

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO.: ANUHCV2009/0217

BETWEEN:

ELOISE JOSEPH
GLORIA JOSEPH

Claimants

and

JOHN JOSEPH

Defendant

Appearances:

Mr. Lawrence Daniels for the Claimants
Ms. E. Deriscia Thomas for the Defendant

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2009: October 23

2010: January 15
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JUDGMENT

[1] **MICHEL, J:** On 27th April 2009 the Claimants filed a Fixed Date Claim Form and Statement of Claim claiming against the Defendant for possession of property, mesne profits, costs and further or other relief. On 26th May 2009 the Defendant filed a Defence and Counterclaim. On 12th June 2009 the Claimants filed a Reply to the Defence and a Defence to the Counterclaim.

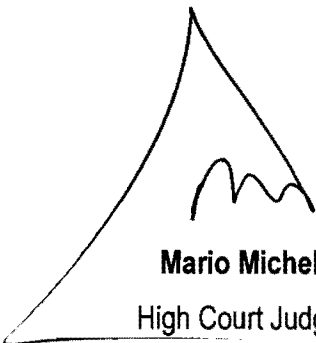
[2] By Notice of Application with Affidavit in Support filed on 12th August 2009, the Claimants applied to the Court to strike out the Defendant's Defence pursuant to

Rule 26.3 (1) (b) of the Civil Procedure Rules 2000 (CPR) essentially on the basis that the Defence does not on its face disclose any basis upon which the Defendant is entitled to remain in occupation of the Claimants' property.

- [3] The matter came before the Court on 25th September 2009 at which time Counsel for the Defendant sought an adjournment of the matter to enable her as the newly-appointed Counsel for the Defendant to get a comprehensive view of the matter and to file a notice of change of legal practitioner. The Court adjourned the hearing of the application to 23rd October 2009 and ordered the Defendant to file and serve an affidavit in response to the Notice of Application filed on 12th August 2009.
- [4] On 15th October 2009 an affidavit in opposition to the Claimants' application was filed on behalf of the Defendant by a clerk in his lawyer's office, wherein it was stated that the clerk was instructed by Counsel that the Defence does disclose a defence known to law but, if the Court is minded, Counsel would ask that the Defendant be granted leave to amend the Defence rather than to have it struck out since there are issues between the parties that Counsel believes should go to trial.
- [5] At the hearing of the application on 23rd October 2009 Learned Counsel for the Claimants argued in essence that so much of the Statement of Claim as is admitted by the Defendant results in the Defence of the Defendant not disclosing any reasonable ground for defending the Claimants' claim and the Defence should therefore be struck out.
- [6] In answer to the submission by Counsel for the Claimants, Learned Counsel for the Defendant argued that a defence is disclosed by the Defendant and she referred to paragraphs 6, 8 and 10 of the Defence and Counterclaim as disclosing a defence. But paragraphs 6, 8 and 10 are part of the Defendant's Counterclaim and not of his Defence, which ends at paragraph 5. The Defence, such as it is,

does not in fact disclose any reasonable ground for defending the Claimants' claim and ought therefore to be struck out.

- [7] Although Counsel for the Defendant in her oral submission in opposition to the application to strike out the Defence mentioned the possibility of an amendment to the Defence, no application to amend the Defence in accordance with Rule 20.1 of the CPR was in fact made and no amendment can therefore be made to the Defence at this stage.
- [8] The Defendant's Defence is accordingly struck out as not disclosing any reasonable ground for defending the claim, but his Counterclaim remains extant and must therefore be determined by the Court.
- [9] The matter is set down for case management on 29th January 2010 whereupon directions will be given by the Court on the determination of the terms of the judgment for the Claimants on their now undefended claim and on the trial of the Defendant's Counterclaim.



Mario Michel
High Court Judge