

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV No. 2018-03537

Between

PEARL CICELY RAMOO

MANN RAMOO

CRYSTAL CICELY RAMOO

MARK MITCHUM JOSHUA RAMOO

(by their lawful attorney of **KERWIN MOHAMMED**

By virtue of Power of Attorney dated 9th June, 2014

And registered as DE2014 0218 5194)

Claimants

And

ERROL HAYWOOD

Defendant

Before the Honourable Mr. Justice David C. Harris

Appearances:

Mr. Chris Selochan **for the** Claimants

Mr. Jawara Mobota **for the** Defendant

DECISION

1. The Claimants claim several reliefs commencing with the substantial relief of possession of the subject property known as and described as “*Lot 13 (or sometimes called Lot # 44)*”, First Street, Five Rivers, Arouca and as “*described in Bill of Sale dated 13th May, 2008 registered as No. BS 2008 0095 2733*”. The relief included mesne profits and damages for breach of the tenancy agreement, interest and costs.
2. The Fixed Date Claim was filed on October 3, 2018. To date no Defence has been filed. The Notice of Application by the Claimant for Summary Judgment pursuant to Part 15.2 of CPR was filed and served on 22nd March 2019 on the Defendant. To date the Defendant has filed no affidavit in opposition to the Claimants’ application for Summary Judgment.
3. The matter came up for hearing on several dates; 3rd December 2018, 4th February 2019, 25th March 2019 and 8th May 2019. On each of these occasions the Defendant was represented by Counsel.
4. On the first hearing on 3rd December 2018, Counsel for the Defendant made an oral application for an extension of time to file a Defence. Time for filing the Defence was extended to the 27th December 2018. No Defence was filed. On the hearing of the 27th December 2018, Counsel for the Claimant indicated his intention to file for Summary Judgment. The matter was adjourned to the 4th February 2019. On that adjourned date, Counsel for both parties were present and the matter was further adjourned to the 25th March 2019 to allow for the Defendant to defend the action. Again, Counsel for both parties were present along with the Defendant himself. By this time the Defendant had already been served with the Notice of Application for Summary Judgment (22nd March 2019).
5. On this adjourned date, the 25th March 2019, at the behest of Counsel for the Defendant and without vigorous objection by Counsel for the Claimant, the Court granted the Defendant permission to file and serve on or before the 15th April 2019, an Affidavit in Response to the Notice of Application for Summary Judgment filed and served on the defendant since the 22nd March 2019¹. This matter was then further adjourned to the 6th May 2019 for hearing the said Application.

¹ A fuller account of the history of the matter and appearances(which is accepted and adopted by this court), is set out in paras 4-6 of the Affidavit of Kerwin Mohammed, in support of the Notice of Application filed on the 22nd March 2019.

6. On the 6th May Counsel, in Mr. Mobota, along with the Defendant appeared. Counsel for the Claimants, Mr. Selochan, was present and prosecuted his application.
7. The upshot of the Claimants' application is that, the Defendant has no realistic prospect of success on his Defence to the claim. The facts alleged by the Claimant are set out in the pleadings and repeated in para 3 of the affidavit of Kerwin Mohammed, in support of the Notice of Application for Summary Judgment. The Court accepts the content and import of the affidavit evidence as set out in para 3 of the said affidavit. On a balance of probabilities, if this were the testimony at trial the Claimant would have made out its case against the Defendant save for the claim for "*Damages for breach of the tenancy agreement between the Claimants and the Defendants*". There is no evidence in support of this.
8. What then is before the court to establish that the Defendant has a realistic prospect of success or conversely, that the Claimant has no realistic prospect of success. In fact, the Defendant has not filed any Defence to either the claim or to the Notice of Application for Summary Judgment, despite the repeated indulgence by both the Court and Counsel for the Claimants. The Court notes that even the CPR and learning thereto provided the Defendant a continuing opportunity to file his Defence without permission, at least up until the filing of the Application for Summary Judgment on the 22nd March 2019. This fact is all that is required to found the success of the Claimants' application. But, the Defendant's prospects do not look any better even if the Court were to consider Defence Counsel's oral representations of alleged facts, in Court.
9. Counsel for the Defendant sought to convince the Court that the Defendant had earlier represented to the court, the inadvertent loss of certain documents in support of what he says is his Defence/Claim; that over the years as a tenant he had expended monies on significant improvement on the property with the understanding that he would be given the option to purchase. He does not claim ownership of the property nor does he claim a proprietary estoppel, but, according to his Counsel, makes a claim in equity for compensation for his expenditure in which he alleges he was encouraged by the claimant to incur.
10. Further, Counsel for the Defendant submitted that just recently he was presented with some further documentation that the Defendant was able to recover, in support of the alleged

expenditure. Counsel contends that this documentation was necessary as the evidence in support of the Defendant's claim.

11. Further still, Counsel for the Defendant contended that a 'power of Attorney' upon which the Claimants act in this matter and the Bill of Sale relied on by the Claimants refer to a property that does not match the description of the property in which the Defendant resides and from which the Claimant requires him to vacate in this action.

Disposition

12. The Claimants have satisfied Parts 15.2 – 15.5 of the Civil Proceedings Rules 1998 as amended.
13. The subject property is variously referred to as "*Lot 13 (or sometimes called lot 44)*" in the Claim Form, Statement of Case, and Power of Attorney. There can be no dispute that the property, the subject of the claim, is that which the Defendant occupies and has responded to by his presence in Court.
14. Further, apart from the variance in Lot number ('13' and '44' respectively), the street address – *First Street, Five Rivers, Arouca* - is substantially the same in all documentary references in the matter (including those documents referred to above) along with the lease agreements, rent receipts and notice to quit.
15. There is no defect in the Claim or the Notice of Application with respect to the identity of the subject property.
16. Counsel for the Defendant has not contended that the Defendant has dispossessed the Claimant. His alleged prospective claim is in damages at its highest.
17. The Court noted that the Defendant has no evidence before the Court in support of his allegation of his expenditure, including the nature and extent of it; he had been given the opportunity to make and file a case/defence even without referring to or exhibiting the document evidence in support of it; he has failed absolutely to properly respond to the claim or the Notice of Application in accordance with the CPR and instead, now asks the Court to rely on oral representation at the last hearing, in support of Counsel's somewhat feint and blurry assertions as to what may be the

defendant's case. The Court has no sufficient way of assessing the veracity of his prospect of success. No inherent sustainable factual or legal defect has been identified in this case for the Claimant².

18. There simply is no evidence before the Court. The Court's view is that the documentary evidence referred to by Counsel for the Defendant, may or may not enhance the proof of the case for the defendant, but is not necessary to his articulating and proffering a defence. Further, the fact that the defendant may have expended monies on the property during his tenure as suggested by Counsel (without any detail and particulars) does not necessarily or at all mean that the Defendant was either encouraged to do so or that he was necessarily promised the option to purchase an improved property, that he alleges he has in effect paid for already (if that be the case) by his financial input over the years. The Defendant has not presented any reasonable grounds for failing to formally resist the claim or the Notice of Application either procedurally or substantively. The Defendant has not complied with any of the orders of the court or rules of the CPR, having been given several and ample opportunities to do so. In the end, even counsel could not orally set out a sufficiently detailed and coherent account of the defendant's prospective defence or describe with sufficient detail the nature and character of the documents that he recently received from the defendant.

19. The relief claimed in the Notice of Application of the Claimant, of the 22nd March 2019, is granted and Summary Judgment given to the Claimant.

20. For the reason provided above **IT IS HEREBY ORDERED:**

- i. The Claimants are entitled to possession of all that chattel house measuring approximately 20' x 30' comprising two (2) bedrooms, one (1) kitchen, one (1) living room and a gallery with an outhouse and a bathroom. The walls are made out of tapia dirt and grass, plastered with cement on the inside and outside and have a ceiling. The said house is covered with galvanized iron sheets and is approximately 4' off the ground together with the tenancy of the lands on which it stands bounded on the North by lands of Balgobin on the South by Road Reserve on the East by lands of Mr. Ho Ting and

² Except for the miscalculation of rental payments due and owing by the Defendant.

West by lands of Mr. Maniram Maharaj and together the property is known and described as Lot #13 (or sometimes called Lot #44) First Street Five Rivers Arouca in the Ward of Tacarigua in the Island of Trinidad as described in Bill of Sale dated 13th May 2008 and registered as No. BS 2008 0095 2733;

- ii. The Defendant deliver up vacant possession of the subject premises to the Claimants within 12 weeks of the service of this order upon him;
- iii. The Defendant pay to the Claimants the sum of Four Thousand Four Hundred Dollars (\$4,400.00) which represents rent due and owing for the months of July 2015 to October 2015 inclusive;
- iv. Mense profit from the 1st day of November 2015 until vacant possession of the said property is delivered to the Claimants;
- v. Statutory interest at the rate of 5% from the date of judgment until vacant possession delivered up by the Defendant to the Claimants;
- vi. Costs of this application for summary judgment for the Claimant pursuant to Part 67.7(a) of the Civil Proceedings Rules 1998 as amended;
- vii. Costs of the claim on the Prescribed Costs Scale pursuant to Part 67.5 of the Civil Proceedings Rules 1998 as amended, to be determined before a Master if not agreed.
- viii. Mesne profits, Interest and Costs of the application for summary judgment to be determined before a Registrar or Master on a date to be fixed.

DAVID C HARRIS
HIGH COURT JUDGE
MAY 7, 2019