

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
GRENADA
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2024/0073 (ELP) (FORMERLY CLAIM NO. GDAHCV2020/0043)

BETWEEN:

FITZROY DUNCAN

CLAIMANT

AND

RHONDA FRANCIS

DEFENDANT

Before:

The Hon. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Winnifred Duncan – Phillip of counsel for the claimant

Sephora Khan of counsel for the defendant

2025: May 8th

July 9th

October 3rd

JUDGMENT

[1] **GLASGOW, J.:** The saga in this case is a tale that is reflective of the unhappy state of the land tenure system in Grenada. The facts are unfortunate but not uncommon in Grenada.

THE FACTS

[2] The claimant (“Mr. Duncan”) asserts his right to possession of a parcel of land situated at Soubise, St. Andrew. The parcel of land measures 11,589 square feet (“the land”). Mr. Duncan claims that his possession of the land is evidenced by a statutory declaration filed on 23rd January 2008 and filed in the Deeds and Land Registry in Liber 5-2008 at page 205 (“the Duncan Statutory Declaration”).

- [3] The defendant (“Ms. Francis”) resides on a portion of the land (“the disputed land”). She lives in a wooden house on that portion. The disputed land occupied by Ms. Francis measures 4000 square feet. Mr. Duncan claims that Ms. Francis trespassed on his land. He requests orders for possession of the disputed land and for Ms. Francis to stop performing acts of construction on the wooden building in which she resides. Ms. Francis denies the allegation of trespass and claims that Mr. Duncan is not entitled to possession of the disputed land since she is residing there lawfully. Mr. Duncan denies that Ms. Francis is living there lawfully. In fact, he asserts that she resides in the wooden house pursuant to a licence which he gave to his brother Aaron Duncan, which licence has since been terminated. The story of how Ms. Francis came to occupy 4000 square of the land claimed by Mr. Duncan is therefore relevant.

How did Ms. Francis come to occupy the land in question?

- [4] Unsurprisingly, there are 2 opposing versions of the story surrounding Ms. Francis’ occupation of the disputed land.

Mr. Duncan’s account

- [5] For Mr. Duncan, his version of the saga is that his uncle, Bertie Munro owned or possessed the land. I must pause here to point out that Ms. Francis also accepts that Bertie Munro owned or possessed the land. This concession is relevant for the later disposition of this claim. Mr. Duncan explains that he grew up on the lot of land next to his Uncle Bertie Munro’s land. He shared a very close relationship with his uncle who promised to leave the 11,589 square feet of land for him. When Uncle Bertie Munro died in 1990, he left the property in his will for Mr. Duncan. This will was never admitted to probate. In 1998, Mr. Duncan deposited the will with his attorney – at – law, but before counsel could apply for a grant of probate, the will was lost due to the damage caused by Hurricane Ivan in 2004. Mr. Duncan did not receive another copy of the will until the year 2024, when he obtained a copy from a family friend.

- [6] In the meantime though, Mr. Duncan moved ahead with the use and occupation of the land. In 1993, he built a house on the same spot that his Uncle Bertie Munro had his house. He lived in that house until he migrated to the United States of America ("USA") in 1998. Mr. Duncan also cultivated the land with cabbage, cucumbers, corn, lettuce and plantains. When he migrated to the USA, he asked his sister Patrice Duncan Thomas to reside in his house. She still lives there. In 2008 he commissioned a survey of the land and caused the Duncan Statutory Declaration to be registered at the Deeds and Lands Registry of Grenada indicating that he had occupied the land for over 18 years from the time of his uncle's death in 1990. He pays taxes for the land.
- [7] Mr. Duncan's story continues. Before Bertie Munro died, he was renting the disputed land to his friend Ignatius Benjamin ("Mr. Benjamin"). Mr. Benjamin built a wooden house on the disputed land. However, at some point Mr. Benjamin and Bertie Munro had a falling out. Bertie Munro asked Mr. Benjamin to leave his land and he did so. Mr. Benjamin moved to somewhere in the St. George's area but he left his wooden house on the disputed land. Mr. Benjamin left someone to live in the wooden house for a short while but thereafter he sold the wooden house to Mr. Duncan's brother, Aaron Duncan. As recited above, Mr. Duncan took possession of the land when Bertie Munro died but he allowed Aaron Duncan to remain in the wooden house that Aaron Duncan had purchased from Mr. Benjamin.
- [8] After Aaron Duncan bought the wooden house from Mr. Benjamin, he lived in it and started doing repairs to the same. It must be noted that the wooden house that Aaron Duncan purchased is very close to Mr. Duncan's house. Aaron Duncan's girlfriend, Christine Francis ("Ms. Francis' mother") also lived close to the land. She lived with her 3 children (including Ms. Francis) in a house belonging to Christine Francis' father on land that was in boundary with the land. Christine Francis and her children moved between her father's house and the wooden house purchased by Aaron Duncan. About one year after Aaron Duncan purchased the wooden house, Christine Francis and her 3 children moved into the wooden house with him.

- [9] At some point in 1993, Aaron Duncan migrated to the USA. He left Christine Francis and her children residing in the wooden house. Christine Francis never questioned Mr. Duncan's ownership of the disputed land since "he and Christine got on like family". In 2013, Christine Francis also migrated to the USA leaving her daughter, Ms. Francis, living in the wooden house with her family.
- [10] In 2008, when Mr. Duncan visited Grenada, he saw a fence being erected in the space between his house (occupied by his sister Patrice Duncan Thomas) and the wooden house owned by his brother Aaron Duncan but now occupied by Ms. Francis and her family. Mr. Duncan removed the fence since he had not authorised its construction. His sister, Patrice Duncan Thomas, later advised him that one Allister Charles ("Mr. Charles"), Mr. Benjamin's brother and the father of Ms. Francis, was claiming ownership of the disputed land and that Mr. Charles had filed a claim in the magistrate's court seeking an order of possession of the disputed land from Christine Francis. Mr. Charles was claiming that he was the owner of the disputed land and that he rented the same to Christine Francis. Mr. Duncan and his sister assisted Christine Francis with that claim in the magistrate's court. That claim was heard and dismissed by the magistrate.
- [11] A few years after the magistrate's court claim brought by Mr. Charles was dismissed, Mr. Duncan took notice of a statutory declaration registered by Mr. Charles in 2011 ("the Charles Statutory Declaration"). The Charles Statutory Declaration declared that Mr. Charles purchased the disputed land from Mr. Benjamin. Mr. Duncan disputes this assertion. Mr. Duncan claims that there is no evidence that Bertie Munro sold the land to Mr. Benjamin and as such Mr. Benjamin did not own the land to sell to Mr. Benjamin's brother, Mr. Charles.
- [12] In 2017, Mr. Duncan was informed by his sister Patrice Duncan Thomas that Ms. Francis was in the process of converting part of the wooden house owned by his brother, Aaron Duncan, into a concrete structure. Several lawyers' letters were sent by Mr. Duncan to Ms. Francis up until 2020 when Mr. Duncan obtained an injunction to stop Ms. Francis from further construction.

Ms. Francis' version

- [13] Ms. Francis does not dispute much of Mr. Duncan's version as to how her mother, Christine Francis, she Ms. Francis, and her family came to reside on the disputed land. Ms. Francis also does not dispute that Bertie Munro was the original owner or possessed the land including the disputed land. Ms. Francis, however claims that her father, Mr. Charles told her that Bertie Munro sold the disputed land to Mr. Benjamin who then sold the same to her father, Mr. Charles. Mr. Benjamin also commissioned a survey of the disputed land in the year 1983.
- [14] Ms. Francis presented a receipt for sale of the disputed land given to her by her father, Mr. Charles. Ms. Francis contends that the receipt reflects a purported sale of the disputed land by Mr. Benjamin to Mr. Charles on 23rd September 1998 for the sum of \$3000.00. Ms. Francis pleads that her father, Mr. Charles told her that he never obtained a deed for the sale of the disputed land because Mr. Benjamin, who was a fisherman, went out to sea during the year 1989 and has never been seen or heard from since that time. Her father, Mr. Charles therefore had the Charles Statutory Declaration prepared by Zephryne and Deslyn Fletcher and filed in the Deeds and Land Registry of Grenada in Liber 32-2011 at page 237 indicating that he is the owner of the disputed land.
- [15] Ms. Francis pleads that her father told her that Mr. Benjamin sold the wooden house to Aaron Duncan and her mother Christine Francis. She disputes the claim that it was Mr. Duncan who gave Aaron Duncan permission to remain on the disputed land. Her position is that her father, Mr. Charles, told her that Mr. Benjamin permitted Aaron Duncan to leave the wooden house on the disputed land.
- [16] Ms. Francis also disputes the contention that she or her mother ever sought permission from Mr. Duncan or anyone on his behalf to remain on the disputed land or to build up the wooden house located on it. This is since, Ms. Francis asserts, she always treated the disputed land as belonging to her father, Mr. Charles. Ms. Francis then explains her efforts to commence construction and the various

interventions by Mr. Duncan in an effort to stop construction. She reiterates that at no point did she or anyone on her behalf acknowledge Mr. Duncan's claim to ownership of the disputed land. Ms. Francis also maintains that her mother was living on the disputed land for 23 years undisturbed until she left for the USA in 2013. Ms. Francis claims that she, in her own right, continued the occupation undisturbed from that time until the year 2017 when Mr. Duncan issued her with a notice to vacate the disputed land.

FINDINGS AND CONCLUSIONS

[17] After the trial of this matter, I have found that Mr. Duncan has proven his claim that he is entitled to possession of the disputed land. There are several reasons for this view.

[18] Both sides are agreed that they do not possess title deeds for either the land or the disputed land. Both parties rely on statutory declarations and various acts of possession to support their varying positions. For Mr. Duncan, he relies on the Duncan Statutory Declaration registered on his behalf as sworn by Letitia Francois in the year 2008. For Ms. Duncan, her case is that she relies on her father's claims to rights or interests in the property evidenced by, among other things, the Charles Statutory Declaration filed on his behalf in the year 2011 by Zephryne and Deslyn Fletcher.

[19] In Grenada, it is by now, the well-accepted legal posture that a statutory declaration does not operate as proof of the conveyance of land, but it may have limited evidential weight in aid of a claim to title. See **Gordon Charles v Claire Holas**¹ **GDAHCV1996/0151**, per Alleyne J (as he then was), where his Lordship explained the position at law in this manner –

“Both parties appear to have proceeded on the assumption that a statutory declaration has the legal effect of vesting title in land. It has no such effect. A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain

¹ GDAHCV1996/0015

limited evidential value, but it is not an alternative method of conveying title to land. Indeed, even its evidential value is very limited in the context of proceedings of this nature. The viva voce evidence of the witness, tested by cross-examination would carry much more weight than the statutory declaration, if indeed the statutory declaration would be admissible to prove the truth of its contents in the absence of proof of certain preconditions.”

[20] The present circumstances thus suggest that neither party has, by their respective statutory declarations, adduced conclusive proof of title. Ms. Francis tried, in closing submissions to make much of the fact that Mr. Duncan referenced Bertie Munro’s will both in his pleadings and oral evidence. Ms. Francis’ complaint is that Mr. Duncan is not permitted to claim ownership of the land “as of right” (that is as a title owner) and also as entitled to possession by means of adverse possession. She is correct about the law. See **Arnold Celestine v Carlton Baptiste**² for the learning in this regard. But the submission fails on the facts since, while Mr. Duncan did recite the fact that Bertie Munro did devise the land to him in his will, Mr. Duncan made the point explicitly in his pleadings and oral evidence that the will was never admitted to probate. His pleadings and evidence further made it very clear that when it became apparent that his lawyer could not find the will, he caused the Duncan Statutory Declaration to be filed on his behalf. It is this statutory declaration and his acts of factual possession that are recited above that he relies on to base his claim against Ms. Francis. Nowhere on the claim or his evidence, unlike in the claimant in **Arnold Celestine**, has he pleaded or is he claiming to be the title holder to the disputed land.

[21] The state of the evidence therefore suggests that this court must determine which of the parties has provided more credible evidence of the right to possession of the disputed property. In this regard, counsel for Mr. Duncan has helpfully recited a number of the authorities from Grenada and elsewhere in our jurisdiction which elucidate the point that a claimant for possession of land or trespass to land does not have to be the title holder or the fee simple owner of the land in question. The law is that a squatter in possession may, for instance, file a claim for trespass or

² GDAHCVAP2008/0011

possession. See **Nurse v St. George's University Club**³, where Benjamin J, (as he then was), stated the law -

"It is fundamental to the law of property in Grenada that title to land is ascertained by reference to the better right to possession. This basic doctrine was explained by Lord Diplock in Ocean Estates Ltd v Pinder [1969] 2 A. C 19, in the following dictum at pp 24-25:-

" At common law... there is no such concept as an 'absolute' title. Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land."
This was the purport of the decision in Asher v Whitlock [1865] L. R 1 Q.B.1, it was held that a person in possession of land can devise his interest and the devisee's heir can successfully maintain an action for ejectment against anyone who having entered upon the land is unable to show title or possession predating the testator's possession. Also, in Perry v Clissold [1970] A. C 72, the Privy Council held that a person in exclusive possession of land was not a mere trespasser but enjoyed a possessory title maintainable against all except the rightful owner. The concept of possession of land was considered by Slade, J (as he then was) in Powell v McFarlane (1977) 38 P & Cr 452. His Lordship had this to say (at p. 469):-
" possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession."

The foregoing dicta have consistently restated the basic rule that if a person possesses land to the exclusion of other claimants in the absence of any other explanation, such possession is evidence of ownership in fee simple. Since there are competing claims being asserted on the one hand by the Claimants through their deceased father and on the other hand by the Defendants through its predecessors-in-title, the Court must assess the relative strengths of the titles as proved on the evidence and make a determination as to which party enjoys the better title."

³ GDAHCV2006/0524, paragraphs 13 and 14

- [22] See also **Shirley Hodge v Chief Registrar of Lands**⁴, per Ellis J (as she then was) and **Sigma v Redhead**.⁵
- [23] As I have stated above, there is consensus on the evidence that the land (including the disputed land) was owned or possessed by Bertie Munro for quite a long time⁶. But this is where the parties diverge.
- [24] For Mr. Duncan, his case is that after Bertie Munro died, he possessed the whole of the land, including the disputed land. He occupied the same and built his home thereon. His case is that, while he was aware that his brother, Aaron Duncan, his girlfriend and her children lived in the chattel house on the disputed land, he did not disturb their occupation since at all times, he acted as owner and it was accepted by Aaron Duncan and Christine Francis that he owned or possessed all of the land including the disputed land.
- [25] For her part, Ms. Francis claims that she resides on the disputed land with her father, Mr. Charles' permission. She relies on the claim that Mr. Charles owns or possesses the disputed land by reason of his purported purchase of the disputed land and his efforts to remove her mother Christine Francis therefrom. See paragraph 2(vii) of Ms. Francis' defence where she states that –*"The Defendant always considered that she is in occupation of the said lot of land bought and owned by her father and the Defendant therefore vehemently denies that she is a licensee of the Claimant."* It is instructive that no part of Ms. Francis' case suggests that Mr. Charles ever occupied the disputed land or that he informed Aaron Duncan or Mr. Duncan that he owned the land or that Aaron Duncan or Mr. Duncan ever held discussions with Mr. Charles or ever acknowledged that he possessed the disputed land or the wooden house that is situated thereon. In fact, Mr. Duncan's claim (which was not controverted on the pleadings or at trial) was that he found out about Mr. Charles' effort to claim title to the disputed land when he learned about the magistrate's court case that Mr.

⁴ BVIHCV2017/0004 at paragraphs 57 - 58

⁵ GDAHCV2011/0024 at paragraphs 9 to 10

⁶ See for instance paragraph 2 of the Statement of claim filed by Mr. Duncan on 26th April 2024 and paragraph 2(1) of Ms. Francis' defence and paragraph 5 of Ms. Francis' witness statement

Charles filed against Christine Charles in 2008. Ms. Francis is correct that her father, Mr. Charles, would have held a receipt in his name stating that he purchased the disputed land from Mr. Benjamin. Ms. Francis has also pleaded that Mr. Benjamin had the disputed land surveyed before the purported sale to Mr. Charles and that Mr. Charles had the Charles Statutory Declaration prepared and filed on his behalf. However, neither Ms. Francis nor Mr. Charles presented any evidence of any acts of ownership or possession being taken to demonstrate to Mr. Duncan that Mr. Charles was claiming ownership of the disputed land other than the magistrate's court claim for possession against Christine Francis which was dismissed. Instructively, at trial Mr. Charles denied that he retained counsel to file the magistrate's court claim against Ms. Christine Francis.

[26] It must also be noted that Ms. Francis does not claim adverse possession or any title to the land in her own right. Allusions to her own possession are exhibited at paragraphs 11 et seq. of her witness statement where she states that her mother, Christine Francis migrated to the United States in the year 2013 leaving her and her family in the wooden house on the disputed land. Her evidence at paragraph 11 of her witness statement is that *"... I continued after she left undisturbed until in or about the year 2017 when the Claimant issued a notice to me to vacate the said lot of land."* It is quite evident that possession for the period 2013 to 2017 is insufficient to amount to the requisite period of 12 years required in the laws of Grenada for Ms. Francis to claim rights of adverse possession against Mr. Duncan as set out in the Possessory Titles Act or for the requisite consequences of the Limitation of Actions Act to apply.

[27] In the round, I prefer the evidence presented by Mr. Duncan since he has indeed demonstrated that since taking over the land in 1990 after Bertie Munro's death, he built his home thereon, planted crops thereon and pays the taxes therefor. For all the foregoing reasons, his evidence that his brother, Aaron Duncan, who testified to the same at trial, was residing with his girlfriend Christine Francis and her family in the wooden house on the disputed land with his approval is preferred to the unproven assertion that Mr. Charles is the owner and that Aaron Duncan, Christine

Francis and later the defendant, Ms. Francis occupied the disputed land and remained thereon with Mr. Charles' permission.

The receipt for the sale of the land

[28] Now a word must be said about Mr. Charles' attempts to rely on the receipt for a purported sale of the disputed land by Mr. Benjamin to Mr. Charles. Mr. Duncan is correct in his submission that there is no evidence that Bertie Munro ever sold the disputed land to Mr. Benjamin. Section 4 of the Real and Personal Property (Special Provisions) Act⁷ recites the law in Grenada on this subject –

“No action shall be brought whereby to charge any person upon any contract for sale of lands, or any interest in or concerning them, **unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing**, and signed by the person to be charged therewith, or some other person thereunto by him or her lawfully authorised.
(Bold emphasis mine)

[29] Ms. Francis has presented no written agreement for sale of the disputed land by Bertie Munro to Mr. Benjamin or a memorandum in writing thereof. As counsel for Mr. Duncan rightly submits, Mr. Benjamin could not sell what he did not own and there is no proof that he owned anything other than the wooden house.

[30] There was some argument as to whether Mr. Benjamin sold the wooden house to Aaron Duncan or to Christine Francis and Aaron Duncan. I am of the view that nothing turns on this fact for the outcome as I have found it. In any event, at trial, Christine Francis accepted that the house was purchased by Aaron Duncan. Mr. Duncan's version of the facts is therefore more credible and I accept his claim that Mr. Benjamin was Bertie Munro's tenant who was evicted and that Mr. Benjamin left the wooden house on the disputed land when he was evicted therefrom. The evidence that Mr. Benjamin sold the wooden house alone and not the disputed land is also more believable since, as I have stated above, there is no evidence that Mr.

⁷ Chapter 273

Benjamin purchased or owned any of the disputed land to sell to anyone including Mr. Charles.

- [31] Counsel for Ms. Francis argues that the receipt for sale of the disputed land may also serve as proof that Mr. Benjamin sought to act as owner thereof and that there is therefore a propriety estoppel against an assertion to the contrary. I do not believe that propriety estoppel or any assertion of ownership against Mr. Duncan assists Ms. Francis' case. For one thing, I cannot see how an estoppel operates against Mr. Duncan when he was not party to, part of, acknowledged or acquiesced in the sale agreement between Mr. Benjamin and Mr. Charles. A compendious statement of the law on proprietary estoppel is recited by the learned authors of the **Contract: the Law of Contract (Common Law Series)**⁸ –

“(i) An estoppel may be raised where A expends money or otherwise acts to their detriment either (a) in the mistaken belief that they enjoy rights over property of B and B, being aware of A's mistaken belief, knowingly stands by and allows them to do so or (b) in the belief, created or encouraged by B, that A will be granted rights over property of B.

(ii) In cases of type (b), involving encouragement, there must be a clear representation by B that A will be granted property rights in return for A's actions. It is no bar to the creation of such an estoppel that the representation is not sufficiently certain or precise to be contractually enforceable, but it must induce A to rely upon it and be such that it is reasonable for A to do so.

(iii) In cases of acquiescence no estoppel will be raised unless B is aware of their own rights and of A's mistaken belief. In cases of encouragement, however, such knowledge is not necessary.

(iv) In cases of encouragement, A must detrimentally rely on B's representation. Often A will do so by spending money on B's property, but such expenditure is not necessary. 'However, detriment 'is not a narrow or technical subject'. Thus it 'need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial'. The requirement was therefore satisfied where A worked for B for almost 40 years, at slightly below market wages, taking no steps to seek alternative employment or to secure his own or his family's financial position on the strength of assurances from B. The detriment alleged must be pleaded and proved, and must be incurred in

⁸ Contract: The Law of Contract (Common Law Series): 7th Edition at paragraph 2-129; See also Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd [1982] QB 133; Cobbe v Yeoman's Row Management Ltd and another [2006]EWCA Civ 1139; Gillet v Holt [2000]All ER 289; Amalgamated Investment & Property Co Ltd v Texas Commerce International [1981] 1 All E R 923

reliance on the representation. However, it seems that where the representation is such that reliance would be reasonable and A has acted to their detriment it will be assumed that they did so in reliance on the representation unless the contrary is proved. The representation need not be the sole inducement for A's action provided that it is an inducement.

(v) The principle only applies where A believes that they have, or will be granted, rights over property of B. Thus the doctrine did not apply where A entered into negotiations with B, a planning authority, for permission to redevelop A's own property and was led to believe that there would be no objection to the redevelopment, since the property affected by the representation was A's rather than B's. An expectation that B will enter into a contract with A will not give rise to a proprietary estoppel. In most of the cases in which the principle has been applied the representation has related to the grant or creation of rights over land, but it seems that it may extend to other types of property. There are statements that the representation must relate to particular property, but it seems that the representation may relate to B's property generally, including future property.

(vi) **The essential purpose of the principle is to protect A against unconscionable behaviour by B. It will therefore only apply where it would be inequitable for B to deny the rights that B has led A to believe they have, or will be granted.** It has been said therefore that an estoppel will only arise where B is aware that A relies on B's representation so that there is a 'mutual understanding' between the parties. Certainly there must be a connection between B's representation and A's action in reliance on it, and B's knowledge of A's reliance will often make it inequitable for B to retract the representation. However, where B intends to induce A to act to A's detriment and A does so, or where B's representation is such that a reasonable person in A's position would rely on it and a reasonable person in B's position would expect the reasonable person to so rely, it seems unnecessary also to require B to know of A's reliance, and the better view is that provided that there is a connection between B's representation and A's conduct which constitutes the required detriment, it is not necessary that there be anything like a precise agreement, or bargain, eg as to the interest to be granted to A. The purpose of the principle is to protect A. As the Court of Appeal emphasised in *Gillett v Holt*, the doctrine cannot be seen as divided into separate 'watertight components'. The separate elements of representation, reliance and detriment are intertwined and the function of the court is to determine whether B's repudiation of their assurance would be unconscionable in all the circumstances. In assessing what would be equitable in a particular case the court can take account of the conduct of both parties, including conduct of A after reliance on B's representation". (Bold emphasis mine).

[32] Based on the foregoing principles of law, I cannot see how the claimed estoppel operates against Mr. Duncan or anyone on his behalf. It would appear that it would

be Mr. Benjamin or anyone who claims on his behalf or through him who may be estopped from asserting the contrary of the purported sale transaction which Mr. Benjamin sought to enter into with Mr. Charles.

- [33] The long and short of the foregoing is that Mr. Duncan has established his claim that he is entitled to redress in law for Ms. Francis' unlawful occupation of the disputed land. He claims, among other things, an order for possession of the disputed land. In closing submissions made by Mr. Duncan on the 8th August 2025, he makes the point that –

“The granting of an order for possession is akin to a mandatory injunction for the Defendant to break the house. It is submitted that the court can rely on principles for granting a mandatory injunction in deciding whether to grant the order for possession.”⁹

- [34] Mr. Duncan's request for injunctive relief is premised on his complaint that Ms. Francis has wrongfully interfered with his land. He claims that she is a trespasser who remains on his land in spite of being served with a notice to quit. Mr. Duncan further laments the fact that Ms. Francis continued construction works on the house notwithstanding his protests against her doing so. Mr. Duncan points out that beginning in 2017, he has served Ms. Francis with two notices to quit, an order for interim injunction and committal order regarding her attempts to make additions to the wooden house. He laments the fact that Ms. Francis has ignored or disobeyed those notices and orders. Mr. Duncan also claims that Ms. Francis has family land on which she can place her house. Mr. Duncan also requests damages for the years of Ms. Francis' use and occupation of the disputed land. He claims damages based on the current letting price of the land at a rate of \$500 to \$800 per annum as the current letting rate for land in that area.

- [35] Ms. Francis argues against the grant of an injunction and instead asks the court to find that damages are appropriate in lieu of the requested mandatory injunction to remove her house from Mr. Duncan's land. However, Ms. Francis did not articulate

⁹ Page 4 of Mr. Duncan's submissions filed on 8th August 2025

any reasons for asserting that damages are more appropriate than the grant of an injunction.

- [36] Mr. Duncan has helpfully recited learning from Halsbury's Laws of England as to why a mandatory injunction should be granted ordering Ms. Francis to remove her house from his land. Mr. Duncan relies on the following learning on the grant of mandatory injunctions –

"Where the injury done to the claimant cannot be estimated and sufficiently compensated for by damages, or is so serious and material that the restoration of things to their former condition is the only method whereby justice can be adequately done, or where the injury complained of is in breach of an express agreement, the court will exercise its jurisdiction and grant a mandatory injunction, even though the expense and trouble of obeying the injunction will be far in excess of any sum which could reasonably be awarded by way of damages. However, a defendant cannot by means of a mandatory injunction be ordered to take legal proceedings against a third person. If, on the other hand, no substantial damage is proved, **or the injury admits of estimation and can be compensated for by damages, a mandatory injunction will not be granted but the court will assess damages or an inquiry will be ordered to ascertain the amount of the damages sustained.**"¹⁰ (Bold emphasis mine)

And

"A mandatory injunction may be granted even though the act sought to be restrained has been nearly or entirely completed before the action is begun, but it will only be granted in such cases to prevent very serious damage. Where a building is the subject of the litigation it is material to consider, among other circumstances of the case, the condition in which the building was when complaint was first made. The court may even order a building to be pulled down even though it has been erected and completed and works carried on within it for some months without complaint, **but it will not readily do so.**"¹¹ (bold emphasis mine).

And

"If distinct notice of objection is given before the completion of the act complained of, but it is nevertheless persisted in, or if the defendant on an interlocutory application gives an undertaking to undo what he has done if so ordered at the trial, the court is more disposed to grant a mandatory

¹⁰ Halsbury Laws of England, Vol 12, 5th edn, para.1091

¹¹ Supra, note 8 at para.1094

injunction than where no complaint is made until after the completion. However, every case depends upon its own peculiar circumstances, and **the mere fact that the act complained of was persisted in after notice of objection was given is not of itself sufficient to justify the granting of a mandatory injunction if, in all the circumstances, damages would be an adequate remedy.**" (Bold emphasis mine)¹²

- [37] As forceful as the arguments made by Mr. Duncan appear, it must be conceded that his right to an injunctive remedy lies in the discretion of the court. The learning that he has presented makes it clear that in deciding whether or not to grant a mandatory injunction in cases of this sort, the court is required, among other things, to assess whether the injury to Mr. Duncan's property can be estimated and compensated for by way of damages. Halsbury's Laws of England makes the point that in cases of trespass to land, where the claimant seeks an injunction –

"The court may grant an injunction (which may be mandatory) to prevent a continuance or threatened repetition of a trespass to land. Where a trespass is threatened, although not committed, the court may prevent it by injunction. Where the trespass is of a 'trifling' nature, or **where damages are a sufficient remedy**, or where the granting of an injunction would be oppressive, an injunction may be refused..."¹³

- [38] For the reasons to follow, I have concluded that damages are an adequate remedy in this case. I have taken account of Ms. Francis's conduct as I have set out at paragraph 34 above. I have also taken account of Mr. Duncan's somewhat muted assertion that he wishes to retire soon and utilise his land. However, I am also constrained by authority to assess whether the grant of damages may be a proper and indeed adequate redress. As Mr. Duncan rightly points out from the case of **Evans Marshall & Co Ltd v Bertola SA**¹⁴

"The standard question in relation to the grant of an injunction, "Are damages an adequate remedy?" might perhaps, in the light of the authorities of recent years, be rewritten: "Is it just, in all the circumstances, that a plaintiff should be confined to his remedy in damages?"

¹² Ibid, at para. 1095

¹³ Halsbury Laws of England, Vol 97A, 5th edn, para.190

¹⁴ 1973 1 WLR 349

- [39] For one thing, it is quite possible to conduct a valuation of the property and to assess a dollar value for the property that has been wrongfully occupied by Ms. Francis. Ms. Francis has also stated that she and her family are willing to pay compensation for the property. I approach this matter cautiously though since, as rightly submitted by Mr. Duncan, a court ought to be slow to validate or seemingly endorse a defendant's wrongful appropriation of the claimant's property.¹⁵
- [40] But the foregoing is compounded with the notorious fact in this case that this has been the home of Ms. Francis and her family for decades. Further complicating this affair is the fact there seems to be no credible evidence that Ms. Francis and her family have anywhere else to move their home. Mr. Duncan maintains that Ms. Francis has access to land next door to his land. The neighbouring land is allegedly owned by Ms. Francis' grandfather. Ms. Francis counters with the response that her grandfather has promised the land to her mother and as such she cannot move her house there.
- [41] I started this discourse with a lamentation about the state of land issues in Grenada. The position of both parties on this point is a glaring example of some of what troubles me about the land tenure system in Grenada. It is, in my view, beyond high time, that the uncertain land tenure system in Grenada is conclusively resolved in a land registration system. This, in my view, will significantly reduce the sort of contentions that have arisen in this and like cases and that has a deleterious effect on social harmony especially in families. Both sides wish me to deliberate and rule with respect to land involving persons who are not parties to this claim. If, for instance, I am to follow Mr. Duncan's direction, a logical consequence of a mandatory order will be to compel Ms. Francis to move her house to land that she does not own or whose owner is not joined in these proceedings, who has not appeared or has even acquiesced to the proposed course of action in respect of their land. As if the entire fracas in this case did not sadly commence or proceed

¹⁵ Halsbury Laws of England, Vol 14, 4th edn, para.142

because of family disputations about land, I am being asked to possibly compound the affair.

Damages

[42] Where damages are concerned, **Halsbury's Laws of England** makes the point that

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“In a claim of trespass, if the claimant proves the trespass then he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use.”

[43] As I have indicated above, Ms. Francis has in her submissions, presented some arguments on the basis for and the quantum of damages that may be awarded for her trespass to Mr. Duncan's land. Mr. Duncan has not done the same beyond submissions on a proposed sum for use and occupation. In my view, at the very least, Mr. Duncan is entitled to damages, as in **Horsford v Bird**¹⁶, for the wrongful appropriation of the disputed land. Such an award will be guided by a valuation of the property. The parties will be permitted to present a joint valuation of the property. Mr. Duncan may also be awarded a sum for use and occupation of the disputed land and other damages that may be proved. The parties will be permitted an opportunity to present submissions on the award of damages.

Order

[44] Mr. Duncan is successful on this claim and is granted the following relief –

- (1) An order that Ms. Francis has trespassed on his land;
- (2) An award of damages for trespass which damages are to be assessed in accordance with this order;

¹⁶ 2006 UKPC 3

- (3) The parties are to agree on and instruct a valuator to assess the value of the property and present a valuation of the same to the court on the assessment of damages;
- (4) The parties may file submissions and authorities on the award of damages and on costs of these proceedings on or before 31st October 2025. The joint valuation is to be filed by Mr. Duncan along with his submissions and authorities on damages and costs; and,
- (5) The court will issue a ruling on the assessment of damages including costs thereafter.

Raulston L.A. Glasgow

High Court Judge

BY THE COURT

REGISTRAR