

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2021/0302

BETWEEN:

REGIONAL PERFORMANCE MOTOR SPORTS LIMITED

Claimant

and

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

ANTIGUA PUBLIC UTILITIES AUTHORITY

Defendants

APPEARANCES:

Mr. Hugh Marshall and Jonathan Marshall for the Claimant
Ms. Alicia Aska, Joy Dublin and Zacchary Phillips for the Defendants

2024: June 24th

October 23rd

DECISION

- [1] **DRYSDALE, J.:** The case involves an allegation of breach of agreement by the First Defendant and trespass by the Second Defendant. The dispute centers around the lease of lands identified as Registration Section: Crabbs Peninsula; Block: 21 2692A; Parcels: 38 and 110 from the First Defendant and the subsequent trespass to said land by the Second Defendant.

BACKGROUND

- [2] The case for the Claimant is that it entered into an agreement with the Government of Antigua and Barbuda to lease parcels of land at Crabbs Peninsula identified as Registration Section: Crabbs Peninsula; Block: 21 2692A; Parcels: 38 and 110 for the development of a motorsports park. This agreement was confirmed by Cabinet Decision dated November 3, 2016.

- [3] The Claimant asserts that following the Cabinet Decision, it entered into a License Agreement with the Government on February 24, 2017, allowing it to occupy the land while the lease was being finalized. The Claimant took possession of the land, incurred significant expenses for its development, and began constructing facilities for the motorsports park. Specifically, the Claimant undertook various activities, including surveying, clearing, and initiating the construction of necessary infrastructure. Additionally, the Claimant hosted several international events, enhancing the visibility and reputation of the proposed motorsports park.
- [4] Despite these investments and efforts, the formal lease agreement was never finalized due to various administrative delays and the retirement of the responsible legal officer. The Claimant maintains that the Government consistently assured them that the lease would be finalized. However, these assurances did not materialize into a formalized lease agreement, causing significant operational and financial uncertainties for the Claimant.
- [5] On March 21, 2021, the Claimant discovered that a portion of the leased land had been allocated to the Public Utilities Authority (Second Defendant) to construct a power station. This allocation led to significant disruption and damage to the Claimant's developments on the land. The Claimant asserts that the Second Defendant's activities, including fencing off the area and altering the topography, amounted to trespassing and caused extensive damage to the infrastructure already developed by the Claimant.
- [6] The Claimant repeatedly sought clarification and resolution from the Government regarding the lease and the unauthorized activities of the Second Defendant. Despite these efforts, no satisfactory response or resolution was provided, exacerbating the Claimant's losses and operational challenges.
- [7] The Second Defendant is a body corporate in whom all lands, buildings, installations, equipment, and all other forms of property whether real or personal, and all interests therein, of whatsoever nature, belonging to the Government in Antigua and Barbuda and used exclusively for the purposes the Electricity Division; the Telephone Department; and the Water Division are vested.
- [8] The case for the Second Defendant is that it was granted permission to use a portion of the land for a power station and denies causing any unauthorized damage or disruption to the Claimant's operations.

THE PLEADINGS

The Claimant's Amended Statement of Claim

- [9] The Claimant states that it entered into a binding agreement with the Government of Antigua and Barbuda to lease certain parcels of land at Crabbs Peninsula identified as Registration Section: Crabbs Peninsula; Block: 21 2692A; Parcels: 38 and 110 for the development of a motorsports park. This agreement was underpinned by a Cabinet Decision dated November 3, 2016, which granted the Claimant permission to lease the lands.
- [10] This decision was crucial as it laid the foundation for the Claimant's plans to develop a world-class motorsports park, envisioned to boost tourism and local employment.
- [11] The Claimant alleges that following the Cabinet Decision, it entered into a License Agreement with the Government on February 24, 2017, allowing it to occupy the land temporarily while the formal lease was being finalized. The Claimant undertook numerous preparatory activities in reliance on the Government's assurances. These activities included extensive surveying and clearing operations to prepare the site for development. The Claimant also commenced the construction of essential infrastructure such as race tracks, spectator stands, and administrative buildings, all aimed at meeting international standards required for hosting significant motorsport events. The development of these facilities required significant financial investment and planning.
- [12] Furthermore, the Claimant hosted several international motorsport events, which played a crucial role in promoting the park and attracting international attention. These events not only helped in marketing the facility but also demonstrated its viability and potential as a premier destination for motorsport activities. The Claimant incurred substantial expenses in these endeavors, including costs associated with marketing, logistics, and compliance with international sporting regulations.
- [13] Despite these efforts and the Claimant's compliance with all requirements, the Government failed to finalize the lease agreement, causing significant financial and operational harm. The Claimant contends that the Government's inaction has resulted in substantial financial losses, including lost revenue from potential events, sponsorships, and other commercial opportunities that were expected to arise from the motorsports park. The Claimant argues that the failure to formalize the lease has left it in a state of uncertainty, severely impacting its ability to plan and execute further developments.

- [14] The Claimant further alleges that in March 2021, the Second Defendant, Public Utilities Authority, entered the leased land and began constructing a power station without the Claimant's consent. This unauthorized entry and construction caused extensive damage to the Claimant's infrastructure and disrupted its operations. The Claimant asserts that the Second Defendant's activities, including fencing off the area and altering the topography, amounted to trespassing and caused significant harm to the development and financial stability of the motorsports park.
- [15] The Claimant maintains that it has repeatedly sought clarification and resolution from the Government regarding the lease and the unauthorized activities of the Second Defendant. Despite numerous attempts to resolve these issues through dialogue and correspondence, no satisfactory response or resolution was provided by the Government, exacerbating the Claimant's losses and operational challenges. The Claimant highlights that its requests for the execution of the lease agreement and compensation for the damages caused by the Second Defendant have been ignored, leaving the Claimant in a precarious financial and operational position.

The Defence

- [16] The Defendants admit that a License Agreement was granted to the Claimant for temporary occupation of the land and that there were ongoing discussions regarding the finalization of the lease. The Defendants further state that the license included a clause stating that if the Government intended to develop the area for public use, the Claimant would be relocated under mutually agreed-upon terms.
- [17] The Defendants state that the license expired on September 20, 2018, and that the Claimant subsequently occupied the land as a tenant at will. The Defendants maintain that the Claimant does not have any overriding interest or ownership rights over the property after the license expired and reaffirm that the Claimant only occupied the land as a tenant at will
- [18] The Defendants contend that the lease terms, such as the size of the land and rental fees, were never formally agreed upon or approved by the Cabinet. They argue that the draft lease agreement, which was incomplete and lacked essential information, was merely a proposal for negotiation and did not constitute a legally binding contract. Additionally, the Defendants state that no rental payments were made under the proposed lease agreement.

- [19] The Defendants argue that the Claimant's claim for specific performance is untenable as the lease agreement was never finalized, and the Claimant is not entitled to an injunction or damages as there was no binding lease agreement in place. The Defendants assert that the Claimant's expectations based on preliminary negotiations do not constitute a legally enforceable contract, and any investments made by the Claimant were at its own risk.
- [20] The Defendants contend that the Second Defendant's entry onto the land was lawful and authorized by the First Defendant after the expiration of the license, for the urgent construction of a power station. They argue that the power station is a critical infrastructure project necessary for public utility purposes and was therefore prioritized by the Government. The Defendants deny any breach of the agreement or unauthorized trespass and argue that any disruption or damage was a necessary consequence of fulfilling public utility needs.
- [21] The First Defendant further asserts that the Claimant was informed by letter in writing about the need for the power station and was offered alternative arrangements, which the Claimant responded that in principle it had no objection to an exchange or relocation.
- [22] The Defendants contend that the Claimant's request for an injunction is unwarranted and that damages would be an adequate remedy if the Claimant's claims were to succeed. The balance of convenience, the First Defendant argues, weighs heavily in favor of the public interest in constructing the power station, which serves a critical need for the community. The First Defendant emphasizes that the public utility project is of paramount importance and that halting its progress would significantly impact public welfare.
- [23] The Defendants deny that the Claimant has any valid claim for breach of contract or trespass. They maintain that all actions taken were within legal bounds and authorized by the appropriate governmental bodies. The Defendants argue that the Claimant's allegations of unauthorized entry and damage are unfounded and that the Claimant's claims for damages are exaggerated and without merit.
- [24] The Defendants request that the Court dismiss the Claimant's claims in their entirety, arguing that the Claimant has not established a basis for relief. The Defendants assert that the Claimant is not entitled to specific performance, an injunction, or damages, and that the Claimant should bear the costs of this legal action.

THE EVIDENCE

[25] The parties each presented one witness for cross-examination. For the Claimant Thomas Heller and for the Defendant Shaun George.

The Claimant's Evidence

Tomas Hellier

[26] The witness deposed that he is a director of the Claimant.

[27] His evidence is that the Claimant, desirous of pursuing motorsports within Antigua and Barbuda and promoting it on a regional level sought to establish a proper home for motor racing in Antigua and Barbuda where local and visiting participants could engage in motorsports.

[28] For the viability of the venture, the Claimant invested and developed a business plan that required the use of approximately 30 or more acres of land. The land at Crabbs Peninsula, identified as Registration Section: Crabbs Peninsula; Block: 21 2692A; Parcels: 38 and 110 was identified and extensive discussions were had with the Ministry of Sports. Based on those discussions and the advice of the Ministry of Sports, the Claimant made an application to the Cabinet which included submitting the business plan and the making of a presentation.

[29] Subsequently by Cabinet Decision dated 3rd November 2016, 3 acres of lands were identified as parcel 38 but the remaining 29 acres had to be surveyed although the area from which it would come was identified as a portion of parcel 40.

[30] Having obtained the Cabinet decision, the witness then contacted the Ministry of Lands who explained that the process would require the Survey Department to carry out a survey and demark the lands to be leased to the Claimant. This land would then be divided into smaller parcels and assigned new parcel numbers. This process would take some time as it involves various stages. However, in the meantime, and prior to the execution of the lease, the Claimant was assured that it would be placed into occupation of the lands once the survey was complete. This would be under a tenancy pending the lease.

[31] The Claimant was subsequently permitted to occupy the land pursuant to a license agreement dated 24th February 2017.

- [32] The lands were demarked by the Survey Department, which produced a survey plan and assigned a parcel number being 110 to the newly surveyed land. That map is dated 15th December 2016.
- [33] A draft lease was then prepared by a Crown Counsel in the Ministry of Legal Affairs and delivered to him for review. He attempted to contact the attorney on multiple occasions to finalize the lease. However, after a while, he was informed that the attorney had retired and moved away. Despite repeated efforts, the lease was never finalized. Notwithstanding the foregoing, the Claimant was placed in possession of the land under the draft lease agreement and occupied same without any interference by anyone and went ahead and made substantial investment in the land to start the business.
- [34] In or about March 2021, the witness was notified by Andre Matthias, the Electricity Manager of the Second Defendant that there was a possibility the Second Defendant may require a portion of the land for a power station. The witness deposed further that he suggested alternate areas. Afterward, he observed that persons were entering upon parcel 110 and carrying out a survey.
- [35] The Claimant instructed its attorney to contact the Government again to try to finalize the lease. It was then that the Claimant was officially notified that the Second Defendant planned to build a power station on a portion of the land, approximately 5 acres, that had been assigned to the Claimant under parcel 110.
- [36] The witness on behalf of the Claimant had extensive discussions with the Government at the Ministry of Legal Affairs and it was agreed that the Government would produce a Memorandum of Understanding (hereinafter MOU) detailing the discussions and forward same to us for review and execution. This would have allowed the Government to proceed in exchange for them giving us additional lands attached to parcel 110. In principle, this was agreed but was subject to a survey being carried out.
- [37] The MOU was signed by the Claimant and delivered to the Attorney General's Chambers to be executed and an undertaking was given that upon receipt of the executed document that the Claimant would file a Withdrawal of Caution which had filed at the Land Registry.
- [38] The Claimant never received the signed Memorandum of Understanding, and the caution was removed from the land register without any explanation. All efforts to obtain the lease have proven unsuccessful...

- [39] The Claimant has made significant investments in developing the motorsports industry, and due to the actions of the First and Second Defendants, the Claimant has experienced financial losses.
- [40] During cross-examination, the witness acknowledged that the Cabinet Conclusion did not specify the length of the lease or the amount of land involved. He also agreed that these terms are essential components of the agreement.
- [41] The witness admitted that the claimant did not make any rental payments based on the draft lease.
- [42] The witness also acknowledged that the lease agreement does not provide any information that could help determine these terms. Later, he admitted that despite expressing a preference for a 25-year lease, the parties were still negotiating the terms of the agreement. He agreed that the terms of the lease had not been finalized.
- [43] When asked about the license, the witness agreed that it was initially issued for six months but was then extended on two occasions. He also stated that the license was not renewed after September 2018 and that payments under the license were made up until that time.
- [44] The witness agreed that in March 2021, the Claimant did not have a valid license but denied that the claimant did not have the authority to exclude anyone from the property at that time.
- [45] Regarding the issue of damages, the witness insisted that he had provided the court with evidence to support the claimant's claim for damages. However, he later admitted that, aside from the itemized list included in the statement of claim, no invoices had been presented.

The Defendant's Evidence

Shaun George

- [46] The witness deposed that he is the Chief Lands Officer within the Ministry of Housing, Lands and Urban Renewal. In that capacity he is responsible for supervising the allocation and distribution of Crown Lands which includes leases on the instructions of the Cabinet of Ministers.
- [47] His evidence is that the Claimant applied for the lease of Crown Lands situated at Crabbs which land is recorded in the Antigua and Barbuda Land Register as Registration Section

Crabbs Peninsula; Block; 21 2692A; Parcel: 38 and 40. to establish and operate a motor car racetrack. In support of its application, the Claimant submitted a Business Plan as part of its application documents.

[48] Upon receiving the application, the then Chief Lands Officer reviewed and conducted an assessment of the application, prepared a technical report, and submitted the same to the Minister for presentation to Cabinet for its approval. Two reports were prepared. The first dated 18th December 2015 and the second was dated 17th March 2016.

[49] Cabinet on 3rd November 2016 decided to lease parcel 3[8] and a portion of parcel 40 to the Claimant. The Cabinet Decision did not specifically provide the terms of the lease namely the acreage, duration, rate, performance obligations, and termination. Notwithstanding these omissions, assistance was sought from the Ministry of Legal Affairs with respect to the preparation of a draft lease for review by the parties and ratification by Cabinet.

[50] On 24th February 2017, an Agreement for a contractual licence for the use and occupation of the crown lands situated at Crabbs Peninsula for developing a motor sports park was granted to the Claimant.

[51] The said licence was for a duration of six (6) months pending the completion of the lease and could be renewed for a further period of six (6) months upon expiration of the same. According to the Ministry's records, this licence was renewed twice with the last renewal expiring on 25th September 2018.

[52] On 22nd June 2017, Ms. Bridget Nelson, then Senior Crown Counsel within the Ministry of Legal Affairs, prepared and submitted a draft lease for review. In her cover Memorandum, Ms. Nelson highlighted several issues that posed a challenge to finalizing the Lease Agreement, and the Claimant was advised of those challenges by letter dated 19th July 2017. The challenges included: -

- a. The absence of a survey plan,
- b. Details as to the duration of the lease to the intended lessee,
- c. Failure to address health and safety considerations regarding the suitability and use of the land,

- d. Inserting of information in the blank spaces contained throughout the draft lease, and
- e. Technical guidance from APUA regarding the appropriate buffers from high tension pylons directly west of parcel 40.

- [53] On 31st July 2017, Mr. Tomas Hellier wrote to the Permanent Secretary attempting to address some of the queries raised by Ms. Nelson in her Memorandum of 22nd June 2017.
- [54] On 16th March 2021, Mr. Hugh Marshall, the Claimant's Attorney-at-law wrote to the Minister of Housing Lands and Urban Renewal requesting that the lease be executed. By letter dated 25th May 2021, the First Defendant's attorney-at-law confirmed that the lease could not be executed until the terms as to acreage, duration, and rate were approved by the Cabinet.
- [55] The witness stated that concerning the requested acreage, he had been directed that Cabinet is not in agreement with the lease of 32 acres as proposed by the Claimant. The witness further stated that it was his understanding that Cabinet had agreed to lease 22 acres of land to the Claimant and that the Claimant was so advised by correspondence dated 20th September 2021. The Claimant by way of correspondence dated 5th October 2022, rejected the Cabinet's decision.
- [56] Sometime in 2021, a request was made by the Second Defendant seeking the urgent use of a portion of parcel 40 for the construction of an LNG Plant. The said plant was necessary to assist the Second Defendant in meeting the ever-increasing demand for the production and supply of electrical services to residents of Antigua and Barbuda.
- [57] The Claimant was informed of the Second Defendant's need for a portion of 5 acres of parcel 40 and the allocation of the same. The Second Defendant was granted express permission by the First Defendant to enter onto the land and to begin preparatory work for the establishment of the LNG Plant. At the time of granting the Second Defendant permission, the Claimant's licence to occupy the land had expired. The said licence expired on 25th September 2018.
- [58] Following an application by the Claimant seeking injunctive relief, via Court Order dated 2nd December 2021 the Second Defendant was allowed to continue works on the said parcel. Parcel 40 has been subsequently subdivided to allow for the creation of Parcel 115 measuring 5 acres. Parcel 115 is now registered to the Second Defendant.

- [59] The Parties have been in discussions as to the identification of an alternative site to be leased to the Claimant. However, the parties were unable to arrive at an agreement as to the acreage to be leased and negotiations were terminated.
- [60] Under cross-examination, the witness stated that the size of the property to be leased and the duration of the lease were unknown. He further stated that these terms were to be determined by the Cabinet.
- [61] The witness confirmed that there is a process to determine the acreage of the land, which involves submitting a business plan before the survey. However, the witness disagreed that the Cabinet's decision was based on the business plan, stating that if it had been, the Cabinet would have specified the number of acres.
- [62] The witness further clarified that before a survey could be undertaken that Cabinet would have had to specify the number of acres. He admitted however that a survey was undertaken,
- [63] The witness confirmed that the Permanent Secretary wrote to the claimant granting permission to enter the property and establish a motorsports park. However, he suggested that the Permanent Secretary acted beyond the authority granted by the Cabinet.
- [64] When questioned regarding the letter issuing the Claimant a license, the witness admitted that it specified the rent as \$2,000.00 per month and included the acreage and term.
- [65] When questioned further, the witness agreed that the acreage, term, and rent had been settled. However, he immediately stated that the lease could not have been executed as the process had not been completed.
- [66] On reexamination, the witness clarified that the figures he admitted to under cross-examination were in reference to the rates payable under the license agreement.

ISSUES

- [67] In order to determine this matter the following issues need to be resolved:
- i. Whether there was a valid lease agreement between the Claimant and First Defendant?
 - ii. Whether the Claimant was entitled to exclusive possession of the property in 2021?

- iii. Whether the Second Defendant committed an act of trespass against the Claimant
- iv. Whether the Claimant is entitled to any damages for improvements

ANALYSIS

Issue 1: Whether there was a valid lease agreement between the Claimant and the First Defendant

- [68] The Claimant argues that there is a valid lease agreement between itself and the First Defendant. In support of this contention, the Claimant argues that the essential elements of the lease including the length of the term, property and rent were all capable of being properly defined. The Claimant argues that the property was clearly identified as Crabbs Peninsula Block 21 2692A Parcels 38 and 110. Additionally, the specific acreage was identified and consequent upon a survey of the property with new parcel numbers were designated which gave the combined acreage of 32.94 acres. Finally, the term of the lease was expressly stated as 25 years with an annual rental of \$24,000.00 was stated by the Ministry of Agriculture.
- [69] The Defendants did not directly address the issue of whether a valid lease existed, instead focusing on whether the Cabinet Decisions constituted a promise to lease or an agreement for a lease. It is crucial to distinguish between a claim for breach of a lease and a claim for breach of an agreement for a lease. In the case of a claim for breach of a lease, a legally binding lease exists that has been violated. In the case of a breach of an agreement for a lease, the parties agreed in principle to create a formal lease but failed to do so. This constitutes a breach of a contractual promise to create a lease in the future. Nevertheless, the Defendants' argument that there was no agreement regarding the specific acreage, lease rate, duration, performance obligations, and other essential elements remains relevant when considering the existence of a valid lease.
- [70] A valid lease requires that the parties intend to create a legal relationship and that the terms are unambiguous and precise. These terms generally include the duration, rent, and property involved. The disagreement between the parties revolves around the clarity and certainty of these specific terms. Despite the Claimant's vigorous arguments that the evidence provided proves that the disputed terms were clear or could be determined, I respectfully disagree. The Claimant's witness, a director and controlling mind of the Claimant, repeatedly agreed on cross-examination that there was no agreement on the essential terms of the lease, such as

the size of the property to be leased and the rent. He also agreed that these were fundamental terms of the agreement. Moreover, the witness also stated that the parties were still negotiating and that the terms of the lease had not yet been finalized. The questions asked of the witness were simple and direct, and the court did not believe that the witness was confused or misled into giving an answer that contradicted his claim. The Claimant's admission of ongoing negotiations indicates a lack of agreement on these essential terms, which is a substantial shortcoming and suggests that the parties have not reached a consensus. This is indispensable for creating any binding obligation. The concept of certainty of terms for contract formation is well-established in legal precedent, dating back to at least the 20th century. In the case of **May and Butcher v The King**¹, the court was faced with the question of whether an agreement where the parties had agreed to establish a price in the future was too uncertain. The court found that for a contract to be valid, all essential terms must be agreed upon. Any ambiguity or uncertainty regarding key terms can render a contract unenforceable. Lord Buckmaster in his decision summed it up this way, 'To be a good contract, there must be a concluded bargain, and a concluded contract is one that settles everything which is necessary to be settled and leaves nothing to be settled by agreement between the parties.' This means that a valid contract must be complete and unambiguous, leaving no essential terms open to negotiation or future agreement. Since the Claimant has admitted failing to agree with the First Defendant on the essential terms of the lease, it cannot be concluded that a valid and enforceable lease was established. The lack of agreement on these critical terms renders the lease agreement incomplete and unenforceable“

Whether the Claimant was entitled to exclusive possession of the property in 2021

- [71] Consequent upon the determination of the previous issue, which concluded that there was no valid lease, raises the question of the nature of whether the Claimant's continued occupation of the property entitled it to exclusive possession. This is crucial to resolving whether a claim of trespass against the Second Defendant is sustainable.
- [72] The Claimant admits that the initial license issued by the First Defendant was for six months and was subsequently renewed twice for another six months each. The license expired in September 2018, and rent was received up until that time. Amongst other things, it was a term

¹ [1934] 2 KB 17

of the license that the Claimant was entitled to exclusive possession of the property. I pause here to note that the Claimant did not argue that the license terms were more akin to a tenancy at will, even though it was explicitly stated to be a license. This is surprising, as exclusive possession is not typically associated with licenses (See **Street v Mountford [1985] 2 All ER 289**). However, since the claim was pursued on the basis of the letter being a license, these observations are not directly relevant to the case.

- [73] A license grants a personal right to use the property for a specific purpose or period. Upon the expiration of a license, the Claimant's legal right to occupy the property terminates unless there is a contrary agreement. This means that the Claimant's continued occupation of the property after the expiration of the license would be considered unlawful unless there was a new agreement or understanding that allowed for continued occupancy.
- [74] While the Claimant acknowledges that the initial license issued by the First Defendant expired in September 2018, they contend that continued occupation of the property was permissible due to an implied understanding or tacit agreement from the First Defendant. This is supported by the fact that the Claimant occupied the property for over two years without any interference or attempts to remove the Claimant, suggesting an understanding that continued occupancy was allowed.
- [75] Furthermore, the ongoing negotiations between the Claimant and the First Defendant during this period indicate a tacit agreement or understanding that the Claimant could continue to occupy the property while the terms of a new lease were being discussed. This suggests that the First Defendant did not consider the Claimant's continued occupation to be unlawful like that of a trespasser but rather subject to the First Defendant's discretion.
- [76] Since the initial license granting the Claimant exclusive possession expired in 2018, the Claimant no longer had a valid legal basis to assert exclusive possession. It is worth noting that the Claimant was initially referred to as a tenant at will by the Defendant in their Defence, although they later seemed to abandon this position. While the Claimant did not explicitly raise this issue, it's worth noting that even if the Claimant were considered a tenant at will in 2016, it would not have been entitled to exclusive possession in 2021 as according to the **Ramnarace**

v Lutchman² case, a tenancy at will terminates one year after its commencement. This of course is on the basis that the tenancy has no fixed term.

[77] Additionally, without a leasehold or freehold interest in the property, the Claimant does not possess an estate in land that can confer continued exclusive possession. Consequently, the Claimant cannot prevent others, including the First Defendant as the property owner or others lawfully authorized by the First Defendant, from entering or building on the property. As the Second Defendant entered and constructed on the property with the First Defendant's consent, it cannot be considered a trespasser.

[78] Before concluding this section, I wish to address the claimant's assertion that it has an overriding interest pursuant to section 28(g) of the Registered Land Act in the property which it has pleaded but seemingly not pursued in its submissions or otherwise. Section 28(g) reads as follows:

'Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register- ...

...(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;'

[79] Overriding interests are legal entitlements that safeguard the rights of an affected party against subsequent property transactions. These interests, even if unregistered, can bind purchasers and have priority over certain subsequent dealings with the property, protecting the affected party's rights. However, it's crucial to remember that overriding interests are not equivalent to ownership and do not convey a proprietary interest in the property, meaning they do not grant the affected party ownership rights. The Privy Council case of **Ramnarace v Lutchman**³ supports this view, clarifying that an overriding interest does not automatically grant exclusive possession of the property. While that case focused on adverse possession as an overriding interest, the decision established that a party claiming adverse possession must demonstrate actual exclusive possession within the prescribed timelines, not merely an interest that

² [2001] 1 WLR 1651

³ [2001] 1 WLR 1651

overrides other interests in the property. Thus, while overriding interests provide a level of protection for the affected party's rights, they do not grant the same level of control and ownership as a proprietary interest. This means that the Claimant does not have the same rights as an owner to exclude others from the property or to use the property as it sees fit.

- [80] Therefore, considering that the Claimant lacks the legal right to exclude others from the property and that the Second Defendant acted with the consent of the property owner, its actions were lawful. The Claimant's claim of trespass therefore fails.

Whether the Claimant is entitled to damages for improvements

- [81] While the Claimant has previously been unsuccessful in its claims, the issue of entitlement to improvements remains outstanding. Although the Claimant was granted permission to develop the property for motorsports, there is insufficient evidence to substantiate the claimed expenses. The Claimant has provided a list of expenses, but the absence of receipts or supporting documentation precludes the court from awarding significant damages.
- [82] However, I accept that the Claimant likely incurred some expenses, and the court will award damages pursuant to the authority of **Carlton Greer v Alstons Engineering Sales and Services Ltd**⁴ as token compensation. However, the lack of evidence prevents the court from awarding a substantial amount. Accordingly, the Claimant is awarded the sum of \$5,000.00 as nominal damages.

ORDER

- [83] In light of the foregoing, it is hereby ordered as follows:
- I. The Claimant's claim for breach of a lease agreement and trespass is hereby dismissed.
 - II. The Claimant is awarded the sum of \$5,000.00 for improvements to the property.
 - III. The Claimant is awarded prescribed costs on the adjudged sum.
 - IV. Interest

⁴ [2003] UKPC 46

Justice Jan Drysdale

High Court Judge



By the Court

Registrar