

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No. CV2017 -01755

BETWEEN

MCLEOD RICHARDSON

Claimant

AND

AVRIL GEORGE

Defendant

Before Her Honour Madam Justice Eleanor J. Donaldson-Honeywell

Appearances:

Mr. Mustapha Mushim Khan and Ms. Kristin Khan, Attorney at Law for the Claimant

Mr. Edwin K. Roopnarine and Ms Shelly Khan, Attorneys-at-Law for the Defendant

Delivered on: 20th March 2018

RULING

A. Introduction

1. This Claim was filed by McLeod Richardson, the Claimant, seeking repossession from Avril George, the Defendant, of two lots of land forming part of a six acre property that he has owned since 1995. He contends that she is a Statutory Tenant who has not renewed her tenancy in accordance with the provisions of the Land Tenants (Security of Tenure) Act, 1981 [“the Act”] and accordingly, she must vacate the premises.
2. The Claimant seeks early determination of the Claim by way of the application being considered in this ruling. It is an application to strike out the Defendant’s Defence and

Counterclaim pursuant to **Part 26.2(1) (a) (c) and (d)** of the Civil Proceedings Rules, 1998 as amended [“the CPR”].

3. The main basis for the application is the Claimant’s contention that the Defendant failed to respond in her Defence to what he had pleaded at paragraphs 5 to 9 of the Statement of Case. The Claimant contends that by this alleged absence of a response the Claimant failed to disclose any grounds for defending the Claim. Further, the Claimant argues that the Defendant’s Defence does not comply with the requirements of **Part 10.5 of the CPR** in that her case as set out therein did not include denials and non-admissions of the points pleaded in the Statement of Case.
4. A technical point is also raised as to an omission by the Defendant in not including the word “Counterclaim” in her certificate of truth at the end of her Defence and Counterclaim. The Certificate does cover all points pleaded in the Defence. Those same points are reiterated in the Counterclaim. Counsel for the Claimant has appropriately conceded that the omission can be rectified by permitting the Defendant to amend the certificate by adding the word “Counterclaim”.

B. Decision

5. On my review of the pleadings it is my finding that, although untraditional in format, the Defence provides a comprehensive response to the Claim. The response does not present a hopeless case. It provides a basis for refuting the claim for possession. It does so by setting out a different version of events which, when considered holistically, amounts to a denial of the main point of the Claim which is that the Defendant is a Statutory Tenant.
6. Although precise words such as “paragraphs 5 to 7 of the Defence are denied” do not feature in this Defence, it is clear that the Defendant is denying the contents of those paragraphs by putting forward a different version of events wherein she had been more than a mere tenant of land with a dwelling house on it prior to 1981.
7. Instead, she points out that the specific two lots to be repossessed are not described in the Claim and says that she is party to a contractual yearly tenancy to occupy more than the two lots of land since 1964. The Contractual Tenancy she describes as having

entered into with the Claimant's predecessor in title, her relative, was not one for dwelling purposes as contemplated by the Act. It was part of an agreement reached in or around 1964 to purchase four and a half lots of the land ["the land"], at a later time when she could afford it, with permission and acquiescence to develop the lands accordingly for dwelling, agricultural use and the building of a church. In addition to three dwelling houses, a church was built on the land several years before 1977.

8. According to the Defendant, her contractual tenancy agreement included provision for yearly rent payments and future purchase at a reduced cost. The concession as to reduced cost was included for three reasons: firstly, to account for rental paid; secondly, out of family relationship; and finally, the contractual arrangement to pay a lower price for eventual purchase being based on the former owner's alleged shared membership and desire to "invest" in the Church built within the land.
9. The Defendant pleads that the aspect of the contractual tenancy arrangement which was intended to lead to her purchase of the land was partially concluded, as she purchased one lot of the land in 1977. It is on that lot that she had built a house which she currently occupies. Since she claims to be the owner of that one lot she is clearly denying that she is a Statutory Tenant. Further in Defence to paragraphs 2, 3, 5 and 6 of the Statement of Case, her defence regarding the remaining three and a half lots is stated by way of a version of events that differs from the Statutory Tenancy pleaded by the Claimant. It is based on this alternate version that in her Counterclaim the Defendant seeks declarations that she is a contractual yearly tenant of those remaining lots and/or alternatively that she has an equitable interest in those rented lands.
10. There was no failure to respond to paragraphs 7 to 9 of the Statement of Case such that it could be said that the Defence should be struck out as either disclosing no case or for non-compliance with CPR 10.
11. The Defence set out by way of a different version of events is not hopeless thereby not rendering the determination of this Claim an open and shut case. Accordingly, the application to strike out the Defence will be dismissed.

C. Review of the Pleadings

12. Paragraphs 2 & 3 and 5 & 6 of the *Statement of case* – 2 & 3 are not the paragraphs to which the Claimant contends the Defendant has not responded. However, it is those paragraphs that allege that the Claimant was a Statutory Tenant. That allegation is the premise for pleadings at paragraphs 5 and 6 as to failure of the Claimant to renew the alleged tenancy. As such, a denial of paragraphs 2 and 3 by way of setting out an alternate version of events, effectively responds to paragraphs 5 and 6 as well.
13. Paragraph 3 of the *Defence* - This expressly responds to paragraphs 2, 3 and 4 of the Statement of case setting out a version different from a Statutory Tenancy thereby responding to 5 and 6 as well.
14. Paragraphs 3 to 11 of the *Defence* - These explain that the Defendant and her grandmother entered into a contractual tenancy with a relative in 1964 which included permission to develop four and a half lots of land and to purchase same when they could afford to do so. The eventual price would be at a lower rate based on rent payments over the years, family relations and the then owner's wish to invest in a church to be built on the land.
15. The Defendant and her grandmother cleared and developed the land, used it for agricultural purposes, built three houses and a church on it prior to 1981. Additionally before that date the Defendant was able to purchase one lot of the land where she built a house and currently resides.
16. Paragraph 7 of the *Statement of Case* - This paragraph alleges that in or around February 2017 the Defendant began to expand her occupation of tenanted lands thereby encroaching on lands of the Claimant and another named occupant who is not a party to these proceedings.
17. Paragraph 2 of the *Defence* - This pleading underscores that the Claimant has not identified the description or location of the two lots claimed within a 12 acre parcel of land owned by the Claimant. Paragraph 2 clearly discloses grounds for defending the Claim not only as to there being no identified lands for the alleged two lot Statutory Tenancy but also as to any alleged encroachment. It is therefore not correct that the Defence fails to respond to paragraph 7 of the Claim.

18. Paragraph 8 of the Statement of Case - This paragraph refers to the pre-action protocol letter sent to the Claimant prior to filing the Claim seeking that the Defendant either purchase “the said lands” (which are undefined) or vacate the premises. The proposed purchase of the property was to be at open market value as determined by an independent valuator.
19. Paragraph 3(c) of the Defence – This paragraph pleads that there was included as part of the contractual tenancy arrangements between the Defendant and the prior owners an agreement that the lands could be sold to her “at a much reduced rate.” It is therefore not correct that the Defence fails to respond to paragraph 8 of the Claim.
20. Paragraph 9 of the Statement of Case – This paragraph of the Statement of Case alleges that a church stands on the tenanted lands and it is incapable of removal.
21. Paragraphs 2, 7 and 9 of the Defence - Save in so far as the Defendant has pleaded at paragraph 2 of the Defence that the Claimant has not identified the two lots referred to in the Statement of Case, it is clear from paragraphs 7 and 9 that the Claimant admits that a Church stands somewhere on the four and a half lots of land that are subject to her contractual tenancy arrangements.

D. Analysis of Law and authorities

22. On coming into force in 1981, Sections 3 and 4 of the Act provided that any pre-existing tenancy with a chattel house used as a dwelling erected thereon was converted to a Statutory Tenancy in 1981. That meant that tenants gained security of tenure for a period of 30 years. After that, in the year 2011, the Tenant could either exercise a right to renew the tenancy for a further 30 years or to purchase it at half the market value. This had to be done by 2011, the expiration of the 30 year statutory tenancy. Land used for agricultural purposes was expressly excluded from the provisions of the Act and land used for a building that was not for dwelling was also excluded.
23. In light of the provisions of the Act relied upon by the Claimant, the Claimant must establish that a Statutory Tenancy existed in order to succeed in the Claim. According to the Claimant, if there is no denial of such a tenancy then the Defence filed cannot succeed and should be struck out as disclosing no grounds for defending against the

Claim. The Claimant says that the Defendant has not responded to the pleading that she is a Statutory Tenant and has not met the requirements of **CPR 10.5 (3) to (6)**.

24. **CPR 10.5** provides as follows:

Defendant's duty to set out his case

10.5 (1) *The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.*

(2) *Such statement must be as short as practicable.*

(3) *In his defence the defendant must say—*

(a) *which (if any) allegations in the claim form or statement of case he admits;*

(b) *which (if any) he denies; and*

(c) *which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.*

(4) *Where the defendant denies any of the allegations in the claim form or statement of case—*

(a) *he must state his reasons for doing so; and*

(b) *if he intends to prove a different version of events from that given by the claimant, he must state his own version.*

(5) *If, in relation to any allegation in the claim form or statement of case the defendant does not—*

(a) *admit or deny it; or*

(b) *put forward a different version of events, he must state each of his reasons for resisting the allegation.*

(6) *The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.*

25. Counsel for the Claimant and for the Defendant have cited different cases as to the type of pleading that will meet the requirements of Part 10.5 of the CPR. The Defendant cites **CV2010-05075 Wayne Dillon v Trinity Housing Company Ltd**. The Claimant cites **Civil Appeal 244 of 2008 M.I.5 Investigations Ltd v. Centurion Protective Agency Limited**.

26. From these authorities, there is no real distinction as to the position taken by the Court. Mendonca JA said at paragraphs 7 and 8 of **M.I.5** that in his view “*where a Defendant sets out a different version of events from that set out by the Claim that can be a sufficient denial for purposes of 10.5(4)(a).*” Boodoosingh J, following the **M.I.5** guidance, observed in **Wayne Dillon** that the Defendant’s Defence was in the format of putting forward a different version of events. He said at paras 12 to 13 that even if the words “admit” and “deny” are not used, once it is clear on a reading of the paragraphs of the Defence in context that a Defence is established, the requirements of CPR 10.5 are met.
27. As aforementioned, it is my finding that in the instant case the Defendant has pleaded a Defence that meets the requirements of CPR 10.5 by setting out a different version of events which denies the points pleaded by the Claimant.
28. The Claimant included in his written submission, argument as to whether the Defence pleaded is of insufficient merit and should therefore be struck out as disclosing no grounds for defending the case. The said argument at paragraphs 11 to 23 of the submission fails however, to take into account that the Defendant is not admitting to being a Statutory Defendant.
29. She has set out an entirely different contractual basis for her presence on the land for over 50 years where she has been farming, has built three homes and a church and has purchased one lot over a period of time preceding 1981 when Statutory Tenancies were created. In all the circumstances the authorities cited by the Claimant are inapplicable as they do not address the pleaded Defence.

E. Conclusion and Order

30. The Defendant has comprehensively responded to the Claim by setting out a different version of events which denies the critical contention of the Claimant that the Defendant is merely a Statutory Tenant. In so doing she has complied with CPR 10.5 by not only denying but giving reasons for her denial by way of the said different fact scenario pleaded. It is clear that her Defence is that the Act does not apply in the circumstances of this case and that instead she is entitled to retain the four and a half lots based on her

purchase of one lot and “contractual tenancy” of another three and a half lots, in a manner which, as fully pleaded, exceeds the scope of the Act.

31. Additionally, she underscores in her pleading that the two lots claimed by the Claimant are not described by reference to any surveyed boundaries. As such she clearly does not admit that any land she occupies is the land that the Claimant is seeking possession of or that she has encroached on anyone’s land as alleged.
32. She has counter-claimed for declarations based on the alleged contractual arrangements and the acquiescence of the prior owners of the land on which she relied to her detriment by developing the lands for over 50 years.
33. The application to strike out the Defence is dismissed with costs of the Application to be paid to the Defendant by the Claimant.
34. The Claimant’s application for an extension of time to April 10th 2018 to file a defence to the Counterclaim is granted.

Delivered on: 20th March 2018

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**Eleanor Joye Donaldson-Honeywell
Judge.**

Assisted by: Christie Borely, JRC I