

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2015/0099

BETWEEN:

GLENNIS MARLON MILLS

Claimant

AND

[1] CARIBBEAN RESORTS LIMITED (Trading as Mariners Hotel)

[2] THE FRENCH VERANDAH INC.

Defendants

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mrs. Zhing Home-Edwards of Counsel for the Claimant

Mr. Stanley K. John K.C and Mr. Akin S. John for the Defendants

2024: June 18,
July 22, 26
December 6

JUDGEMENT

[1] **THOM J (Ag):** On July 22, 2020, the Court gave judgment in favour of the Claimant Glennis Marlon Mills (Ms. Mills). The learned judge made the following order in paragraph (147) of the judgment:

"It is accordingly ordered:

1. Judgment is entered for Glennis Mills.
2. Caribbean Resorts Limited and the French Verandah Inc. shall by 10:00am on July 20th, 2020, deliver to Glennis Mills vacant possession of the disputed property at Villa comprising the parking area and knoll, being part of the land described in the second schedule to Vesting Deed No. 2599 of 2011.
3. Caribbean Resorts Limited and the French Verandah Inc. shall pay to Glennis Mills mesne profits for the period June 2011 to July 2020 to be assessed on application to be filed and served by her on or before September 17th, 2020.
4. Caribbean Resorts Ltd's and the French Verandah Inc's ancillary claim is dismissed.
5. Caribbean Resorts Limited and the French Verandah Inc. shall pay to Glennis Mills if not agreed, prescribed costs of \$7,500.00 pursuant to CPR 65.5 (2) (b)

[2] The defendants being dissatisfied with the decision appealed to the Court of Appeal. A single judge of the Court of Appeal granted a stay of execution of the Judgment.

[3] The Court of Appeal having heard the appeal, in its judgment dated February 23, 2003 dismissed the appeal and made the following orders in paragraph 119 of its judgment as follows:

"Accordingly, I would order that:

- (1) The appeal is dismissed, and the orders of the learned trial judge are affirmed.
- (2) The appellants are ordered to pay the respondent's costs of this appeal to be assessed by a Judge or Master of the High Court at no more than two thirds of the amount awarded at the Court below unless such costs are agreed within 21 days of the date of this judgment.

[4] Ms. Mills in her application for assessment of damages, outlined the following grounds:

"(1) By a judgment in the above cause delivered on the 22nd day of July, 2020, the defendants were ordered to pay to the claimant mesne profits and interest thereon in respect of their use of the Claimant's property, being the parking area and the signage knoll from June 2011 up to the present time."

[5] Ms. Mills in her affidavit in support stated that she has been the owner of the parking lot and the knoll since May 2011. The defendants have been using the parking area for its patrons and the knoll to display their signs from 2011 without paying her any rent.

[6] The parking area is a benefit to the Defendants as their patrons are able to park their vehicles. She has not had the use or benefit of the parking area. The Respondents occupation prevented her from renting it to someone else or selling the area or developing it. The knoll provides very valuable advertising space for the Defendants. She relies on the valuation report of the Expert witness Mr. Christopher Browne who valued the Knoll at \$275.00 per month and the parking lot at \$2,297.00 per month. Ms. Mills at paragraph 13 requested the court to assess mesne profits due to her for the period June 2011 to July 2020 a period of 9 years and one month on the basis of the valuation report being the sum of \$29,975.00 for the Knoll and \$250,373.00 for the parking area; interest at 3% per annum from June 2011 to April 2015, and interest at 2% per annum from May 2015 to the date of judgment on the assessment of damages, and 6% interest

from date of the judgment on assessment until payment in full. She also seeks \$550.00 being the cost of the valuation report.

- [7] In her supplemental affidavit filed on the 24th day of October, 2023, she deposed that the property is still being used by the Defendants.
- [8] The Respondents declined to cross-examine Ms. Mills.
- [9] Mr. Christopher Browne gave evidence in accordance with his expert report. In his opinion, the rental value of the parking lot is \$2,297.00 per month, and the Knoll to be \$275.00 per month. Mr. Browne's evidence was not contested.
- [10] Mr. Vidal Browne testified on behalf of the Respondents. Mr. Browne acknowledged that judgment was granted against the Defendants and they were ordered to pay mesne profits in relation to the parking lot and the Knoll to be assessed by the Court. He also acknowledged that the defendants appeal to the Court of Appeal was dismissed. Subsequent to the dismissal of the appeal the Respondents made an offer to Ms. Mills of \$353,076.00 being mesne profits, interest and costs in the sum of \$12,500.00. Also, an offer to purchase the car park was also made of \$187,000.00-being \$40.00 per sq ft the car park measuring 4, 687 sq ft.
- [11] Under cross-examination Mr. Browne testified that the request was made for payment of rent between 2011-2015. He offered to pay rent, but Ms. Mills requested a higher sum. He acknowledged that the parking lot was of benefit to the Respondents. It is indeed a necessary part of the operation of both Respondents. As of March 6, 2023, the respondents no longer had use of the car park. Ms. Mills erected barriers on the parking lot.
- [12] In April 2023 he made an offer to pay outstanding rent and interest along with an offer to purchase the car park.

Submissions

- [13] Learned Counsel Mrs. Horne-Edwards urged the Court to accept the evidence of Ms. Mills and Ms. Christopher Browne of the value of the parking lot being \$2,297.00 per month and the knoll of \$275.00 as the starting point and mould an award according to the justice of the case taking into account the following:
 - (i) The effect of the order of the Court made on July 20, 2020 with respect to the period for which mesne profits were awarded.
 - (ii) The undertaking signed by the claimant (without prejudice to her rights) at the request of the defendants, that she would not enforce the judgment of the court until the start of the new law term in September 2020.
 - (iii) The undertaking signed by the claimant (without prejudice to her rights) at the request of the defendants that she would not enforce the judgment of the court until the start of the new law term in September 2020.
 - (iv) The application by the defendants and the grant of a stay of execution pending the outcome of the appeal.
 - (v) The dismissal of the appeal on February 23, 2023, almost 3 years after the judgment of the High Court.

- (vi) The continuation of the defendants' trespass beyond the date of the judgment in July 2020 and up to the present time and the claimant's inability to recover mesne profits in respect of any period beyond July 2020.
 - (vii) The significant advantage of the defendants.
 - (viii) The significant advantage the defendants gained by their trespass.
 - (ix) The doubling of the market rental value in Horsford v Bird and Samuel v Griffith because of the enhanced value of the land to the defendants.
- [14] Learned Counsel Mrs. Horne-Edwards submitted that the applicable legal principles relating to the assessment of mesne profits are those stated by Lord Lloyd in the decision of the Privy Council in Inverugie Investments Ltd v Hackett 1995 1WLR 713:

"Before stating their own conclusion on the facts, their Lordships should say a brief word on the law. The cases to which they have already referred establish beyond any doubt, that a person who lets out goods on hire, or the landlord of residential property, can recover damages from a trespasser who has wrongfully used his property whether he can show that he would have let the property himself". The point is well expressed by Megaw LJ in Swordheath Properties Ltd v Tebet [1979] 1 W.L.R. 285, 288.

"It appears to me to be clear both as a matter of principle and of authority that in a case of this sort the plaintiff when he has established that the defendant has remained on as a trespasser in residential property is entitled, without bringing evidence that he could or would have let the property to someone else in the absence of the trespassing defendant, to have as damages for trespass the value of the property as it would fairly be calculated and in the absence of anything special in the particular case it would be the ordinary letting value of the property that would determine the amount of damages."

It is sometimes said that these cases are an exception to the rule that damages in tort are compensatory. But this is not necessarily so. It depends how widely one defines the "loss" which the plaintiff has suffered. As the Earl of Halsbury L.C. pointed out in Mediana (Owners of Steamship) v Comet (Owners of Lightship) [1900] A.C. 113, 117, it is no answer for a wrongdoer who has deprived the plaintiff of his chair to point out that he does not usually sit on it or that he has plenty of other chairs in the room.

In Stoke-on-Trent City Council VWLJ Wass Ltd [1988] 1 W.L.R. 1406 Nichols LJ called the underlying principle in those cases the "user principle". The Plaintiff may not have suffered any actual loss by being deprived of the use of his property by the trespasser, and the trespasser may not have obtained any actual benefit from the use of the property. But under the user principle he is obliged to pay a reasonable rent for the use which he has enjoyed. The principle need not be characterised as exclusively compensatory, or exclusively restitutionary, it combines elements of both."

- [15] Learned Counsel also relied on the following passage in Halsbury's Laws of England 4th edition Vol 45 (2):

"**Trespass actionable per se.** "526. In a claim of trespass, if the claimant proves the trespass, 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. Where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the defendant cynically disregards the rights of the claimant in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded. If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, then general damages may be increased.”

[16] In relation to the rental value of the subject property to the Defendants, Learned Counsel urged the Court to consider the nature of the Defendant’s business and their needs, the proximity of the said business to the subject property and the use to which the Defendants made of the subject property are all strong indications of the premium which the Defendants have attached to the subject property.

[17] The evidence of the Ms. Mills and indeed Mr. Vidal Browne is that the parking lot has enhanced the amenities of the Defendants property. The parking lot and the knoll added significant value to the defendants’ business. Learned Counsel urged the court in determining the damages to double the rental value stated by the expert witness Mr. Christopher Browne in his report as was done by the Privy Council in Horsford v Bird and Ors. (2006) UKPC 3.

Interest

[18] Mrs. Horne-Edwards submitted that interest should be awarded on the sum awarded at the rate of 3% per annum from June 2011 to April 2015 and at 2% per annum from May 2015 to the date of the judgement on the assessment of damages.

Consequential Loss

[19] Learned Counsel submitted that Ms. Mills should be awarded the costs of the valuation of the property by Mr. Christopher Browne in the sum of \$550.00.

Defendants Submissions

[20] Mr. Stanley John KC submitted that the period of assessment of mesne profits is the period stated in the decision of the High Court and which was affirmed by the Court of Appeal.

Quantum

[21] In relation to the quantum of damages, Learned King’s Counsel submitted that the Court should apply the approach of the Privy Council in Hosford v Bird, where the Board set the starting point at 7.5% the Capital Value of the property. Mr. John KC submitted that Mr. Christopher Browne the expert witness did not provide the Court with a capital value of the property. However, Mr. John KC referred the Court to the valuation report of Mr. Glenford Stewart which

was filed in the liability proceedings and to which the Claimant made reference in paragraph 19 of her affidavit of 24th October 2023. Learned Counsel urged the Court to use this capital value and award 7.5% of it as the mesne profits.

Discussion

- [22] In relation to the period of the assessment of mesne profits, while Learned Counsel Mrs. Horne-Edwards initially submitted the period should be until the date of judgment on the assessment, in her further submissions dated 26th July, 2024 and her further oral submissions, Learned Counsel conceded that the period is that stated by the learned judge and which was indeed the period affirmed by the Court of Appeal. I agree. The Order of the learned judge is very clear. The period stated in paragraph 147 (3) of the judgment is June 2011 to July 2020. This period was not varied by the Court of Appeal but rather the period stated in the order of the learned judge was affirmed by the Court of Appeal. The Court of Appeal would have been seized of the fact that a Single Judge of the Court of Appeal had granted a stay of execution of the judgment until the determination of the appeal.

Quantum

- [23] Learned Counsel on both sides placed much reliance on the Privy Council decision in **Horsford v Bird**. Mr. Horsford is the owner of adjoining lands owned by Mr. Bird (now deceased) then the Prime Minister of Antigua and Barbuda. In constructing a swimming pool and garden and a passageway for a motor vehicle, the contractors fenced in a portion of land belonging to Mr. Horsford.
- [24] Mr. Horsford instituted proceedings in which he claimed damages for trespass and a mandatory injunction for the removal of the fence and structure occupying his land measuring 455sq.ft.
- [25] In the High Court the learned judge declined to grant the mandatory injunction and stated she would award damages instead and also aggravated damages. The judge awarded a sum of \$75,000. In doing so the learned judge did not particularize the damages. The judge in making the award took into account three matters: (i) the value of the land (ii) the value of the land to the respondent; (iii) the manner in which the respondent had dealt with the appellant's claim.
- [26] On appeal by Mr. Bird to the Court of Appeal, the Court of Appeal determined that there was no basis for an award of aggravated damages.
- [27] The Court of Appeal reduced the damages to \$13,600 being the rental value of the land. The Court of Appeal accepted the valuation of the expert witness Mr. Winter of \$40.00 per sq-ft.
- [28] On appeal by Mr. Horsford to the Privy Council, the Board agreed with the Court of Appeal that there was no basis for an award of aggravated damages. The Board found that Mr. Horsford was entitled to damages in lieu of the mandatory injunction and mesne profits. The Board also found that the Court of Appeal in assessing damages did not consider the second head identified by the learned judge being "the value of the land to the respondent." In determining the appropriate amount, the Board referred to the decision in **Woodham Park Estate Co. Ltd v Parkside Hans Ltd [1974] 1WLR** in which the issue was the quantum of damages to be awarded in lieu of an injunction to remove a number of dwelling houses which were built in

breach of a restrictive covenant. Damages were assessed as a proportion of the profit the developer had made.

[29] In **Horsford** the issue was what sum Mr. Hosford could reasonably have sought from Mr. Bird in November 2000 when the land was fenced. The Board accepted that the undeveloped value of the land was \$40.00 per sq-ft. The Board also found that the value to Mr. Bird as part of the garden of his new house would have been at least double \$13,600.00. The Board therefore fixed the value of the land at double the undeveloped value and awarded damages of \$27,300.00 in lieu of the mandatory injunction. It must be noted that the refusal to grant the mandatory injunction meant that Mr. Bird was able to retain the portion of Mr. Horsford's land.

[30] The Board also found that Mr. Horsford was entitled to mesne profits from the date of the trespass to the date of judgment of the learned judge. In relation to mesne profits the Board stated:

"But, in their Lordships' view, the appellant has a clear claim to damages in the form of mesne profits for the use made of his land by the respondent. Any such claim for a period more than six years before the commencement of proceedings would be statute barred, so the claim can only lie for the period starting 20th November 1994. The period for which mesne profits could be claimed terminated in the Lordship's view when Joseph-Olivetti J on 21st February 2003 gave judgment refusing the mandatory injunction and making an award of damages in lieu. So the use by the respondent of the appellant's land for which the appellant is entitled to compensation continued for 8 years and 3 months. The quantum of the claim should, in their Lordship's opinion, be assessed on a yearly basis as a percentage of the capital value of the piece of land in question.

The capital value, in their Lordship's opinion, should be taken to be EC \$27, 300 and their Lordships think that an annual rate of 7.5 percent of that capital value would represent reasonable mesne profits. That rate would lead to an annual mesne profits figure of EC \$2,047.50. Eight years at that rate would produce \$16, 380. The figure for three months would be \$512. The total figure would be \$16,892."

[31] The reference in their Lordships' decision to "double the figure" was in relation to damages in lieu of the grant of a mandatory injunction for the fence to be removed thereby allowing Mr. Horsford to occupy his land. Mr. Bird was permitted to keep the land which was expropriated in excess of 8 years prior and used as part of his garden and driveway.

[32] In my view, The Board was there dealing with a specific situation where a portion of the Mr. Horsford's land was expropriated. In addition to damages the mandatory injunction having been refused, the Board also awarded what it considered to be reasonable mesne profits and determined that the appropriate sum for mesne profits was 7.5% of the capital value of the land. In my view, the Board in **Horsford** was not establishing a new principle for the computation of mesne profits to be 7.5% of the capital value of the land. The Board was not seeking to overturn the well-established principle governing the quantum of mesne profits in its earlier decisions such as Inverugie which was relied on by Mrs. Horne-Edwards. If that was so the Board would have said so. Rather, in my view damages being a matter of discretion, having regard to the facts, the Board fashioned a remedy to meet the justice of the case.

- [33] Ms. Mills and Mr. Vidal Browne were married. After their divorce, an agreement was reached in relation to their assets and certain lands were conveyed to Ms. Mills. A dispute arose as to whether the car park which served as a parking space for the patrons of the 1st and 2nd defendants' businesses formed part of the lands conveyed to Ms. Mills. The learned judge and the Court of Appeal found in favour of Ms. Mills and ordered the defendants to pay mesne profits to Ms. Mills to be assessed by the court.
- [34] Mr. Christopher Browne the expert witness called by Ms. Mills submitted a detailed valuation report. Mr. Browne is a qualified and experienced valuator. His evidence was not challenged by the defendants. I accept the evidence of Mr. Christopher Browne.
- [35] Mr. Browne was aware that the land was used as a car park for the defendants' business. He stated in his report:
- “Presently, the land is paved with reinforced concrete and used as a parking lot for the adjacent Hotel. However, due to its general configuration, the site is suitable for some form of commercial development. In fact, the land is located within an area of compatible type development and land uses.”
- [36] Mr. Browne not only took into account that the land was valuable to the defendants business but further the added commercial potential of the land.
- [37] Further, Mr. Browne conducted an analysis of the area in which the land is located and stated:
- “The subject property is located in Villa close to the beachfront. It can be considered a suburban area of mainly upper income composition. The area is one of mixed land uses, tourism related e.g. hotels and so on. In terms of potential, the area is well suited for guesthouses or hotel development taking advantage of the beachfront location.... Additionally, the area benefits from excellent views of Villa Bay and Young Island.”
- [38] Mr. Christopher Browne's evidence was thorough. I accept Mr. Browne's valuation of \$2,297.00 per month for the car park and \$275.00 for the knoll. Indeed, Ms. Mills in her affidavit in support of the application for assessment of damages stated as follows at para 13:
- “I therefore humbly ask this Honourable Court to assess mesne profits due to me for the period June 2011 to July 2020 based on the said valuation report. The said period amounts to 9 years and one month. The total amount that should therefore be paid in respect of mesne profit for the stated period is \$29,373.00 for the parking area.

Interest

- [39] In relation to interest, Ms. Mills in her affidavit in support of her application clarified interest as follows at para. 4 “In addition, I ask that this Honourable Court assess interest on the said amounts of \$29,975.00 and \$250,373.00 at the rate of 3% per annum from June 2011 to April 2015 at 2% per annum from May 2015 to the date of judgment on the assessment of damages. Had I been paid the rent that was due to me between June 2011, and July 2020 when judgment in the trial on liability was handed down, I would have deposited that money into an interest-bearing savings account at the St. Vincent Cooperative Bank Ltd, or Republic Bank,

where I maintain savings accounts. I have received documentary evidence from the said banks, which operate within St. Vincent and the Grenadines, confirming that I hold a savings account at each and stating the respective interest rates on savings accounts held at the institutions. In both the case of the St. Vincent Co-operative Bank and Republic Bank, the interest rate on savings accounts was 3% in 2011 up to April 2015 and changed to 2% per annum from May 2015 up to the present time. Copies of the letters from the St. Vincent Cooperative Bank and Republic Bank are exhibited herewith as a bundle marked "GMM2".

[40] And further at paragraph 15 of her affidavit:

"15. Apart from the above mentioned interest for the period assessment, I ask that interest at the rate of 6% to be applied to the sum awarded to me from the date of judgment on the assessment of damages until payment in full."

[41] Mr. John KC did not dispute that Ms. Mills was entitled to interest as she claimed. He submitted that interest was in the discretion of the Court.

[42] In my opinion Ms. Mills should be granted interest as outlined in her affidavit. The interest claimed is in keeping with the approach of the Court of Appeal in several cases following its' decision in **Sharna v Motilal**.

Order

[43] It is Ordered:

- (1) The Defendants shall pay the Claimant mesne profits for the use of the car park at \$2,297.00 per month from the 1st June 2011 to the 31st July 2020, being a total sum of \$252,670.00.
- (2) The Defendants shall pay the Claimant interest on the mesne profits awarded at (1), which accrue due monthly as follows:
 - a. at the rate of 3% interest per annum from the 30th June 2011 to 30th April, 2015 being the sum of \$6,493.10; and
 - b. at the rate of 2% interest per annum from 1st May 2015 to 11th December 2024 being the sum of \$41,441.28.
- (2) The Defendants shall pay the Claimant mesne profits for the use of the knoll at \$275.00 per month from the 1st June 2011 to the 31st July 2020 being a total sum of \$30,250.00.
- (3) The Defendants shall pay the Claimant interest on the mesne profits at paragraph (3), which accrue due monthly as follows:
 - a. at the rate of 3% interest per annum from the 30th June 2011 to 30th April 2015 being the sum of \$777.46; and

- b. at the rate of 2% interest per annum from 1stMay 2015 to 11thDecember 2024 being the sum of \$4,961.41.
- (4) The total judgment sum is \$336,593.25 together with 6% interest per annum or Fifty Five Dollars and Thirty-Three Cents (\$55.33) per day from 11th December 2024, the date of this decision, until the final payment.
- (5) The Defendants shall pay the costs of this application to be assessed by the Court if not agreed by the parties within 21 days of the date of this judgment.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar