

TRINIDAD AND TOBAGO

IN THE SUB REGISTRY TOBAGO

H.C.A. T76 OF 2005

BETWEEN

**ERMINE MITCHELL
(by her lawful Attorney Gary Simmons)**

PLAINTIFF

AND

WINSTON SIMMONS

DEFENDANT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. M. George for the Plaintiff

Mr. C. Gift for the Defendant

JUDGMENT

Before me for determination is the Plaintiff's summons of 11th July 2005 seeking summary judgment under the provisions of Order 14 of the Rules of the Supreme Court. The Plaintiff asks for possession of certain premises at Milford Road, Tobago, and for assessment of mean profits.

The application is supported by the affidavits of Gary Simmons filed 11th July 2005 and the Plaintiff's affidavit of 21st October 2005. In opposition is the Defendant's affidavit filed 26th July 2005.

In her statement of claim endorsed on the writ issued 1st June 2005, the Plaintiff claims possession of the premises, which she says the Defendant first tenanted from her in 1990 at a monthly rent of \$1,000.00. This tenancy, she says, was terminated by a notice to quit of 30th June 2004 and which would at in a normal course of events take in effect on 31st July 2004. She refused a tender of rent for the month of August 2004 and the Defendant remains in possession. The Plaintiff further says that the premises are not subject to any rent restriction.

In his defence filed 7th July 2005 the Defendant claims a tenancy from Wilfred Williams beginning in 1969 at a rent of \$70.00 per month, as a consequence of which he raises the issue of statutory protection under the Rent Restriction Act Chap. 59:50. He also raises the issue of having acquired an equitable interest in the property as a consequence of having spent certain monies in expanding the premises based on certain representations made to him by Wilfred Williams.

The Plaintiff filed no Reply. Instead, the Order 14 summons was issued on 11th July.

On the hearing of the summons, Attorneys agreed that the two issues I refer to above had been raised by the defence. Mr. George for the Plaintiff took the view that neither of these issues was "applicable" when determining the summons. The statutory protection is not available, in his view, because the Defendant had agreed to pay a rent higher than a statutory limit of \$150.00 per month, that being the "ceiling" set in 1961. Mr. Gift argued on the other hand, that once "caught" by the statute, the premises remain protected, despite any agreement between the landlord and the tenant to pay a higher rent. I agree with Mr. Gift, but if I am wrong on that, then there is the issue of the Defendant having acquired an equitable interest.

This interest is dealt with by the Plaintiff only in her affidavit filed 21st October 2004. In my view, issues of fact are raised which I cannot determine on what is

before me even if I were to adopt a robust approach, and a trial will be required to fully ventilate the evidence and determine this issue. I should say that I do not agree with Mr. George's submission that any such interest can only bind Wilfred Williams and not the Plaintiff, who is undoubtedly out of possession but has not pleaded her paper title, despite acknowledging the existence of at least one predecessor in title.

There is nothing to demonstrate a lack of bona fides on the part of the Defendant, or that the defence is a sham.

Consequently, the Plaintiff's summons of 11th July 2005 is dismissed with costs.

The matter is to proceed under the Civil Proceedings Rules 1998 and, a defence having been filed, a Case Management Conference is fixed for 6th March 2006 at 9:30 a.m. in Courtroom TGO01.

9th January 2006

C.V.H. Stollmeyer
Judge