

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
CIVIL DIVISION**

**CV. No. 1628 of 2016**

**BETWEEN:**

**ROSALYN ELIZABETH WILKINSON**

**FIRST CLAIMANT**

Suing in her capacity as one of the Executrixes of the Last Will and Testament of **ERNEST CLARENCE WILKINSON** dated the 13<sup>th</sup> day of August, 1993 and one of the Personal Representatives of the Estate of Ernest Clarence Wilkinson, deceased late of St. Paul's in the parish of Saint George in the Island of Grenada

**CECILY ALEXANDRA WILKINSON**

**SECOND CLAIMANT**

Suing in her capacity as one of the Executrixes of the Last Will and Testament of **ERNEST CLARENCE WILKINSON** dated the 13<sup>th</sup> day of August, 1993 and one of the Personal Representatives of the Estate of Ernest Clarence Wilkinson, deceased late of St. Paul's in the parish of Saint George in the Island of Grenada

**AND**

**PAMELA HILL-BASCOMBE**

**DEFENDANT**

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court**

**Dates of Hearing: 2017 April 26<sup>th</sup>,  
July 11<sup>th</sup>,  
August 23<sup>rd</sup>**

**Date of Decision: 2017 September 15<sup>th</sup>**

**Appearances:**

**Ms. Duana Peterson Attorney-at-Law for the Claimants**

**Ms. E. Jamila Rawlins Attorney-at-Law for the Defendant**

## **RULING**

### **Introduction**

- [1] This is an application commenced by Fixed Date Claim Form and filed December 12<sup>th</sup> 2016 in accordance with **Rule 8.1(5) of the Supreme Court (Civil Procedure) Rules, 2008.**
- [2] In this Application the Claimants sought Orders for the delivery up of possession of a property situate at #97 Durants Green, Christ Church in this Island.
- [3] The Claimants also seek an Order that the Defendant pay to them arrears of rent in the sum of \$56,000.
- [4] The Fixed Date Claim Form was supported by two affidavits, one by First Claimant Rosalyn Elizabeth Wilkinson suing in her capacity as one of the Executrices of the Last Will and Testament of Ernest Clarence Wilkinson, and one of the Personal Representatives of the Estate of the said Ernest Clarence Wilkinson, deceased and late of St. Paul's in the parish of Saint George, in the Island of Grenada.

- [5] The first Affidavit outlined the facts/circumstances of the claim and appended in accordance with **Part 8.5(2) of the Civil Procedure Rules**, the documents on which the Claimants sought to rely. There were thirteen [13] exhibits inclusive of the Will, the Resealed Grant, the deed of conveyance of the property to the testator, the Certificate of Registration of the said property under the **Landlord and Tenant (Registration of Tenancies) Act**, the lease to the Defendant and Notice to Quit served on her.
- [6] The second Affidavit in Support is deposed by Hutson Anderson Mottley in his capacity as the Appointed Agent and Accountant in Barbados, in respect of the rental of the property situate at #97 Durants Green in Christ Church. This appointment took effect in September 2013. This Affidavit, among other things, contains a running account of the sums owed by the Defendant/Tenant in this action, which at the time of the filing of the said Affidavit (3<sup>rd</sup> February 2017) was the sum of \$47,000.
- [7] An Affidavit in Reply was filed by the Defendant on April 20<sup>th</sup> 2017. Among other statements, it outlines payments made after the filing and serving of the Fixed Date Claim Form and alleges that the amount owed at the time of the filing of the Affidavit is the sum of \$37,000.

[8] Both parties filed Written Submissions in this matter, the Defendant May 22<sup>nd</sup> 2017 and the Claimants July 7<sup>th</sup> 2017.

### **Discussion**

[9] Pursuant to the case management powers of this Court to be found at **Part 27.2(3)**, it was determined that this matter was suited to summary disposition in keeping with the Overriding Objective of the Rules, **Part 1.1** to deal with cases ‘justly and save expense’, as there were no disputes of fact on the Affidavits filed, merely an issue as to the legal consequences of the Defendant having made certain payments to the account of the Appointed Agent after the filing of the Fixed Date Claim Form.

[10] The various arguments/submissions can be found in the Written Submissions above mentioned, and will not be rehearsed here. Suffice it to say, that the central issue for determination surrounded the legal effect of the payments made by the Defendant into the Bank of Nova Scotia after service of the Notice to Quit and Fixed Date Claim Form.

### **Disposal**

[11] This Court finds that the Defendant’s tenancy was terminated on the expiration of the Notice to Quit, and that the deposits of arrears of rent

did not operate as a waiver by the Claimants and a consequential creation of a new tenancy agreement.

[12] In the circumstances this Court proposes to grant the Claimants the relief sought.

**IT IS ORDERED** as follows:

1. That the Claimants herein are granted possession of the property situate at #97 Durants Green, Christ Church in this Island;
2. In view of the fact that the subject property is a commercial enterprise housing a private retirement home, the Defendant is ordered to deliver up possession of the said property no later than 4 months from today's date, that is on or by January 15<sup>th</sup>, 2018;
3. The Defendant shall pay the Claimants all arrears of rent owed and mense profits due and owing up to the date of delivery of the premises in an amount to be agreed by the parties, or failing that to be assessed;
4. The costs of this application shall be those of the Claimants to be agreed or assessed.

**MARGARET A. REIFER**

Judge of the High Court