

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2013/0558

[1] EUNETTE DESUZA
[2] ALBERT CREESE JR.

Claimants

and

[1] DEBORAH RILEY-BROWNE

Defendant

CLAIM NO. ANUHCV 2013/0722

[1] FERNELLA COLBOURNE

Claimant

and

[1] EUNETTE DESOUZA
[2] ALBERT CREESE JR.

Defendants

Appearances:

Ms Gail Christian Attorney for the Claimants in Claim No 2013/0558 and for the Defendants in Claim No. 2013/0722

Mr. Dane Hamilton Jr., for the defendant in Claim No 2013/0558 and for the Claimant in Claim No. 2013/0722

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2018: February 7
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JUDGMENT

- [1] **HENRY, J.:** The first claimant In Claim No 2013/0558 is the mother of the second claimant and the sister of the defendant. The claimants, seek (1) possession of a parcel of land situate in Pigotts and registered and recorded in the Land Registry as Registration Section: West Central; Block: 11 2093B; Parcel 34 (the land); (2) An order that the defendant, Ms Riley-Browne remove her chattel house located thereon and do deliver vacant possession of the land; (3) A declaration that Ms Riley-Browne is not entitled to remain on the land; (4) An order that Ms. Riley-Browne is a trespasser on the land; (5) Damages for trespass; (6) An order that Ms. Riley-Browne do pay to the claimants mesne profits in respect of the land from October 2012 to date of delivery at a rate of \$100.00 per month together with interest and costs.
- [2] Fernella Colbourne, the claimant in claim No. 2013/0722, is the mother of Ms. Desuza and Ms Riley-Browne and the grandmother of Albert Creese Jr. Ms Colbourne seeks the following relief against Ms Desuza and Mr. Creese:
- a) A declaration that the claimant was induced to make the Affidavit dated the 9th January 2008 by fraudulent representation of and/or by the undue influence of the first defendant, Ms Desuza;
 - b) A declaration that the said parcel 34 is owned by the claimant or alternatively that the defendants hold the same in trust for Ms Colbourne;
 - c) Rectification under section 140 of the Registered Land Act Cap 374 of the Land Register relating to Parcel 34;
 - d) Damages;
 - e) Interest and prescribed costs.

The Pleadings – Claim No 2013/0558

- [3] By the Amended Statement of Claim, the claimants assert that at all material times they were and continue to be the owners of the land. In 1987, the land was allocated to Ms Colbourne by Central Housing and Planning Authority (CHAPA) for which she was required to make monthly remittances towards the payment of the full purchase price. In or about 2008, Ms Desuza accompanied Ms. Colbourne to the office of the Attorney for CHAPA. Ms Colborne had been previously advised by letter of the likelihood of the sale of the land due to non-payment of the monthly remittances. At the meeting, Ms. Colbourne of her own accord decided to transfer her interest in the land to Ms

Desuza. In furtherance of this decision, Ms Colborne gave instructions to an Attorney to prepare an affidavit to reflect her wishes. It was expressed and understood between Ms Desuza and Ms Colbourne that Ms Desuza would complete payments to CHAPA and that until such time the beneficial ownership of same would no longer vest in Ms Colbourne but rather in Ms Desuza. It was further expressed and understood that Ms Colbourne would no longer have an interest in the land and thus not be entitled to have same transferred to her by CHAPA. It was Ms Desuza's understanding that Ms Colbourne was motivated to transfer her interest to her on account of the care and support given to her at all times, particularly through her illness.

- [4] The claimants further plead that Ms Desuza duly completed the payments. On 25th August 2008, Ms Desuza by affidavit, instructed CHAPA to include the name of her son, on the instrument of Transfer. Accordingly, the Certificate of Title was issued in the names of Eunette Desuza and Albert Creese Jr.
- [5] In addition, prior to the claimants' registration as the owners of the parcel of land, Ms Riley-Browne was let into occupation, at a date unknown, by Ms Colbourne. The claimants on assuming proprietorship caused a letter to be written to Ms Riley-Browne on 26th April 2012 by their Solicitor requesting that the parties formalise lease agreement for the rental of the land. Ms Riley-Browne refused to do so. On the claimants' instructions Ms Riley-Browne was given notice to deliver up vacant possession of the portion of the land by the 30th September 2012. When Ms. Riley-Browne failed to do so, the instant action ensued.
- [6] In her Defence, Ms Riley-Browne admits that the claimants are the Registered Proprietors of Parcel 34, but denies that they are entitled to possession of the said parcel. She further states that there are four houses situated on the parcel of land. Ms. Colbourne resides in one of them. Ms Riley-Browne admits she resides in one and asserts she was let onto the said land by Ms Colbourne.
- [7] Ms. Riley-Browne states that she is aware of Claim No 2013/0722 instituted by Ms Colbourne against the claimants seeking among other things Rectification of the Land Register on the grounds that the transfer of the said parcel in the claimants' names was obtained through the fraudulent representation of Ms Desuza and/or her undue influence. She admits that the claimants

caused a letter to be written to her requesting she attend their Solicitor's Chambers to formalise lease agreements for the rental of the land and that she failed to do so.

Pleadings – Claim No 2013/0722

- [8] Several months after the above claim was filed, Ms Colbourne commenced claim No. 2013/722 against her daughter and grandson. In her statement of claim she admits that they are the registered owners of the land. Ms Colbourne pleads that she has resided on the said land for a period in excess of 30 years and that the land was allocated to her by CHAPA and that she had agreed to pay the purchase price by instalments. She states that she is an elderly woman who does not read or write well due to her age and medical condition. She avers that in or about 2007 she was diagnosed with Cancer and while undergoing treatment at the hospital, she was advised by letter that CHAPA was demanding full payment of the balance of the purchase price of the land. Ms. Colbourne states that she requested the assistance of Ms. Desuza and subsequently entered into an oral agreement for Ms. Desuza to advance to Ms. Colbourne the sum of money owed to CHAPA by way of a loan. The said loan was to be repaid out of the income earned by Ms Colbourne from her rental property.
- [9] Pursuant to the said agreement, on or about the 9th day of January 2008, Ms. Colbourne accompanied Ms. Desuza to the offices of the Attorney representing CHAPA. After seeing the Attorney, in the absence of Ms Colbourne, Ms. Desuza instructed Ms Sherrie Ann Bradshaw, an Attorney, to prepare an Affidavit to be signed by Ms Colbourne. Ms Colbourne avers that at all times she understood the purpose of that visit was to make arrangement for the payment of the outstanding sums of money to CHAPA and for the loan arrangement between herself and Ms Colbourne.
- [10] Ms Colbourne admits that by affidavit dated 9th January 2008, she transferred her beneficial interest in the land to Ms. Desuza and instructed CHAPA to transfer the parcel to Ms Desuza. She avers however, that before the said affidavit was made and in order to induce her into transferring her beneficial interest in the parcel of land, Ms. Desuza represented to Ms Colbourne that the said affidavit was to authorize Ms Desuza to pay the outstanding sum to CHAPA. As a result of the representation she, Ms. Colbourne, was induced to sign the affidavit without reading the same or having the same read over to her. Further, that Ms Desuza well knew that the affidavit purported to

transfer to her Ms Colbourne's interest in the land and that her representation was false. Ms. Colbourne states that Ms Desuza's representation was false and made fraudulently or was made recklessly, Ms. Desuza not caring whether it was true or false. Alternatively, that Ms Colbourne was induced to sign the said affidavit without reading the same or having it read over to her by the undue influence of Ms. Desuza and owing to the trust and confidence that she reposed in her.

[11] The particulars of undue influence pleaded are as follows:

- Ms. Colbourne was 65 years of age at the time of signing the affidavit;
- Ms. Colbourne was diagnosed with cancer and at the material times was undergoing chemotherapy and other treatment for the same;
- Ms Desuza is Ms Colbourne's natural daughter;
- During Ms Colbourne's treatments Ms Desuza visited and assisted Ms Colbourne and was her confidant;
- At all material times Ms. Desuza was trusted by Ms Colbourne to assist her in her day to day business affairs, including amongst other things the collection of rent from the rental properties.

[12] Lastly, Ms Colbourne pleads that Ms. Desuza, in an effort to hide the fraud carried out, kept all of the copies of the Affidavit dated 9th January 2009 and the correspondence sent to Ms Colborne from CHAPA.

[13] In their defence Ms. Desuza denies that the oral agreement was for Ms. Desuza to advance to Ms Colborne the sum of money owed to CHAPA by way of a loan and that the said loan was to be repaid out of the income earned from Ms. Colbourne's rental property. The defendants assert instead that Ms Colbourne invited Ms. Desuza to liquidate the balance of the purchase price in return for the transfer of the subject parcel to her. With regard to the visit to the offices of the Attorney for CHAPA, the defendants aver that Ms. Desuza accompanied her for the purpose of advising the Attorney of the Agreement to have Ms. Colbourne's interest in the land transferred to Ms. Desuza on payment by her of the balance of the purchase price, being approximately \$13,179.22.

[14] Ms. Desuza also denies that, in the absence of Ms. Colbourne, she instructed Ms Bradshaw to prepare an Affidavit to be signed by Ms Colbourne. Ms. Desuza avers that she had no dialogue with Ms Bradshaw with respect to the matter of the transfer of the land or otherwise. Ms. Desuza

further denies that she visited the Chambers of CHAPA's Attorney to make loan arrangements between herself and Ms Colbourne and asserts that she attended said Chambers only at the behest of Ms Colbourne.

[15] Ms Desuza denies that she represented to Ms Colbourne that the document was to authorise her to pay the outstanding sum to CHAPA. She also asserts that she did not induce Ms Colbourne to transfer her interest in the parcel or at all.

[16] Both actions were consolidated for trial.

[17] Because the decision in claim No 2013/0722 will affect the claim for possession in claim no 2013/0558, the court will deal with Claim No 2013/0722 first.

The Evidence in Claim No 2013/0722

Ms Colbourne's case

[18] Ms Colbourne's case rests entirely on her evidence. In her witness summary she describes herself as 71 years old (65 at the time the Affidavit was executed) and suffering from Cancer. She is also states that she is a person who cannot read or write well, but over the years she has learned to write her name whenever she needs to sign any documents. As a result she is dependent on her family to assist her by reading and explaining letters and documents. Prior to 2008 Ms Desuza was the person who she primarily trusted and assisted her with her affairs. She was also the one in charge of collecting rent from the income property.

[19] Her evidence is that she made several payments over the years towards the purchase price and recalls making payments up to the time of her illness. Despite those payments, she admits that she was in arrears and that sometime in 2007 she received a letter from Mr. Symister, the Attorney for CHAPA. At the time she received the letter she was receiving treatment for her condition at Mount Saint John Medical Center. Ms Desuza opened and read the letter to her. Ms Desuza explained to her that CHAPA wanted all of the money owed, or they would sell the land to someone else. Ms Colbourne states that she was immediately worried and concerned. She did not know how long the letter was at home before it was brought to her attention and secondly, she did not have the balance of the purchase price to pay right away.

[20] As to the agreement reached with her daughter she states:

“Eunette (Ms. Desuza) and I spoke about this, we agreed that I could borrow the money from her and repay her through the money earned from the rental apartment. We also decided to go to the Lawyer when I was released from the hospital and make the necessary arrangements. I readily agreed to this arrangement as I trusted my daughter with all of my business and had no reason to believe that she would trick me. At no time did we discuss me giving her the land.”

[21] On her release in January 2008, Ms Desuza immediately took her to see Mr. Symister. Mr. Symister told them to return in a few days to sort out everything, as she was just getting out of the hospital. Mr. Symister then left his office and Ms Desuza asked her to hold on in a waiting area. Ms Desuza came back shortly and told her all they needed was a paper that would say that she was taking over the payments on her behalf and that someone in the office could do it now. So she agreed to sign. She left and came back with a young lady who she knows was another Attorney in the office by the name of Ms Bradshaw.

[22] Ms Colbourne describes the execution of the document in these terms:

“The young lady showed me a document that she had for me to sign. She asked me whether or not I understood what I came to do at the office and whether or not I was letting Eunette take over paying CHAPA. I said yes. I did not ask her to read over the documents to me because Eunette had explained what the paper was and I trusted her. I signed the document and handed them back to the lady. I was not given a copy of the paper that I signed.”

[23] Her evidence is that as far as she knew she was signing something to allow her daughter to pay on her behalf. She did not realize that she was turning over the land to her. I never intended Eunette to become an owner of the land, as far as I was concerned it is family property.

[24] At trial she stated further, that upon Ms Desuza reading the letter, she said she would take it to “Housing” to understand what is the problem. When Ms. Desuza returned she told her that the letter was sent up to Mr. Symister’s office. According to Ms Colborne, Ms Desuza then said to her that she was almost finished paying for her mortgage therefore she would get some money and pay off the land for her and until Ms Colbourne is released from hospital. Ms Desuza then added that if she was going to pay off the land she wanted to have an agreement because if anything happened to Ms Colbourne, the other sisters would not pay her back. By this exchange she

understood that Ms Desuza was lending her the money to pay off the land. At trial she describes the execution of the agreement in these terms:

“She bring me out (of Mr. Symister’s office) and put me on an old iron chair. She went and rap a door and somebody peep out of the door. I don’t know what the person tell her, but I know she went in. She stay a good while in there. When she come out she put her hand round my neck and say mommy I want the hand agreement now.

I told her how I going do the hand agreement and I was trembling. She said I want it now because I am not going to bring you back. After that, she start up a noise pon me : and I did it. I signed the paper.”

[25] She was asked by Counsel, who gave you the paper?

[26] She responded: “A lady, I didn’t know it was a lawyer”. She said, “sign ya sa so and ya so so”. She didn’t tell me anything else. I thought I was signing the “hand agreement”. No one told me I was giving Eunette the land my house was on.

[27] Ms Colbourne was asked about the terms of repayment of the alleged loan from her daughter. She replied:

“After I come out I tell her I will give her \$1000.00 per month. She drawing \$750.00 for me from a three bedroom house on rent and when I get my pension I would give her \$250.00.”

Her evidence is that Ms Desuza was paid the \$1000.00. per month.

[28] On cross examination she was asked about her payment to CHAPA. Her evidence is that she paid every month from 1987 until she went into the hospital. It was put to her that if she had been paying steadily every month from 1987, she would have completed payment for the land. She disagreed.

[29] Ms Desuza’s account of what transpired is quite different. Her evidence is that her mother, Ms Colbourne had received a notice that the parcel of land allocated to her would be re-allocated if she did not pay the amounts owing. She admits reading the letter to her. Her mother then asked her to take her to see the lawyer. On reaching Mr. Symister’s office, he spoke briefly to them and requested that they return. A day or so thereafter, she transported her mother to the hospital for treatment. She was not warded and about a week later at her request, they returned to Mr. Symister’s office. Mr. Symister explained to her mother that if she did not pay for the land it would

be given to someone else. Her mother said she did not want that. In her presence, her mother told Mr. Symister that Ms Desuza was looking after her and had assisted with the payments over the years, and that she wanted Ms Desuza to have the land. Mr. Symister asked her if she was sure, to which she replied, yes.

[30] Mr. Symister told Ms Colbourne that she would have to prepare an Affidavit to send to CHAPA for the changes to be made to their records. Mr. Symister then referred Ms Colbourne to Ms Bradshaw, an Attorney in the building.

[31] Ms Desuza's evidence is that she did not go in to see Ms Bradshaw with her mother, so she does not know what happened in Ms Bradshaw's office. She denies vehemently that she was the one who gave instructions to Ms Bradshaw. At the end of the meeting with Ms Bradshaw, Ms Colbourne handed her the document, which she later took to CHAPA. She was advised formally by CHAPA of the outstanding amount and she later obtained a loan from RBTT Bank in the sum of EC\$11,997.63 to pay for the land in full.

[32] Ms. Bradshaw gave evidence. She states that she is a Solicitor of the Eastern Caribbean Supreme Court, Antigua Circuit, having been called to the Bar on the 15th July 2004. Her evidence is that on 22nd January, 2008 she operated Chambers at Newgate Street. She recalls receiving instructions on that day from one Fernella Colbourne, for the preparation of an Affidavit, by which the said Ms Colbourne intended to transfer her interest in a parcel of land to her daughter Eunette Desuza. She describes the process as follows:

“At the instance of receiving instructions from Ms Colbourne, there was no other person with her. Ms Colbourne clearly and unequivocally said to me that she had secured a parcel of land from the Central Housing & Planning Authority that she was required to make monthly payments for. She further said to me that she had fallen into arrears but was unable to complete payments.

Ms Colborne further stated that her daughter, Eunette Desuza, had previously assisted her with paying for the land. As such she stated that she preferred her daughter to complete the payments, and obtain the land, rather than the land being re-allocated to someone else.

I specifically asked Ms. Colbourne whether she was being forced or influenced by anyone, to include her daughter, to transfer the land to Ms Desuza. Her clear and indisputable answer was “no”.

- [33] Ms. Bradshaw's evidence is that she was certain to tell Ms Colbourne that she would no longer have any interest in the land and would not be entitled to claim it as her own. Ms. Colbourne's unambiguous response was that she understood that the parcel would no longer be hers. Ms. Bradshaw states that having fully satisfied herself that Ms Colbourne was transferring her interest in the parcel to her daughter of her own free will, she duly prepared the requested Affidavit, which was signed by Ms. Colburne after it was read over to her. Her evidence is that at the signing, Ms Colbourne clearly understood the contents of the Affidavit and voluntarily signed same.
- [34] It was put to Ms Bradshaw on cross-examination that it was Ms Desuza who gave her initial instructions in preparing the Affidavit. Ms Bradshaw's response was: "that is not correct, I would not have taken instructions from Ms. Desuza." Ms Bradshaw was further asked if she was made aware that Ms Colbourne couldn't read. Her response was that she had read over the Affidavit to her in its entirety and explained it thoroughly to her. Ms Bradshaw also confirmed that the conversation and execution of the Affidavit took place in her office and not in the waiting area. That she had personally taken Ms Colbourne into her office in the back and dealt with her there.
- [35] The Affidavit executed by Ms Colbourne was tendered into evidence. It consists of four short paragraphs. In Paragraph 1 she deposes that she is well acquainted with Eunette Desuza and that she is her daughter. Paragraph 2 sets out the necessity for the Affidavit. It states that the Affidavit is made in relation to a parcel of land at Pigotts and that she is making payments to CHAPA in relation to same; that she has defaulted on the payments and is in arrears. In Paragraph 3 she states that she is willing to transfer the loan in relation to the said land to her daughter who will be fully responsible for the payments on the said parcel of land. Further, that at the termination of the loan, she expects that an Instrument of Transfer be prepared in the name of Eunette Desuza. The last paragraph states that she makes the Affidavit believing same to be true, accurate and correct to the best of her knowledge, information and belief.

The Law

- [36] Cases in which a gift or contract has been set aside on the ground of undue influence have traditionally been divided into two categories: (1) those cases where the court has been satisfied that the gift or contract was the result of actual influence expressly used for the purpose (actual undue influence); (2) those cases in which the relationship between the parties at the time of or

shortly before the making of the gift or contract has been such as to raise a presumption of influence (presumed undue influence).

[37] In **Barclays Bank plc v O'Brien**¹ Lord Browne –Wilkinson referred to the classification adopted by the Court of Appeal in **Bank of Credit and Commerce International SA v Aboody** [1992] 4 All ER 955 at 964 as follows:

Class 1: actual undue influence. In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.

Class 2: presumed undue influence. In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways, viz:

Class 2A. Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2B. Even if there is no relationship falling within class 2A, if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a class 2B case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.

¹ [1993] 4 All ER 417 at 423

- [38] The authorities establish that fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.... Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.' ***Derry v Peek (1889) LR 14 App Cas 337 at 374***, per Lord Herschell

Discussion & Conclusion

- [39] While normally it is the parent, as a person in authority, who is presumed to have undue influence over the child and not necessarily the reverse, under the facts in this case, the court finds that Ms Colbourne has proved the existence of a relationship under which Ms Colbourne reposed trust and confidence in her daughter, Ms Desuza. As a consequence of her age, lack of education and especially because of her serious medical condition, Ms Colbourne entrusted the management of her affairs and everyday needs to Ms Desuza. The burden therefore now shifts to Ms Desuza to disprove the undue influence alleged.
- [40] The court accepts the evidence of Ms Bradshaw in regard to the instructions she received from Ms Colbourne and the process of execution of the Affidavit. I do not accept Ms. Colbourne's version of the events. Ms Colbourne appeared to be quite confused on the witness stand and her memory of events was not reliable. For example even though she admitted to defaulting on the loan, she was adamant that she had missed none of the monthly payments from 1987 when she got the land to the time she was hospitalized. The Executive Officer from CHAPA presented evidence that Ms Colbourne made only nine (9) payments between 1987 and 2007 when the demand for full payment was made. Even when confronted with the records from CHAPA, she insisted that the records were incorrect and the Officer was lying. Ms Colbourne could not recall the amount of the monthly payments nor when she was first hospitalized for her illness.
- [41] In regard to the events at the signing of the Affidavit her evidence was at times contradictory. In her witness statement she states that she knew Ms Bradshaw was an Attorney in that office. In court she stated that she didn't know who the "young lady" was or that she was an Attorney. In answer to Counsel she said that the only thing the lady told her was to sign. In her witness statement she related that the Attorney asked her if she understood what she came to do and whether she was letting her daughter take over the payments. Further, the account given in court

adds many details not given in her witness statement, such as the “hand agreement”. For the first time in court she also stated that her daughter was yelling (making noise pon me) at her to get her to sign the agreement.

[42] With regard to the alleged payments of \$1000.00 monthly to Ms Desuza, the court accepts Ms Desuza’s evidence that at the time of the agreement the house was not rented so there was no rental income to keep, and that no payments were made to her by her mother as alleged.

[43] I am satisfied that it was Ms Colbourne who sought her daughter’s assistance to avoid reallocation of the land to someone else. The court is satisfied that Ms. Colbourne gave the instructions to Ms Bradshaw for the preparation of the Affidavit in the absence of her daughter; that the affidavit was read over and explained to her and that she signed same. The court finds that at the time, her decision to execute the Affidavit transferring responsibility for further payments and full title to the land to her daughter was not as a result of influence unduly exercised by Ms Desuza. The decision was brought about by the exigencies of the circumstances facing Ms. Colbourne.

[44] Furthermore, no evidence amounting to fraud on the part of Ms Desuza has been shown.

[45] Accordingly, Ms Colbourne’s claim for Declarations, Rectification of the Land Register and Damages is denied.

Claim No 2013/0558

[46] The claimants were registered as the owners of the land about February 2009. By letter dated 26th April 2012 Ms. Desuza’s Solicitor requested that her sister formalize a lease agreement for rental of the land. Her sister failed and refused to do so. In June 2012, Ms Desuza instructed her Solicitor to give notice to her sister to deliver vacant possession of the land by 30 September 2012. Ms Riley-Browne admitted in her defence that she lives on the said parcel 34 and that Ms Desuza is the registered owner. Ms. Riley-Browne did not give evidence.

[47] In light of the court’s ruling in Claim No 2013/0722, the claimants are entitled to possession of the land. At best the defendant was a licensee of Ms Colbourne and in the absence of a rental agreement, the claimants can maintain the action for trespass. The letter from Ms Desuza’s Solicitor Ms Riley-Browne dated 19th June 2012 pointed out that her continued occupation of the land in the absence of a rental agreement amounted to a trespass. Ms Riley-Browne was given to

30th September 2012 to vacate the land. She admits that she has failed to do so. The claimants are entitled to the relief sought.

[48] Accordingly, judgment is granted as follows:

In Claim No 2013/0722, Judgment is granted in favour of the defendants, Eunette Desuza and Albert Creese Jr., dismissing the claim.

In Claim No 2013/0558 judgment is granted in favour of the claimants Eunette Desuza and Albert Creese Jr., as follows:

- 1) Possession of the portion of parcel of land situated in Pigotts in the Parish of Saint John and registered in the Land Registry as Registration section: West Central; Block: 11 2093B; Parcel: 34 on which the defendant's chattel house is located.
- 2) An order that the defendant remove her chattel house located thereon and deliver vacant possession of the said land on or before 30th April 2018.
- 3) The defendant do pay to the claimants in respect of the said land \$100.00 per month from the filing of the claim to the date of delivery of possession.
- 4) Cost to be assessed if not agreed.

Clare Henry
High Court Judge

By the Court

Registrar