

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 1992/0335

BETWEEN:

GERTRUDE PAYNE, Executrix and
Beneficiary of the Estate of
ADIANA ALEXANDER

Claimant

AND

BONIFACIA NOEL

Defendant

Appearances:

Mrs. Shirley Lewis for Claimant
Mr. Horace Fraser for Defendant

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2007: May 9, 29, 31,
July 10
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JUDGMENT

Mason J

[1] In 1984 the Government of St. Lucia, through its Attorney General, instituted escheat proceedings with respect to lands at La Courville, Micoud, against twenty three (23) persons, two (2) of whom are the parties to this action. On 22nd June 1992, Matthew J gave judgment.

[2] It is my view that his judgment is the jumping off point for the present action and so I shall here quote it extensively.

[3] The learned judge determined that Government had lost the right to escheat by virtue of the long and undisturbed possession of the Respondents, that the Attorney General had lost the chance to put order into the ownership of the land when he failed to withdraw the action and allow the personnel of the land registration and titling project (LRTP) to determine the rights of the parties to the land. He was of the opinion that:

“it does not follow that because the Attorney General fails to have the land vested in Her Majesty that such land will necessarily be vested in the Claimants”

He continued:

“I am persuaded in my view by the requirements of the rules to activate declaration of title under which I have described above. As I recall, there is the necessity for a plan of survey of the land; for service on the adjoining owners; for posting of the summons in the Sheriff’s Office and the Court Room of the Magistrate of the District and for publication in the Gazette and newspapers etc. I refuse to declare title in respect of any land which has not been surveyed or

for which the requirements of the said rules have not been complied”.

“Some of these Respondents are no doubt fit persons to pursue applications under Article 2103A of the Civil Code as Ritanese Joseph did but they must act in accordance with the appropriate rules. They may be on the way but they are not quite ready for declaration of title”.

“There is another reason why I could not make declaration in respect of some of the Respondents. It is evident that some of them are making opposing claims in respect of the same piece of land”.

“Lambert Noel’s claim may be inconsistent with that of Ritanese Joseph. Adiana Alexander’s claim may be inconsistent with those of Leonard Darius and Boniface Noel”.

- [4] Matthew J also determined that the Respondents should proceed to perfect their title under Article 2103A of the Civil Code and the relevant rules of Court. During the proceedings, Adiana Alexander and one other person, Elizabeth Augustin had produced Deeds of Sale as a result of which the learned judge determined that they did not need declaration of title by the Court because their deeds were their authority for holding the land.

[5] On 9th July 1992 Adiana Alexander filed a Writ alleging that the Defendant had wrongly entered and taken possession of a portion of her land, built a wooden house on it and was in the process of further construction. Adiana further alleged that she had warned the Defendant of her trespass and had requested her to move on several occasions and to cease construction but that the Defendant had refused and wrongly continued to occupy the lands.

[6] Adiana Alexander then claimed:

(1) A Declaration that the Defendant is not entitled to enter, cross, or remain on the Plaintiff's said land;

(2) An Injunction to restrain the Defendant whether by herself or by her servants or agents or otherwise, howsoever from entering, crossing or remaining on the Plaintiff's land;

(3) An Order that the Defendant do forthwith pull down and remove her house from the said land;

(4) Damages for Trespass

(5) Further or other relief

(6) Costs

[7] On 15th September 1992 the Defendant entered a Defence in which she denied the claim and stated that for more than thirty (30) years she had been in possession of a portion of that land and during that time she had never seen Adiana Alexander or her agent on any part of the said land.

[8] The Defendant indicated that she would contend at the trial that Adiana Alexander was aware that she had been a Defendant in the escheat proceedings when the judge had expressed that she should apply for title by prescription and that she had taken steps to do so.

[9] Between May to July 1993, Adiana Alexander had a survey of the land executed as had been instructed by Matthew J. This land incorporated the land which the Defendant was claiming. On 23rd May 1994 Adiana Alexander died and the present Claimant, after having been granted probate to the estate, was substituted as Claimant in these proceedings. After a number of interlocutory orders, the matter came to trial.

Evidence

- for the Claimant

[10] Mr. Ornan Monplaisir gave evidence that in 1993 he carried out a survey of lands at La Courville for Adiana Alexander and one Elizabeth Augustin. His points of reference were a Deed of Sale and the judgment of Matthew J referred to above. A number of persons were present and although notices of intention to survey had been served, the Defendant was not listed as one of those persons. He spoke of trees which Adiana Alexander indicated she had planted after she had purchased the land in 1942. Among those trees were coconut trees which he observed were different in age from those allegedly planted

by other persons including the Defendant. The trees planted by these other persons did not appear to be older than twenty (20) years.

[11] Under cross examination he stated that he did a plan of the land and separated it into A and B, that Adiana Alexander had a house on the south end of parcel A. She was claiming the entire portion of A. He indicated that he had received objection from two (2) other persons who claimed they had been on the land for thirty (30) years but he disbelieved them because he was relying on the Deed of Sale from Adiana Alexander. He reiterated that the other trees he saw could not have been planted more than twenty (20) years and that it was possible they could have been more than ten (10) years or more.

[12] The Claimant, aged 76, in her testimony recalled her father purchasing a portion of land in October 1942 from a Stanley Edmunds and by Promissory Note promising to pay by April 1943. Mr. Edmunds left St. Lucia for Trinidad and did not return for many years and so the transaction could not be completed. Her father died in 1951. When Mr. Edmunds returned to St. Lucia in 1985, her mother, Adiana Alexander made the payment for the land, executed the Deed and registered it in April 1985. She stated that her family had always occupied the land, and had a wooden house with a small grocery shop on it. They planted trees. The Claimant left for England in 1960. She states that she first saw the Defendant on the land in the 1980's when the LRTP was taking place at which time the claimant and her mother requested her to remove her house from their land. The Defendant was cutting down trees planted by the Claimant's mother who then caused a "lawyer's" letter to be sent to the Defendant. After the escheat proceedings, the Claimant's mother had a survey done of the land.

- [13] The Claimant denied that the Defendant had lived on the land for thirty (30) years before 1992 or before 1984. She stated that the Defendant had remained in occupation since 1985, that she vacated the land in 2000 and went elsewhere to live but left the wooden house on the land returning to tie her animals there.
- [14] The Claimant stated that at the time of the escheat proceedings few persons had deeds to their lands: Ediana Flavius, Ritanese Joseph (the Defendant's grandmother) and the Claimant's mother.
- [15] Under cross examination the Claimant denied that the Defendant had been on the land before 1984. She knew that she was not there in 1980 but could not give the year that the Defendant went onto the land. She admitted that Mr. Darius had been on the land before 1984 as well as Iris Biscette.
- [16] The Claimant stated that she understood the Judge in the escheat proceedings to say that the persons who did not have deeds should get deeds and those with deeds to go ahead and survey their lands. She could not recall the Judge saying that the persons on the land had been there for more than thirty (30) years.
- [17] She said that the Defendant built a house close to her mother's but denied that between 1984 and 1992 her mother did nothing to remove the Defendant. She said that her mother did not have any paper to prove the land was hers until 1985 and in 1986 she went to each person to let them know that the land belonged to her. She admitted that no

notice had been sent to those persons between 1985 and 1992, that her mother had her papers for the land in 1985 but she did not take the Defendant to Court then.

[18] The Claimant admitted to knowing the Defendant's mother but that she did not meet her there in the 1930's. She stated that the Defendant had not been born in that area. She also denied that all of those persons had been living on the land when her mother purchased it in 1942.

[19] The Claimant's sister, gave evidence which essentially supported that of the Claimant, and cross examination of which was unremarkable in that it remained basically unchallenged.

- **for the Defendant**

[20] The evidence of the Defendant was that prior to herself, her mother lived on the land from 1939 for about 18 years and when her mother died in 1957 she continued to live there. She stated that the Claimant's land is separated from hers by a drain and that the Claimant is claiming more land than she occupied. She also gave evidence of having planted agricultural crops on the land.

[21] Under cross examination she stated that she knew Adiana Alexander because as a child she was born and brought up in the land at La Courville. When it was brought to her attention that her birth certificate recorded that she had been born at Lombard she was

unsure why it should have been so recorded. She remained adamant that she was born on the land at La Courville.

[22] She denied that she had not been present when the surveyor conducted the survey of the land. She claimed that Adiana Alexander had come and found her house on the land, that she had renovated it, that the house had been there since 1942. She denied putting her house next to Adiana Alexander's when Mrs. Alexander was getting old and stated that Mrs. Alexander had come and found the house there.

[23] The Defendant conceded that although she went to the escheat proceedings and told the Court she was occupying two (2) parcels of land, she never surveyed the lands but she was still occupying the land. She believed that the land is Crown lands.

[24] She denied stating that in her Affidavit in 1985 that she was forty six (46) years old or that she had said that she was forty six (46) years old in order to put herself within the prescription period. When the mentioned Affidavit was shown to her, she stated that it could have been a mistake.

[25] She stated that during the LRTP she was told that everybody over the age of thirty (30) had a right to file for title, that she filed but her lawyer had the paper. She stated that out of the thirty seven (37) persons concerned, only Adiana Alexander surveyed her land. She recalled meeting with a Mr. Dantes but denied that she had agreed with him to relocate.

[26] The Defendant stated that her house which is located next to Mrs. Alexander is not the only one she owns. She also has her daughter's which she occupies when her daughter is out of the island. The house is on lands given to her daughter by Mr. Dantes in 2001. When questioned again she stated that Mr. Dantes had given the land to her but she had given it to her daughter. He did not give her any "paper" for the land.

[27] The Defendant reiterated that she had been occupying the land over the years, that when her mother died she was six (6) years old and that she had been living with her grandmother since then, that her grandmother had been renting the house. Before the escheat proceedings her grandmother had claimed land nearby through long possession, that in 1979 when she was about 28 years old, her grandmother gave her the house, her son was born there in 1969 and her daughter in 1973. She stated that she never went to live with her grandmother on the lands attained by long possession. The Defendant stated that she left the lands some four (4) years ago and has not lived there since.

[28] The two (2) witnesses for the Defence both spoke of knowing the Defendant "from small" and that she always lived on the land. Beyond that, their testimony was not particularly helpful.

Issue for Determination

[29] This is whether the Defendant has a prescriptive title to the land in question.

Findings

[30] Counsel for the Defendant argued that the issue of the Defendant's and others occupation was decided by a court of record and of competent jurisdiction and so it becomes res judicata, that that Court had found that the right to escheat had been lost by virtue of the long and undisturbed possession of the Respondents including the Defendant and therefore this not only affected the Crown but Adiana Alexander who would have had the lawful title to the land at the date of the pronouncement of the decision. Adiana Alexander therefore lost her right to evict the Defendant by virtue of Article 2103A of the Civil Code.

[31] While I found this to be a particularly attractive argument, it must be rejected.

[32] It is manifest from his judgment (the relevant parts of which are to be found at paragraph 3 above) that Matthew J realized that having found that the Respondents could not be disturbed by the Crown there were still issues which among the Respondents themselves still had to be resolved. He therefore specifically indicated that he was not prepared to make any declarations of title in favour of the Respondents except for the Claimant and one other person. In coming to the decision that Adiana Alexander's deed was her authority for holding the land while recognizing that her claim might yet be inconsistent with that of the Defendant's, the learned judge would no doubt have borne in mind Article 2105 of the Code which states

“If a title be shown, it helps to establish the defects of the possession which hinder prescription”

[33] He therefore advised the Respondents to proceed to perfect their title under Article 2103A of the Code and the relevant rules of Court. He even set out for them the steps required to “activate declaration of title” (see paragraph 3 above).

[34] The Claimant followed the learned judge’s instruction and had her land surveyed. Indeed it is the evidence of the Defendant and one of her witnesses that Adiana Alexander was the only one of the Respondents who adhered to the judge’s direction. The Defendant up to the date of the trial believed the land to be the Crown’s and has done nothing to perfect her title.

[35] Exhibited in the present proceedings were two (2) documents, one of which Matthew J would not have been privy to i.e. the survey plan. He had pronounced on the other – the Deed of Sale.

[36] In the Deed of Sale dated 1st April 1985 it is revealed by its schedule that the land in question measured one carre and that it was purchased by the Claimant.:

“TOGETHER with all the appurtenances and dependencies thereof but excluding the wooden dwelling house thereon which belongs to the Purchaser”

[37] (It did not elaborate as to the subject matter of these appurtenances and “dependencies”).

[38] This Deed was registered on 2nd April 1985 as No 148006 in Vol. 125 in the Office of Deeds and Mortgages and subsequent to the escheat proceedings and the survey in the Land Registry as Block and Parcel 1426B 64 on 20th September 1999”.

[39] Counsel for the Defendant contends that the validity of the Claimant’s Deed of Sale is in doubt, that it was not a matter which engaged the attention of the Court in the escheat proceedings and that in light of the paucity of the evidence surrounding its validity and the fact that there was no counterclaim challenging its validity before this court, this court is not in a position to pronounce positively on the question of its validity. Counsel further suggested that the Court should consider that the land register which recognizes the Claimant as the owner of Block 1426B Parcel 64 was moved by the Claimant’s representative via Instrument Number 3853/1999 dated the 20th September, 1999 premised on the judgment of Matthew J in the escheat proceedings and not the Deed of Sale.

[40] This was yet another of the skilful arguments by Counsel for the Defendant which again cannot be accepted.

[41] I am agreed that at no time, whether in her pleadings or her evidence, was any challenge made by the Defendant to the validity of the Deed but given the statement made by Matthew J, it is reasonable to assume that he was satisfied as to its validity and therefore its “authority”. I am of the view that for this very reason – absence of challenge to the validity of the Deed either at the escheat proceedings or its subsequent registration – that

the registration serves to give effect to the real rights of the Claimant and is evidence of the Claimant's title to the land.

[42] There was the evidence of Mr. Alexis, the Defendant's witness and one of the Respondents in the escheat proceedings. Under cross examination he remembered that around 1983/1984 Mr. Stanley Edmunds (the vendor in the Deed of Sale) was offering land for sale in the La Courville area but he did not purchase any, his reason being that his lawyer told him that he had no knowledge that Mr. Edmunds had any land. That in my opinion amounted only to the witness' rationale for not pursuing the advice given by Matthew J regarding titling of his land rather than a challenge to the validity of the Claimant's Deed of Sale.

[43] Consequently I can find no justifiable basis for this court to reject the Deed of Sale. I am justified in this view by the statement of Maule J in Jones v Chapman [1847] 2 Ex 803 at 821:

“If there are two (2) persons in a field, each asserting that the field is his and each doing some act in the assertion of the right of possession, and if the question is, which of the two (2) is in actual possession, I answer, the person who has the title is in actual possession, and the other person is a trespasser the question as to which of the two really is in possession is determined by the fact of the possession following the title, that is, by the law, which makes it follow the title”.

- [44] The land when subsequently surveyed by the Claimant was described as “A” on the survey plan produced to this court and included the lands occupied by the Defendant. This has caused the impasse foreseen by Matthew J and now calls for determination by this court: can the Defendant claim possession of the land for 30 years in spite of the existence of the Claimant’s title deed.

“Lapse of time is recognized as creative and destructive of rights. This is so with the destruction of the ownership of land through dispossession for twelve (12) years. The owner loses not only his right to recover possession of the land, he loses title to the land itself. Dispossession involves issues of fact and of law, and the onus of proof lies on him who alleges dispossession: Luckhoo J A in Brandis v Craig (1981) 30 W!R 136 at 143”.

- [45] The Defendant's claim to possession must satisfy the requirements of Article 2103A of the Civil Code which reads:

“Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court”.

- [46] The essentials of the possession which have all to be established to the satisfaction of the Court are set out in Article 2057 which provides:

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor”

[47] It is my opinion that possession as perceived by those Articles consists of two (2) elements – the physical and mental. The person claiming title by prescription has to prove not only occupation of the lands for thirty (30) years but must evince an intention to retain the lands and dispossess the owner with title or have “animus possidendi” for when possession or dispossession has to be inferred from equivocal acts, the intention with which they are done is all important: Littledale v Liverpool College 1900 1 ch 19.

[48] The evidence of the Claimant and her witness simply put is that the Defendant did not come onto the land before 1985 and that she sued her in 1992. The Defendant on the other hand states that she was born there in 1951, that her mother before her had lived there for eighteen (18) years and when her mother died in 1957, she continued to live there with her grandmother.

[49] On review of the Defendant's evidence I found parts to be contrary and therefore unacceptable: she testified to being born on the land. When confronted with her birth certificate which refuted this she states:

“When my birth certificate states that I was born at Lombard, I don’t know anything about that. I don’t know anything about where I was born. I was born at La Courville”

[50] She denied swearing in her affidavit in the escheat proceeding that she was 46 years old at the time. When the document was produced she suggested that it could have been a mistake and denied that she said that she was 46 years old in order to put herself within the prescription period (she was 33 years old having been born in 1951). The Defendant also denied that in 2001 she agreed with Mr. Dantes, the Crown Lands Officer, to remove from the land and to be relocated elsewhere. She stated that the land had been given to her daughter but when shown the letter, she changed tack and admitted that he had in fact given her the land to relocate but that she had given it to her daughter.

[51] The question remains: why would Mr. Dantes give her an alternative portion of land if she already owned the disputed parcel of land by long possession. It could only have been because she had the belief or had been convinced that the disputed land was really not hers.

[52] As a consequence I found her evidence to be somewhat perplexing and not permitting of conclusive proof of long and adverse possession. She states that the Claimant came and found her (the Defendant’s) house on the land, that her house had been there since 1942:

“The house was there, my grandmother had her house. She took me and my little brother to live with her but the house was there ,,,,,,she was renting it”

[53] Did this mean that she was not in fact born there but only came there to live with her grandmother after her mother's death? When asked if her grandmother was also renting the land on which the house stood, she conceded that she did not know. She went on to relate that her grandmother gave her the house in 1969, that her grandmother claimed another parcel of land nearby by long possession prior to the escheat proceedings but that she did not go to live with her grandmother on her land. As indicated this evidence gave rise to speculation which cannot be resolved in the Defendant's favour.

[54] Even if these discrepancies were to be ignored and I were to reject as self serving and coincidental the Claimant's testimony that the Defendant only came onto the land in 1985, it must be borne in mind that it is the Defendant who must prove to the satisfaction of the Court that she is entitled to possession, the Claimant's legal title notwithstanding. Thus if it is accepted that the Defendant has been on the land from her early years until 1992 when this action was instituted against her, in continuous, uninterrupted, peaceable and public possession, can it however be said that the possession was also unequivocal and as proprietor.

The Defendant's evidence is:

"When I went to the escheat proceedings in 1985 I told the Court that I was occupying two (2) pieces of land. I never surveyed any of them"

[55] At the close of those proceedings she was instructed to perfect her title. She did nothing. By her own admission when the land titling and registration project was being undertaken

in 1985 here in St. Lucia she was advised that “everybody who was living on the land over the age of 30 years had a right to file”. She again did nothing. When the Claimant was surveying the land, she neither attended the surveying, even after having been given notice, nor raised any objection to it. In addition during the course of her cross examination she asserted on three (3) occasions that the land belonged to the Crown. What the Defendant did was live on the land, and although she planted banana trees and a kitchen garden, all the time she believed it belonged to someone else. It was for the Defendant to show unequivocally that she intended to possess the land.

[56] I found to be particularly helpful a couple of cases provided by Counsel for the Claimant. In the first of these, No. 515 of 1985 Joseph Adjodha & Co., Ltd v Mathias Eleador et al, a decision of this court, Mitchell J in considering the issue of adverse possession in an action also involving title by prescription said:

“What constitutes adverse possession is a question of fact and degree which the Court in the exercise of its jury mind will decide on all the evidence”.

“In every case the possession which will cause time to run against the owner involves an animus possedendi, that is an occupation with the intention of excluding the owner as well as other persons, and such a possession must be shown unequivocally by the person who claims adverse possession Littledale v Liverpool College (supra)

[57] The second case also from this jurisdiction is Petition No. 237 of 1999 Exparte Josephine Altenor again involving prescriptive title. Barrow J (ag) as he then was, determined:

“that for a person to acquire a possessory title that person must have the intention to possess the land to the exclusion of all other persons including the owner with the paper title. The absence of such an intention is fatal, according to that authority, even if the person has exclusive possession”.

[58] Barrow J made reference to a number of cases, two of which I would myself wish to cite. The first of these is Williams Brothers Direct Supply Stores Ltd v Raftery (1957) 3 AER 593 in which the defendant relied upon his cultivation of land without the owner's permission and his erection of a shed for greyhound breeding to establish his defence of a squatter's title to the owner's action for possession. The Court of Appeal ruled that this action by the defendant was not capable of being treated as sufficient to oust or dispossess the plaintiff because from the evidence, the defendant never had or claimed any intention of asserting any right to the possession of the piece of land. Distinguished from that case was Marshall v Taylor (1895) 1 Ch 641 where the defendant had completely enclosed the property in question by a hedge and made it entirely part of his garden thereby excluding the owner from access to it. This action was held sufficient to dispossess the owner.

[60] In the 2nd case, Archer et ux v Georgiana Holdings Ltd (1974) 21WIR 431 the Court of Appeal of Jamaica held, inter alia, that a finding of adverse possession required some

affirmative unequivocal evidence going beyond mere evidence of discontinuance and consistent with an attempt to exclude the true owner's possession. Swaby JA opined:

“The mere fact that the true owner does not make use of his land does not necessarily mean that he has discontinued possession of it. Non user is equivocal...the mere fact that a stranger has interfered in some way with the land of the true owner is not enough to show dispossession. The stranger must go further. He must prove occupation and use of a kind that is altogether inconsistent with the form of enjoyment which is available to or intended by the true owner”.

[61] It is apparent from the legal authorities then that mere possession for the requisite thirty (30) years is not sufficient. The Defendant's intention to dispossess or exclude the Claimant is crucial and this must be evidenced by some concrete action e.g. the building of a fence or the digging of a ditch.

[62] From the evidence adduced and especially through the Defendant's own admission, the Defendant had done nothing to keep the Claimant off the land or to dispossess her. All she did was grow agricultural crops, live on the land in the belief that it belonged to someone else – the Crown – and refused either to survey or claim it under the LRTP.

[63] I would wish therefore to adopt the words of Morris LJ in the Williams Brothers case (supra). In all the circumstances it seems to me that the cumulative effect of the evidence is to make it quite impossible to say that there was actual possession in the Defendant of a

nature that ousted the Claimant from possession or excluded her from possession. In my judgment such measure of user as took place was not of a nature or quality which could amount to an ouster by the Defendant of the Claimant from her possession.

[64] And in the words of Barrow J: The evidence of the Defendant shows she has and continues to have possession of the land but did not possess it and that is fatal to her claim. Likewise in the words of Mathew J: she was on her way but not quite ready for a declaration of title.

[65] Taking into account that it is essential that all of the elements of possession as contained in Article 2057 of the Code must be proved to the satisfaction of the Court and that it may be said that the Defendant's possession of the land was continuous, uninterrupted public and peaceable, it cannot be said that her acts were unequivocal or that she was in possession as proprietor. I therefore find that her defence of title by prescription fails and the Defendant is hereby deemed a trespasser.

[66] In addition to a declaration that the Defendant is not entitled to enter, cross or remain on her land, the Claimant has asked the court for what in the circumstances amounts to a perpetual injunction.

[67] The evidence of the Claimant is that the Defendant has entered upon her land and in spite of the Claimant's objections has built a house there, has begun the construction of another, has cut down the Claimant's trees and continues to tie her animals there.

[68] Where a claimant has established that he has a right which has been infringed and that further infringement is threatened to a material extent, he is entitled to an injunction to restrain the threatened infringement : Torquay Hotel Co. Ltd v Cousins (1968) 1 AER 522. Following Patel and others v W. H. Smith (EZ1OT) Ltd and Another (1987) 1 WLR 852 it would seem that prima facie our Claimant is entitled to an injunction to restrain trespass on her land even if it appears to be quite impossible to say that there is no potential damage to be suffered by her if the injunction is not granted.

[69] Having made the determination that the Defendant does not have the right to possession of the disputed land, I am of the view that such an injunction can be granted in order to permanently prevent any infringement of the Claimant's rights and thereby obviating the necessity of the Claimant having to bring any further or future action: Halsbury's Law 4th edition volume 24, paragraph 903.

[70] It is the Defendant's evidence that she has ceased living on the lands for the past four (4) years. It is my judgment that in those circumstances it cannot be said that the granting of the injunction would serve to place the Defendant in a position of extreme difficulty or that it would prove unnecessarily oppressive: Stollmeyer v Trinidad Lake Petroleum Co., (1918) AC 485 PC.

[71] It is on that basis that this court is moved to grant the injunction as requested by the Claimant.

[72] The Claimant also claims damages for trespass and prays for an order that the Defendant pull down and remove her house from the land.

[73] If a trespasser erects a building on the land of another, the person who is entitled to the possession of the land may pull down the building: Jones v Foley (1891) 1QB 730.

[74] This Court is guided principally by Article 372 of the Civil Code which provides:

“When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor”

If they were necessary, the owner of the land cannot have them taken away. He must, in all cases, pay what they cost, even when they no longer exist; except, in the case of bad faith, the compensation of rents issues and profits”

“If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented”

“If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost on their actual

value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise in each case, the improvements belong to the owner, without indemnification. The owner may, in every case, compel the possessor in bad faith to remove them”

[75] In light of the evidence before this court and of the law as indicated the Defendant must, at her own expense and to the extent that it does not damage or cause deterioration to the land, remove her house and other structure from the Claimant's land.

[76] The legal authorities indicate that in an action for trespass, if the claimant proves the trespass, he is entitled to recover nominal damages unless he can prove that the trespass caused him actual damage. He would then be entitled to receive an amount as would compensate him for his loss. Where also the defendant has made use of the claimant's land he is entitled to receive by way of damages such a sum as should reasonably be paid for that use.

[77] It is also accepted that the court may exercise its discretion to award damages in addition to an injunction but where an injunction is granted and the claimant also claims damages as ancillary to the real remedy of an injunction, he is not entitled to substantial damages, but is entitled to recover something as an acknowledgement of the wrong he has suffered Lipian v George Pulman and Sons Ltd (1904) 91 LT 132.

[78] Although the evidence suggests that the Defendant did cut down trees from the Claimant's land, this has not been specifically pleaded and so the Claimant is not entitled to "substantial" damages. The Court will however make to the Claimant the award of a nominal sum as damages for the trespass by the Defendant.

ORDER

Judgment is hereby entered for the Claimant:

- 1. The Claimant is hereby granted a declaration that the Defendant is not entitled to enter, cross or remain on the Claimant's land**
- 2. The Claimant is hereby granted an injunction restraining the Defendant whether by herself or by her servants or agents or otherwise, howsoever from entering, crossing or remaining on the Claimant's land**
- 3. Within three (3) months of this Order, the Defendant must at her own expense remove all structures from the Claimant's land**
- 4. The Defendant will pay to the Claimant the sum of \$100.00 as damages for trespass**

5. The Defendant will pay to the Claimant prescribed costs as provided by Rule 65.5 CPR 2000

SANDRA MASON Q.C.

High Court Judge