

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: CV2020-01090**

**BETWEEN**

**DEODATH SOOKDEO**

First Named Claimant

**SHIVANAM SOOKDEO**

Second Named Claimant

**AND**

**STOLLMAYER LIMITED**

First Named Defendant

**JENNY BOODOOSINGH**

**Joined pursuant to the order of the Honourable Madam Justice Avason  
Quinlan-Williams dated the 7<sup>th</sup> day of September 2020**

Second Named Defendant

**Before the Honourable Madame Justice Quinlan-Williams**

**Appearances:** Ms. Mohani Maharaj-Mohan for the Claimants  
Mr. Bryan McCutcheon instructed by Mr. Marcelle  
Ferdinand for the First Named Defendant

**Date of Delivery:** 28<sup>th</sup> January 2021

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**DECISION**

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1. In this decision, any and all reference to the defendant are references to Stollmeyer Limited. There is one application before the court awaiting decision – the notice of application filed by the defendant on the 26<sup>th</sup> day of October 2020 to strike out the claimants’ claim. The court on the 27<sup>th</sup> day of November 2020, dismissed the claimants’

application for an extension of time to file a defence to the counterclaim and the issue of the consequences of that decision is the subject of this decision.

2. The claimant filed a claim on the on the 8<sup>th</sup> day of June 2020 (the claim was amended on the 30<sup>th</sup> day of October 2020). The defendant defended the claim and counterclaimed on the 18<sup>th</sup> day of September 2020. A defence to the counterclaim was due 28 days from the service of the counterclaim.
3. In brief, the claimant seeks an order or orders of the court to keep them in undisturbed possession of a parcel of land located at No. 120 Boodoosingh Road Rousillac comprising about four acres. The claimant says that the defendant has disturbed their quiet possession of the said parcel of land. The claimant has described the boundaries of the parcel of land, that is bounded on the north by an existing road reserve and lands of Mr. Parahoo, on the South by lands of Ramjit Ramai and lands of R. Ramai and S. Ramai, on the East by Boodoosingh Trace and on the West by lands of Ramjit Ramai. The claimant further states that the defendant has encroached from the eastern side.
4. The defendant's defence is that the claimants have not been in occupation of the parcel of land they describe, but have been in occupation of a smaller parcel of land. The defendant says that they own a parcel of land distinct from that occupied by the claimants. The defendant has given a description of the root of their title from 1929. The defendant says that they caused a survey to be conducted on the 16<sup>th</sup> October 2014 which confirmed the boundaries to their land. The defendant is confident that their parcel of land is distinct from the parcel occupied by the claimants.

5. The defendant pleads that it granted the claimant permission to ingress through their parcel to gain access to the Boodoosingh Lands. Following the permission given by the defendant, heavy machinery came to the site. The location of the works done by the heavy machinery is at the heart of the dispute. The claimants say they occupy this area and the defendant says they own that area of land.
6. Upon application and after hearing the applicant and the respondent, the court granted an injunction to the applicant/claimant. Inter alia, defendant counterclaimed that the claimants were the ones who in November 2014, unlawfully entered onto lands owned by them and erected a chain link wire fence on the Western Boundary. They further claimed that in June 2020, the claimants also unlawfully erected a fence on the northern boundary of the defendant's lands.
7. The defendant says that the area occupied by the claimant is well defined. The claimants have a home and the area around their home is fully enclosed by a chain link fence. The defendant says that the area now claimed by the claimants is outside of their chain link fenced premises and that they have unlawfully trespassed on the defendant's property.
8. The defendant counterclaims for a declaration that they are the owners of the land described in the Schedule to the Deed of Conveyance dated the 6<sup>th</sup> day of November 1929 and registered as Deed No. 4178 of 1929.
9. The consequences of a claimant's failure to defend a counterclaim are found in the CPR Part 18.12(1) and 2. Where a party against whom a counterclaim is filed, fails to file a defence to that counterclaim then:
  - "18.12(2) "The party against whom the [counterclaim] is made-
    - (a) Is deemed to admit the [counterclaim], and is bound by any judgment or decision in the main proceedings

in so far as it is relevant to any matter arising in the [counterclaim]”

10. Rule 18.12(2) provides a sanction from the failure to file a defence to the counterclaim. The sanction is a deemed admission of the averments in the counterclaim. A claimant may be able to avoid the sanction with a successful application made under the CPR Part 26.7.

11. The Court of Appeal considered the effect of Rule 18.12(2) in Civ. App No. P198 of 2015 *Maharaj v The Great Northern Insurance Company Limited*. The claim was for damages arising out of a motor vehicle accident and a counterclaim alleging that the collision was caused by the negligence of the claimant and sought damages for the claimant’s negligence. The claimant failed to file a defence to the counterclaim. The Court of Appeal considered whether the trial judge was wrong in granting judgment for the defendant on the counterclaim and dismissing the claimant’s claim. The Court of Appeal affirmed that the clear effect of the rule is that failure to file a defence to the counterclaim means that the claimant has admitted the counterclaim.

12. According the Mendonca JA after that admission is made

“22. ...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 on the claim.

23. There of course need be no connection between the claim and the counterclaim (see rule 18.5(2)). In such a case it is unlikely that the failure to defend the counterclaim will have any significant impact on the claim. Where, however, the counterclaim is wrapped up in the claim and intimately connected to it the position can be expected to be different.

24. It is the position in this case that the counterclaim is intimately wrapped up with the defence. As we mentioned the allegations contained in the counterclaim are identical to those contained in the defence. In those circumstances neither party

contended that the effect of admitting the counterclaim can have no impact on the claim. The appellant's position was that the claim should not have been struck out by the Judge. The appellant, however, conceded that in an appropriate case the admissions deemed to arise from the failure to defend the counterclaim can result in the dismissal of the claim. We think it must be right 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. To permit the claimant to proceed with the claim in those circumstances would be an abuse of process. The respondents submitted that that was this case."

13. This court, based on the judgment in *Maharaj* (supra) has to consider the effect of the claimants' failure to defend the counterclaim, on the claim. In this claim, it is obvious that the defence and the counterclaim are bound together. The defence is that the defendant owns the area in dispute and that the claimant has no legal or equitable right to occupy the disputed lands as, they were in fact not in occupation of the area in dispute. They suggest that there has been what is tantamount to an attempt to land grab. It seems therefore that in this case the admissions contained in the counterclaim are sufficient to resolve the dispute between the claimants and the defendant; unlike the factual matrix in *Maharaj* (supra), there would be no remaining dispute between the claimant and the defendant.
14. Therefore, the defendant would be entitled as a consequence of the claimants' admissions in the counterclaim, to judgment on the counterclaim and an order dismissing the claimants' claim against the defendant. Unless, there is some legal reason why this order should not be made.
15. The claimants suggest that the declaratory reliefs sought by the defendant should preclude the order for judgment. The reliefs sought

in *Maharaj* (supra) did not include any declarations and so the Court of Appeal did not consider this issue.

16. In Civ. App. No S027 of 2013 *Pan Trinbago Inc v Keith Simpson and ors*, one of the issues before the Court of Appeal was whether the judge was right to grant declaratory relief on the sole basis that the appellant conceded the case. Justice of Appeal Mohammed said:

“54. The Court ought not to make declarations of right either on admission or in default. In the case of *Wallersteiner v Moir*<sup>48</sup> Buckley L.J. said at page 251: “If declarations ought not to be made on admissions or by consent, a fortiori they should not be made in default of defence, and a fortissimo, if I may be allowed the expression, not where the declaration is that the defendant in default of defence has acted fraudulently. Where relief is to be granted without trial, whether on admissions or by agreement or in default of pleading, and it is necessary to make clear on what footing the relief is to be granted, the right course, in my opinion, is not to make a declaration but to state that the relief shall be on such and such a footing without any declaration to the effect that that footing in fact reflects the legal situation.”

55. In *Wallersteiner*, Scarman LJ saw the position as being less rigid and considered that it would be open to the court to grant a declaration by consent where that was necessary to do justice between the parties: “..... I believe, the duty of the court to exercise caution before committing itself to sweeping declarations; to look specifically at each claim, and to refrain from making declarations, unless justice to the claimant can only be met by so doing. Generally speaking, the court should leave until after trial the decision whether or not to grant declaratory relief and, if so, in what terms...”<sup>49</sup> [emphasis added]

56. The case of *Claude Denbow & Ano. v The AG of T&T*<sup>50</sup> was relied on by the appellant. In that case Pemberton J considered the authorities on granting declaratory relief on admissions and at paragraph 19 said:

“DECLARATORY RELIEF

Much has been written on this special jurisdiction of the Court to grant declaratory relief. I do not intend to traverse that ground in this decision. Suffice it to say that in the absence of special or exceptional

circumstances, or in appropriate cases, such as where there is no possible defence or where there are no factual disputes and the denial of such relief will cause the claimant an injustice the Court will not readily grant declaratory relief based on admissions.” [emphasis added]

According to the appellant, it could not be said that the denial of declaratory relief to the first respondent would have caused him injustice as he was not a delegate of his member steel band.”

17. This court has to look, specifically, at the counterclaim and the admissions to determine whether the justice of the case would be met by making declarations, by granting the relief sought otherwise than by declarations or by waiting until the end of the trial to grant the requisite relief sought by the defendant against the claimant.
18. This court has already decided that there are no triable issues remaining between the parties. Therefore, to order that there be a trial will be illusory as the outcome would be pre-determined. The claimants would be precluded from leading any evidence that run contra to the admissions made by them and there would be no possibility for this court to make any findings other than what is already admitted.
19. Additionally, the claimants have not claimed that the defendant is the legal owner of the area in dispute. The pleadings suggest that the claimants do not know who the legal owner is. The claimants aver that if the defendant is the legal owner of the land in dispute, then they claim an equitable interest. A declaration that the defendant is the legal owner does not in any way prejudice the claimants.
20. The defendant’s claim is injunctive reliefs. These injunctive reliefs address the claimants’ unlawful occupation, based on their admissions to the averments in the defendant’s counterclaim. There is no similar

caution about the effect of other reliefs sought, similar to declaratory reliefs.

21. The court is satisfied, that there is no prejudice to the claimants for this court to grant the declarations sought by the defendant. In fact, the claimants would be incurring unnecessary costs and inconvenience if this court were to order a trial when I can say, today, what the outcome would be. The facts and issues here fit squarely in the category of an “exception case” where there are both no factual disputes and no defences available to the claimants.

22. In *Balgobin and Another v Algoo and Others*<sup>1</sup> R. Mohammed J found that the facts of case did not make it an exceptional one, and made an order extending the time for the claimant to file a defence to the counterclaim. However, each case has to be considered on its own facts. Here there is of an extension of time to for the claimants to file a defence to the counterclaim and I find this case to be exceptional.

23. The averments having been admitted by the claimants, the court has to question whether there are matters in the claimants’ claim that remain live and triable issues. What the claimants admit are that the defendant has legal title to a parcel of land as described in the 1929 Deed. This parcel included the area where the chain link fence was erected and where the heavy equipment passed.

24. The claimants admit that the defendant is entitled to a declaration recognizing them as the legal owners and persons entitled to possession of the land described in the 1929 Deed.

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<sup>1</sup> CV2014-04731



25. The claimants admit that they or their servants unlawfully entered lands of the defendant, in circumstances where they cannot claim any legal or equitable title to the land, and erected a chain link fence.

26. Based on the admissions made by the claimants, there are no issues remaining in the claim for the court to adjudicate and decide.

### **Disposition**

27. IT IS HEREBY ORDERED THAT:

- a. Judgment be entered for the defendant against the claimants with damages and interest pursuant to section 25 of the Supreme Court of Judicature Act, Chap. 4:01 thereon to be assessed by a Master in Chambers with costs to be paid by the claimants to the defendant to be assessed by a Master in Chambers in default of agreement;
- b. It is declared that the defendant is the owner of the said land described in the Schedule to the Deed of Conveyance dated the 6<sup>th</sup> day of November, 1929 and registered as No. 4179 of 1929 (“the Stollmeyer Deed”) by which the said land was conveyed to Charles Conrad Stollmeyer and which described therein as the First Schedule thereof comprising seven acres two roods and fifteen perches bounded on the North by lands of Amawas on the South by lands of Ramasar on the East by a Trace and on the West by lands of Magan and intersected by Boodoosingh’s Trace (“the Defendant’s Property”);
- c. The claimants whether by themselves or with their servants and/or agents, be and are hereby prohibited, from entering the Defendant’s Property save and except the piece of land upon which the claimants’ home is erected and enclosed with a wire fence and marked as “occupied by D. Sookdeo” on the survey plan of Christian Persad dated the 6<sup>th</sup> day of October 2014;

- d. The claimants either by themselves or with their servants and/or agents, be and are hereby prohibited, from erecting any structure (temporary or permanent) on the Defendant's Property save and except the piece of land upon which the claimants' home is erected and enclosed with a wire fence and marked as "occupied by D. Sookdeo" on the survey plan of Christian Persad dated the 6<sup>th</sup> day of October 2014;
- e. That the claimants' claim against the defendant be struck out with costs to be paid by the claimants to the defendant to be assessed by a Master in Chambers in default of agreement;
- f. The undertaking given by the defendant on the 9<sup>th</sup> day of April 2020 that the defendant and/or its agents or any other persons by its permission or otherwise refrain from clearing and/or bulldozing any portion of that parcel of land located at No 120 Boodoosingh Road. Rousillac, in the Republic of Trinidad and Tobago in the island of Trinidad comprising 2.0146 hectares approximately four (4) acres of land more or less on which stands a concrete house until the hearing of this application be and is hereby discharged;
- g. The interim injunction granted on the 24<sup>th</sup> June 202 be and is hereby discharged and an inquire be made a Master in Chambers as to the damages sustained by the defendant by reason of the injunction and that interest thereon pursuant to section 25 of the Supreme Court of Judicature Act, Chap. 4:01 and costs of the inquiry be paid by the claimants to the defendant in any event, such costs to be assessed by a Master in Chambers in default of agreement;
- h. The defendant be at liberty to enter judgment against the claimants for the amount of such damages together with interest and costs following the inquiry or earlier settlement thereof; and

- i. That the costs of and occasioned by this application be paid by the claimants to the defendant to be assessed by a Master in Chambers in default of agreement.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran