

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016-02814**

**BETWEEN**

**FIYAZ HOSEIN**

**Claimant**

**AND**

**FYZAL HOSEIN**

**Defendant**

**Before the Honourable Madam Justice Margaret Y. Mohammed**

**Dated the 4<sup>th</sup> May 2018**

**APPEARANCES:**

The Claimant not appearing and being unrepresented.  
Mr. Chris Seelochan Attorney-at-Law for the Defendant.

**REASONS**

1. On the 2<sup>nd</sup> February 2018 I dealt with two applications which were filed by the Defendant on the 8<sup>th</sup> May 2017. The first application was the Defendant's application for summary judgment on his Counterclaim ("the summary judgment application"). The Defendant did not seek all the reliefs which he sought in his Counterclaim, therefore I only granted the Defendant the reliefs sought in the summary judgment application. I ordered that:

- (a) The Defendant is entitled to possession of All and Singular that piece or parcel of land comprising five thousand (5000) square feet more or less together with the building standing thereon situate at No. 2 Essence Avenue, Carli Bay Road, Couva in the Island of Trinidad by virtue of his Certificate of Comfort ("the Couva property").

(b) The Claimant do pay the Defendant's costs of the Application and the Counterclaim.

2. The second application was the Defendant's application to strike out the Claimant's Claim Form and Statement of Case ("the striking out application") on the basis that it was an abuse of process and it disclosed no grounds for bringing the instant action. I struck out the Claim Form and Statement of Case on the grounds of abuse of process and that the Statement of Case disclosed no grounds for bringing a Claim against the Defendant. I also ordered the Claimant to pay the Defendant's costs of the striking out application and the claim.
3. The Claimant having appealed both orders I set out my reasons for making both. To place the applications in context, I will set out the pleaded case by each party.

#### *The Claim*

4. The Claimant lives at the Couva property and has resided there since 1991 following the construction of a concrete three bedroom flat dwelling house ("the house") with a large garage to the left side and a large shed to the front of the house. In 1990, while living in Felicity, the Claimant allowed Fareed Hosein ("Fareed") and the Defendant to live with him. Their parents consented to this arrangement because they were poor and had immense difficulties caring for their children. From that time the Claimant considered Fareed and the Defendant to be his sons and he gave them permission to occupy the Couva property.
5. The Claimant expended monies he had saved over the years paying construction workers and also physically building the house. After the house was built, the Claimant expended monies on the general maintenance, upkeep and renovation of the Couva property over the years.
6. In 1999, the Claimant gave permission to the Defendant to make an Application for a Certificate of Comfort ("the Certificate of Comfort") on behalf of the family at the Land Settlement Agency for the Couva property. The Claimant's case was that he was of firm view that the Defendant would adhere to his wishes to have the family as a unit acquire

security of tenure of the Couva property and not any sole and exclusive rights to the Defendant to the exclusion of all others.

7. Around June 2003, the Defendant left the Couva property of his own free will and at no time did the Claimant revoke the Defendant's permission to occupy it.
8. The Claimant remained in continuous and undisturbed occupation of the Couva property along with the other family members. When the Claimant asked the Defendant why he had left the Couva property, the Defendant told him he would only explain himself if the Claimant promised not to ask him to return to it. The Claimant so promised and the Defendant stated that he left to take care of his biological mother who died approximately four and a half months later.
9. According to the Claimant, a few months after the Defendant left, the latter went to the office of Mr. Rajaram, a Justice of the Peace in Couva, and caused him to draft a document stating that the Defendant had given up all rights in the house on the Couva property to his brother, Fareed.
10. In June 2016, the Defendant in a brazen and aggressive manner attended the Couva property while the Claimant and other family members were present and in a boisterous manner demanded that all parties vacate it since it belonged to him due to the existence of the Certificate of Comfort which is the name of the Defendant. The Defendant returned to the Couva property in July 2016 and informed the Claimant that he needed to construct a small place to reside on the Couva property due to his difficulties in renting a place of abode that occurred subsequent to him vacating the Couva property. The Claimant consented to the construction solely because of his relationship with the Defendant and his desire to maintain his fatherly role and good relations.
11. The Defendant blocked around a shed which had once served as a garage and a place to operate their trade. He blocked the shed with red blocks and it remained unfinished. From the Claimant's observation there were three rooms, a toilet and bath. There was no window installed. The Claimant annexed a copy of a picture illustrating same and marked as "A".

12. The Claimant contended that from July 2016 to the date of the filing of the instant action, he and his family had been met by frequent abuse and lived in fear of immediate violence due to the many times the Defendant attended the Couva property and hurled obscenities demanding that the Claimant and his family members leave as the Defendant is the owner due to the Certificate of Comfort.
13. On the 9<sup>th</sup> day of August 2016, the Defendant informed the Claimant that he had six days to vacate the Couva property or he will “*remove them by force*”. The Claimant became even more fearful for his and his family’s safety as a result he attended the office of Sajina A. Kadir & Co., Attorneys-at-law who caused a pre-action protocol letter dated the 10<sup>th</sup> day of August 2016 to be dispatched to the Defendant. The Claimant annexed the pre-action protocol letter as “B”.
14. According to the Claimant, on the 12<sup>th</sup> day of August 2016 at approximately 11a.m, a person named “*Richard*” attended at the Couva property. Richard showed the Claimant a badge and identified himself to be Licensed Bailiff. The bailiff gave the Claimant and other family members approximately five minutes to gather some belongings and to vacate the Couva property. Due to fear, the Claimant and his family complied with the said instructions. The bailiff and his servants and/or agents began to physically remove furniture and other items from the Couva property. The Claimant called the Couva Police Station, who came to the Couva property promptly in an attempt to keep the peace. The police told them that the matter ought to be dealt with before the court and their duty was simply to keep the peace.
15. According to the Claimant, the bailiff did not produce any Court Order, but rather, he demanded that the Claimant leave the Couva property as it was owned by the Defendant who had retained the bailiff to ensure that all persons save and except the Defendant vacate the Couva property forthwith.
16. The Claimant averred that he informed the bailiff that his Attorneys-at-Law were dealing with the matter but the bailiff did not pay attention to his concerns. This prompted the Claimant to immediately contact Sajina A. Kadir and Kavita C. Persad, Attorneys-at-Law

to seek immediate assistance and redress. The Claimant subsequently left the Couva property with the bailiff still present. The Claimant said he felt traumatized, devastated, upset and exasperated by the chain of events that took place on the day 12<sup>th</sup> of August 2016.

17. The Claimant averred that Sajina A. Kadir, Attorney-at-Law contacted him to confirm his appointment to address the issue. The Claimant passed his mobile phone to the bailiff. The Claimant stated that he was duly informed by the said Ms. Kadir that the bailiff informed her “ *I gave verbal notice which tantamount to a letter and them ent paying rent so them have to go*”. The Claimant stated that Ms. Kadir brought the conversation to an immediate end indicating that the issues will be dealt with by a Judge of the High Court of Justice. An interim injunction was granted on the 12<sup>th</sup> August 2016 by Gobin J (“the Injunction Order”). A copy of the Injunction Order was annexed as “C”. The Injunction Order was served on the Defendant around 10 p.m. that night by the Couva Police Station because no bailiff arrangements could have been made.
18. According to the Claimant upon entering the Couva property with the Police, he observed that all locks were changed. When the Claimant brought this to the attention of the Police, the Police requested that the Defendant hand over the keys to the locks to the Claimant and exit the Couva property forthwith. The Defendant stated that there was nothing in the Injunction Order which prevented him from staying on the Couva property or returning. He indicated that he owned the Couva property and nothing could stop him from moving. The Claimant read clause 4 of the Injunction Order and the Police agreed that the Defendant had to move from the Couva property. The Defendant refused to leave and then agreed to leave when the police insisted that he had to leave. The Police caused the Defendant to change the said locks on the doors back to the original locks.
19. The Claimant stated that at approximately 8a.m the next day, 13<sup>th</sup> day of August 2016, the Defendant and one person unknown to the Claimant entered the Couva property which was unfenced. This prompted the Claimant to call Ms. Persad, Attorney-at-Law who advised him to immediately contact the Police. While waiting for the Police to arrive, the Defendant in breach of the Injunction Order began playing loud music from inside the area where he was building and singing along with the music in loud and raucous manner. When the

Police arrived, the Claimant produced and showed to the Officer a copy of the Injunction Order. The police officer went to the Defendant and told him he had no right to be on the Couva property.

20. According to the Claimant, the Defendant told the Police Officer who served the Injunction Order that he can return to the Couva property. The Defendant and the persons who were in his company complied with the command of the Officer and to date the Defendant and/or his servants and/or agents have not entered the Couva property.
21. The Claimant contended that if the Defendant is not restrained by an Order of the Court he will continue to be deprived of the use and enjoyment of the Couva property and he and his family will always live in fear of the Defendant due to his aggressive conduct.
22. The Claimant also pleaded that before the incident leading to the Injunction Order he had retained the services of the Defendant to assist as a carpenter with the certain works on the Couva property. In his Statement of Case, the Claimant included a table which represented the monies paid to the Defendant for services rendered. In 2004, the Defendant was paid \$2,500.00 for completing fence work on the right and left side of the Couva property. In 2006, he was paid \$11,000.00 for the construction of a bedroom wardrobe/cupboard. In 2007, he was paid \$3,000.00 for plastering the bedroom walls of the house and 2011 he was paid \$33,750.00 for work done on kitchen cupboards.
23. According to the Claimant, all these monies were paid by the Claimant to the Defendant in cash. The Defendant never gave receipts and the Claimant never asked for them due to the relationships which existed. Fareed assisted the Defendant with labour for all the works as listed above and he was not paid because he was living on the Couva property.
24. The Claimant averred that he used his monies to purchase material and pay for labour for the purpose of construction and renovation of the Couva property over the years. He said he went to the hardware many times and he was heavily involved in every aspect of the work. He annexed copies of receipts from workmen who received payment from him. He attached certain receipts which were marked as "D" as well as copies of statutory

declarations from persons who worked on the house and lived around the village collectively marked as “E” to the Statement of Case.

25. The Claimant’s case was that both Fareed and the Defendant assisted in the construction of the house but it was not free labour or free services of any kind. At all materials times, once the Defendant’s services were requested, the Claimant paid him for his services in cash on a daily or weekly basis. Due to the familiar nature of their relationship , the Claimant did not take receipts from the Defendant as he never envisioned any problems of this nature whatsoever as he took care of the Defendant for so many years like a real father would care for a son.
26. In light of the foregoing the Claimant claimed against the Defendant:
  - i. A declaration that the Claimant has acquired equitable interest in the Couva property.
  - ii. An order to restrain the Defendant, whether by himself or through others acting on his behalf or on his instructions or with his encouragement from harassing and/or threatening and/or molesting the Claimant and his family.
  - iii. An order preventing the Defendant, whether by himself or through others acting on his behalf or on his instructions from entering the Couva property.
  - iv. Interest at the statutory rate of 6% per annum from the date hereof to the date of judgement and thereafter a rate of 12% pursuant to Section 25A of the Supreme Court of Judicature Act Chapter 4:01.
  - v. Costs
  - vi. Further or other relief that the court may deem fit.

#### *The Defence and Counterclaim*

27. In his Defence, the Defendant contended that the Claimant had no reasonable cause of action or realistic prospect of success on his claim. The Defendant’s Defence was based on the following facts. The Defendant contended that the Claimant lived at the Couva property with him and his brother, Fareed and that the house was built by them. He denied that the Claimant was, at the time, living in Felicity. According to him, he was living with his

parents and his siblings at Mission Road, Freeport when the Claimant observed the Defendant and his brothers playing cricket and football in front of the Masjid Nasir mosque at Gupta Trace, Freeport. The Claimant approached the Defendant's parents saying that he needed workers for this cake essence business and told his parents that he would take care of the children and their schooling and pay them a salary and the Defendant's parents would be allowed to visit. The Defendant stated his parents agreed to the arrangement.

28. The Defendant and his three brothers then went to reside with the Claimant in Felicity at the residence of the Claimant's mother-in-law. The Claimant lived with his father at 113 Mission Road, Freeport at the time and it was only after the arrangement was made that the Claimant and the Defendant and his brother went to live at Felicity.
29. The Defendant averred that he and his siblings began working at the essence business at 113 Mission Road, Freeport at the Claimant's father's house prior to moving to Felicity. The Defendant denied that his parents were having immense difficulties but acknowledged that they were not wealthy. A copy of the essence label was annexed and marked "A" to the Defence. The Defendant contended that the house in Felicity was not the Claimant's but was owned by his mother-in-law. The Defendant and his four brothers together with the Claimant, his wife and their one year old child lived there.
30. Upon moving in with the Claimant, the Claimant caused the Defendant and his brothers to work full time at the essence factory, firstly at Freeport and then at Felicity. They washed bottles, mixed essence, labelled bottles, mixed and filled the bottles and conduct sales. There were no other workers and the Claimant would assist from time to time. The Defendant and his siblings visited their parents every two weeks. The Defendant averred that he and his brothers were never paid for any work that were done for the Claimant.
31. The Defendant contended that while he lived at Freeport at around age 16, the Claimant began making sexual overtures to him and his siblings. Upon moving to Felicity at age 17, the Claimant began physically abusing the Defendant and his siblings. Two of the Defendant's siblings ran away and returned to live with their parents. The Claimant's wife and two children migrated a few months later in 1991. The Defendant and his siblings



remained at the Felicity house with the Claimant. After the Claimant's wife left, the Defendant began blaming the Defendant for them leaving and accused him of becoming affectionate with his wife.

32. In 1991, a bailiff, acting on behalf of the mother of the Claimant's wife evicted the Claimant, the Defendant and his siblings out of the Felicity home. They returned that same night but about three weeks later the same bailiff came and threw them out again. They then went to live at the residence of the Defendant's sister and her husband in Couva on lands owned by the State. The Claimant, the Defendant and his brother Fareed built a shed annexed to the house and they lived and ran the essence business from there where they remained for a year. After some time the Claimant's brother-in-law pointed to a vacant piece of land two lots away.
33. The Claimant, Defendant and Fareed then gradually constructed a three bedroom house with a living room and kitchen over a period of eight or nine years ("the Couva property"). They moved in around 1992. At the time the house was not plastered, with ply boards blocking the windows. The essence business was moved to the Couva property. The Claimant, the Defendant and Fareed slept in one bed in one bedroom and the sexual abuse continued. The Defendant and Fareed continued to work in the essence business without any form of compensation. As the business took off, the Defendant and Fareed would take one day off per week. The Claimant had total control of the lives of the Defendant and Fareed. In 1996, the Defendant and Fareed changed their names and their parents were upset and stopped speaking to them. The Defendant annexed a copy of his birth certificate as well as the deed poll changing his name and marked "B" and "C" to the Defence. The Defendant got married in 1998 and he annexed his marriage certificate as "D" to the Defence.
34. According to the Defendant, prior to meeting him, the Claimant was the owner of eleven lots of land at Freeport which he had purchased in 1988 ("the Freeport land"). A copy of the deed for the said lands was annexed and marked "E" to the Defence.

35. The Defendant continued to work without payment from the Claimant who provided the Defendant and his wife with their basic needs, such as food and clothing. The Claimant continuously told the Defendant that he was responsible for the breakdown of his marriage and that everything he did in his life would be to please him. The Defendant said he felt guilty about this and he felt constrained to do the Claimant's bidding.
36. As time went on, the Defendant and Fareed began to question the Claimant about non-payment for their services and his behaviour towards them. The Claimant agreed that as partial compensation for their efforts the Defendant would get the Couva property and Fareed would construct a house on the lot at the back of the Couva property for himself. As a result of this, the Defendant applied for the Certificate of Comfort without objection from the Claimant or Fareed. He annexed a copy of the Certificate of Comfort as "F" to the Defence.
37. The Defendant contended that upon reliance of the Claimant's promises that compensation for his efforts would be forthcoming, the Defendant continued to work in the essence business and assist in maintaining the Couva property. The Defendant averred that the monies for the building and maintenance of the house on the Couva property came from the business. The Claimant also had other businesses including a video game arcade and several vehicles. The Claimant, the Defendant and Fareed ran all these businesses. The arcade was closed shortly thereafter since they were robbed three occasions.
38. The Defendant put the Claimant to strict proof that construction workers were retained by the Claimant and of any monies were expended in the construction of the house.
39. The Defendant averred that he and his wife left the Couva property in 1998. However, Fareed contacted the Defendant and told him that the Claimant had threatened to drink weedicide and out of sympathy, the Defendant and his wife returned.
40. Around 2000 to 2001, the Defendant, the Claimant and Fareed (with assistance from the Defendant's wife and one of the Defendant's brothers who had reconciled with the Claimant) constructed a flat concrete house on one lot of land on the Freeport land ("the Freeport house"). Materials were purchased with monies from the essence business. The

Freeport house was initially built for the Claimant's brother Imitaz to live in. Imitaz lived at the Freeport house for about seven years until around 2009 when he moved out and returned to live with his father. The Freeport house then remained vacant for five years. The other lots on the Freeport land were planted by the Claimant, the Defendant and Fareed for about three years. The crops were tomatoes, sweet peppers and cucumber and the Defendant sold this produce at the Chaguanas Market. All monies were given to the Claimant.

41. The Defendant claimed that the Claimant owed him the following amount of monies for work done during the fourteen year period from 1990 to 2003: (a) \$150.00 per day Monday to Sunday – the sum of \$604,800.00; (b) 25 Sundays per year at \$150.00 - \$52,500.00 being 350 Sundays for 14 years; and (c) Taxi – the Defendant said he worked for the Claimant for three years driving taxi on mornings and evenings. The Claimant earned about \$300.00 per day. The Claimant promised to pay to the Defendant the sum of \$100.00 per day for the days he worked. However, the Claimant never paid the Defendant. The Defendant averred that he worked approximately 48 weeks per year and that he was therefore entitled to the sum of \$86,400.00.
42. The Defendant averred that in 2003 he left the Couva property since while the Defendant was seated in the back of a car on the Couva property, the Claimant came up to him and told him to get up and do some work. The Defendant responded that he was not feeling to do any work and the Claimant slapped him on the left side of his face. The Defendant had been assaulted by the Claimant on many previous occasions but this was the last straw and he drove away without returning. The Defendant did not take his wife with him. The Defendant parked the vehicle opposite the Couva Police Station and returned to his parents' home where he reconciled with them. The Defendant denied that he left to take care of his mother as alleged by the Claimant since at the time he was not on speaking terms with his parents and, in any event, his father and youngest brother were caring for his mother. When the Defendant left, Fareed stopped speaking to him.
43. The Defendant remained at his parents' premises for about three months and then went to live at rented accommodation in Brickfield Village. The Defendant, upon moving in with

his parents, had started to work a taxi which his parents had purchased for him. He was 32 years old at the time and this was the first time was earning an income. He and his wife divorced three years after. He annexed a copy of the decree absolute and marked it as “G” to the Defence.

44. In 2012, the Defendant was still renting in Brickfield and at the time he was living with his then common law wife and his daughter. Fareed told the Defendant that the Claimant had realized that the Defendant had been treated unfairly and that he arranged with the Claimant for the Defendant’s family and him to stay at 245 Mission Road, Freeport. The Defendant spoke with the Claimant who acknowledged that the Couva property was the Defendant’s and he told the Defendant that he could live at Freeport for as long as he needed to. Upon reliance of the Claimant’s promises the Defendant and his family moved in and stayed on in the Freeport house for four years.
45. During the four years the Defendant did several renovations to the Freeport house. According to the Defendant, he filled the yard around the house with dirt. He removed the ply windows and replaced same with glass and steel in the kitchen area. To do the renovations, he bought thirty loads of dirt at \$300.00 per load and one load of Blue Metal at the cost of \$1,400.00. The cost of labour and materials for the windows were \$3,000.00. The backhoe services cost \$4,500.00. He said no receipts were issued to him for the materials because at the time he did not request any, as he did not feel it was necessary. He annexed photographs showing the renovation works and marked “H” to the Defence.
46. In February 2016, the Claimant told the Defendant that he needed the Freeport house to use and he asked him to leave. The Defendant then went to the Couva property and began constructing an apartment consisting of two bedrooms, kitchen and living room, toilet and bath with washing area. The apartment formed an extension to the house on the Couva property. The Claimant never gave consent to this construction. The Defendant’s position was that the Claimant’s consent was not required since the Defendant was the holder of a Certificate of Comfort for the Couva property. Fareed assisted the Defendant with the construction works. The apartment was built of hallow clay bricks with galvanized roof. The inside of the apartment has gypsum partitions and a drop ceiling made of gypsum tile.

The windows were made of steel however they were still to be installed. The doors were wooden. The Defendant spent approximately \$60,000.00 on materials and labour for the construction of the apartment. He annexed copies of receipts and marked them as "I" to the Defence.

47. During the first three months of 2016, the Claimant again acknowledged his debt to the Defendant for his years of employment. Around May to June 2016, Fareed, as agent of the Claimant, approached the Defendant and told him that the Claimant was willing to give the Defendant the Freeport house and approximately one lot of land on which it stands together with the sum of \$150,000.00 (to be paid on or before 10<sup>th</sup> July 2016) as compensation for all the works the Defendant had done over the years provided that the Defendant allow the Claimant and Fareed to stay at the Couva property. The Claimant also subsequently personally made this offer to the Defendant, who accepted in July of 2016, by communicating same to Fareed as agent of the Claimant as well as to the Claimant.
48. The Defendant contended that in July 2016, the Claimant and the Defendant entered into an oral agreement ("the Agreement") in which the Claimant would compensate the Defendant for the work done by the Defendant for the Claimant over the years by giving the Defendant the sum of \$150,000.00 to be paid on or before the 10<sup>th</sup> July 2016, together with the Freeport house and approximately one lot of land of the Freeport land on which the house is situated provided that the Defendant allow the Claimant and Fareed to stay at the Couva property.
49. The Claimant sent a letter to the Defendant dated 5<sup>th</sup> July 2016 in which he purported to state his position and intention to give to the Defendant the Freeport house together with the land on which it stands if the Defendant would give to him and Fareed the house on the Couva property and refrain from doing or saying any negative thing about his character. The letter excluded the agreed payment of \$150,000.00 and wrongly stated that the Claimant had agreed to give the house on the Couva property to the Claimant and Fareed when in fact he had only agreed to allow them to live there. The Defendant annexed a copy of the July the 2016 letter and marked it as "J" to the Defence.

50. In furtherance of the Agreement, the Claimant paid to the Defendant \$81,000.00 by cheque dated the 1<sup>st</sup> July 2016. However, the balance of \$69,000.00 remained due and owing to the Defendant and the Claimant refused to pay it to the Defendant. The Defendant annexed a copy of the cheque and marked it as “K” to the Defence.
51. The Defendant denied speaking to the Claimant upon entering the Couva property in June 2016. According to the Defendant, the Claimant asked the Defendant to vacate the Freeport house because it belonged to him. The Defendant then decided to construct an apartment for his family and himself at the Couva property as he had an interest in it. The Defendant proceeded with the construction of his apartment so that his family could have somewhere to live. Fareed helped the Defendant to construct the apartment. The Defendant averred that he did not have any conversation with the Claimant with respect to the house on the Couva property save and except when the Claimant offered to give the Defendant the sum of \$150,000.00 and the Freeport house together with the lands upon which it stands in exchange for the Defendant doing all in his power to transfer any interest in the Couva property to the Claimant and Fareed. The Defendant annexed a photograph of Fareed assisting the Defendant and marked it “L” to the Defence.
52. The Defendant contended that he began construction of a two bedroom structure on the side of the house. The said structure is located at the back of the garage area and in no way could affect the Claimant’s business operations. The said structure is annexed to the main house. He annexed a photograph showing the Defendant’s constructions as well as the garage area and marked it “M” to the Defence.
53. The Defendant denied the allegation of entering the Couva property and hurling insults. He said he went about his business of constructing his apartment for his family and himself. He said he stopped speaking to the Claimant when he realized that the Claimant was not forthright.
54. The Defendant asked that the Freeport house and the one lot it stood be transferred over to him as agreed however the Claimant wanted the Defendant to sign over the Couva property

but the Defendant told him that was not the agreement and that he could not transfer the Couva property to anyone.

55. The Defendant denied giving the Claimant 6 days to vacate the property. He said he had no interaction with the Claimant as he had stopped speaking with him. The Defendant's attorney at law responded to a letter sent to the Defendant by the Claimant's previous attorney and the Defendant was prepared to see the outcome of that correspondence.
56. The Defendant stated that the Couva property belonged to him. Neither the Claimant nor Fareed paid rent and they are in occupation since the Defendant allowed them to stay there. Despite several requests of the Defendant to have the Claimant and Fareed moved to their respective lands which they own the Claimant and Fareed refused to leave the Couva property. The Defendant contended that he had no other place for his family to stay except on the Couva property or to rent since the Claimant had requested that the Defendant vacate the Freeport house. The Defendant said he took misguided actions to remove the Claimant and Fareed from the Couva property as the Defendant did not want either of them around his three daughters for fear that the Claimant may abuse them.
57. The Defendant contended that the Injunction Order was granted in his absence and he reserved the right to apply to have it set aside. The Defendant also contended that the Claimant misled the court in his application for the Injunction Order by falsely stating that the Claimant was the owner of the Couva property. He annexed a copy of the Injunction Order dated the 12<sup>th</sup> August 2016.
58. In relation to the Claimant's allegation that the Defendant changed the locks, the Defendant stated that only one lock was changed and not all as alleged by the Claimant. He said he gave the Claimant the keys to the lock that was replaced. He said when the police arrived, he was on the Couva property with one of his brothers and his father. He said he listened to the officer. He then asked the officer to wait until he secured his apartment and they all left. He stated that the scene which the Claimant described was fabricated and embellished and did not happen.

59. The Defendant averred that he returned to the Couva property at about 7:30 a.m on the 13<sup>th</sup> August 2016. He said he did not seek legal advice with respect to the Injunction Order and he had not read or understood the terms of it so he was unaware that he was restricted from entering the portion of the Couva property that he had recently constructed. He said when the police arrived and explained to him the terms of the Injunction Order he then explained to the officers that he was not aware of the terms as he had received it late at night and he did not read it. Thereafter he was allowed to secure his apartment and then left. He said he did not have any interactions with the Claimant.
60. The Defendant maintained that he is the owner of the Couva property and that the Claimant and Fareed have their properties elsewhere. He annexed copies of deeds (to the Defence) showing the properties of the Claimant and Fareed and marked “O” and “P” respectively. The Defendant annexed copies of the deed showing Fareed’s name and the Claimant’s name as well as the Certificate of Comfort for the Couva property showing the Defendant’s name as well as a copy of a cheque showing the payment made by the Claimant and marked them as “Q”, “R” and “S” respectively to the Defence.
61. The Defendant contended that the fence work allegedly done in 2004, the construction of a bedroom wardrobe/cupboard allegedly done in 2006, plastering of the bedroom walls of the house allegedly done in 2007 and kitchen cupboard allegedly done in 2011 were not done by him. The Defendant left the Couva property in 2003 and he did not speak to the Claimant for several years thereafter. Additionally, the Defendant stated that he only learnt how to do cupboard work from July 2013 from his brother Andy Samlal and in or about November 2013, the Defendant purchased his own tools. The Defendant therefore contended that the alleged work that the Claimant claimed he did and was paid for was fabricated by the Claimant.
62. The Defendant contended that no work was done on the Couva property after he left in 2003 save and except the apartment that the Defendant began constructing in 2016. He said he only started speaking to the Claimant in March 2012. He annexed copies of receipts showing when the Defendant purchased his tools and marked them “U” to the Defence.



63. The Defendant contended that he was never paid for any work done for the Claimant. He said all proceeds from the sale of the essence, the taxi work as well as the garden and arcade were given to the Claimant by the Defendant. The monies the Claimant alleged that he purchased materials with were made with the efforts of the Defendant and his brother. The Defendant stated that he and Fareed went with the Claimant to purchase the necessary materials.

*The Counterclaim:*

64. The Defendant claimed that in the agreement the Claimant agreed to compensate the Defendant for the works that he had done for the Claimant over the years by giving the Defendant the sum of \$150,000.00 (to be paid on or before the 10<sup>th</sup> July 2016) together with the Freeport house and approximately one lot of land on which the house is situated provided that the Defendant allow the Claimant and Fareed to stay at the house on the Couva property.

65. In furtherance of the agreement the Claimant paid to the Defendant the sum of \$81,000.00 by cheque dated the 1<sup>st</sup> July 2016. However, the balance of \$69,000.00 remained due and owing to the Defendant and the Claimant has refused to pay same to the Claimant. The Defendant annexed a copy of the cheque and marked "U".

66. In breach of agreement, the Claimant failed to pay the balance of the sum to the Defendant by the 10<sup>th</sup> July 2016 or at all and took steps to have the Defendant removed from the Couva property. The Claimant refused to pay the said sum at all or even acknowledge that the agreement was made. The Claimant failed to take any steps to transfer the Freeport house and the one lot of land on which it is situate to the Defendant. The Claimant was now attempting to deprive the Defendant of the use and occupation of both the Couva property and the Freeport house. The Defendant had not been compensated for works done for the Claimant despite the Claimant's agreement to do so.

67. The Defendant contended that by acquiescence and promissory estoppel and /or proprietary estoppel and the numerous acts of expenditure, time and effort, he had acquired an interest in the Freeport house.
68. The Defendant maintained that he is the holder of the Certificate of Comfort for the Couva property. The Claimant and Fareed Hosein have refused to vacate the Couva property and continued to occupy same (even though both of them have alternative accommodation) and instead they sought the services of another attorney who wrote to the Defendant. In support of his claim, the Defendant submitted that the utility bills for the Couva property are in his name. He annexed a copy of a utility bill and marked “V” to the Defence.
69. The Defendant averred that the house on the Couva property is incomplete and not furnished save and except for one bed, one mattress, one small table and utensils in the kitchen. He annexed a photograph showing the state of the house on the Couva property and marked “W” to the Defence.
70. The Claimant continued to use the Couva property for his essence business and the Defendant was not given any compensation for the use of it. The Defendant has been deprived of the use and enjoyment of the Couva property and has suffered loss and damage. He has been living in rented accommodation since August 2016 with a monthly rent of \$2,200.00.
71. The Defendant counterclaimed:
  - i. Specific performance of the agreement.
  - ii. Damages for breach of the agreement.
  - iii. Further or in the alternative, a declaration that the Defendant is entitled to the Freeport house and the lot of land on which it is situate by virtue of the said promissory estoppel and/or proprietary estoppel.
  - iv. A declaration that the Defendant is entitled to possession of the Couva property by virtue of the Certificate of Comfort.

- v. Further and in the alternative, a declaration that the Defendant is entitled to an equitable interest in the house situate on the Couva property by virtue of the said promissory estoppel and/ or proprietary estoppel.
72. The Defendant also counterclaimed for interest pursuant to Section 25 of the Supreme Court of Judicature Act; costs and such further and/or other relief as the Court may deem just.
73. The Defendant relied on the pleaded facts in the Defence to support the aforesaid reliefs in the Counterclaim.
74. There was no Defence to the Counterclaim filed by the Claimant.

*The summary judgment application.*

75. The basis for the Defendant seeking summary judgment was set out in the grounds and the affidavit of the Defendant filed on the same date. The reasons were that the Claimant had no realistic prospect of success on the Defendant's Counterclaim since he had failed to file a Defence to the Counterclaim despite being given repeated opportunities to do so and pleadings in the matter was closed at the 8<sup>th</sup> May 2017.
76. On the 9<sup>th</sup> November 2016 the Defendant filed a Counterclaim against the Claimant seeking the following orders:
- (i) Specific performance of the agreement
  - (ii) Damages for breach the agreement.
  - (iii) Further or in the alternative, a declaration that the Defendant is entitled to the Freeport house and the lot of land on which it is situate by virtue of the said promissory estoppel and/or proprietary estoppel.
  - (iv) A declaration that the Defendant is entitled to possession of the Couva property by virtue of the Certificate of Comfort.

- (v) Further and in the alternative, a declaration that the Defendant is entitled to an equitable interest in the Couva property by virtue of the said promissory estoppel and/or proprietary estoppel.
- (vi) Interest.
- (vii) Costs.
- (viii) Such further and/or other reliefs as the Court may deem just.

77. On the 9<sup>th</sup> December 2016 at the first Case Management Conference (“CMC”) the Court gave directions for the Claimant to file and serve a Reply and Defence to Counterclaim on or before the 27<sup>th</sup> January 2017 and the matter was adjourned to the 3<sup>rd</sup> February 2017.
78. On the adjourned date the Claimant’s attorney at law indicated that she was unwell due to a foot injury and she requested time to file the Reply and Defence to Counterclaim. Having regard to the reason provided, the Attorney at law for the Defendant did not object to the extension of time for the filing of the Reply and Defence to Counterclaim until the 17<sup>th</sup> February 2017 and the matter was adjourned to the 14<sup>th</sup> March 2017.
79. On the 14<sup>th</sup> March 2017 at the CMC, the Claimant’s attorney at law indicated to the Court that she was filing a Reply and Defence to the Counterclaim. The Claimant has not filed any Defence to Counterclaim and it was unlikely to be any material dispute as to the fact in relation to the evidence to be adduced by the Defendant to prove his counterclaim.
80. In the summary judgment application the only relief in the Counterclaim which the Defendant sought was the declaration that he was entitled to possession of the Couva property and the costs of the application and the main action.

Law and analysis

81. Rule 15.2(a) CPR, empowers the Court to give summary judgment on the whole or part of the claim if the Defendant has no realistic prospect of success on his claim or part of claim or issue. The summary judgment application was with respect to the Defendant’s counterclaim, which was his claim against the Claimant. In **Western Union Credit Union**

**Co-operative Society Limited v Corrine Amman**<sup>1</sup> Kangaloo JA was dealing with an application for summary judgment by the Claimant. The learned Judge applied the English approach on applications for summary judgment and gave the following guidance:

“The court must consider whether the Defendant has a realistic as opposed to fanciful prospect of success: **Swain v Hillman** [2001] 2 AER 91

A realistic defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: **ED & F Man Liquid Products and Patel** [2003] EWCA Civ 472 at 8.

In reaching its conclusion the Court must not conduct a mini trial **Swain v Hillman** [2001] 2 AER 91:

This does not mean that the court must take at face value and without analysis everything the Defendant says in his statements before the court. In some cases it may be clear there is no real substance in the factual assertion made, particularly if contradicted by contemporaneous documents: **ED & F Man Liquid Products v Patel** EWHC 122

However in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but also the evidence which can reasonably be expected to be available at trial **Royal Brompton NHS Trust v Hammond** (No 5) [2001] EWCA Cave 550

Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: **Doncaster**

---

<sup>1</sup> CA 103/2006 Kangaloo JA

**Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR  
63.”**

82. I was of the opinion that the failure by the Claimant to plead any facts to address the several new matters raised in the Defence and Counterclaim meant that the Claimant had conceded that those facts were not disputed and were indeed true. In this regard I concluded that the Claimant had conceded that the Defendant was the owner of the house on the Couva property for the reasons the Defendant had pleaded in the Defence and Counterclaim. For this reason I was of the opinion that the Claimant had no realistic prospect of success in defending the Counterclaim. As such I made the order as requested in the summary judgment application. I also ordered costs and ordered the costs to be assessed which was later done with Counsel for the Claimant being present.

*The striking out application*

83. In support of the striking out application was an affidavit of the Defendant deposed to on the 8<sup>th</sup> May 2011 (“the Defendant’s Affidavit”). The Defendant’s Affidavit set out the material aspects of the history of the matter as set out aforesaid in the pleadings. It stated that the instant action as commenced by Notice of Application and affidavit in support of the Claimant on the 12<sup>th</sup> August 2016. The Fixed Date Claim Form and Statement of Case were filed on the 1<sup>st</sup> September 2016 and a Defence and Counterclaim were filed on the 9<sup>th</sup> November 2017.
84. On the said 12<sup>th</sup> August 2016, the Court determined the Notice of Application filed on the 12<sup>th</sup> August 2016 without a hearing and made the Injunction Order:
- (a) This action is deemed fit for hearing during the court vacation;
  - (b) By way of interim relief, it is declared that the Applicant/Claimant and his family remain on the Couva property pending the determination of the substantive matter and the Respondent/Defendant is hereby restrained from evicting or attempting to evict the Applicant/Claimant and his family pending the determination of the substantive matter.

- (c) An injunction is granted to restrain the Respondent/Defendant, whether by himself or through others acting on his behalf or on his instructions and/or with his encouragement from harassing and/or threatening and/or molesting the Applicant/Claimant and his family.
- (d) An injunction is granted to restrain the Respondent whether by himself or through others acting on his behalf or on his instructions from entering on the Couva property pending the determination of the substantive matter.
- (e) Further hearing of this application is scheduled for Monday 15<sup>th</sup> August 2016 at 11:00 am in courtroom POS 20, Hall of Justice, Knox Street Port of Spain.”

85. On the 15<sup>th</sup> August 2016 the matter came up for hearing and the Gobin J ordered the injunction to continue.

86. The Defendant deposed that approximately two weeks later on the 1<sup>st</sup> September 2016 the Claimant’s Attorney at law filed the Fixed Date Claim and Statement of Case with exhibits. Having regard to the inordinate lapse of time between the filing of the injunction application and the Fixed Date Claim and Statement of Case, the Claimant and his attorney at law would have had more than sufficient time to give careful consideration to the contents of the Claimant’s claim.

87. The reasons the Defendant relied on to strike out the Claim were as follows:

- (a) The primary relief sought was an equitable interest in the Couva property which is owned by the State but the Land Settlement Agency/Commissioner of State Lands was not joined as a party despite the Claimant having had the opportunity to do so. The Defendant is merely the holder of the Certificate of Comfort for the Couva property and the party with the legal interest is therefore not before the Court. Therefore, the Court cannot grant the order sought in the Fixed Date Claim.
- (b) The Claimant was pleading rights in equity but he had failed to properly plead and particularize same.
- (c) The Claimant has failed to disclose to the Court that he is the owner of other properties, including the Freeport house and the Freeport land.

(d) The entire action is frivolous and without foundation.

88. The Defendant also stated that the Claimant had sufficient opportunities to make the necessary amendments to his Fixed Date Claim and Statement of Case in order to rectify the aforesaid and that was not done.
89. Under Rule 26.2(1)(b)CPR the Court is empowered to strike out a statement of case where it is an abuse of process of the Court. The Court is also empowered under Rule 26.2(1) (c) to strike out a statement of case for disclosing no grounds for bring or defending a claim.
90. Lord Diplock in **Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at page 536** stated that this is a power “*which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it would otherwise bring the administration of justice into disrepute among right-thinking people.*”
91. I struck out the Fixed Date Claim and Statement of Case for abuse of process since the State which is the legal owner of the Couva property was not joined as a party. It was clear from the pleadings that neither the Claimant nor the Defendant had the legal interest in the Couva property since neither exhibited a title document to his pleadings. I was of the opinion that any dispute in ownership of any interest of the Couva property which the Court was called upon to adjudicate, the party with the legal title ought to have been given notice of the instant action since the outcome would have had an impact on that party. The State was not made a party by the Claimant and there was no evidence that the Claimant had notified the State of the instant proceedings.
92. Secondly, I was of the opinion that although the Claimant grounded his claim in the Couva property in equity he failed to dispute the Defendant’s allegations of the Defendant’s financial and non-financial contributions to the Couva property, the agreement which the Claimant had with the Defendant and the Certificate of Comfort being in the Defendant’s name. In effect this demonstrated to me that the Claimant’s claim was without any basis



and there was no reasonable ground for bringing the claim against the Defendant. For this reasons I was of the opinion that there was no reasonable basis to allow the Claimant's claim to move forward.

**Margaret Y Mohammed**  
**Judge**