

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0039

BETWEEN:

EILEEN LANGAIGNE

Claimant

and

**GRENADA GOLF AND COUNTRY CLUB LIMITED
(A LIMITED LIABILITY COMPANY REGISTERED UNDER THE COMPANIES
ORDINANCE NO. 18 OF 1926)**

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Herricia Willis for the Claimant

Ms. Sheriece Noel and Mrs. Afi Ventour-De Vega for the Defendant

2025: May 27th;
June 10th.

JUDGMENT

[1] **ACTIE, J.:** This case raises issues of nuisance, trespass and negligence, and concerns liability for damage caused to the claimant's dwelling house which is in boundary with the only golf course in Grenada.

Brief Facts

[2] The defendant has been in existence and operating a golf course since the 1930s, although it obtained a lease from the Government of Grenada over the golf course in 1995.

[3] The claimant became the registered title owner of her property which is approximately 60 to 70 feet away from the golf course boundary by virtue of a

deed of conveyance dated 22nd December 2016. However, it was in the year 2019 that the claimant began residing in her dwelling house which is situate between the fifth and sixth holes of the golf course..

- [4] The claimant contends that the defendant's agents/invitees create a nuisance by striking golf balls and causing them to enter onto her property and habitually trespass onto her property to retrieve said golf balls. The claimant also avers that persons on the defendant's property negligently caused golf balls to strike and damage the solar panels affixed to her roof.
- [5] The claimant avers that the trespass, negligence, nuisance and resultant damage and loss will be continual, and that she is unlikely to obtain redress without the intervention of the court. She states also that her safety is at risk, and that she is unable to enjoy portions of her property for fear of being struck by errant golf balls from the defendant's property.
- [6] The claimant in a claim filed on 1st February 2022 and amended on 10th December 2024 claims, among other things, an injunction restraining the trespass and nuisance, an order directing the defendant to redesign the sixth hole, damages including special and aggravated damages, interest and costs.

The Defence

- [7] The defendant emphasises that it is the sole golf course in Grenada, and that the golf course is treated as a public space utilised by members of the public, for whom the defendant shares no legal responsibility. The defendant further asserts that it has been a futile exercise for it to restrain the use of the golf course given the social history and large expanse of the land.
- [8] The defendant contends that the claimant did not plead any particulars of negligence to impute liability. Moreover, the defendant asserts that the type of hit necessary from any angle for a golf ball to land on the claimant's roof is an extraordinary stroke, not common to the game of golf here in Grenada, and that its resultant damage is therefore not a foreseeable harm.

- [9] The defendant states that errant balls are considered as lost balls, and that, resultantly, it is unlikely that any of its members would trespass on the claimant's property to retrieve same.
- [10] The defendant contends that its operations cannot be classified as a nuisance and denies liability for any damage caused by persons who utilize the golf course, as its policy is that its members must compensate for any injury or damage caused by their errant balls while playing golf.

Legal Analysis - *The pleadings*

Whether the defendant is liable for negligence

- [11] The defendant both in pleadings and submissions contends that that the claimant failed to plead particulars of the tort of negligence referenced in the claim.
- [12] Following the filing of the defence on 28th March 2022 challenging the claimant's failure to plead particulars of negligence, the claimant, through her previous counsel, filed a reply to the defence listing the particulars of negligence as complained against the defendant.
- [13] It is trite that parties are to succinctly plead all the relevant facts upon which they wish to rely on in their statement of claim or defence. **Rule 8.7, Civil Procedure Rules (Revised Edition) 2023** ("CPR") requires a claimant to plead the factual matrix in a claim form and statement of claim and not in a reply. The basis of this rule is that the defendant is entitled to the opportunity to set out its case in the filed defence in compliance with **CPR 10.5** and would be deprived of this opportunity where new issues are raised in the reply to its defence.
- [14] The claimant filed an amended statement of claim on 10th December 2024 but failed to incorporate the particulars of negligence pleaded in the reply. An amendment duly made takes effect not from the date when the amendment is made, but from the date of the original document which it amends. The claimant in the amended claim should therefore have pleaded the particulars of the

negligence pleaded in the reply which would have afforded the defendant an opportunity to file an amended defence disputing or admitting the claim.

- [15] This court in **Layne Houston v Matthew Hardy**¹ referred to Blackstone Civil Procedure where it is stated:

“Where the defence takes issue with a fact set out in the particulars of claim and the claimant accepts that the fact is incorrect, the proper course of action should be for the claimant to seek to amend his statement of case accordingly and not to deal with the matter in a reply”.

- [16] Further in **Williamson v London and North Western Railway Company**² it was found by the Chancery Court that a reply to a defence must not plead mere evidence, nor must it raise new issues or claims or any issues which ought to properly have been pleaded in a statement of claim.

- [17] The court, applying the authorities to the facts, agrees with the defendant that the claimant’s claim in negligence must fail.

Whether the defendant is liable for trespass

- [18] The court notes that the claimant in the amended claim pleads negligence, trespass and nuisance in the alternative. It is the claimant’s contention that the defendant’s agents/invitees trespass onto her property to retrieve golf balls played from the defendant’s property.

- [19] **Halsbury's Laws of England**³ sets out the principles concerning trespass as follows:

“A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another.”

¹ GDAHCV2017/0435

² 1879 12 Ch D 787

³ (5th edn 2021) vol 97A para 161

[20] Counsel for the claimant relies on the case of **Maria Thorne-Bramble v Lauriston “Yankee Primus”**⁴. This court is of the view however that the issue arising in this case does not arise on the facts in the extant matter.

[21] The defendant puts the claimant to strict proof of the trespass. Pre-trial submissions filed on behalf of the defendant however are silent on the issue of trespass, other than to indicate that the claimant is only entitled to nominal damages for same.

[22] The claimant relays one instance in 2021 when, allegedly, one of the defendant’s guests came onto her property to claim a golf ball and compensate for the resultant damage. Besides this specific instance, the claimant makes a sweeping statement that the defendant’s guests trespass onto her property to retrieve golf balls.

[23] Counsel for the claimant further raises the argument that trespass occurred by the striking of golf balls into her property and contends that each occasion constitutes a fresh trespass.

[24] Counsel’s statement of law is correct in that trespass, whether by personal entry or throwing things on the claimant’s land, may be continuing even when the defendant had previously been held liable for the said trespass. Every continuance of the trespass is a fresh trespass, giving rise to a further action for trespass as long as the trespass continues.

[25] However, in **Miller et al v Jackson et al**⁵, relied on by counsel for the claimant, Lord Denning MR referring to the House of Lords decision in *Bolton v Stone* made the following statement:

“As I said in *Letang v Cooper* ([1964] 2 All ER 929 at 932, [1965] 1 QB 232 at 239):

‘If [the defendant] does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action today in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care.’”

⁴ SVGHCV Claim 162 of 2002

⁵ [1977] QB 966

- [26] The claimant, residing in proximity to an existing golf course, should reasonably expect errant balls to fall on her property. Taking that expectation into account, the claimant has failed to establish that the act of the striking of golf balls onto her property was intentional, given the claimant's own reference to the proximal location of the sixth hole of the course to her dwelling house. A claim in trespass for the striking of golf balls onto the claimant's property is consequently untenable.
- [27] In addition, the burden of proving a trespass rest with the claimant. Nevertheless, the claimant merely states that the defendant's servants come onto her property and retrieve the balls. The claimant did not provide any further particulars other than photographs of two containers of golf balls, which were allegedly collected from her property.
- [28] **Part 31 of the CPR** requires a party who intends to rely at a trial on evidence which is not (a) to be given orally and (b) contained in a witness statement, affidavit or expert report must disclose that intention to the other parties. There is no evidence as to the authenticity or the date of the photographs, neither were the photographs referenced or appended to the claimant's witness statement. Also, there is no evidence that the claimant disclosed her intention to use the photograph. Therefore, the court cannot rely on such evidence and finds that the claimant has failed to satisfy her case for trespass.

Whether the defendant is liable for nuisance

- [29] **Halsbury's Laws of England**⁶ states that a private nuisance is one which interferes with a person's use or enjoyment of land, or some right connected with the land. It is thus a violation of a person's private right.
- [30] The claimant in a private nuisance case must establish that there has been an unreasonable interference with the use and enjoyment of his or her property. This may come about by physical damage to the land.

⁶ (5th edn. 2018) vol 78 para 107

[31] Counsel for the claimant relies on the case of **Arian Blanchard v Nalda Peterson**⁷ where Henry J. stated at paragraph 7:

“The essence of Nuisance is an act or omission which is an interference with, disturbance of or annoyance to a person in the exercise or enjoyment of his ownership or occupation of land. Private nuisance is usually caused by a person doing, on his own land, something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his act are not confined to his own land but extend to the land of his neighbour by (1) causing an encroachment on his neighbour's land, when it closely resembles trespass, (2) causing physical damage to his neighbour's land or building or works or vegetation upon it, or (3) unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land. Further, it is necessary, in any particular case where interference is alleged, to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort or causing material damage to the land”.

[32] The claimant contends that the defendant's servants/agents, members or invitees created nuisance resulting in damage to her property. The claimant in her pleaded claim states that on 18th November 2020, persons on the defendant's property caused a golf ball to strike the roof of her house damaging the solar panels. On 23rd November 2020, she informed Mr. Lyden Ramdhanny, the then Managing Director of the defendant of the damage, however he acknowledged receipt but did not respond any further.

[33] The claimant in her statement of claim pleaded three further instances, namely:

- (1) Early 2021 a golf ball damaged her windowpanes which was repaired by the defendant's visitor on the golf course; and
- (2) 30th August 2021 and January 2022, a golf ball landed in the claimant's dining room causing fear for her safety and safety of her home.

[34] However, the court notes that it is in the claimant's witness statement filed on 15th July 2024 that she gave further particulars of incidents in support of her claim for nuisance, namely:

- (1) 26th March 2022 a golf ball landed on the roof of the dwelling house;

⁷ ANUHCv2013/0796

- (2) 27th March 2022 a golf ball struck a door on the upper level of southeast side of the dwelling house causing three glass panes on the door to shatter;
- (3) 8th April 2023 a golf ball landed on the verandah on southeast side of dwelling house;
- (4) 19th April 2023 a golf ball landed on roof of the dwelling house;
- (5) 2nd May 2023 a golf ball broke an antique lamp in a bedroom in the dwelling house;
- (6) Sometime during the month of June 2023 a golf ball landed on the verandah of upper level of the dwelling house;
- (7) 26th February 2024 a golf ball damaged solar panels on the roof of the dwelling house; and
- (8) 24th June 2024 a golf ball landed on the roof of the dwelling house.

[35] The court further notes that the witness statement was filed prior to the filing of the amended claim on 10th December 2024. As indicated above, the claimant was under a duty to plead all those particulars or the period of the complaints and then give details in the witness statement. The pleading in her amended claim would have given the defendant an opportunity to file an amended defence either admitting or denying those averments.

[36] The court recites the well-established principle in relation to the need for proper pleadings and the purpose of witness statements as was restated by Sir John Dyson Scj in the Pricy Council decision in **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack**⁸ where he said:

“15. In the view of the Board, an amendment of the statement of case was required. Part 8.6, which is headed ‘Claimant’s duty to set out his case’, provides that the claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies. This provision is similar to Part 16.4(1) of the England and Wales Civil Procedure Rules, which provides that “Particulars of claim must include— (a) a concise statement of the facts on which the claimant relies”. In *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at p 792J, Lord Woolf MR said:

⁸ [2010] UKPC 15

'The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. **This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.** What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules. The Practice Direction to r 16, para 9.3 (Practice Direction – Statements of Case CPR Pt 16) requires, in defamation proceedings, the facts on which a defendant relies to be given. No more than a *concise* statement of those facts is required.'

16. But a detailed witness statement or a list of documents cannot be used as a substitute for a *short* statement of *all* the facts relied on by the claimant. The statement must be as short as the nature of the claim reasonably allows." [emphasis mine] [italics not mine]

- [37] The court in an action for nuisance must consider the particular circumstances of each case, having regard to the (1) the nature of the locality; (2) the utility of the defendant's conduct; (3) the claimant's abnormal sensitivity; (4) the duration of the harm; and (5) whether the defendant carried on the activity with the main purpose of causing harm and annoyance to the claimant.
- [38] The court in the circumstances cannot consider the incidents from 26th March 2022 stated in the claimant's witness statement which were not pleaded in the statement of claim, as is required to establish the tort of nuisance. This is especially having regard to the reliefs claimed. The court will however consider the incidents complained of during the year 2021 and January 2022.
- [39] It is the claimant's claim that the interference to her property is substantial, unsafe, unreasonable and intolerable, and that the acts of the defendant's guests prevent her from the peaceful use and enjoyment of her property.

[40] It is the evidence of Kevin Shockness, a roofer, in support of the claimant's claim, that he noticed two golf balls stuck in the guttering of the roof of the claimant's house upon inspection, and three more golf balls on the roof. In cross-examination, Mr. Shockness indicated that he unblocked the guttering of the claimant's house by removing the golf balls, and that he also found golf balls by the solar panel and clear sheeting on the roof.

[41] The defendant in its case has maintained that there is no nuisance whatsoever created by their operations, and the allegations of the claimant do not satisfy the legal threshold to ground a claim in nuisance. It is further the evidence of the defendant that golfers are responsible for their golf balls and should damage result during the play of golf, the dispute is between the golfer and the property owner.

Character of the neighbourhood and locality

[42] it is the case of the defendant that the existence of the golf course pre-dates the claimant's dwelling house, and that the claimant purchased same with the knowledge of its locality with respect to the golf course. Counsel for the defendant argues that the claimant has failed to satisfy her case of private nuisance for the following reasons:

- (1) The defendant has been in operation since 1926⁹, and a reasonable and responsible person living adjacent to the defendant ought to reasonably expect that from time to time, errant golf balls would land in their property.
- (2) The claimant removed five eighty-foot silk cotton trees on her property which were allegedly destabilizing her house's foundation, as well as a netting installed on the property by the previous owners, which were protective measures minimizing the alleged nuisance. These measures have not been replaced by any other mechanism by the claimant to guard against the expected perils of living next to a golf course.
- (3) The striking of golf balls is a natural use of the defendant's land, it being a golf course. The claimant therefore also failed to establish that the use

⁹ The defendant's defence, and the evidence of Ian Harford state that the defendant was in operation since the 1930s.

of the defendant's land was non-natural so as to ground a claim in private nuisance, nor has the claimant shown that the use of the land is inherently unreasonable.

[43] Counsel for the claimant relies on the case of **Miller et al v Jackson et al**¹⁰ and refers to statements made of Geoffrey Lane LJ in his ruling, which are helpful to recite at length:

"There is, however, one obviously strong point in the defendants' favour. They or their predecessors have been playing cricket on this ground (and no doubt hitting sixes out of it) for 70 years or so. Can someone by building a house on the edge of the field in circumstances where it must have been obvious that balls might be hit over the fence, effectively stop cricket being played? Precedent apart, justice would seem to demand that the plaintiffs should be left to make the most of the site they have elected to occupy with all its obvious advantages and all its equally obvious disadvantages. It is pleasant to have an open space over which to look from your bedroom and sitting room windows, so far as it is possible to see over the concrete wall. Why should you complain of the obvious disadvantages which arise from the particular purpose to which the open space is being put? Put briefly, can the defendants take advantage of the fact that the plaintiffs have put themselves in such a position by coming to occupy a house on the edge of a small cricket field, with the result that what was not a nuisance in the past now becomes a nuisance? ... It does not seem just that a long-established activity, in itself innocuous, should be brought to an end because someone chooses to build a house nearby and so turn an innocent pastime into an actionable nuisance. Unfortunately, however, the question is not open. In *Sturges v Bridgman* this very problem arose. The defendant had carried on a confectionary shop with a noisy pestle and mortar for more than 20 years. Although it was noisy, it was far enough away from neighbouring premises not to cause trouble to anyone, until the plaintiff, who was a physician, built a consulting-room on his own land but immediately adjoining the confectionary shop. The noise and vibrations seriously interfered with the consulting-room and became a nuisance to the physician. The defendant contended that he had acquired the right either at common law or under the Prescription Act 1832 by uninterrupted use for more than 20 years to impose the inconvenience. It was held by the Court of Appeal, affirming the judgment of Jessel MR, that use such as this which was, prior to the construction of the consulting room, neither preventable nor actionable, could not found a prescriptive right. That decision involved the assumption, which so far as one can discover has never been questioned, that **it is no answer to a claim in nuisance for the defendant to show that the plaintiff brought the trouble on his own head by building or coming to live in a house so close to the defendant's premises that he would inevitably be affected by the defendant's activities, where no one had**

¹⁰ [1977] QB 966

been affected previously. It may be that this rule works injustice, it may be that one would decide the matter differently in the absence of authority. But we are bound by the decision in *Sturges v Bridgman* and it is not for this court as I see it to alter a rule which has stood for so long.” [emphasis mine]

[44] Counsel for the claimant argues that the pre-existence of the golf course should not be used as a defence or an excuse for the defendant to escape liability. It is also the claimant’s evidence that other properties with dwelling houses are located in the vicinity of the golf course.

[45] It is the evidence of Mr. Ian Harford, director of the defendant, that there were incidents of errant balls prior to the claimant’s purchasing of her property. Mr. Harford, who, in the view of the court, was candid in his testimony during cross examination, stated that there are trees on the boundary of the property of the claimant which are approximately 30 to 40 feet tall. However, Mr. Harford stated that despite the presence of the trees there remains a likelihood of golf balls entering the claimant’s property as the trees did not prevent all of the balls.

[46] Counsel for the defendant relies on a judgment of the High Court of Barbados in **Greenidge v Barbados Light and Power Co. Ltd**¹¹, and the decision of the Chancery Court in **Vanderpant v Mayfair Hotel Co. Ltd.**¹² which both predate the decision of the English Court of Appeal in **Miller**¹³ relied on by the claimant. The court also notes that the defendant has failed to plead contribution on the part of the claimant for the nuisance complained.

Duration of harm

[47] Private nuisance does not require that the nuisance be completely permanent in nature and will often involve an interference over a period of time, although a single event may amount to a nuisance¹⁴.

¹¹ (1975) 27 WIR 22

¹² (1930) 1 Ch. 138

¹³ [1977] QB 966

¹⁴ Halsbury’s Laws of England (5th edn, 2025) vol 78 para 101

[48] Counsel for the defendant submits that the claimant's complaints are insignificant, juxtaposed to the length of time the claimant has been in occupation. The court further notes that it is the evidence of the defendant that the golf course operates from 8:00am to 8:00pm, seven days a week. It is also the defendant's evidence that golf is played on three and a half sides of the claimant's property, and that at times, balls would go over to the claimant's property.

Utility of the defendant / The claimant's abnormal sensitivity.

[49] The defendant has been in operation since the 1930s, and serves a public function being the sole golf course operator in Grenada. The claimant residing in close proximity to an existing golf course should reasonably foresee that the incidents complained of as the ordinary use of the defendant's land as a golf course and that she would endure some degree of inconvenience having regard to the fact that it is the only golf course.

[50] However, it is the law that where an annoyance amounts to a nuisance, such nuisance cannot be justified on the grounds that the claimant has come to the nuisance, or that the claimant's predecessor in title brought and compromised a previous action against the defendant to restrain the nuisance¹⁵

Material Damage and Substantial Interference

[51] A balance has to be struck between, on the one hand, the rights of the individual to enjoy his property without the threat of damage, and on the other hand the rights of the public in general or a neighbour to engage in lawful pastimes¹⁶.

[52] Counsel for the defendant argues that the damage claimed by the claimant does not constitute material damage to the land. Counsel submits that the occurrences of the striking of golf balls onto the claimant's property do not materially interfere with the ordinary physical comfort of human existence so as to amount to a substantial interference.

¹⁵ Halsbury's Laws of England (5th edn 2025) vol 78 para 139

¹⁶ [1977] QB 966

[53] The evidence on behalf of the claimant however demonstrates otherwise. It is the evidence of Mathias Paul that he was almost struck by a golf ball when visiting the claimant. In cross-examination, Mr. Paul indicated that on a visit to the claimant's property, he observed balls hitting the roof of the claimant's dwelling house and veranda. In addition, it is the evidence of Celia Charles that she has experienced a golf ball travelling towards her while sitting on the claimant's property.

[54] The court is of the view that the damage or potential damage at which the claimant is at risk is physical, to both property and to person. The golf course owners have a duty to protect their neighbours from foreseeable errant golf balls and to mitigate the damage to avoid liability for the damage and multiplicity of claims. The court does not consider the number of incidents of damage pleaded as a deterrent in the finding of a claim in nuisance. It matters not that material damage did not occur every day. The outstanding material damage as evidenced by the claimant and accepted by the court, includes her broken solar panels, having regard to the contemporaneous reports made to Mr. Ramdanny.

Unauthorised use of the golf course

[55] The defendant made the point that at times, trespassers who are not members of the defendant utilise the golf course, and for whom the defendant denies liability.

[56] Although no authority in support of the defendant's position on liability was provided to the court, the court takes judicial notice of **Halsbury's Laws of England**¹⁷ which states:

"Any person is liable and may be sued for a nuisance if they either create or cause it, or continue or adopt it, or if they authorise its creation or continuance. The liability applies whether or not that person is in occupation of the land on which the nuisance is committed. **However, an occupier will not be liable for a nuisance created by a trespasser without the occupier's knowledge, actual or constructive, or consent.** A person is liable as having caused or continued a nuisance when the person is guilty of an act or omission which directly gives rise to the nuisance; when the person authorises such an act or omission; **or when inadvertently the person does or authorises an act from which a nuisance arises as a natural and probable consequence.** It is a prerequisite of the recovery of

¹⁷ (5th edn 2025) vol 78 para 118

damages in both private and public nuisance that the harm for which compensation is sought should have been foreseeable. Even foreseeable interference will not constitute a nuisance if it results merely from the ordinary use of premises and is an inevitable consequence of the way in which those premises were built, provided that that method of construction was lawful at the time.” [emphasis mine]

[57] Moreover, Finnmere J in **Hall v Beckenham Corporation**¹⁸ stated the following:

“...That argument addressed to a private individual would be right, having regard to *Attorney-General v. Tod Heatley* and *Sedleigh-Denfield v. O'Callaghan*. The reason is plain: **an owner of private property can prevent people from coming on to his land and committing a nuisance there**. The argument for the plaintiff is that the corporation are in exactly the same position: **they are the owners and the occupiers of this land, and certainly have the management and control of it; and if other people, licensees counsel would call them, create a nuisance in that park and the corporation do nothing about it, they, as occupiers, and in any event as managers and controllers, are responsible, at any rate unless they take reasonable steps to stop it.**” [emphasis mine]

[58] The defendant in its evidence, during the cross examination of Mr. Ian Harford, indicated that he is aware of actual trespass onto the golf course, in response to which it erected signs on the defendant’s property warning against trespassers. Nothing further was done by the defendant, as ascertained by the evidence, toward against trespassing, although it is the evidence of the defendant through Mr. Harford that at least three times a week there is a report of unauthorised play.

[59] The court notes the correspondence exchanges between the claimant and the then defendant’s director, Mr. Lyden Ramdhanny, with respect to the damage of the solar panels and lack of electricity as a result. The claimant in her correspondence included photographs of the damaged panel and a copy of the quotation for the repairs to the damaged panel. She also mentioned the fact that golfers were seen striking balls aimed to pass over her property in an attempt to reach the sixth hole.

[60] On 12th February 2021, the defendant responded via letter stating that it could not accept responsibility for any unintentional damage caused by its members as it would be very difficult to identify the golfer who played the errant ball unless the

¹⁸ [1949] 1 KB 716

person came forward and acknowledged that the damage. The letter stated that enquires made in identifying the golfer were unsuccessful. The letter further stated that the defendant depended on golfers to contact any homeowner in the immediate vicinity of the course whose property was impacted by stray golf balls struck by the golfer.

[61] At trial, Mr. Ian Harford, director, admitted that golfers sometimes hit what he referred to as “fantastic hits” outside the bounds which can affect the claimant’s property. He said there are warning signs and golfers are penalized when errant balls are pitched outside the bounds. He further stated that golf is a gentleman’s sport and it is a requirement for members and invitees to inform and accept liability for any damage caused by errant balls.

[62] The court is of the view that it would be an onerous and unreasonable exercise for a claimant who has suffered damage to identify the golfer to be compensated. The court, taking into consideration the claimant’s evidence in reporting the damage to the defendant’s managing director and the defendant’s response, accepts that the damage was caused by an errant ball. The letter in response did not deny the claimant’s property was damaged but only stated that it could not accept liability for the unintentional damage.

[63] The court is of the view that this is matter that could have been settled by the parties having regard to the contemporaneous correspondence and the proof of damage to the solar panel. However, all efforts including mediation failed. The court finds that the claimant has established a case in nuisance for the damaged solar panels..

Relief

[64] The claimant in her claim seeks an injunction restraining the defendant, its servants or agents from committing the nuisance, as well as redesign of the sixth hole or the installation of a golf barrier net near the boundary to the property. The claimant also seeks general, special and aggravated damages.

- [65] In **Lawrence and another v Fen Tigers Ltd and another**¹⁹, it was held that where a claimant has established a nuisance, prima facie that claimant is entitled to an injunction to restrain the defendant from committing such nuisance in the future in addition to damages for the past nuisance.
- [66] With respect to the redesign of the sixth hole of the defendant's golf course, the claimant has failed to provide evidence to substantiate the adequacy of that remedy, the associated costs, a proposed plan for such redesign or evidence of its utility. Also, the claimant has further failed to establish the functionality of a barrier net near her property in preventing golf balls from entering. The claimant herself in cross-examination indicated that she cannot agree or disagree that a net would eliminate golf balls.
- [67] As it relates to the injunction, a necessary balance must always be struck between the need for autonomy over individuals' uses of land. The court is mindful that a blanket injunction may frustrate the economic and social benefit of the sole golf course that has been in operation for over 90 years.
- [68] A nuisance claim related to golf balls generally involves repeated incidents of golf balls entering or striking neighbouring properties, causing interference with the use and enjoyment of the land or property damage. A key factor is the frequency and duration of the incidents, as well as the nature of the locality, which can influence what is considered unreasonable interference.

Abatement

- [69] The court also notes that the measure of abatement as indicated by the defendant included the "no trespassing" signs for unauthorised use, the evidence of perennial trees around the property of the defendant and penalties in the game of golf itself by the reduction in points if balls are hit off course. This in the court's view is an insufficient deterrent.

¹⁹ [2014] UKSC 13

[70] It has been said that nuisance is the law of give and take. The court is inevitably concerned to some extent with the utility or general benefit to the community of the defendant's activity. The protection of the law of nuisance is a balancing act, weighing the competing interests and rights of neighbours, and requires a process of compromise necessitating the examination by the court of the reasonableness of the defendant's conduct, and the consideration of all circumstances.

[71] Without any adequate measures taken by the defendant, the court is of the view that the nuisance will continue. The court will therefore order the defendant to, within six months of today's date, take the appropriate steps such to abate the nuisance such as erecting warning signs, installing nets, educating players on high risks areas, keeping registers and maintaining proper complaints recording and if all fails may wish to consider the redesigning or shifting of the sixth (6th) hole. .

General Damages

[72] The applicable measure of damage for nuisance is the diminution in the value of the claimant's land, the cost to restore the claimant's land, or some other intermediate award²⁰.

[73] The claimant has not claimed any diminution in the value of her land but has placed before the court the cost of restoration of the damage sustained by her property pleaded as special damages.

Special Damages

[74] The claimant seeks special damages in the sum of \$7,100.84. which has not been substantiated. However the court accepts the special damages proved for the costs of the replacement of the solar panels in the sum of \$6,000.84.

Aggravated damages

[75] Aggravated damages may be awarded to compensate a claimant whose injury has been aggravated by the conduct of the defendant²¹. It is compensation which

²⁰ Halsbury's Laws of England Vol 29 (2024) para 425

²¹ DOMHCV2009/0054 Levi Maximae v the Chief of Police et al

takes into account the motives and conduct of the defendant over and above the ordinary damages flowing from the injury done to the plaintiff.

- [76] Counsel for the defendant states that the extant case is devoid of any exceptional or contumelious conduct on the part of the defendant so as to ground a claim for aggravated damages. The court agrees with counsel for the defendant that the circumstances in the extant matter do not give rise to an award of aggravated damages. The claimant's basis for the additional award in damages concerned the seriousness of the wrong of the defendant, which is not germane to aggravated damages in keeping with the requirements of malevolence or spite as stated by Lord Devlin in **Rookes v Barnard**²².

Conclusion

- [77] The court applying law to the facts and for the foregoing reasons orders and directs as follows:

- (1) The claimant's claims for negligence and trespass stand dismissed.
- (2) The claimant's claim for nuisance is allowed.
- (3) The defendant is ordered to make every effort to take necessary actions of abatement to effectively reduce the nuisance within six months of the date of this judgment.
- (4) Special damages in the sum of \$6,000.84 with interest at the rate of 3% from the date of filing the claim and at the rate of 6% from the date of judgment until payment in full.
- (5) The claimant having had partial success and accordingly the parties agree on reduced costs in the sum of \$3,000.00 to be paid by the defendant within six weeks of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar

²² [1964] AC 1129