

COMMONWEALTH OF THE BAHAMAS

2021/CLE/gen/00101

IN THE SUPREME COURT

Common Law & Equity Division

**DAVID PUGH
LISA PUGH
DEVRON PUGH**

Plaintiffs

AND

MERONACER ROLLE- MORLEY

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Rouschard Martin for the Plaintiffs

Mr. Brian Dorsett for the Defendant

Trial Dates: 2nd and 3rd March, 2022

JUDGMENT

Darville Gomez, J.

This action arose out of a Rent to Own Contract executed in August, 2014 among the three Plaintiffs referred to as the "Renters" and the Defendant referred to as the "Owner" for the purchase of property situate at Lot No.2 Romer Street in Fox Hill, Nassau, The Bahamas for \$135,000. The property was the subject of a mortgage with First Caribbean International Bank however, this was not referred to in the said Contract. The Plaintiffs allege that they acted to their detriment in their payment of about \$100,000 in accordance with the said agreement, in addition to the improvements they made to the property. Therefore, they claim that they have acquired an equitable interest in the property. The Defendant counterclaimed for the arrears of the rent.

HELD:

- (i) I find that the Plaintiffs have not proven that they have acquired an equitable or any interest whatsoever in the subject property;

- (ii) I award judgment to the Defendant on her Counterclaim in the sum of \$44,950 representing rent for the period 2018 to October, 2023;
- (iii) Possession of the subject property to the Defendant within sixty (60) days subject to the payment by the Plaintiffs of rent of \$2,600 for the period November 13, 2023 – January, 12, 2024 and;
- (iv) Costs of the action to the Defendant to be fixed and paid by the Plaintiffs; unless otherwise agreed by the parties.
- (v) Costs of the Summary Judgment application to the Plaintiffs, such costs to be fixed and paid by the Defendant; unless otherwise agreed by the parties.
- (vi) I will hear the parties on the quantum of costs, if they are not agreed by written submissions no later than December 31, 2023 and not to exceed 10 pages.

The Claim

1. The Plaintiffs filed a generally endorsed Writ of Summons followed by a Statement of Claim in which they sought the following reliefs:
 - (I) A declaration that the Plaintiffs have an equitable interest and/or beneficial interest in the Property at Romer Street, Fox Hill;
 - (II) An Order that the Defendant shall transfer the equity of redemption or her right, title and interest in the Property situate at Romer Street, Fox Hill to the Plaintiffs immediate upon payment of the balance of the purchase price;
 - (III) A declaration that the Plaintiffs are entitled to quiet enjoyment and possession of the Property at Romer Street, Fox Hill;
 - (IV) Damages to be assessed in favour of the Plaintiffs as a result of the Defendant's failure to act in good faith, her breach of the Agreement and negligence;
 - (V) Costs and Interests;
 - (VI) Further or other reliefs that the Court may deem just.

2. The Defendant filed a Defence and Counterclaim. The Defendant denied that the Plaintiffs were unaware of the mortgage with the Bank and further that the Plaintiffs eventually became delinquent in their payments causing her to rewrite the mortgage to cover the outstanding payments. In her Counterclaim, she sought inter alia:
 - (i) Special Damages in the amount of \$16,350;
 - (ii) General damages to be assessed;
 - (iii) Rescission of the Rent to Own Contract;
 - (iv) Possession of the said property;

- (v) Interest;
- (vi) Such further or other relief as is just; and
- (vii) Costs.

Issues

3. The Plaintiffs have claimed a plethora of relief including declaratory relief for an equitable interest, quiet enjoyment and possession of the subject property and an order for the transfer of the equity of redemption or the Defendant's interest in the subject property to them and damages. I have distilled the issues to the following questions:
 - (i) Whether the Plaintiffs are entitled to a declaration that they have an equitable and/or beneficial interest in the said property?
 - (ii) Whether the Plaintiffs are entitled to damages?

The Evidence for the Plaintiff

4. The First and Second Plaintiffs, David and Lisa Pugh gave evidence and they called Chester Knowles, a Contractor and a friend of the First Plaintiff to also give evidence.

First Plaintiff - David Pugh

5. David Pugh in his evidence in chief testified as follows:
 - i.) the Defendant entered into a Rent to Own Contract with him, his wife Lisa and his son Devron.
 - ii.) that he and the Plaintiffs have been paying money monthly to own the subject property since 2014 and expended money to improve and maintain the subject property which the Defendant never challenged and that the Defendant has never maintained or done anything to the property since 2014. He said that he had not seen the Defendant since 2014 or any agent of hers since 2014.
 - iii.) he noted that it was never the intention of the parties to go through an eviction process for failure to pay rent and he referred to the third paragraph of the agreement which reads: "It is understood that the Renters and Owner intend that ownership of the property shall transfer to Renters upon the full completion of this agreement upon the terms of this agreement."
 - iv.) he referred to the grave injustice that they would suffer having paid almost \$135,000 to have the property that they have treated as their home taken away. He stated that it was a critical intention of the parties that they will become the owners of the house by gaining a greater interest with each payment made to the

Defendant. He set out the notable maintenance and repairs they had performed which included the following:

- (i) Repairs to roof and facial boards;
 - (ii) Repairs to the border fence of the property;
 - (iii) Repairs to significant cracks in the interior and exterior walls;
 - (iv) Annual painting of the entire house internally and externally;
 - (v) Significant repairs and treatment work over the year for termite infestation;
 - (vi) Repairs to a septic tank issue which existed prior to their possession and which caused water to overflow into the property. This required plumbing work which the Plaintiffs paid for and completed;
 - (vii) Built a concrete wall facility to keep the garbage bins;
 - (viii) Planted beautification trees including fruit tree like banana trees etc;
 - (ix) Built a fence enclosed area for dogs.
- iv.) he stated that he was advised by his attorney that this was not simply a matter of what the plaintiff paid or did not pay, but rather about a mortgage which the Defendant never told the Plaintiff about. He said that the Defendant was not forthright and upfront with honest disclosure of the fact that there was a mortgage attached to the subject property.
- vi.) he denied any knowledge of the mortgage or a second mortgage and said that the Defendant was strategic in her failure to include it in the agreement.

Second Plaintiff - Lisa Pugh

6. Lisa Pugh in her evidence in chief testified as follows:

- i.) She corroborated the evidence of her husband that they had signed a Rent to Own agreement with the Defendant; that they had been paying money monthly to own the property; that they spent significant sums of money to improve and maintain the property; that the Defendant had agreed that they will pay rent, maintain the property and become owners as a result of each monthly payment; that this was a fundamental promise.
- ii.) She said that they had commenced legal action in the Supreme Court as a result of the Defendant's action brought in the Magistrates Court.
- iii.) She averred that she along with the First Plaintiff, her husband planted a number of trees bearing fruits throughout the yard.
- iv.) she stated that when her family gained possession of the property, they discovered an issue with the septic tank which led to the destruction of some of their valuable items and other items having to be replaced.
- v.) In addition, she stated that she and her family treated the property as though it was their own based on the agreement to own the property upon completion of the purchase price.

- vi.) She expressed that she along with the other Plaintiffs were unaware of a mortgage on the property and were in disbelief when the information was revealed.

Witness - Chester Knowles

7. Chester Knowles in his evidence in chief testified as follows:

- i.) that he is a contractor by profession and has been for about 28 years and that he is also the friend of the First Plaintiff.
- ii.) Mr. Knowles testified that he was aware that the First Plaintiff had entered into a Rent to Own Contract with the Defendant and that as a result of this agreement that his services was sought over the years to help improve, maintain and repair the property. He said that he was never challenged by the Defendant or anyone to stop the work that he was doing at the home. His list of notable improvements was identical to the list given by the First Plaintiff in his evidence in chief.
- iii.) His evidence under cross examination was: that the First Plaintiff sought his services and assistance with regard to a number of improvements, maintenance and repairs to the said property including resolving an issue with the septic tank. The material and labour for work done to the property between 2014 and 2021 totaled approximately \$4,000.00. He particularized the work done as follows: the construction of a garbage bin, fenced area for dogs, changing of roof and facial boards (interior and exterior), painting and landscaping.
- iv.) Chester Knowles testified that he assisted the Plaintiff with work to the property, particularly the septic tank issue. He also testified that he never charged the Plaintiff full price for any work done because of their relationship and that is the reason why there are no receipts for the work that was completed. Mr. Knowles further testified that he provided the First Plaintiffs with receipts for the materials he would have purchased to complete work. However, no receipts confirming work done to the property were produced for the hearing of the trial.

The Evidence for the Defendant

- 8. The Defendant gave evidence and she called Eileen Powell, her friend to also give evidence.

The Defendant - Meronacer E. Rolle- Morley

9. The Defendant in her evidence in chief testified as follows:

- i.) That she is the owner of the property situate at Lot No.2 Romer Street in Fox Hill, Nassau, The Bahamas which she purchased in 2005 with a mortgage from First Caribbean International Bank (CIBC).

- ii.) She testified in similar terms as the two Plaintiffs that she had entered into a Rent to Own agreement for them to purchase the house for \$135,000 and that the monthly payments were \$1,300.
- iii.) She said that the payments were supposed to be made directly to her mortgage account at CIBC and that she did not make any real profit from the transaction because the purchase price was mainly to cover the outstanding amount on the mortgage. She testified that she was leaving the Bahamas and wanted to be rid of the mortgage because she did not intend to return to reside.
- iv.) She said that the First Plaintiff informed her that it was inconvenient for him to make deposits at CIBC and that Royal Bank was better because there was a branch located at the Lynden Pindling airport where he worked.
- v.) The Plaintiffs made consistent payments until sometime in 2017 when they fell significantly behind. In December 2018, she gave them Notice to Vacate due to outstanding rent and as per the Rent to Own Agreement. Then in October 2019 because of the significant amount due by the Plaintiffs her mortgage account became delinquent and she had to restructure it by borrowing the sum of \$19,000 to bring the mortgage account current and avoid foreclosure.
- vi.) In January, 2020 the Plaintiffs paid \$5,800 towards the \$19,000.
- vii.) The Defendant during cross examination admitted that she ceased communication with the First Plaintiff around April 2020.
- viii.) The Defendant maintained that the Plaintiffs continued to be delinquent with rental payments therefore she effected and served a second Notice to Vacate in December 2020, to take effect as at 31st January, 2021.
- ix.) In February 2021 following the Second Notice to Vacate, the Plaintiff filed a Summons in the Magistrate's Court to have the Plaintiffs evicted from the property due to non-payment of the monthly rental payments. The Defendant gave authorization to Eileen L. Powell to act on her behalf in those proceedings which were dismissed in April, 2021 because the Magistrate did not have jurisdiction to hear the matter.
- x.) At the Magistrates Court, she became aware that the Plaintiffs had commenced the instant action in the Supreme Court claiming an equitable interest in the home.
- xi.) The Plaintiffs have not made any payments towards the rent for the entire year 2021 in addition to outstanding amounts from previous years.
- xii.) The Defendant made it clear that she did not grant permission to the Plaintiffs to make improvements to her home situate Romer Street. She added that the

property was in good condition when the Plaintiffs took possession in 2014. Moreover, that the Plaintiffs never informed her of any defects or septic tank issues with the property which warranted her intervention and assistance. She stated that the Plaintiffs were only responsible for the maintenance of the property as stipulated in the agreement.

- xiii.) The Defendant further stated that the First Plaintiff was aware that there was a mortgage on the property with CIBC which was supported by the Whatsapp chats between them.

Witness - Eileen Powell

10. In her evidence-in-chief she testified as follows:

- i.) That she is a close friend of the Defendant and have known her for more than 15 years.
- ii.) The Defendant gave her a Power of Attorney to act on her behalf with regard to the eviction proceedings in the magistrate's court. Her evidence was that the Defendant informed her that the Plaintiffs paid rent consistently until up to 2017 and sought her advice. The witness stated that she advised the Defendant to prepare a Notice to Vacate and serve it on the Plaintiffs. She recalled that the Defendant's daughter Rubinique Forbes served the notice on the Plaintiffs sometime in 2018. However, the Plaintiffs refused to vacate the said premises.
- ii.) That she was made aware of the Plaintiffs continued delinquency which resulted in the Defendant having to refinance the mortgage on the property.
- iii.) That in December, 2020 the Defendant effected a Second Notice to Vacate on the Plaintiffs for non-payment of the monthly payments, but to no avail because the Plaintiffs remained in possession of the property.
- iv.) The witness testified that acting on instructions from the Defendant proceedings for eviction were instituted in February 2021 in the magistrates court however, the magistrate did not have jurisdiction to hear the matter.
- v.) Further, she testified that the Plaintiffs have not made any payments for 2021 and the outstanding arrears now totals about \$28,050.00.

Analysis and Discussion

ISSUE I: Whether the Plaintiffs are entitled to a declaration that they have an equitable and/or beneficial interest in the said property?

11. I begin with setting out the entire Rent to Own agreement between the parties:

Rent to Own Contract

Whereas, **DAVID A. PUGH, LISA M. PUGH and DERVON PUGH** (hereafter Renters) desires to possess and have the use of certain property owned by **MERONACER ROLLE- MORLEY** (hereafter Owner) and described as that parcel of land located # Romer St in the Subdivision known as Fox Hill on the island of New Providence in the Commonwealth of the Bahamas.

Whereas, the parties have agreed that Renters shall take possession of the property on **09/01/2014** and have the use of the property until this agreement is terminated.

It is understood that the Renters and Owner intend that ownership of the property shall transfer to Renters upon the full completion of this agreement as per the terms of this agreement.

Now, therefore, both parties agree as follows:

Renters shall pay Owner the sum of \$3,900.00 representing the initial contribution applied as first, last and security amounts in equal parts (\$1,300.00 per month) to **RBC Royal Bank, Nassau, The Bahamas Account Number #05715-7039654**. Further, the amount of **\$1300.00** becomes due on the 1st day of each month for rental of the property. After receipt of the deposit amounts outlined above, a total of 104 payments remain (setting the contract to reach fulfilment after a period of 8 years and 8 months), including \$250.00 which represents the water bill in advance payable upon the execution thereof and the said security deposit will be refundable to the Tenants within one month after the expiration of the term hereby created provided that the Tenants has paid all accounts payable by the Tenants in relation to the tenancy.

Please note that there is no penalty for early repayment and lump sum payments are encouraged to lessen the term of the agreement. However, if payment is late by more than five days, a late fee of **\$100.00** shall be applied and is due immediately from Renters, along with the outstanding monthly rental amount. It is agreed that the amount of the late fee will not be deducted from the balance of the contract and is solely for the purpose of discouraging late payments and for accounting for the inconvenience caused thereby.

The parties agree that the purchase price of the property is **\$135,000.00**

The parties agree that \$1300 (the full amount of each month's rent payment shall be applied towards purchase of the property until the balance is satisfied).

The parties agree that ownership of the property shall transfer to Renters upon Renters' completion of payments as described above.

The parties agree that if Renters fails to complete the contemplated purchase of the property for any reason, no refunds or credits shall be due to Renters. All payments received will be viewed accounted for as rent received. (my emphasis added)

Renters shall maintain the property, at the Renter's expense, assuring that the property remains in clean, good working order.

Renters shall indemnify and hold harmless Owner against any and all claims, damages, or actions arising from Renters' possession or use of the property from the beginning of this contract.

If Renters fails to make a payment within 30 days of its due date, Renters agrees to default and agrees to surrender the said property to Owner upon the Owner's demand after receipt of a letter described as a 30 day notice to vacate the premises. At such time the renter agrees to being deemed in a state of foreclosure. (my emphasis added)

Further, if renter fails to make a payment within 30 days of receipt of a Notice to Vacate Foreclosed Property, Renters agrees that Owner shall have the right to enter Renters' property for the purpose of taking possession of the rented property. (my emphasis added)

12. The First Plaintiff during cross examination admitted to being in breach of the covenant in the agreement to pay the monthly sum of \$1,300.00 to the Defendant.

13. He testified and responded to questions regarding the monthly payments as follows:

"... I'm saying to you, sir, is that I made payments. You asked me if I didn't make no payments. I told you I always made payments. It might not have been the full amount, but I was making payments."

Q. And you just indicated in evidence that you made payments but sometime the payments was short, that's your evidence, correct?

A. Yes, sir

Q. So if the payments were short, doesn't that make you in breach of the agreement?

A. Like, I say –

Q. Yes or no, sir. Yes or no.

A. Yes, sir

Q. Thank you very much. So for all intents and purposes, every time you short changed Mrs. Morley, you stood in breach of the agreement, correct?

A. Yes, sir. But I was making it up in back pays.

14. Further, when the First Plaintiff was pressed under cross examination as to the extent of his indebtedness to the Defendant he responded as follows:

Q: What is the extent of your indebtedness of Mrs Morley right now? Aren't you in arrears of payment?

A: "I'm in arrears of payment."

Q: Isn't that arrears in amount more than \$20,000?

A: Somewhere up in there, but we made attempts to pay that in October.

Q: So you are saying then that Mrs Morley let you remain in her home that she's paying a mortgage on without making payments, that's what your'e saying?

A. Like I say to you again, sir, I had no knowledge of no mortgage.

15. The Second Plaintiff, Lisa Pugh under cross examination similarly admitted that they were in arrears of payment to the Defendant in the sum of over \$20,000.00.

16. Therefore, the First and Second Plaintiffs admitted to being in a breach of the contract for failure to make the monthly rent payments.
17. The Plaintiff's witness, Chester Knowles also testified that the First and Second Plaintiffs informed him that they were behind on rent payments to the Defendant therefore she intended on recovering possession of the property.
18. Therefore, on the evidence it is plain to see that the Plaintiffs were in arrears of their monthly rental payments and thus in breach of the Rent to Own Agreement.
19. The First Plaintiff's evidence relative to the mortgage under cross examination was gained from the Whatsapp messages between himself and the Defendant at tab 9 of the Defendant's Bundle of Pleadings beginning. He read the message dated 7/16/20 at 8:43 am from the Defendant into the record as follows:

"Hi, David. I called but Lisa didn't answer. No worries Lisa did not answer. I notice that you're not paying the rent on time again. Is there's another problem? Also, have you seek a lender to purchase the house in Romer Street because it's been more than six years. I'm not your ENEMY David. I just want this mortgage out of my name and your promise to purchase". (my emphasis)

20. The First Plaintiff was asked to read another excerpt from the Whatsapp messages dated 7/30/20 at 12:28 pm which he read as follows into the record:

"David, I just came off the phone with the bank online you have not made any deposit. This is a problem now what we discussed. The mortgage is due again in a few days, and yet I'm begging you. (my emphasis added)

21. In another message from the Defendant to the First Plaintiff read into the record by the First Plaintiff, the Defendant wrote on 8/14/20 at 7:28am:

*"I refuse to let my house rent go again in default with the bank. You are late and still owing balance". (my emphasis added)
"Am getting all off the funds just give me little time. [First Plaintiff's response 8/14/20 at 8:41am]*

22. The First Plaintiff in his message on 8/28/20 at 11:10am stated:

"Morning miss Molly I am trying my best to get the money together I was short last month bad same thing this am trying my best I will have to go to then try n c if they will perches for because airport is slow am trying.

23. The Whatsapp messages exhibited between the Defendant and the First Plaintiff date back to 2019 and end in 2021. They demonstrate a close amiable relationship between

them. They also show the persistent efforts by the Defendant to ensure that she received the monthly payments from the Plaintiffs in order for her to make her mortgage payments.

24. Additionally, the Second Notice to Vacate dated December 31, 2020 refers to the mortgage:

"This letter serves as formal notice for you to vacate the premises being House #2, Romer Street, Fox Hill, New Providence, The Bahamas effective January 31, 2021. You are in breach of our Agreement having not lived up to the payments and I can and will no longer pay the mortgage for you and your family to live free. Should you decided not to comply with this notice to vacate, I have retained legal counsel for the purpose of effecting the vacation of my house through the courts of The Bahamas".

25. Therefore, I believe the evidence of the Defendant when she stated that the monthly payments were initially to be made to CIBC, however, that she sought to accommodate the First Plaintiff by having them made at RBC which was more convenient to him because there was a branch at the airport where he worked.
26. In any event, despite the fact that the mortgage was excluded from the Rent to Own Agreement, the evidence showed that the Defendant was transparent about the mortgage and the need for the monthly rental payments to meet her mortgage obligations. Therefore, the Plaintiffs' evidence that they knew nothing about the mortgage or that the Defendant sought to conceal the mortgage or complicate the agreement between them is patently false and dishonest.
27. The above Rent to Own Contract clearly outlined the expressed terms of the agreement between the parties to this action. Its authenticity was not challenged by either party and during cross examination, the First Plaintiff confirmed that he was not forced or coerced to sign the contract.
28. Therefore, the Plaintiffs ought to not have been surprised as to what would have occurred because the relevant clauses addressed this issue as follows:

"If Renters fails to make a payment within 30 days of its due date, Renters agrees to default and agrees to surrender the said property to Owner upon the Owner's demand after receipt of a letter described as a 30 day notice to vacate the premises. At such time the renter agrees to being deemed in a state of foreclosure.

Further, if renter fails to make a payment within 30 days of receipt of a Notice to Vacate Foreclosed Property, Renters agrees that Owner shall have the right to enter Renters' property for the purpose of taking possession of the rented property."

29. Counsel for the Plaintiffs submitted that the Defendant waived her right to take possession of the property by failing to serve the Plaintiffs with a notice to vacate after 30 days of nonpayment as stipulated in the contract. During cross examination, the Defendant

admitted that she nor any of her agents went to the property to take possession and during re-examination, the Defendant admitted that her duty in accordance with the contract was to go in and take possession. She stated:

“ Was for me to go in, me or my agent to go in and released them from the house, but I never did that. I’ve never done that.”

30. It cannot be said that the Defendant waived her right of possession by her actions. The Defendant served two Notices to Vacate on the Plaintiffs so as to enforce her right to possession. The fact that she did not go further and enter the property for the purpose of taking possession is irrelevant. She served notice per the Agreement and in any event after the Second Notice to Vacate was served and the Magistrate determined that he had no jurisdiction to determine the matter, she became aware that the Plaintiffs had already commenced the instant action.
31. The Plaintiffs supported their claim for equitable and/ or beneficial interest by submitting that they were in compliance with the contract since its inception in 2014 which was clearly false.
32. During cross examination, Counsel for the Defendant led the Second Plaintiff to the contract which provided that the Plaintiffs were required to ‘maintain’ the property at their own expense. Lisa Pugh accepted that the contract did not stipulate that they were to make any improvements to the home.
33. The issue surrounding the septic tank also arose and when asked whether the Defendant was notified, the Second Plaintiff stated that she verily believe that the First Plaintiff told her. However, the Defendant’s evidence was that she was never advised of the septic tank issues or any other issues.
34. In relation to repairs, Forbes J in the case of ***British Anzani (Flexstowe) Ltd. v International Marine Management (UK) Ltd. [1979] 2 All ER 1063*** expressed that “...the landlord's obligation to repair premises demised does not arise until the tenant has notified him of want of repair...”
35. Further, the Plaintiffs have further claimed that improvements were made to the property which entitled them to an equitable or beneficial interest in the property. While the First Plaintiff’s evidence outlined the repairs and or improvements made to the property and this was supported by his witness, Chester Knowles, nothing was tendered in evidence to prove this. Mere words cannot support the Plaintiffs claim for a beneficial interest in the subject property. In any event, the terms of the Rent to Own Contract was that the Renters were to maintain the property at their own expense. Therefore, whatever extra works were carried out by the Plaintiffs as they allege (but none of which were proven) did not give them any entitlement to an equitable or beneficial interest in the said property. The Plaintiffs’ became entitled to the property upon the completion of the 104 payments which never occurred.

36. Counsel for the Plaintiff submitted two cases in support of the Plaintiff's claim for equitable and/ or beneficial interests: *Jagdeo Sookraj and Buddhu Samaroo [2004] UKPC 50* and *Mohammed Tahir and Faiz Ul Hassan Faizi [2019] EWHC 1627 (QB)*. None of these cases support the Plaintiffs' case or are applicable at all to the instant case.
37. Therefore, I find no reason to support the Plaintiffs' claim for an equitable or beneficial interest in the property or any other of the reliefs claimed by them.

ISSUE II: Whether the Plaintiffs or Defendant are entitled to damages.

38. The Contract signed by the Plaintiffs was extremely transparent as it related to the amount of payments necessary to confer ownership of the subject property to them and how any improvements to the subject property were to be treated. The Plaintiffs' entitlement in the property would evolve upon the completion of the agreement (that is, 104 payments) and if they failed to complete the contemplated purchase price for any reason, all payments received will be accounted for as rent received.
39. Therefore, the Plaintiffs have failed to prove any of their claims for reliefs. First, it was undisputed that they were in default of the Rent to Own Contract because their rental payments were in arrears and second, any improvements made to the property did not grant them any interest in the property. Finally, their claim that the existence of the mortgage complicated matters is untrue. In fact, it was obvious that at the commencement of this action the Plaintiffs were already in breach of the Rent to Own Contract for their failure to pay the monthly rental payments.
40. Therefore, the Plaintiffs are not entitled to any damages.
41. The Defendant has however, proven that the Plaintiffs failed to make any rental payments from 2018 until today's date and therefore, their counterclaim succeeds.

Conclusion

42. For the foregoing reasons, I make the following Orders:
- (i) All reliefs claimed by the Plaintiffs are hereby refused.
 - (ii) The Plaintiffs do deliver up possession of Lot No. 2 Romer Street, Fox Hill, Nassau, The Bahamas sixty (60) days from today's date that is, no later than, the 12th day of January, 2024 subject to the payment by the Plaintiffs of \$2,600 to the Defendant by no later than November 30, 2023.
 - (iii) The Defendant is awarded Special damages in the amount of \$44,950 representing the outstanding monthly payments for the period 2018 –

October, 2023 with interest at the rate of two percent per annum from the date of the Counterclaim to the date of judgment and to accrue thereafter in accordance with the Civil Procedure (Award of Interest) Act.

- (iv) Costs of the action to the Defendant to be paid by the Plaintiffs and costs of the Summary Judgment application to the Plaintiffs to be paid by the Defendant; such costs to be fixed unless otherwise agreed among the parties. The parties are to submit their written submissions on the quantum of costs by no later than December 31, 2023 in the event they are unable to agree them.

Dated this 13th day of November, A. D., 2023


Camille Darville Gomez
Justice