



THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 405 OF 2007

BETWEEN:

JOCELYN PORTER

Claimant

V

STEINSON FINDLAY

Defendant

Appearances:

Mr. Joseph Delves for the Claimant.

Mr. B. Commissiong, Q.C., and Ms. Mira Commissiong for the Defendant.

2012: January 21, 24, 30, 31
June 21
July 27

DECISION

BACKGROUND

- [1] **JOSEPH, MONICA J. (Ag.):** This suit relates to possession of land at Dauphine. The claimant's case is that she has been in possession of the disputed property for over twenty years. Her grown son was born and grew up on the disputed property. The defendant's case is that the disputed property belonged to his mother Rosa Cunningham (Cunningham) who migrated to Canada, leaving Pastor Chandler (the pastor) in charge of the property. The defendant claims that the disputed property was conveyed to him by Cunningham. When he made entry into the house he was exercising his claim of right.

CLAIM

[2] On 22nd November 2007, the claimant instituted these proceedings against the defendant seeking the following reliefs:

- (1) A declaration that the claimant is entitled to possession of a parcel of land at Dauphine admeasuring 13,287 sq ft as shown on survey plan G44/47 prepared by Osborne Browne licensed surveyor.
 - (2) An injunction restraining the defendant whether by himself, his servants, agents licencees from trespassing on the parcel or otherwise interfering with the claimant or the claimant's servants, agent, licensee or tenant's possession.
 - (3) Damages for trespass to the parcel and damages for wrongful seizure and conversion of he claimant's property, and special damages \$3,150.00.
 - (4) Further and in the alternative a declaration that the claimant is entitled to reside on the premises for life or until she otherwise chooses to vacate same. Costs and such further or other relief as the court considers necessary or appropriate.
- [3] Particulars of trespass are detailed and appear in the judgment. Particulars of loss and special damage are also detailed. The claimant gave these particulars of espottel: She has resided upon the disputed property from the age of seven. She has expended more than \$10,000.00 to repair the house on the disputed property and to keep the same in repair. Her son Sheldon Daniel was born on the disputed property and has lived there all of his life. She understood that she had a right to reside upon the disputed premises for life or for as long as she chooses. The defendant has or ought to have knowledge of her long residence and user of the disputed premises and her improvements thereto.

STATEMENT OF CLAIM

- [4] In 1969, the claimant, as a child, lived with Cunningham. Also living with Cunningham were two other girls, her two daughters and Cunningham's husband. About 1970 Cunningham's husband died, the two other girls left and her daughters had migrated. About 1980, Cunningham and the claimant, by themselves, were living on the disputed property. Cunningham was in failing health and depended on the claimant for assistance.
- [5] Around 1983 Cunningham migrated to Canada to be with one of her daughters. She was then about 20 years and would have been left alone on the disputed property. Not wanting that, Cunningham arranged for her to reside in Kingstown with friends. The claimant went to live with those friends. In 1984, about 6 months after she had left the disputed property being unhappy and pregnant, she returned to live in the disputed property which she knew to be empty.
- [6] The house had begun to deteriorate: It was leaking heavily, several windows and louvers were missing: some of the wood was rotting, had termites and needed replacing. After moving in, the claimant repaired the house with no-one questioning her or her activities. She gave birth to her son, Sheldon Danel thereon and brought him up on the disputed property. About 1987 the claimant left the disputed property to reside with her son's father, leaving some of her belongings and furniture on the disputed property. She kept returning to clean and maintain the house and to ensure that her property had not been interfered with.
- [7] About 1988, the claimant decided to return to the disputed property to live. She did not have the permission or consent of anyone and did not think that she needed any such permission or consent. No one interfered with her, with her residence or occupation of the disputed property.
- [8] Over the years the claimant made numerous repairs to the house. She replaced most of the galvanize sheets in early 1990s to stop the leaking. She changed windows and doors,

installed bolts and locks and painted the house from time to time. She paid no rent to anyone or acknowledged any landlord, overseer or any person claiming to have rights of ownership to the premises. She treated the premises as her own and believed that she had become the owner thereof.

[9] In 1990s the defendant visited from Jamaica where he resides and had a friendly conversation with her unrelated to the occupation of the disputed property.

[10] After Cunningham's death about 2001 the defendant visited and spoke to the claimant. He claimed to be owner and informed her that he intended to take possession of the disputed property. She denied that he was the owner and informed him of her entitlement to the disputed property. There was an argument and the defendant left.

[11] In July 2007 the defendant caused persons to cut fruit trees before they were stopped by the claimant's son. In September 2007, the defendant visited the claimant at the disputed property claiming that he now had a deed for the disputed property. He demanded that she leave the disputed property, but she maintained her denial that he was the owner. The defendant then began to commit various acts of trespass upon the disputed property.

[12] The claimant admits that she received a letter from his solicitors which demanded that she vacate the disputed property by 18th October 2007 or face legal action. The defendant did not institute legal action.

[13] In 2007 after instituting this suit, the defendant removed the roof of the house and broke into the house. People took her things, including clothes, pots, dishes and some money and she never got back those items. He also cut down about 50 holes of plantain and one full bunch of plantain and went away with it.

DEFENCE AND AMENDED COUNTERCLAIM

- [14] I comment that some of the information in the defence and amended counterclaim seems to be hearsay evidence which is not of much use. The defendants allege that the claimant was taken in by his mother Cunningham, but says that the reason and circumstances need to be explained. The claimant as a minor, came under the care of the state as her mother was an inmate of the mental hospital who roamed the street. Cunningham took care of two girls, the claimant and another girl named Annis.
- [15] The defendant denies that in 1969 two of his sisters lived with Cunningham on the disputed property. One sister Cynthia emigrated in 1965; the other Hannah left St. Vincent in 1981 or 1982. Cunningham's husband died on 12th May 1963.
- [16] The defendant denies that Cunningham was failing in health in 1981 but was an energetic person known for the excellent chocolate she made. In late 1983 Cunningham immigrated to Canada, spending two months in Jamaica with the defendant and his wife on her way to Canada. She died in Canada on 2nd October 2002 after a short illness.
- [17] Cunningham was a member of the Good Tidings Baptist Church and was a close friend of the pastor, whom she left in charge of the disputed property, and who died about 1998. The pastor's son, Leon Chandler, stepped into his father's shoes with regard to the disputed property, continuing to visit and generally overseeing the premises on Cunningham's behalf.
- [18] The claimant was over eighteen when Cunningham migrated. Cunningham, not wanting the claimant to return to the life she lived with her mother, persuaded a Christian friend in Kingstown to take in the Claimant. Cunningham arranged for her nephew, Jerome Gibson (Gibson) to live in the house and take care of the disputed property, with the pastor in overall control. Gibson lived alone in the disputed property for about 15 months after Cunningham left for Canada.

- [19] The defendant denies that the claimant returned to the disputed property six months after she went to live in Kingstown. While Gibson lived in the disputed property the claimant visited her friends in the neighbourhood and sometimes passed by the property. Following unfavourable reports regarding his life, Cunningham requested Gibson to vacate the property and hand over the keys to the pastor which he did about 1985.
- [20] About 1986 the claimant went to the pastor, informed him that times were hard and begged him to allow her to move into the house because she had nowhere else to live. The pastor contacted Cunningham in Canada and both of them being moved by Christian compassion permitted the claimant to move into the disputed property until she sorted herself out.
- [21] It was never Cunningham's intention for the claimant to live there indefinitely for, apart from being a place for the family to come to, it was her intention ultimately to leave it by will to the defendant which she did by her last will dated 24th January 2001, in which she appointed Percy Ashford Gibson her sole executor, devising the premises to the defendant, by deed of assent No. 4244 of 2006 dated 13th October 2006.
- [22] The defendant says that the dwelling house was not in a state of disrepair as alleged by the claimant. Cunningham regularly engaged a cousin Micah Findlay who is a builder and cabinetmaker to do whatever little maintenance was needed and it was he who built most of Cunningham's furniture. After Cunningham migrated to Canada maintenance was done by the pastor and on one occasion while Cunningham was in Canada, the claimant effected repairs with money given to her by the defendant. Around 2003 the defendant through Maurice Warrican gave the claimant \$1,000.00 to effect repairs and to pay taxes.
- [23] The defendant denies that the claimant planted fruit trees and states that it was Gibson who planted the golden apple tree and the lime tree and transplanted cinnamon tree from one part of the property to another.

- [24] The defendant was not in exclusive possession of the disputed property as the defendant and his siblings made several visits there picking and taking away fruit and other produce. The claimant never objected to this or tried to prevent them from so doing, and always recognized their right as Cunningham's children to do so.
- [25] The claimant accounted to Cunningham for taxes as can be seen from the contents of a letter she had written to Cunningham dated 12th October 1997. That letter carries the Pastor's post office box No. 570 which the claimant used until she formed the intention to claim the defendant's property as her own. Until the Pastor's death the claimant was accountable to him as Cunningham's agent for occupation of the premises.
- [26] Up to the pastor's death in 1998, he and his son Leon used to go to the premises to see to its general condition and upkeep and to pick produce which he sold to pay taxes and Cunningham's society dues. The defendant denies that he spoke to the claimant about Cunningham's ailing health. The subject never arose as Cunningham was in good health.
- [27] The only visit in the 1990s that the defendant made to St. Vincent was with his wife in July 1996. They visited the premises where they met the claimant in the company of a gentleman. The defendant, as he usually does, picked nutmegs and mangoes, the only crops then available. The claimant made no objection to his walking on the property and behaving as owner of it.
- [28] In the reply and defence to counterclaim, the claimant joined issue with the defendant on his defence except where she has made admissions.

WRITTEN SUBMISSIONS: On behalf of Claimant - 18th July 2012:

ISSUES

- [29] Mr. Delves points to the issues of the Court being of mixed fact and law:
- (1) Who was in possession of the subject premises at the material time?
 - (2) What was the nature of the possession?

- (3) What were the legal rights, if any?
- (4) Did the defendant have any or any proper title at the time?
- (5) Who was the trespasser in the circumstances?

CLAIMANT'S SUBMISSION

[30] Mr. Delves submits that there is a plethora of evidence of the claimant's possession from witnesses for both parties. The claimant case is in trespass. It is trite that trespass to land consists of interference with possession and that it is actionable per se, whether or not the occupier suffered any damage. Counsel refers to Textbook on Torts where Michael Jones at p 494, said:

"Once the invasion is proved it is for the defendant to justify his action, which he will normally be unable to do simply by showing that he acted reasonably or with due care. Nor does the claimant have to prove that he has been damaged – the interference with his right is injury enough to establish liability. These features of the action enable its use for three distinct purposes: as a remedy for damage actually inflicted on the land, as a means of settling title to land and to a lesser extent, as protection against abuse of the powers of officialdom."

[31] Counsel argues that there can be little doubt that the claimant was in possession. The critical issues in this case are the nature of that possession, and whether the claimant was in adverse possession from about 1984 and 1987 when she went into the house up to until 2007 when she was forcibly ejected by the defendant or for any 12 year period during that time.

[32] Further, Mr. Delves submits: the ground work for the claimant's case to adverse possession, with the necessary animus, was established by the claimant and corroborated and supported by the defendant and his witnesses.

FACTS

[33] Cunningham was a religious woman and was a close friend of the pastor. From about 1969 the claimant lived with Cunningham who had offered her a home. At the time the

claimant moved to reside on the disputed property with Cunningham, there were other persons living with her. They were Cunningham's husband, two daughters and two other girls.

[34] The two daughters left St. Vincent, one in 1965, the other around 1981 /1982. The two girls ceased living with Cunningham. Her husband died on 12th May 1963. In her witness statement, the claimant stated that Cunningham depended on her and she was 'her foot and hand'. She stated that Cunningham was in failing health.

[35] I do not believe that Cunningham's health was deteriorating to the extent that the claimant attempts to make out. Cunningham was well enough to migrate to Canada in 1983 to live with one of her daughters. On her way to Canada she stopped in Jamaica, where she spent two months with the defendant and his wife.

[36] Around 1983 the claimant was about 20 years of age. Cunningham arranged for the claimant to reside with one of her (Cunningham's) Christian friends in Kingstown. I accept the evidence that Cunningham's nephew, Jerome Gibson, (Gibson) moved into the house on the disputed property. About 1985, Gibson vacated the disputed property, locked up the house and delivered the keys to the pastor. I believe Leon Chandler that, when Cunningham left for Canada, she left the pastor in charge of the disputed property.

[37] I find that around 1986 the pastor was in charge of the disputed premises. In 1987, the claimant left the disputed property and went to live with her son's father. She kept some items in the house and visited periodically, moving between both houses. Her son Sheldon continued to live in the house on the disputed property.

[38] The claimant wrote a letter dated 12th October 1997 to Cunningham in Toronto, Canada. She gave her address on that letter as POB 570, Kingstown which was the Pastor's post box. I shall be referring to that letter.

[39] The pastor died about 1998, and his son, Leon Chandler, performed some of the functions that the pastor had undertaken. I believe Leon Chandler's evidence that after the pastor's death, the claimant asked him for a number of documents stating that the defendant had sent her for them. He handed over the documents to her.

[40] Cunningham died in Canada on 2nd October 2002. By her will dated 24th January 2001, she appointed Percy Ashford Gibson of Gomea her executor, and devised the disputed property to the defendant. The defendant claims, which has not been denied by the claimant, that by deed of assent dated 13th October 2006, registered as no. 4244 of 2006, the disputed property was conveyed to him.

Letter dated 12th October 1997:

[41] To determine the capacity in which the claimant occupied the disputed property, I consider the text of a letter she wrote to Cunningham on 12th October 1997, an extract of which reads:

".....I did receive your two letters along with the money. Thanks for everything."
I did ask pastor Chandler if he did heard from you he didn't receive any letter he said for the longest while...

...with the taxes I already paid it since in July. I always remember to pay it around that time it does be only \$25.00 a year."

[42] When she was asked if she had enquired of the Pastor about Cunningham, her response was that it was the pastor who had asked and when she had said that it was untrue. What was her reason for denying this? I think it is that she wanted to convince the court that she had no cause to enquire of Cunningham, and it was the pastor showing interest in Cunningham. Additionally, that the court should not accept that the pastor was in charge as here he is out of touch with the person who is said to be the owner of the disputed property. Here is her oral evidence:

"Pastor was the one who ask me if I heard from Mrs. C. and I said no. When I said I asked Pastor Chandler it wasn't true".

[43] Her explanation for mentioning payment of taxes in the letter was:

"Well with the taxes. She never send any money to pay taxes. I just wanted them to know I was in charge and paying the taxes. By Nennie, it's Mrs. Chandler. By them I meant whosoever it concerned that am paying the taxes. She didn't give me permission to stay in the house. I just decide to write that I paid the taxes. I so decide. She didn't ask anything about the taxes so I just wrote the letter and say whatever I did. She wasn't interested in anything about the taxes. She never mentioned it in the letters. She was not interested. I know she is not interested as she didn't ask about it."

[44] By that letter, the claimant acknowledges that she received money from Cunningham. From the phrasing of that letter, I conclude that Cunningham had enquired about the payment of the taxes. The claimant assured Cunningham that the taxes on the disputed property had been paid.(whether or not that was so). Why would the claimant give that account to Cunningham? Why did the claimant consider that she was required to give Cunningham that information? If the claimant was paying taxes as owner, there was no requirement or need to account to Cunningham.

[45] There could be only one reason. She was accounting to the owner Cunningham. It was an acknowledgment to the owner of the disputed property that she (claimant) always remembers when to pay the tax, and that the tax of \$25 for the land had been paid in July.

[46] From the information coming from the claimant, I find that there was some arrangement regarding the disputed property, between the claimant and Cunningham. I find that, by that letter, the claimant acknowledged Cunningham's ownership of the disputed property. I find that the claimant was in possession of the disputed land with owner Cunningham's permission. The question of adverse possession of the disputed property by the claimant arises.

[47] Cunningham died on 2nd October 2002, and the permission she granted to the claimant ceases from the date of her death. Time runs against Cunningham's estate from 3rd October 2002. This suit was filed on 22nd November 2007, a period of some five years has

elapsed. Twelve years of possession required in accordance with statutory limitation have not passed.

THE LAW APPLIED

[48] It is necessary for the claimant to prove on a balance of probabilities that she was in possession for twelve years. In proving possession she would need to prove that her possession is adverse to all persons including the owner.

[49] Section 2 of the Possessory Titles Act (Cap 328) (Act) gives the definition of "adverse possession": "factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of 12 years or more accompanied by the requisite intention to possess the said land as owner thereof," The claimant is to satisfy the court on a balance of probabilities, of her physical possession of the disputed property and her intention to possess the land (*animus possedendi*). In **Powell's** case Slade J. at 38 P & CR 452, 470:

- (1) "In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the *prima facie* right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.
- (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (*animus possidendi*)".

[50] The case for the claimant is that she has been in possession of the disputed property for over twenty years and the defendant trespassed on the disputed property. The defendant claims that Cunningham was owner of the disputed property which she conveyed to him and that he has possession of the disputed property as he is the owner.

[51] The claimant was in occupation of the disputed property from 1987, with the pastor being in charge of the disputed property on behalf of Cunningham. I have found that in 1997 she acknowledged Cunningham's ownership of the disputed property. She was on the disputed property with Cunningham's permission. That permission ceased with Cunningham's death in 2002, and the right of action against Cunningham's estate accrues on Cunningham's date of death. I find that, having acknowledged Cunningham's ownership in 1997, the claimant's intention to possess the disputed property could commence only at Cunningham's death. Part 2 of the Schedule to the Limitation Act,(Cap 129), provides:

1. "Where the person bringing an action to recover land of a deceased person (whether under a will or on intestacy) the deceased person -
 - (a) was on the date of his death in possession of the land or.....; and
 - (b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death"

[52] The claimant was in occupation, without permission, from 2002, and time began running in her favour and against the Cunningham estate from 3rd October 2002.

[53] The factual possession of the disputed property by the claimant must be exclusive. The owner and the possessor cannot be in possession at the same time. The possession must be undisturbed.

[54] "Undisturbed" relates to the acts of the owner in relation to the disputed property. Disturbing possession by an adverse possessor, can occur by an owner taking some physical action, as entering with intent to repossess the disputed land. The entry of the owner upon the disputed property with the intent to repossess, is a clear exercise of ownership that disturbs possession.

[55] There must be no doubt as to the owner's intention of exercising ownership. The entry must be peaceable, must be well known, and must be open. However, making physical

entry on disputed property may not be such a good idea, as that might result in combat between the owner and the possessor, thus destroying the element of peaceable entry.

[56] The evidence from the claimant's witness statement is that, on one occasion, the defendant visited her, claiming to be the owner of the disputed property. He informed her that he intended to take possession of the property. She denied that he was the owner and informed him that she was entitled to it. There was an argument between them and the defendant left. That conversation gives an indication of the defendant's intention.

[57] Another instance of intention is that the defendant caused a solicitor to write a letter to her, demanding that she leave the disputed property by 18th October 2007, or face legal action.

[58] The claimant's evidence is that the defendant did not institute legal action, but instead chose to trespass and threaten her and her son with violence and physical harm. The claimant states that the defendant began to commit various acts of trespass upon the disputed property, which she details in particulars of trespass in her claim, reproduced in her witness statement.

[59] It has been accepted that the disputed property was conveyed to the defendant as owner on 13th October 2006. I find that, by that deed, and on that date, the defendant obtained a right to possession of the disputed property. Clerk and Lindsell on Torts 18th ed. p.928 para 18-11:

"Proof of ownership is prima facie proof of possession, unless there is evidence that another person is in possession, but if there is a dispute as to which of two persons is in possession, the presumption is that the person having a title to the land is in possession and even a long continued assertion of title, without proof of title, can be of significance "in that it attaches to the activities of those claiming under it a quality of acts of possession."

[60] From the account given by the claimant of the defendant's entry and acts on the disputed property, I conclude that the defendant was attempting to make entry on, and repossess, the disputed property as owner. It is noticeable that the instances of entry by the

defendant occurred in July and September 2007, (after he had obtained a right to possession to the disputed property in 2006).

- [61] I find that the entries on the disputed property in 2007, by the defendant, constitute entry by an owner repossessing property. By those entries in 2007, the defendant disturbed possession of the disputed property by the claimant, which possession commenced in 2002 (after Cunningham's death). The claimant had been in undisturbed possession for five years (2002 to 2007).
- [62] The institution of legal action regarding ownership of disputed property, stops the running of time under the Limitation Act against an owner. The defendant did not institute legal action. He participated in legal action in that, when the claimant filed an action, he filed a defence in answer to the claimant's claim. By so doing, any time running against the Cunningham estate is suspended from the date the defence is filed, that is, 5th February 2008.
- [63] Two situations apply here. The first, the running of time in favour of the claimant and against the Cunningham estate from 3rd October 2002, after Cunningham's death. The claimant's possession was disturbed in 2007 when the defendant, as owner, made entry on the disputed property. The element of undisturbed possession by the claimant has not been satisfied. The claimant was in undisturbed possession from 2002 to 2007, a period of five years. The statutory period of limitation has not elapsed.
- [64] The other situation is that legal action stops the continuity of possession. On 5th February 2008, the continuity of possession by the claimant was suspended, when the defendant filed a defence to the action that the claimant had instituted, claiming ownership of the disputed property. The number of years between commencement of possession by the claimant (2002), and the filing of defence by the defendant (2008) is six years. The claimant has not been in possession for the statutory period of twelve years.

TRESPASS

[65] **Clerk and Lindsell** 18th ed. p 927 para 18-10 the learned author states:

Trespass is actionable at the suit of the person in possession of land, who can claim damages or injunction or both."

[66] The claimant's instances of the defendant's entry (trespass acts) unto the disputed property are:

- (1) In July 2007 the defendant entered, either by himself or his servants and agents and cut trees, picked fruit and loitered on the land:
- (2) On 30th October 2007, the defendant entered upon the disputed property with other persons, broke and entered the house, interfered with the property and removed furniture:
- (3) On 30th October 2007 the defendant entered the house, left the electricity meter hanging which was disconnected by VINLEC after she had reported it.
- (4) On 9th November ... the defendant caused the water supply to be disconnected; the defendant caused damage to the doors and locks of the house.

[67] Counsel for the claimant's submission is that the defendant forcibly ejected the claimant. The claimant claims that In 2007 after instituting this suit, the defendant removed the roof of the house and broke into the house. People took her things, including clothes, pots, dishes and some money and she never got back those items. He also cut down about 50 holes of plaintain and one full bunch of plantain and went away with it.

[68] The defendant's defence claims that his solicitor by letter to the claimant dated 4th October 2007 demanded that the claimant should vacate the disputed property. She did not and he decided to exercise his claim of right and take possession of his property. Hitherto, he states, "he had always entered on the premises and picked fruit, did other acts of ownership and remained there without the claimant's consent."

[69] The defendant as owner – as he has the right to possession - may enter and try to repossess the disputed property. His entry must not be of a violent nature. The acts complained of by the claimant took place in the claimant's absence and there is no complaint of a personal attack or violence involving the claimant. The claimant mentions threats but no direct physical encounter.

[70] I do not think that the acts of cutting trees and picking fruit constitute acts of trespass as the defendant would, in fact, be cutting trees and picking fruit on the disputed property that he claims as owner. The defendant in breaking and entering the house on the disputed property is breaking and entering the property as owner.

[71] The defendant must not intentionally cause damage that is unreasonable in effecting entry. If he does so he is liable for the damage caused. I accept that he caused damage to electrical connection and is liable for damage so caused but no value of damage is presented to the court.

[72] The learned author of Clerk and Lindsell on Tort p. paragraph 18-32 writes:

"If a person entitled to the possession of premises can manage to get in without committing a forcible entry, even though he does so by means of an artifice, he may then justify using force to defend his possession so acquired without rendering himself liable even to criminal prosecution. He may justify forcibly expelling a trespasser, and it makes no difference that the trespasser was on the premises before the owner. An expulsion, after a peaceable entry by a party having title, does not make the entry forcible.....and in no case must he use more force than the occasion requires; for any violence in excess of what is reasonably necessary to effect the expulsion the owner will be liable."

CONCLUSION

[73] The claimant claims that she repaired the house and her evidence is that she spent \$10,000.00 replacing galvanize but burnt the receipts. That item is not specifically claimed in her filed claim. Although the claimant has not presented a value with regard to the damage to the electrical connections, I will make an award.

FURNITURE

[74] The claimant claims special damage of \$3150.00 for property which she claims were removed from her house by the defendant on or about 30th October 2007. I think that the defendant ought to have made an inventory of the furniture in the house when he entered. The claimant claims that the small table and three chairs were built by her son's father Chesley Daniel. She met the other items in the house but they had become dilapidated and had been repaired by Chesley Daniel. I accept that the other items were dilapidated and she had them repaired, so that with that act I regard them as hers. I allow the special damages sum of \$3150.00.

On the claimant's claim:

[75] The claimant's claim partially fails. The Court does not grant the declaration and injunction sought by the claimant.

[76] The court finds that the defendant did not trespass on the disputed property as he entered on the disputed property in the process of repossessing as the owner of the disputed property. The defendant in making entry to repossess intentionally damaged the electrical connection. I award \$500.00.

On the defendant's claim:

[77] The defendant's evidence is that he owns the disputed property. I have found that, from the date the disputed property was conveyed to him, he had a right to possession and that his acts on the disputed property were in furtherance of that right to possession.

[78] The defendant's counterclaim is for mesne profits from 18th October 2007 to the date the claimant vacates the disputed property. The claimant has left the disputed property although it is unclear what date this took place. The defendant has not satisfied the court on this point and I award no mesne profits.

[79] Although the defendant is entitled to some costs, the court makes no award of costs in this matter against the claimant. I accept counsel's submission that the claimant obtained an injunction against the defendant on 28th November 2007 restraining him, his servants and agents from trespassing on the disputed property until final determination of the matter. As I understand it, the defendant ignored that injunction and entered on the disputed property. I award no costs to the defendant.

[80] There were long pauses during the giving of evidence by the defendant. The defendant's oral evidence was: "This thing I have now I didn't always have it". On being asked 'what was the thing' he indicated that it was his memory. I am satisfied that the defendant has a medical problem and that he was attempting to assist the Court, as much as it was possible in his situation.

ORDER

[81] It is ordered:

- (1) The claimant's claim partially fails. The Court does not grant the declaration and injunction sought by the claimant.
- (2) The defendant is to pay special damages of \$3,150.00 to the claimant.
- (3) The claimant is awarded \$500.00 for the damaged electrical connections to be paid by the defendant.
- (4) As owner, the defendant has a right to possession of the disputed property.
- (5) No order as to costs.


MONICA JOSEPH
HIGH COURT JUDGE (Acting)
25th July 2012.