



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No: 94

**IN THE MATTER OF THE PROPERTY SITUATE AT PHILSTON UNIT 2, 21
WHALE BAY ROAD SOUTH HAMPTON SB04 BERMUDA**

BETWEEN:

M ATTHEW HAYWARD

Plaintiff

-and-

SONIA MARTINS

Respondent

RULING

(In Chambers)

Date of Hearing: 5 September 2025
Date of Oral Ruling: 5 September 2025
Date of Reasons: 10 September 2025

Appearances: **Amy Murray of Cox Hallett Wilkinson Limited, for the
Plaintiff**
**Bruce Swan of Bruce Swan & Associates, for the
Respondent**

Introduction

1. This written ruling confirms my oral ruling dated 5 September 2025

Application

2. By Originating Summons dated 29 April 2025 the Plaintiff seeks an Order of Possession of the property pursuant to Rule 113 of the Rules of the Supreme Court 1985 (Summary proceedings for possession of land).
3. This matter was last before the Court on 19 June 2025. On that date, the Court (Martin, J) ordered directions for the filing of the Respondent's defence, and, *inter alia*, that:-
 - (i) the Plaintiff shall have possession of the property suspended until the Respondent is heard on her defence;
 - (ii) the Plaintiff is entitled to mense profits for the period 31 March 2025 until date the Respondent vacates the Property, at a rate to be assessed and on terms subject to any cross claim made by the Respondent;
 - (iii) Costs reserved.

The Issue before the Court today

4. Martin, J's note of the proceedings on that day confirmed that the only issue before the Court is whether the Respondent has a right to remain in the Property i.e. why she is not a trespasser.

The Law

5. The application of Rule 113 for the summary possession of land does not extend to the claim for possession of land against a tenant. Consequently, Ms. Murray on behalf of the Plaintiff readily conceded that her client is not entitled to mense profit (compensation) on the Originating Summons before the Court. Therefore, IT IS ORDERED that in accordance with Rule 113/8 that part of this Court's Order dated 19 June 2025 granting the Plaintiff mense profits (compensation) for the period 31 March 2025 until the date the Respondent vacates the Property, is immediately set aside.

Findings

6. The Court having considered all of the affidavit evidence before the Court and submissions of Counsel, makes the following finding:-
 - (i) The purpose of the August 2022 "letter of understanding" between the parties was simply to put into writing their "*wishes should {their} current*

relationship break up for unreconcilable differences”, per paragraph two of the said letter – Exhibit SM1, page 1.

- (ii) The final paragraph of the said letter expressly states that “*both acknowledge that this letter is not a legally binding document.*” (Emphasis added). Consequently, it is very clear that the parties did not intend for this letter to legally bind them.
- (iii) At all material times the Plaintiff continued to service the property’s mortgage. Whilst there is evidence that the Respondent might have offered to pay rent to the Plaintiff, there is absolutely no evidence that the Plaintiff at any time whatsoever accepted such offers nor is there any evidence that the Respondent made good these offers. The Court rejects that there was at any time a “rent-to-buy” agreement between the parties as claimed by the Respondent.
- (iv) Further, there is no evidence that the Plaintiff consented to the Respondent’s continued occupation of the Property beyond 31 March 2025. Thereafter, the Respondent became a trespasser.

Conclusion

7. In all these circumstances the Respondent’s defence of “Reliance” is not made out. The Court therefore Orders that:-
- (i) The Plaintiff shall have immediate possession of the Property.
 - (ii) The Plaintiff shall have his cost to be taxed by the Registrar, if not agreed between the parties.

DATED this 10th day of **September 2025**



HON. NICOLE STONEHAM
PUISNE JUDGE