

ESTHER LUKE COOPER-DANIELS,' only surviving executrix of the estate of the late HENRY LUKE, and his wife, WILLIETTE LUKE, Plaintiff/Appellant, v. **SOCIETA LAVORI PORTO DELLA TORRE,** by and thru its General Manager and/or Agent, and **VIANINI CONSTRUCTION,** by and thru its General manager and/or Agent, Defendants/Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY

Heard: May 7, 1986. Decided: May 30, 1986.

1 In the absence of a statute, the proper party plaintiff is the person in actual or constructive possession of the property. A person in possession of property at the time of the trespass has been held to be a real party in interest.

2 Where premises are leased, generally, the right to use them during the term is transferred from the landlord to the tenant. During the existence of the lease, the tenant is the absolute owner of the demised premises for all practical purposes for the term granted, the landlord's rights being confined to his reversionary interest.

3 In the absence of a contrary provision in the lease, the lessee has, within certain exceptions, the sole and exclusive right to the occupation and control of the premises during the term of the lease, and the landlord has no authority during the term to enter or otherwise disturb the lessee in his occupancy or enjoyment or in any manner interfere with his rights to the management and control of the premises.

Appellant leased real property to appellees, a construction and public works contractor, for a period of 20 years certain with two consecutive optional periods of twenty years. Appellee extended an invitation to two other companies (Societa Lavori Porto Della Torre and Vianini Construction) to move onto the leased premises to carry out similar business activities as lessee. When appellant complained about the presence of the two other companies on her premises, the lessee maintained that the invitees were business associates which were owned by the same investors as lessee. Being dissatisfied with the response from lessee, plaintiff/appellant filed two separate

actions against appellees (the two companies invited onto the premises by lessee) for trespass.

The trial court dismissed the action on the grounds that the action had no legal basis and that the plaintiff/appellant had no standing to sue since she was not in actual or constructive possession of the premises.

The Supreme Court affirmed the ruling, holding that the question of whether the invitees were trespassers under the circumstances narrated in the case was a question of law for determination by the judge. The judge, the Court concluded, had not erred in the determination made on the law issues.

S. Raymond Horace, Sr., in association with Joseph Andrews, appeared for appellant. *H. Varney G. Sherman* of the Maxwell and Maxwell Law Offices appeared for appellees.

MR. CHIEF JUSTICE NAGBE delivered the opinion of the Court.

On October 12, 1957, an agreement of lease was executed between appellant and the Buccimaza Industrial Works for a term of 20 years certain with two conservative optional period of twenty years with rental amounts for said optional periods stated. Appellees, who have no privity of estate with appellant came on the premises by invitation of Buccimaza Industrial Works, lessee of the appellant. The appellees are contractors engaged in the, business of construction, road building projects, and other engineering works. When appellant contacted .Buccimaza Industrial Works, lessee of the appellant, about the presence of appellees on the demised premises, appellant was told that appellees were business associates of lessee, and that lessee and appellees were being directed and conducted by one general manager, and that all the businesses concerned were owned by the same investors. Being dissatisfied with this response and in view of the fact that appellees were engaged in several public works contracts out of which the appellees were to realize respectively the sums of \$52,136,916.00 and \$10,543,047.00, the appellant, plaintiff below, instituted separate actions of damages for trespass against the appellees. In the complaint, the plaintiff/

appellant alleged that the appellees had "without any color of right, nor the knowledge, will or consent of the plaintiff, unlawfully wrongfully and illegally entered upon the premises of the demised estate and thereupon were conducting its business operations, prejudicially depriving plaintiff of the property rights and benefits in and of the said estate." The appellant therefore alleged that she "has been substantially damaged by virtue of such illegal and unwarranted entry and occupancy of said premise..." and therefore claims as special damages against the appellees the sums of \$6,820,535.50 and \$1,581,456.70, respectively, plus six percent punitive damages.

The trial judge dismissed the actions on purely issues of law, stating that the actions had no legal basis. The judge based his ruling on several counts of the defendants/appellees' answer, particularly counts 3 and 4 thereof which allege in substance that one who is neither in actual or constructive possession of a demised property has no standing in law to bring an action of damages for trespass against those entering on said premises by invitation of one having the right of possession to the premises by virtue of an agreement of lease. Both cases, having the same set of facts, were consolidated.

Appellant strenuously argued that the issues raised in the pleadings are those of mixed law and facts and, therefore, the matter should have been submitted to the jury for trial, and since that was not done, the cases should be remanded for a new trial.

The issue therefore is whether or not the judge committed reversible error in dismissing plaintiff/appellant's actions on the ground that the actions have no legal basis and that appellant has no standing in law to bring said actions.

In 87 C.J.S., § 679, p. 1013, it is stipulated that: "In the absence of statute, the proper party plaintiff is the person in actual or constructive possession of the property; a person in possession of property at the time of the trespass has been held to be a real party in interest'."

Also American Jurisprudence 2d. *Landlord and Tenant*, § 226, it is laid down that:

"Where premises are leased, generally the right to use them during the term is transferred from the landlord to the tenant. During the existence of the lease, the tenant is the absolute owner of the demised premises for all practical purposes for the term granted, the landlord's rights being confined to his reversionary interest. In the absence of a contrary provision in the lease, the lessee has, within certain exceptions, the sole and exclusive right to the occupation and control of the premises during the term, and the landlord has no authority during the term to enter or otherwise disturb the tenant in his occupancy or enjoyment or in any manner interfere with his rights to the management and control of the premises . . ."

According to the records, appellant's lessee, who is in possession of the property, invited appellees onto the demised premises as its business associates. The issue as to whether these invitees are trespassers on the land under the circumstances narrated herein above, and if so who can bring suit against them, is an issue of law. Therefore the ruling of the trial judge, dismissing the actions on the legal grounds therein stated and supported by authorities herein cited, is hereby affirmed and confirmed with costs against appellant. And it is hereby so ordered.

Judgment affirmed