

29.4.09

**IN THE GRAND COURT OF THE CAYMAN ISLANDS,  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

**IN CHAMBERS**

**CAUSE NO. 383 OF 2008**

**BETWEEN: ALFRED SOLOMON**

**Plaintiff**

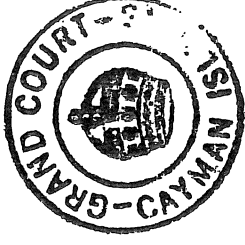
**AND: VERNON VIGILANT**

**Defendant**

**Appearances:** Mr. Steve McField of A. Steve McField and Associates for the  
Applicant  
Mr. James Kennedy of Samson and McGrath for the  
Defendant

**Before:** Hon. Justice Henderson

**Heard:** April 29, 2009



**RULING**

1. The defendant, Vernon Vigilant, applies to set aside a default judgment obtained regularly on September 23rd, 2008. The claim involves a dispute over a residential property on Grand Cayman.
2. The plaintiff is registered as a one-third owner of the property in question and the defendant is registered as an owner of the remaining two-thirds' share. The

defendant has lived in the property for many years without, however, paying any occupation rent to the plaintiff.

3. The parties have been on unfriendly terms for some considerable period of time. There has been previous litigation between them over matters concerning their respective entitlement to the property.
4. The claim alleges that the plaintiff has been ousted from the property by the wrongful acts of the defendant. It is said that the property, which contains just one residence, is incapable of partition. The prayer for relief seeks an order for sale and an order that the plaintiff be given a right of first refusal with respect to that sale. There is also a request for an equitable accounting and for reasonable occupation rent and income generated by the property. The claim concludes with a request for pre- and post-judgment interest and costs on an indemnity basis.
5. The first question is how it came to pass that the defendant allowed default judgment to go against him in a case which he says he intended to defend.
6. In his affidavit evidence, the defendant says that upon being served with the writ on August 19th, 2008, he spoke with an unnamed colleague who assisted him in

filing an acknowledgement of service. On that document, the defendant indicated an intention to defend. He went to the court office to file the acknowledgement of service and, while he was there, he applied for legal aid. At the time of filing, he asked the clerk if there was anything further he needed to do and was advised that there was nothing further to be done until legal aid was granted. However, legal aid was granted only on September 19th, 2008. By the time the defendant had had an opportunity to consult with his attorney; default judgment had already been entered.

7. The affidavit evidence also shows that there was no communication between plaintiff and defendant prior to the entry of the default judgment notwithstanding that the attorneys for the plaintiff were aware that the defendant would be seeking legal aid.

8. In these circumstances, it would be impossible to conclude that the defendant has acted unreasonably. He has provided a reasonable explanation and one which cannot be attributed to any default on his part. He has, therefore, satisfied the first branch of the test.

9. I turn to the merits of the defense.

10. The defendant says, in answer to the claim, that the plaintiff inherited his one-third share in the property from Hazel Solomon in 1997. Previously, in 1985, Hazel Solomon had made a will bequeathing her entire estate to the defendant. Evidently this was done because the defendant looked after her completely, as he says, from his arrival at the residence in 1981 until her death in 1999.

11. The defendant in his draft defense pleads that Hazel Solomon made numerous oral promises to him to leave her one-third share in the property to the defendant. He says he did maintenance and repair work on the house during the time he lived there. The plaintiff never requested rent until the year 2005. The draft defense goes on to claim that occupation rent for any period prior to 2002 is statute barred.

12. The defendant asserts an equitable entitlement to the one-third share held by the plaintiff on the theory of promissory estoppel. He says that the plaintiff inherited subject to the defendant's equitable interest, which is grounded upon the oral promises made by Hazel Solomon and upon the defendant's reliance, to his own detriment, upon them. He also claims a setoff against any occupation rent for the value of the improvements and repairs to the property which he has carried out.

13. I find that there is sufficient merit in this defense and in the affidavit evidence supporting it that there is, indeed, a real prospect of success. The defense does, in the words of the leading authority, "carry some degree of conviction". As a result, the default judgment is set aside.

14. The plaintiff is entitled to his costs of this application on the standard basis. The defendant is directed to file and deliver his statement of defense within 14 days.

Dated this 29<sup>th</sup> day of April, 2009

*Henderson, J.*

Henderson, J.  
Judge of the Grand Court

