



IN THE SUPREME COURT OF NAURU  
AT YAREN

Civil Suit No. 54 of 2016

BETWEEN

Lad Agege

Plaintiff

And:

Silas Denitage

Defendant

Before: Khan, J  
Date of Hearing: 18 and 20 November 2019  
Date of Last Submissions: 11 December 2019  
Date of Judgement: 30 January 2020

Case may be cited as: *Agege v Denitage*

CATCHWORDS: Oral agreement – Where parties are related – Where plaintiff carried out renovations to the premises belonging to the defendant – Where differences arose between the parties as to the terms and conditions of agreement – Where plaintiff leased out the premises without defendant's written approval – Whether the lease was valid.

APPEARANCES:

Counsel for the Plaintiff: E Soriano  
Counsel for the Defendant: C Giouba

## JUDGEMENT

### INTRODUCTION

1. The defendant is the sole beneficiary of Block 27, Room 4 located at Location Compound in Denigmougu District, land portion 208 and 209 (Room 4).
2. The plaintiff and the defendant are cousins – their parents are brothers and sisters.
3. Room 4 belonged to the defendant's mother and she occupied it with her two sons which included the defendant. After her death the defendant, his family and his brother continued to live in Room 4. Subsequently, the defendant's brother passed away and he still continued to live there with his family but he had difficulty overcoming his

brother's death so he decided to move out to live with his wife's family in Boe District. Room 4 was left empty.

4. The plaintiff approached the defendant in or about October or November 2014 and requested him to give Room 4 and he agreed to bear all the costs of renovation to turn it into a habitable condition.

#### AGREEMENT TO USE ROOM 4

5. The agreement between the plaintiff and the defendant was entirely oral and there were no witnesses to their discussions. The version of what was agreed differs vastly as to the term of the agreement, the terms and conditions, however, there is consensus between the parties that the plaintiff carried out substantial renovation work, but there is disagreement as to the actual costs of renovations.
6. Following the agreement, the plaintiff commenced renovation work in December 2014 and since he had limited funds, he carried out the renovations in a piecemeal manner. Having completed the renovation of one portion of Room 4 he set up a video and grocery store in about mid-2015 to generate some income so that he could carry out the renovations to the remaining part of Room 4.
7. The plaintiff was able to complete the renovations to the remaining part by October 2015 and on 12 October 2015 he entered into a tenancy agreement with Eigigu Holdings Corporation to let out the remaining portion. In the tenancy agreement the plaintiff is described as 'the landlord' and the rent was \$1,200 per month. I shall discuss the tenancy agreement later in my judgement.
8. Around October 2015 the defendant took his son for medical treatment to Fiji and upon his return in the later part of 2015 he told the plaintiff that he wanted to move into room 4 and the plaintiff told him that he could not do so as he had already let it out to Eigigu Holdings Corporation.
9. In January 2016 the plaintiff went to Fiji on holidays and the defendant began to hassle and harass the management of Eigigu Holdings Corporation and told them that he was lawful owner of room 4. On or about 8 January 2016 Eigigu Holdings Corporation vacated the premises and terminated the lease agreement.
10. After Eigigu Holdings Corporation moved out the defendant and his family moved in to Room 4 and the plaintiff's shop was closed.

#### CLAIM

11. On 20 July 2016 the plaintiff filed a writ against the defendant and in the statement of claim it is pleaded inter alia that:
  - a) The agreement between the parties was for the plaintiff to carry out renovation of Room 4;
  - b) Room 4 was to be used for commercial purposes to generate income to enable the plaintiff to construct his dwelling house;

- c) After the dwelling house was constructed the plaintiff was to hand over Room 4 to the defendant;
  - d) That the term of the agreement was for 5 years.
12. In the relief the plaintiff seeks an order for specific performance of the agreement entered into with the defendant in October/November 2014.
  13. In October 2016 the defendant was sentenced to a term of 14 years for a criminal matter.
  14. On 20 December 2016 the plaintiff and the defendant entered into an agreement whereby the plaintiff was given use of Room 4 for a term of 13 years.

#### PRE-TRIAL CONFERENCE

15. The parties had a pre-trial conference on 16 September 2019 and agreed to the following facts and issues:

##### Agreed Facts

- 1) The plaintiff is a cousin to the defendant and resides in the family home in Anibare District with his wife and their 3 children. He is currently employed at the Department of Commerce, Industry and Environment.
- 2) The defendant is from Bauda District, and is the occupant of Block 27, Room 4, which is the subject of these proceedings. He is married to Olive Hilo and they have one son.
- 3) Block 27, Room 4 was initially used by the mother of the defendant, by virtue of permission granted by her siblings. She occupied the unit until she passed away in 2013.
- 4) The defendant became the sole surviving beneficiary of his mother's estate when his only sibling also died and his family continued occupation and use of Block 27, Room 4.
- 5) Sometime between October and November 2014 the plaintiff and the defendant agreed for the plaintiff to occupy and use Block 27, Room 4.
- 6) Block 27, Room 4 was in a dilapidated state when the plaintiff was granted rights to it as the defendant at this time was living with his wife at her family's residence in Boe District.
- 7) The plaintiff refurbished a section of the property in December 2014 and converted it into a small shop.

- 8) The plaintiff helped the defendant on several occasions with cash handouts and canned foods from the shop.
- 9) The plaintiff completed full renovation of the property in 2015 and rented it to Eigigu Holdings Corporation.
- 10) The defendant with the assistance of his aunty, made representations to Eigigu in relation to the property.
- 11) Eigigu terminated the tenancy agreement made with the plaintiff after the defendant's aunty made representation to Eigigu with regards to ownership of the property.

#### ISSUES TO BE DETERMINED BY THE COURT

16. 1) Whether there was a breach of the agreement between the plaintiff and the defendant with regards to the plaintiff's use of Block 27 Room 4; and
- 2) Whether the plaintiff is entitled to damages in the form of repayment for costs of repairs and refurbishment to Block 27, Room 4;
- 3) Whether the plaintiff is entitled to payment of special damages.

#### CONSIDERATION

##### Nature of Agreement

17. Before I address the matters set out in the issues for determination, I shall first determine as to the exact nature of the agreement entered into between the plaintiff and the defendant. As I stated earlier, this was entirely an oral agreement.
18. In the Law of Contract<sup>1</sup> it is stated as follows:

*"A contract may be made wholly by word of mouth, or wholly in writing, or partly by word of mouth and partly in writing."*

*If the contract is wholly by word of mouth, its contents are a matter of evidence for the jury or the judge sitting as a jury. It must be found as a fact exactly as to what it was that the parties said, as for example in Smith v Hughes<sup>2</sup> - a troublesome case affecting the law of mistake - where the question was whether the subject matter of a contract of sale was described by the vendor as 'good oats' or as 'good old oats'.*

#### PLAINTIFF'S EVIDENCE

19. The plaintiff's evidence of what transpired between him and the defendant is as follows<sup>3</sup>:

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<sup>1</sup> Sixth Edition by Cheshire & Fifoot page 101

<sup>2</sup> (1871), L.R 6Q.B. 597

<sup>3</sup> Pages 9, 10 and 11 of the Transcript

Question: Can you tell us what the conversation was?  
 Answer: To ask for the house that he left so I can use it for business.  
 Question: Was the cousin under the influence, was he drunk or was he ....  
 Answer: Sober  
 Question: Did you speak to him English or?  
 Answer: No spoke in Nauruan.  
 Question: Was there any, what was the reaction of your cousin?  
 Answer: He said you take it you can build it. Rebuild it.  
 Question: What are we talking about? Take what?  
 Answer: The house that I came, that I was asking him for.  
 Question: Does it have number?  
 Answer: I know it is Room 4 but I can't remember if it is 27.  
 Question: And then what happened after?  
 Answer: Then I left when he said you take it.  
 Question: What did that mean to you?  
 Answer: That the house belongs to me.  
 Question: Did you start working on the house immediately after?  
 Answer: Yes, I starting building little by little.  
 Question: How long did you ask for the house for  
 Answer: Indefinite.  
 Question: How long for?  
 Answer: No term.

20. From the plaintiff's evidence discussed above, he stated that the agreement was for an indefinite period whilst the statement of claim states that the agreement was for a period of 5 years. Further, in the agreement entered on 20 December 2016, the period is stated as 13 years. How does one reconcile these differences? Although, the plaintiff's evidence is that the agreement was for an indefinite period, but the statement of claim states that it was for 5 years which would have been prepared by his pleader upon his instructions. This puts the plaintiff's credibility in issue.
21. On the other hand, the defendant's evidence is that there was no term to the agreement and that sounds more probable to me.

### LOSS OF RENTAL

22. In the statement of claim there is a claim for the loss of rental at the rate of \$1,200 for 58 months totaling a sum of \$69,000.
23. When the plaintiff signed the lease with Eigigu Holdings Corporation on 12 October 2015 he described himself as the landlord. Obviously, he was not the landlord, nor did he have any written authority or power of attorney from the defendant to enter into the lease and thus the lease in my respectful opinion was of no effect and void. No evidence was adduced as to the loss of rental as a result of the termination of the lease by Eigigu Holdings Corporation or in respect of the loss suffered by the plaintiff when Room 4 was taken over and the shop was closed. Mr Soriano in his opening address stated:

*"... this case has been and it continues to be a claim for the monies that were expended on the renovation. There is no claim for damages ..."*

24. From Mr Soriano's opening address it suggests that he abandoned the claim for damages and only confined his claim for the renovation costs.


#### RENOVATION COSTS

25. The parties agreed in the pre-trial conference that Room 4 was in a dilapidated state and the plaintiff carried out the renovation in a piecemeal manner because of budgetary constraints.
26. All the documents relating to the renovations were kept by the plaintiff in a box which was left in the store. The plaintiff was not given those documents which included a diary when the defendant returned some items to him. However, he was able to compile the amount of renovation costs in the sum of \$19,035 from the records that he kept. The defendant disputes this amount to be excessive.
27. Unfortunately, no pictures were tendered to the court for pre-renovation or post-renovation work which is very unusual in this day and age as everybody has a mobile phone, but the fact remains that Room 4 was in a dilapidated state and the renovation work was carried out. Mr Soriano in his submissions states that Room 4 became 'commercially inviting' for Eigigu Holdings Corporation which is one of largest and well known organisations in Nauru to rent it for one of its employees.
28. Between the evidence of the plaintiff and the defendant I accept the evidence of the plaintiff and I am satisfied that the renovation costs were in the sum of \$19,035.

#### CONCLUSION

29. I order the defendant to pay the plaintiff the sum of \$19,035 and I further order the defendant to pay the plaintiff's costs of these proceedings which is summarily assessed in the sum of \$1,500.

DATED this 30 day of January 2020

  
Mohammed Shafiullah Khan  
Judge

