

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV270 of 2021

BETWEEN:

[1] NESSIE JONES

Claimant

and

[1] ANDRE VEGA

[2] DOMINIQUE GOMEZ

Defendants

Appearances:

Ms. Darlene M. Vernon for the Claimant

Mr. Bryan A. Neal for the Defendants

2023: August 22, October 24;
November 09.

JUDGMENT

[1] **ALEXANDER, J.:** The claimant ('Nessie Jones') seeks declarations and damages for the unlawful trespass, possession, and occupation of a lease property on the seashore in front of Lot No. 63 Seashore Drive, Belize City, Belize together with the contents in the said property. I find wholly against Nessie Jones' claim, which has not been established on a balance of probabilities, and I dismiss it.

Background

[2] On 15th April 2021, Nessie Jones, a restaurateur, filed a fixed date claim form by which she stated that she was the owner, and in lawful possession, of a restaurant and bar business located on the foreshore in front of Lot No. 63 Seashore Drive ("Nessie's restaurant"). Nessie's restaurant is situated directly across the roadway from and not

on the same property known as Lot No. 63 Seashore Drive (hereinafter “No. 63”). No. 63 is situated in the Caribbean Shores Registration Section and is allegedly the subject of a lease between the Belize City Council and Nessie Jones, which was fully paid up. Nessie Jones claims that she was the only person entitled to possession and occupation of No. 63 and Nessie’s restaurant, under the terms and conditions of her lease. She claims, further, that the Belize City Council was the authorized agent of the Ministry of Natural Resources, for granting leases of lots along the streets or road reserves. Nessie’s restaurant was located on the public reserve and she was successfully conducting her business on the reserve for upwards of five years before she was dispossessed of it.

- [3] On 15th April 2015 the defendants, Andre Vega and Dominique Gomez (“the Vegas”), trespassed and entered Nessie’s restaurant and dispossessed her of it. By their trespass, the Vegas unlawfully interfered with her just expectation of obtaining a lease for the years 2016, 2017 and 2018. Nessie Jones claims declarations, special damages of \$72,000 per annum and general damages for unlawful interference with her lease and business and with her reasonable expectation of making a profit.
- [4] The implication from the pleadings was that Nessie Jones was the holder of a verifiable valid lease for the public reserve on which Nessie’s restaurant was situated. Evidence of this would be critical for resolving the issue.
- [5] The Vegas filed their first affidavit in which Mr. Vega stated that his wife and he are the joint owners of No. 63. The Vegas were issued a Land Certificate for No. 63, which gave them title absolute. They had purchased the property with vacant possession, as there was nobody living at No. 63 at the time. They had demolished the house on No. 63 and reconstructed a new house. The Vegas did not purchase No. 63 from Nessie Jones directly and there was no evidence as to who sold the property to them. Their ownership of No. 63 is not in issue in the present proceedings.
- [6] Mr. Vega stated that since No. 63 is located on the seashore, they had applied for and received a permit to construct a pier and a restaurant, in front of their property on the

reserve. As part of their application, they submitted a sketch plan of the proposed restaurant to be housed on the property. Mr. Vegas claims that at no time did he see a business being operated at the location (i.e. the public reserve) nor was he made aware of that fact by the Belize City Council. In fact, the Belize City Council granted the Vegas permission to operate a business at that location by licence dated 8th April 2015 ('the Vegas' Licence'). Attached to their affidavit was the Land Certificate and the Vegas' Licence, authorizing them to Use the Seabed and 66 feet Reserve, as approved on 8th April 2015.

- [7] Having filed their witness statements late, they were not allowed to call any evidence at the trial.

Issues

- [8] The following issues arise for determination by this court:
1. Whether Nessie Jones had a valid and subsisting lease in 2015 that entitled her to possess and operate her business from the public reserve in front of No. 63?
 2. Whether the Vegas unlawfully trespassed on the public reserve or Nessie's restaurant, and took possession of Nessie Jones' property?
 3. Whether the Vegas are liable for any losses sustained by Nessie Jones and evidence of the quantum can be led at the assessment?

Submissions

- [9] Counsel for Nessie Jones, Ms. Darlene Vernon, focuses her submissions on the silence in the defence on the issue of trespass. She states that the Vegas' Land Certificate for No. 63 (as exhibited in their defence) relates to the residential property and not the reserve on national land, along the foreshore. Ms. Vernon also points out that the Vegas produced no evidence at the trial, assumedly to make the point that they could not prove their case. Ms. Vernon states that the Vegas failed to prove that they did not see any business in operation at the time they took possession of the public reserve and Nessie's restaurant. The crux of counsel's submissions is that the

Vegas' Licence 'at no point in time granted access to or possession of the existing structure...or ownership of [its] equipment and furniture'.

- [10] Ms. Vernon submits further that Nessie Jones is entitled to obtain the declarations and damages sought. Nessie Jones had pleaded that the Vegas' unlawful trespass or occupation was met with resistance by Nessie Jones and she proved her case. Nessie Jones' evidence of her lease of the reserve was specific and clear. It identified the date of the 2015 lease, which was confirmed by a letter from a Ms. Candice Miller from the Belize City Council ('the Miller letter'). Counsel states that the evidence was incontrovertible. The court ought to accept these pieces of evidence as sufficient to establish, on a balance of probabilities, that Nessie Jones had a valid and subsisting lease over the use of the public reserve on which Nessie's restaurant stood.
- [11] Ms. Vernon argues further that when the Vegas knowingly trespassed upon and dispossessed Nessie Jones of Nessie's restaurant and its contents, they deprived Nessie Jones of the remainder of her lease period and legitimate expectation of further renewals. The Vegas have provided no evidence to explain their unjust enrichment of a fully furnished restaurant, with a mere licence to build a pier and restaurant. The court ought to accept the evidence of Nessie Jones and her son, Darryl Jones, that Nessie's restaurant was in existence on the public reserve in front of No. 63 and its contents were lost as a result of the trespass. Nessie Jones was, therefore, entitled to recover damages for her losses including her business equipment, and the value of works done to reclaim the land and to build a retaining wall for Nessie's restaurant. There was a tacit acknowledgement in the submissions of a lack of documentary but this was due to the failings of Nessie Jones' previous attorney. Ms. Vernon relies on the case of **P Noreen Fairweather v Gladwin Penner**¹ as authority for where a claimant holds a valid and subsisting lease, time can be enlarged to put in additional information on the issue of trespass during the assessment of damages.
- [12] Mr. Neal, counsel for the Vegas, submits that Nessie Jones has failed to establish liability for trespass or to prove any of the alleged losses suffered. There was no

¹ Claim No. 398 of 2020 delivered by Young J

evidence provided of trading activities by Nessie Jones on the public reserve or of her alleged losses or of any issue raised by her. Having failed to discharge the requisite burden of proof on every issue raised in the case, her claim ought to be dismissed.

Issue No. 1: Whether Nessie Jones had a valid and subsisting lease in 2015 that entitled her to possess and operate her business from the public reserve?

- [13] The property at the centre of the dispute in these proceedings is located on the public reserve in front of No. 63, on the opposite side of the public roadway. Nessie Jones has not brought a claim for recovery of possession of No. 63, which she purportedly once held a valid lease to. She also did not provide a copy of the 2015 lease (or of previous leases for No. 63). She relies on the 2015 lease to support her claim to the public reserve, where Nessie's restaurant is located. I find that she has provided no proper evidence to show that she was operating a business at the said location.

The Legal Framework

- [14] Under the Public Roads Act of Belize² ('PR Act') a public road is defined as:

'... any road, street or thoroughfare which may hereafter be declared by Order of the Minister under this Act, and includes all carriageways, cartways, bridle-tracks and pathways as well as bridges, ferries, drains, dams, shoulders, embankments, causeways, fences and ditches belonging or appertaining to a public road, and such land adjoining any public road as may be reserved for its protection or benefit **by Order of the Minister:**

Provided that where any road street or thoroughfare other than a highway as defined in this Act falls within the limits of Belize City, the City of Belmopan or any other town mentioned and referred to in the Schedule to the Town Councils Act, Cap. 87, **the powers conferred on the Minister and the Chief Engineer under this Act shall**, in respect of each town established under the Town Councils Act, be vested in the respective Town Council, and in the case of Belize City or the City of Belmopan, **be vested in the Belize City Council** or the Belmopan City Council:

Provided further that the powers conferred upon the Minister by sections 6 and 7 of the Act shall, in respect of Belize City ... be exercised by the Belize City Council ... with the consent of the Minister of Local Government;' [Emphasis added]

² Cap. 232 Revised Edition 2011 showing the Substantive Laws as at 31st December, 2011

[15] Section 11 of the PR Act further states:

‘The City Engineer may enter into all contracts relating to matters necessary for the purposes of this Act, and in the event of any breach thereof or of any claims or disputes arising out of the execution of the powers conferred upon him by this Act, civil proceedings by or against the Government may be taken under the Crown Proceedings Act, Cap. 167.’

[16] By virtue of the PR Act, Part 1, the Belize City Council is stated to have delegated power to deal with public roads and all associated responsibilities. In their submissions, both parties seem to accept that the Belize City Council has the authority to grant ‘permission’ to operate businesses on public reserves adjoining roads and highways within the limits of Belize City. Further, under the PR Act, the Minister has the power to declare any land adjoining a public road as reserved. This is done ‘by Order of the Minister’. However, Ms. Vernon, admits that she did not find any ‘Order of the Minister’ declaring the land at the centre of this dispute as a public reserve.

[17] The reserve in issue adjoins a public road but is also on the waterfront, on reclaimed land. Ms. Vernon states, therefore, that the applicable law governing the reserve in issue, on which Nessie’s restaurant sat, is the National Lands Act CAP 191 (‘the NLA’). The NLA defines national lands and frontage line as:

“national lands” means all lands and sea bed, other than reserved forest within the meaning of the Forests Act, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize;
“frontage line” means the boundary of a road, river, public reserve, or any sea coast, permanent stream or lake.

[18] By section 3 of the NLA, the Minister has the power to delegate his functions to the Commissioner of Lands. By section 4(1) of the NLA, national lands are classed as: (a) town lands; (b) suburban lands; (c) rural, including pastoral, lands; (d) mineral lands; and (e) beach lands. Section 6(1)&(2) of the NLA sets out additional powers of the Minister in retaining for public interests national lands:

(1) Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings ... or as the sites of public quays, wharves or landing places on the sea coast or shores of streams ...'

(2) The Minister shall also have power to alter, vary or add to the ordinary terms and stipulations upon which any grant, lease or licence is made, should it be considered expedient to do so in any special instance.

[19] Section 7 of the NLA specifies that:

'The Minister may grant leases of national lands on such terms and conditions as he thinks fit and likewise renew leases on such terms and for such periods as to him may seem proper.'

[20] Ms. Vernon states that any property not privately owned or which forms part of a reserve or otherwise not disposed of would be considered national land for the purpose of the Act. Thus, the public reserve in issue is national land. It adjoins a public road and sits near the water opposite to No. 63.

[21] I note, interestingly, that the Vegas' Licence for use of the public reserve is described as 'a privilege to utilize National Land' that runs with the land, but does not confer legal ownership. Further, the Vegas' Licence is issued by the Commissioner of Lands.

The Yearly Lease

[22] Nessie Jones claims that she had a yearly lease in 2015 from the Belize City Council. It was subsisting at the time of the Vegas' trespass. She had enjoyed such leases since 2007. She provided no lease document evidencing the agreement. However, Ms. Vernon states that the lease was proved on a balance of probabilities. First, Nessie Jones said that it existed. Secondly, the court was provided with the specific date of the lease (i.e. 2015). Thirdly, the court was told that there was the Miller letter, confirming the existence of the lease. The evidence provided should satisfy the court,

on a balance of probabilities, that she in fact enjoyed a yearly lease over the use of the public reserve from the Belize City Council. I disagree.

Analysis

[23] Nessie Jones makes positive averments that she is required to prove on the balance of probabilities. Neither the lease document nor the Miller letter was provided in evidence. I was unclear as to the basis of the submission that the Miller letter was received into evidence. I am not aware also of the contents of the alleged lease that reputedly related to No. 63 and the public reserve or if there was also a separate licence. Nessie Jones simply failed to call evidence to support or corroborate her claim of the existence of Nessie's restaurant. She did not even call the evidence of Ms. Miller or the Belize City Council who no doubt would have retained documentary records to clarify the issue. If the evidence of subsisting rights to possession existed, Nessie Jones could have provided it. I, therefore, drew a negative inference from the failure to provide the documents, which Nessie Jones alleges she possessed.

[24] During cross-examination, Nessie Jones stated that her previous attorney was responsible for not filing her documents. Yet, she claims to have documents that still, somehow, were not produced in evidence.

Q. You said, we don't have a written lease, but as a part of this lease didn't the City Council require you to pay trade licence fee?

A. Which I do yearly, but for one instance as Ms. Miller has stated in her letter

...

Q. No, wait hold on. That's a simple question. You can say yes, you can say no.

A. ... to pay my lease yearly, but there was a hold on it for one.

Q. No, no, I nuh ask yuh (sic) about a hold, hold on. Trade licence, yes, or no.

A. Yes, I pay trade licence.

Q. Hold on let me write it down, sorry. Trade licence, so your saying that you were required to pay trade licence and you know that was a legal requirement to run a business. You agree with me, yes or no?

A. I know the legal requirement is a trade licence, which I do have.

Q. But you didn't bring any of those past licences or receipts or anything to prove to the Judge that you had that trade licence.

A. I do, but it wasn't submitted by my previous counsellor (sic) for whatever reason I don't know.

- Q. This Judge will not be able to see a copy of this trade licence and receipt that you're talking about.
- A. Mr. Neal if I could I would produce it, but I can't. My counsel have (sic) to do that for me and I did gave (sic) it to him and he didn't submit them. I have all my files that I have given to him and he have been very rude to me and I need to make a report.
- Q. I really feel sorry to hear that, but just write yes, I don't have those trade licence to produce to the Court. You agree with that?
- A. I don't agree, because I have them with me.

[25] I find that as a witness, Nessie Jones was not direct in her responses to questions asked. There was an obvious pattern of avoidance in answering questions or of being circuitous or changing her responses, which did not aid her credibility:

- Q. Okay, let's move on, so you refer in paragraph 3 to reclamation work being done for this restaurant that you had. Can you produce to us any permission from the Ministry of Natural Resources to show that you had the permission to reclaim land in that area?
- A. No, we don't, but we were living there, we clean the place, we did the maintenance
- Q. I was asking a specific question I'm writing it down, if you had any permission from the Ministry of Natural Resources to reclaim land in that area that you talk about. Environmental clearance anything like that?
- A. Belize City Council has approached us ...
- Q. I'm not talking about Belize City Council Miss. I am asking specifically and I saw the judge write it, so I assume that she write what I asked about the Ministry of Natural Resources. I going to come to the City Council, but I'm asking about the Minister, the Ministry of Natural Resources.
- A. We had no need to approach them.
- Q. So if you had no need to approach them, then my next logical question is, so you had no need for any environmental clearance?
- A. We got that from Belize City Council.
- Q. You got the environmental clearance from the Belize City Council?
- A. We didn't remove any mangrove.
- Q. Hold on, my question was because you said you didn't go to the Ministry of Natural Resources I understand your answer. I'm not gonna (sic) need to go there? Let me be more specific. You didn't need to get environmental clearance from the Minister or from the Ministry of Natural Resources. No worry about the City Council. You didn't need to get any environmental clearance, in your mind, from the Ministry of Natural Resources.
- A. It was not needed. We did not disrupt anything.
- Q. I feel satisfied with your previous answer. My next question is whether there was no need for a mining licence to your mind. Because you said you did beach reclamation in the city. No mining licence was required for that?
- A. Nope.

...

- Q. ... You didn't produce for this case any proof of payment of Business Tax or Sales Tax to the Government of Belize for operating this restaurant.
- A. I have those stuff, but I was not asked to present ... my previous counsel told me that he will amend my application to submit those stuff.

[26] Instead of addressing the weaknesses in Nessie Jones' evidence, Ms. Vernon attacked the Vegas' title document for No. 63 as relating only to the residential property, not the public reserve. That argument is of no moment, as it does not shield Nessie Jones from the requirement to prove her own 'possession or occupation' of the public reserve. It does not shield Nessie Jones from proving her case that Nessie's restaurant existed and was in operation at the time of the alleged trespass. I noted with interest that she never made a case of lawful ownership of No. 63 nor did she seek recovery of No. 63. Her claim was her entitlement to Nessie's restaurant on the public reserve for which she had no evidence.

[27] Despite the lack of evidence, Ms. Vernon states that the court must factor in that Nessie Jones did have a valid lease to No. 63. I had no such evidence before me. I assume that by this argument that Ms. Vernon was advocating that Nessie Jones had possession and control of the public reserve in 2015. Even if I am minded to accept that Nessie's restaurant was located on the public reserve and she was actively conducting business at that location (and I do not so hold), Nessie Jones is still required to produce evidence of her rightful occupation and, at the very least, ought to have called evidence in corroboration of her claim.

[28] I am unable to accept Ms. Vernon's invitation to view Nessie Jones' oral evidence as proof of her lease of the reserve. There are cases where oral evidence, especially unchallenged evidence, will suffice on a balance of probability to prove a claim. However, there must be cogent reason for accepting such evidence. See **Ramnarine Singh et al v Johnson Ansola**.³ In my judgment, where documentary evidence is available or can be produced, a court will not allow a claimant to renege on its responsibility to furnish the documents to support its case. Further, a claimant is not entitled to bring a claim and then rely on the defendant to disprove the claimant's case.

³ Civil Appeal 169 of 2008 page 32, paragraph 97

She who brings a claim must prove it or face the consequences of this failure. Nessie Jones failed to prove her occupation of the reserve or that she was trading there with the requisite approval.

[29] I dismiss Ms. Vernon's argument that the Vegas' Licence and Land Certificate for No. 63 are inadequate. Counsel neglected to mention that the Vegas' Licence clearly sets out that, '[T]he benefits and burden of this license (sic) run with the respective Parcel No. 63; if Parcel No. 63 is transferred this license is to be transferred to the new owner(s)'. Further, the Vegas' Licence specifies that its grant **'is only a privilege to utilize National Land and does not confer ownership nor an interest in the land (seabed)'**. In my judgment, these clauses provide a complete answer to Nessie Jones' claim to a perpetual lawful right to occupation of the public reserve.

[30] I find that there was no lease for the reserve in Nessie Jones' name. Without the lease, she could not satisfy me that she was given terms and conditions of use of the public reserve that were exclusive or different to that given to any other member of the public. In my judgment, she has not proved any entitlement to operate a business on the reserve in 2015 or at all. She has not proved this aspect of her case.

Issue No. 2: Did the Vegas unlawfully trespass on the public reserve or Nessie's restaurant, and took possession of Nessie Jones' property?

[31] The evidence does not support unlawful trespass on the reserve or Nessie's restaurant. I have found that Nessie Jones has not established her entitlement to lawful possession or occupation of the public reserve in front of No. 63. It means that Nessie Jones could not be dispossessed of something that she did not have possession or control over. For the sake of completion, however, I will briefly look at the law of trespass and what is required to be proved to establish liability.

[32] Trespass is defined as:

'Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. **A person**

trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes mineral from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another, or if he discharges water upon another's land, or sends filth or any injurious substance which has been collected by him on his own land onto another's land.'⁴ [Emphasis added]

- [33] To establish trespass, Nessie Jones needed to satisfy me that she was in control or possession of the public reserve, where she was operating Nessie's restaurant. She must show that her possession was exclusive and that the Vegas did not have the permission to do what they did. Nessie Jones bears the burden of proof for establishing the trespass on a balance of probabilities.
- [34] It can constitute a trespass if the Vegas, without any legal right to enter the land, did enter and take possession of it and/or remained in Nessie's restaurant after being asked to leave. Nessie Jones gave evidence that the Vegas entered Nessie's restaurant, which rested on a structure that her husband and she had built on reclaimed land in front of No. 63. The Vegas dispossessed her of her property, and took it over. She did not consent to the actions of the Vegas in unlawfully entering Nessie's restaurant so resisted it. She gave no evidence as to how exactly she had challenged the Vegas' occupation of Nessie's restaurant. Her evidence was that she had requested the return of her personal restaurant items but the Vegas refused to return them, causing her to also lose their value. Nessie Jones did not provide evidence of the value of these items or when the request for their return was made.
- [35] During cross-examination, she conceded that she was doing 'repairs' on Nessie's restaurant when the trespass occurred. I assume that during the renovations, Nessie's restaurant was not in operation but there was no clear evidence of this. During re-examination, she stated, 'I was changing the deck of the restaurant to reopen', which to me meant that Nessie's restaurant was closed to business. She also conceded that No. 63 was repossessed by the credit union in 2015 and, at the material time, No. 63

⁴ Halsbury's Laws of England, 4th ed. Vol. 45, paragraph 1384

was unoccupied, having been vacated by her in 2013. I find her not to be candid and her constantly shifting evidence difficult to rely on:

- Q. So then you vacated the premises in January of 2015 or before that?
A. I vacated that property 3rd September 2013, when I move to Florida with my children.
Q. In 2013, you went to live in the United States?
A. I went to visit my children. I was living between Belize and Florida.
...
Q. So it's fair to say that between 23rd September 2013 and today you've been living back and forth between the United States and Belize?
A. I've always been Mr. Neal. I'm an American born.

[36] During cross-examination, Nessie Jones was pressed also on whether she had called the police when the Vegas stopped her from operating her restaurant. She stated, '[H]e brought police on May 26. I did May, 26, 2015 after Vega brought police to me at Seashore where my restaurant is. I was removed by police because he presented a lease he got from Lands stating he had a lease in 2015 and I called my lawyer and she told him I too had my documents and police removed both of us.'

[37] Nessie Jones called the evidence of her son, Darryl Jones, who confirmed that his parents constructed a structure on the public reserve that was, 'probably 14' wide by 20' long made of hardwood siding ... that [was subsequently] made larger and included concrete decking and wooden decking that extended over the sea.' He provided no value of the initial or subsequent structure. The evidence of Darryl Jones was of limited utility in establishing the tort or quantifying the exact nature of this loss. Moreover, it came out in cross-examination that he has not lived in Belize since 2005, before the advent of any business on the public reserve. I noted, however, that the Vegas' Licence gave them permission to 'reconstruct' the pier from the date of the approval. I assumed from this that a previous structure or pier was at that location but its condition, the state of disrepair or value remained unknown.

[38] Ms. Vernon, in her submissions, maintained that the Vegas did not provide any evidence to explain their unjust enrichment of a fully furnished building housing Nessie's restaurant 'with simply a licence to build a pier and restaurant.' There was no pleading of unjust enrichment in this matter. Regarding Ms. Vernon's submission

that the Vegas' Licence gave them no right to the items in Nessie's restaurant or to override Nessie Jones' alleged interest in the reserve, I find no such evidence of the claimed 'interest to the public reserve'. The lease document was never disclosed to this court and there was no independent evidence of the existence of Nessie's restaurant or that it was operating or of its workers. She did claim to have suffered a loss of monthly profit from the trespass, without providing evidence of the loss, of her business accounts, of payment of taxes or exemptions, of payment of salaries or social security for workers. She also stated that she was exempted from paying taxes on her \$8000 per month earnings but provided no proof of this waiver.

[39] There were major evidentiary failures in the presentation of Nessie Jones' case of which Ms. Vernon was curiously silent. Instead, Ms. Vernon decried the lack of evidence provided by the Vegas. In my judgment, the Vegas' failure to provide evidence does not constitute proof of Nessie Jones' case. Further, it is not proof of trespass if a claimant insists that she had an unexpired lease that she was using to generate income but could not produce it. The evidence fell short of proving Nessie Jones' lawful or exclusive possession of the reserve or unauthorised interference with her possession or that the Vegas unlawfully destroyed anything permanently fixed to the public reserve. Nessie Jones has not proved trespass.

Issue No. 3: Whether the Vegas are liable for any losses sustained by Nessie Jones and evidence of the quantum can be led at the assessment?

[40] In the present proceedings, Nessie Jones has not proved the tort to entitle her to any damages. There is no need for me to deal with quantum. It is trite law that damages for trespass is contingent on a claimant proving trespass.⁵ However, I will address, for guidance only, the limited issue of the extension to put in evidence on quantum, as it was raised and extensive arguments advanced.

⁵ *Livingstone v The Rawyards Coal Co.* [1880] 5 App. Cas. 25, at page 35 which states that the claimant ought to be restored as nearly as money could possibly do, to the position that he would have been in had the trespass not been committed i.e. the principle *restitutio in integrum*.

- [41] I find against any such right by Nessie Jones to lead evidence on quantum in the context of this case. There is no separate assessment or bifurcation of the trial ordered. Further, the application for an extension was made at the trial, after case management orders were given to manage the evidence. The late application flouts the overriding objective to deal with matters justly, through the best use of the court's resources and time.
- [42] By her application, Nessie Jones is seeking to get into evidence her alleged losses of a stove, refrigerator, tables, chairs, glasses, plates, and utensils. She did not plead a specific sum nor did she provide evidence of the value of these items at trial. In her witness statement, she states that she was earning BZ\$2000 per week in profit, and seeks BZ\$72,000 (i.e. 8 months remaining on her lease at BZ\$2000 weekly).
- [43] The law is clear that nominal damages for trespass can be awarded even if there is no actual loss suffered but the tort is proved. Where the trespass causes actual damage, a claimant can receive compensation for such a loss but this must be proved.⁶ See: **Asot A. Michael v Astra Holdings Limited and Robert Cleveland et al v Astra Holdings Limited.**⁷ In the present case, the tort is not proved and what was essentially an easily quantifiable claim, capable of proof, is also not proved. Nessie Jones is not entitled, after the trial ended, to now get an extension of time, to prove her losses. I reject Ms. Vernon's argument that she can.
- [44] Ms. Vernon relies on the approach to quantifying damages taken in **Fairweather (supra)**. Ms. Vernon states that Nessie Jones is entitled to substantial damages, and recognizing that this must be proved and was not at trial, she asked for an opportunity to put in evidence at an assessment based on **Fairweather**. I refuse.
- [45] **Fairweather** can be distinguished from the present matter. In **Fairweather**, liability was determined by default, unlike the present case where liability is in issue before me and the trial was not bifurcated. Further, in **Fairweather**, there was evidence of

⁶ Halsbury's Laws of England, 4th Ed. Vol 45(2)2.

⁷ Civil Appeal 17 and 15 of 2004 ESCS paragraphs 56 and 58.

that claimant's land certificate (as proof of her legal title), and of police reports on the defendant's bulldozing of property and trees and constructing of illegal animal enclosures and other structures. **Fairweather** was not an evidentiary deficient matter.

[46] In my judgment, Nessie Jones cannot rely on **Fairweather** to get time extended to provide evidence of her losses in a trial that was not bifurcated. In any event, as stated above, liability was not established. Her case is dismissed.

Limitations

[47] In submissions, the Vegas raised an issue of limitation. Limitation was not claimed in the defence. It was not considered.

Costs

[48] The general rule is that the losing party ought to pay the costs of the other side. In this case, Nessie Jones has failed to establish her right to lawful occupation of the public reserve or the Vegas' liability for trespass. I will allow the Vegas their costs in this matter.

Disposition

[49] It is hereby ordered as follows:

1. The claimant's case is dismissed.
2. The defendants are awarded costs to be assessed or taxed by the Registrar in default of agreement.

Martha Alexander
High Court Judge