

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2023/0614 (formerly CLAIM NO. GDAHCV2018/0426)

BETWEEN:

CHRISTOPHER HYACINTH

Claimant

and

CHRISTIANNA GIBBS

(In her capacity as Administratrix of the Estate of George Francis Gibbs, Deceased)

Defendant

Before:

The Hon. Mr. Justice Raulston L.A. Glasgow

High Court Judge

Appearances:

Mr. Ian Sandy and Ms. Celeste Reece for the Claimant

Mr. Ruggles Ferguson KC and Ms. Mckaeda Augustine for the Defendant

2025: December 11th;
2026: February 2nd and 3rd (Submissions);
June 09th.

JUDGMENT

- [1] **GLASGOW, J.:** This judgment concerns a dispute arising from a lease agreement entered into between the claimant (hereafter referred to as “Mr. Hyacinth”) and the defendant (hereafter referred to as “Ms. Gibbs”) in respect of property situate at Molinere, St. George (hereafter referred to as “the property”).
- [2] Although the proceedings originally involved broader issues concerning Mr. Hyacinth’s continued occupation of the property and Ms. Gibbs’ entitlement to possession, the matters remaining for determination are confined to a claim for monies due and owing to Ms. Gibbs for Mr. Hyacinth’s occupation.

Background

- [3] On 1st April 2014, the parties entered into a lease agreement of the property for a term of four years. The annual rent reserved under the lease was \$31,200.00 payable in equal monthly instalments.
- [4] During the subsistence of the tenancy, disputes arose between the parties concerning the payment of rent. By letter dated 2nd December 2015, Ms. Gibbs' attorneys wrote to Mr. Hyacinth alleging that rent was in arrears and gave him three months' notice to quit and deliver up possession of the property.
- [5] Notwithstanding the notice to quit, Mr. Hyacinth remained in occupation of the property for several years and ultimately vacated the premises on 24th January 2025 following a court order of 15th July 2024.

Case History

- [6] Mr. Hyacinth commenced proceedings against Ms. Gibbs on 30th October 2018. In response, Ms. Gibbs filed a defence and counterclaim on 6th February 2019 for, among other things, an order for possession of the property, an order for payment of arrears of rent for September 2015 and July and August 2017, such other relief as the court deems just and costs.
- [7] On 15th July 2024, upon hearing Ms. Gibbs' application, summary judgment was partly granted to Ms. Gibbs. By further order dated 17th March 2025, it was directed that the trial will be heard with respect to paragraph 3 of the counterclaim, which sought an order for the payment of arrears of rent and mesne profits for September 2015, July 2017 and August 2017, in the total sum of \$7,800.00.
- [8] Witness statements were filed on 30th April 2020 and on 10th June 2020. The matter came on for trial on 11th December 2025.
- [9] At the commencement of the trial, Ms. Gibbs conceded that rent for September 2015 had been paid. The dispute was therefore narrowed to Ms. Gibbs' claim for arrears of rent in relation to July and August 2017, and the question whether any

further relief could properly be awarded arising from Mr. Hyacinth's continued occupation of the property.

The Evidence

- [10] The evidence disclosed that Mr. Hyacinth's last payment of rent was made in September 2020. He nevertheless remained in occupation of the property until 24th January 2025. Accordingly, from October 2020 to January 2025, Mr. Hyacinth occupied the property without making any further rental payments.
- [11] Against that factual background, the court must determine whether Ms. Gibbs has established her entitlement to the arrears claimed and whether she is entitled to recover monies due for Mr. Hyacinth's occupation.

Legal Analysis

Whether Ms. Gibbs is entitled to rent arrears

- [12] Mr. Hyacinth maintains that he paid rent for July and August 2017 to Garvin Gibbs, Ms. Gibbs' son, but that receipts were not issued to him. Ms. Gibbs denies receiving those payments and contends that the rent remains outstanding.
- [13] The issue is ultimately one of fact to be determined by the court, and having considered the evidence as a whole, the court is unable to accept Mr. Hyacinth's assertion that the rent for July and August 2017 was paid.
- [14] The court attaches particular significance to correspondence dated 14th September 2017 from Mr. Hyacinth's attorneys enclosing rent for September 2017. That correspondence was written against the backdrop of an ongoing dispute concerning rent arrears and possession of the property. Notably absent from the correspondence is any complaint by Mr. Hyacinth that receipts had been withheld for rent paid for July and August 2017.

[15] In the court's view, on a balance of probabilities, if Mr. Hyacinth had in fact paid rent for those months and was encountering difficulty obtaining receipts, it is reasonable to expect that he would have raised the matter with his legal practitioners and that it would have been communicated to Ms. Gibbs. The absence of any contemporaneous complaint, coupled with the lack of documentary evidence supporting the alleged payments, significantly undermines Mr. Hyacinth's account. Conversely, the record, which reflects a pattern of irregular and sporadic rental payments, is more consistent with the conclusion that rent for July and August 2017 was not paid.

[16] Accordingly, the court finds that the total sum of \$5,200.00 in rent arrears remains due to Ms. Gibbs.

Whether Ms. Gibbs is entitled to monies due for Mr. Hyacinth's occupancy from October 2020 to January 2025

[17] Ms. Gibbs submits that the court should make an award in respect of Mr. Hyacinth's occupation of the property between October 2020 and January 2025, during which period no payments were made to her.

[18] Relying on the decision in **Drane v Evangelou et al**¹, **Re Vandervells Trusts**² and **FBO 2000 (Antigua) Ltd v Vere Cornwall Bird Jr. et al**³, Ms. Gibbs argues that a court may grant relief flowing from material facts proved at trial, notwithstanding that the precise relief is not specifically pleaded. She submits that the issue of Mr. Hyacinth's continued occupation of the property and his failure to pay rent after September 2020 was repeatedly raised in the proceedings through affidavit and documentary evidence.

¹ [1978] 2 All ER 437

² [1974] 3 All ER 205 at 213

³ Civil Appeal No. 30 of 2003

[19] Ms. Gibbs further relies on the prayer in the counterclaim for “such further or other relief as this Honourable Court deems just”, and refers to the case of **Hawkes v Cuddy; Re Neath Rugby Ltd**⁴ where the Court of Appeal stated:

“The all-but-universal inclusion in the prayer of petitions of ‘that such other order may be made as the court thinks fit’ itself means that the discretion of the court as to the relief to be granted is unfettered by the petition.”

[20] Accordingly, Ms. Gibbs seeks an award of \$135,200.00 for Mr. Hyacinth’s occupancy during the period of October 2020 to January 2025.

[21] Mr. Hyacinth submits that any claim for mesne profits must be specifically pleaded and particularised. Relying on **Bernestine Lewis v Esther Hall**⁵, he argues that mesne profits are distinct from rent and arise only where a person’s legal entitlement to occupy property has come to an end.

[22] Mr. Hyacinth further submits that the burden rests on Ms. Gibbs to establish her entitlement to mesne profits, including the period of wrongful occupation and the basis upon which such damages are to be assessed. He relies on **Clifton Securities v Huntley**⁶ for the proposition that the claimant must establish a superior right to possession, the absence of any lawful basis for continued occupation, and the period during which the occupation was wrongful.

[23] Mr. Hyacinth argues that the principle in **Drane**⁷ represents a narrow exception, and does not permit a party to advance a materially different claim beyond that which was pleaded. He submits that Ms. Gibbs’ pleaded claim is confined to July and August 2017 and that any award in respect of the period October 2020 to January 2025 would cause prejudice, as he had no opportunity to defend a claim framed in those terms.

⁴ [2009] EWCA Civ 291

⁵ ANUHCv2022/0136

⁶ [1948] 2 All ER 283

⁷ [1978] 1 WLR 455

The Court's Findings

[24] The principal objection advanced by Mr. Hyacinth is that the court cannot award damages arising from his occupation of the property between October 2020 and January 2025 because that period was not specifically pleaded in the counterclaim. The question for determination is therefore whether the relief sought by Ms. Gibbs constitutes a new claim or whether it is relief flowing from material facts already before the court.

[25] It is well established that a party is required to plead material facts. In **Drane v Evangelou et al**⁸ the English Court of Appeal held:

“The judge was entitled of his own motion to raise the issue of trespass even though it had not been pleaded, because the facts were sufficient to warrant a claim for trespass and as they were set out in the particulars of claim the defendant could not claim that he had been taken by surprise when the judge raised the issue.”

[26] In reaching that conclusion, the Court relied on the principle articulated in **Re Vandervells Trusts**⁹ as follows:

“It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit.”

[27] The same principle was applied by our Court of Appeal in **FBO 2000 (Antigua) Ltd v Vere Cornwall Bird Jr. et al**¹⁰, where the Court held that relief may be granted although not specifically identified by a party provided that facts supporting such relief are properly before the court. The Court stated that:

“In the instant case the Court’s determination of the rights or interest in relation to the land to which the appellant was entitled could not be limited by the appellant’s view of what such rights or interests were or by the relief that the appellant identified...”

⁸ [1978] 2 All ER 437

⁹ [1974] 3 All ER 205 at 213

¹⁰ Civil Appeal No. 30 of 2003

[28] The Court of Appeal expressly relied on **Drane**¹¹ and confirmed that what is required is the pleading of material facts. The Court stated:

“The decision to allow the new ground of appeal relied on the principle that a claimant may be entitled to relief that he does not ask for if all the material facts that entitle him to a particular relief are before the court. This is the effect of the decision of the English Court of Appeal in *Drane v Evangelou* where a claim was pleaded in contract and the court granted exemplary damages, which are only available in tort, notwithstanding that there was never pleaded any claim for damages in tort. The following remarks of Lord Denning MR are apt: ‘The judge was right. The tenant in the particulars of claim gave details saying that three men broke the door, removed the tenant’s belongings, bolted the door from the inside; and so forth. Those facts were clearly sufficient to warrant a claim for trespass...’”

[29] These authorities do not dispense with the requirement for proper pleadings, rather they establish that where material facts have been pleaded and fully litigated, the court may grant the relief that properly flows from them.

[30] The court must therefore consider whether the material facts supporting the relief sought by Ms. Gibbs were before the court and whether Mr. Hyacinth had a fair opportunity to address them. The resolution of that issue requires the court to consider, first, whether the facts supporting the claim were sufficiently before the court and second, whether damages can properly be assessed on the evidence presently available.

[31] The evidence demonstrates that the issue of Mr. Hyacinth’s continued occupation of the property and his failure to make rental payments after September 2020 was raised repeatedly throughout the proceedings. In the certificate of urgency filed on 4th August 2022, Ms. Gibbs asserted that Mr. Hyacinth had failed to pay rent for well in excess of one year and that substantial arrears had accrued.

[32] The supporting affidavit of Garvin Gibbs filed on 4th August 2022 similarly alleged that Mr. Hyacinth remained in occupation while failing to pay rent. He deposed:

“[Mr. Hyacinth] has not been forthright with the court, and indeed, has not approached the court with clean hands, which is essential when seeking equitable relief. Rather, [Mr. Hyacinth] has neither apprised the court that

¹¹ [1978] 2 All ER 437

the renewal period has expired, nor has he told the court that he is not paying rent.”

- [33] Correspondence exhibited to that affidavit included a letter dated 25th March 2021, in which counsel for Mr. Hyacinth, acknowledged the existence of outstanding rent, stating:

“Our client has instructed us to say that he will bring all outstanding rent current on or before 15th April 2021.”

- [34] The issue was further addressed in the affidavit evidence filed on behalf of Mr. Hyacinth. In that evidence, he did not deny that rent remained outstanding. Rather, explanations were advanced for the non-payment. In the affidavit of Marthara Joseph filed 21st November 2022 at paragraph 4(g), it is stated:

“In respect of paragraph 5 (vii) of the affidavit, [Mr. Hyacinth] would happily pay rent to [Ms. Gibbs] if [Ms. Gibbs] renews [Mr. Hyacinth’s] lease to enable him to be in a position to properly conduct his business on the demised premises...”

- [35] Further, at paragraph 3(a) [sic] of the Marthara Joseph affidavit, it is deposed that:

“...the failure to so disclose was inadvertent and one of the reasons for non-payment is the inability of [Mr. Hyacinth] to operate his business because of the absence of a signed lease agreement due to [Mr. Hyacinth’s] refusal to renew same. Additionally, no revised rent was agreed between the parties.”

- [36] Having reviewed the evidence, the court is satisfied that the material facts relied on by Ms. Gibbs formed a recurring feature of the proceedings. The issue of Mr. Hyacinth’s continued occupation of the property after September 2020, together with his failure to make further payments, was raised in affidavit and documentary evidence long before the trial. Indeed, the evidence reveals that Mr. Hyacinth did not deny that sums remained outstanding, but instead sought to explain the reasons for the non-payment.

- [37] In those circumstances, the relief now sought does not arise from a new factual foundation, rather it is a consequence of facts that were advanced throughout the

proceedings. The court is therefore unable to accept the submission that an award in respect of the period October 2020 to January 2025 would occasion prejudice.

[38] The court is satisfied that this case falls within the principle articulated in **Drane v Evangelou et al**¹² and subsequently applied in **FBO 2000 (Antigua) Ltd v Vere Cornwall Bird Jr. et al**¹³. The court is not being asked to determine a new cause of action, rather it is being asked to grant relief flowing from material facts which were pleaded, contested and proved.

[39] The evidence establishes that Mr. Hyacinth remained in occupation of the property until 24th January 2025 and that no payments were made to Ms. Gibbs after September 2020. The court is therefore further satisfied that Ms. Gibbs is entitled in principle to recover damages arising from that occupation.

[40] The difficulty, however, lies in the quantification of those damages. Although Ms. Gibbs seeks an award calculated at the monthly rate of \$2,600.00, the court has not been provided with sufficient evidence upon which a final assessment can confidently be undertaken. In particular, the court has not received evidence directed to the appropriate measure of damages for the entirety of the period in question, or any relevant evidence concerning any payments or credits properly affecting the assessment.

[41] In those circumstances, the court considers it appropriate to direct that the quantum of damages be assessed.

Conclusion

[42] For the reasons set out above, the court finds that rent for the months of July and August 2017 in the sum of \$5,200.00 remains due and owing to Ms. Gibbs.

[43] The court further finds that Ms. Gibbs is entitled in principle to recover damages arising from Mr. Hyacinth's continued occupation of the property from October 2020 to January 2025, determinable upon assessment.

¹² [1978] 2 All ER 437

¹³ Civil Appeal No. 30 of 2003

Order

[44] It is therefore ordered and directed as follows:

- (1) Ms. Gibbs' counterclaim is allowed.
- (2) Mr. Hyacinth shall pay arrears of rent in the sum of \$5,200.00.
- (3) Mr. Hyacinth shall pay damages for occupation for the period October 2020 to January 2025 to Ms. Gibbs, to be assessed if not agreed within twenty-one (21) days from today's date.
- (4) Failing settlement, Ms. Gibbs shall file and serve witness statements, submissions with authorities in support of assessment on or before 30th July 2026.
- (5) Mr. Hyacinth shall file and serve witness statements, submissions with authorities in response on or before 30th August 2026.
- (6) The assessment of damages shall be conducted by a Master of the Eastern Caribbean Supreme Court upon application by Ms. Gibbs.
- (7) Costs to Ms. Gibbs in the sum of \$2,500.00.

Raulston Glasgow
High Court Judge

By the Court

Registrar