

EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2022/0105

BETWEEN:

ELENORA SERGEANT as lawful Attorney for

ANIKA DAVIS and ALICIA FRANCIS

Claimant

and

[1] IRVIN HENRY

[2] ERIC FRANCIS

Defendants

Appearances:

Mrs. Kivinee Knight Edwards, with her Ms. Derecia Browne for the Claimants

Mr. Lawrence Daniels for the Defendant

.....
2024: June 4th

July 23rd
.....

JUDGMENT

[1] **BYER, J.:** This matter before the Court involves a familial dispute concerning the ownership and possession of a property situated in Buckley's Village, Parish of Saint John, Antigua and Barbuda. The parties to this case are all blood relatives, including siblings, children, and a nephew, who find themselves entangled in a dispute that, regrettably, has necessitated judicial intervention.

- [2] It is a matter of considerable regret that family affairs, which ideally should be resolved through mutual understanding and agreement, have deteriorated to such a point that resolution must now be sought through the legal process. The Court acknowledges the emotional and personal nature of this dispute and approaches the matter with the solemnity and care befitting its implications for the family involved with the hope that whatever the determination of this court that the rift that has existed for over 20 years between the siblings may start to heal.
- [3] The claimants initiated proceedings, by way of a Fixed Date Claim Form ("FDCF") and a Statement of Claim filed on 30th March 2022 against the defendants in this matter, wherein the claimants claim the following:
- a. Possession of property situated at Registration Section; South Central; Block: 15 2086B; Parcel: 72;
 - b. Mesne Profits;
 - c. Solicitor's fixed cost on the issue;
 - d. Court fees;
 - e. Interest pursuant to the Eastern Caribbean Supreme Court Act;
 - f. Costs; and
 - g. Further or relief.
- [4] The claimant, Ms. Elenora Sergeant, is the biological sister of the first-named defendant, Mr Ervin Henry, and the aunt of the second-named defendant, Mr Eric Francis. Their mother, Ms Rose Dowe, was the matriarch of the family, having had eight children, including Ms. Sergeant and Mr. Henry. Ms. Dowe passed away on 20th August 2018.
- [5] Sometime in 1991, Ms. Dowe acquired property at Registration Section: South Central; Block: 15 2086B; Parcel: 72, hereinafter referred to as "the Property." This property was the familial residence of all parties involved. In 1993, Ms. Dowe transferred a half share of the property to Ms. Sergeant, making them joint proprietors. The defendants

have questioned the circumstances surrounding this transfer, noting that Ms. Dowe had initiated legal action against Ms. Sergeant concerning the property. However, the evidence presented to this court shows that as of 1993, Ms. Sergeant and Ms. Dowe were registered as proprietors of the property¹.

[6] It is established that all parties once lived together on the property. At some point, Ms. Dowe permitted the first defendant, Mr Henry, to place a chattel house on the premises. Following the destruction of the defendant's house by Hurricane Luis in 1995, Ms. Dowe allowed him to move into her home, which was still in good condition. At that time, both the claimant and Ms. Dowe were co-owners of the property, although it appears that this fact was not known to the wider family.

[7] The claimant subsequently had three children and eventually moved out of the property with them, although she continued to visit periodically. Ms. Dowe also moved out upon her becoming ill, leaving the defendants residing in the house.

[8] After Ms. Dowe's death in 2018, the claimant filed an 'Application to Delete Name of Joint Proprietor on Death' on 7th November 2018, which was granted. This allowed the claimant to execute a Transfer Instrument on 12th April 2019, transferring the property to herself and her three children—Anika Davis, Jervon Davis, and Alicia Francis.

[9] Following Ms Dowe's death in August 2018, the defendants expressed their desire to continue residing on the property. On 19th August 2019, the claimant's then-attorney sent a letter of demand to the defendants, requesting a lease payment of \$500 per year, with the threat of further action for non-compliance². The defendants did not respond to this letter. Subsequent letters were sent on 30th September 2019 and 7th January 2020, offering a lease arrangement of \$250 payable quarterly and requesting a response within 7 days. Failing which, the defendants were demanded to give up

¹ See pages 8 and 9 of bundle 1.

² Bundle 1 pg. 11

vacant possession of the property³. The defendants failed to address these communications and at trial it appeared that the first defendant baulked at even acknowledging receipt of the same. The second defendant has not participated in these proceedings.

[10] It is against this background the claimant seeks to gain possession of the property and mesne profits from the defendants, and the claimant instituted proceedings against the defendants, in her name and on behalf of her three children, by way of a Power of attorney dated 18th August 2021 appointing her as their attorney concerning the property⁴.

[11] Mr Jervon Davis, one of the claimant's children, regrettably passed away on 21st January 2023. The claimant applied to represent his estate and obtain a grant of administration on 3rd October 2023. The defendants challenged the claim on 22nd September 2023, arguing that the death of Mr Davis rendered the Power of Attorney by the claimant void. On 10th October 2023, the court granted the defendants an opportunity to strike out the claim based on this argument.

[12] The defendants did not pursue this application further, leading the court, on 18th December 2023, to order that the matter proceed to trial due to the defendants' failure to comply with the previous order. It was also of some interest that at the trial of the matter the witness Anika Davis purported to introduce a newly executed but unregistered or recorded power of attorney executed by herself and her sister again in favour of the claimant. The court determined that the document having not been recorded was of no legal effect prohibited its entry into evidence.

[13] The first defendant now contends that he has been in open and uninterrupted possession of the property for over 43 years and claims adverse possession of the

³ Bundle 1 pages 12 and 13.

⁴ Page 14 bundle 1.

land. He argues that his mother granted him the right to reside on the property and that the claimants, upon becoming registered proprietors in 2019, did so subject to his rights and interest in the land. He asserts that there have been no discussions or agreements regarding a lease for a sum of \$250 payable quarterly, in fact, he and the claimant have not been on speaking terms for over 30 years and that the claimants have not lived on the property for over 30 years. The defendant maintains that he is entitled to continue occupying the property due to his long-term possession in excess of forty-three (43) years and he is entitled to adverse possession of the section of land upon which his house occupies. Thus, the claimants are not entitled to vacant possession of the property.

[14] At trial, two of the claimants gave witnesses on their own behalf, Ms Anika Davis and Ms Elenora Sergeant. The first named defendant Mr Irvin Henry gave evidence on his own behalf along with his sister Ms Lonie Francis.

The evidence

Anika Davis

[15] The Claimant, represented by their mother as their lawful attorney, purported to provide a statement regarding the ownership and history of the property at Buckley's, St. John's. However it was clear to the court upon cross examination that this witness having been born in 1993 could not give any first-hand knowledge of the circumstances of acquisition or arrangements made between her grandmother Ms Dowe and the defendant and more so that she in fact left the property in 1998 at the age of 5.

[16] At the age of 5 when she departed, she was aware that her uncle was living on the land and remained there until present. She is also aware that he has never paid any rent. It is not within her knowledge that her uncle constructed any house on the land. When questioned about her contribution to building the house on the property she stated that she made no monetary contribution.

[17] Further to her evidence, she stated that a part of the parcel of land was transferred into her name after her grandmother's death. Her grandmother did not leave a will. The size of the property is 0.12 of an acre.

[18] When questioned about her acts of possession she candidly admitted that she knew nothing about the present state of things save and except that her uncle remained on the land.

Elenora Sergeant

[19] This witness is the claimant and the biological sister of the first Defendant and the Second Defendant's aunt.

[20] She stated that the property located in Buckley's, St. John was where she was born in and grew up with her seven (7) siblings, which included the defendant. She further stated that as her siblings got older, they moved out of the house. She also gave evidence that the second defendant's mother moved in with her husband and later moved out but they had asked that her mother keep and look after the second defendant after they left. She stated that the second defendant then stayed with them on the property being her mother, herself and the first Defendant.

[21] She stated that the property was first owned by her mother, Rose Dowe, solely by way or Transfer Instrument which was executed on 14th November 1991 and entered on the Land Register as sole proprietor on the 2nd December 1991. However in 1993 her mother out of love and affection transferred ½ share to her as joint proprietor. The witness however had to admit that this transfer was conducted by a lawyer who acted for both herself and her mother and upon her mother discovering the transaction she filed a claim bearing the claim number ANUHCV 200410147 in the Antigua and Barbuda High Court against her seeking a declaration that the transaction be set aside. This claim was never determined and the claimant told the court that her mother filed a notice of discontinuance on 4th October 2005, which this court later learnt was

coincidental to her mother becoming ill and leaving the Buckley property to live with another sister in Liberta. The claimant therefore averred that the claim never affected the register as the property remained in both their names up until the death of her mother.

[22] In any event this witness eventually left the Buckley property in 1998 leaving the defendants on the property but she kept an eye on the property as she indicated that the arrangement for not paying rent was that the defendants were mandated to make sure the premises were in good condition. They were required to keep the house in good condition and the yard well kept, and they were permitted to occupy the house for a time which was never intended to become a permanent position as her mother never gave up the house to either of the defendants.

[23] After her mother's death, the claimant stated that she applied to 'Delete the Name of the Joint Proprietor on Death' on 7th November 2018 and the application was granted making her the sole owner of the property. Subsequently, a Transfer Instrument was executed and filed on 12th April 2019, transferring the property to herself and a 1/2 share of her portion to each of her children, Anika Davis, Jervon Davis and Alicia Francis. Therefore, the land register reflects her name along with Anika Davis, Jervon Davis and Alicia Francis as joint proprietors of the property. She stated that she had been the one who paid the property taxes.

[24] The witness stated that while she allowed the defendants to remain on the property after her mother's death, she was desirous of leasing the property to the defendants at \$250.00 payable every quarter, as evidenced in the letters addressed to them. The Defendants did not accept the offer and therefore, the letters stated that the permission given had been revoked and vacant possession was therefore demanded. However, the Defendants failed and or refused to vacate the premises. By virtue of the notices given to the defendant, the claimant was of the view that she is entitled to vacant

possession of the premises even though she admitted that she was aware that the defendants had lived there all their lives and in particular the first defendant.

Irvin Henry

[25] Mr. Henry stated that he has resided in Buckley's Village from the day of his birth, from 1959 to the present. He asserted that he has never moved out of the house situated on the property and has always known his mother to have lived at the aforementioned property with the rest of his brothers and sisters. During his mother's lifetime he was always made aware by his mother that she was the sole proprietor of the land and having that authority she had given him a life interest in the property.

[26] The witness further averred that he not only took care of his mother, but he and his nephew, Mr. Eric Francis, completely repaired the entire house. He emphasized that this is the only home he has lived in since birth and has never moved to any other property during his lifetime.

[27] The witness claimed that his mother gave him a life interest in the land, but he did not provide any evidence to the court to support this. He acknowledged that she did not leave a will, create a trust, or write a letter. After his mother's death, his sister claimed the entire property. Mr. Henry accepted that his sister and mother owned the land as individuals and acknowledged that his mother could not have given away his sister's interest. He also stated that he was never in receipt of any letter from the claimant to pay rent or vacate the premises in 2019 and only understood that his sister and her children were the owners of the land when he came to court.

[28] The first defendant stated that he did not indicate his interest in the property after being served with the letters and claimed that his sister never spoke to him about renting the property. He maintained that they have not spoken since she left Buckley's. Contrary to his sister's assertion, he claimed that he has paid property taxes twice but did not provide evidence of this to the court. He also failed to show that he has invested money

into the property or provided any evidence of his interest in it. Mr. Eric Francis, the second defendant, lives with first defendant and was served with this claim but did not defend it. The first defendant also tried to claim a life interest for both himself and Mr. Francis, but Mr. Francis has not done so on his behalf and has not produced a witness statement.

IONIE FRANCIS

[29] The witness stated that her mother was Rose Dowe, and that the claimant is her sister, the first defendant is her brother and the second defendant is her nephew. She indicated that she had been born and raised in Buckley Village, where she currently resides and she had never heard her mother say that the property was to be given to her sister the claimant. However, she recalls her mother frequently stating that "this land belongs to Ervin Henry and Eric Francis, and nobody shall take advantage of them" although she was not aware of any formal document saying this or that she said so to anyone else.

[30] The witness was aware that her mother took her sister Elenora Sergeant to court in April 2004 concerning the ownership of the property in Buckley's Village but that she was unaware as to the outcome. However she was also aware that the defendants had resided on the property for over sixty years with them both having undertaken extensive repairs.

ISSUES

[31] To this court's mind, the issues which fall to be determined are as follows:

- a. What is the nature of the defendant's occupation of the property?
- b. Should the defendant yield up possession to the claimant?
- c. Is the claimant entitled to mesne profit?

[32] However before this court considers the stated issues, it is clear that this court needs to acknowledge this matter and the way in which counsel for the claimants and the defendants have treated the orders of the court with scant regard.

[33] At the conclusion of the trial on the 4th June 2024 the court ordered the filing of closing addresses by the 17th June 2024. To date the court has not received any submissions from counsel for the defendant and counsel for the claimants purported to file submissions some 10 days later with an application seeking an extension of time stating the illness of counsel as the reason for the late filing but failed to file any supporting documentation or explain why counsel who sat second chair at the trial was incapable of filing the submissions on time.

[34] This court has therefore not relied on the contents of those submissions as filed although the same were read and as such this determination is done without the assistance of counsel whose duty is to the court.

[35] Additionally, this court will not be considering any determination in relation to the second defendant as the court has not been privy by way of evidence to the manner of occupation by the second defendant and the first defendant is not at liberty to “make a claim” on his behalf without the legal incidence to do so. The position of the second defendant is therefore that an order of possession is granted against him. The other relief for mesne profits will be considered shortly when the same is addressed in relation to the first defendant.

LAW AND ANALYSIS

Nature of the first defendant’s occupation

[36] This issue encompasses the narrower questions of whether the first defendant has any interest in the property, either through adverse possession or otherwise, whether the claimant took the property subject to any rights of the first defendant, or whether the first defendant is a trespasser on the disputed property. It may be more efficient to first

address the matter of adverse possession to determine the nature of the first defendant's occupancy.

[37] As this court understands it, the first defendant went into possession of the disputed property sometime in 1995 and contends that he has been in open and uninterrupted possession of the property for over forty-three (43) years, thus he has adversely possessed the land upon which his property occupies.

[38] It is also the evidence before this court, which has been admitted by the first defendant, that in 1995 owing to the destruction of the first defendant's house due to the passage of Hurricane Luis, their mother, Ms Dowe, permitted him to live in her house on the property as it was undamaged. The first defendant further contends that the claimant knew or ought to have known that he had property upon the land and is entitled to adverse possession on the section of land upon which his house occupies and accordingly, the claimant is not entitled to vacant possession.

[39] It has not been successfully challenged before this court and thus it is the evidence, that at the material time, the claimant and her mother, Ms Dowe, held the property as joint tenants. Additionally, the first defendant's occupancy with the permission of their mother was known to the claimant, as she had admittedly periodically visited the property with the intention of ensuring that the defendants kept to their agreement to maintain the property. As expressed earlier, their mother regrettably died on 20th August 2018, and the claimant subsequently transferred the property in her name and that of her children to the exclusion of her mother by virtue of her death.

[40] To obtain possessory title the first defendant must be in uninterrupted exclusive possession of the disputed land for at least twelve (12) years. **Section 135** of the RLA instructs that "the ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years". The ingredients are, that the first defendant must be peaceably enjoying the land, it must have been open and uninterrupted, must

be without permission of any lawful owner, and for a duration not less than 12 years. All the ingredients must be met for there to arise a right to the possessory title.

[41] In ***Winston Molyneux v Hugh Smith et al***⁵, Pereira CJ (as she then was) cited the authority of the London Borough of Lambeth⁶ case at paragraph 14 of the judgment in considering the elements which are relevant to constitute adverse possession, so far as is relevant, she stated the following:

“All that is necessary now is for the squatter to go into ordinary possession of the land for the requisite period without the consent of the owner. ... the intention of the trespasser is not one to own or acquire ownership of the land. All he need intend is to possess it for the time being in so far as that was reasonably practicable. It must be an intention in one’s own name and on his own behalf to exclude the world at large, including the owner with the paper title if he is not himself the possessor, so far as reasonably practicable and so far as the processes of the law will allow.”

[42] In this case, the appellant moved onto a portion of a parcel of land and cohabited with Ms Victoria Molyneux nee Cameron (Victoria). She was a sharecropper for the respondents (the Smiths). During the time they lived together on the land, they maintained four structures on it and lived in undisturbed possession of same until Victoria died in 1992. The appellant continued to live in exclusive possession and at no time before 2006 did the respondents perform any act of ownership concerning the land nor did the appellant ever have any discussions or arrangements with the

⁵ BVIHCVAP2009/0022

⁶ London Borough of Lambeth v Blackburn (2001) 82 P&

respondents about his presence on the land. In paragraph 15 of the judgment the former Chief Justice went on to state the following:

After 1992 “he would have been a trespasser with exclusive possession ... there was no acknowledgement in writing made by the [appellant] of the rights of the [respondents], nor it appears any was asked of him until 2006. The Smiths were dispossessed on 17th August 1992 the day after the death of their licensee Victoria. ... time began to run in the [appellants] favour from 18th August 1992. By continuing in exclusive occupation of that part of parcel, he dispossessed the Smiths right and a right of action accrued to them to recover the occupied area from him from that date. The latest date by which the Smiths could have brought action to recover possession from him was 16th August 2004. Being 12 years from the date when the cause of action first accrued to the Smiths. The action was however brought on 5th April 2007, by which time it was statute barred...”

[43] Based on the evidence presented, it is clear, that in 1995, the first defendant was granted permission by his mother, Ms. Dowe, to occupy the house situated on the property. At that time, both Ms. Dowe and the claimant were joint proprietors of the property, and the claimant was aware of this arrangement. This arrangement lacked a fixed or renewable term and did not involve any monetary consideration for his continued occupation. There was also no evidence of a trust created in favour of the defendants. Consequently, the first defendant's occupation of the property in 1995 constitutes a bare license.

[44] The nature of a license is permission or an “agreement which merely makes an act (such as trespass) lawful that otherwise would be unlawful and does not properly alter or transfer any estate or interest in the property to which it relates...”⁷

⁷ Halsbury's Laws of England, volume 62 (2022), paras 1-595; (2) Leases Distinguished from Licenses to Occupy Land.

[45] In the authority of **Duff's Valley Corporation Ltd v Kunta Brookes**⁸ Ellis J (as she then was) stated in paragraphs 20 – 21 of her judgement that:

- i. [20] “A critical feature of the bare license is that it gives that licensee no proprietary interest in land and it can be withdrawn at any time by the licensor without notice but the licensee must be given a reasonable time to depart.”
- ii. at paragraph 21 the learned judge cited the authority of **Wood v Leadbitter**⁹ with approval and stated the following “... it is also clear that a licensee’s presence on the land is only justified to the extent granted in the license ... a licensee who remains on land after his license expires or is properly revoked is also a trespasser.”

[46] The permission to use the property was explicitly granted by Ms. Dowe, one of the joint tenants, to the defendant, allowing him to remain on the land. While the license was in effect, it served as a defence against any allegations of trespass, provided the licensee adhered to the terms of the license¹⁰. It was not stated in the evidence what the scope of the first defendant’s license was, save to live in the house on the disputed property.

[47] It is trite law that in a joint tenancy each tenant owns an undivided share of the property. However, one joint tenant cannot grant a license that binds the other joint tenant without their consent. Therefore, the license given to the first defendant is valid only to the extent of Ms Dowe’s interest in the property during her lifetime, and no

⁸ BVIHCV2016/0002

⁹ (1845) 13 M&W 838

¹⁰ Tomlinson v Congleton Borough Council [2003] 3 WLR 705 per Lord Hutton and Lord Hobhouse of Woodborough.

proprietary interest was therefore passed to the first defendant. An added feature of a license is that it is revocable at any time.

[48] A revocation of a license occurs in several ways. Generally, a license to occupy terminates upon the death of the licensor (unless it is coupled with an interest); or by notice. In Halsbury's Laws of England,¹¹ paragraph 6 reads:

“Since a license does not create an interest in land, it is not binding upon a successor in title of the original grantor unless the circumstances are such as to give rise to a constructive trust ... A gratuitous licence is revocable by notice at any time, and is revoked by the death of either party or by an assignment of the land over which the licence is granted.”

[49] Accordingly, up to the year 2018, the defendant was a licensee on the disputed property. This runs contrary to his assertion that he has been in open and uninterrupted possession of the property for more than 43 years. In fact it is clear that his user of the land could not be said to be “not by force, nor stealth, nor license of the owner.”¹² His license was effectively revocable upon Ms Dowe's death in 2018 since a license creates personal rights which are binding solely upon the parties to the contract and do not run with the land. Upon Ms Dowe's death, her interest in the property automatically passed to the claimant, making her the sole owner of the property. The defendant's continued presence on the property after his mother's death was therefore without the express permission of the sole surviving joint tenant, the claimant.

¹¹ Ibid

¹² **R v Oxfordshire County Council ex p Sunningwell Parish Council** [2000] 1 AC 335 at 350 per Lord Hoffman

Incidents of joint tenancy

[50] The right of survivorship is an indispensable incident of joint tenancy¹³. In clear language, when joint tenants hold property, the death of one tenant results in the surviving tenant automatically becoming the sole owner of the property through the right of survivorship. The rationale is that the deceased tenant 'did not hold anything and could not therefore have left any estate or part thereof to be inherited. It was only with the other co-owner that he was entitled to the whole estate¹⁴.'

[51] The learned authors in Halsbury's Laws of England¹⁵ paragraph 202 better explain it in the following:

"The death of one joint tenant creates no vacancy in the seisin or possession. His interest is extinguished. If there were only two joint tenants, the survivor is now seized or possessed of the whole ... this incident which is called the *jus accrescendi*, is the most important feature of joint tenancy."

[52] Upon Ms Dowe's death in 2018, the claimant automatically became the sole owner of the property, and accordingly, was entitled to have the same reflected in the land registry. **Section 116** of the Registered Land Act ("RLA") instructs that "*if one of the two or more joint proprietors of any, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.*" Thus, when the claimant applied to delete the name of Joint Proprietor on Death on 7th November 2018 resulting in her mother's name being removed from the property title, it was permissible and she was entitled by law so to do.

¹³ Commonwealth Caribbean Land Law, pg 332 Sampson Owusu.

¹⁴ Ibid.

¹⁵ 5th Edn volume 87 (2022) 202.

First Defendant's occupancy

[53] As intimated earlier, up to the point of his mother's death, the first defendant held no proprietary right or interest in the disputed property, and the claimant could not have taken title subject to any rights and interest he held in the land. During the period between 21st August 2018 (a day after Dowe's passing) and the first notice on 19th August 2019, the first defendant was occupying the property without the explicit permission of the claimant. If the claimant had failed to take any action at that point, the continued occupation of the first defendant would have changed and time would have begun to run as against the claimant and her interest.

[54] The defendant's refusal to vacate or yield possession after the first notice on 19th August 2019, which explicitly revoked any implied license therefore ultimately rendered the first defendant a trespasser on the property. It is from this date that the continued occupation of the first defendant could have accrued for the ultimate dispossession of the claimant.

Should the first defendant yield up possession to the claimant?

[55] Based on the foregoing, the death of Ms Dowe in 2019, the first defendant's continued exclusive possession of the property would have initiated the running of time in his favour. By maintaining possession, he effectively attempted to dispossess the claimants of their rights, giving them a right of action to recover the occupied area from that date. The latest date for the claimants to bring an action to recover possession from the defendant would have been 2031, being 12 years from the accrual of the cause of action. However, the action was brought in 2022 well within the statutory limit. As was stated in the case of **Iri Anthony Francis v Raphael Frederick**¹⁶ Alleyne J (

¹⁶ Grenada Civil suit 100 of 2001

as he then was) “ in order to interrupt acts of adverse possession the party must initiate and pursue effectively a remedy”

[56] At common law, an action for possession is ordinarily based upon title, allowing a claimant to ‘eject’ the occupant by proving that he has a better title to possession than the occupant. The remedy granted to the claimant is an order for possession, requiring the occupant to relinquish possession. This principle was affirmed in the case of **Dunford v McAnulty**¹⁷, where Lord Blackburn stated:

“an ejectment, where a person was in possession those who sought to turn him out were to recover upon the strength of their own title; and consequently possession was at law a good defence against anyone, and those who sought to turn the man in possession out must shew a superior legal title to his.”¹⁸

[57] In the authority of **Duff’s Valley Corporation Ltd v Kunta Brookes** *supra*, Ellis J at paragraph 43 referred to the summary of the learned authors in Clerk and Lindsell on Torts¹⁹, where at paragraphs 10-71 the authors elucidate on the modern position in a claim for possession of land. So far as is relevant to these proceedings, the passage states:

- a. In the case of ordinary trespass where the claimant in possession sues for interference with his possession of land, *jus tertii* is no defence.
- b. If the claimant is not in possession and is suing an occupier for ejectment, he claims a right to possession

¹⁷ (1883) 8 AC 456 at 462

¹⁸ See paragraph 29 of *Duff’s Valley Corporation Ltd v Kunta Brookes*.

¹⁹ Twentieth Edition Sweet and Maxwell

based on the strength of his title so he must show that title for “possession is good against all the world except the person which can show a good title.”

- c. Based on the evidence before this court, the claimant and her surviving children are the legal owners of the disputed property. This court is satisfied that in the circumstances, where the claimant has produced the title document and there being no challenge by the first defendant of its present ownership, the claimants have established that they have a better title to possession than that of the occupant.

[58] The court is also satisfied that the first defendant was granted a license to remain on the premises which was revoked by the death of his mother in 2018 when he failed to enter into the lease agreement proffered by the claimants for value consideration. Between 2019 with the issuance of the first notice and the issuance of these proceedings, the claimant clearly exercised her legal right as the property owner and as such this court finds she is entitled to the remedy sought for vacant possession²⁰.

Is the Claimant entitled to mesne profits?

[59] Mesne profits, in technical terms, are damages granted for the tort of trespass. The landowner has the right to take legal action against the trespasser for wrongful use and occupation, or for mesne profits. Seeking mesne profits is the conventional approach to obtaining reasonable compensation for the unauthorized use and occupation of land. These are therefore seen as the “profits or other pecuniary benefits, which once who dispossesses the true owner receives between dispossessing and the restoration of possession.”²¹

²⁰ See [47] of *Duff's Valley Corporation Ltd v Kunta Brookes* where Ellis J stated “It is clear that a licensee who remains on the property after his license expires or is properly revoked is a trespasser. He is however entitled to a reasonable time for packing and removal of his belongings. It is also clear that where the licence is revocable, the licensor in his notice of revocation is not obliged unless contractually bound, to specify the time within which the licensee must remove himself and his belongings. The revocation will be valid even if the time given is insufficient.

²¹ *Ibid* at paragraph 55

[60] In ***Geddes Meyer v Kehvin Dickinson***²² Blenman JA (as she then was) in paragraph 52 cited the authority of Hill and Redman where the learned authors in their text *Law of Landlord and Tenant*²³ states the following:

“The principle is that a trespasser shall not be allowed to make use of another person’s land without compensating that other person for that use. Usually, where the landlord is kept out of his property by a tenant wrongfully failing to deliver up possession he will be entitled to damages for trespass (or mense profits as they are commonly called in the context of the law of landlord and tenant) for a sum equal to the rental value of the premises during the period when the landlord is kept out of possession.”

[61] Thus even if the landowner did not experience a direct loss from being deprived of their property (as in the case at bar) the law recognizes that they are still entitled to reasonable rent for the trespasser’s unauthorized use. Similarly, the trespasser must pay reasonable rent even if they did not benefit from the property. This principle combines elements of both compensation for the landowner and restitution from the trespasser.

[62] The court of appeal in ***Geddess*** supra at paragraph 55 went on to consider the authority of ***Inverugie Investments Ltd v Hackett***²⁴ which expounded on this principle as follows:

²² [2019] ECSCJ No. 349

²³ LexisNexis 1996

²⁴ (1995) 46 WIR 1 at p.5

"The plaintiff may not have suffered any actual loss by being deprived of the use of his property. But under the user principle, he is entitled to recover a reasonable rent for the wrongful use of his property by the trespasser. Similarly, the trespasser may not have derived 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."

[63] As a general rule therefore, mesne profit is claimed from the date on which the land owner became entitled to possession of the land. Thus, in the case at bar, the claimant became entitled to possession of the land in 2018 when the licensor died.

Assessing the amount of mesne profit

[64] The authority of *Duff Valley Corporation Ltd supra* had also considered the case of *Invergie Investments Ltd v Hackett*, where Lord Lloyd of Berbick, delivering the advice of the Board of the Judicial Committee of the Privy Council, discussed the legal position of assessing mesne profit. The Board opined that the point is well expressed by Megaw LJ in *Swordheath Properties Ltd v Tabet* as follows (on page 288):

"It appears to me to be clear, both as a matter of principle and 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 the 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."

[65] In **Duff's** case supra, Ellis J had to grapple with evidence on a similar footing to the evidence of these proceedings that the defendant was not a paid tenant but occupied the property as a gratuitous licensee. Nevertheless, the claimant in that case had claimed the sum of \$1,000.00 per month as an appropriate basis of award however the court in that case was unable to accept that sum without any "assessable bases". Just like this case, the quantum claimed for mesne profits is also without assessable bases in so far as the claimant has failed to provide any evidence of the market rent nor was it clear to the court whether the first defendant was occupying the entire 0.12 acre or only a portion of the same. It is indeed trite law that who asserts must prove and like any other special damage, the claim of mesne profits must be specifically proven, to allow the person who is being asked to pay "the opportunity of inquiring into the details ..."²⁵

[66] In the case at bar, the claimant started in August 2019 a yearly rental of \$500.00 (as having been agreed), by September 2019 she claimed to be entitled to a quarterly rental of \$250.00 (which would have equated to a \$1000.00 a year) with no justification for the increase by 100%. This sum was again claimed in her correspondence in January 2020. These sums were not challenged in the particulars by the first defendant as his constant case was that the claimant took the land subject to his right to be there. Be that as it may, this court is not satisfied that the claimant has made out her claim for the mesne profits to assessed based on the sum sought in correspondence. This court has absolutely no information on the formulation of an assessment and to attempt to do so would lead to speculation and result in a disservice not only to the first defendant but also to the claimant. This court therefore makes no order as to the sum for mesne profits the claimants not having proven this aspect of their case.

²⁵ **Mediana (Owners) v Comet(Owners)** [1900-03] All ER Rep 126

Fixed Costs

[67] The claimant has also included a claim for fixed costs which is made under Part 65.4 CPR 2023 and are stated to be applicable to a claim for a specific sum of money. In fact, it is long settled that as a general rule a party is entitled to prescribed costs only if the fixed costs regime does not apply.²⁶

[68] In the case at bar, the primary claim is for an order of possession and mesne profits if payable would not have been for a specified sum as that was not claimed and would have to have been assessed by the court. The claimant is therefore not entitled to rely on the provisions in relation to fixed costs and I so find.

Order of the court is as follows:

- 1. The claim for the order of possession is granted as against both defendants and they are to vacate the said property on or before the 31st July 2025.**
- 2. The claimant's claim for mesne profits is dismissed**
- 3. Prescribed costs to the claimant on an unvalued claim pursuant to Part 65.5 CPR 2023**

²⁶ **The Attorney General of the commonwealth of Dominica v Stewco Construction Company**
HCVAP2008/0007

Nicola Byer
High Court Judge



By the Court

Registrar