

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ILFORD COUNTY COURT
(His Honour Judge Platt)

CCRTF 96/1527/H

Royal Courts of Justice
Strand
London WC2

Friday 18th July, 1997

B e f o r e:

LORD JUSTICE STAUGHTON
LORD JUSTICE MILLETT

CHESTERS ACCOMODATION AGENCY

Respondent

- v -

VICTOR ABEBRESE

Appellant

(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
Tel: 0171 831 3183
Official Shorthand Writers to the Court)

MR JOHN DAVIS (Instructed by Alan Winter Peace & Co, Ilford Essex IG2 6NE) appeared on behalf of the Appellant

THE RESPONDENT DID NOT ATTEND AND WAS NOT REPRESENTED

J U D G M E N T
(As approved by the Court)

Friday 18th July, 1997

JUDGMENT

LORD JUSTICE MILLETT: This is a somewhat curious case. It is an appeal by the defendant, Mr Abebrese, from an order of his Honour Judge Platt in the Ilford County Court made on 13th August 1996, when he ordered that the defendant give possession of the property known as 556 Eastern Avenue, Gants Hill Essex to the plaintiff, Chester's Accommodation Agency Ltd, and ordered the defendant to pay £20 a day by way of mesne profits. Leave to appeal was given by Lord Justice Staughton.

The case was a claim by a landlord for possession under a shorthold tenancy after giving notice to quit because the rent was in arrears. However, it is quite clear that the plaintiff, Chester's Accommodation Agency Ltd, was not the landlord but merely the managing agents. The landlord was Dr Hossain. The tenancy agreement is in the bundle at page 48. The plaintiff served the notice to quit as agent for and on behalf of the landlord, but the proper plaintiff in an action for possession is the person in whom the immediate reversion is vested, not his agent. The only ground of appeal in the notice of appeal states that the judge was wrong in law in holding that a managing agent of the landlord has *locus standi* to bring possession proceedings. In fact the judge decided no such thing for the point was never brought to his attention at all. If it had been he would almost certainly have granted an adjournment in order to see whether Dr Hossain was willing to adopt the proceedings, and ask for them to be amended so he could be substituted as plaintiff. There could be no such objection to such a substitution if Dr Hossain was prepared to make the necessary application. It is obvious that the defendant was not prejudiced or deceived by the mistake.

When the hearing came on before Judge Platt both the plaintiff, despite being a limited company, and the defendant appeared in person. The transcript shows that Judge Platt said to the defendant:

"JUDGE PLATT: Are you Mr Victor Abebrese?
MR ABEBRESE: Yes, your Honour.
JUDGE PLATT: Do you wish to defend these proceedings,
Mr Abebrese?
MR ABEBRESE: No, your Honour, but I want to make a
remark please."

The judge then explained the nature of the proceedings, that there was a claim for possession because the notice to quit had expired and Mr Abebrese said, "Your Honour, I know that". Then he said that the point he wanted to make was that the house was in disrepair and that he wanted to claim damages for want of repair. The judge told him that that should be done by a counterclaim. In due course, after further discussion, the judge made the order from which the appeal is brought.

Now, we have all the powers which the judge had, and we have jurisdiction to order the proceedings to be amended by substituting Dr Hossain for the plaintiff, but Dr Hossain does not appear and there is nothing to indicate that he is willing to take over the proceedings. Indeed, the Chester Accommodation Agency does not appear either, so we have not been able to hear from them whether they are in a position to obtain Dr Hossain's consent.

In the circumstances it seems to me that the best way forward is to allow the appeal, to set aside the order below, but to indicate that if Dr Hossain wishes to make an application to the Ilford County Court to be substituted as plaintiff then he should be at liberty to make that application, and it will then be up to the judge to consider whether to allow the substitution and to make a fresh order in favour of Dr Hossain. Accordingly I would allow the appeal.

LORD JUSTICE STAUGHTON: I agree. My Lord has referred to the passage in the transcript of the county court proceedings, where Mr Abebrese said he did not intend to defend. I must say that I wonder whether Hutchison LJ and I were told that when we heard an application for leave to appeal

from Miss Wickins. I am certainly not able to assert from recollection that we were not told it, but I just wonder how we could have granted leave to appeal so readily if we had been. As it is, the best solution is that proposed by Lord Justice Millett and I agree with it.

ORDER: Appeal allowed. Legal aid taxation.
Liberty to apply in the County Court to substitute the landlord as plaintiff.

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