

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2022/0335

BETWEEN:

PERNELLE CRAIG SAMUEL also called
P. CRAIG SAMUEL

Claimant

AND

JYLE GRIFFITH

Defendant

Appearances:

Ruth-Ann Richards-Simpson for the Claimant
Loy Weste for the Defendant

2023: October 10th,
December 8th

JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **WILLIAMS, J:** By Fixed Date Claim filed on 1st September 2022 the Claimant Pernelle Craig Samuel commenced proceedings for trespass against the Defendant Mr. Jyle Griffith. These proceedings culminated with the following order made by His Lordship Justice Andie George (Ag.) on 19th April 2023:

1. The Defendant is to remove two chattel houses on the Claimant's property on or before the 31st day of May 2023.
2. The parties shall discuss and agree upon the amount of damages payable to the Claimant
3. The matter is adjourned to 12th July 2023.

[2] The parties have not agreed on the quantum of damages payable to the Claimant in accordance with paragraph 2 of the order quoted above. Accordingly, these damages now fall to be assessed.

Background

- [3] The Claimant Pernelle Craig Samuel is the owner of lands described as Registration Section Cassada Gardens and New Winthropes Block 42 18944A Parcel 1652 (Parcel 1652). The Defendant Jyle Griffith is the owner of an adjacent parcel of land described as Registration Section Cassada Gardens and New Winthropes Block 42 1894A Parcel 1619 (Parcel 1619).
- [4] The Claimant alleges that the Defendant is in illegal occupation of 3,006.35 square feet of Parcel 1652. The illegal occupation allegedly consists of two chattel houses which are erected partially on the Claimant's property and partially on the Defendant's.

The Proceedings

- [5] Service on the Defendant was effected by a specified method namely by personal service on the Defendant's niece Teresa Edwards. She was served on 15th September 2022. Since then, the Defendant has attended court on several occasions and was present at this hearing.
- [6] On 19th April 2023 the court made the order for possession which is recited at paragraph 1 above. The order recites that the Defendant was advised by counsel that he was unable to defend the claim.
- [7] The matter came before this court on 12th July 2023. At that hearing counsel for the Claimant indicated that efforts had been made to reach out to the Defendant to agree on damages. However, the Defendant had failed to respond. Prior to this, the Claimant had on 30th June 2023 filed an application for a summary trial of this matter. However, upon noting that possession of the property had previously been ordered, the court treated this application as one for assessment of damages.
- [8] Accordingly, directions were given for conduct of the assessment to give the Defendant an opportunity to be heard. The matter was then adjourned to 10th October 2023 for hearing.
- [9] The Claimant relied on affidavits and submissions previously filed in this matter. On 26th and 27th September 2023 the Defendant filed a Form 31 (Notice of Intention to be heard of Assessment of Damages), a Witness Statement of the Claimant which exhibited a valuation report of engineer B.T Lewis and Skeleton Arguments. These documents were filed after the deadlines stipulated by the court on 12th July 2023.

Preliminary Objection-Witness Statement of the Defendant

[10] At the hearing, counsel for the Claimant objected to the Defendant's documents being filed after the stipulated deadlines. Counsel focussed especially on the Claimant's Witness Statement which as per the previous order should have been filed by 1st September 2023.

[11] Counsel for the Defendant conceded that the documents had been filed after the deadlines. However, he stated that there was no prejudice to the Claimant as these had been filed well in advance of the hearing. Counsel also noted that the order of 12th July 2023 had not imposed any sanctions for non-compliance with its terms.

[12] In relation to witness statements Rule 29.11 of the Revised Civil Procedure Rules provides as follows:

- (1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.
- (2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

[13] It is not disputed that the witness statement was filed after the stipulated date and that no application for relief from sanctions had been made pursuant to CPR Rule 26.8. Accordingly, the Witness Statement of Jyle Griffith and the valuation report of B.T Lewis were not permitted to be tendered into evidence.

[14] The situation is different with respect to the Form 31 and the Defendant's Skeleton Arguments. Neither Part 16 of the Revised Civil Procedure Rules 2023 nor the order of 12th July 2023 specifies a sanction for the late filing of these documents. Further despite the late filing these documents were filed sufficiently in advance of the hearing. Accordingly in the exercise of my discretion pursuant to CPR Rule 26.9 I ordered that the Form 31 and the Defendant's Skeleton Arguments be deemed properly filed.

[15] Accordingly, the only witnesses to give evidence were the Claimant himself and Mr. Olivee Morris who testified on his behalf.

The Claimant's Evidence

[16] The Claimant was sworn and the following affidavits (without objection by the Defendant) were allowed to stand as his evidence-in-chief:

1. Affidavit in Support of the Fixed Date Claim filed on 1st September 2022;
2. Affidavit in Support of Injunctive Relief filed on 1st September 2022;
3. Affidavit in Support of Assessment filed on 30th June 2023

[17] Mr. Samuel's evidence is summarized as follows:

1. He is employed with the Antigua Public Utilities Authority (APUA) and resides at Fitches Creek.
2. He purchased land registered as Registration Section Cassada Gardens and New Winthorpes Block 42 18944A Parcel 1652 from the former owner Bedster Gordon in or about July 2015.
3. The entire parcel measures approximately 0.18 acres and shares a boundary with land described as New Winthorpes Block 42 1894A Parcel 1619 ("Parcel 1619") owned by the Defendant.
4. Parcel 1619 is developed with four houses erected on it. Two of these houses are entirely within Parcel 1619 whilst the other two are partially on Parcel 1619 and partially upon Parcel 1652 owned by the Claimant.
5. At the date of purchase the Claimant was unaware of the encroachment and only became so aware when the land was surveyed in August 2015.
6. In 2018 the Claimant contacted the Defendant with a view to negotiating a sale of the portion of Parcel 1652 where the two houses are located. Between 2018 and 2021 the Claimant attempted to finalize an agreement for sale but no progress was made.
7. In July 2021 the Claimant indicated that he "had had enough" of the Defendant and that unless the Defendant agreed to purchase the land which he was illegally occupying he would take him to court. The Defendant then agreed to purchase the land.
8. In anticipation of a sale to the Defendant the Claimant did the following at his own expense:
 - A. Paid a surveyor to survey Parcel 1652 in July 2021 which demarcated the area that he was going to sell to the Defendant.
 - B. Paid for Parcel 1652 to be valued.

- C. Wrote to his Bank to get permission to sell a portion of Parcel 1652.
9. Having received permission from his bank to sell the relevant portion of Parcel 1652 the Claimant contacted the Defendant via telephone in September 2021 to arrange for a written sales agreement. However, the Defendant put the former owner Bedster Gordon on the line. According to the Claimant Bedster Gordon then accused him of being greedy for land and otherwise insulted him. The Claimant alleges that since then he has never contacted the Defendant.
 10. The Claimant sought legal advice and his lawyers issued a letter dated 4th April 2022 giving the Defendant the opportunity to purchase the occupied property or proceedings would be taken against him.
 11. The Claimant further states that sometime during the past five years the Defendant has enclosed the occupied portion of the property with a wire fence.
 12. The area of the encroachment is 3006.35 square feet as shown on a survey plan by Licenced Surveyor Nechelle Peters dated 18th July 2021.
 13. The Claimant indicates that the houses are being rented to tenants at the rate of \$900.00 per month and has been so informed by the tenants.
 14. Finally, the Claimant indicates that in 2018 he lost an opportunity to sell Parcel 1652 to a willing purchaser as the prospective purchaser's bank would not finance the purchase due to the Defendant's encroachment.

[18] The Claimant was not cross-examined.

Evidence of Olivee Morris

[19] Olivee Morris who like the Claimant is an employee of APUA was sworn and his affidavit filed on 30th June 2023 was admitted as his evidence-in-chief. As with the Claimant there was no objection to his evidence on the part of the Defendant.

[20] At the hearing, Counsel for the Claimant sought to amplify Mr. Morris' evidence pursuant to CPR Rule 29.9. The Defendant objected to this on the grounds that no prior notice had been given.

[21] Counsel for the Claimant sought to amplify paragraph 12 of Mr. Morris' affidavit. In that paragraph Mr. Morris states that he is still interested in purchasing Parcel 1652. I gather that the

Claimant now wished to change his evidence to indicate that he was no longer interested in purchasing the said parcel.

[22] I noted that the Defendant in his legal submissions made the point that the previous prospective purchaser “remains willing and ready to purchase the land.”¹ I note that this apparent change of heart on Mr. Morris’ part came about after the filing of the Defendant’s written submissions. I was therefore left with the distinct impression that the sole purpose of this change of evidence was to undercut the Defendant’s legal submissions on this point.

[23] Accordingly, in the exercise of my discretion I denied permission to amplify Mr. Morris’ evidence on the basis that the proposed amplification would be unduly prejudicial to the Defendant.

[24] Mr. Morris’ evidence is summarized as follows:

1. Mr. Morris is the Claimant’s co-worker and has known him for the past eight years. He is aware that the Claimant is the owner of Parcel 1652.
2. Four and a half years ago, Mr. Morris was interested in purchasing Parcel 1652 from the Claimant for the price of \$9 per square foot.
3. Mr. Morris was pre-approved for a mortgage from Eastern Caribbean Amalgamated Bank (ECAB). He therefore applied to ECAB for financing to purchase Parcel 1652.
4. However, when the bank carried out its investigations the Defendant’s encroachment onto Parcel 1652 was discovered. ECAB therefore refused to finance the purchase. Mr. Morris thereafter purchased property at Mount Pleasant instead.
5. Mr. Morris expressed the view that it was really sad that the Claimant is losing out on money because of the Defendant’s actions. He also indicates that he is still interested in purchasing Parcel 1652.

[25] Counsel for the Defendant also elected not to cross-examine Mr. Morris.

Analysis of the Evidence

[26] At the outset it is important to emphasize that neither the Claimant nor Mr. Morris were cross-examined as to the contents of their affidavits filed in this matter. In this regard counsel for the

¹ Defendant’s Submissions Filed 27th September 2023- Paragraph 4

Claimant states that the rule in **Browne v. Dunn**² is applicable. In that case Lord Herschell stated as follows:

“.....it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might be able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that it is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.”

[27] Thus, in accordance with the principle quoted above the Claimant's and Mr. Morris' evidence stands unchallenged. I am therefore justified in making the following findings of fact:

1. The Defendant has been in illegal occupation of 3006.35 square feet of Parcel 1652 since 21st August 2015 (when the Claimant became registered proprietor) to date.
2. The illegal occupation consists of two chattel houses.
3. The Claimant has made several attempts to have the Defendant regularize his occupation of Parcel 1652 by purchasing the illegally occupied portion of the parcel but the Defendant has failed to do so.
4. Mr. Olivee Morris was interested in purchasing Parcel 1652 in or about 2018 but was unable to obtain financing due to the Defendant's encroachment.

[28] The Claimant seeks the following damages:

1. Damages for loss of use *vis-à-vis* the Defendant's *mesne* profits;
2. Damages for loss of commercial/economic opportunity;
3. Aggravated damages as a result of the Defendant's conduct;
4. Prescribed costs;
5. Interest; and
6. Compensatory costs for restoring the land when the Illegal Structures have been removed.

² [1894] H.L. 67

Limitation

[29] The Claimants uncontroverted evidence is that the two-chattel houses owned by the Defendant have been present on Parcel 1652 since 21st August 2015 when the Claimant became the registered owner. The Claimant therefore seeks mesne profits from that date. Before addressing the claim for mesne profits it is necessary to address the issue of limitation as this will affect the quantum of mesne profits awarded.

[30] The Defendant's written closing submissions notes that by virtue of **section 4** of the **Limitation Act 1997** an action founded in tort shall not be brought after the expiration of six years when the cause of action accrued. He further points out that the Privy Council in the case of *Horsford v. Bird* also stated that "any claim for a period of more than six years would be statute barred."³

[31] However, the Defendant has not filed a Defence to this claim. In *Leonora Walwyn v. Eustace Archibald* the Court of Appeal held that the defence of limitation needed to be pleaded in order to be relied upon. Chief Justice Pereira giving the judgment of the court stated as follows:

"However, it is well established that a limitation defence is required to be specifically pleaded in a defence to a claim for repayment of a debt, failing which its benefit does not arise. Mr. Archibald made no such pleading. The limitation defence did not, therefore, apply to him, and the judge was wrong to so find otherwise."⁴

[32] In *Horsford v. Bird*⁵ it should be noted that the Respondent had specifically pleaded limitation as a Defence. This must be contrasted with the Defendant in the instant proceedings who seeks to raise limitation for the first-time at the assessment of damages stage. This is not permissible. Accordingly, the Claimant is entitled to mesne profits for the entire period commencing 21st August 2015 until the Defendant gives up possession.

Mesne Profits

[33] In Skeleton Arguments filed before the hearing and in written closing submissions the Claimant seeks damages for mesne profits on the basis of what the Defendant has collected as rental of the two chattel houses for the past eight years. The Claimant calculates this at \$1800.00 per

³ [2006] UKPC 3 at paragraph 15

⁴ SKBHCVP2010/0012 (decided 10th July 2014, unreported)

⁵ 2006] UKPC 3 at paragraph 8

month or \$21,600.00 per year. The Claimant therefore calculates that the Defendant has collected rent from 21st August 2015 to 30th June 2023 totalling \$169,200.00.

[34] The evidential basis for these figures is based on alleged conversations which the Claimant had with the Defendant's tenants. I will shortly examine whether this evidence may be properly relied upon. This is as it has been argued on behalf of the Defendant that this evidence is inadmissible hearsay as the tenants themselves have not given evidence.

[35] The Defendant for his part claims that the Claimant is only entitled to ground rent of \$300.00 per year. The Defendant bases this figure on a report of Engineer B.T. Lewis which was annexed to his witness statement. However, since the witness statement and this report have been excluded, I cannot take these documents into account in assessing mesne profits.

[36] In **Clarabell Investments Ltd. v. Antigua Isle Company**⁶ Blenman J. (as she then was) stated as follows:

"A claimant in trespass is entitled to recover damages, even though he has sustained no actual loss. There is no need for the Claimant to prove any actual damage in order to sustain an action for trespass. See *Stoke-on-Trent Council v. J Wass Ltd.* [1988] 1 WLR 1406."

[37] In **Asot Michael v. Astra Holdings Ltd.**⁷ Rawlins JA (as he then was) stated:

"Where there is a continuing trespass, damages are usually measured by the worth of the use of the land. This would normally be the rental value."

[38] As previously indicated the Claimant seeks to establish this rental value by reference to the rents which the Defendant has allegedly collected. This is based on conversations which the Claimant has had with the Defendant's tenants. In answer to the Defendant's objection that this is inadmissible hearsay the Claimant relied on the well-known Privy Council decision of **Subramaniam v The Public Prosecutor**⁸ which was decided during the Malayan Emergency of the 1950's.

[39] In that case the Appellant was charged with possession of ammunition which was contrary to Emergency Regulations then in force. At trial the Appellant stated that he had been threatened

⁶ ANUHCv2006/0326 (decided 8th October 2008 unreported) at paragraph 45

⁷ Antigua & Barbuda Civil Appeal No. 17 of 2004 (decided 23rd May 2005, unreported) at paragraph 56

⁸ [1956] 1 WLR 965

by terrorists and at all times he had acted under duress and in fear for his life. He then attempted to give evidence of his conversations with the terrorists. The judge ruled this evidence inadmissible unless the terrorists were called to give evidence. The Appellant was found guilty. In allowing the Appellant's appeal Lord Radcliff stated as follows:

"In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes."⁹

[40] It is necessary to refer to **Subramaniam** at length to illustrate that the principle outlined by Lord Radcliff has no applicability to the present situation. In this case the Claimant is seeking to prove that the Defendant collected rent of \$1800.00 per annum in respect of the occupied property. This would mean that the court would have to accept the tenant's statements as to how much rent they paid as the truth. This by itself renders these statements as inadmissible hearsay. Thus, there is no admissible evidence to establish how much rent the Defendant has been collecting.

[41] The Claimant also sought to rely on a valuation report which was prepared by John Bradshaw and submitted to First Caribbean International Bank in September 2021. This report assessed the value of the whole of Parcel 1652 at \$174,057.09 or \$9.85 per square foot. The Claimant therefore submits that the encroached area of Parcel 1652 has a value of \$29,612.55.

[42] The Defendant has challenged the admissibility of the valuation report on the basis that it is opinion evidence which can only be admitted pursuant to CPR Part 32. Thus, the Claimant is not permitted to simply attach the report to his affidavit as proof of the statements made therein.

⁹ 1956] 1 WLR 965, 970

[43] Counsel for the Claimant relies on **Section 40(1) of the Evidence (Special Provisions) Act**¹⁰ which provides:

“Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record whether in paper, electronic or any other form, made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.”

[44] Counsel states, “The 2021 Valuation is the product of a business entity that commissioned the valuation to ascertain the value of Parcel 1652. This document, therefore, is admissible by dint of section 40 of the Evidence Act Number 5 of 2009 as it was produced in the normal course of business and discloses details directly relevant to a fact in issue for these assessment proceedings.”

[45] I respectfully disagree with counsel for the Claimant on this issue. The record itself must be admissible in legal proceedings apart from section 40. In this case the author of the report on the basis of his training and experience is providing his opinion on the market value of Parcel 1652. In **Phillip Abbot v. Aziz Hadeed** Carrington JA giving the judgment of the Court of Appeal stated as follows:

“The common law drew a distinction between evidence of fact and evidence of opinion. I agree with the statement made by the authors of Phipson on Evidence at paragraph 37-01 that at common law, subject to certain exceptions opinion evidence is inadmissible as proof of material facts. The well-known exception is that the courts will accept the evidence of expert opinion, i.e. opinions that are the result of competence acquired by specialized study or experience.”¹¹

[46] Therefore, even if the valuation report could be considered a business record, it contains opinion evidence which therefore can only be admitted pursuant to Part 32 of the Civil Procedure Rules. No application has been made to appoint the report’s author as an expert witness. Finally, it is not desirable for opinion evidence to be accepted without the Defendant being given an opportunity to issue written questions to the expert or to cross-examine him as the case may. The valuation report therefore cannot be admitted into evidence.

¹⁰ Act No 5 of 2009

¹¹ ANUHCVP2010/0041 (decided January 28, 2013 unreported) at paragraph 28

[47] However, there is the unchallenged evidence of Mr. Morris who was willing to purchase Parcel 1652 at \$9.00 per square foot. This therefore can be used to establish the capital value of the land occupied by the Defendant. The area occupied by the Defendant measures 3006.35 square feet. Therefore 3006.35×9 leads to a capital value of \$27,057.15.

[48] The Privy Council in **Horsford v. Bird** utilized a formula which calculated mesne profits as 7.5% of the capital value of the property.¹² Therefore the mesne profits can be calculated in this case by using the formula $7.5\% \times 27,057.15$ which gives mesne profits of \$2,029.29 per annum.

[49] In **Horsford v. Bird** the Privy Council also took into account the fact that the encroached property increased the value of the Defendant's property. The Lordships therefore doubled the figure used as the mesne profits in respect of the encroached property. Similarly, in this case the Defendant has gained an advantage by erecting the chattel houses partially on the Claimant's property and partially on his own. Applying the same methodology, mesne profits will be doubled to \$4,058.58 per annum.

[50] The uncontroverted evidence is that the Defendant has encroached upon the Claimant's property from 21st August 2015 to the date of hearing (10th October 2023). This is a period of eight (8) years, one (1) month and twenty (20) days. Eight years at the annual rate of \$4,058.58 leads to a figure of \$32,468.64. One month's occupation ($4058.58/12$) is calculated at \$338.25 and twenty days calculated at the rate of \$11.27 per day leads to the sum of \$225.40. This leads to a total sum of \$33,032.29.

[51] Thus, the Defendant must pay the Claimant the sum of \$33,032.29 as mesne profits for the period 21st August 2015 and to the date of assessment. Thereafter the Defendant is to pay mesne profits at the rate of \$11.27 per day from that date until possession is delivered up.

Loss of Commercial Opportunity

[52] The Claimant seeks compensation in respect of the aborted sale of Parcel 1652 to Mr. Olivee Morris. According to his evidence Mr. Morris was willing to purchase the property in 2018 for

¹² [2006] UKPC 3 at paragraph 15

\$186,094.08 or \$9.00 per square foot. In this regard the Claimant relies on the authority of **Matthurin Jurgenson v. Public Utilities Authority**¹³ where Blenman J (as she then was) stated:

“Whilst it is accepted that in trespass a successful litigant is entitled to recover secondary loss, it is also a question of proof whether that loss has been established.”

[53] In that case the Claimant alleged that potential investors to a project had withdrawn their proposals due to the actions of the Defendant who had illegally erected an antenna on the Claimant's land. The court found no evidence that the investment proposals had advanced beyond preliminary discussions and thus declined to award any damages for the loss of commercial activities.

[54] I accept that Mr. Morris wished to purchase Parcel 1652 but was unable to obtain funding as a result of the Defendant's trespass. However, this court's order of 19th April 2023 has already ordered the Defendant to remove the two chattel houses on the property. Thus, once these are removed the Claimant will be able to sell his land to any willing purchaser.

[55] Compensating the Claimant for the aborted sale to Mr. Morris whilst he still has the ability to sell the property would lead to a double recovery. This would be contrary to the purposes of damages for trespass which are not to provide a windfall for the Claimant. I therefore find that in the circumstances of this case the Claimant has not suffered any secondary loss. I therefore decline to award any damages under this head.

Aggravated Damages

[56] The Claimant also seeks aggravated damages on the basis that he has been subjected to a persistent, concerted and coordinated campaign of abuse and disrespect by the Defendant. In written submissions counsel for the Claimant identifies the following factors which may justify an award of aggravated damages:

- a. Lying to the Claimant from their first encounter in 2018, asserting that he was going to regularize the status of the Illegal Structures knowing full well that he had no intention so to do. The persistence of these lies is underscored by the fact that they were repeated over three (3) years and have, thereafter, stalked this Court;

¹³ ANUHCv2004/0529 (decided 24th October 2010, unreported) at paragraph 75

- b. Causing the Claimant to incur the costs associated with a potential mutation of the title of Parcel 1652 and then reneging on the purchase, thus causing all such costs to be sunk costs;
- c. Subjecting the Claimant to truly incendiary and uniquely flavoured Caribbean verbal insults regarding the Claimant's integrity, identity and mortality to which more than one person was privy;
- d. Demonstrating a degree of defiance and discourtesy to the Court that borders on contempt in failing to file any pleadings to date, and in failing or refusing to remove the Illegal Structures within the timeline set by the Court; and
- e. Abusing the processes of the Court by failing or refusing to retain the services of an attorney in a timely manner given the protracted delay and given his averments that he has been endeavouring to do so. This is particularly underscored by the fact that during the hearing of the Injunctive Application in September 2022, the Defendant was warned categorically by the Court to seek legal advice.

[57] In **Horsford v. Bird**¹⁴ the Privy Council noted:

"It is well established that trespass to land accompanied by high-handed, insulting or oppressive conduct may warrant an award of aggravated damages. The award in such a case is to compensate the plaintiff for the distress and injury to his feelings caused by the conduct in question (see Halsbury's Laws – 4th Ed., Vol 12(1), Para.1114).

[58] However, in the instant case the Defendant's conduct does not rise to the level which justifies an award of aggravated damages. The Defendant appears from the outset to be simply avoiding the consequences of his actions. He first avoided the Claimant's efforts to have him pay for the land which he was illegally occupying by failing to negotiate. Then subsequent to the order of 19th April 2023 when the Court invited him to discuss the issue of damages with the Claimant he failed to do so which necessitated these proceedings. The Defendant has also not complied with the said order which required him to remove the two chattel houses from the land by 31st May 2023.

[59] I view this behavior as delaying tactics on the Defendant's part. These tactics have caused the Defendant to remain in illegal occupation of the Claimant's property for a long period. This would of course be very frustrating for the Claimant. However, in my view the Claimant will be

¹⁴ [2006] UKPC 3 at paragraph 14

adequately compensated for this inconvenience by the award of mesne profits, interest and costs.

[60] I have also taken into account the telephone conversation that the Claimant attempted to have with the Defendant in 2021 concerning the purchase of the encroached area. The Defendant instead put the former landowner Bedster Gordon on the line who then proceeded to accuse the Claimant of being greedy for land among other insults. However, it must be born in mind that these are Mr. Gordon's words and not the Defendant's. Accordingly, there is no evidence of behavior which may be considered highhanded, insulting or oppressive on the part of the Defendant. In the circumstances I am unable to make an award of aggravated damages.

Interest

[61] The Claimant seeks interest pursuant to **section 27** of the **Eastern Caribbean Supreme Court Act** at a rate from 10% to 25% per annum. The Claimant relies on the following passage from the Court of Appeal decision in **Asot Micheal v. Astra Holdings**¹⁵ where the court stated as follows:

“The High Court has discretion in proceedings for the recovery of a debt or damages, to award simple interest on any sum for which judgment is given. Interest may be awarded with respect to all or part of the period between the date of the judgment or prior payment. The rate of interest and the period for which it runs are discretionary.”

[62] In this case I can see no basis to award interest at a commercial rate. The Claimant was not involved in any commercial activities on Parcel 1652 and has not indicated that he had any plans to do so. The Claimant's efforts to sell Parcel 1652 also do not constitute commercial activity. Accordingly, in the exercise of my discretion I decline award interest at a commercial rate.

[63] The Court of Appeal in **Terrance Amedee v. Marcus Modeste**¹⁶ has recently clarified the periods for which pre-judgment interest should be awarded. At paragraph 100 of the decision Michel JA states:

“Interest on general damages is to be paid from the date of service of the claim form to the date of judgment, while interest on special damages should be from the date of the loss to the date of judgment.”

¹⁵ Antigua & Barbuda Civil Appeal No. 17 of 2004 (decided 23rd May 2005, unreported) at paragraph 73

¹⁶ SLUHCVP2022/0001 (decided 9th November 2023, unreported)

[64] In this case no special damages have been pleaded and all awards made are in the nature of general damages. The rate of interest and the period for which it is awarded are discretionary. Accordingly, interest on these damages will be awarded at the statutory rate of 5% per annum from the date of service of the Fixed Claim Form to the date of judgment.

Cost of Restoration of the Land

[65] The Claimant has led no evidence as to the cost of reinstating the land when the structures are removed. I therefore award no damages under this head.

Costs

[66] The Claimant is entitled to the costs of this hearing. In accordance with CPR Rule 65.5(a) (i) the value of the claim for the purposes of costs will be the mesne profits awarded up to the date of hearing which is \$33,032.29. The Claimant is therefore awarded costs of \$3,963.87 in accordance with Column 3 of Appendices B and C to Part 65 of the Revised Civil Procedure Rules.

Order

[67] The Court hereby orders:

1. The Defendant shall pay the Claimant the sum of \$33,032.29 representing mesne profits from 21st August 2015 to the date of hearing of this application.
2. The Defendant shall pay the Claimant mesne profits of \$11.27 per day with effect from the date of hearing to the date of possession.
3. The Defendant shall pursuant to section 27 of the Eastern Caribbean Supreme Court Act pay interest on the damages awarded at the rate 5% per annum from the date of service of the Fixed Date Claim Form to the date of judgment.
4. The Defendant shall pay interest pursuant to section 7 of the Judgments Act at the rate of 5% per annum from the date of this judgment until payment.

5. The Claimant is awarded Prescribed Costs of this application in the sum of \$3,963.87.

[68] I wish to express my gratitude to counsel for their helpful submissions.

**Rene Williams
High Court Judge**

By The Court

Registrar