

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV 2009/0547

BETWEEN:

MAURICE JOSEPH

Claimant

AND

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

Appearances:

Leslie-Ann Brissett for the Claimant

Alicia D.L. Aska for the Defendant

2010: November 3, 4
2011: May 4

JUDGMENT

INTRODUCTION

- [1] **Remy, J:** The Claimant in this case alleges that he is a contractual licensee of the Government of Antigua and Barbuda (the Government) by virtue of an oral agreement between himself and the said Government to occupy a parcel of land known as Farm #17 comprising 41 acres and situate at North Sound (the land). He further alleges that sometime in February of 2009, certain agents of the Government without notice to him and without his permission, entered onto the land and caused works to be done which resulted in damage to his perimeter fence as well as the loss of some of his cattle arising

from the gate being left open. The Government denies the existence of any lease or tenancy agreement with the Claimant and contends that the Claimant's brother Mr. Stephen Joseph is the lawful tenant of the land. The Government alleges that it entered the land and executed the works with Mr. Stephen Joseph's permission.

THE PLEADINGS

- [2] By a Claim Form with Statement of Claim filed on the 21st September 2009, and an Amended Statement of Claim (also referred to as the Statement of Claim) filed on the September 14th 2010 the Claimant pleaded that he is a livestock farmer and a contractual licensee occupying the land.
- [3] The Claimant in his Statement of Claim alleges that in 1983 he entered into an oral agreement with the Ministry of Agriculture, Lands and Fisheries (the Ministry) to occupy and use the land for animal husbandry under a Government European Development Funded programme (the EDF programme). The Claimant goes on to plead that he has paid the Government the sum of \$1300.00 every three months for his occupation of the land.
- [4] The Statement of Claim further alleges that the terms of the agreement expressly protected the Claimant against the arbitrary termination of his tenure by the Defendant. The Claimant contends that implied into the agreement were the Defendant's obligation to secure his relocation to a suitable alternative location and to pay him adequate compensation for improvements made to the land in the event of a termination of the agreement at the Defendant's behest.
- [5] The Statement of Claim further alleges that the Defendant breached the agreement when the Defendant, without issuing him with prior notice entered the land sometime in February of 2009 with a bulldozer. The Statement of Claim alleges that the Defendant's entry onto the land resulted in damage to the steel gate, perimeter fence as well as damage to the

Claimant's pigs enclosure. The Claimant avers that the entry also caused 25 of his cattle to wander off the land.

[6] The Claimant further pleaded that, acting in reliance on the "representations, acquiescence and encouragement" of the Government, he has to his detriment expended significant sums of money to make the land suitable for animal husbandry. He further pleaded that the Defendant's conduct was "arbitrary, highhanded and oppressive".

[7] The Claimant claims the following reliefs against the Defendant:-

- (1) Damages for breach of Contract.
- (2) A Declaration that the Claimant is the lawful contractual licensee of all that parcel of land measuring approximately 41 acres identified as Farm #17 in the Records of the Ministry of Agriculture, Lands and Fisheries.
- (3) A Declaration that the Claimant is entitled to remain in lawful occupation of the said property in the absence of a proper termination notice fully determining the contract of occupation.
- (4) Compensation for wrongful interference with property.
- (5) Special Damages in the amount of \$489,194.00.
- (6) Damages including Exemplary damages.
- (7) Interest pursuant to section 27 Eastern Caribbean Supreme Court Act, Cap 143 of the Laws of Antigua and Barbuda.
- (8) Costs.
- (9) Such further and other relief as this Honourable Court deems fit.

- [8] By a Defence filed on the 26th October 2009, the Defendant denies that the Claimant is the contractual licensee of the Government and contends that Mr. Stephen Joseph is in fact a year to year tenant of the land and pays an annual rental premium of \$30.00 per acre. The Defendant denies that it entered into any agreement whether oral or otherwise with the Claimant for the occupation and use of the land. The Defendant alleges that the Government successfully negotiated with the Mr. Stephen Joseph to secure the land for use as a Public Cemetery. The Defendant contends that following the negotiations between the parties, Mr. Stephen Joseph granted the Government permission to enter the land to commence the requisite works.
- [9] The Defendant further denies that the fence was damaged as alleged by the Claimant and contends that during the period within which works were executed on the land, the gates were inadvertently left open by the Government's employees that resulted in a few of the Claimant's cattle wandering from the land and onto the main road. The Defendant asserts that the cattle were retrieved and returned within the perimeter fence, after which the Government's employees locked the gates.
- [10] In his Reply to the Defence filed on the 30th December 2009, the Claimant admits that his brother occupied the land, but asserts that his brother's occupation ended prior to his own occupation of the land in or around 1989. The Claimant further asserts that the land was provided to him by the Government in or around 1989 to be used specifically as a farm under an EDF initiative for which he has paid approximately E.C. \$1,300 (E.C. \$30 per acre) every three months.
- [11] The Claimant in his Reply pleaded that his brother's interest in the land "had long been relinquished" but that sometime in 1997 upon their father's death the Claimant and his brother verbally agreed that he (the Claimant) would take care of and keep their deceased father's cattle. The Claimant further asserts that he and his brother agreed that in exchange for caring for the cattle his brother would pay the rental premiums for the land to the Government. The Claimant further contends that he believes that his

brother began making these payments in or around 1997 and has continued to make payments to the Government pursuant to their verbal agreement.

- [12] The Claimant in his Reply alleges that he was made aware that the land would be used as a public cemetery sometime in or around July 21st 2004, when certain persons met him at the farm and advised him that they were present to conduct "initial inspections." The Claimant contends that thereafter, he received no formal notification of the intended acquisition. The Claimant further alleges that if any negotiations took place between the Defendant and his brother, that those negotiations were "ill conceived" as his brother had no authority "implied or otherwise" to enter into negotiations with the Defendant with respect to the farm. The Claimant contends that he is entitled to compensation from the Defendant for "wrongful interference" with his property.

EVIDENCE

The Claimant's case

- [13] The Claimant's case was presented through the evidence of the Claimant and his three witnesses, namely, Louise Jacobs, Liston Joseph and Hilroy Humphreys.

The Claimant

- [14] In his Witness Statement, the Claimant stated that in or about 1989 there was an oral agreement between himself and Hilroy Humphreys who was then the Minister of Agriculture, and who acted as the agent of the Government. He testified that Hilroy Humphreys gave him permission to occupy a vacant piece of land in North Sound. This, he stated, was as a result of the Government's EDF programme, wherein the Government provided farmers with land for use in cattle farming.
- [15] According to the Claimant, the land, which comprised 40 acres, was deserted, abandoned and overgrown with cassi bush trees. He explained that he prepared the land for close to two years to get it ready for animal husbandry. The Claimant stated that

he employed his brother Liston Joseph and some other persons to clear and prepare the land. He added that sometime in January of 2009, acting on a message from a neighbour, he went to his farm where he noticed that the gate was "broken down", "deformed", "badly damaged and could not close on its own." He observed that 25 of his cattle were missing and that a stationary bulldozer was at the entrance of the farm, although no driver was present. The Claimant added that he further observed that the front perimeter fence was also damaged. He stated that the next day, on arrival at his farm he had a conversation with a man "who appeared to be the driver of the bulldozer and who told him that they were employed by Public Works."

[16] The Claimant stated that his brother had abandoned the farm "since the late 1970's or early 1880's" and that he thereafter went into his Supermarket business sometime in the 1990's. He stated that, sometime in 1997, following the death of their father, his brother called him and informed him that "people were taking up his father's animals." The Claimant added that at his brother's request, he agreed to look after the animals, in exchange for which his brother agreed to take care of the rent for the farm. The Claimant stated that he never received any receipts from his brother but that he had trusted him since they were brothers. The Claimant went on to explain that he however, never told the Ministry of this agreement with his brother as "he didn't think that it concerned them", and that he never communicated to the Ministry that he was relinquishing his occupation of the land.

[17] The Claimant stated that on July 21st 2004 he was advised by the Chief Health Inspector and two other persons that they were present to conduct initial inspections at the farm, "since the Government had earmarked the land to be used as a public cemetery." He stated that he never gave his brother permission to enter into negotiations with the Government to clear the land and make roads for the cemetery.

[18] Under amplification of his Witness Statement, the Claimant stated that Mr. Humphreys did not "tell him a specific time frame for occupying the land." He stated that he had no copy of the receipts since they were destroyed during the hurricane in 1995.

- [19] Under cross-examination, the Claimant testified that in 1983, he made an oral agreement to occupy the land with Dr. Robinson who was the Chief Veterinary Officer at the time. He added that it was in 1983 that he "approached the Chief Veterinary Officer", but that "he never actually got started until 1989." He further testified that he did not have the funds to start in 1983 and that in 1989, he entered into an agreement with Mr. Hilroy Humphreys, but that this agreement was a "follow up." In response to Counsel's question as to why he needed a follow up agreement if he was already occupying the land in 1983, the Claimant stated "the Doc (Dr. Robinson) promised that he would assist me with clearing the lands, but I never get any help at all from the Ministry." He stated that although he "signed something" with Dr. Robinson in 1983 and would have been given a copy, all his documents "got wet" in the hurricane in 1995.
- [20] The Claimant testified that Mr. Hilroy Humphreys was "someone he knew" and that he approached him and that he sent an assistant to help him "get off the ground" with the land.
- [21] The Claimant further testified that with respect to the follow-up arrangements with Mr. Hilroy Humphreys in 1989, "they were planning to lease the land for a couple of years." He elaborated and stated that the lease was meant to be "for a couple of years, 25 years or upward, something like that" and that "they were going to make a preparation for that." Regarding the issue of the payment of the rent, the Claimant stated that he was to pay the rent quarterly, but that sometimes he paid twice a year, "it depends". He added that the last time he paid rent for the land was in 1996. He further added that all the receipts for the rent were lost in the hurricane of 1995 and that the receipts for 1996 were "misplaced somewhere." He stated that from 1997, as a result of an arrangement between his brother and himself, his brother took over the payment of the rent. The Claimant further contended that he knew that up to the year 2004, the rent was "up to date."

[22] The Claimant testified that his brother had the same Farm #17 before he (the Claimant) got permission to farm it. He stated however that the land was "abandoned" when he received permission to farm it. The Claimant stated that he knew the land was abandoned because "he traveled and saw the vacant piece of land and inquired about it." He stated that he was not aware that his brother occupied it or had an agreement with the Government for the land and that it was only after he got the land that his brother told him, "you know, I had that piece of land already." He explained that when he approached Dr. Robinson he was told that "nobody occupied the land."

[23] The Claimant further testified that he did not have the receipts for the cost of hiring equipment for clearing the land as these were in a "pick up" which he kept on the farm. He added that his brother had done most of the land clearing and that he did not get a receipt.

[24] Under re-examination, the Claimant testified that the land was neither cleared nor fenced by the Government. He re-iterated that Dr. Robinson told him that the land was vacant land.

LOUISE JACOBS

[25] The next witness to give evidence on behalf of the Claimant was Louise Jacobs (Ms. Jacobs). In her Witness Statement, Ms. Jacobs stated that she is currently employed at the Ministry of Agriculture (the Ministry) as an Executive Officer in the Accounts Department, a post that she has held since December of 2006. Ms. Jacobs testified that prior to taking up her present position, she was employed at the Veterinary and Livestock Division of the Ministry until 2006 and that her primary responsibility was the collection of revenue. She claims to be familiar with the Claimant and "would have been first acquainted with him" in the late 1990's because he was one of the persons "who came to pay for the lease of his land." She stated that some farmers paid yearly and some paid a fixed amount quarterly. She recalled that when farmers came to pay, there "would have been" a page with the farmer's name, the acreage, the name of the property rented and where it was located, and that this information about the farmers

was logged in a book, but that she had no copy of the book, nor did she have "any copies of the receipts issued" to the Claimant as "these records belong to the Veterinary and Livestock Division."

[26] Under amplification of her Witness Statement, Ms. Jacobs stated that the page in the book would also have the dates on which that person made the payments and the amount of those payments and the period for which those payments were made.

[27] Under cross-examination, Ms. Jacobs testified that she was unaware of the Government's arrangement with the Claimant with respect to Farm #17, nor did she remember how much the Claimant paid or how he paid. She stated that she could not recall the last time the Claimant paid or whether he made payments on behalf of his brother Stephen Joseph. She also admitted that she had never seen any lease agreement between the Claimant and the Government.

LISTON JOSEPH

[28] Liston Joseph (Mr. Joseph), a brother of the Claimant, followed Louise Jacob as the next witness to give evidence for the Claimant. A Witness Summary was filed on his behalf and he gave evidence at the trial. Mr. Joseph testified that sometime in 1989, the Claimant told him that he had some work to be done on his farm. He testified that he "worked around the farm" for about 2 years, clearing the land, digging the holes to plant the posts as well as pulling fence wire. Mr. Joseph stated that he used a backhoe to remove the trees and that the Claimant paid him a lump sum and that he would pay him again when "he met him on the road."

[29] Mr. Joseph stated that he never gave the Claimant any receipt and could not say the amount of the lump sum that the Claimant had given him. Mr. Joseph acknowledged that the "total charge" would be "a little bit over \$200,000.00." He stated that he cleared the land all by himself with the help of four workers who were paid by him. Mr. Joseph added that Stephen Joseph never helped him to clear the land but was aware that he was clearing the land.

[30] Under cross-examination, Mr. Joseph explained that he did not give the Claimant a receipt because he was his brother. He added that the sum of \$200,000.00 which the Claimant paid him was for labour and for the use of his backhoe. He stated that Maurice paid him in cash.

HILROY HUMPHREYS

[31] Hilroy Humphreys (Mr. Humphreys) was the final witness for the Claimant. In his Witness Statement, Mr. Humphreys stated that during the period 1988-1989, he held the position of Minister of Agriculture and Lands. He stated that sometime in 1989, he was involved in the process of giving permission to the Claimant to occupy land located at North Sound, to be used for farming. He explained to the court that although at that time, "firm leases" were not given to farmers to occupy the vacant land since "the tax implications would have been too onerous for the struggling farmers," a record was kept of payments by the farmers and the farm which the payments were made.

[32] Mr. Humphreys further stated that no survey was done of Farm #17, but that the Claimant could occupy the land "until the land was needed" but he would be responsible for clearing the land, fencing it and making it suitable as a farm." He stated that where the land was fenced and a farmer was relinquishing his occupation, it was standard practice that the farmer would be compensated for provision of fence and other work and improvement which he made to the land.

[33] Under cross-examination, Mr. Humphreys testified that there was an agreement between the Ministry and the Claimant for occupying land. He stated that "he was the Minister" and that the Claimant came to him and that there was an oral agreement between himself and the Claimant sometime between 1988 and 1989 for the Claimant to occupy the land for livestock farming. He added that the agreement provided for the Claimant to enjoy those lands until a formal lease could be agreed upon and signed by the parties. Mr. Humphreys recalled that the lease would have been for 25 years.

[34] Mr. Humphreys under cross-examination testified that when he gave permission to the Claimant, the land in question was not occupied by Stephen Joseph or by anyone else. He explained that the differences between the EDF and Livestock Development Unit (the LDU) programmes were basically that, under the EDF programmes, the lands would be already cleared, fenced and that there was provision of water whereas the LDU programme, merely offered technical advice from technicians at the LDU unit. He further noted that under the LDU programme, the farmers had to clear their farms. Mr. Humphreys stated that the only arrangement which he had with the Claimant was for him to occupy the lands, fence, clean and "if I want you off, I pay you."

For the Defendant

CHARLESWORTH GRANT

[35] The first witness for the Defendant was Charlesworth Grant (Mr. Grant). In his Witness Statement, Mr. Grant stated that he is a qualified Veterinary Public Health Inspector and is employed as an Animal Health Assistant with the Ministry and that his duties include, among other things, allocating lands for livestock purposes.

[36] Mr. Grant recalled that the Government had embarked upon two programs for livestock farming. The LDU program, he explained was set up in or around the 1970's for "small livestock farmers whereby farmers were given year to year tenancies." The other program he stated was the (EDF) program, set up in or around 1987 for "small livestock farmers whereby farmers were given a period of 25 years lease." He stated that the farms under the LDU program are all located in the North Sound and Donovans area whereas the farms under the EDF program are located in other areas namely in Burkes estate, Bodkins Estate, Betty Hope Estate and Yorks Estate. He further observed that "there are no EDF farm programs in the North Sound area and the Donovans area neither are the LDU farm programs found in any of the areas allocated for the EDF farm program."

- [37] Mr. Grant stated that sometime in 1997, the Defendant entered into a year to year tenancy agreement with Stephen Joseph under the LDU program with respect to a parcel of land measuring approximately 41 acres situate at North Sound, allocated for livestock farming.
- [38] He stated that the Defendant did not enter into a tenancy or other agreement with the Claimant and that "all activities and transactions" with respect to the land have always been between the Defendant and Stephen Joseph. He further observed that Stephen Joseph always paid the rent and that all receipts have been issued to Stephen Joseph by the Defendant. Mr. Grant stated that so far as he was aware, the Claimant's name does not appear as a tenant on the records of the Department.
- [39] Mr. Grant confirmed that he was aware that the Claimant was Stephen Joseph's brother and that the Claimant had "some animals" on the farm but that this was an issue between Stephen Joseph and the Claimant and that, so far as the Defendant was concerned, "the proper party "with respect to any negotiations or notice with respect to the land was Stephen Joseph, "the lawful tenant of the property".
- [40] Mr. Grant stated that sometime in 2004, the Government selected a portion of the land for the development of a new public cemetery and that Stephen Joseph was notified that 30 acres of the land would be affected and the Government began negotiations with Stephen Joseph in an effort to relocate his farm to another area.
- [41] Mr. Grant stated that sometime in the latter part of 2008, Stephen Joseph granted permission to the Defendant to have surveyors enter the land to commence working and that the work on the property was executed over a six month period in the central area of the property and not in any area or vicinity of the perimeter fence. Mr. Grant observed that during this period, the gates were used as the access to the property and that there was no damage to the property "except for the already existing fair wear and tear." He further observed that neither the gates nor the perimeter fence were destroyed by the

Defendant and that to date, the perimeter fence is still standing and the gates are still locked and kept locked.

[42] Upon amplification of his Witness Statement, Mr. Grant stated that (a) Farm #17 does not exist under the EDF livestock project; (b) there is no EDF farm located at North Sound and (c) under the EDF agreement, farmers pay \$25 and not \$30 an acre.

[43] Under cross-examination, Mr. Grant testified that in 1989, he worked alongside the Chief Veterinary Officer Dr. Joseph L. Robinson who was responsible for livestock production, as well as for dispersing lands to farmers for livestock purposes. He stated that Stephen Joseph actually occupied 61 acres since an additional 20 acres were given to him in 1997. He stated that the agreement between the Government and Stephen Joseph was "before his time."

[44] Mr. Grant further stated under cross-examination that formerly there was an LDU farm book, but that this book disappeared prior to the present litigation.

STEPHEN JOSEPH

[45] The next witness to give evidence for the Defendant was Stephen Joseph. In his examination in chief, this witness stated that Farm #17, is one of the LDU farms "which he occupied for years" and that there was an agreement between himself and the Government, specifically the Ministry and that this agreement was signed sometime in 1980. Stephen Joseph further stated that as part of this agreement he had to upkeep the farm, make sure the fencing was intact and the land was not overgrown and not over populated and that he had to pay the rent. He stated that the rent was \$30 an acre and that the agreement was for an indefinite period but was from year to year, on the understanding that the farmer had to adhere to the terms of the agreement.

[46] Stephen Joseph's evidence was that he had an arrangement with the Claimant with respect to the land, but that he has "never relinquished his rights to the agreement" with the Government with respect to the land. He explained that the arrangement with the

Claimant came about because sometime in 1983 his new job as Manager of a paint shop required him to travel from time to time which resulted in some of his animals being lost while he was abroad. Stephen Joseph disclosed that the rest of his family migrated to the U.S.A in 1984 and that he approached his father who also had animals and proposed that he (his father) occupied the farm because of the challenges that he (Stephen Joseph) faced. Stephen Joseph informed the court that his father declined on the basis that the proposal required him to pay rental fees. Stephen Joseph testified that he then made the proposal to the Claimant, who was initially reluctant, because of the obligation to pay rental fees. He added that the Claimant eventually agreed. Stephen Joseph stated that he then sold some of his worthy animals and gave the rest to his father. He stated that the Claimant then moved his animals into the paddock with the understanding that he would continue to occupy the land, and clear and maintain the farm.

[47] Stephen Joseph informed the court that at no stage did the Claimant indicate that he wanted to take possession of the farm, because, like their father, the Claimant did not want to invest any money. He further stated that during that time, he had started his building company and had started a hardware store which dealt with all the maintenance material for the farm, namely walaba posts, fencing and barbed wire. He added that the Claimant collected all the items for use on the farm and that the Claimant did not pay for the material.

[48] Stephen Joseph recalled making arrangements for the land to be cleared. He stated that when they first moved to North Sound, the paddock was overgrown and was not in the best condition. He added that he contracted a heavy duty company to undertake the initial clearing of the land. He testified that he cleared the land again in 1996/1997 and that in 1997; he got an additional 20 acres of land from the Government. Stephen Joseph disclosed that he used the opportunity to clear the whole property and contracted someone to do so. He observed that prior to the World Cup in 2007; the area was again overgrown and was cleared, but this time, using his own equipment.

[49] Stephen Joseph testified that he was in 2004 approached by the Government with respect to taking a portion of the land that they needed to re-site the cemetery and that he "debriefed" the Claimant of the conversation. He claimed that in 2008, he gave the Government permission to enter the farm to commence work for the public cemetery.

[50] Under cross-examination, Stephen Joseph testified that he had no copies of receipts for payment of rent for the farm and that he had no copies of receipts for clearing the land. He stated that it was a term of the agreement that the land was meant for farming. He further stated that when his father died, he called the Claimant and informed him that they were moving the animals back into the paddock.

[51] It is Stephen Joseph's testimony under cross-examination that he did not relinquish occupation of the farm. He insists there was a verbal agreement between himself and the Claimant and that at no time did the Claimant contest his involvement with the farm. He further testified that the Claimant came onto the farm in 1985.

ISSUES

[52] The broad issues that arise for the Court's determination are as follows:-

1. Whether or not the Claimant entered into an enforceable agreement with the Defendant to occupy lands described as Farm #17 situate at North Sound.
2. Whether or not there is a lease or tenancy agreement between the Claimant and the Defendant.
3. Whether, if the Court finds that no enforceable contract exists between the Claimant and the Defendant, the Claimant can rely on the principle of estoppel to establish a right to occupy the land and to claim compensation for expenditure on the land.
4. Whether the Claimant is entitled to special damages.

5. Whether the Claimant is entitled to exemplary damages.

[53] Before dealing with the issues, I find it appropriate at this stage to consider the submission of Counsel for the Claimant with respect to the "Claimant's standing to bring this action."

[54] Counsel for the Claimant submits that "the Claimant's claim does not arise pursuant to an interest in land or concerning an interest in land and therefore the fact that he is unable to rely on a memorandum or note indicative of the agreement with the Government does not preclude him from instituting these proceedings as a contractual licensee." She further submits that the basis of this action is governed by contract law for which no interest in land arises and which may be governed by parol evidence.

[55] Learned Counsel's submission would appear to be a response to the Defendant's Pre-Trial Memorandum which stated among other things that "there is no legal basis upon which the Claimant brings this claim against the Defendant." However, there being no further objection or challenge from the Defendant either at the trial or in the submissions of Learned Counsel for the Defendant with respect to the Claimant's standing to bring this action, no adjudication on this issue is necessary.

Issue # 1 - Whether or not the Claimant entered into an agreement with the Defendant to occupy land described as Farm #17 situate at North Sound.

[56] It is the submission of Counsel for the Claimant that the Claimant had an oral contract with Mr. Humphreys, the Minister of Agriculture, in 1989, to occupy the farm under an EDF 25 years programme until a formal lease was signed. Counsel urges the Court to "make a finding of fact that the agreement with the Defendant and the Claimant did in fact exist." Counsel bases her submission, among other things, on the following:-

- "(a) That Mr. Humphreys gave evidence in chief that the Claimant was given permission to occupy the farm at North Sound "further to an EDF initiative." Further, that Mr. Humphrey's evidence that "Cabinet made an omnibus decision to give livestock farmers such as the Claimant permission to occupy Crown lands to use for farming" was "unchallenged by the Defendant."
- (b) That Mr. Humphreys stated in cross-examination that there was an agreement between the Claimant, the Ministry and himself" somewhere in 1988 or 1989" and that when the Claimant came to him, he told the Claimant he could occupy the farm for livestock farming "until a formal lease was agreed upon and signed by him."
- (c) That Mr. Humphreys gave evidence under cross-examination that Farm #17 was vacant when he gave permission to the Claimant to settle on the land.

[57] Counsel for the Claimant invites the Court to accept the evidence of the Claimant's witnesses as proving that the Claimant did in fact have an agreement to occupy the land. In the view of the Court, however, the evidence of Louise Jacobs in that regard was to the effect that she was not aware of the Government's arrangement with the Claimant with respect to Farm #17, while the evidence of Liston Joseph, the Claimant's half brother in that regard established nothing more than the fact that he cleared the land for the Claimant at a cost which he cannot substantiate and that Stephen Joseph was aware that there was clearing of the land.

[58] Counsel for the Defendant on the other hand submits that there was no oral agreement between the Crown and the Claimant to occupy Farm #17 and that any agreement to occupy the farm was with Stephen Joseph and not the Claimant. Counsel further submits that the Claimant's occupation of Farm #17 was as a result of an agreement / or arrangement between the Claimant and Stephen Joseph.

[59] Counsel for the Defendant further submits that the Claimant has failed to establish that there was an oral agreement between himself and the Crown, and

urges the Court to not accept the Claimant's claim that there was such an agreement "on the basis that the Claimant has made numerous inconsistent statements in respect of the terms of the alleged agreement."

[60] It is the submission of Counsel for the Defendant that these inconsistent statements include the following:-

- "(a) The Claimant stated in his Claim Form that he entered into an oral agreement in 1983 with the then Minister of Agriculture, Mr. Humphreys to occupy Farm # 17 under the EDF programme.
- (b) The Claimant in his Witness Statement stated that in 1989 he entered into an oral agreement with Mr. Humphreys to occupy Farm #17 under the EDF program.
- (c) Under cross-examination, the Claimant stated that in 1983 he entered into an oral agreement to occupy the said lands for livestock farming with Dr. Robinson, deceased, the Chief Veterinary Officer at the time and not Mr. Humphreys as he stated in his claim.
- (d) On cross-examination the Claimant stated that what he had with Mr. Humphreys in 1989 was a "follow up" of his oral agreement with Dr. Robinson, deceased.

[61] Counsel for the Defendant further submitted that if there was an agreement for the Claimant to occupy the land, the terms of the agreement must be clear. She submits that, due to his several inconsistent statements, the Claimant is unable to accurately state the terms of the agreement, namely, the time when he entered into the agreement, the rental payment and with whom he entered into the agreement.

[62] Counsel for the Defendant further submits that Charlesworth Grant clearly distinguished the two programs which exist for farmlands. This evidence is that farms under the EDF program were set up in or around 1987 for small livestock farmers in Antigua

whereby farmers were given a period of 25 years lease at a cost of \$25 per acre and the LDU program, which was set up in or around the 1970s and is a program set up for small livestock farmers whereby farmers were given year to year tenancy and at a rental cost of \$30.00 per acre per year. Counsel further submits that the evidence also demonstrates that the farms under the LDU program are all located in the North Sound and Donovans area and the farms under the EDF program are only located in Burkes estate, Bodkins Estate, Betty Hope Estate and Yorks Estate. Counsel contends that this aspect of Mr. Grant's evidence was unchallenged. Accordingly, submits Counsel for the Defendant, "it appears that this nullifies the Claimant's claim that he was under the EDF program."

[63] The Court finds that the evidence of the Claimant that he entered into an agreement with the Government in 1983 is untenable. In his Statement of Claim, the Claimant pleaded that he entered into an oral agreement with the Government in 1983, and that, based on that agreement; he went into occupation of the land. It is his contention that the agreement was entered into between himself and Mr. Humphreys, the then Minister of Agriculture, Lands and Fisheries (the Minister) and that the said agreement was made in accordance with the Government's EDF programme.

[64] Under cross-examination however, the Claimant testified that the oral Agreement which he entered into in 1983 was with Dr. Robinson who was then the Chief Veterinary Officer. He further testified that the agreement which he entered into with Mr. Humphreys was in 1989. This agreement, he stated, was a "follow up."

[65] The Claimant's further evidence is that he entered into the Agreement with Dr. Robinson in 1983 but did not have the funds to start in 1983. The Claimant further stated that Dr. Robinson told him that he would have to pay quarterly every year, but he did not quote a figure. Nevertheless, the Claimant's evidence is that he started making the first payment of \$1300.00 in 1984/1985. He further testified that there were no other terms attached to the Agreement with Dr. Robinson except that it was for livestock farming. The Claimant further stated that Dr. Robinson said that he would assist him in clearing the land, but he

did not do so and that he "signed something" with Dr. Robinson in 1983 and "would have gotten" a copy, but all the documents "got wet" in the hurricane in 1995. The Claimant further testified that Dr. Robinson told him that a tractor would provide him with water every day, but provided no evidence that this was done.

- [66] Based on the totality of the evidence, there is no evidence to satisfy the Court on a balance of probabilities that an Agreement existed between the Claimant and the Government in 1983.

Was there an enforceable agreement with the Defendant in 1989 for the Claimant to occupy Farm #17?

- [67] The Claimant's evidence is that in 1989, he entered into an Agreement with Mr. Humphreys to occupy the land based on the EDF programme. Mr. Humphreys' evidence is that he entered into an Agreement with the Claimant between 1988 and 1989, somewhere around that time." He testified that the Claimant, who is "someone he knew", came to him, and there was an agreement between them that he (the Claimant) could occupy the land for livestock farming, and that he would enjoy the lands until a formal lease could be agreed upon and signed by him. He stated that the lease would have been for 25 years and that that the agreement was a "follow up" to the agreement which the Claimant had with Dr. Robinson.

- [68] Mr. Humphreys stated that he did not discuss the amount of rent payable with the Claimant since "that would be discussed with Dr. Robinson." He stated further that he was aware at the time that the Claimant had an arrangement or agreement with Dr. Robinson but said "I could not tell you the terms of that agreement." He stated further that he never contacted Dr. Robinson about the agreement because "it was on the file." Mr. Humphreys goes on to say what Dr. Robinson "would have done." He stated that Dr. Robinson "would have written" on that paper what had transpired between himself and the particular farmer, which would be brought to his attention by the Permanent

Secretary. He then "would have to either approve or disapprove what had been agreed upon."

[69] The evidence of Mr. Humphreys is that at the time when he gave permission to the Claimant to occupy the land, the land in question was not occupied by Stephen Joseph or anyone else. He however offers no conclusive evidence or proof that this is so. The evidence that Mr. Humphreys provides in that regard is that the Lands Officer "would have known" that the lands were free and clear; however he stated that "he is not certain whether the Lands Officer informed him that the land was free and clear."

[70] The Claimant stated in his Reply to the Defence that his brother Stephen Joseph occupied Farm #17, but that Stephen Josephs occupation came to an end prior to his (the Claimant's) occupation in or around 1989, at which time he went into vacant occupation of the land. However, under cross-examination, the Claimant testified that he was not aware that his brother Stephen Joseph occupied the land when he (the Claimant) began occupation and that he was only aware of that fact after he (the Claimant) got the land. In his Witness Statement, however, the Claimant stated that "it is well known that my brother Stephen Joseph, the founder of the Bargain Centre, had abandoned his farm since the late 1970's or early 1980's and he thereafter went into his supermarket business sometime in the 1990's."

[71] In light of these statements by the Claimant, one has to question the credibility of the Claimant's testimony as to when he became aware of Stephen Joseph's occupation of the land.

[72] Counsel for the Claimant submits that "in this instant case the Claimant had an oral contract with the Minister of Agriculture in 1989 to occupy the farm under an EDF 25 years program until a formal lease was signed and he paid \$307.50 quarterly for use of the land until in or around 1997 when he had an arrangement with his brother Stephen Joseph."

[73] Mr. Humphreys testified under cross-examination that the agreement with the Claimant was pursuant to the Government's EDF programme. In his Witness Statement, Mr. Humphreys stated that sometime in 1989 he was involved in the process to give permission to the Claimant to occupy land located at North Sound, to be used for farming. He stated that the Claimant was one of the farmers given permission to occupy land at North Sound known as Farm #17, and that this was further to an EDF initiative. Given the evidence of Mr. Humphreys that he was intimately involved with the process of allocating land, it is therefore amazing that Mr. Humphreys stated that he did not recall the areas which would be covered under the EDF program; however he stated that the LDU programme was basically over the entire country.

[74] The evidence of Mr. Humphreys was that there were differences between the EDF and the LDU programmes. He stated that under the EDF programmes, the lands would be already cleared, fenced and there would be provision of water. Under the LDU programmes, the farmers had to clear their farms. This fundamental distinction between the two programmes was confirmed by the Defendant's witness namely Mr. Charlesworth Grant. It is therefore logical to conclude that since, on the evidence of the Claimant himself, the land was not cleared and fenced by the Government when he went into occupation thereof, that the Claimant's occupation thereof could not have been under the EDF programme.

[75] Further, the evidence of Mr. Charlesworth Grant was not only that Farm #17 does not exist under the EDF Livestock project, but that there is no EDF farm located at North Sound. This evidence was not discredited.

[76] I think it appropriate at this stage to consider the document admitted into evidence as "MJ1". Under the heading "Documents To Be Used At Trial" which formed part of the Core Trial Bundle, this document was described as "Copy of official document evidencing rental agreement with Antiguan Government and payment by Maurice Joseph in regards to Farm #17." At the trial Counsel for the Defendant objected to the document being admitted into evidence on the basis that it was one of the

documents which was not agreed to by the Defendant and should not be admissible. Counsel further challenged the authenticity of the document. Counsel for the Claimant responded by arguing that whether documents are agreed to or not does not speak to whether those documents are admissible in evidence. There were further submissions from both Counsel and the Court allowed the document and it was tendered as "MJ1".

[77] Under cross-examination, the Claimant testified that he obtained the said document from an unidentified person whom he stated he does not know, although he stated that this person met him somewhere in St. John's and handed him the document, which he knows absolutely nothing about, not even its origin. The Claimant further testified that he was unaware of the reason he was given the document.

[78] Counsel for the Defendant further submitted that, when the document was shown to the Defendant's witness Mr. Grant, the witness was unable to identify the document which he stated did not form part of any documents in the Ministry of Agriculture files/records. Counsel further submits that if the Court were to go further and compare this document to the copy of the page from the logbook exhibited by the Defendant, both documents are completely different documents and do not in any way indicate similarity.

[79] In the view of the Court, no weight is to be given to the document "MJ 1" as it fails to provide conclusive proof either of the fact that the Claimant entered into occupation of Farm #17 under the EDF programme, or if he did, when he did so. Further, that the document is not evidence of any binding agreement between the Claimant and the Defendant.

[80] Counsel for the Claimant also relies on the letter of Mr. Humphreys as providing proof not only that "the Claimant did in fact have an agreement to occupy the land but also that the Claimant was encouraged to take occupation of the land by both Mr. Robinson and Mr. Humphreys". The letter was admitted into evidence as "MJ 3" and is hereby reproduced:

"December 16, 2009

To whom it may concern

This letter is intended to show my involvement when I occupied the position of Minister of Agriculture with special responsibility for lands and also CHAPA.

From my recollection sometime time (sic) in the 1989 we had decided at the Ministry to grant a formal lease to Mr. Maurice Joseph to occupy lands at North Sound. In the interim we settled him on the said land and was awaiting specific instructions from the Attorney General's office regarding documentation.

The Ministry had a policy of granting lands to farmers based on a year to year basis. However for large tracts of land where farmers wanted to obtain loans from financial institutions formal leases were drawn up with time frame and performance clauses.

In order to speed up the occupation and operation of the farm the ministry mandated CHAPA to use their heavy duty equipment driven by Mr. Dorian Hughes to start clearing the land.

For any further particulars please feel free to call me at 268-720-8810.

I am

(sgd)

Hilroy R. Humphreys"

[81] The Court makes the following observations with respect to the above letter:-

- (a) The letter was dated 2009, five (5) years after Mr. Humphreys demitted office as Minister of Agriculture.
- (b) The letter makes reference to the plural "we". In particular, that "in the interim we settled him (Maurice Joseph) on the said land." This is in sharp contrast to the evidence of Mr. Humphreys under cross-examination wherein he stated that "he" (singular) gave permission to the Claimant to occupy the land. Further, that the Claimant was "someone he knew", thus emphasizing the personal nature of the decision.

- (c) It would appear from the letter that the decision to draw up "formal leases" was to accommodate farmers who "wanted to obtain loans from financial institutions." There is however no evidence from the Claimant that he intended to, or had applied for a loan from any financial institution or indeed from any other source. Indeed, nowhere in the evidence of Mr. Humphreys does it refer to a Government or Ministry "policy" to that effect. Further, the evidence of Mr. Humphreys as to reason why the Claimant was not in possession of a lease was, as stated in the Submissions of Counsel for the Claimant, that "the long term lease of 25 years would have been extremely expensive in terms of stamp duty so the Government through the Ministry of Legal Affairs were trying to work out a mechanism where farmers were exempt from paying stamp duty that is why the Claimant did not receive a formal lease up until he left the Ministry."
- (d) There is no mention in the letter that the Claimant was promised a 25 year lease. In fact what seems to be implied is that the farmer would be made aware of "time frame" and "performance clauses" when the formal lease was drawn up. Further, those specific instructions were awaited.
- (e) The letter states that "the ministry mandated CHAPA to use their heavy duty equipment driven by Mr. Dorian Hughes to start clearing the land". There is however no mention of Mr. Dorian Hughes in the evidence of the Claimant. The evidence of the Claimant in his Witness Statement is that he "initially got some help to clear the land from the Government". Under cross-examination, the Claimant testified that "I think what happened they eventually put a guy from Bethesda, I cannot remember his name, to work along with me but the guy never show up. Never showed up no time at all." The Claimant stated that "about 2 week-ends of work "was done by someone whom Mr. Humphreys sent to assist in clearing the land, during which heavy duty equipment was used.

[82] Based on the totality of the evidence, and in particular having observed and listened to the witnesses as they gave their evidence at the trial, the Court finds the evidence of the

witnesses for the Defendant more credible than that of the Claimant and his witnesses. Further, the Court was not impressed with the Claimant's demeanour. The Court found that the evidence of Stephen Joseph as to his occupation of the land was more credible than that of the Claimant and more consistent with logic. The Court is satisfied that, if the Claimant was in occupation of the land, that his occupation was not pursuant to the Government's EDF program, as alleged in his pleadings.

[83] The Court is also of the view that the Claimant has not proved on a balance of probabilities that Stephen Joseph's interest in the land "had long been relinquished" when he (the Claimant) claims he entered into vacant possession thereof, or that Stephen Joseph's occupation of the land came to an end prior to his (the Claimant's) occupation in or around 1989 at which time he went into vacant occupation of the land.

[84] Based on the totality of the evidence, there is nothing to satisfy the Court on a balance of probabilities that an enforceable agreement existed between the Defendant and the Claimant in 1989 for the Claimant to occupy Farm #17.

Issue #2 - Whether or not there is a lease or tenancy agreement between Stephen Joseph and the Crown.

[85] Sampson Owusu in his book "Commonwealth Caribbean Land Law", in defining a Lease states:-

"In the words of Lord Hoffman in *Brutton v London & Quadrant Housing Trust* A 'lease' or 'tenancy' is a contractually binding agreement, not referable to any relationship between the parties, by which one person gives another the right to exclusive occupation of land for a fixed or renewable period or periods of term, usually in return for a periodic payment in money. An agreement having these characteristics creates a relationship of landlord and tenant to which the common law or statute may then attach various incidents."

The writer goes on to say:

"There are three elements of vital importance for a valid lease viz:

(a) certainty of duration (fixed term)

- (b) rent
- (c) exclusive possession."

[86] The law is settled that a tenancy from year to year or a yearly tenancy is a valid lease. As stated by Megarry & Wade in *The Law of Real Property*, 7th edition, at page 763:

"A yearly tenancy is one which continues from year to year indefinitely until determined by proper notice, notwithstanding the death of either party or the assignment of his interest." Further that "a tenancy from year to year is saved from being uncertain because each party has power by notice to determine at the end of any year."

[87] Counsel for the Defendant submits that there is "undisputed evidence" that a lease agreement exists between Stephen Joseph and the Crown and not the Claimant", and submits further that any agreement to occupy Farm #17 was between the Crown and Stephen Joseph, and that "at all material times a lease agreement exists between Stephen Joseph and the Crown."

[88] Counsel for the Defendant submits that the evidence that a lease agreement exists between Stephen Joseph and the Crown is based, among other things, upon the following:-

- "(a) The unchallenged evidence of Stephen Joseph is that he had a year to year lease agreement with the Crown for the 41 acres of Crown lands under the LDU farm program which he pays rent in the sum of \$30 per acre per year, and that this evidence was confirmed by the Defendant.
- (b) The Claimant in his Witness Statement confirmed that Stephen Joseph was a tenant of Farm #17.
- (c) Notwithstanding that the Claimant has stated that Stephen Joseph abandoned the said farm by relinquishing his rights to the said farm the Claimant has not provided any cogent evidence that the agreement between Stephen Joseph and the Crown was ever terminated.

(d) The letter dated 12th September 2000 by the late Dr. Robinson to Stephen Joseph acknowledges the existence of an agreement between the Crown and Stephen Joseph. Dr. Robinson in the said letter advised Stephen Joseph as tenant of Farm #17 that he was in arrears of his rent in respect of the said farm.

[89] Counsel for the Claimant on the other hand submits that the Claimant and not Stephen Joseph was the lawful occupier of Farm #17.

[90] Counsel for the Claimant invites the Court to accept the evidence of Mr. Humphreys and the Claimant that in 1989 the property was overgrown and was not used as a farm by Stephen Joseph when the Claimant was settled on it. Counsel invites the Court to reject the evidence that Stephen Joseph was in occupation of the farm from 1989 on the basis that, by his own evidence he sold his animals and gave away the remainder to his father because his new job in 1983 as sales manager, together with his family's moving to the U.S.A. in 1984 presented a big challenge. Counsel urges the Court to conclude that since Stephen Joseph ceased doing farming he obviously relinquished the land for farming purposes and therefore cannot claim that he is still in occupation for use as a farm.

[91] Counsel for the Claimant further invites the Court to accept the evidence of the Claimant that his brother Stephen Joseph occupied the farm but only before his tenure in 1989, and also to accept the evidence of the Claimant that the agreement with Stephen Joseph was because their father had died and persons were taking their father's animals, and that Stephen Joseph would pay the rent to help his brother as he was in a stronger financial position than he was.

[92] Counsel for the Claimant further submits that "... furthermore Stephen Joseph says he was a year to year tenant but the only time he signed an agreement was in 1980 and no mention is made of any renewals and or extensions." However, as stated in Megarry and Wade (*supra*) at page 763, "a yearly tenancy or tenancy from year to year continues until determined as if both parties made a new agreement at the end of

each year." In my view therefore, there is, with respect, no merit in Counsel's submission.

[93] The evidence of the Defendant is that there is a lease agreement between Stephen Joseph and the Crown. Stephen Joseph's evidence is that he had a year to year lease agreement with the Crown under the LDU program and that he pays rent in the sum of \$30 per acre, per year. The letter dated 12th September 2000 from Dr. Robinson to Stephen Joseph states that Stephen Joseph is in arrears of rental. It is the submission of Counsel for the Defendant that this letter acknowledges the existence of an agreement between the Crown and Stephen Joseph. I agree. I am also of the view that this letter is very significant as it erodes the foundation of the Claimant's contention that there was an initial agreement entered into with Dr. Robinson in 1983. Mr. Humphreys, who gave evidence that his agreement with the Claimant in 1989 was a "follow up" to the agreement with Dr. Robinson in 1983, testified that he did not discuss the terms of the agreement with Dr. Robinson because "it was on the file." The Claimant's own evidence is that he did not inform the Ministry of his arrangement with his brother Stephen to pay the rent as "he didn't think that it concerned them". The Claimant further testified that he never communicated to the Ministry that he was relinquishing his occupation of the land.

[94] It defies logic therefore, that Dr. Robinson would address the letter to Stephen Joseph and not Maurice Joseph unless he was operating on the reasonable assumption that Stephen Joseph was the proper person to whom this letter should be addressed on the basis that Stephen Joseph was, if not the legal tenant, at the very least, the lawful occupant. Furthermore, no proof is provided that Dr. Robinson was aware of the arrangement between the two brothers.

[95] Implicit in my finding is my rejection of the submission of Counsel for the Claimant that the Government failed to provide reasonable notice to the Claimant that the land was needed for a cemetery. Rather, the Court accepts the submission of Counsel for the Defendant that since it is established that a lease agreement exists between Stephen

Joseph and the Crown, then any permission to enter onto the property should be sought from Stephen Joseph.

- [96] In the view of the Court therefore, the Defendant has proved, on a balance of probabilities that a lease or tenancy agreement existed between Stephen Joseph and the Defendant.

Issue # 3 - Whether , if the Court finds that no enforceable contract exists between the Claimant and the Defendant, the Claimant can rely on the principle of estoppel to establish a right to occupy the land and to claim compensation for expenditure on the land.

- [97] In the Statement of Claim, the Claimant pleads that he is a “contractual licensee” of the Defendant.

- [98] The law distinguishes between a lease and a licence. Halsbury's Laws of England Volume 27 (1) Page 27, paragraph 9 states that: “A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession of them, or where exceptional circumstances exist which negative the presumption of a grant of a tenancy.”

- [99] At paragraph 10, it is stated that:

“... Where a licence is granted by contract, the resulting right to occupy land is usually described as a 'contractual licence', but it is not an entity distinct from the contract which brings it into being, but merely one of the provisions of the contract... In order to establish a contractual licence, there must be a promise which is intended to be binding and is either supported by consideration, or is intended to be acted upon and is in fact acted upon.”

- [100] Learned Counsel for the Claimant submits that “if the Court finds that there is no contract between the Claimant and the Crown that the Claimant relies on the application of the

equitable principle of estoppel." Counsel quotes from Megarry and Wade, The Law of Real Property, 16th edition, Paragraph 13-001, as follows:-

"Proprietary estoppel, which is also sometimes referred to as estoppel by acquiescence or estoppel by encouragement is a means by which property rights may be affected or created. The term describes the equitable jurisdiction by which a court may interfere in cases where the assertion of strict legal rights is found to be unconscionable."

[101] Counsel for the Claimant relies on the dictum of Lord Denning in the case of **Inwards v Baker** [1965] 1 All ER 446, 448, as follows:-

"If the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the owner of the land that he will be able to remain there, that raises an equity in the licensee as to entitle him to stay there."

[102] The legal principles with respect to the doctrine of proprietary estoppel were re-stated in the case of **FBO 2000 (Antigua) Limited v Vere Bird Jnr. et al**, cited by Counsel for the Claimant. In that case, the Court of Appeal affirmed that the Claimant must prove the following to raise the equitable doctrine:

1. encouragement or acquiescence by the Defendant.
2. detrimental reliance by the Claimant.
3. unconscionability in withdrawing the promised benefits.

[103] The law is also settled that an agent's representation is "as effectual for the purpose of estoppel as if it had been made by his principal – see **A-G to Prince of Wales v Collom** [1916] 2 KB 193 per Atkin J." - Halsbury's Laws of England, Fourth edition, Volume 16, page 913, paragraph 1050. The estoppel will not arise from the representation of the agent unless it is within his actual or ostensible authority to make it." Any encouragement by Mr. Humphreys, as Minister of Agriculture, could be held to be attributable to the Defendant.

[104] It is the submission of Counsel for the Claimant that the instant case "is an appropriate case to invoke the equitable jurisdiction of the Court." That the Claimant at all times believed that Mr. Humphreys was the appropriate agent of the Government and he was encouraged by Mr. Humphreys to believe that he could occupy the land as a farm for 25 years and that he would eventually get a written lease; that the Claimant acted to his detriment in reliance on the encouragement of the agent of the Government, Mr. Humphreys; that the Claimant paid labourers to clear the property and paid them the sum of \$390,000.00 for labour costs and paid \$201,600.00 to his brother Liston Joseph.

[105] In the footnote appearing at Page 705 of Megarry and Wade (supra) it is stated:

"... it is important to bear in mind that the fundamental principle is to prevent unconscionable conduct. While it is convenient to examine the prerequisites for a claim as if they were separate components, they do not in fact operate in isolation and must necessarily impact on each other... In the end, the Court must look at the matter in the round. *Gillet v Holt* (2001) Ch. 210 at 225, per Robert Walker L.J."

[106] Should the Court invoke its equitable jurisdiction in this case?

[107] It is the evidence of Mr. Humphreys that in 1988 or 1989, the Claimant came to him and that he told the Claimant that he could occupy and settle on the land for use for livestock farming until a formal lease was agreed upon and signed. The evidence of the Claimant's brother Liston Joseph was that in or around 1989 he was called by the Claimant to help him to clear the land so that it could be used to rear cattle. According to the evidence of the Claimant in his Witness Statement, he employed his brother Liston Joseph to give him a hand. Although the Claimant does not state when he did so, we have the evidence of Liston Joseph that this was around 1989. The Claimant further states in his Witness Statement that "...Additionally I employed a man called George Phillip in or around 1989 along with Johnny and some other labourers."

[108] Counsel for the Claimant in her submissions states that "The Claimant and Mr. Humphreys gave evidence to the effect that the Claimant was encouraged to take occupation of the land by both Mr. Robinson and Mr. Humphreys." The Court notes however, that nowhere in the Claimant's Witness Statement does it state that the Claimant entered into occupation of the land in 1983, which, according to the Claimant, is the date of the agreement which he entered into with Dr. Robinson. Significantly also, the Witness Statement makes no mention of Dr. Robinson or of any agreement with Dr. Robinson. In the view of the Court, this omission is extremely significant.

[109] If, as is pleaded by the Claimant, he entered into occupation of the land in 1983 in reliance of the agreement entered into at that time, then the Claimant has provided no evidence that Dr. Robinson had authority to enter into that agreement, or that he was encouraged to go on the land by Dr. Robinson or that he acted to his detriment in reliance on any representation made to him by Dr. Robinson. The Claimant is bound by his pleadings.

[110] However, if, looking at the "matter in the round", the Court is of the opinion that the agreement entered into between the Claimant and Mr. Humphreys in 1989, although unenforceable, is such as should invoke the doctrine of proprietary estoppel, how is the Court to resolve the equity in this case? The law is settled that the Court has a discretion to award a Claimant in this case any remedy it considers appropriate. As stated by the Court of Appeal in the FBO case (*supra*):

"It has been said that the court will look at the circumstances in each case to determine how the equity can best be satisfied, and it has wide discretion as to the order; which it may make. Relief that has been granted has included ordering the owner of land to grant a term of years, to make a money payment by way of compensation, to grant a mere licence or not to assert its legal title."

[111] Counsel for the Claimant invites the Court to "resolve the equity in the instant case" by compensating the Claimant for the value of his improvements, since "...it is redundant to order specific performance because in this case the Defendant has given evidence that the land will be used for a public cemetery and therefore the Claimant will be unable to

occupy the land in any event." Counsel submits that the value of the Claimant's expenditure on the land in the sum of \$591,600.00. This sum, Counsel submits further, is the cost expended on the land and includes the costs of hiring the equipment in the sum of \$201,600.00 and \$390,000.00 being the sum for labour cost for clearing the land.

[112] The Claimant's difficulty is, as Counsel for the Defendant states in his Submissions, that he (the Claimant) has not provided evidence of the expenditure which he claims. He has provided no receipts for the cost of hiring the equipment, nor has he provided receipts for the labour cost for clearing the land.

[113] The Claimant testified that the receipts for clearing the land were lost during the hurricane. He stated also that he misplaced the receipts for the cost of hiring equipment for clearing the land. These receipts, he added, were all in a "pick up" which he kept on the farm.

[114] Therefore the Court finds that the Claimant has not established his entitlement to the compensation claimed.

Issue # 4 - Whether the Claimant is entitled to special damages.

SPECIAL DAMAGES

[115] The Claimant in his Amended Statement of Claim pleaded the following particulars of special damages;

1. Estimated salvage value of pigs enclosure in the sum of \$25,000.00
2. Estimated salvage value of steel gate in the sum of \$3,000.00
3. Value of lost cattle in the sum of E.C.\$75,000.00 (at \$3,000.00 for each animal)
4. Walaba post to construct fence in the sum of \$183,600.00
5. Wire used to construct fence in the sum of \$201,040.00
6. Nails used to construct the fence in the sum of \$1,554.00

Total = \$ 489,194.00

[116] Since, as stated above, the Claimant has not satisfied the Court that there was an enforceable agreement between the Claimant and the Government in 1983, or for that matter in 1989 and based on the finding of the Court that a lease or tenancy agreement existed between the Government and Stephen Joseph, the submission of Counsel for the Claimant that the Defendant is in breach of contract is unsustainable. Further, the Court is of the view that the Claimant has failed to discharge his evidential burden as required.

[117] The rule relating to awards for general and special damages was stated by Lord Mac Naughten in **Stroms Bruks Aktie Bolaq v Hutchinson** [1905] A.C. 515 at pages 525 – 526:

"General damages'... are such as the law will presume to be the direct natural or probable consequence of the action complained of.

'Special damages' on the other hand, are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed specially and proved strictly."

[118] The Claimant has provided no documentary evidence to support his claim for special damages.

[119] In the Particulars of Special Damage referred to in paragraph above, the Claimant has pleaded;

(a) "Value of lost cattle in the sum of EC \$ 75,000.00 (at \$3,000.00 for each animal). However, the Claimant has provided no evidence to substantiate his claim as to the number of cattle that were missing and the value of each of the said cattle.

(b) "Estimated salvage value of pigs' enclosure in the sum of \$25,000.00". He has, however, provided no evidence to substantiate his valuation of the pigs' enclosure.

(c) "The estimated salvage value of steel gate in the sum of \$3,000.00", again, no evidence has been provided to the Court either by way of receipt or otherwise. "

(d) Fencing the land. Again, the Claimant provides no evidence either by way of receipt or otherwise to substantiate this claim. He provides his own valuation based on an estimate contained in a "Proforma Invoice" obtained from Bargain Centre Hardware.

[120] Accordingly, it is the view of the Court that the Claimant's claim for special damages must fail.

Issue # 5 - Whether the Claimant is entitled to Exemplary Damages.

Exemplary Damages

[121] The Claimant pleads in his Statement of Claim:-

"In the premises, the said conduct of the Defendant whether by himself, his agent, servants, employees and representatives was arbitrary, highhanded and oppressive and the Claimant claims exemplary damages."

[122] In his "Particulars" the Claimant has pleaded that:-

"(a) The Defendant whether by himself, his agents, servants, employees and or representatives have failed and refused to communicate a reasonable notice to remove to the Claimant, despite his persistent attempts to communicate with the Defendant whether by himself, his agents, servants, employees and or representatives;

(b) The Defendant whether by himself, his agents, servants, employees and or representatives have continued to unlawfully enter upon his premises and demolish and compromise the Claimant's cattle farming operations'.

(c) The Defendant whether by himself, his agents, servants, employees and or representatives have failed to offer any compensation to the Claimant or offer any other form of amelioration."

[123] The law is settled that exemplary damages are awarded for conduct that deserves to be punished.

[124] Mc Gregor on Damages, 18th edition, Page 420 states:-

"The primary object of an award of damages is to compensate the claimant for the harm done to him; a possible secondary object is to punish the Defendant for his conduct in inflicting the harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which are variously called exemplary damages, punitive damages, vindictive damages or even retributory damages, and comes into play whenever the Defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence or the like."

[125] In the Court of Appeal decision of **Asot A. Michael v Astra Holdings Limited**, Civil Appeal No. 17 of 2004, consolidated with **Robert Cleveland et al v Astra Holdings Limited**, Civil Appeal No. 15 of 2004, Rawlins, J.A. [Ag], as he then was, stated:

"Under this head, the object of exemplary damages is to punish for conduct that is deliberate, cynical or outrageous. The award would be to show displeasure with and disapproval of the conduct and to deter the tortfeasor from repeating it."

The learned Judge cited the cases of **Rookes v Barnard** [1964] A.C. 1129 at page 1228; **Brome v Cassell & Co. Ltd.** [1972] A.C. 1027, at page 1060 and **A v Bottrill** [2003] 3 WLR 1406 [P.C.]

[126] In the instant case, the Court is of the view that there is no evidence to support a finding that the Defendant engaged in conduct that was arbitrary, highhanded and oppressive. Further, on the basis of my findings above, I am satisfied that the Claimant has failed to prove, on a balance of probabilities, that he is entitled to a punitive award.

CONCLUSION

- [127] As this is a civil suit, the burden of proof is on the Claimant. This principle is usually summed up in the maxim "He who alleges must prove." The standard of proof is on a balance of probabilities. In the instant case, the Court is of the view that based on the totality of the evidence; the Claimant has failed to discharge this burden.

Accordingly, the Claimant's claim against the Defendant is dismissed, and my Order is as follows:-

ORDER

- [128] My Order is as follows:-

- i. The Claimant's claim is dismissed.
- ii. The Claimant shall pay to the Defendant prescribed costs in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules (CPR) 2000.


JENNIFER REMY
High Court Judge