

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-03671

BETWEEN

ALLISON JOHN-DE COTEAU

Claimant

AND

LOUISE MAYNARD-PAUL

Defendant

**BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR**

**APPEARANCES**

Ms. Samantha Lawson for the claimant

Mr. Felix Celestine for the defendant

**REASONS FOR DECISION**

1. In September 2012 the Claimant sought an injunction. By amended statement of case she also sought damages in a specific sum for trespass to goods. The application for that injunction was refused.
2. The reasons for refusing it are set out in this court's written reasons for decision delivered on May 27<sup>th</sup> 2013.
3. The Claimant filed an application on July 4<sup>th</sup> 2013 – for “default judgment”, based upon a defence not having been served on her.
4. The specific reliefs that were being sought under the claim for “default judgment” were not specified in the draft order attached to the application.

5. The reliefs claimed in the statement of case included:-
  - a. A Declaration that she was entitled to **recover possession** of the subject premises.
  - b. A Declaration that the Defendant had committed an act of trespass in taking possession of the subject property.
  - c. A Declaration that the Claimant has an **equitable interest** in the subject property.
  - d. A Declaration that the Claimant is **beneficially entitled** to the subject property.
  - e. Two injunctions seeking to restrain the Defendant from obstructing **her re-entry** into the premises, and ordering her to replace all items allegedly removed therefrom
  - f. Seeking **in the alternative** the sum of \$67, 264.22 to replace all items of furniture and household effects the property of the Claimant.
6. Most of the reliefs claimed concerned her claim to possession and her claim to be restored to possession.
7. The claim **in the alternative** is in effect for damages for trespass to goods which she claimed were damaged / lost as a result of the eviction from the premises.
8. Those premises were
  - a. the same premises as those which were the subject matter of the hearing / trial in 2010, and;
  - b. the same premises as those in respect of which she had sought the injunction to restore her to possession.
9. That injunction was refused and is the subject of appeal.
10. The issue arose as to whether, even if the court were functus only in respect of the injunction, the issue of whether the Defendant were guilty of trespass to goods in respect of the eviction from the premises should be progressed, while there was an **appeal pending** in respect of the refusal to grant an injunction to restore her to possession of those premises.

11. The issue arose as to whether this court was bound by the decision in **McKnight v McKnight Civ App No. 136 of 1981** and in particular dictum at page 12 which states “*In our judgment the effect of the filing of the notice of appeal of December 22, 1981, with the Registrar operated in the circumstances to render Blackman J. functus officio in relation to the matter thereafter, but without prejudice to his inherent power to correct any clerical mistakes or errors...We are of opinion, however, that the changes which the learned judge made to his original order were not corrections of any clerical mistakes or errors.*”

12. If it were applicable then the Court not only could **not deal** with matters arising or concerning the **injunction**, (becoming functus officio upon the filing of the Notice of Appeal), but could not deal with **any** of the matters in the claim form, becoming functus in respect of the entire matter.

13. The basis of the refusal of the injunction was that the Claimant had failed to establish at trial her claim to be entitled to possession of the premises. Accordingly her claim, years later, for an injunction to be restored to possession of those very premises, for which she had failed to establish a claim to possession at trial, failed. See paragraph 22 and 30 inter alia of this court’s written reasons dated May 27<sup>th</sup> 2013.

14. The Defendant had filed an application for an extension of time dated April 25<sup>th</sup> 2014 to file a defence after having requested one in writing on June 24<sup>th</sup> 2013 and receiving no response, save for the filing of the application for default judgment.

15. If the matter were to proceed the court would have to consider:

- a. the application for extension of time to file the defence, and
- b. the Claimant’s application for *default judgment*.

16. The only guidance on this issue before the court was the dictum in **McKnight v McKnight Civ App No. 136 of 1981** above, which makes no distinction between the whole matter and part of the matter. It does not support the notion of the High Court itself notionally severing the matter and dealing with it on a piece meal basis, notwithstanding that a Notice of Appeal has been filed and the appeal is pending before the Court of Appeal.

17. In the circumstances, rather than run the risk of encroaching on the jurisdiction of the Court of Appeal by determining, without reference to the Court of Appeal, where the possession claim ended and where the “alternative” trespass claim began, the Court stayed the proceedings pending the determination of the appeal.

Dated the 31<sup>st</sup> July, 2014

Peter A. Rajkumar

Judge