HABIB ABI RACHID, Appellant, v. **MAX DENNIS, EDA JOHNSON** and **SARAH FREEMAN**, Executors and executrices of the Testate Estate of the late FLORENCE McGILL HOWARD, Appellees.

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

Heard: June 23, 1986. Decided: August 1, 1986.

1 The Supreme Court can render such judgment in a matter upon appeal, which should have been rendered by the trial court.

2 A verdict awarding damages will be held excessive where the damages awarded exceeds the sum alleged in the complaint.

3 A party to a lease agreement, or one in privity with such party, will be estopped from denying the validity of the lease, especially where the complaining party or her successor in interest has received benefit under the lease over a period of time.

The testator of the appellees leased a parcel of land to a business man who subsequently subleased it to the principal of the appellant. Thereafter, the testator, the lessee and the principal of the appellant executed an addendum to the original lease. Notwithstanding the fact that the testator, during her lifetime, received rent pursuant to the addendum, the appellees instituted an action of ejectment seeking to evict the appellant. The trial jury returned a verdict, which provided that "the plaintiff is liable to his property, in said case, and the damages of $34,000.00." Judgment was entered on the verdict and an appeal taken therefrom to the Supreme Court.

The Supreme Court reversed the judgment of the trial court, holding that the appellees were bound by the contract of their testator.

Joseph Andrews appeared for appellant. *Joseph Findley* appeared for appellees.

MR. JUSTICE TULAY delivered the opinion of the Court.

On the 15t of July, 1961, the late Florence McGill Howard, grandmother of the plaintiffs/appellees herein, entered into a lease agreement as lessor with one Habib Abi Rachid, a Lebanese business man, as lessee, for her plot of land known as part of lot No. 81 in and lying in the corner of Benson and Lynch Streets, Monrovia. The leasehold agreement was to run from July 1, 1961 to June 30, 1981 with an optional period of another twenty years - 1981-2001 A. D., providing for an increased rental.

In March 1962; the lessee subleased the premises to a Mr. Fadalah Farage. Then in March 1966, an addendum was prepared by the lessor, lessee and the assignee in which paragraphs 2(a) and 2(b) were amended as follows to wit:

"1. Paragraph 2 of the original agreement of lease dealing with the amount of rental for the use of the premises which now reads as follows:-

` To HAVE AND TO HOLD the said premises with all the easements, outlet, buildings, appurtenances connected with the said demised premises unto the lessee for during the period of (20) twenty calendar years certain commencing from theist day of July, A.D. 1961 up to and including the 30th day of June, A.D. 1981 with the right to renewal of twenty (20) years, at One Thousand Five Hundred Dollars ($1,500.00) per annum after the expiration of the first period hereby granted' be deleted and substituted by the following provisions:

`To pay or cause to be paid to the lessor the rental of $1,200,00 (One Thousand Two Hundred Dollars) per annum payable monthly in advance at the rate of $100.00 per month during the life of the lease agreement it being understood, however, that the rental of . $900.00 for the year 1965 already paid by lessee to lessor, the receipt whereof is hereby acknowledged, prior to this agreement. The difference of $300.00 (Three Hundred Dollars) is to be paid at the signing of this agreement.'

2. That paragraph 2 respecting rental payment for optional period which reads as follows:

`With the right to renewal of twenty (20) years at One Thousand Five Hundred Dollars ($1,500.00) per annum after the expiration of the first period hereby granted' be deleted and substituted by the following provisions:

`Rental for the optional period shall be One Thousand Six Hundred Dollars ($1,600.00) per annum, payable monthly in advance in the sum of $133.33 per month on the first legal day of each and every succeeding month after the expiration of the basic period and during the life of the optional period.'

3. This addendum shall extend to the whole of the principal agreement and shall extend to and be binding on both parties hereto, their heirs, assigns, executors and/or administrators."

With these amendments the addendum was signed by the lessor, Florence McGill Howard, lessee, Habib Abi Rachid, and assignee, Fadalah Farage, thereby approving and confirming same. It was probated on March 27, 1966,

Decedent Florence McGill Howard collected and received rental under this lease agreement with its addendum from the assignee up to the time of her death in 1974. Around this time, the assignee went home and died leaving his widow, Marian Farage, in charge of the premises. She, of course, obtained letters of administration from the Probate Court.

In the course of time, Mrs. Farage, widow of the deceased assignee, took sick and being desirous to go abroad for medical treatment, gave one Habib Abi Rachid a limited power of attorney to take care of the premises and, in connection therewith, to do and perform any and all acts as she herself would have done if physically present.

On January 3, 1974, plaintiffs/appellees, Max Dennis, Ida Jordan and Sarah Tanoe Freeman presented to the probate court the last will and testament of their grandmother, Florence McGill Howard, verifying their appointments as executor and executrices, respectively, oftheir late grandmother estate. On the 29th day of May, 1974 they were granted the letters testamentary and were placed under oath accordingly.

After several letters were exchanged between plaintiffs/ appellees and appellant, in connection with the estate in point, appellees sued out an action of ejectment asking the court to evict appellant from the premises and to place them in possession of the estate, their heritage. For the benefit of this opinion, we give below counts 3 & 4 of the complaint, and the plaintiffs' prayer, which we consider salient:

"3. That notwithstanding the foregoing, defendant has entered upon said premises and wrongfully withholds possession thereof from plaintiffs who are rightfully entitled to possession of the parcel of land, part of lot No. 81, Monrovia aforesaid.

4. That defendant has been on the property and has withheld same from plaintiffs since July 1, 1981; the annual rental value of the property is $7,000.00 per annum, from July 1, 1981 to the present, October 1, '1982, i.e. to the institution of this suit, $15,750.00 in damages; computable at the rate of ($7,000.00) in rent per annum.

WHEREFORE and in view of the foregoing, plaintiffs demand judgment against defendant, praying this Honourable Court to evict him from the premises aforesaid, and grant unto plaintiffs damages in the sum of $15,750.00 rental value of the property at $7,000.00 per annum with proportional increase during the pendency and up to emanation of this suit."

With the complaint, plaintiffs filed copies of the last will and testament of their grandmother and the letters testamentary from the Probate Court.

Along with defendant's responsive pleading, he attached copies of the lease

agreement of June 1961 with its addendum of 1966 and the limited power of attorney from Mariam Farage, widow of Fadalah Farage, the assignee, to Habib Abi Rachid. A portion of appellant's responsive pleading is quoted herein below:

"2. And also because defendant submits that plaintiffs' complaint is void of legal merit and should be dismissed in that defendant is rightly entitled to the immediate possession of the premises held under lease agreement dated July 18, 1961 and addendum of lease dated March 21, 1966, granting the lessee a total period extending to and expiring on the 17th day of July A. D., 2001, executed between Florence E. McGill Howard, Lessor, whose estate plaintiffs profess to administer, and with whom plaintiffs are in privity and Emile Abi-Rachid's lessees as appears more fully by copies of the agreement of lease and addendum to said lease hereto annexed marked exhibits "A" and "B" and made profert of to form a part of this answer as if herein set forth word for word.

3. And also because defendant submits that while it is true that Florence E. McGill Howard did die seized of the parcel of land described in count two (2) of plaintiffs' complaint, the said Florence E. McGill Howard, by the agreements referred to in count two (2) of this answer, transferred her title and right of possession to said land to defendant's principal named in said lease documents until 2001, in consequence of which she, Florence E. McGill Howard, her heirs executors and assigns may not and cannot maintain an action of ejectment against defendant for the very parcel of land. The action should therefore be dismissed and defendant so prays."

The case was submitted to the jury for trial, and on March 28, 1983, the trial jury returned with a verdict which was announced in open court as follows:

"We the petty jurors to whom the case Max M.. Dennis, Florence McGill Howard - Lessors, plaintiffs versus Habib Abi Rachid, defendant in an action of ejectment, was submitted after a careful consideration of the evidence adduced at the trial of said case, we do unanimously agree that the plaintiff is liable to his property in said case, and the damages of $34,000.00."

Appellant's motion for a new trial was denied.

On this verdict the trial court found for plaintiffs/appellees May 17, 1983 and awarded them damages in the sum of $34,000.00. Appealing from that judgment, appellant has brought the case before this Court on a four-count bill of exceptions. Count three of the bill of exceptions is sustained, as the judge should have granted the motion for new trial.

In count four (4) of said bill of exceptions, the judge has been charged with entering judgment on an uncertain, doubtful and capricious verdict. We most certainly sustain this count of the bill of exceptions because the clause: "Plaintiff is liable to his property" cannot be interpreted to mean that plaintiffs are entitled to their property, or that they are not entitled to it. Can it be construed that the $34,000.00 damages awarded is to the plaintiffs who are liable to their property, or to the defendant? Additionally, the verdict awarded is an amount more than what was prayed for in the complaint. *Wright v. Tay,* 12 LLR 189 (1954). It cannot even be inferred that the award includes general damages as this was not asked for. But even if general damages were asked for, the verdict should have separated the award, naming a sum certain for special and another for general damages. *Seleh v. Montgomery,* 21 LLR 125 (1972).

It is not argued that the 1961 lease agreement with the optional period specifically agreed upon, and the addendum of 1966, entered into by and between plaintiffs' grandmother and Fadalah Farage, is null and void, or that the time has expired. The point stressed by plaintiffs is that Habib Abi Rachid who presently manages the leased property by virtue of a limited power of attorney does so in the absence of a valuable consideration and as the lessee, his assignee and his widow are no longer residing in the country said property must revert to plaintiffs.

The lease agreement for 20 years certain, with its optional period of another twenty 20 years, and the addendum of 1966, specifically bind the lessor, her executors, administrators and heirs and the lessee and his assignees. The heirs of the testator

have inherited this agreement and they are obliged to honor and keep it sacred; neither party can repudiate it. Habib Abi Rachid's assignees can even keep the premises closed up for the remainder of the lease period so long the annual rental is paid on time, plaintiffs would have no cause to complain as a contract may only be avoided upon proof that performance is impossible, and it cannot be said that receiving the annual rental from the assignee's agent/representative presents any difficulty.

The issue that Habib Abi Rachid, agent of Mariam Farage, the widow of Fadalah Farage, occupies the premises without parting with valuable consideration is not tenable, as the doctrine of *nudum factum* advanced by counsel for plaintiffs during arguments before this Bench cannot be raised by a third party. Plaintiffs cannot challenge Habib Abi Rachid's occupancy of the premises. Only Mrs. Farage can seek the aid of the law of *nudum factum,* but it is she, by her limited power of attorney to Mr. Habib Abi Rachid, who placed him in charge of the premises. We also hold that plaintiffs cannot question any business transaction that exists between the widow of Fadalah Farage and the Ministry of National Defense concerning this leasehold.

Reverting to the verdict and the judgment entered upon it from which this appeal has come before us, we assert that said verdict is so unintelligible that judgment upon it cannot be affirmed.

The judgment appealed from is hereby reversed and, as this Court can render such judgment which should have been rendered by the trial court, we hold that plaintiffs herein are duty bound to honor and respect their grandmother's contract with Habib Abi Rachid and his assignees, and that they abide their time until 2001 A. D. *Cooper v. CFAO,* 20 LLR 554 (1972). Until that time, they are barred from disturbing the leasehold agreement. Costs against appellees. The Clerk of this Court must instruct the court below to resume jurisdiction over the cause and execute this judgment. And it is hereby so ordered.

Judgment reversed