

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

DARRYL E. WALLACE	)	
Plaintiff	)	CIVIL NO. 601/1981
	)	
v.	)	
	)	ACTION FOR FORCIBLE ENTRY
RUPERT TUITT	)	AND DETAINER AND RESTITU-
Defendant	)	TION.
	)	

CLARICE A. BRYAN, ESQUIRE
P. O. Box 831
St. Thomas, Virgin Islands 00801
(Attorney for Plaintiff)

HERBERT MURIEL, ESQUIRE
P. O. Box 10686
St. Thomas, Virgin Islands 00801
(Attorney for Defendant)

MEMORANDUM OPINION AND JUDGMENT
(March 8, 1982)

FEUERZEIG, J.

Defendant Rupert Tuitt on February 1, 1982 was found to be \$2,820.00 in arrears for rent due from June 15, 1976 to February 1, 1982. As a result, the court granted plaintiff Darryl Wallace a judgment with interest on the rent as it had become due and owing, plus attorney's fees. The court directed plaintiff's counsel to calculate the interest for the court. Both plaintiff's and defendant's counsel have since submitted their own calculations of interest due. Defendant also has filed a motion for reconsideration, requesting that plaintiff not be awarded attorney's fees and interest in this action because plaintiff illegally raised defendant's rent.

In support of his motion for reconsideration, defendant cites Marcelly v. Mohan, Civil No. 129/1979 (Terr. Ct. St. T. and St. J. December 17, 1979) (Feuerzeig), and 28 V.I.C. §844 (1975 ed), which provides for the assessment of penalties for illegal rent increases. In Marcelly, this court held that an increase in rent for property governed by the Virgin Islands rent control law was invalid without the approval of the rent control officer.

Defendant argues that plaintiff's attorney Clarice Bryan, as agent for the plaintiff, raised the rent illegally and that, because she was an attorney, knew that the increase was illegal. The court notes, however, that the plaintiff raised the rent from \$50 per month to \$100 per month during 1977 and that Ms. Bryan was not given a power of attorney to act as agent until April 20, 1979. Moreover, Marcelly was not decided until December 17, 1979 so neither plaintiff nor plaintiff's attorney could have known with any degree of certainty that the 1977 rent increase was invalid. The court, therefore, will not hold that the attempted increase in rent was wilful and, therefore, will not assess a penalty under 28 V.I.C. §844(b).

The plaintiff also cannot be subjected to the penalties provided in 28 V.I.C. §844(a) (1975 ed.) because that section only applies to a landlord who receives rent in violation of the subchapter. The only rent plaintiff received for the period from June of 1976 to February of 1982 was \$595 during the year 1977. Calculated at \$50.00 per month, that constitutes rent for approximately twelve months. Plaintiff at no time collected rent at \$100 per month. Consequently, he cannot be subjected to any penalties under 844(a).

The court also is of the opinion that had defendant paid his rent regularly, this case never would have reached this court. As late as March 5, 1981, the defendant had good cause to believe he only had to pay rent at the rate of \$50.00 per month. It was at that time that the rent control officer issued a certificate of eviction, found that the purported increase was illegal, and that the rent was still \$50.00. Despite this finding, the defendant continued to withhold rent payments, forcing plaintiff to file this action on July 23, 1981.

After reviewing its findings of February 1, the court notes that it made an error in calculating the total rent due.

The court found that for the period of June 15, 1976 to December 31, 1976, the defendant owed \$325; for the years 1977 through 1981, the defendant owed \$3,000, and for January and February of 1982, the defendant owed \$100. This totals \$3,425. The defendant, however, is entitled to a credit of \$595.00 for payments made in 1977. This amounts to \$2,830 being due and not \$2,820.00 as the court previously found. The total amount of interest is \$748.02. Accordingly, it is

ORDERED that judgment of \$2,830.00 plus \$748.02 in interest calculated from June 1976 to February 1982 is granted to the plaintiff, and it is

ORDERED that plaintiff is awarded \$250.00 in attorney's fees plus \$15.00 in costs, and it is further

ORDERED that the defendant shall have until March 31, 1982, to satisfy the judgment. Failure to make payments will result in the court entering a motion for the defendant to show cause why a writ of restitution should not issue.

DATED: March 8, 1982


HENRY L. FEUERZEIG
JUDGE

1982 MAR 15 AM 3:22