

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

SPANALL COMPANY,	)	
Plaintiff	)	
	)	CIVIL NO. 385/1981
vs.	)	
	)	ACTION FOR REPLEVIN & DAMAGES
HENRI D. BRIN,	)	
Defendant	)	

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MEMORANDUM OPINION
(August 24, 1982)

HODGE, Presiding Judge

This case involves the determination of whether defendant is liable to plaintiff for the rental cost of certain construction equipment belonging to plaintiff and used on defendant's property by defendant's contractor, where the defendant refused to release the equipment to plaintiff after non-payment of rent by the contractor and after proof of ownership was presented to the defendant. During the final hearing, defendant orally moved for dismissal of the case and for summary judgment. For the reasons which follow, defendant's motions will be denied, his counterclaim will be dismissed, and judgment will be entered in favor of plaintiff.

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Based on the numerous stipulations entered into the record by the parties, and based on the testimony, exhibits, and reasonable inferences drawn therefrom, the court finds the following to constitute the facts of the case.

Defendant, owner of Plots 6C and 6D Estate Hull, St. Thomas, Virgin Islands, hired one Frank Greaux to construct a large cistern on the said property. Thereafter, on September 29, 1980, Mr. Greaux entered into a rental agreement with plaintiff for the leasing of construction forms to use on the defendant's property to build the cistern. Under the terms of the rental agreement, the rental fee was \$2,290.70 per month. Mr. Greaux commenced the construction of the cistern with the use of plaintiff's forms. Due to certain disagreements between defendant and Mr. Greaux, the defendant's attorney wrote a letter to Mr. Greaux on March 12, 1981 ordering him to keep off the defendant's property. In the meantime, Mr. Greaux failed to pay any rental to the plaintiff for the forms. Because of the failure to collect rent, plaintiff contacted defendant requesting permission to remove the forms, which were still on defendant's site and still in use under construction conditions. Defendant refused to release the forms, claiming that Mr. Greaux said the forms belonged to him, and demanding proof of ownership by plaintiff before releasing them. This proof was submitted on March 20, 1981 by plaintiff's attorney to defendant's attorney, who agreed that his client would release the forms. On April 20, 1981, plaintiff hired a crew, rented equipment, and proceeded to the site to obtain the forms, but again defendant refused to release them

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or allow access to the site. The next day, plaintiff prepared its complaint seeking replevin, rental, damages, costs and fees, but continued its attempt at settlement, which proved to be unsuccessful and resulted in the ultimate filing of the complaint on May 27, 1981. Plaintiff posted a replevin bond on June 22, 1981, but the forms were not released by defendant until August 18, 1981 at which time plaintiff had to hire another crew and rent equipment for the removal. The costs of the duplicate expenses to plaintiff totalled \$350.00.

Meanwhile, a separate action for debt and damages was filed in this court against Mr. Greaux by plaintiff (Spanall Co. v. Frank Greaux, Civ. No. 527-1981) and default judgment was entered in favor of plaintiff, including the rental cost of the forms from September 29, 1980 to August 18, 1981.

Any damage to defendant's property during the use of the forms are attributable to the contractor and not to plaintiff. Because of defendant's wrongful refusal to release the forms, plaintiff seeks to hold defendant jointly liable with the contractor for the unpaid rental during the period April 20, 1981 to August 18, 1981.

Defendant's arguments in support of his motions are specious; thus, only a few brief points are needed to reject them.

First, there is no basis whatsoever for defendant's claim that an "election of remedy" to sue one party for the rental precludes a similar action against another. Defense counsel is reminded that the days of strict common law pleadings are over. Under our modern rules of civil procedure such an argument is

anachronistic. Where, as here, parties could be joined in the same action and have judgment imposed against both of them, and where the possibility of double recovery by the plaintiff is precluded by phrasing the judgment as "jointly and severally", this same qualification can be superimposed on separate judgments in separate cases. Indeed, the court can order consolidation for judicial efficiency, so long as neither party is held responsible for a larger portion than his adjudged liability. Fed.R.Civ.P 20.

Second, defendant suggests that plaintiff's complaint was limited to an action in replevin, and that since there was a return of the property, plaintiff is now barred from recovery. What the defendant overlooks or ignores is the fact that the complaint also clearly demands rental fees and damages, among other things. Moreover, since the replevin portion of the action was settled after the filing of the complaint, but long before the final hearing, it is obvious that the claims for rent and damages were the only remaining substantive issues. Thus, defendant's arguments regarding "replevin" is not only mooted but also constitutes no basis whatsoever for dismissal of plaintiff's remaining claims.

Third, defendant claims that plaintiff had no right to possession of the property at the commencement of the case, thereby vitiating the action in replevin. This is erroneous because plaintiff established beyond any doubt that it was entitled to both possession and use of the construction forms, immediately upon default in rent, and this default occurred prior to the filing of the complaint. Moreover, since defendant wrongfully withheld the property even after numerous requests and submission of proof of ownership by plaintiff, damages may be recovered. 66 Am Jur. 2d Replevin §120; Lou Leventhal Auto Co. v. Munns, 328 N.E.2d 734 (Ind. App. 1973).

Fourth, defendant's contention that plaintiff's claim should be denied because it was not in a position to use the property is without merit because plaintiff was ready, willing and able to utilize the construction forms, except for defendant's refusal. Plaintiff may therefore recover not only the rental value of the property but also the actual cost incurred in its recovery.

Finally, Summary Judgment may be granted only when there are no genuine issues of material fact and the party is entitled to judgment as a matter of law. Here, there were numerous genuine issues of material fact which the court had to resolve from the testimony at the final hearing, thereby rendering it inappropriate to grant Summary Judgment.

Accordingly, defendant's motions to dismiss and for summary judgment will both be denied.

In deciding the case on the merits, the court considers the defendant's initial refusal to release the construction forms to be quite understandable; however, with the submission of proof of ownership by the plaintiff, defendant's continued refusal constituted wrongful withholding of plaintiff's property. When the contractor breached his contract, the defendant clearly had a cause of action against him, and upon the timely release of plaintiff's property, defendant would not be jointly liable for any of the rental. But for four months (from April 20, 1981 to August 18, 1981) defendant wrongfully refused to release the construction forms to plaintiff and had already prohibited the contractor from entering the site. Defendant is therefore liable for rental and damages during that period, jointly and severally with the contractor.

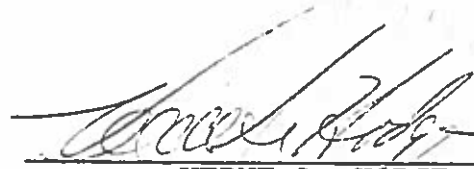
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Defendant even claimed in his answer (para. 13) that he needed plaintiff's property to complete his cistern. Thus, it is obvious that he also retained the construction forms for his own use, thereby further establishing his liability for the unpaid rental. This also points out the frivolity of defendant's counterclaim which he appears to have abandoned, for little proof was submitted and no argument was made in its favor. Hence, there is no validity to the counterclaim, which should be directed at the contractor instead of the plaintiff.

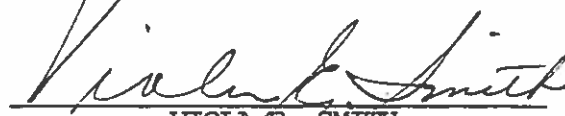
Since the fair rental value of the property was established at \$2,290.70 per month, defendant is liable to plaintiff in the sum of \$9,162.80 for the four months rent, jointly and severally with Mr. Greaux. In addition, defendant is liable to plaintiff for the \$350.00 incurred in recovering the construction forms.

Accordingly, judgment will be entered in favor of plaintiff for \$9,512.80, plus court costs, bond costs, and attorney's fees, and defendant's counterclaim will be dismissed.

Dated: August 24, 1982


VERNE A. HODGE
Presiding Judge

ATTEST:


VIOLA E. SMITH
ADMINISTRATOR/CLERK OF THE COURT