

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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WILLIAM P. MINOGUE,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
JEANNE P. HARMAN, HARRY E. HARMAN III,	:	
JUSTUS A. VILLA and MAY A. VILLA,	:	
Defendants	:	CIVIL NO. 666/1982
	:	
vs.	:	
	:	
JOHN MINOGUE, MEL GARFINKEL, and	:	
KING AND SON EQUIPMENT, INC.,	:	
Third-Party Defendants	:	

WILLIAM P. MINOGUE, Pro Se
c/o Territorial Court of the Virgin Islands
St. Thomas, Virgin Islands

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MEMORANDUM OPINION
(September 20, 1983)

FEUERZEIG, J.

Several motions are pending before the court. Most of them, unfortunately, are spawned by the fact that William P. Minogue is not represented by counsel.

The court must nevertheless dispose of them, so it will address them in the order in which they were filed.

I. MOTION BY DEFENDANTS JEANNE P. AND HARRY HARMAN III FOR SUMMARY JUDGMENT ON THE COMPLAINT OF WILLIAM P. MINOGUE AND ON COUNT I OF THEIR COUNTERCLAIM

The plaintiff's second amended complaint contains four causes of action.^{1/} All four arise out of an interest he claims to have in certain property of Jeanne P. and Harry E. Harman in Estate Hope, St. Thomas. The plaintiff asserts that on March 26, 1970, he leased Parcel 8A Estate Hope for a term of fifty years from the Harmans. He further claims that on March 8, 1975 he also leased from them "Parcel 8 and remainder of Parcel 8A and 8B" for "a term of perpetual lease."

In their motion for summary judgment the Harmans make two arguments: (1) the 1970 lease of Parcel 8A required the plaintiff to pay the real property taxes on that parcel, and because he failed to do so the lease was terminated in 1979,^{2/} and (2) the March 1975 "receipt for ground rent paid," by which the plaintiff claims he leased Parcels 8A and 8B Estate Hope for a "term of perpetual lease," gave him no interest whatsoever in any of the Harmans' land. Applying these two arguments to the plaintiff's complaint and to Count I of the Harmans' counterclaim, the court will grant the Harmans partial summary judgment.

A. Failure to Pay Property Taxes

The Harmans by affidavit and documentary evidence have submitted proof of Minogue's^{2A/} failure to pay property taxes. Although William Minogue in his

^{1/} Although the Harmans filed their motion for summary judgment before William P. Minogue filed his second amended complaint, the court will consider their motion as it applies to the second amended complaint. Dickheiser v. Pennsylvania Railroad Co., 5 F.R.D. 5 (E.D. Pa. 1945), aff'd per curiam, 155 F.2d 266 (3d Cir. 1946), cert. denied, 329 U.S. 808 (1947).

^{2/} This argument is embodied in Count I of the Harmans' counterclaim.

^{2A/} Although John Minogue is a third-party defendant, all references to "Minogue" are to the plaintiff William Minogue unless otherwise stated.

answer to the Harmans' counterclaim denies that he failed to pay any property taxes, he states in his first affirmative defense to the counterclaim that "[d]efendants have failed to provide plaintiff with notification adequate to make any tax payments which may be due." The plaintiff thus implicitly admits his failure to pay any taxes that may be due while claiming that his failure was a result of the Harmans' inaction. More importantly, though, he offers nothing to rebut the affidavits and documentary evidence submitted by the Harmans, which establish that, in fact, he has failed to pay taxes since 1976.

To grant summary judgment a court must determine that there is no genuine issue of material fact and that, as a matter of law, the moving party is entitled to judgment. Fed.R.Civ.P. 56; Smith v. Sparky's, Inc., Civ. No. 78-232 (D.V.I. Dec. 6, 1979). When considering a motion for summary judgment, the court must resolve all inferences and factual disputes against the moving party unless the motion is supported by affidavits or other evidence that permits only one conclusion. Chulani (V.I.) Inc. v. Fireman's Fund Insurance, Civ. No. 79-93 (D.V.I. Feb. 20, 1980). While a party opposing summary judgment does not always have a duty to present evidence in opposition, "if the proof in support of the motion is largely documentary and has a high degree of credibility, the opponent must produce convincing proof attacking the documents in order to sustain his burden:" 10 C. Wright and A. Miller, Federal Practice and Procedure, §2727 at 536 (1973), quoting Bauman A Rationale for Summary Judgment, 33 Ind. L.J. 467, 483-484 (1958). Here, as stated, Minogue has failed to submit any proof to rebut the Harmans well documented claim of the plaintiff's failure to pay property taxes on Parcel 8A from 1976 to 1982. Summary judgment on this issue, therefore, will be granted to the Harmans.

B. Creation of a "Perpetual Lease"

The plaintiff claims to have leased both Parcels 8A and 8B of Estate Hope for a "term of a perpetual lease." The document by which he claims to have been given such an interest, which is labeled "receipt for ground rent paid," states, in pertinent part:

1. This will certify that the ground rent on the lease entered into between William P. Minogue and Jeanne and Harry Harman on a portion of Parcel 8 Estate Hope has been paid in full along with the specified interest.
2. Still owing annually is the real property tax on that section or part of Parcel 8 Estate Hope leased to William P. Minogue.

[Signed] Jeanne P. Harman and Harry C. Harman III, 8 March 1975

Interpreting this document liberally, and granting all inferences in favor of the plaintiff, the court fails to find any basis for concluding there was a conveyance of any interest. By its very terms, the document states "the ground rent on the lease entered into between [the plaintiff and defendants] on a portion of Parcel 8 Estate Hope has been paid in full . . ." (emphasis added). It therefore strains the imagination to interpret the document either as conveying any new and different interest in Parcel 8A, or as conveying any interest in the land. Certainly, no perpetual lease on either Parcel 8A or 8B was created by that document. The sworn explanation of the Harmans also clearly reflects that they never intended to grant the plaintiff any new or different interest in either parcel by giving him the "receipt for ground rent paid." They state that the receipt was sent to the plaintiff in response to his request that they acknowledge that the rent had been paid because he said he wanted the acknowledgement in order to sublease a portion of Parcel 8A. Again, plaintiff has

submitted nothing by way of affidavit or competent evidence to rebut this explanation. ^{3/}

The Harmans argue further that even if the receipt is viewed as conveying some interest in either Parcel 8A or 8B, it fails to comply with the statute of frauds. 28 V.I.C. Chapter 11. Thus, they argue that on this ground alone the purported conveyance is ineffectual. Having found that the receipt did not constitute a conveyance, the court does not address this argument.

C. Application of the Harmans' Arguments to the Plaintiff's Complaint

1. Plaintiff's First Cause of Action

The first cause of action of the plaintiff's complaint is based on the plaintiff's asserted rights and interest in both Parcels 8A and 8B. Having determined that the only rights and interest, if any, that the plaintiff may have in either parcel is his 50-year lease in Parcel 8A, the court will grant partial summary judgment to the Harmans and declare that the plaintiff has no rights or interest whatsoever in Parcel 8B and he does not have a perpetual lease on Parcel 8A.

2. Plaintiff's Second Cause of Action

The second cause of action of the plaintiff's complaint, which is based on a number of theories apparently sounding in tort, ^{4/} is affected by the court's determination that Minogue has no interest in Parcel 8B, and that his only interest, if any, is his alleged lease of 8A. None of the allegations of the second cause of action specify which parcel of land--8A or 8B, or both--is involved. The court, therefore, will consider such allegations only as they apply to the plaintiff's alleged leasehold interest in 8A.

^{3/} In his supplemental response to the Harmans' motion for summary judgment, the plaintiff cryptically asserts what he contends is a fact: "2. The Harmans' grant of a lease to William P. Minogue to the Remainder of Parcel No. 8." Not only is this assertion an incomplete sentence, but more importantly, it fails to state any fact.

^{4/} A more detailed discussion of the second and third causes of action appears below. IIA and B, infra.

Minogue, however, does claim the Harmans granted him a right of first refusal to purchase Parcels 8A and 8B (together known as Parcel 8) Estate Hope, and that the Harmans interfered with that right. The Harmans do not dispute that they granted plaintiff the right of first refusal, but contend it applied only to a right to lease, and not to purchase, the house on Parcel 8B. Since a genuine issue of material fact exists, summary judgment with respect to this claim will be denied. For the same reason, summary judgment will be denied with respect to the other claims of the second cause of action.

3. Plaintiff's Third Cause of Action

Plaintiff's third cause of action reasserts the claims made in his second cause of action, but also alleges that the defendants' actions were intentional. Here again, though, nothing has been presented to the court to establish that there are no genuine issues of material fact. As a result, summary judgment must be denied. The claim stated in the third cause of action, however, will only be considered as applied to the plaintiff's interest in Parcel 8A.

4. Plaintiff's Fourth Cause of Action and Prayer for Relief

Plaintiff's fourth cause of action inartfully alleges several torts. Of those that rely on the plaintiff's claim of a perpetual lease, the court will grant partial summary judgment to the Harmans. Summary judgment will be denied with respect to the other alleged torts because genuine issues of material fact exist.

The prayer for relief asserts a claim for compensation due to the plaintiff's inability to use Parcels 8A and 8B. The court will consider this claim only as it applies to the plaintiff's interest in 8A.

D. Relief Sought by the Harmans on their Motion for Summary Judgment

In their motion for summary judgment the Harmans seek the following: (1) an order declaring that the plaintiff has no rights or interest in Parcels 8A or 8B Estate Hope; (2) "an order declaring that any assignment of the 1970 lease, subsequent to the date said lease was terminated by them, is null, void, and without any legal affect (sic) as to the passing of any property interest thereunder;" (3) judgment against the plaintiff in the amount of the property taxes he failed to pay (\$1,304.74); (4) an order evicting the plaintiff from the Harmans Estate Hope property, and (5) dismissal of the plaintiff's complaint.

For the reasons already stated, the court will not issue an order declaring that the plaintiff has no rights or interest in Parcel 8A because the defendants have failed to establish that there exist no genuine issues of fact with regard to the plaintiff's alleged tenancy for years in 8A. With respect to the plaintiff's claim to an interest in 8A and his claim to possess an interest "for a term of perpetual lease," the court will issue an order declaring the plaintiff has no such interest.

The Harmans have failed to show why an order declaring any assignment null and void should issue, therefore it shall be denied.

The court will grant judgment in 20 days against the plaintiff in the amount of the property taxes he failed to pay from 1977 through 1982, \$1,304.78 plus interest. By paying the amount due into court in accordance with 28 V.I.C. §292, the plaintiff may avoid eviction. See Blyden v. Sugar Estates Associates, 14 V.I. 247 (Terr. Ct. 1977).

II. MOTION BY DEFENDANTS HARMAN TO STRIKE PLAINTIFF'S
SECOND AND THIRD CAUSES OF ACTION

A. Plaintiff's Second Cause of Action

The Harmans claim that the plaintiff's second cause of action fails to assert any "legally cognizable interference [sic]" with plaintiff's use and occupancy of the leased premises. With respect to the plaintiff's claim in subparagraphs (13)b, (d), and (f), the court agrees. Construing the claims liberally with generous allowance made for a pro se litigant's lack of familiarity with the drafting of pleadings, the court still cannot find any basis for reading these paragraphs as alleging any actionable tortious conduct. If the plaintiff by his allegations in 13(b), (d), or (f) is relying on some theory under which defendants have a duty, the breach of which would amount to a tort, he will have to state so with more particularity. Consequently, the plaintiff will be granted leave to amend his complaint to supply the missing information. Failure to do so will result in these paragraphs also being stricken. The remaining claims in paragraph 13 do appear to state claims and the court, therefore, will deny the motion to strike them.

B. Plaintiff's Third Cause of Action

The Harmans describe the plaintiff's third cause of action as redundant and as stating nothing different from the second cause of action. The court disagrees. The third cause of action seeks punitive damages based on the deliberate conduct of the defendants. This assertion is not redundant.

The Harmans argue further, though, that the complaint "alleges no set of facts supporting a claim for punitive damages." Relying on the Restatement (Second) of Property §96.1 and 10.2 (1977), they specifically contest the availability of punitive damages for a landlord's interference with a tenant's use

of leased property. This argument, however, has been rejected in this jurisdiction. Jeffers v. Gottlieb, No. 134/1979 (Terr. Ct., Div. St.X., July 9, 1980); see Robert L. Merwin & Co., Inc. v. Strong, 7 V.I. 282, 429 F.2d 50 (3d Cir. 1970); St. Thomas House, Inc. v. Barrows, 15 V.I. 435 (Terr. Ct. 1979). This court cannot, therefore, as a matter of law say that the plaintiff will not be able to establish any right to punitive damages, and the motion to strike the punitive damages claim will be denied.

III. REQUEST FOR ENTRY OF DEFAULT ON HARMANS' COUNTERCLAIM

In view of the fact that the plaintiff answered the Harmans' counterclaim on May 17, 1983, if not on that date, then on June 9, 1983, the request will be denied.

IV. PLAINTIFF'S MOTION TO TRANSFER

As this court advised the plaintiff at the May 3, 1983 hearing, this motion must be made in the District Court, not this court. Ruan v. Shulterbrandt, 9 V.I. 191 (Mun.Ct. 1972). Minogue will be required either (1) to amend his prayer for relief to \$200,000 or below, thereby bringing it within this court's jurisdiction, or (2) to file his motion to transfer in the District Court. If he fails to do either, this court will dismiss his complaint for lack of subject matter jurisdiction and proceed with the defendants' counterclaim.

V. HARMANS' MOTION TO STRIKE PLEADINGS AS SHAM AND FALSE

The Harmans argue that three pleadings filed on behalf of the plaintiff but without his signature, ^{5/} should be stricken as a violation of Rule 11, Fed.R.Civ.P. The plaintiff, however, has since resubmitted the pleadings and all have been signed by him. The motion, therefore, will be denied.

^{5/} The following pleadings were not signed by the plaintiff: (1) Response to Harmans' Amended Counterclaim, (2) Supplemental Responses to Defendant Harmans' Motion for Summary Judgment, and (3) Motion to Transfer.

VI. HARMANS' MOTION TO STRIKE PLAINTIFF'S [SECOND] AMENDED COMPLAINT, OR IN THE ALTERNATIVE, A MOTION TO STRIKE PLAINTIFF'S FOURTH CAUSE OF ACTION, DEMAND FOR JUDGMENT, AND CLAIM FOR PUNITIVE DAMAGES

A. Motion to Dismiss Amended Complaint

The Harmans contend that the complaint should be dismissed because the plaintiff is not a real party in interest pursuant to Rule 17, Fed.R.Civ.P. The Harmans note that the March 26, 1970 lease on which the plaintiff relies was signed by the Harmans as lessor and Mr. B's Properties, Inc., not the plaintiff, as lessee. Although the plaintiff may have failed to plead the series of transactions by which he is claiming an interest in Parcel 8A, in his supplemental response to the Harmans' motion for summary judgment, he does refer to the documents which show how he acquired his interest. To dismiss the complaint for a technical failure to plead certain facts elsewhere stated would be unduly harsh. The court will deny the motion. In order for the plaintiff to prevail at trial, however, he will have to show that he is the proper party in interest. The court will allow him to amend his complaint to add other parties if he wishes, but only if it is done expeditiously. If no additional parties are added and it turns out that, in fact, he is not the proper party in interest, he, of course, will suffer the consequences.

B. Motion to Strike Plaintiff's Fourth Cause of Action, Demand for Judgment, and Claim for Punitive Damages

The Harmans ask for dismissal of Minogue's fourth cause of action, and his demand for judgment and punitive damages on that cause of action for failing to meet the requirements of Rule 9(b), F.R.Civ.P., that all averments of fraud be stated with particularity. Minogue alleges that the Harmans committed

fraud by their deliberate refusal to admit to the execution of a receipt for ground rent by which the plaintiff claims his "perpetual lease" of all of Parcel 8.

The fourth cause of action will not be stricken because it alleges tortious interference with business relations and "an unlawful self-help method of evicting the plaintiff;" an actionable tort, stated with particularity.^{6/} Finally, the claim for punitive damages will not be stricken as punitive damages would be appropriate for the torts claimed. See St. Thomas House, Inc. v. Barrows, 15 V.I. 435 (Terr. Ct. 1979).

VII. DEFENDANTS' JUSTUS A. AND MAY S. VILLA'S MOTION FOR
LEAVE TO FILE ANSWER TO PLAINTIFF'S SECOND AMENDED
COMPLAINT

Leave will be granted to allow defendants Justus A. and May S. Villa to file their amended answer to the plaintiff's second amended complaint as no prejudice will be suffered by granting leave.

VIII. HARMANS' MOTION TO STRIKE PLAINTIFF'S RESPONSE TO
THEIR AMENDED COUNTERCLAIM AND PLAINTIFF'S
SUPPLEMENTAL RESPONSE TO THEIR MOTION FOR SUMMARY
JUDGMENT

The Harmans argue that plaintiff's response to their amended counterclaim and plaintiff's supplemental response to their motion for summary judgment were untimely and should be stricken. Although defendants are correct, the court in its discretion will deny this motion in the interest of justice.

IX. HARMANS' MOTION TO COMPEL PLAINTIFF TO CATALOGUE DOCUMENTS

The Harmans complain that the plaintiff failed to appropriately catalogue

^{6/} In so holding, the court does not decide that such allegations will support the relief prayed for, but only that the allegation is stated with particularity.

certain documents they demanded of him. The plaintiff will be ordered to specify which documents correspond to each particular demand for production.

X. DEFENDANTS' VILLA MOTION FOR ORDER COMPELLING
DISCOVERY AND SANCTIONS

After repeated attempts to proceed with discovery have proven fruitless, the Villas have moved for an order compelling the plaintiff to comply with discovery. The court will order the defendant to comply with discovery requests within 20 days of this order. Failure to comply will result in the imposition of sanctions.


HENRY L. FEUERZEIG
Judge of the Territorial Court

ATTEST:


VIOLA E. SMITH
Administrator/Clerk of the Court