

BARBADOS

[Unreported]

IN THE HIGH COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 2027 of 2002

BETWEEN:

BARBARA FARMER-LEWIS

(Plaintiff)

AND

NICHOLAS K. P. ADOMAKAH

(Defendant)

Before the Honourable Madame Justice Margaret Reifer, Judge of the High Court.

2003: July 17, 30

Mr. Ramon Alleyne and Mr. John Boyce for the Plaintiff

Mr. Elliott Mottley, Q.C. for the Defendant

REASONS FOR DECISION

[1] These are reasons for my decision and not strictly speaking a judgment.

[2] The Plaintiff's claim by Writ filed September 24th, 2002 is for loss and damage sustained as a result of breach of contract by the Defendant in failing to give three (3) months notice in writing of the termination of a tenancy.

[3] On October 25th, 2002, the Defendant filed a Defence making no admissions as to the material facts claimed but advancing one ground of defence, namely, that the said Agreement was/is illegal and unenforceable, by reason of the non-registration of the premises with the Commissioner of Inland Revenue.

[4] A summons was filed in February 2003 by the Plaintiff for summary judgment under Order 14 of the Rules of the Supreme Court of the amount claimed in the statement of claim with interest therein and costs. An Affidavit in support was sworn by the Plaintiff and also filed February 28th 2003.

[5] An Affidavit Opposing the Summons for Summary Judgment was filed by the Defendant on March 14th 2003 alleging a good defence on the merits on the same grounds as alleged in the above Defence, namely illegality and unenforceability of the contract.

[6] A Summons for Judgment under Order 14 should be filed before the service of a Defence and should be made promptly but it may be made even after service of a defence, if the plaintiff can satisfactorily explain the delay and show cause that the Defence cannot satisfactorily hold water." Odgers 21st Edition page 63. In other words special circumstances must apply placing a greater

burden on the Plaintiff.

[7] No explanation has been given for the delay by the Plaintiff.

[8] And on the second ground the Defendant, to defeat this application does not have to show a good defence but merely an arguable defence, even if it is unlikely to be successful.

[9] On a question of law leave to defend should be given. Only if the point is unarguable, should leave to defend be refused: The Supreme Court Practice 1982 14/3-4/10.

[10] It is ordered as follows:

Upon hearing Mr. Ramon Alleyne, Attorney-at-Law for the Plaintiff and Mr. Elliott Mottley, Q.C. Attorney-at-Law for the Defendant AND Upon reading the affidavits filed herein. IT IS ORDERED THAT:

1.

2.

Margaret Reifer

High Court Judge (Ag.)