

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

VANNESA GAUTIER,	)	
	)	SMALL CLAIMS NO. ST-12-SM-191
Plaintiff,	)	
	)	ACTION FOR DEBT
vs.	)	
	)	
DUNCAN LETTSOME AND	)	
AGATHA LETTSOME,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

(Dated: June 28, 2012)

SMITH, ALAN D., Magistrate

Summary

Vannesa Gautier sued to recover out-of-pocket expenses and damages she suffered as a result of Duncan Lettsome and Agatha Lettsome's unsuccessful attempt to evict her for breach of a residential apartment lease. A tenant who prevails on the merits in a forcible entry and detainer action may recover damages if the action itself was a wrongful civil proceeding or filed in retaliation against the tenant. Gautier failed to prove, by a preponderance of the evidence, the liability of the Lettsomes under either theory. Therefore, Gautier's complaint will be dismissed.

Facts

On April 24, 2012, Guatier successfully defended the Lettsomes' action for forcible entry and detainer (FED).¹ In that action, the Lettsomes claimed that Gautier breached her lease with them by, among other things, keeping pets on the property. That court held Gautier's decision to keep her pets was not, under the circumstances, a material breach of the lease.

In this small claims action, Gautier asks the Court to award her a portion of the expenses that she incurred as a result of the unsuccessful FED action as well as damages for emotional distress. As best the Court can determine, Gautier contends that the FED action was a wrongful civil proceeding² and/or was filed in retaliation against her.

¹ *Lettsome vs. Gautier*, Super. Ct. Civ. No. ST-12-CV-180.

² A separate tort, "abuse of process" also exists. A notice to quit, however, is not "process" since it is not issued by a court. See BLACK'S LAW DICTIONARY 1325 (9th ed. 2009). Accordingly, the Court will not conduct the analysis for this tort.

At trial, Gautier testified that when she first rented an apartment from the Lettsomes in October 2011, she told them that she eventually wanted to buy her own home and obtained a verbal agreement from them that they would release her from obligations under the lease when she was ready to exercise her option to purchase a home under the Section 8 homeownership program. She also testified, among other things, that the Lettsomes' Notice to Quit³ triggered certain processes regarding her Section 8 housing assistance, forcing her to choose between renting without assistance for the balance of the year or accepting a voucher to purchase a home under the Section 8 homeownership program. This was confirmed by representatives of the Virgin Islands Housing Authority. They also testified that an individual cannot be the recipient of more than one rent voucher within the same year. They explained that because Gautier had signed the lease during the same year that she was given the Notice to Quit and because the Lettsomes would not drop the eviction proceeding or release her from obligations under the lease, Gautier had to choose between looking for new apartment for the balance of the year without section 8 assistance or accept a housing-purchase voucher. Gautier personally, and through Legal Services and representatives of the Section 8 program, asked the Lettsomes to drop the FED action. The Lettsomes adamantly refused to do so. Gautier further testified that although she planned to eventually purchase her own home under the Section 8 homeownership program, the Lettsomes' unsuccessful FED action prematurely "forced her hand". Consequently, she chose the housing-purchase voucher.

As a result of the Lettsomes' actions, Gautier contends that she had to expend money to meet the obligations that arose from the issuance of the housing-purchase voucher, including certain paperwork, and that she lost wages because she had to take time off work to look for housing, visit various government agencies, etc. She also claims that the Lettsomes' action caused her to suffer emotional distress.

Mr. and Mrs. Lettsome admitted they served the Notice to Quit and filed the FED action against Gautier. In the January 18, 2012 Notice to Quit the Mrs. Lettsome stated, in relevant part, as follows:

"I am writing to you because you have breached your lease agreement, and when I speak to you about those situation, your attitude to me have become extremely hostile, aggressive and disrespectful, your disrespect have shown in you refusing to talk to me face to face, on two occasion when I come to the apartment to speak to you (1) you commend to the your daughter to close the door in my face, (2) you slam the door in my face, you pays your Rent late and refuse to pay the late fee and ignored the no pet policy...

For all these reasons I have just cause to terminate your lease. Please note that you are to vacate the premises on or before February 29th 2012."

The Lettsomes assert, however, that their actions were lawful, that Gautier's has no claim against them for her expenses, and they are not liable to her for damages.

³ See V.I. CODE ANN. tit. 28, § 790 (1996). RESTATEMENT (SECOND) OF TORTS § 682 (1977).

Discussion

Wrongful Use of Civil Proceeding

In the absence of local law, the Restatement (Second) Torts, provides the legal basis for a cause of action to recover damages resulting from the wrongful filing of a civil action.⁴ Section 674 of the Restatement provides:

One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if

(a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and

(b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.⁵

Furthermore, Section 675 states the elements for probable cause:

One who takes an active part in the initiation, continuation or procurement of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either

(a) correctly or reasonably believes that under those facts the claim may be valid under the applicable law, or

(b) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information.⁶

Based on the two relevant sections of the Restatement cited above, the Court must examine the evidence to determine whether (1) the Lettsomes' FED action was brought with or without probable cause, (2) its primarily purpose was other than gaining possession of the apartment and (3) the action terminated in Gautier's favor. The Court will, in reverse order, address each requirement.

With respect to the last requirement, the Court takes judicial notice that Gautier prevailed in the FED action. An order, dated May 10, 2012, dismissed the matter with prejudice. Therefore, Gautier has established the first element of her claim that the outcome of the action was in her favor.

⁴ See V.I. CODE ANN. tit. 1, § 4 (1995).

⁵ RESTATEMENT (SECOND) OF TORTS § 674.

⁶ § 675.

In order to establish the second element, that the FED action for was a purpose other than gaining possession of the apartment, the Court must find that the Lettsomes served the Notice to Quit and filed the FED action “primarily for a purpose other than that of securing the proper adjudication of the claim on which [it is] based.”⁷ Here, Gautier must demonstrate that the Lettsomes’ filed the claim for a purpose other than seeking restitution of the premises due to a breach of the lease. Although there are four recognized categories of improper purpose, the only one that may have any relevance here is “when the proceedings are begun primarily because of hostility or ill will.”⁸ Based on the contents of the Notice to Quit, the Lettsomes could have been motivated by spite, but both the Notice to Quit and the FED action were used in an attempt to get Gautier out of the apartment and restore possession to the Lettsomes. This is exactly what the notice and FED action are intended for and designed to accomplish. There is no evidence from which the Court can conclude that the Lettsomes had any other purpose. Therefore, the Court cannot find that the primary purpose of the Lettsomes’ FED action was for any purpose other than recovering possession of the premises.

To find probable cause, the Court must determine that the Lettsomes “reasonably believe[d] in the existence of the facts upon which the [FED] claim [was] based, and either (a) correctly or reasonably believe[d] that under those facts the [FED] claim may [have been] valid under the applicable law, or (b) believe[d] to this effect in reliance upon the advice of counsel”⁹ The Court must conclude that Mr. and Mrs. Lettsome did not rely on advice of counsel because both testified that they did not talk with a lawyer before serving the Notice to Quit or filing the FED action. Since Gautier admitted that she had pets on the premises when she signed the lease, there is no evidence from which the Court can reasonably infer the Lettsomes did not believe the facts existed to establish their claim. Also, there is no dispute that the lease Gautier signed in November 2011 has a “no pet” provision. Finally, Virgin Islands’ law provides that a tenant unlawfully holds property when, after a notice to quit, the holding is “contrary to any condition or covenant [of the lease.]”¹⁰ Therefore, the Court cannot find that the Lettsomes did not correctly or reasonably believe that under the facts their claim may be valid under applicable law.

Based on the foregoing analysis and the conclusions that Lettsomes brought the FED action with probable cause and for the purpose of gaining restitution of the premises, the Court cannot find that the Lettsomes’ actions constituted wrongful use of civil proceedings.

⁷ § 676.

⁸ § 676 cmt. c. The remaining three recognized situations are “[1] when the person . . . is aware that his claim is not meritorious . . . [; 2] when the proceedings are initiated solely for the purpose of deriving the person . . . a beneficial use of his property . . . [; and 3] when the proceedings are initiated for the purpose of forcing a settlement that has no relation to the merits of the claim” *Id.*

⁹ § 675.

¹⁰ V.I. CODE ANN. tit. 28, § 789(a)(2).

Retaliation

Although Gautier did not explicitly state that the Lettsomes actions were retaliatory, she certainly implied that they were. Therefore, out an abundance of caution, the Court will consider whether the Lettsomes' actions were, in fact, retaliatory.

In *James v. Victoria House, Inc.*,¹¹ in which the tenant sought damages based on his claim that the landlord had wrongfully evicted him after complaining about the plumbing, the Appellate Division of the District Court of the Virgin Islands, in the absence of controlling precedent or statute, looked to and applied the Restatements (Second) of Property. Section 14.8 states that:

A landlord has taken retaliatory action against a tenant with respect to residential property whenever he undertakes to terminate a tenancy that is terminable by an appropriate notice, or refuses to renew a tenancy for a specified term when that term ends, if:

- (1) there is a protective housing statute embodying a public purpose to insure proper conditions of housing, especially multi-unit housing designed for rental to tenants of low or moderate income;
- (2) the landlord is in the business of renting residential property;
- (3) the tenant is not materially in default in the performance of his obligations under the lease at the time the landlord acts;
- (4) the landlord is primarily motivated in so acting because the tenant, either alone or through his participation in a lawful organization of tenants, has complained about a violation by the landlord of a protective housing statute; and
- (5) the tenant's complaint was made in good faith and with reasonable cause.¹²

The first three elements of a retaliatory action are present in this case. With respect to the first element, 29 V.I.C. § 330 *et seq.* embodies minimum housing conditions and standards applicable to all housing in the Virgin Islands. The second element is met because the Lettsomes were in the business of renting the apartment occupied by Gautier and her family. This Court's ruling in the FED action establishes the third element because Gautier was not materially in default in the performance of her obligations under the lease at the time the Lettsomes filed that action. It is less clear, however, whether elements four and five under § 14.8 have been shown.

While there is no evidence that Gautier complained about the condition of the apartment to the Lettsomes or any regulatory agency, she did contact her case worker at Section 8 as well as Legal Services and requested that both agencies try to persuade the Lettsomes to withdraw the Notice to Quit. The Lettsomes admit they were contacted. Thus, the issues are whether Gautier's efforts, including actions taken by Section 8 and Legal Services on her behalf, to persuade the Lettsomes to withdraw the Notice to Quit, became the primary motivation for filing and continuing the FED action, and if so, does this kind of pressure constitute a complaint that § 14.8 is intended to protect.

¹¹ *James v. Victoria House, Inc.*, 51 V.I. 566, 570 (D.V.I. App. Div. 2009).

¹² RESTATEMENT (SECOND) OF PROPERTY § 14.8 (1977).

The Court cannot find that the actions Gautier took after she was served with the Notice to Quit were the motivation behind seeking to terminate the tenancy. Agatha Lettsome unequivocally expressed their motivation in her January 28, 2012 written notice when she stated, "I have just cause to terminate your lease." Through this statement, the Lettsomes clearly announced their intention to file an FED action against Gautier because there is no simpler way, under Virgin Islands law, to remove a tenant who refuses to vacate premises after receiving a notice to quit. Therefore, it would not be reasonable for the Court to infer that any pressure by Gautier, either directly or indirectly, was the primary motivation for the FED action. Moreover, even if Gautier's attempts to persuade the Lettsomes to relent, "[t]he fact that the landlord is motivated equally by several reasons, only one of which is the tenant's complaint about a violation of a protective housing statute, is not enough to establish retaliatory action."¹³ Finally, even if the pressure brought by Gautier further motivated the Lettsomes to follow through with the FED action, this kind of pressure does not constitute the motivation required under § 14.8. Therefore, the Court cannot find that the Lettsomes' action was retaliatory.

Conclusion

Although the Lettsomes' action could be characterized as mean spirited and insensitive, the Court cannot find that their decision to serve Gautier with a Notice to Quit and thereafter file an FED action, which they failed to prove at trial, constituted a wrongful civil proceeding or a retaliatory action. Therefore, Gautier's complaint will be dismissed.

DATED: June 28, 2012


ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

BY:


HYACINTH M. LOCKHART

Senior Deputy Clerk 6/29/12

¹³ § 14.8 cmt. f.