

**THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: ANUHCV2023/0283**

**BETWEEN:**

**PAMELLA MAYERS**

**Claimant**

**AND**

**RAWN MORRISON**

**Defendant**

**Appearances:**

Mr. Kendrickson Kentish with Ms. Cherise Archibald for the Claimant  
Mr. Lawrence Daniels for the Defendant

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2023: October 10<sup>th</sup>,  
November 7th  
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**JUDGMENT**

[1] **WILLIAMS, J:** The Claimant by Fixed Date Claim filed on 1<sup>st</sup> August 2023 commenced proceedings against the Defendant seeking the following relief:

1. Vacant possession of the demised premises;
2. Removal of the structure built on the demised premises by the Defendant;
3. Payment of all outstanding utilities;
4. The sum of XCD\$87,300.00 as rent due and owing to the Claimant for the period of 2011 to 2023;
5. Mesne Profit at the rate of XCD\$1400.00 monthly from May 2023 to the date possession is delivered up;
6. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143;
7. Legal Practitioners fixed costs;
8. Process servers costs;
9. Such further or other relief as the court may deem just.

## **Background**

[2] The Claimant Pamela Mayers is a retiree of Potters Village whilst the Defendant is a contractor of the same community. The claim relates to premises owned by the Claimant which the Defendant occupies.

## **The Proceedings**

[3] As previously indicated this matter commenced by Fixed Date Claim Form filed on 1<sup>st</sup> August 2023 supported by an affidavit sworn to by the Claimant. The Defendant was duly served with the proceedings on 1<sup>st</sup> August 2023 but has failed to file an Acknowledgement of Service or a Defence.

[4] The matter came up for First Hearing on 10<sup>th</sup> October 2023 with both parties being present at court. Due to the Defendant's failure to file a Defence, counsel for the Claimant Ms. Archibald orally applied pursuant to CPR Rule 27.2(4) for summary trial of the matter.

[5] At that point counsel Mr. Lawrence Daniels although having not been previously on record agreed to represent the Defendant. The matter was stood down to allow Mr. Daniels to take instructions.

[6] Having received instructions, Mr. Daniels indicated to the Court that his client agreed to a summary trial but only wished to contest the sums being claimed as arrears of rent.

## **The Claimant's Evidence**

[7] The Claimant was duly sworn and her affidavit filed on 1<sup>st</sup> August 2023 along with the exhibits attached thereto were admitted as her evidence-in-chief without objection.

[8] In her affidavit in support of the Claim Ms. Mayers alleges the following:

1. She is the owner of property located at Potter's Village identified as Registration Section: West Central, Block 11209B Parcel 68.
2. By an oral agreement made in or about January 2008 she agreed to lease the property to the Defendant at the sum of \$1400.00 per month. The Defendant would be responsible for the payment of utilities.
3. For the first three years of the tenancy the Defendant paid the monthly rental as agreed.

4. In or about the fourth year of the tenancy the Defendant ceased paying rent on time. The Defendant would make irregular lump sum payments towards the arrears of rent but these payments were not enough to cover the full amount of what was owed.
5. The Claimant was initially lenient towards the Defendant. However, in 2022 she discovered that the Defendant had built a room on the property without her knowledge or consent. Apparently, the Defendant indicated that this was a storeroom, however the Claimant discovered that this room was accommodation for his eldest son.
6. Feeling that she had been taken advantage of, the Claimant sought the assistance of the firm of Lake, Kentish and Bennett. The firm issued a Notice to Quit to the Defendant on the Claimant's behalf dated 8<sup>th</sup> December 2022. The Notice to Quit gave the Defendant until 31<sup>st</sup> January 2023 to vacate the property.
7. The Defendant requested three months to get his affairs in order before he could leave the property. Accordingly, the Claimant consented to the Defendant remaining on the property until the end of April 2023.
8. The Defendant made payments of \$10,000.00 and \$2,800.00 on 17<sup>th</sup> January and 28<sup>th</sup> April 2023 respectively.
9. By letter of 3<sup>rd</sup> February 2023 addressed to Daniels, Phillips and Associates the firm of Lake, Kentish and Bennett acknowledged receipt of the sum of \$10,000.00 paid on behalf of the Defendant and demanded payment of the balance of arrears of \$97,300.00. The letter further stated that the Claimant did not wish to negotiate but simply wanted possession of her property.
10. By further letter dated 22<sup>nd</sup> February 2023 the firm indicated to Daniels, Phillips and Associates that if the Defendant failed to respond to the previous letter of 3<sup>rd</sup> February 2023 the Claimant would seek redress from the court.
11. Finally, the Claimant's affidavit claims arrears of rent from 2011 to May 2023 in the sum of \$87,300.00 and mesne profit from May 2023 until the Defendant gives up possession of the premises.

### **Cross-Examination and Re-Examination of the Claimant**

- [9] The Claimant was extensively cross-examined by Mr. Daniels as to the exact amounts paid to her by the Defendant. The Claimant was unable to remember exactly how much the Defendant had paid her in particular years especially during the period 2014 to 2015.

[10] Mr. Kendrickson Kentish on behalf of the Claimant strongly objected to this line of questioning. Mr. Daniels responded that this questioning demonstrated that much of the Claimant's claim was statute-barred. This aspect of the claim will be examined in more detail.

[11] The Claimant also admitted under cross-examination that the payments of \$10,000.00 and \$2,800.00 were not received by her personally but by her lawyers. Mr. Daniels also put it to the Claimant that another \$10,000.00 payment had been made by the Defendant. However, the Claimant responded that she had no knowledge of such payment.

[12] Under re-examination the Claimant stated that after the issuance of the Notice to Quit in December 2022 all payments were made to her lawyers. The Claimant's case then closed.

[13] The parties elected to file written submissions in lieu of oral closing addresses within seven (7) days of trial. These submissions were duly filed within a few days after the hearing.

#### **Claimant's Closing Submissions**

[14] The Claimant's written submissions state that the Claimant has proven her case as to sums owed by the Defendant by reference to her affidavit and the documents exhibited thereto. The submissions also directly address the Claimant's inability to remember the exact amounts paid in particular years. At page two of the written submissions counsel states: "Therefore, it is respectfully submitted that a lapse in memory ought not to be held against the Claimant. This, we submit, is a common feature of the human matrix, even more so with someone of the Claimant's advanced age."

[15] The Claimant also notes that the Defendant has remained in possession of the premises even after a generous extension of the Notice to Quit up to the end of April 2023. The Claimant relies on the case of **Geddes Meyer v Kehvin Dickinson**<sup>1</sup> where Blenman JA stated at paragraph 52 of the decision as follows:

"It is the law that where a person has been in occupation of land without an agreement, the landlord may bring an action against the occupier for use and occupation to recover a sum in reasonable satisfaction for the lands held or

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<sup>1</sup> ANUHCVP2014/0005

occupied.”

[16] On the basis of the foregoing the Claimant seeks mesne profits of \$1400.00 per month from May 2023 up to the date of possession.

[17] In terms of the claim for the payment of outstanding utilities, counsel admits that no evidence was tendered as to the amount payable in respect of outstanding utilities. However, counsel also points out that the Defendant has not challenged the fact that utilities are owing. It is therefore submitted on behalf of the Claimant that the court should, “fix a fair and reasonable sum under this part of the claim, using as its guide, the considerable length of time that the Defendant has not been making payments of rent, provided the Court accepts the evidence of the Claimant in this regard.”

### **Defendant’s Submissions**

[18] The Defendant’s submissions may be summarized as follows:

1. Under cross-examination the Claimant could not say what amount of monies were due and payable for the years 2014 and 2015.
2. The Claimant admitted that monies were paid to her lawyers but she was not present.
3. The Claimant has not indicated an amount for which judgment should be entered therefore the matter should be referred for assessment of damages.
4. Elements of the claim are statute-barred being in excess of the limitation period of six years. Therefore, the Claimant can only claim for arrears of rent from 2017 to 2023.
5. Accordingly, the Defendant submits that the Claimant is only entitled to the following:
  1. Vacant possession;
  2. Mesne profits; and
  3. Arrears of rent to be assessed or alternatively the sum of \$74,100.00 awarded.

### **Issues**

[19] Due to the Defendant electing to only contest certain aspects of the claim the main issues to be determined are follows:

1. Whether the Claimant has proven her entitlement to the sum of \$87,300.00 as arrears of rent?
2. Whether the Defendant can rely on the defence of limitation to reduce any sums payable as arrears of rent?

## Arrears of Rent

[20] The Claim having commenced by way of Fixed Date Claim Form requires the Claimant to give evidence proving her entitlement to the relief claimed. The Court of Appeal has so stated in the decisions of **Travis Augustin v. Choc Estates**<sup>2</sup> and more recently in this jurisdiction in the case of **Edson Lewis v. Hilary Ghansah**.<sup>3</sup> Accordingly, despite the fact that that Defendant has not filed a Defence or led any evidence, the Court is still required to determine whether the Claimant has proven her claim.

[21] As indicated, under cross-examination the Claimant was unable to remember exactly how much the Defendant had paid her in particular years. I agree with counsel for the Claimant that this by itself does not affect her overall credibility. The Claimant's evidence must be examined in the context of dealings with the Defendant which according to her began in 2008 when the Defendant leased the premises. I must also take into account that since 2011 the Defendant has been making periodic lump sum payments which did not fully cover the arrears of rent. In these circumstances it would be difficult for anyone to recall payments made in any particular year over a 12-year period. This is more so bearing in mind that the Claimant is of advanced age. Otherwise than her inability to remember the exact sums paid in particular years, the Claimant demonstrated a forthright demeanour. Accordingly, I find the Claimant to be a credible witness.

[22] However, it is not very clear how the sum of \$87,300.00 sought as arrears of rent was arrived at using the documents exhibited to the Claimant's affidavit. The Notice to Quit issued by the firm of Lake, Kentish and Bennett on 8<sup>th</sup> December 2022 states that the arrears of rent up to December 2022 stood at \$130,200.00. The firm's later letter of 3<sup>rd</sup> February 2023 acknowledges receipt of the sum of \$10,000.00 and demands payment of \$97,300.00. Crucially this letter refers to reconciled statements which were attached to the letter. Unfortunately, these reconciled statements are not exhibited. These would have been useful to demonstrate exactly how the arrears were calculated.

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<sup>2</sup> SLUHCVP2014/0002 (delivered 9th June 2015, unreported).

<sup>3</sup> ANUHCVP2021/0014 (delivered 20<sup>th</sup> October 2022, unreported).

[23] I however can reasonably infer that the sum of \$10,000.00 paid on 17<sup>th</sup> January 2023 was applied to the balance of \$97,300.00 referred to in the letter of 3<sup>rd</sup> February 2023 thereby reducing the arrears to \$87,300.00. Thereafter rent at \$1400.00 per month accrued in respect of the months of March and April 2023 bringing the total to \$90,100.00. The Defendant then paid \$2,800.00 on 28<sup>th</sup> April 2023 bringing the arrears back to \$87,300.00 which is now claimed.

[24] The Defendant has submitted that the sum of \$74,100.00 should be awarded to the Claimant in addition to vacant possession and mesne profits. However, the Defendant has given no indication as to how this sum was calculated. Furthermore, the Defendant has submitted no evidence to contradict what has been tendered by the Claimant.

[25] The Defendant also submits that this matter should be referred for assessment of damages. I decline to do so on the basis that an assessment would lead to increased costs which would be out of proportion to what is a relatively simple landlord and tenant claim. This would not be in furtherance of the Overriding Objective as specified as Rule 1.1(2) of the Civil Procedure Rules 2023.

[26] Accordingly on the basis of the documentary evidence exhibited to the Claimant's affidavit I find as a fact that the Claimant has proven her claim of \$87,300.00 as arrears of rent owed up to 30<sup>th</sup> April 2023

## **Limitation**

[27] Having accepted the Claimant's evidence as to the sums owed by the Defendant the only issue remaining to be considered which may have any bearing on any damages payable is that of limitation. Counsel for the Defendant appears to be relying on **section 21** of the **Limitation Act**<sup>4</sup> which provides as follows:

"No action shall be brought, or distress made, to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due."

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<sup>4</sup> Act No. 8 of 1997

[28] This claim was commenced on 1<sup>st</sup> August 2023, thus if **section 21** of the **Limitation Act**<sup>5</sup> is applicable, the Claimant will not be able to claim any arrears of rent which accrued before 1<sup>st</sup> August 2017. The issue is whether the Defendant may rely on this provision having failed to file a Defence?

[29] In the case of **Ronex Properties v. John Laing Construction**<sup>6</sup> the Court of Appeal of England and Wales examined similar legislation in the United Kingdom namely the Limitation Act 1980. Lord Donaldson giving one of the judgments stated as follows:

“Where it is though to be clear that there is a defence under the Limitation Act, the Defendant can either plead that defence and seek trial of a preliminary issue or, in a very clear case he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process of the court and support this application with evidence.”

[30] The Court of Appeal in **Leonora Walwyn v. Eustace Archibald**<sup>7</sup> also examined the issue of whether the defence of limitation needed to be pleaded in order to be relied upon. Chief Justice Pereira giving the judgment of the court stated as follows:

“However, it is well established that a limitation defence is required to be specifically pleaded in a defence to a claim for repayment of a debt, failing which its benefit does not arise. Mr. Archibald made no such pleading. The limitation defence did not, therefore, apply to him, and the judge was wrong to so find otherwise.”

[31] As outlined in **Ronex** statutes of limitation bar the remedy but not the right. Thus, based on the foregoing authorities having failed to plead limitation in a Defence to this claim, the Defendant cannot rely on section 21 of the Limitation Act. Accordingly, the Claimant is entitled to the full arrears of rent as proven.

## **Mesne Profits**

[32] In terms of mesne profits I accept the Claimant’s submissions that she is entitled to mesne profits of \$1400.00 per month from 1<sup>st</sup> May 2023 until possession is delivered up. The Claimant’s

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<sup>5</sup> Act No. 8 of 1997

<sup>6</sup> [1982] 3 WLR 875 at page 880 per Donaldson LJ

<sup>7</sup> SKBHCVAP2010/0012 (decided 10<sup>th</sup> July 2014, unreported)

evidence is that she gave the Defendant until the end of April 2023 to vacate the premises. However, the Defendant remains in possession. Accordingly, the Claimant is entitled to mesne profits for the period which the Defendant remains in possession after the expiry of the notice period. This aspect of the claim has not been challenged by the Defendant.

### Utilities

[33] The Claimant's unchallenged evidence is that the Defendant was responsible for the payment of utilities consumed at the premises. However, the Claimant led no evidence to clarify the following:

1. Whether the utilities are in the Claimant's or Defendant's name?
2. Whether the utilities are in arrears? and
3. If so, what is the extent of the arrears?

[34] In light of such paucity of evidence I am unable to accede to the Claimant's request to award a reasonable sum in respect of utilities. However, as long as the Defendant remains in occupation of the premises it is likely that he will continue to consume utilities. In the circumstances it is ordered that the Defendant shall settle all arrears of utilities prior to vacating the property and provide proof of payment to the Claimant within seven (7) days thereafter.

### Vacant Possession and Demolition

[35] The Claimant is seeking vacant possession of the premises and demolition of an additional room which the Defendant constructed without her permission. The Defendant has not contested these claims and thus I will make the orders accordingly.

### Interest

[36] The Claimant has claimed pre-judgment interest pursuant to **section 27** of the **Eastern Caribbean Supreme Court Act**.<sup>8</sup> The purpose of pre-judgment interest is outlined in the case of **Jefford v. Gee**<sup>9</sup> where Lord Denning stated:

“Interest should not be awarded as compensation for the damage done. It should be awarded to a Plaintiff for being kept out of money which ought to

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<sup>8</sup> Cap. 143

<sup>9</sup> [1970] 2 Q.B. 130

be paid to him.”

[37] In accordance with **section 27** of the **Eastern Caribbean Supreme Court Act** interest will be awarded from the date of service of the claim (1<sup>st</sup> August 2023) to the date of judgment. Interest will be awarded solely on the sum of \$87,300.00 awarded as arrears of rent. In accordance with the Court of Appeal decision in **Alphonso v. Deodat Ramnath**<sup>10</sup> the rate of interest will be 2.5% per annum which is half of the statutory rate of 5%.

[38] The Claimant is entitled to post judgment interest pursuant to **section 7** of the **Judgments Act**<sup>11</sup> as a matter of course.<sup>12</sup> This will be at the statutory rate of 5% per annum on the global sum awarded as damages from the date of judgment until payment.

### **Order**

[39] Therefore, the order of the Court is as follows:

1. The Defendant is to vacate the property owned by the Claimant more particularly identified as Registration Section: West Central, Block 11209B Parcel 68 on or before 31<sup>st</sup> December 2023.
2. The Defendant shall demolish the additional room which he has constructed upon the Claimant's premises on Registration Section: West Central, Block 11209B Parcel 68 without the permission of the Claimant on or before 30<sup>th</sup> November 2023.
3. The Defendant shall pay all arrears of utilities in respect of the premises prior to vacating and shall provide proof of payment to the Claimant's Attorneys-at-Law no later than seven (7) days thereafter.
4. The Defendant shall pay the Claimant arrears of rent up to 30<sup>th</sup> April 2023 calculated in the sum of \$87,300.00.

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<sup>10</sup> (1997) 56 WIR 184

<sup>11</sup> Cap. 227

<sup>12</sup> Haynes Brown v. Neil Sergeant (ANUHCVP2018/0009, decided 20<sup>th</sup> June 2019) at paragraph 45

5. The Defendant shall pay the Claimant mesne profits of \$1400.00 per month with effect from 1<sup>st</sup> May 2023 to the date of possession.
6. The Defendant shall pay interest on the sum of \$87,300.00 at the rate of 2.5% per annum from 1<sup>st</sup> August 2023 to the date of judgment.
7. The Claimant is entitled to interest on the global sums awarded as arrears of rent and mesne profits pursuant to section 7 of the Judgments Act at the rate of 5% per annum from the date of this judgment until payment.
8. The Claimant is awarded Prescribed Costs to be calculated on the sum of \$87,300.00.

**Rene Williams**

**High Court Judge**

**By The Court**

**Registrar**