cedi equivalent of Twenty-One Thousand United States Dollars (USD21,000.00) against the 1st Defendant being the outstanding rent owed to the Plaintiff as at November 2019;
- (d) Interests on (c) from November 2019 at the prevailing commercial interest rate till date of final payment;
- (e) Ten Thousand Ghana Cedi as general damages against the 1st Defendant for breach of contract;
- (f) Ten Thousand Ghana Cedi as general damages against the 2nd Defendant for misrepresentation;
- (g) The Plaintiff shall in addition be entitled to Fifteen Thousand Ghana Cedi (GH¢15,000.00) cost.

(SGD)

**JUSTICE RICHARD APIETU
(JUSTICE OF THE HIGH COURT)**

PARTIES:

ABSENT

COUNSEL:

MICHAEL B. Y. APALBILAH HOLDING THE BRIEF OF BENJAMIN SACKAR
FOR THE PLAINTIFF PRESENT

FELIX ANYINSAH FOR THE DEFENDANTS ABSENT

REFERENCES

CASES CITED

1. BANK OF WEST AFRICA LIMITED VRS ACKUN (1963) 1 GLR 176.
2. TEI & ANOTHER VRS. CEIBA INTERCONTINENTAL (2017-2018) 2 SCGLR 906 AT 919
3. NARTEY VRS MECHANICAL LLOYD ASSEMBLY PLANT LTD (1987-88) 2 GLR 314
4. IN RE WEST COAST DYEING INDUSTRY LTD; ADAMS VRS TANDOH: (1984-86) 2 GLR 561.
5. QUAGRAINE VRS ADAMS (1981) GLR 599

STATUTES

1. ORDER 32 RULE 7A (3) (B) OF C. I. 47 AS AMENDED BY THE HIGH COURT (CIVIL PROCEDURE) (AMENDMENT) RULES, 2014 (C.I. 87)
2. SECTION 12 (2) OF THE EVIDENCE ACT, 1975 (N.R.C.D. 323)