

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 10/07

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MISS JUSTICE SMITH, J.A. (Ag.)**

BETWEEN	PAUL CHEN	APPELLANT
AND	JANNIS CHEN	RESPONDENT

H. Charles Johnson for the appellant

Trevor Ho-Lyn for the respondent

7th December 2007

ORAL JUDGEMENT

PANTON, P.

The appellant appealed against the judgment of Her Honour Miss Carolyn Tie delivered on the 5th of March 2007 in the Resident Magistrate's Court in Montego Bay. There is some confusion in the Record as filed by the appellant in that the Notice of Appeal refers to the judgment being delivered on 5th of March 2007 whereas the other document headed Notice and Grounds of Appeal refers to the judgment being delivered on the 29th of May 2007. Suffice it to say the decision was delivered on the 5th of March and the Reasons for Judgment were dated the 29th of May 2007.

The judgment arises from an action brought by the respondent against the appellant in which she sought to recover possession of premises occupied by the appellant and situated at 9 Melrose Terrace, Coral Gardens, Ironshore in the parish of St. James and in that plaint the respondent stated that the annual value of the premises does not exceed Seventy-Five Thousand Dollars (\$75,000.00). The appellant filed a counterclaim which is at page 2 of the Record. In it he said:

"... that the next hearing of this action the Defendant intends to set up Counter Claim, particulars of which are set out hereunder:

STATEMENT OF COUNTER CLAIM

The Defendant claims against the Plaintiff for beneficial interest of a house built on land at 9 Melrose Terrace, Coral Gardens and Ironshore St. James in 1998.

The Plaintiff Claims that she is the registered owner and the executor of property of the late Sybil Chen at 9 Melrose Terrace Ironshore in the parish of Saint James, mother of both Plaintiff and Defendant. The Defendant claims that by permission of the deceased, his mother he built with his own money a two bedroom dwelling house situated on the said premises and by so doing claims an equitable interest in the said property."

The learned Resident Magistrate in entering judgment made an order that the defendant was to vacate the premises on or before June 4, 2007 a date that was agreed on by the parties.

The learned Resident Magistrate adjudicated in favour of the respondent having heard the evidence from both the respondent and the appellant and their

witnesses. She recorded her reasons at pages 137 to 147 of the Record of Appeal. We have carefully read her reasons for judgment and do not feel that there is any error of law therein. She has demonstrated full appreciation of the facts that were put before her and she made findings which were quite reasonable in keeping with the evidence. We see absolutely no reason to disagree with any of the contents of her judgment.

The grounds of appeal which are listed at page 149 of the Record were argued by Mr. Johnson herein for the appellant. His arguments do not in any way, with respect, disturb the reasons recorded by Her Honour Miss Tie and as such we saw no reason to invite any submissions from Mr. Ho-Lyn for the respondent, beyond such written submissions that he had already presented.

In the circumstances we do not see anything that we need to add to the reasons for judgment recorded by the Resident Magistrate. They were properly stated and gave a clear impression that she fully understood what was presented to her.

In the circumstances the appeal is dismissed and costs of \$15,000.00 awarded in favour of the respondent. The order for recovery of possession takes effect immediately.