

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB REGISTRY, SAN FERNANDO

Claim No. CV 2011-02841

BETWEEN

BISSRAM KALLADEEN

Claimant

AND

WENDELL MARCANO

SEEMA KALLADEEN

KRISHNA KALLADEEN

Defendant

BEFORE THE HONOURABLE MR. JUSTICE RAJKUMAR

APPEARANCES:

Ms. Francis for the Claimant

Mr. Lucky for the Defendant

REASONS FOR DECISION

PROCEDURAL HISTORY

1. On November 2nd 2011 the applicant's application for possession came up for hearing. It was adjourned to November 23rd 2011 at the request of the attorney for the respondents as he had been recently retained. On November 23rd an extension of time was granted by consent for the filing of the respondents' affidavits in response, and the matter was adjourned.

2. When the matter again came up on March 21st 2012, attorney at law for claimant was not present. It was adjourned to April 25th 2012.
3. On April 25th Attorney for the respondents was not present, and nothing had yet been filed on behalf of the respondents.
4. The matter was adjourned to July 4th 2012 for the matter to proceed. Time was extended for filing of the respondents' affidavits in response to May 18th 2012.
5. Attorney at law for the claimant was ordered to communicate that order to the attorney for the respondents in writing, and indicate the court's position that there would be no further adjournment.
6. Every opportunity had therefore been afforded to the respondents to respond.
7. The claimant's affidavit alleged that the third respondent entered into occupation of the subject premises under a licence which was terminated. The second and first named respondent's occupation was not pursuant to any licence.

THE RESPONSE

8. The defendants filed sworn "defences" on May 4th 2012. These were not responsive in any material way to the matters alleged by the claimant and failed to demonstrate a defence with a realistic prospect of success.
9. Each purported sworn defence at best constituted simply a bare denial of the allegations in the claimant's affidavit. No affidavit had been sworn which demonstrated that the respondents had a realistic prospect of success under Part 68.7.
10. On July 4th 2012 the claimant made an oral application for the striking out of the purported defences filed on behalf of the respondents. Additionally the court has power under the Civil

Proceedings Rules to deal with a matter at case management, including the power in appropriate cases, to dispose of a matter finally.

11. An opportunity was provided to counsel for the respondents to indicate what, if anything, in the purported sworn “defences” responded specifically to the specific allegations in the claimant’s affidavit. He was unable to do so.

12. If the documents were affidavits they were not at all responsive to the allegations in the claimant’s affidavit. Even if they were “defences” the law as it stands does not permit such vague, non responsive defences to stand. **See MI5 Investigations Limited v Centurion Protective Agency Limited CA Civ 244 of 2008.**

13. After affording every opportunity to the respondents to put forward their response they had done so only by way of their purported “defences”. Those purported “defences” were not adequate in law to constitute defences to the claimant’s allegations.

14. The effect thereof was to leave those allegations unchallenged and expose the respondents to the consequences. The court’s powers of case management under CPR Part 1.1, Part 25 (1) (a), (b), and Part 26 (2) (c) were invoked and utilized.

15. In those circumstances the respondents had no material before the court, even after having been afforded excessively generous indulgences of time to respond to the claimant’s case, and judgment was entered for the claimant under CPR Part 68.7.

16. With respect to the application for injunctive relief, an undertaking was sought from counsel for the respondents, and the matter was stood down to permit the nature, effect, and consequences of an undertaking to be explained to the respondents. The undertaking was then given and recorded.

Dated this 18th day of September 2012

Peter A. Rajkumar
Judge.