

2013

No. 189/S

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

1. SHAFEEL MOHAMED

2. FAWZIA MOHAMED

Plaintiffs

-and-

ZAKIR SALIM

Defendant

Mr. P. Mohanlall for the plaintiffs

Mr. K. Khan for the defendant

### **DECISION**

The Plaintiffs are the transported owners of the property by Transport No. 635 of 2005, and claim that the defendant occupies by way of a licence granted in 2004 which licence has been terminated by letter.

The defendant claims that he was put in occupation by a family arrangement for which he has not produced any tangible evidence.

The plaintiffs bought the property from one Chandra Balli Bisheswar and transport was passed to them jointly. There is no evidence that

the defendant or any family members were parties to this conveyance.

The plaintiffs have an indefeasible title which cannot be defeated except by fraud. When the plaintiffs bought the land there is no document evidencing a family arrangement, no evidence of any contributions by anyone else such as a family member. Nor has the defendant provided any facts which can show the court that there title.

The defendant claims he has expended money but has not given any evidence or facts supporting this contention and in any event if he has so expended monies he can make a claim against the owner or person who encouraged him to do so. The defendant cannot claim a right of interest in a third party, t h is vague and unclear. Who is this family he is referring to? There is no evidence of a trust in favour of the defendant. As far as the court can determine the defendant has not shown he has any interest in the property which must be clear and unambiguous.

In relation to Order 14 proceedings and the type of defence which the law requires from a defendant in such cases was dealt with in the case of **Banque de Paris** by Lord Ackner who stated as follows:-

e law that Order 14 proceedings are not decided by weighing the two affidavits. It is also trite that the mere assertion in an affidavit of a given situation which is the basis of a defence does not, ipso facto, provide leave to defend; the court must look at the whole situation and ask itself whether the defendant has satisfied the court that there

A defendant cannot claim he has a defence which is all surmise and not even a faint possibility of a defence exists as shown in *Paclantic Financing Co v Mosow Narodny bank Ltd*.

In **Guyana Oil Company Ltd v Feizal Amin** Civ App No. 39 of 2010 the Honourable justice Carl Singh in delivering the judgment of the court at page 15 stated thus:

proceedings, should as far as possible deal specifically with the defence is and what facts are relied on as supporting it. Sufficient facts and particulars must be given to show that there is a bona fide defence. Leave to defend is usually granted where there is a triable

issue and the obligation is that of the defendant to satisfy the court  
that ther

In **Wallingford v The Mutual Society** (1880) TLR 258 Lord Blackburn  
noted as follows:

defence, they must, if I may use the expression, condescend upon  
ifficult to define it but you must give such an extent  
that there are facts which  
make it reasonable that you should be allowed to raise that

**Order 12 Rule 4(2)** states as follows:

hearing under this order, give  
judgment for the plaintiff on his application, provided that if the  
defendant by his affidavit shall satisfy the judge that he has a good  
defence to the action on the merits or shall disclose such facts as  
may be deemed sufficient to entitle him to defend, the judge shall  
give leave to defend, subject to such terms, if any, as the judge may  
impose, or make such orders as may be just or otherwise, as the case  
may require

Lindley, MR in **R v General Railway Syndicate, Whiteley's case,**  
(1900) 1Ch 365 noted:

he filed an affidavit which shows no defence at all apart from the right to rescind. It starts with a formal statement that the deponent is not indebted. That goes for nothing unless you can find some circumstances which can throw light upon it and give rise to some reason for supporting that that is a true statement. I disregard that

Thus it is required of the defendant that he shall provide such circumstances which can throw light upon his assertions, and if he fails to do so, then his defence must be disregarded altogether. The defendant cannot make bare assertions and expect the court to find that he has a meritorious defence, when he has provided no particulars to support his assertions.

without more is vague, ambiguous and cannot amount to a defence

a

struck out and judgment granted for the plaintiff in terms of paragraph 8 (a) of the Affidavit verifying claim dated 26<sup>th</sup> September 2013 and it is further ordered that the defendant do deliver up

vacant possession of the premises on or before the 1<sup>st</sup> September  
2014.

Costs in the sum of \$20,000.

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Diana F. Insanally

Dated this 21<sup>st</sup> day of May 2014.