

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-03723

BETWEEN

JOHN RODNEY

CLAIMANT

AND

CHRISTOPHER WICKHAM

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE KEVIN RAMCHARAN

**Appearances:**

For the Claimant: Ms. Samantha Lawson

For the Defendant: Mr. Lennox Phillip Jr.

**REASONS FOR DECISION**

1. Before the Court was an application dated the 5<sup>th</sup> January 2017 for the following relief:
  - a. An order that the Claimant not having filed a Defence to Counterclaim is deemed to admit the Counterclaim pursuant to Rule 18.12(2)(a) of the Civil Proceedings Rules 1998.

- b. The Claimant do repay the Defendant the sum of \$35,000.00 with interest thereon at the rate of 6% per annum from the 1<sup>st</sup> May 2013 to the date of the order herein.
- c. The Claimant's claim be dismissed.
- d. The Claimant do pay the Defendant's costs of the Claim, the Counterclaim and the Defendant's Application herein to be assessed in default of agreement.

### **Procedural History**

- 2. The claim was commenced by Claim Form and Statement Case filed on the 28<sup>th</sup> October 2016. A Defence and Counterclaim was filed on the 11<sup>th</sup> November 2016, and according to the affidavit of the Defendant was served on the 28<sup>th</sup> November 2016. No Defence to the Counterclaim was filed within the 28 days provided for by the Civil Proceedings Rules 1998 (CPR), and on the 5<sup>th</sup> January 2017, the Defendant filed the instant application for judgment in default, as well as dismissal of the Claim on the basis of a deemed admission of the Defence.
- 3. The Claimant thereafter, on direction of the court filed an application on the 30<sup>th</sup> January 2017 for an extension of time to file the Defence to Counterclaim. This application was granted by me, resulting in the consequential dismissal of the

instant application but overturned on appeal<sup>1</sup>. In the circumstances, it is now incumbent to consider the instant application.

### **Discussion of Law**

4. The question of what happens when a Claimant fails to file a defence to counterclaim was considered by the Court of Appeal in the case of *Satnarine Maharaj v The Great Northern Insurance Co. Ltd & Anor*<sup>2</sup>. In that case, the Appellant had filed a claim in a running down action claiming that the accident was caused by the negligence of the 2<sup>nd</sup> Respondent. The Respondents in their defence counterclaimed that the accident was caused “wholly or in part” by the Appellant.
5. As in the instant case, no defence to counterclaim was filed within the prescribed time and the Respondents sought judgment against the Appellant that the claim be struck out. The Appellant filed an application to extend the time to file the defence to counterclaim which was refused, and the judge ordered that the claim be struck out and that there be judgment for the 2<sup>nd</sup> Respondent on the Counterclaim.

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<sup>1</sup> Civ. App T162/2017

<sup>2</sup> Civ. App P198 of 2015

6. On appeal, the Appellant acceded that under the provisions of rule 18(2)(a) he was deemed to have admitted the counterclaim. The Court of Appeal expressly stated that in their view this was the correct position based on the law. The issue before the Court of Appeal therefore was what was the effect of the deemed admission.
  
7. At paragraph 22, the court stated the course that ought to be adopted when considering the effect of the deemed admission: **“When faced with an application such as the respondents’ in this case, the approach of the Court must be to determine the effect of the deemed admissions on the claim. It is necessary for the court to carefully consider the admissions and ask itself whether any of the allegations in the claim can exist consistently with the deemed admissions. If there are allegations that cannot stand in view of the deemed admissions the court must assess how that impacts the claim.”**
  
8. Later at paragraph 24, the court noted **“We think that it must be right that that there would be cases where the deemed admissions arising from the failure to defend the counterclaim can result in the dismissal of the claim. One such case is where the effect of the claimant admitting the counterclaim would lead to a contradictory outcome on the claim if it were allowed to continue.”** This therefore is what the court must consider.

9. Before considering in detail the instant application, the court is constrained to note that the effect of the *Satnarine Maharaj* judgment is that a defendant who has done nothing is placed in a more advantageous position than a Claimant who has failed to file a Defence to Counterclaim. The reason for this is that a defendant who has failed to file a defence has an easier task of getting an extension of time to file his defence, or even set aside a judgment in default of defence under **Part 13**, than a Claimant who has failed to file a defence to counterclaim, but who in many cases would have put before the court his version of facts to oppose the counterclaim, in his statement of case, under part 18(2)(a). In the latter case, the Claimant has to satisfy the rigours of Rule 26.7<sup>3</sup>, whereas a defendant does not. It would be surprising to me if this were the intent of the Rules when drafted and perhaps there is need for the Rules Committee to look at, what is in the court's view, this anomaly.

10. Having said that, I must consider whether there is any part of the Claim which can stand in the face of the deemed admission. The Claimant's claim is that he was in exclusive possession of the subject parcel of land and that he entered into an agreement with the Defendant for him to purchase the same for the sum of \$175,000 with a deposit of \$50,000.00 and thereafter \$1,000.00 per month. Upon

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<sup>3</sup> See the Court of Appeal decision in the previous application

payment of the deposit of \$50,000.00 the Defendant would be allowed to enter into possession. A deposit of \$30,000.00 was paid, but not further monies were paid under the agreement. In spite of this, the Defendant entered the premises in April 2016.

11. In his defence and counterclaim, the defendant accepts the agreement, but avers that he discovered that the Claimant had no interest in the premises and counterclaimed for the return of the \$30,000.00 deposit paid.

12. The Claimant argued that the Counterclaim and the claim were different, the Counterclaim dealing solely with the question of the agreement for sale and the Claim dealing solely with the issue of possession. While this is an attractive argument, especially in light of the reservations noted above, I do not agree with the Claimant.

13. Firstly, the Defendant's claim to a refund of the deposit is premised on the fact that the Claimant has no interest in the subject premises. It would lead to a contradictory decision if on the one hand the Claimant is deemed to admit that there is no valid agreement for sale, and on the other hand, I were to hold that the Claimant had a right to possession. If the Claimant has a right to possession, there would be, on the Defendant's Counterclaim, a valid agreement for sale.

14. Further, and more importantly, at paragraphs 3, 16 and 17 of the Defence, which is expressly incorporated into the counterclaim by paragraph 34, the Defendant specifically avers that the Claimant has no interest in the subject lands. Paragraph 3 states **“The Defendant admits that his entry upon the said lands were without the Claimant’s consent but avers that the Claimant was in no position to give any such consent as he has never had any interest or title to the said land”**. Paragraph 16 states **“In or about March 2016, the Defendant from enquiries made became aware that the representations made to him by Kenrick James and the Claimant were false and that the Claimant was not the owner of the said or any lands”, and paragraph 17 states **“Nor was the Claimant ever in possession of the said lands or any part thereof but rather on Charles D’abreau and his family were in possession of the said lands for over 30 years”**. (all emphasis supplied).**

15. It is clear therefore that the Defendant is alleging that the Claimant had no interest in or was ever in possession of the subject lands and therefore, the Claimant having been deemed to have admitted the Counterclaim cannot now pursue a claim alleging a right to possession of the subject lands.

16. In the circumstances, the Court must strike out the Claim and give the Defendant judgment on the counterclaim together with costs.

## **Conclusion**

17. In all the circumstances, the following orders were made.

- a. The Claimant not having filed a Defence to the Counterclaim is deemed to admit the Counterclaim pursuant to Rule 19.12(2)(a) of the Civil Proceedings Rules 1998.
- b. The Claimant do repay the Defendant the sum of \$35,000.00 with interest thereon at the rate of 6% per annum from the 1<sup>st</sup> May 2013 to the date of the order herein.
- c. The Claimant's Claim is dismissed.
- d. The Claimant do pay the Defendant's costs of the Claim in the sum of \$7,700.00.
- e. The Claimant do pay the Defendant's costs of the Counterclaim in the sum of \$5,637.50.
- f. The Claimant do pay the Defendant the costs of this application to be assessed in default of agreement.

**Dated the 10<sup>th</sup> January, 2018.**

**Kevin Ramcharan  
Judge**