STATE OF VERMONT
CHITTENDEN COUNTY, SS.

KIRSTEN ELDER)
)
v.)
)
KIM E. FIELDS)

Chittenden Superior Court
Docket No. S641-01 CnC

OPINION AND ORDER

This matter is before the court on appeal from the Decision and Order of the Small Claims Court dated April 20, 2001. Appellant Kirsten Elder is represented by John Collins, Esq. Appellee Kim Fields is represented by Stephen A. Unsworth, Esq. For the reasons set forth below, the Appellant's appeal is granted, and the judgment is affirmed in part and reversed in part.

Appellant was a tenant in a condominium owned by the Appellee under a one-year lease which was to expire on September 30, 1999. During the month of September, there were negotiations between the parties about the possibility of extending the lease beyond its termination date. In the end, the lease was not extended. Appellant moved out by the end of September except for leaving a desk in the garage which she picked up later. Appellee rented to a new tenant as of November 1, 1999. When Appellee did not return the Appellant's $900 security deposit, Appellant brought this Small Claims action for recovery of the security deposit. Appellee counterclaimed for rent and other expenses related to her claimed inability to rent the condominium for the month of October 1999, because, she claimed, Appellant had led Appellee to believe, at the end of September, that Appellant would not be moving out by September 30th, and therefore Appellant could not rent the unit for the month of October.

A trial took place on July 7, 2000. Judge Villa dismissed the Appellant's claim and entered judgment for the Appellee on the counterclaim in the amount of $1,119.11. On appeal, Judge Jenkins reversed the judgment and remanded the case for a new trial on the grounds that there was insufficient evidence to support the elements of equitable estoppel, which was the basis for the court's decision.

A second trial took place on February 16, 2001. Judge Villa issued the Decision and Order on April 20, 2001 from which this appeal was taken. The judge dismissed the Appellant's claim and entered judgment for the Appellee on the counterclaim in the amount of $2,246.80. She stated that the damages consist of $900 October rent, $100 in condominium association penalty, $116 for additional advertizing, $2,146.80 in attorney's fees, less the $900 retained

security deposit. The net of these amounts is actually $2,362.80, which is $116 more than the judgment amount of $2,246.80. Thus, the amount of the judgment shows that the $116 was not awarded in fact, despite the language to the contrary. The basis of the decision was that Appellee had proved all of the elements of equitable estoppel.

Appellant raises six issues on appeal. The first four of them claim that Judge Villa erred in making a determination of detrimental reliance by Appellee on Appellant's conduct. The standard on appeal as to findings of fact is that if there is any set of facts in evidence to support the trier of fact, the findings of the Small Claims Court Judge will be upheld, even though there may also be a sufficient factual basis for a different conclusion. This court grants deference to the trial court's findings, viewing them in the light most favorable to the prevailing party below, disregarding the effect of modifying evidence. *Jarvis v. Gillespie*, 155 Vt. 633, 637 (1991). The court reviewing on appeal will overturn only upon a showing of clear legal error or in the absence of factual support. *Id.* This court has reviewed the tape of the hearing and the evidence, and concludes that there is sufficient evidence in the record to support Judge Villa's finding of detrimental reliance by Appellee on Appellant's conduct and statements such that Appellee could not offer the condo for rent to a new tenant as of October 1st, and thereby lost rent for the month of October. Thus, the Appellant's first four claims are denied as a basis for appeal

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The sixth claim is that Judge Villa erred in granting judgment on the counterclaim based on the equitable doctrine of estoppel because the evidence showed that the Appellee entered the condominium to show it to prospective tenants in violation of a statute, and thus should not be entitled to equitable relief. Even accepting Appellant's argument that there was a statutory violation, the evidence shows that the violation was of a technical nature without prejudicial significance, since the Appellee would have a statutory right to enter the condominium to show it to prospective tenants soon thereafter in any event. Thus, the violation was not of a magnitude to deny Appellee an equitable remedy to which she was otherwise entitled.

The fifth question raises a different issue. The question is whether the judgment based on equitable estoppel overcompensated Appellee and placed her in a better position than she would have been in otherwise. This claim has merit with respect to some of the components of the judgment awarded. The findings of the Small Claims Court are sufficient to support all four elements of equitable estoppel as they relate to the Appellee's claim for October rent, since there is sufficient evidence to support the court's conclusion that Appellee detrimentally relied on the conduct and statements of Appellant, and Appellee was thereby unable to rent the condo for the month of October. The same reasoning could be applied to the $116 in extra advertizing fees, since they were a direct consequence of Appellant's conduct giving rise to equitable estoppel, but this sum was not included in the judgment. Appellee did not cross appeal.

It is unclear how the doctrine of equitable estoppel applies to the award of the $100 condominium association penalty, for which Appellee had incurred liability as of September 15th, even *before* the conduct upon which the equitable estoppel claim is based. Therefore, the

fact that Appellee incurred this expense is not as a consequence of relying on any conduct of Appellant, because she owed it anyway. Furthermore, it is not established by evidence that she would have been able to charge this expense to a new incoming tenant paying rent during the month of October. Therefore, there is insufficient evidence to support the factual determination of detrimental reliance as it relates to this charge.

More significantly, it is unclear how the doctrine of equitable estoppel applies to the award of attorney's fees to Appellee in any amount. When Appellant moved out on September 30th, she was leaving by the end of the lease term, and owed no unpaid rent. There is no claim that she left the premises in a damaged condition. The lease provided Appellee with a right to attorney's fees for "all costs of collection of unpaid rents or other amounts due under this lease, including attorney's fees and court costs." (Paragraph 14 E of the Lease, which relates to "Defaults") Appellee incurred no attorneys fees at all in connection with any "default" of Appellant under the lease: her rents were all paid, and she left on time. There was no action for unpaid rent under the lease, or for eviction. Appellee's counterclaim was based solely on a theory of equitable estoppel for the amount of rental she missed for the month of October, but not for any remedies due to her based on Appellant's violation of any lease term.

The American Rule, adopted in Vermont, is that neither party recovers attorney's fees from another party absent a contract or statutory provision. *Myers v. Ambassador Ins. Co.,* 146 Vt. 552, 558 (1986). The remedy given in this case as the basis for the judgment is an equitable remedy and not a contract remedy. The trial court did not explain how a factual finding showing detrimental reliance as to the $900 loss due to the loss of October rent could support a conclusion that Appellee relied to her detriment in a manner that justified the attorney's fees awarded. The only statement on the subject in the Decision is the summary statement on page 8 that "Defendant is entitled to reasonable attorney's fees which total $2,146.80." While there is an exception to the American Rule which allows for circumstances under which a court may order one party to pay another's attorneys' fees, it applies "where one party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons where the litigant's conduct can be characterized as unreasonably obdurate or obstinate, and where it should have been unnecessary for the successful party to have brought the action." *DJ Painting, Inc. v. Baraw Enterprises, Inc. and E.F. Wall Associates, Inc.*, 12 Vt. L. Wk. 139, 141 (May 11, 2001), (quoting *In re Gadhue*, 149 Vt. 322 at 329 (1988), which was quoting *Harkeem v. Adams*, 117 N.H. 687, 377 A. 2d, 617, 619 (1977)). While the most recent decision is dated May 11, 2001, which was later in time than the trial court's decision in this case, the language and standard quoted are from *Gadhue*, which established the principle of law in 1988.

In *DJ Painting*, the Vermont Supreme Court reversed an award of attorneys' fees to defendants who prevailed on a summary judgment motion because plaintiffs' conduct of the case was not outrageous, did not require multiple trips to court, was not obdurate or obstinate, and even though plaintiffs were wrong in their interpretation of an agreement, no "dominating reasons of justice" required an award of attorneys fees. The same reasoning applies here. Although there were multiple trips to court, the reason was not due to any unreasonable conduct

trial, appeal, remand, trial, and appeal. Although the case does not involve a lot of money, the facts are tricky and the application of the law is not easily apparent. This case falls within the realm of normal litigation, in which the American Rule applies, and each party bears her own expenses.

If Appellee had had to sue for unpaid rent or possession, she would have been entitled to attorney's fees based on the rental contract. Her remedy under this judgment, however, is not based on the contract, but on an equitable theory on which she sought money not for rent, but for a loss incurred after the termination of the lease. No legal justification has been provided by anyone for the award of attorney's fees for a claim based on equitable estoppel. As Appellant points out, the result is that Appellee is overcompensated in that the judgment places her in a better position than she would otherwise have been. Once the rental agreement was fully complied with, Appellee had no claim to attorney's fees.

While Appellant's argument is not framed in exactly the manner the court has framed it, Appellant's fifth claim included the argument that the judgment resulted in overcompensation to Appellee. The issue was thereby sufficiently raised for purposes of appellate review.

For the foregoing reasons, the appeal is denied insofar as it relates to the award of $900 on grounds of equitable estoppel, but granted insofar as it relates to the award of a $100 condominium penalty and attorney's fees.

ORDER

Judgment for Appellant on the claim (the $900 security deposit) is affirmed, and judgment for Appellee on the counterclaim is affirmed in the amount of $900.00, and reversed as to the remaining $2,246.80. Appellant's security deposit of $900.00 was retained by Appellee, lowering the Appellee's net judgment amount to zero.

Date at Burlington, Vermont this 29th day of November, 2001.

Mary Miles Teachout

Hon. Mary Miles Teachout
Presiding Judge