

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV 0666/ 2006

BETWEEN

**OLIVER ADAMS
OLIVIA ADAMS**

Claimants

AND

PAMELA ADAMS

Defendant

Appearances:

Ms. Sherrie Ann Bradshaw for the Claimants

Mrs. Eleanor Solomon for the Defendant

2012: February 27
June 6

JUDGMENT

- [1] **REMY J.:** This is a claim involving the ownership of property, namely a dwelling house together with the land on which it stands.
- [2] Oliver Adams and his sister Olivia Adams are the Claimants in this case. The Defendant Pamela Adams is the ex-wife of their brother Devlyn Adams. The Claimants in their Statement of Claim filed on the 10th day of November 2009, plead that the 1st Claimant Oliver Adams is the owner of the concrete house situate in Horsford Hill, Liberta Village (the dwelling house) and erected on land described as Registration section: South East; Block No: 56-2282 A; Parcel: 401 (the Land) and which is owned by the 2nd Claimant Olivia Adams.

[3] The Claimants' claim is for:-

1. A Declaration that the 1st Claimant is the beneficial owner of the house situate at Horsford Hill, Liberta Village, St. Paul's, Antigua and registered and recorded in the Land Registry as Registration Section: South East; Block: 56-2282A, Parcel 401 in the name of the 2nd Claimant;
2. An order that the Defendant do deliver vacant possession of the house and property situate at Horsford Hill, Liberta Village, St. Paul's, Antigua and registered and recorded in the Land Registry as Registration Section: South East; Block : 56-2282A, Parcel 401 in the name of the 2nd Claimant;
3. An order that the Defendant is a trespasser in the 1st Claimant's one bedroom concrete dwelling house and on the 2nd Claimant's land;
4. An injunction to restrain the Defendant whether by herself, her servant, agents or otherwise from destroying, renovating the house of the 1st Claimant and entering or placing any object any kind whatsoever thereon;
5. An injunction to restrain the Defendant whether by herself, her servant, agents or otherwise from placing any object any kind whatsoever on the land;
6. Damages for trespass against the Defendant;
7. Interest pursuant to the Eastern Caribbean Supreme Court Act, Cap. 143;
8. Such further or other relief as this Honourable Court deems just; and
9. Costs.

[4] In her Defence and Counterclaim filed on the 14th January 2010, the Defendant Pamela Adams denies the allegations contained in the Claimants' Statement of Claim. She admits that the second Claimant became the registered proprietor of the land in 2008, but alleges that this was because of a "mistake in the Ministry of Agriculture." She denies that the first Claimant constructed the dwelling house as alleged and states that in 1996, herself and her ex-husband commenced building a concrete dwelling house on

the land and began residing in the "incomplete structure" in 1997. The Defendant pleads that the construction of the dwelling house remains incomplete and that she has spent "in excess of \$10,000.00" on the said house, and counterclaims the following:-

1. That she is the owner of the concrete dwelling house on the land
2. An order that she is entitled to remain in the dwelling house or alternatively that the Claimants pay the value thereof.
3. Prescribed costs.
4. Such other relief as to the court may seem just.

[5] The Claimants filed a Reply and Defence to Counterclaim on 4th February, 2010. They state that the Defendant made no contribution whatsoever to the construction of the dwelling house and was never authorized by the Claimants to renovate and/or construct or otherwise deal with the dwelling house. They dispute the Counterclaim and state that the Defendant does not have an interest in anyway whatsoever in the dwelling house and that the 1st claimant is the sole beneficial owner of the dwelling house which is erected on land legally and beneficially owned by the 2nd Claimant.

ISSUES

[6] The issues that arise for determination for the Court in this case are as follows:-

1. Whether or not the Defendant has a beneficial interest in the parcel of land.
2. Whether the 1st Claimant is the sole beneficial owner of the house erected on the said land.
3. Whether the Defendant is a trespasser in the concrete dwelling house situate on the said land.
4. Whether the Claimants have been deprived of the use of the house and land respectively and have suffered loss and damage.
5. Whether the Claimants are entitled to injunctive relief.

EVIDENCE

- [7] Oliver Adams (Oliver) in his Witness Statement stated that his sister Olivia Adams (Olivia) became the registered proprietor of the Land on the 20th November 2008, having purchased the Land from the Government. He states that sometime between 1990 and 1991, the Defendant came to Antigua and took up residence with his brother Devlyn Adams (Devlyn) in a one bedroom chattel house that was on the Land for years and used by Devlyn as his residence. The Defendant and Devlyn got married on the 2nd April 1992. In 1995, the chattel house was completely destroyed by Hurricane Luis and the Defendant and Devlyn thereafter resided with himself and his family in their 3 bedroom matrimonial home for about 5 years until, for "privacy reasons", he requested that they vacate his home. After hurricane Luis, he asked and obtained permission from Olivia to build a house on her land in order that he would rent it.
- [8] Oliver states that in order to assist Devlyn in placing a roof over his head, he halted his plans to build a house and decided to renovate and turn the garage on the property into a one bedroom house so that the Defendant and Devlyn could reside there temporarily. He was employed with George Lewis' Construction Firm and had a good relationship with Abbott Brothers & Co. Ltd (Abbotts); he therefore decided to credit for Devlyn all the building materials and supplies from Abbotts for the construction of the dwelling house. He stated that construction began sometime between 1997 and 1998 and that he is still indebted to Abbotts for the materials and supplies. In or about 1998, during the construction stages of the concrete house on the land, he permitted the Defendant and Devlyn to occupy it rent free. The house was unfinished at the time and consisted of one bedroom on the first floor. Devlyn vacated the house sometime in the middle of 2003 as a result of differences between himself and the Defendant, but the Defendant remained in occupation of the house. Himself and his sister Olivia have made numerous requests to the Defendant to vacate the concrete dwelling house and deliver possession of the Land to them on the basis that her licence to occupy the same had come to an end; but that she has failed and/or refused to do so.

- [9] Oliver states that in or about 2007 and 2008, the Defendant, without the consent and approval of himself or Olivia, commenced renovation and construction works on the dwelling house, despite being requested to desist from doing so. In January 2007, himself and Olivia instructed their Solicitor to give notice to the Defendant to vacate the premises. By letter dated January 10, 2007 the Defendant was given notice requiring her to vacate the premises by the 31st January 2007. He states that the Defendant continues in wrongful occupation of the land and dwelling house, by reason of which he has been deprived of the use of the dwelling house, and Olivia has been deprived of the use of her land, and that they have thereby suffered loss and damage.
- [10] Under cross-examination, Oliver re-iterated that he credited materials from Abbott Brothers on behalf of his brother Devlyn and the Defendant to build the house and that to date no moneys were given to him for the materials credited.
- [11] The evidence of the Second Claimant Olivia Adams (Olivia) as contained in her Witness Statement is basically as stated in that of the First Claimant Oliver. She states that she applied to the Ministry of Agriculture for the purchase of a parcel of land. She states that by letter dated 5th October 2004, the Ministry of Agriculture wrote to her and advised her of the allocation of the land which they agreed to sell to her for the sum of \$15,339.71 which sum was to be paid by way of monthly installments. Over the years, she made all the payments, and on the 20th November 2008, became the registered proprietor of the Land. She confirms that she gave permission to Oliver to build a house on the Land so that he would have rented the same. She states that Oliver and herself made numerous requests to the Defendant to vacate the concrete dwelling house and deliver up possession of the land on the basis that her licence to occupy the same had come to an end, but that the Defendant has failed and/or refused to vacate the same. She states that herself and Oliver instructed their Solicitor to give notice to the Defendant to vacate the premises, and that this Notice was issued to the Defendant by letter dated the 10th day of January, 2007 requiring the Defendant to vacate the premises by the 31st day of January, 2007. Olivia states that the Defendant remains in wrongful occupation of the

Land and the concrete house situate thereon, as a result of which she has been deprived of the use of her land and has suffered loss and damage.

[12] Despite a rigorous cross examination by Ms. Solomon, Olivia's evidence was not contradicted.

[13] Devlyn Adams (Devlyn), the Defendant's ex-husband, gave evidence on behalf of his siblings, namely the First and Second Claimants. In his Witness Statement, Devlyn states that in late 1990, he invited the Defendant to Antigua as they had just commenced dating. On her arrival, she took up residence with him in a one bedroom chattel house that was on the land for years and used by him as his residence. He states that this chattel house was completely destroyed by Hurricane Luis in 1995, after which himself and the Defendant began residing with Oliver and his family in their 3 bedroom house, and in which they resided for the next 5 years. Devlyn states that at no time during and after the construction of the house and during her occupancy of the same did the Defendant give him money to pay to Oliver for the building materials and supplies credited.

[14] Under cross examination, Devlyn testified that although he was to repay his brother Oliver for the materials credited, he did not do so. He said that his brother is the owner of the house and that the Defendant did not assist with the construction. He gave no moneys towards the construction of the house; his contribution consisted of some labour. He further testified that the Defendant did not pay any bills, but that she "decorated the home".

[15] The Defendant Pamela Adams (Pamela) in her Witness Statement states that during the marriage, herself and the Claimants were "good friends". She states that herself and Devlyn lived in the wooden chattel house until it was destroyed by the hurricane in 1995, and that thereafter they lived with Oliver for approximately one year. In 1996, herself and Devlyn started to build a concrete house on the land and started living in it in 1997, while it was still "incomplete." She stated that Oliver, Devlyn and herself had a

discussion about the materials for the house and decided that they would get them from Abbotts. It was agreed that Oliver would credit the finishing materials from Abbotts and that Devlyn and herself would give him the money to pay Abbotts for the materials. This arrangement was in place from about 1997. Pamela stated that prior to her divorce from Devlyn, the house was their "matrimonial home" and that she made both direct and indirect contributions to the said home by paying utility bills, decorating the house, doing plumbing work and minor repairs around the house, including changing 2 doors. She stated that during the construction of the house, she would carry cement blocks, water and other materials to the other workers and that she helped in the construction of the house. Since the divorce in 2006, she has made improvements to the house costing \$10,536.00. These improvements, which were to enclose the patio area in order to extend the kitchen, were completed in or around July 2008. She states that she is paying for the cost of the said improvements.

- [16] Under cross examination, Pamela testified that the construction of the dwelling house commenced in or around 1997/1998 and that the statements and invoices referenced to from Abbott Brothers in the Trial Bundle of documents were those related to the materials for the construction of the house. She stated that herself and Devlyn paid moneys to Oliver for the materials credited but she was unable to provide the Court with an estimate of the moneys paid and provided no proof of the alleged payments. Pamela testified that she is the sole owner because Devlyn stated during "the divorce trials" that he had no interest in the house and further that he wanted nothing to do with her and the children. She had to admit that Devlyn was granted custody of their daughter during the divorce proceedings, while she was granted custody of their son. She testified that she renovated the house and did not see the need to ask permission of the Claimants to renovate as she was the owner of the house. She stated that she was the owner of the house even to the exclusion of Devlyn. When questioned by Ms. Bradshaw as to the reason why she did not make an application for declaration of her interest in the dwelling house under the Married Women's Property Act during the divorce proceedings, Pamela replied that she did not see the need to, as she was the owner of the house.

- [17] In relation to the Land owned by Olivia, Pamela testified under cross examination that she was entitled to the Land.

FINDINGS

- [18] From the evidence before the Court, I find the evidence of the Claimants more credible than that of the Defendant, whom I found to be a most unreliable witness. I found the Claimants to be honest and straight forward witnesses and have no difficulty in accepting their evidence. I find no evidence that the second Claimant Olivia acquired the property as a result of a "mistake" on the part of the Ministry of Agriculture, as alleged by the Defendant. In any event, it is undisputed that Olivia is the registered proprietor of the Land. The Defendant is obviously intelligent and quite worldly. She did not impress me, however, as a witness of truth, either from her demeanour or from her evidence.
- [19] Certain facts are not disputed. It is undisputed that the Defendant and Devlyn first resided in the wooden chattel house which had been the residence of Devlyn, and in which Devlyn had resided prior to the Defendant's arrival in Antigua. It is also undisputed that after Hurricane Luis, which destroyed the wooden chattel house, the Defendant and Devlyn resided with Oliver in his matrimonial home. I also find accept that they resided with Oliver in his house for a period in excess of the one year as alleged by the Defendant. It is undisputed that the Defendant and Devlyn obtained a divorce in 2003 and that Devlyn vacated the dwelling house, leaving the Defendant in occupation thereof. I believe the evidence of Oliver that he took the materials on credit from Abbotts building supply and that he paid for the said materials. I also believe Oliver's evidence that he was not repaid by either Devlyn or the Defendant. Devlyn in his cross-examination testified that he had not repaid Oliver; he stated that his contribution was only "in labour". The Defendant also testified that she did not repay Oliver – "not directly". She testified however, that she was present when Devlyn gave monies to Oliver for paying off the credit; she could not give any indication as to how much was paid, either at any of those occasions, or in total. I have difficulty accepting the Defendant's evidence.

[20] I do not believe the Defendant's evidence that she contributed to the payment of the materials. Apart from the fact that she produced no receipts to substantiate her claim, I do not think any of her evidence with respect to the construction of the dwelling house is credible. In the view of the Court, the dwelling house was constructed without any financial assistance from either the Defendant or Devlyn. According to Devlyn's evidence, which I accept, he only contributed to the construction of the dwelling house by providing labour. Significantly, Devlyn does not claim a share or interest in the said dwelling house. I also do not accept the evidence of the Defendant that she contributed to the maintenance and upkeep of the dwelling house.

[21] I do not accept the evidence of the Defendant that she made application to the Ministry of Agriculture to purchase the Land. I have difficulty in accepting that the Defendant was unable to provide either a copy of the said application made to the Ministry or else a copy of a letter indicating that she had done so. I find it even more improbable that, even if her "Attorney at the time" could not find a copy of the said application, that no letter was written under his hand acknowledging that he in fact had been retained by the Defendant to make such an application on her behalf.

ANALYSIS

[22] On the evidence before the Court, I find that both Devlyn and the Defendant occupied the Land and dwelling house with the permission of the Claimants. The evidence is undisputed that the Defendant and Devlyn had previously resided in a wooden chattel house but that this wooden chattel house was destroyed during the passage of Hurricane Luis. It is also undisputed that Devlyn and the Defendant thereafter took up residence in the dwelling house while it was still "unfinished". Based on the evidence before the Court, the materials for the construction of the dwelling house was paid for by the First Claimant Oliver. Further, that Oliver allowed Devlyn and the Defendant to temporarily occupy the dwelling house rent free. The evidence of the Claimants as contained in their Witness Statements is that, after Devlyn vacated the dwelling house,

they requested of the Defendant on numerous occasions, that she vacate the dwelling house but that she refused to do so. That evidence was not challenged or discredited during cross examination of either of the Claimants.

[23] The Defendant has produced no cogent evidence to substantiate her claim that she carried out improvements to the dwelling house to the tune of \$10,000.00 as she alleges. She has also failed to prove that if she carried out improvements or repairs, that she had the permission or consent of either one or both of the Claimant to do so. In fact, the Defendant boldly asserts that she required neither the permission nor the consent of either of the Claimants to renovate "her house."

[24] Based on the evidence and my finding that the Defendant and Devlyn were in occupation of the dwelling house and Land with the permission of Oliver and Olivia, they were licensees. There is no evidence of a contractual arrangement between the Claimants and the Defendant and Devlyn, so the Court is unable to infer that they were anything other than bare or gratuitous licencees.

[25] Before dealing with the issues identified in paragraph 6 above, the Court finds it necessary to deal with the submission of Ms. Solomon Learned Counsel for the Defendant with respect to the Witness Statements of the Claimants. Counsel submits that "little, if any, weight" should be attached to their Witness Statements. She bases her submission on the fact that the Claimants' Witness Statements were almost identical and were not in their own words. The Court notes that Part 30 of the Civil Procedure Rules (CPR) 2000 states that the Witness Statement should **as far as is practicable**, be in the Witnesses' own words. The Court is however, of the view that the fact that the Witness Statement does not appear to be expressed in the words of the Claimants in this case, is no reason to disregard the said Witness Statements, or to treat the evidence contained therein in a negative light. The Court notes also that no objection was taken by Counsel for the Defendant at the start of the trial to the form or content of the Witness Statements of the Claimants. Additionally, the Court had an opportunity to see and hear the

Claimants at the trial and to observe their demeanour. As stated previously, the finding of the Court is that the Claimants were credible witnesses.

Issue No. 1 - WHETHER OR NOT THE DEFENDANT HAS A BENEFICIAL INTEREST IN THE LAND.

[26] In Antigua and Barbuda, the law relating to title to land is governed by the Registered Land Act, Cap. 374 (the Act). Section 23 of the Act provides as follows:-

23. "Subject to the provisions of section 27 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject –

- a) To the leases, charges and other incumbrances and to the conditions and restrictions , if any, shown in the register; and
- b) Unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register....."

[27] The undisputed evidence before the Court is that the 2nd Claimant Olivia is the legal owner of the Land. The Land Certificate dated the 20th day of November 2008 gives her "absolute title" to the Land. Further, there are no incumbrances, conditions and restrictions shown on the Register.

[28] It is the law that the sole registered (legal) owner of property is presumed to be the sole beneficial owner. It is therefore for the Defendant to prove, as she alleges, that she has an equitable interest in the Land.

[29] It is the submission of Ms. Eleanor Solomon, Learned Counsel for the Defendant, that the Defendant has an equitable interest in the Land, namely Parcel 401. Learned Counsel contends that the Defendant's equitable interest is by virtue of the following facts:-

- a) The Defendant renovated the dwelling house thereby increasing the value of Parcel 401;
- b) The Defendant contributed to the maintenance and upkeep of the dwelling house.

[30] The Court is of the view that the Defendant has failed to prove any of the above, on a balance of probabilities. These issues are dealt with in more detail later in the Judgment.

[31] Ms. Solomon further contends that since the 2nd Claimant Olivia was only "registered as the legal proprietor of parcel 401" in 2008, that she was not the owner of the Land in 2007 when Notice was given to the Defendant to quit the Land and the dwelling house. She further contends that since, as admitted by the 1st Claimant, parcel 401 was created in the year 2004, that the 2nd Claimant Olivia did not own that parcel or the original parcel 400 from which parcel 401 was sub-divided, at the time when he claims that he sought permission of Olivia to build on "her" land. Ms. Solomon submits that the application by the 2nd Claimant, presumably for the purchase of the Land, "was strategically made when the Claimants' brother and the Defendant were experiencing difficulties and after he had vacated the said dwelling house."

[32] In paragraph 3 of her Defence and Counterclaim, the Defendant pleaded that she applied to the Government of Antigua and Barbuda for the purchase of the Land and that "she was always informed by the Ministry of Agriculture that her application was being processed." In paragraph 5 of the said Defence, she pleaded that while she admits that the 2nd Claimant became the registered proprietor of the Land in 2008, that "this was caused by a mistake in the Ministry of Agriculture." In her Witness Statement, the Defendant stated that it was shortly after herself and Devlyn started experiencing marital difficulties in 2003, that she submitted an application to the Ministry of Agriculture for the purchase of the Land. She stated that the application was submitted by her then Attorney-at-Law, Charlesworth Samuel. She stated that "since the commencement of these proceedings," she has tried to obtain a copy of the application from the Chambers

of Mr. Samuel and from the Ministry of Agriculture but "has not been able to retrieve a copy." She added that that is so "despite the fact that periodically she would check with the Attorney concerning the application for the purchase of the Land." As I stated earlier, I do not accept the Defendant's evidence that she made application for the Land, either in 2003 or at any time thereafter. In any event, the Court is of the view that even supposing, which the Court does not accept, the Defendant made application for the purchase of the Land, that fact in no way entitles her to an interest in the Land. The Defendant herself gave evidence under cross examination that she made no payment to the Ministry for the purchase of the Land. She produced no letter from the Ministry indicating that her purported application was accepted or even being considered by the Ministry. On the other hand, there is evidence before the Court that, prior to being entered on the Register as the proprietor of the Land, the 2nd Claimant received a letter from the Ministry dated the 5th October 2004, advising her that her Ministry had "approved her application" for the purchase of parcel 401 and informing her that the payment of the purchase price was to have been by installments. Copies of the receipts for the installment payments by the 2nd Claimant during the period 2004 to 2007, as well as the receipt for the final payment on 25th June 2008 were also tendered in evidence. The Defendant has produced no evidence before the Court to substantiate her pleadings that the 2nd Claimant became the proprietor of the Land because of a mistake in the Ministry of Agriculture. In any event, the Court is of the view that the Ministry would have had enough time to rectify its "mistake" if indeed such a mistake had been brought to their attention by the Defendant. It is also significant that the Defendant has made no application to the Land Registry or to the Court with respect to the purported "mistake".

- [33] When asked during cross-examination why she thought she was entitled to Parcel 401, the Defendant testified that it was because she has been living on that parcel of land for over 20 years, since 1990, and that she proceeded to make an application to the Ministry of Agriculture for that land. She agreed that her ex-husband Devlyn has been living on that parcel of land for longer than she has, and that Devlyn "could have" claimed entitlement to the land. It would appear, based on the Defendant's response that she is contending that her entitlement to the parcel of land is by virtue of prescription under

Section 135 (1) of the Registered Land Act (the Act) referred to above. However, since this was not pleaded by the Defendant, the Court makes no adjudication on that issue.

HAS THE DEFENDANT ACQUIRED AN OVERRIDING INTEREST IN THE LAND?

[34] Section 28 of the Registered Land Act states:-

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

- a) “
- b)
- c)
- d)
- e)
- f)
- g) The rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed
- h)

[35] It is undisputed that the Defendant was in actual occupation of the Land, namely parcel 401. Does this bring the Defendant within the ambit of Section 28 above? As stated by Lord Templeman in **City of London Building Society v Flegg**¹, “Actual occupation is not an interest in itself.” A person can only protect a proprietary interest by his actual occupation. The intent of the Act is to give legal effect to the rights that people have if they are in actual occupation of the land but their rights are not registered. There is no evidence that the Defendant had or has acquired any overriding interests in the Land that are safeguarded by Section 28. The Defendant is not the purchaser of the Land; she has neither a lease nor an agreement for a lease of the Land. She is a bare or gratuitous licensee. In the case of **Andre Winter and Stephen Winter v Charles Richardson**², it was held inter alia that “the rights of a person in actual occupation under

¹ [1988] AC 54 at 74D

² Court of Appeal, Antigua and Barbuda, HCVAP 2006/25

section 28(g) of the Registered Land Act Cap 374 (the Act) are not protected as an overriding interest where that person is a bare or gratuitous licensee."

[36] If, as the Defendant claims, she has an equitable interest in the Land, how has she acquired that interest? She has produced no cogent evidence to substantiate her claim that she carried out improvements to the dwelling house to the tune of \$10,000.00 as she alleges, or indeed any amount. She has also failed to prove that if she carried out improvements or repairs, that she had the permission or consent of either one or both of the Claimants. In fact, the Defendant testified that she did carry out improvements or renovations without the consent or permission of the Claimants; she boldly stated that she "did not see the need to ask permission to renovate "her house". Absent that consent, the Defendant cannot claim to have been induced or encouraged by the Claimants to act to her detriment. She therefore cannot ask for the Court's intervention by virtue of the doctrine of proprietary estoppel. By that doctrine "if A, by his conduct, encourages B to believe that he has some right in relation to A's property, and B acts in some way to his detriment in reliance upon that belief, an equity arises in B's favour to which the Court may give effect in the manner and to the extent that it considers appropriate. In this way B may acquire a proprietary interest in, or right over, A's property." – see **Megarry & Wade**³.

[37] Similarly, the Defendant cannot ground her claim to an equitable interest in the Land on the basis of a trust. It is settled law that the Court will intervene to impose a trust where it is just and equitable to do so. In the case at bar, however, there is no evidence before the Court of either an express trust or a constructive trust in favour of the Defendant and the Court is therefore unable to infer a trust in her favour. In the view of the Court, the Defendant is not entitled to claim equitable relief since equity will only come to the assistance of someone who comes to the Court with "clean hands". If as she contends, the Defendant renovated and/or carried out improvements to the dwelling house, the Court is of the view that she deliberately and calculatedly did so in order to claim an

³ 7th edition, page 432, paragraph 11-032.

entitlement to the dwelling house and the Land, so as to deprive the Claimants of their rights therein.

[38] Based on the facts before it as well as the law, the Court is of the view that the Defendant has no equitable interest in the Land, namely parcel 401, as submitted by Counsel for the Defendant. The Court notes that although the Defendant, in her Counterclaim pleads:- "The Defendant repeats paragraphs 3,5,7 and 10 of the defence and says that she is entitled to an equitable interest in the property," in the Prayer of her Counterclaim she does not state that she is entitled to an equitable interest in the Land , namely parcel 401. The relief which she seeks is as follows:-

"AND THE DEFENDANT counterclaims:

- 1) That she is the owner of the concrete dwelling house on the said land;
- 2) An order that she is entitled to remain in the dwelling house or alternatively that the claimants pay the value thereof;
- 3) Prescribed costs
- 4) Such other relief as to the court may seem just."

ISSUE NO. 2 - WHETHER THE DEFENDANT IS THE OWNER OF THE DWELLING HOUSE.

[39] By her Defence and Counterclaim, the Defendant contends that she is the owner of the concrete dwelling house by virtue of her contribution in excess of \$10,000.00 towards the said house.

[40] It is the submission and contention of Ms. Solomon, Learned Counsel for the Defendant, that the Defendant is the sole beneficial owner of the dwelling house. Counsel submits that "the evidence supports a finding of fact that the Defendant renovated the dwelling house thereby increasing the value of the Parcel 401." She also submits that "further, the Defendant contributed to the maintenance and upkeep of the dwelling house." During cross examination, the Defendant testified that she paid utilities and contributed to the upkeep and maintenance of the house. She however provided no receipts, no

bills or any other evidence that this was so. She stated that when she stated that she "decorated" the dwelling house, she meant that she put paintings on the wall and put furniture in place, bought curtains, and "even painting the wall." She also agreed that if it was not in the agreement, she would have to pay the utilities if she were renting a house. She testified that she did not give Oliver any money towards the payment of the Invoice at Abbott Brothers – "not directly." She testified that her ex-husband Devlyn "gave up his rights" in the house. She stated that at "the divorce trials", Devlyn stated that he wanted nothing to do with them, meaning the children of the family and herself, or with the house.

[41] In her Witness Statement, the Defendant stated that she made improvements to the dwelling house. She states that she paid one Mark Tyrell to make the improvements and renovations to the dwelling house. Although a Witness Statement and a Witness Summary respectively were filed on behalf of Mark Tyrell and one Clement Noel to testify on the Defendant's behalf, those persons did not come to give evidence at the trial. Accordingly, the Witness Statement and Witness Summary were struck out.

[42] The evidence of the Claimants with respect to the dwelling house is that the Defendant and Devlyn were residing in a wooden chattel house which was destroyed in 1995 by Hurricane Luis. According to the 1st Claimant Oliver, he got permission from Olivia to construct a house on Parcel 401, and to assist Devlyn, halted his plans to build a house to be placed on rent and decided to assist Devlyn to put a roof over his head. He states that he credited materials from Abbott Brothers, a lumber store, and states that Devlyn was to repay him for the materials credited. The Defendant does not deny that this is so. The statements and invoices from Abbott Brothers were produced to the Court. Oliver states that neither the Defendant nor Devlyn repaid him for the materials credited.

[43] The Defendant's evidence is that Devlyn paid Oliver for the goods credited from Abbott Brothers for the construction of the dwelling house as agreed. She testified that she was present "sometimes" when Devlyn paid the monies to Oliver, but could give no indication as to what amount of money was paid. Devlyn in his evidence testified that he did not

repay any of the monies. I accept the evidence of Oliver and Devlyn in preference to that of the Defendant. I find that neither the Defendant nor Devlyn made any contribution towards the payment of the materials purchased for the construction of the dwelling house. I find further that the Defendant did not contribute in any way towards the dwelling house. The Defendant also stated in her Witness Statement that during the construction of the house, she carried cement blocks, water and other materials to the other workers and that she "helped in the construction of the house." She also stated that prior to her divorce from Devlyn, in addition to paying the utility bills and decorating the house, she also did plumbing work and minor repairs around the house. She states that she recalls changing 2 doors. Devlyn testified that the Defendant decorated the house but disagreed that she paid any bills. I accept the evidence of Devlyn in preference to that of the Defendant with respect to the payment of bills. I am also of the view that the contribution made by the Defendant with respect to the dwelling house was limited to her "decorating" the house.

- [44] I am of the view that the Defendant has produced no cogent evidence to prove on the balance of probabilities that the dwelling house belongs to her and not to Oliver. The Defendant has based her claim for ownership of the dwelling house on the fact that she has contributed in excess of \$10,000.00 towards the said house. She has provided no evidence of this, either by way of receipts or other documentary evidence. There is no evidence of any contribution which she has made as alleged. Based on her own evidence, her contribution towards "the maintenance and upkeep" of the house consisted of placing furniture in the house, putting up paintings and curtains, and even painting the wall. This in no way can be considered to be contributions of the kind which would entitle the Defendant to succeed in her claim that she is the owner of the dwelling house. In any event, the Defendant did not even provide any proof that she purchased the furniture or the paintings or the curtains. I further accept the evidence of Devlyn that the Defendant made no contribution as she alleged.

[45] It is the submission of Ms. Solomon that the 1st Claimant Oliver is not the owner of the dwelling house and that there is no evidence to support that contention. Counsel bases her submission on the following:-

- a) There is no evidence to support the allegation that the 1st Claimant gave the defendant permission to live in the dwelling house. She states that the 1st Claimant admitted that he assisted Devlyn to build a house in which Devlyn and the defendant could live. She states that the 1st Claimant stated that he obtained permission from the 2nd Claimant to build the dwelling house on her property, yet the evidence clearly shows that the 2nd Claimant was not the owner of the property at the time that the 1st Claimant alleges he sought and obtained her permission.
- b) Oliver stated that he obtained the 2nd Claimant's permission to build on parcel 401, yet that parcel did not exist in 2000 and that parcel 401 was created in the year 2004.
- c) The 2nd Claimant did not own that parcel or the original parcel at the time when the 1st Claimant stated that he sought "her" permission to build on "her" land. There is no evidence before the Court to prove that the 1st Claimant is or was the owner of the dwelling house.
- d) The 1st Claimant was never the owner of the dwelling house.

[46] It would appear that the submission of Learned Counsel Ms. Solomon goes like this: - Because parcel 401 was created in 2004, and because the 2nd Claimant did not own parcel 401 at the time the 1st Claimant states that he sought her permission to build on "her property", then the 1st Claimant cannot be the owner of the dwelling house, since the 2nd Claimant was not the owner of parcel 401.

[47] With the greatest of respect, the Court does not find merit in this submission. The evidence before the Court is that parcel 400, from which parcel 401 was mutated or sub-divided, belonged to the Crown prior to the 2nd Claimant becoming registered as the

legal proprietor of that parcel 401. The evidence as contained in the Witness Statement of the 2nd Claimant, and which was not challenged under cross examination is that prior to the sub-division of parcel 400, her siblings and herself were given the first option to purchase a portion of the land in the area as they had lived there from their respective births. She stated that all her brothers and sister save and except for Devlyn made the necessary applications to the Ministry of Lands to purchase the lands in the area which applications were approved by the Ministry and lands allotted accordingly. She stated that by way of letter dated 5th October 2004, the Ministry of Agriculture wrote to her and advised her of the allocation of the land described above and agreed to sell her the said land and to repay the purchase price by way of monthly installment, which she did.

[48] There is no evidence before the Court that the dwelling house was built on a parcel other than that which ultimately became parcel 401. There is no evidence that any action was taken by the Crown to eject either the 2nd Claimant or the 1st Claimant from parcel 401 while it was still registered as parcel 400. There is no evidence that the 2nd Claimant withdrew her permission given to the 1st Claimant to build on "her land." It therefore does not follow that because the 2nd Claimant gave permission to the 1st Claimant to build on "her land" prior to "her land" not yet having been mutated into parcel 401, or because she was not yet the legal owner of parcel 401, that this prevented the 2nd Claimant from permitting the 1st Claimant from building on "her land" or that it defeats the 1st Claimant's claim that he is the owner of the dwelling house.

[49] The other submission of Ms. Solomon on the above issue is that there is no evidence to support the Claimants' contention that the 1st Claimant gave the Defendant permission to live in the dwelling house. It is the further submission of Ms. Solomon that the 1st Claimant admitted that he assisted Devlyn to build a house in which they (Devlyn and the Defendant) could live. Again, the Court finds little merit in the above submissions. As stated above, the evidence is undisputed that the wooden dwelling house in which Devlyn previously resided even prior to his cohabiting therein with the Defendant, was destroyed by Hurricane Luis in 1995. With respect to the dwelling house, as stated above, the finding of the Court is that it is the 1st Claimant who began construction of this

house with materials credited by Oliver. Further, that Devlyn and the Defendant went into occupation of the said dwelling house by virtue of the permission granted to them by Oliver to reside in that dwelling house rent free on a temporary basis. This evidence was not contradicted during cross examination of either of the Claimants. The Defendant was therefore residing in the dwelling house by virtue of being permitted to do so, along with her ex-husband, by Oliver. It is the further finding of the Court that after Devlyn vacated the dwelling house, that the Claimants requested of the Defendant that she vacate the premises.

[50] It is the contention of the Defendant that she is the sole owner of the dwelling house. She claims that the 1st Defendant is not the owner of the said house. She claims that the dwelling house was the matrimonial home of herself and Devlyn. She claims that Devlyn has no interest in the house because he indicated during the "divorce trials" that he had no interest in the house and further that he wanted nothing to do with her and the children. Under cross examination, the Defendant testified that throughout the divorce proceedings, she did not make an application for declaration of her interest under the Married Women's Property Act. The reason given by the Defendant for her failure to do so, was because she did not see the need to as she was the owner of the house. In the view of the Court, the Defendant's failure to make an application for her declaration of her interest during the divorce proceedings is significant and is very telling. The Court is of the view that the Defendant was very much aware of the fact that the dwelling house belonged to the First Claimant and did not form part of the matrimonial assets. She now seeks to acquire through the back door of these proceedings that which she could not acquire during the divorce proceedings.

[51] On a balance of probabilities, the Court finds that the 1st Claimant has established his claim that he is the beneficial owner of the dwelling house.

ISSUE NO. 2 – WHETHER THE DEFENDANT IS A TRESPASSER IN THE CONCRETE DWELLING HOUSE OWNED BY THE 1ST CLAIMANT AND WHETHER THE DEFENDANT IS A TRESPASSER ON THE 2ND CLAIMANT'S LAND?

- [52] The Claimants in their Statement of Claim seek among other things:-
- a) 3 - "An order that the Defendant is a trespasser in the 1st Claimant's one bedroom concrete dwelling house and on the 2nd Claimant's land;
 - b) 6- "Damages for trespass against the Defendant."
- [53] Trespass to land consists of interference with possession; it is an injury to a possessory right. Trespass is actionable at the suit of the person in possession of land, who can claim damages or an injunction, or both – per Clerk & Lindsell on Torts, 20th edition, page 1227, paragraph 19-10. Possession means generally the occupation or physical control of land... proof of ownership is prima facie proof of possession."
- [54] According to Clerk & Lindsell on Torts (20th edition, page 1236, paragraph 19-29), "An entry upon the claimant's land is not a trespass if it is justifiable. Justification of the entry may be afforded either by operation of law, or by the act of the claimant or of his predecessors in title, where the entry is made under a right of easement or of a profit a prendre, or under a licence....." A defendant therefore has a defence to an action of trespass to show that he is on the land with the leave and licence (express or implied) of the owner. – see Clerk & Lindsell (page 1245, paragraph 19-45). However, a licensee who remains on land after his licence expires or is properly revoked is a trespasser – (page 1246, paragraph 19-47). If the licensee acts in a way that exceeds the permission granted by the licence, his acts will also constitute a trespass.
- [55] In their Statement of Claim , the Claimants pleaded that:- "The Defendant in or about 2007 and 2008, without the consent and approval of the Claimants commenced renovation and construction works on the said dwelling house and the Claimants have orally requested that the Defendant desist from so doing". In their Witness Statements, the Claimants re-iterate that the said works were carried out by the Defendant without their consent and approval during the said period, notwithstanding their oral requests that she desist from so doing, and notwithstanding their Solicitor's letter dated 10th January, 2007 requiring the Defendant to vacate the premises by the 31st day of January 2007. The Defendant does not deny the fact that she carried out the renovations and

construction works. She stated in her Witness Statement that she has made improvements to the house and that the improvements were completed "in or around 2008." The Defendant under cross examination was defiant in her testimony that she did not need the consent of the Claimants to renovate "her house".

[56] It is the submission of Ms. Solomon, Learned Counsel for the Defendant, that the 1st Claimant is not, and was never the owner of the dwelling house. It is Counsel's further submission that the 1st Claimant had no "locus standi" to grant permission to the Defendant to live in his dwelling house. The Court, however, has made a finding in that regard. The Court has also made a finding that the Defendant occupied the dwelling house as a licensee. It is the submission of Ms. Solomon that since the 1st Claimant had no locus standi to grant permission to the Defendant to live in his dwelling house, that his "attempt" to revoke the "alleged licence" as appears by virtue of the letter dated 10th January 2007 is invalid. She further contends that "a licence could not have been granted in the first instance." Based on the Court's finding that the 1st Claimant was and is the owner of the dwelling house, it follows that, as the owner of the said dwelling house, the 1st Claimant was entitled to revoke the Defendant's licence to remain in the said dwelling house. Accordingly, the above letter dated 10th January 2007 addressed to the Defendant, advising her that her "licence to occupy the dwelling house and premises "of the Claimants and demanding that she remove all her belongings out of the dwelling house and give vacation possession of the same on or before the 31st January 2007, is not invalid. Consequently, although the Defendant's occupation of the dwelling house was with the consent and permission of the 1st Claimant, the Defendant became a trespasser in the dwelling house when she failed and/or refused to vacate the said dwelling house as requested. Additionally, that the Defendant's action in carrying out renovations and works on the dwelling house was a further act of trespass.

[57] With respect to the Land, the Defendant does not deny that the 2nd Claimant is the legal owner thereof. What is submitted by Counsel for the Defendant is that the 2nd Claimant was not the owner of the Land until 2008 and therefore could not give permission to the Defendant to remain on the Land. Counsel further contends that

because this is so, the 2nd Claimant's attempt to revoke the "alleged" licence is invalid and that a licence could not have been granted in the first instance. Counsel submits that "the Claimants have not proved on a balance of probabilities that the 1st Claimant is the beneficial owner of the dwelling house and thus the Defendant is a trespasser in the said dwelling house, and that the Defendant is a trespasser on the 2nd Claimant's land."

[58] Counsel for the Defendant is therefore contending that the 2nd Claimant cannot sue the Defendant in trespass because when she gave Notice to the Defendant in 2007, she was not the "owner" of the Land, namely Parcel 401, but rather that the Land belonged to the Crown. Although it was not pleaded, it would appear that Counsel for the Defendant is submitting that the Defendant is seeking to rely on the defence of *jus tertii*, that is, that the land belongs to some third party – in this case the Crown – and not to the 2nd Claimant. The law is settled that a Defendant sued for trespass in such a case cannot plead *jus tertii*. As stated in **Nicholls v Ely Beet Sugar Factory (No.1)**⁴, per Farrell J: - "It is well settled that in an action of trespass a defendant may not set up a *jus tertii*. He may set up a title in himself, or show that he acted on the authority of the real owner, but he cannot set up a mere *jus tertii*."

[59] The Defendant has not provided any evidence that in 2007 when she received the letter from the Claimants asking her to give up vacant possession of the premises, namely the dwelling house and the Land, that she had title to the Land or that she had the authorization of the Crown whether by way of a lease, agreement for sale or otherwise, to occupy the Land. The defence of *jus tertii* therefore cannot avail her.

ISSUE NO. 3 - WHETHER THE CLAIMANTS ARE ENTITLED TO DAMAGES

[60] A claimant in trespass is entitled to recover damages, even though he has sustained no actual loss. The claimant need prove no actual damage in order to sustain an action for trespass.

⁴ 1931, 2 Ch. 84 at 86

[61] In their Statement of Claim, the Claimants plead that:-

Paragraph 13 - "By reason of the matters aforesaid, the Claimants have been deprived of the use of the said one bedroom concrete dwelling house and land and have thereby suffered loss and damage."

Paragraph 14 - "The monthly rental value of the said concrete dwelling house is \$700.00"

Paragraph 15 - "The net annual value for rating of the said land is \$500.00 per annum."

[62] The law is settled that trespass on a person's land gives rise to a continuing action for as long as the trespass lasts. The law is also settled that special damages must be specifically pleaded and strictly proven. It is however permissible for the Court to make an award of nominal damages where special damages are unproven, as in the instant case. Moreover, the authorities are clear that the term "nominal damages" does not mean "small damages" – per Lord Halsbury LC in **The Owners of the Steamship "Mediana" v The Owners, Masters and Crew of the Lightship "Comet" (The "Mediana")**⁵. In the instant case, the Court is of the view that the sum of \$10,000.00 is appropriate to award the 1st Claimant as damages for the trespass to the dwelling house and the sum of \$2,500.00 is appropriate to award the 2nd Claimant as damages for the trespass to the Land. I so order.

ISSUE NO 4 - WHETHER THE CLAIMANTS ARE ENTITLED TO INJUNCTIVE RELIEF.

[64] The Court may grant an injunction to prevent a continuance or threatened repetition of a trespass. The Court is of the view that unless compelled by Order of the Court, the Defendant will remain on the Claimants' property. The Defendant's brazen assertion that it is "her house"; leads the Court to the conclusion that only injunctive relief will assist the Claimants in obtaining the remedy sought. The Court accordingly grants the order for injunctive relief claimed.

⁵ [1990] AC 113 at page 116

CONCLUSION

[65] Based on the law and the evidence in its totality, I find that the Claimants have succeeded in meeting their legal burden of proving their case on a balance of probabilities. The Defendant bears the burden of proving her Counterclaim on a balance of probabilities. Based on the evidence, it is my finding that the Defendant has failed to prove that she is the sole beneficial owner of the house erected on the Land belonging to the Second Claimant, or that she has an equitable interest in the Land. Her Counterclaim is therefore dismissed.

ORDER

[66] My Order is as follows:-

A. Judgment is granted for the Claimants against the Defendant Pamela Adams.

The Court orders and declares as follows:-

1. The Court declares that the 1st Claimant is the beneficial owner of the dwelling house situate at Horsford Hill, Liberta Village, St. Paul's, Antigua, and registered and recorded in the Land Registry as Registration Section: South East; Block 56-2282A, Parcel 401 in the name of the 2nd Claimant.
2. The Defendant is a trespasser in the dwelling house of the 1st Claimant and on the 2nd Claimant's land.
3. The Defendant do deliver vacant possession of the said dwelling house and the land belonging to the 1st Claimant and the 2nd Claimant respectively on or before the 7th day of July 2012. (within one month of the date of the Order.)

4. An injunction is granted restraining the Defendant whether by herself, her servants, agents or otherwise from destroying, removing any object of any kind whatsoever from the said dwelling house;
 5. The 1st Claimant is awarded damages for trespass in the sum of \$10,000.00.
 6. The 2nd Claimant is awarded damages for trespass in the sum of \$2,500.00.
 7. Prescribed costs to the Claimants in accordance with the Civil Procedure Rules (CPR) 2000.
- B. The Defendant's Counterclaim is dismissed.



JENNIFER A. REMY
High Court Judge