

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2018-00405**

**BETWEEN**

**SOUTHVIEW INVESTMENTS LIMITED**

**Claimant**

**AND**

**OLIVE REYES CLARKE**

**Defendant**

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

**Dated the 4 May 2018**

**APPEARANCES**

Mr. Larry Lalla instructed by Mr. Michael Rooplal Attorney at law for the Claimant.  
The Defendant appearing and representing herself in person.

**REASONS**

1. On the 8<sup>th</sup> March 2018 I granted summary possession of **ALL AND SINGULAR** that piece or parcel of land situate in the Ward of St. Anns in the Island of Trinidad comprising **EIGHT THOUSAND AND EIGHT-FOUR SQUARE FEET (8,084 Sq. Ft.)** and shown as Lot 48 on a certain plan marked "A" annexed to deed registered as No. 11899 of 1975 (being portion of the "Vierra Development") and bounded on the North by Lot No. 52 on the South by an existing road on the East by Lot No. 46 and on the West by Lot No. 50 or howsoever the same maybe known abutted bounded or described together with the building thereon and the appurtenances thereto belonging, which said property is situate at and known as No. 48 Mendes Drive, Champ Fleurs ("the subject property") to the Claimant.

2. I also ordered the Defendant and/or agents and/or her servants and/or her licencees to deliver up vacant possession of the subject property to the Claimant forthwith and for the Defendant to pay the Claimant's costs in the sum of Fourteen Thousand dollars (\$14,000.00).
3. The Defendant has appealed the ruling and I now set out my reasons for that decision.
4. Before the Court was a Fixed Date Claim filed by the Claimant on the 31<sup>st</sup> January 2018 whereby it sought against the Defendant the following orders:
  - (i) An order for summary possession of the subject property;
  - (ii) An order that the Defendant and/or her agents and/or her servants and/or her licencees do deliver up vacant possession of the subject property to the Claimant;
  - (iii) Costs;
  - (iv) Such further and/ or other relief as the Court may deem just.
5. The history of this matter revealed that the Claimant is the owner of the subject property and the Defendant was the former owner. The Defendant was ordered on the 10 July 2015 (“the First Rajkumar Order”) by Rajkumar J (as he then was) to deliver up vacant possession of the subject property to Scotiabank Trinidad and Tobago Limited (“the Bank”) on or before 10 January 2016 for failing to make her mortgage payments to the Bank. The Bank exercised its power of sale over the subject property by entering into an agreement for sale on 16 September 2016 with Mr. Rambarran Sant, a Director of the Claimant, for the sale of the subject property.
6. The Claimant completed the purchase of the subject property from the Bank on the 16 December 2016 and the Deed was registered on the 31 January 2018 (“the Claimant’s Deed”) the subject property was registered in the Claimant’s name.
7. The Claimant alleged that the Defendant and her agents and/or servants broke into the subject property on the 27 January 2018 and took possession of it without the licence or

consent of the Claimant and the Defendant continued to unlawfully occupy the subject property to the exclusion of the Claimant.

8. In support of the Fixed Date Claim were two affidavits of a Director of the Claimant, Mr Rambarran Sant filed on the 31 January 2018 (“the First Sant Affidavit”) and on the 2 February, 2018 (“the Second Sant Affidavit”). There was also two affidavits filed by Mr Prakash Ramadhar on the 31 January 2018 (“the First Ramadhar Affidavit”) and on the 5 February 2018 (“the Second Ramadhar Affidavit”). There was also an affidavit filed by the attorney at law for the Bank Mr Jean Louis Kelly filed on the 31 January 2018 (“the Kelly Affidavit”).
9. The Defendant filed one affidavit in opposition on the 5 March 2018 (“the Defendant’s Affidavit”).

#### **The First Sant Affidavit**

10. The First Sant Affidavit deposed to the following facts. The Claimant is the owner of the subject property. It entered into an agreement to purchase the subject property on 16 September 2016 for the price of \$3,750,000.00 from the Bank which had repossessed it from the Defendant. A copy of the agreement for sale was annexed as “R.S.1”.
11. The Claimant completed the purchase of the subject property on the 16 December 2016, and copies of the cheques evidencing payment were annexed as “R.S.2”. The Deed was only registered on the 31 January 2018 and a copy of the unregistered Deed was annexed as “R.S.3”.
12. The property is situated near to the home of his brother-in-law, Mr. Prakash Ramadhar. Substantial renovations were done to the subject property since the Claimant purchased it, including the removal of the fencing between the subject property and the home of Prakash Ramadhar. The works were still ongoing and he visited the property regularly to oversee the work.

13. On the 27 January 2018, he was informed by Mr. Prakash Ramadhar via telephone that a group of persons were attempting to break into the subject property. On arrival he saw the front gate to the subject property open, with the lock broken and a number of vehicles in the front of the subject property including a police vehicle. Inside the house, he met Mr. Prakash Ramadhar speaking to a police officer by the name of Corporal Wellington and the Defendant. Corporal Wellington was shown a copy of the agreement for sale by Mr Prakash Ramadhar but he said that he was not satisfied with the document. Mr Rambarran Sant told Corporal Wellington that the deed of conveyance was at his attorney's office.
14. Mr Ramadhar then contacted Mr. Roy Rampersad, an employee of the Bank who oversaw the sale of the subject property. Corporal Wellington spoke to Mr. Rampersad on Mr Ramadhar's cellular phone. Mr. Rampersad confirmed the sale of the subject property to the Claimant but Corporal Wellington indicated that since he did not know Mr Rampersad and he could not believe what he said.
15. The Defendant pulled out some papers and said she had an order allowing her to stay in the house on the subject property. Mr Sant was not given any opportunity to read any of the documents. Mr Ramdhar attempted to videotape what was taking place but he was prevented from doing so by Corporal Wellington who then left the subject property without removing the Defendant on the basis that it was a civil matter.
16. On the 28 January 2018, Mr Ramadhar and Mr Sant went to the St. Joseph Police Station, accompanied by the Claimant's attorneys at law. They produced the Claimant's Deed for the subject property but the police failed to take any steps to remove the Defendant from the subject property.
17. Mr. Sant deposed that the Claimant never gave any licence or consent to the Defendant or her agents to occupy the subject property which she occupied.

## **The Second Sant Affidavit**

18. The Second Sant Affidavit deposed that he was present at approximately 1:55p.m on 1 February 2018, when Mr Kendo Wickham personally served the Defendant with the Fixed Date Claim Form and the supporting affidavits. A copy of Mr. Wickham's statement confirming service was annexed as "R.S.4". Mr. Wickham was present while the Defendant was being interviewed by members of the media at a media conference in the driveway of the subject property.
19. Around 9:00 am on 1 February 2018, police officers visited the subject property and removed several persons who were not authorized to be there. The Defendant was not at the subject property at the time. Mr Sant contacted S.W.A.T. Estate Police Company Limited to provide security at the subject property. The Claimant secured the property by changing the locks, boarding windows and having an alarm system installed.
20. Around 5:30 p.m on the 1 February 2018, the Defendant broke and entered into the subject property by scaling the perimeter wall. She entered the subject property and began screaming and physically removing the board which had been placed, and threatened the Claimant's employees and agents who were conducting the works there while she was wielding a crow bar and a hammer. The Defendant then bolted into a bedroom upstairs of house and locked herself in. She hurled insults and threats at the Claimant's employees and agents from the window of the bedroom. The Defendant remained on the subject property where she has kept herself locked in the house.
21. Despite numerous requests from police officers and S.W.A.T. estate officers, the Defendant continued to refuse to vacate the subject property. He deposed that the Claimant was unlawfully kept out of the subject property and deprived of its use and enjoyment. Mr Sant also deposed that he was fearful that unless the Court intervened urgently there would have been imminent breach of the peace by the Defendant and/or her servants and/or agents.

### **The First Ramadhar Affidavit**

22. The First Ramadhar Affidavit deposed that on 27 January 2018 he was alerted by a group of persons attempting to break into the subject property. There is no separation between the subject property and Mr. Ramadhar's property because when the Claimant purchased it the fence between the two properties were removed.
23. Mr. Ramadhar contacted the E999 and made a report of what was happening after which police officers arrived at the subject property. Mr Ramadhar went to the subject property to meet the police. By this time the men had forcibly broken the lock to the front gate of the subject property and unlawfully entered.
24. Mr. Ramadhar informed Corporal Wellington of his observations and told him that the subject property was owned by the Claimant. However, the Defendant also told Corporal Wellington that she was the owner of the subject property.
25. Mr. Ramadhar told Corporal Wellington that he knew the Defendant to be the former owner of the subject property but it was repossessed by the Bank and subsequently purchased by the Claimant. The Defendant told the officer that she knew nothing about that and insisted that she was the owner.
26. Corporal Wellington asked the Defendant why she was breaking into the subject property to which she did not respond. He then asked her when last she had been to the subject property and she said July 2016. The Defendant told Corporal Wellington in Mr. Ramadhar's presence that she had items in the house on the subject property and she wanted to retrieve them. Mr. Ramadhar informed the officer that there was no such items. Corporal Wellington then instructed Mr. Ramadhar to allow the Defendant into the subject property so that she could retrieve her items. When the Defendant was let into the subject property, she along with the group of persons who were with her rushed into the house and began changing the locks. Mr. Ramadhar protested.

27. When Mr. Sant arrived, Corporal Wellington asked to see any title documents for the subject property. He was informed that the Claimant's Deed was at the attorney's office but he had the agreement for sale for the purchase of the subject property from the Bank. Corporal Wellington was shown the document but he was not satisfied with it. Mr. Ramadhar then contacted Mr. Roy Rampersad, an employee of the Bank who oversaw the sale of the subject property to the Claimant. Mr. Rampersad confirmed the sale of the subject property to the Claimant. At the end of the conversation Corporal Wellington indicated that he did not know Mr. Rampersad and he could not believe what he said. The Defendant showed Corporal Wellington some papers and she told him she had an order allowing her to stay in the house on the subject property pending an appeal. Mr. Ramadhar was not given an opportunity to read any document to confirm this.
28. Mr. Ramadhar began videotaping what was taking place in the house on the subject property but Corporal Wellington instructed him to stop doing so, as he indicated that he did not know who was the owner of the subject property.
29. Mr. Ramadhar asked Corporal Wellington whether he was going to allow this criminal trespass to continue and requested that he remove the Defendant and the men. Corporal Wellington indicated that it was a civil matter.
30. On the 28 January 2018, Mr. Ramadhar and Mr. Sant went to the St. Joseph Police Station accompanied by Mr. Sant's attorneys at law where the Claimant's Deed for the subject property was presented.

### **The Second Ramadhar Affidavit**

31. The Second Ramadhar Affidavit deposed that around 3:15 p.m. on Friday 2 February 2018, Police Inspector Gyan arrived at the subject property with three women police officers to speak with the Defendant. The Defendant did not respond. After Inspector Gyan left, the Defendant appeared outside on the porch area of the subject property and said loudly in a mocking tone "*who is this Inspector Gyan who wants to talk to me?*" She also made very insulting remarks about Mr. Ramadhar.

32. On the 3 February 2018 around 4:30 p.m he was alerted by the Claimant's security personnel, S.W.A.T. Estate Police Company Limited at the subject property, that the Defendant had exited the subject property to speak to someone outside the gate. The security tried to secure the subject property but the Defendant walked back in and locked herself in the upstairs floor of the house.
33. Around 5:30 p.m, Mr. Ramadhar observed a motor vehicle arrive outside the driveway of the subject property. Two men, one of whom was armed with a large bolt cutter, exited the vehicle and approached the outer gate to the subject property. The man with the bolt cutter then attempted to cut the lock to the gate. There was a child with him who appeared to have been video recording what was taking place. The Claimant's security personnel at the property approached the men and the man with the bolt cutter lunged it at the security personnel. As they were attempting to cut the lock, one of the men, named George Fort, said very loudly in a threatening manner to the S.W.A.T. estate police officers "*I hope you all could finish what you start. Allyuh have to go home at some time*".
34. Around 5:48p.m two police officers arrived at the subject property. Mr. Ramadhar advised them of what was taking place. They entered the subject property and brought the Defendant out. As they were doing so, the son of the Defendant rushed through the gate and there was a confrontation between him and the police. He was arrested by the police officers. A group of persons then came to the gate and took the Defendant from the subject property. The security officer then secured the outer gate with a lock and chain. As the Defendant was leaving, George Fort began shouting "*Allyuh know who she is? She is the sister of ACP Reyes*". He made several threats that "*this is not finishing so*" or words to that effect.
35. At approximately 10:00 p.m on Saturday 3 February 2018, the Defendant and a group of men returned outside the subject property. Subsequently, a large group of at least ten fully armed police officers arrived at the subject property. According to the S.W.A.T. personnel, the police officers said they were acting on instruction from their Senior Superintendent to allow the Defendant back into the subject property.



36. Around 11:00 p.m. the Defendant scaled the front wall to the subject property and re-entered it. This occurred in the presence of the police officers who then left approximately five minutes after.
37. Around 11:50 p.m. a group of men cut the lock and the chain that the S.W.A.T. estate officers had placed to secure the subject property. They entered the subject property and remained until the time of swearing of the Second Ramadhar Affidavit. They changed the locks to the subject property shortly after their arrival.
38. Around 10:00 a.m on Sunday 4 February 2018, the same group of men began re-erecting a fence between the subject property and Mr. Ramadhar's home. The men, including George Fort remained on the subject property.

#### **The Kelly Affidavit**

39. The Kelly Affidavit deposed the following. He was the attorney at law for the Bank. By Fixed Date Claim Form and supporting affidavit dated the 28 March 2014 (*CV 2014-01106 Scotiabank v Olive Reyes Clarke*) ("the 2014 action") the Bank brought a claim against the Defendant for, inter alia, payment of the sum of \$3,770,079.25 (as at 18 March, 2014) and interest at the per diem rate of \$738.74 from 19 March, 2014. That sum was based on the default made on two mortgage loans securing the subject property and a parcel of land in Moka ("the Moka property"). Both property were held by AJ Properties Limited with the Defendant as surety.
40. The Defendant, during the numerous hearings, gave assurances that she would settle the outstanding debts to no avail with the result that on the First Rajkumar Order was made on 10 July 2015 including a six month stay for the Defendant to settle the debt, as she claimed to have a sale for the Moka property well in excess of the Bank's best offer on file. A copy of the First Rajkumar Order was annexed as "J.L.K.1".
41. Mr. Kelly contacted the Defendant's attorney, Mr. Mervyn Campbell, shortly after the First Rajkumar Order, for him to obtain instructions to remove the reference for possession of

the Moka property from the First Rajkumar Order which was held by AJ Properties. He was informed by Mr. Campbell that he obtained those instructions and by joint letter they wrote to the Court to amend the order and this was done. After the six month had expired the Defendant requested a further extension until March 2016 to close the sale of the Moka property and to settle the entire judgment sum.

42. On 2 March 2016, in *CV 2016 Olive Reyes Clarke v Scotiabank Trinidad and Tobago Limited* (“the 2016 action”) the Defendant filed an action to set aside the First Rajkumar Order. She also applied for an injunction restraining the Bank from, inter alia, entering into an agreement for sale and/or dispossessing and/or evicting her from the subject property. The injunction was granted ex parte on 9 March 2016 (“the First Injunction Order”) and orders were made for the filing of submissions and affidavits in response which were all done. The hearing was adjourned to the 4 May 2016.
43. On 1 April 2016, the Bank filed a writ of possession against the Defendant in respect of the subject property. A copy of the said writ of possession dated 1 April 2016 was annexed as “J.L.K.2”. The First Injunction Order was discharged on 4 May 2016 by Charles J. A copy of the judgment of Charles J dated 4<sup>th</sup> May 2016, discharging the First Injunction Order was annexed as “J.L.K.3”.
44. In July 2016 the writ of possession filed on 1 April 2016 was executed and the Bank took possession of the subject property.
45. The Defendant changed attorneys from Mr. Campbell to Mr. Scoon who filed another injunction application on 21 July 2016 and an application for summary judgment was filed on 22 July 2016 with respect to the amended claim filed on 15 June 2016 in the 2016 action. Copies of the documents in the 2016 action were annexed as “J.L.K.4”.
46. Submissions were filed and by decision dated 12 September 2016 Charles J dismissed the injunction application filed on the 21 July 2016 with costs. A copy of the judgment of Charles J dated 12 September 2016 was annexed as “J.L.K.5”.

47. On 16 September 2016, the Bank entered into an agreement for sale of the subject property with the Claimant which was completed in December 2016. On 29 March 2017, the 2016 action was heard and Mr. Kelly agreed for the summary judgment application to be withdrawn with no order as to costs with the hope that the matter would have been withdrawn by the Defendant.
48. In June 2017, the Defendant's attorney, Mr Scoon made an application to cease to act on behalf of the Defendant and this order was granted. On 10 October 2017, the Defendant through her new attorney filed an application to the Court of Appeal to file a notice of appeal against the First Rajkumar Order in the 2014 action. However it was filed out of time since it was required to be filed in August 2015. The 2016 action was stayed on the 1 December 2017 by Quinlan-Williams J ("the Quinlan- Williams Order") pending the outcome of the appeal in CA P 032/ 2017.
49. At the hearing of the appeal on 15 January 2018, the Bank opposed the Defendant's application for an extension of time to file her notice of appeal against the First Rajkumar Order on the basis that the subject property and the Moka property had been sold and that any appeal, if successful, would be nugatory since the properties had been sold to bona fide purchasers. The Court of Appeal adjourned the hearing and gave directions for the parties to put such evidence before the Court and to file submissions on the application. The hearing of the application was adjourned to 12 March 2018.
50. Mr. Kelly deposed that the sale of the subject property to the Claimant was lawful and therefore clear title to the subject property passed to the Claimant.

#### **The Defendant's Affidavit**

51. The Defendant Affidavit deposed after the Defendant's husband passed away in November 2004, she purchased the subject property which was a four bedroom home from Martin and Hazel Roach in 2006 for her and her four children. In order to do so she obtained a mortgage from the Bank in the sum of \$2,362,500.00 after paying a deposit of \$275,000.00 plus an additional sum of \$100,000.00 to the Bank.

52. She maintained her payments for seven years until she started encountering difficulties due largely to the bad management of her account by the Bank. During the seven year period, the Bank failed to honour the condition of the mortgage offer which required that mortgage payments be deducted from her account on the 15<sup>th</sup> day of each month. Instead, the Bank demanded that mortgage payments be made on the 1<sup>st</sup> of each month. She deposed that this was oppressive behaviour on the part of Bank as the early deductions/demands threw her finances into disarray as there existed other weighty financial commitments, which required servicing towards the end of the month. She annexed a copy of the letter of offer from Bank and an affidavit from Lisa Leung as “A”.
53. She deposed that Bank approached the High Court for an order for her to deliver vacant possession of the subject property in 2014. The First Rajkumar Order was obtained despite the fact that she had advanced the sum of \$400,000.00 towards payment of the subject property during the case management conference period.
54. The First Rajkumar Order was defective because it mirrored the incurably defective Bank claim which referred to her as the owner the subject property and the Moka property even though she only owned the subject property.
55. Mr. Kelly and her then attorney Mr. Mervyn Campbell made a move without her instructions, knowledge or acquiescence to have the judge correct the First Rajkumar Order. She contended that there was no scope for the judge to amend, vary or correct the defective order as the order which was signed by the Assistant Registrar would have been perfected rendering the learned judge functus and any subsequent order void ab initio. She annexed a copy of the Kelly/Campbell letter, email to Michelle Rahim, the First Rajkumar Order and an order of Rajkumar J of the 24 July 2014 (“the Second Rajkumar Order”).
56. She then instructed her attorneys to file a claim in which an application for an injunction was sought. The injunction was granted and then later discharged. While the matter was still being heard in the High Court, on the 20 July 2016, the Bank evicted her and her family and business operations. According to the Defendant, this exercise brought untold hardships, utter devastation and dislocation to her.

57. In order to challenge the eviction, an application for a second injunction was filed, along with application for summary judgment, by her new attorney Mr. Scoon but the application for injunctive relief was refused by Charles J who directed that the matter ought rightly to be dealt with on an appeal. She then instructed her attorney at law to seek permission of the Court of Appeal to file an appeal. This application remained part heard and pending. A stay was granted on the 1 December 2017 pending the outcome of the matter before the Court of Appeal by Quinlan Williams J. The Bank supported the stay and agreed to the order. She annexed a copy of the Quinlan- Williams Order as “C”.
58. After the stay was granted she sought opinions from various persons and the overwhelming advice which she received from attorneys at law suggested that the grant of the stay meant that the status quo at the time of the order was to be maintained and not disturbed. As a result, she commissioned a search clerk to ascertain the status of the records at the Ministry of Legal Affairs. The search revealed that well after a year following her eviction from the subject property, the public records at the Ministry of Legal Affairs disclosed that she was the owner of the subject property. She caused a lis pendens to be lodged at the Ministry of Legal Affairs and ordered a copy of the deed of the subject property. She also visited the Water and Sewage Authority and applied for certified copies of both the deed and lis pendens. She annexed copies of the search report, deed, lis pendens and WASA bill as “D”.
59. On the 27 January 2017 around 4:00 p.m, she re-entered her property after cutting the lock on the outside gate. However, she was met with resistance from Mr. Prakash Ramadhar, who along with his wife, who claimed that he had purchased the property. She recall Mr. Ramadhar became very angry and upset and called in the police who arrived on the scene immediately. She said she was interviewed by police and was allowed to re-enter the property against the protest of Mr. Ramadhar who kept telling the police that he had purchased the subject property and that they should put her off his property. However, the police corporal maintained that based upon her documents she had the right to occupy the subject property.
60. She took up residence and stayed at the subject property. A security firm (Chosen One) was employed to maintain a presence at the property. However when she left for work on

the 1 February 2018, she received a report from a relative who was at the subject property, that Mr. Ramadhar had brought in a large force comprising police, S.W.A.T. security personnel and soldiers from the Trinidad and Tobago Defence Force. They chased the Defendant's security away and proceeded to barricade up the windows and doors with plywood and changed the locks. When the Defendant returned to the subject property she was forced to climb over the outer gate to enter through the front door which was open. She found a hammer on the counter and used it to remove the plywood barricades which were being constructed to block up the windows and entrances.

61. The next day, a group of police officers emerged from Mr. Ramadhar's premises and entered the subject property. One of the officers, Inspector Gyan, entered her home after using a key. According to the Defendant, he threatened in a commanding voice "do not call the St. Joseph Police, right!" She reluctantly followed his instructions but resisted his orders for her to leave and come out of the bedroom. The officers left shortly thereafter. While this was taking place, she observed that S.W.A.T security officers were swarming all over the compound. At the same time Mrs. Ramadhar gave loud and forceful directions to the armed S.W.A.T security officers not to allow her to have any food supplies, water, clothing or refreshments. According to the Defendant, she was held hostage with the gate and doors locked and under heavy guard for a period of three long days. She annexed a copy of a transcript relating to Inspector Gyan threats as "E".
  
62. She said she was allowed one visitor, Mr. Darren Mitchell, attorney-at-law who was given 15 minutes to conduct an interview. However he was constantly interrupted and reminded that his 'time is up' and that it was 'time to leave' by a S.W.A.T security officer, Mr. Riley. As Mr. Mitchell departed, he was escorted out the subject property and through Mr. Ramadhar's premises. Meanwhile the Defendant's family were kept outside in the roadway and were trying to throw water bottles for her to catch. They were told by S.W.A.T security officers to remove themselves from the roadway and entrance to her property. The S.W.A.T team was closely, regularly and aggressively monitored and directed by Mr. and Mrs, Ramadhar throughout the period. She annexed copies of images of S.W.A.T security officers on her property as "F".

63. The next day, Mr and Mrs. Ramadhar continued their onslaught by dispatching armed S.W.A.T. security officers to the subject property. Around 3:00 p.m Fraud Squad officers visited the subject property for a previously arranged interview but were unable to enter the subject property and the Defendant was unable to exit the property to meet them.
64. The Defendant contacted her attorney, Mr. Mitchell, who came to talk with the Fraud Squad officers and senior S.W.A.T. security officers. She said she heard when the Fraud Squad officers told the S.W.A.T. security officers that they should not be on the subject property.
65. The Defendant called Mr. Forte to cut the lock on her gate. As he arrived to do so, a number of armed S.W.A.T. security officers ran from Mr. Ramadhar's premises and joined the S.W.A.T. security officers on the subject property and ran down the steps towards the gate. There the most senior S.W.A.T security officer, Mr. Aron Henry, drew a firearm and aimed it at point blank range at the man who was removing the lock with a bolt cutter. Two police officers came over from Mr. Ramadhar's premises onto the subject property and the officers ascended the stairway towards the master bedroom. The female officer, WPC Collins, grabbed the Defendant by her arm and issued orders for her to present her documents. After receiving the documents, she did not peruse them, she told the Defendant that the documents were 'false and made up documents'. She dragged the Defendant downstairs and issued threats to arrest her. She was accompanied with a heavily armed police officer who stood guard in a ready to kill combat position, with his hands on a deadly looking automatic weapon. WPC Collins told the Defendant that Mr. Ramadhar is the boss and owner and that she was trespassing and she should leave the premises immediately. She annexed a copy of an image of WPC Collins' assault as "G".
66. The Defendant's son, Akil Clarke, was standing outside the subject property. When he saw what was going on, he entered and was immediately arrested and taken through Mr. Ramadhar's premises under the watch of Mr. Ramadhar and S.W.A.T security officers.
67. The Defendant deposed that she was then pushed out bodily and forcefully into the roadway and was not even allowed to take her handbag. She was jostled, assaulted and battered by

WPC Collins. Mr. Ramadhar mockingly said to her “*this is what it had to come to...Olive this is what it had to come to.*”

68. According to the Defendant, as she stood in the roadway, she saw Mr. Ramadhar directing a heavy contingent of S.W.A.T security officers to take up various strategic positions on the subject property event though they were directed by the Fraud Squad officer to leave the property. The Defendant said, after she was pushed out onto the roadway, the officers walked over to Mr. Ramadhar’s home in a celebratory mood laughing loudly, congratulating each other and mocking her son who was placed in handcuffs.
69. The Defendant and her attorney, Mr. Mitchell, visited the St. Joseph Police Station and held discussions with senior police officers and after the discussions were concluded the Defendant was advised by Mr. Mitchell to return to the subject property and if anyone tried to stop her she should contact the police immediately. The Defendant deposed that when she returned the lock at the front gate was changed and a chain was added to the locking apparatus and S.W.A.T. security officers were on the compound so she called the police. When the police arrived the S.W.A.T. security officer informed the police that Mr. Ramdhar had the key. Mr. Ramadhar refused to hand over the keys so the Defendant was once again climb over the padlocked outer gate in order to gain entry to the subject property.
70. The Defendant denied the contents of the First Sant Affidavit save and except that: Mr. Ramadhar lived in the house next to the subject property; Mr. Sant was not given an opportunity to read any documents when the Defendant presented them to Corporal Wellington; and Mr. Ramadhar asked Corporal Wellington whether he was going to allow the criminal trespass and requested that he remove the Defendant and the strange men from the property to which he replied it was a civil matter.
71. The Defendant said she was doubtful whether Mr. Sant was ever present at the subject property or was at any time in her presence. She denied that the Claimant was entitled to the relief sought.



72. In relation to the First Ramadhar Affidavit, the Defendant denied that: the Claimant is the owner of the subject property; anyone attempted to break in or broke into the subject property; that the fence was ever removed between the subject property and Mr Ramdhar's property since there was always a partition in the form of a chain link fence between the properties; and there was any unlawful entry since all matters regarding entry and rights of entry were done under the watchful eyes and/or authorization of uniformed police officers and plain clothes officers. She annexed a copy of a report issued by Mr. Martin Roach, the builder and developer of both properties, regarding the state of the subject property as "H".
73. The Defendant deposed that Mr. Ramdhar told the police officers that he was the owner of the subject property and that Mr. Ramadhar never told the police in her presence that the Claimant purchased or owned the subject property. She said she was unaware whether Mr Ramadhar heard when she told the police that she was going to change the locks and retrieve her furniture. She said when she entered the subject property she was shocked to observe, the decrepit conditions with water flooding the main basement levels, broken window panes, falling ceilings, water stains, dirt and grime, termite infestation and rodent droppings. She was also shocked to observe that several expensive items including chandeliers, water pump and AC units which were left behind, were missing. She annexed copies of images of the conditions and the remaining items of her furniture as "I".
74. In relation to the Second Sant Affidavit, the Defendant deposed that she had authorized persons to enter the subject property on the 1 February 2018. She also deposed that the burglary alarm system belonged to her and it was relocated downstairs and linked to both properties by Mr. Ramadhar. She contended that she was still troubled by the use of police officers to remove her security and to intimidate her.
75. The Defendant deposed that she entered the subject property by climbing over the front gate and used a hammer (not a crowbar) to pull down the plywood panels which were used to deface the subject property and barricade the doors and windows. She denied that she broke into the subject property and threatened anyone including the S.W.A.T. officers who were heavily armed. She admitted that she locked herself in the master bedroom but she

- denied hurling insults and threats unless prayers and recitals of passages from the Bible, which she chanted loudly, could have been considered to be threats and insults.
76. According to the Defendant, as far as she was aware, the Fraud Squad police and the St. Joseph Police suggested that she was rightly in occupation of the subject property and that it was a civil matter, which should be dealt with by the courts.
77. The Defendant contended that several breaches of the peace occurred by the Claimant and the Ramadhars such as when the Defendant was wrongfully/falsefully imprisoned by the Ramadhars, unlawfully assaulted by WPC Collins, threatened by Inspector Gyan, the wrongful arrest of her son and when the private police force drew their weapon/firearm and threatened to shoot down her workers who were attempting to end her imprisonment on Saturday 3 February 2018 around 5: 30 p.m.
78. In relation to the Second Ramadhar Affidavit, the Defendant deposed that Mr. Ramadhar's account of events was selective and he attempted to play the part of victim when in fact he was the aggressor. She said he omitted from his account the fact that he shouted at the female S.W.A.T. officer "*close the door, close the f---ing (expletive) door! What is the sense I have all yuh there?*"
79. She deposed that after the Fraud Squad officers determined that her documents were authentic and formed the view that she had a right to occupy the subject property and that the S.W.A.T. security officers were trespassing and were advised to leave there was no confrontation between her son and the police but what existed was an abuse of power and trumped up charges against her son.
80. According to the Defendant about four officers approached Mr Ramadhar to obtain the keys. After he refused to hand them over, she was forced to climb over the gate to get into the house on the subject property because the outer gate was locked. She stated that there was no need to erect the fence referred to since it was never removed. It was mended to reconnect the broken chain links and change a few locks, after which the men left for their respective destinations.

81. The Defendant stated that equitable reliefs were not available to persons who possessed unclean hands or have failed to do equity and the Claimant and Mr. Ramadhar should have been estopped for their application for summary possession by the Court.
82. In relation to the Kelly Affidavit, the Defendant stated that the two mortgage loans were different facilities with two different owners. She stated that one was for the subject property to be paid on the 15 day of each month and the other was taken by the company AJ Properties Limited and herself on the 1 November 2007 to be paid in 180 monthly payments on the 22 day of each month. She noted that the Moka property mortgage was 'stamped to the full amount of the loan'.
83. She deposed that during the case management conference the sum of \$400,000.00 was made available to Bank on for the subject property.
84. The Defendant contended that her attorney Mr. Campbell colluded with Mr. Kelly to have the First Rajkumar Order varied by removing the deed reference and schedule describing the Moka property but with a new Order, THE Second Rajkumar Order, for the same total sum of almost four million dollars (\$3,907,581.21) and a new order with the same caption at the head of the pleadings "...Properties comprised in two mortgaged ...both made between Olive Reyes Clarke...and Scotiabank..." She said a joint letter was written by Mr. Kelly on his letter head and signed by both attorneys which she did not know about. She said if she had known, she would have appealed immediately. On several occasions she pleaded with the Bank and Mr. Kelly to separate the two properties to protect her home. On one occasion she appealed to him outside the Court room after one of the case management conferences before the First Rajkumar Order was made and in the presence of both Mr. Campbell and a Bank officer. Mr. Kelly was always aware that the mortgages were two different matters with two different owners of the properties. Nevertheless, the joint letter dated the 21 July 2015 was emailed to the JSO on the 23 July 2015.
85. The Defendant said it was significant to note that the First Rajkumar Order was perfected on the 21 July 2015 and dispatched to her on the 23 July 2015. She stated that the First Rajkumar Order could not have been varied nor amended by the 'slip rule' as the judge

purported to do and that the Judge was functus when the order was amended/varied on the 24 July 2015.

86. The Defendant stated that it is clear that Bank relied and acted on an order that was void ab initio since it was faulty. She said she was only aware of the letter to vary the First Rajkumar Order when she requested an office copy of the documents in the matter CV2014-01106 in January 2016 and upon recognizing the error, she sought legal advice from prominent attorneys and they recommended that she pursue the matter.
87. She deposed that Mr. Kelly always maintained in the court that she never contested the dollar amount however that was misleading and untrue was demonstrated by her letter to Rajkumar J on the 11<sup>th</sup> August 2016. She annexed a copy of her letter to Rajkumar J as “J”.
88. For the reasons stated in the Defendant’s Affidavit the Defendant requested the Court to refuse the reliefs sought in the Fixed Date Claim.

### **Reasoning and Analysis**

89. I made the order for the following reasons. Part 68 of the Civil Proceedings Rules (“the CPR”) deals with the Summary Proceedings for Possession of Land. Rule 68.1 states that Part 68 concerns land which is occupied by persons who are not tenants holding over after determination and who entered into or remained in occupation without the licence or consent of the Claimant or any of his predecessors in title. Rule 68.2 provides that the proceedings must be brought by a Fixed Date Claim and the Claimant must name as defendants all persons in occupation of the property as far as was known to the Claimant. Rule 68.3 sets out the evidence in support of the Fixed Date Claim which was required. It states that the claimant must file with the claim form evidence stating his interest in the land; the circumstances in which the land had been occupied without licence or consent; the circumstances in which his claim to possession arises; if he does not know the names of the persons who are in occupation who are not named and full particulars of efforts he has taken to identify any person occupying the land who is not named on the claim form.

90. The instant action was instituted by a Fixed Date Claim Form. I was satisfied from all the affidavits filed in support of the Fixed Date Claim that the Defendant was not a tenant of the Claimant and that she had entered onto the subject property without the consent of the Claimant or the Bank. I was also satisfied that the Claimant had stated that it was the owner of the subject property by the Claimant's Deed and that the Defendant had entered the subject property without the Claimant's consent. Indeed the Defendant admitted in the Defendant's Affidavit that she cut locks on the subject property to re-enter and that she scaled a fence to enter the subject property on another occasion.
91. Rule 68.7 sets out the powers of the Court at the First Hearing of the Fixed date Claim. The first hearing was on the 16 February 2018 but it was adjourned to the 8 March 2018 since the time for the Defendant filing her affidavit in response had not passed. By the 8 March 2018, the Defendant's Affidavit was filed. Under rule 68.7 the general rule is that Court *must* give judgment unless there is a Defendant who attends and satisfies the Court that he has a defence with a realistic prospect of success. The rule also permits the Court to make an order for possession on specified date. It also provides that if judgment is not given the Court *must* give directions as if the hearing were a case management conference.
92. The Court therefore had two options at the first substantive hearing of the Fixed Date Claim namely give judgment if the Defendant had no realistic prospect of success or if the Court was of the view the Defendant has a defence with a realistic prospect of success then the first hearing was to be treated as a case management conference and direction are given.
93. At the first substantive hearing of the Fixed Date Claim on the 8 March 2018 I was not of the view that the Defendant's defence had a realistic prospect of success. In my opinion, the Defendant failed to demonstrate that she had a superior title to the Claimant who was the owner of the property by virtue of the Claimant's Deed referred to as "RS 3" to the First Sant Affidavit. Indeed there was no evidence from the Defendant to dispute that the Claimant had purchased the subject property on the 16 December 2016 or that the Claimant's Deed was registered on the 31<sup>st</sup> January 2018. The Defendant failed to produce any Order of the Court which had set aside the Claimant's 2018. I was of the opinion that the Claimant's Deed was valid and subsisting. It appeared to me that the Defendant was

operating under the mistaken belief that since the Claimant's Deed was not registered until the 31 January 2018 it was not the owner of the subject property. I was of the opinion that the Claimant became the owner of the subject property when the sale was completed on 16 December 2016 and the registration of the Claimant's Deed only served to give notice to third parties of its ownership of the subject property. The registration of the Claimant's deed did not bestow title on it but title passed when the sale was completed in December 2016.

94. The Defendant also failed to demonstrate that at the time she re-entered the subject property on the 27 January 2018 she had obtained the permission and or consent of the owner. She was therefore not there as a licensee.
95. Further, the Quinlan-Williams Order dated the 1<sup>st</sup> December 2017 in the 2016 action ordered that *"This matter is stayed pending the Court of Appeal's decision in Case Number CA P032/2017."* There was no permission granted in the Quinlan-Williams Order to the Defendant to enter the subject property. It is settled law that a stay of proceedings did not bestow any right on the Defendant to enter the subject property.
96. I accepted that there was a pending matter before the Court of Appeal in CA P 032/2017 but there was no evidence presented by the Defendant that the Court of Appeal had made an order setting aside the First Rajkumar Order or that the Court of Appeal had made an order granting her permission to re-enter the subject property. I was of the opinion that a pending matter before the Court of Appeal did not bestow any right on the Defendant to re-enter the subject property and that there was no such authorization bestowed by the Court of Appeal on the Defendant.

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