IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV172 of 2023

BETWEEN:

[1] MARIA ELISA AVILEZ

Claimant

and

[1] MELISSA AVILEZ

Defendant

Appearances:

Mr. Brandon Usher for the Claimant
Mr. Javier Williams for the Defendant

2023: November 1st and 15th;

2024: April 9th.

JUDGMENT

[1] **ALEXANDER, J.**: The claimant and defendant are siblings, who approached the court with a claim and counterclaim involving a parcel of land in Dangria ("the property"). I rule wholly in favour of the claimant's claim and dismiss the counterclaim.

[2] The facts of this case were unfortunate and led ultimately to a huge divide between sisters. The claimant filed a fixed date claim form on 22nd March 2023 for inter alia full possession of the property, an injunction, damages for trespass and mesne profits. By a defence filed on 12th May 2023, the defendant sought a declaration that she is lawfully entitled to full possession of the property. The defendant also asked that the land certificate for the property be transferred into her name. In the alternative, the defendant asked the court to determine her interest in the property and compensate her for investments she made in the property.

[3] The dispute revolved around an informal agreement ("the agreement") between the parties for sale of a house and the property on which it was built. It culminated in the defendant dispossessing the claimant from the house and property and the present proceedings. The defendant claimed prescriptive rights over the property and sought to have the court declare such an interest in the property over which she had allegedly invested monies.

[4] Following a full trial of the claim and counterclaim, the evidence supported a finding that favoured the claimant. She, by evidence, showed that she was the legal owner of the property. The defendant's prescriptive claim and allegations of investments giving rise to an interest in the property were at best tenuous and rejected. Claims such as these in the present proceedings are settled by the strength of the evidence produced in court. I was not satisfied that the defendant produced the evidence, entitling her to the declarations sought in her counterclaim. The defendant's evidence was weak and near non-existent and I found it incredible.

[5] I make the orders as sought to the extent limited below. I set out below my reasons.

Facts

[6] A short foray into the facts is necessary to provide context for my decision. The property at the centre of the dispute is in Registration Section: Dangriga South, Block No. 31, Parcel No: 277, consisting of 801.19 square meters by virtue of Land Certificate, bearing Instrument No: LRS-202101076, issued on 5th February 2021. As stated above, the claimant is the legal owner of the property.

[7] The claimant initially came into possession of the property through a Lease No. 117/97, granted by the Government of Belize ("GOB") sometime in 1997 under the National Lands Act CAP. 191 R.E. 2003. Sometime thereafter in 2002, the parties entered into the agreement for the sale of the property to the defendant.

[8] Both parties have different recalls of the terms of the agreement at the centre of which was Earl David, the then boyfriend of the defendant and now in the present proceedings, the witness for the claimant. It appears that the agreement was never fulfilled.

The Claim

[9] The claimant got possession of the property from the GOB and developed it by constructing a 20"x20" wooden dwelling structure on it ("the wooden house"). The wooden house rested on top of concrete pillars, so was raised approximately 4 feet off the ground. She lived there until she left Belize about 20 years ago.

[10] Upon leaving Belize, the claimant gave permission to Earl David to live on her property, on condition that he would maintain and upkeep it. About 4-5 months later, she learnt that the defendant had begun residing on the property with Earl David. The claimant consented to the defendant living on the property with Earl David. About a year and a half after the defendant started to live on the property, the defendant asked to purchase it from the claimant. This gave birth to the agreement.

[11] The claimant's case is that she entered the agreement with the defendant under specific terms. These included that (i) the defendant would pay BZ$5000; (ii) the claimant would exchange her wooden house on the property for the defendant's dwelling house built on their mother's land; and (iii) the defendant would give another parcel of land to the claimant ("the land swap"). The claimant received the BZ$5000 only.

[12] The claimant visited Belize yearly, at least for 2-3 weeks in any year, and stayed at the property. Subsequently, the defendant informed the claimant that she was unable to give another parcel of land to her and that she had given her dwelling house on their mother's land to their mother. In effect, she could not honour the full terms of the agreement. The claimant informed the defendant that the deal was off. Despite this, the claimant allowed the defendant and Earl David to continue living on the property.

[13] At some point in 2016, the defendant indicated to the claimant that the property belonged to the defendant. Since the claimant had never given her property to the defendant, the

claimant remained on the property for a whole year, during which period she built a concrete fence and started a concrete structure in the back portion of the property.

[14] During this construction, the defendant cut down all the steel from the claimant's concrete foundation and ejected the claimant from the property. The claimant attempted to remove the defendant from the property but despite her best attempts, she was unable to evict the defendant from possession of the property. She has now approached this court. The claimant seeks the reliefs as set out in paragraph 2 above.

The Defence and Counterclaim

[15] By her defence, the defendant claimed that she was part of the initial negotiations and finalization of the living arrangements of the property, although Earl David had full autonomy to settle the issue. She claims that it was a formal tenancy, and not a tenancy at will, that was entered into between Earl David and the claimant.

[16] The defendant denied that she had approached the claimant to purchase the land. She claimed that it was the claimant, who was experiencing some financial and legal issues in the USA, who approached the defendant offering to sell the property. She categorically denied that part of the agreement involved a land swap. She admitted only that the terms of the agreement involved the payment of BZ$5000 and the giving to the claimant of full ownership and possession of the house on their mother's land.

[17] The defendant denied withholding the house on their mother's property from the claimant or that she had given it to their mother. The defendant's case is that when their mother found out that the claimant was now the new owner of the house on the mother's land, their mother expressed her unwillingness to have the claimant live on the mother's land. Their mother demanded that the claimant move the house off the mother's land. It was at this point that the defendant offered to help the claimant locate a separate piece of land for the claimant to purchase on which she could relocate the house. The defendant did this allegedly "as an act of kindness" and based on their "sisterly relationship". The defendant claimed further that she was able to get her mother to gift her a piece of land

in Silk Grass Village, Stann Creek District ("the Silk Grass land"). She then offered the claimant the Silk Grass land but the claimant refused it and demanded land in Dangriga. Subsequently and/or in 2013 she found land in Dangriga that was being sold for BZ$5000, but the claimant indicated that she did not have the money to buy this property.

[18] She claimed that after relocating to Belize from the USA, the claimant did not stay on the property on her own volition. The defendant gave her permission to stay on the property.

[19] On the question of the fence on the property, the defendant conceded that the claimant had erected it. She stated, however, that that only occurred because the defendant's finances were short, at the time, so she could not split the cost for the fence. Her defence, further, was that the claimant "wanted to pay for the fence as they all lived on the property together" and did so "as a token of appreciation" for being permitted to stay on the property after relocating from the USA. In any event, Earl David contributed BZ$300 to the erecting of the fence. The several justifications for the defendant's non-contribution to the erecting of the fence are of no moment. The fact is that it was the claimant who erected it, likely with a small contribution from Earl David.

[20] Regarding the concrete addition to the house on the property, the defendant claims that it was "yet another project" of the claimant that she, the defendant gave her permission to do. It was not done on the claimant's own volition. The claimant was not evicted because of this but because of a fight between the claimant and the claimant's daughter.

[21] The defendant denied cutting the steel from the concrete foundation. She claimed that what she and her agents did was to "refill the dugout foundation because of safety" since it posed a danger to the children who played football on the property.

[22] After learning of the claimant's title to the property, the defendant lodged a Caution on 4th March 2021. She denied being served with a formal Notice to Quit. She claims that she owns the property and has made "gargantuan investments" on the property. She has counterclaimed for reliefs specified in paragraph 2 above.

Issues

[23] The issues, as this court finds them, are:

1. Whether an agreement existed between the parties and, if so, is it unenforceable?
2. Whether the defendant has attained prescriptive rights over the property?
3. Whether there was trespass to the property and, if so, what is the quantum of damages?

Law and Analysis

Issue No. 1: Whether an agreement existed between the parties and, if so, is it unenforceable?

[24] The property is now registered land.[1] Initially, the property fell under the National Lands Act, and it was during that period that the informal agreement was entered into between the parties. Parties disagree now as to the terms or particulars of the agreement. The existence of the agreement between the parties, therefore, is not in dispute. Its validity or enforceability is.

[25] The evidence of the claimant, which is corroborated by Earl David, is that the agreement consisted of "a land for land, house for house swap" with the payment of BZ$5000 (from Eral David). The payment was to assist the claimant with relocation of the wooden house on their mother's land to the said new parcel of land. The defendant would then have the property transferred to herself, giving her open, peaceful, and undisturbed possession of the house and property. Thus, critical to the completion of the agreement were the transfer of ownership and the defendant's possession of the property. According to the claimant, this never happened. The agreement was not fulfilled because of the defendant's inability to meet her obligations. I accepted this evidence.

[26] I rejected the argument of Mr. Williams, counsel for the defendant, that the "land for land swap" was not part of the initial agreement but was a mere "generous undertaking" of the

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[1] The sale of registered land must be in *writing* to be enforceable under sections 40(1) & (2) of the Registered Land Act Cap.194.

defendant because of the sisterly relationship between the parties. This contention was not supported by the evidence.

[27] In my judgment, the agreement is unenforceable. In fact, it is of no moment at this stage whether the agreement was breached or frustrated, rendering it unenforceable. The agreement was entered into some 18½ years ago and was allegedly breached since 2003-2004. By the time the matter reached the court, the agreement was effectively barred by statute. The defendant's evidence points to no meaningful attempts to enforce the agreement, such as transferring the property into her name. Her evidence was that this was not done since the claimant lived out of the jurisdiction. No plausible explanation is given as to why the transfer was not completed during the numerous yearly visits of the claimant to Belize or before 2016, when she evicted the claimant from the property.

[28] Section 4 of the Limitations Act Chapter 170 of the Substantive Laws of Belize R.E. 2020 states that a defendant is barred from bringing any action for the enforcement of a contract after a six-year period has passed. The defendant is not entitled by her counterclaim to enforce a time barred contract. Her counterclaim fails to this extent.

Issue No. 2: Whether the defendant has attained prescriptive rights over the property?

[29] The defendant has raised the issue of prescriptive rights to the property. To determine this, I find it convenient to reproduce sections 138 & 139 of the Registered Land Act Cap.194 in full. I now do so below:

> 138.–(1) Subject to sub-section (2), the ownership of land may be acquired by **open, peaceful and uninterrupted possession for a period of twelve years** and without the permission of any person lawfully entitled to such possession.
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> (2) In the case of national land other than the foreshore, the period of such possession shall be 30 years. Prescription shall not lie with regard to the foreshore.
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> (3) Any person who claims to have acquired the ownership of land by virtue of sub-Section (1) may apply to the Registrar to be registered as proprietor thereof.
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> 139.–(1) Where it is shown that a person has been in possession of land, or in receipt of the rents of profits thereof, at a certain date and is still in possession or receipt thereof, it

shall be presumed that he has, from the date been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

> (2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derived his possession shall be deemed to have the possession or receipt of the rents or profits by the Claimant.
>
> (3) Where, from the relationship of the parties or from other special cause, it appears that the person in possession of land is or was in possession on behalf of anything, his possession shall be deemed to be or to have been the possession of the other.
>
> (4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor continues in such possession after the expiry of the term during which such conditions subsist, without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceful, open and uninterrupted possession within the meaning of section 138.
>
> (5) For the purposes of sub-section (4)-
>
> (a) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined; and
>
> (b) a periodic tenancy shall be deemed to have terminated at the expiration of the period.
>
> Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.
>
> (6) Possession shall be interrupted-
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> (a) by dispossession by a person claiming the land in opposition to the person in possession;
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> (b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or
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> (c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor there that such claim is admitted.
>
> (7) No person possessing land in a judiciary capacity on behalf of another may acquire by prescription the ownership of the land as against such other.

[30] To prove her prescriptive rights, the defendant must show that for 12 years, she enjoyed open, peaceful, and uninterrupted possession of the property, which is private registered land. A party claiming possession must perform acts that are inconsistent with the true

owner's enjoyment of the soil, for the purposes which he intended to use it and it must be adverse. In the present case, it is important to understand what constitutes possession of the property and if the defendant has satisfied the elements.

[31] For present purposes, possession must be both factual and intentional. Factual possession is described as having characteristics like those required for a claim in easement by prescription. In essence, possession must be open, peaceful, and adverse.[2] Factual possession must be accompanied by an *animus possidendi*, that is, an intention to enjoy possession to the exclusion of the paper owner.

[32] To satisfy the court that she had possession of the property, the defendant must show that there was discontinuance of possession by the paper owner, followed by the defendant's possession or a predecessor's possession. In effect, she must show that the paper owner was dispossessed of the property.

[33] The evidence of the defendant is that she ousted the claimant and her daughter from the property sometime in 2016. This physical dispossession commenced the running of time for adverse possession. The High Court Claim was filed on 22nd March 2023, thereby staying the running of time for adverse possession. This timeframe creates a period of 6 years of dispossession and fails to satisfy the minimum 12-year requirement to claim for adverse possession.

[34] The second element to be satisfied for a person to prove adverse possession is animus possidendi or adverse intention to deprive the claimant of her property. The defendant can show this intention by her acts. It is insufficient to rely on the non-action of the title holder to prove she was dispossessed. I am not satisfied that the defendant had the necessary adverse intention, especially given the evidence of the claimant doing work on the property and paying all bills and taxes. The claimant's evidence is that "at no point in time did Melissa financially contribute to anything. She did not pay anything towards the rent for the lease, property taxes, nor did she put anything towards the construction of the fence or the foundation, or even the attachments to the house." The claimant produced

[2] Kodilinye, G. (2005), Commonwealth Caribbean Property Law, 2nd Edition, Cavendish Publishing Ltd, page 259

receipts of some of these payments made by her for taxes and purchase price of the property.

[35] The concept of possession was discussed in **Archer ET UX v Georgiana Holdings** and that court outlined a few points that I consider helpful. **Archer** held that:

i. The owner of land did not necessarily discontinue possession of it by merely not using it, but that each case depended upon the nature of the land in question and the circumstances under which it was held.

ii. A finding of adverse possession required some unequivocal evidence going beyond the mere evidence of discontinuance and consistent with an attempt to exclude the true owner's possession, the nature of the property, again, being relevant.

iii. The matters relied on by the person claiming possession were all equivocal in that they provided an equal balance between an intent to exclude the true owner from possession, and an intent to merely derive some enjoyment from the land, wholly consistent with such use as the true owner might wish to make of it.

[36] In the present case, the claimant gave evidence of her yearly trips to Belize where she continued to use and enjoy the property. The second element in **Archer** to prove adverse possession is not satisfied. It requires some unequivocal evidence to exclude the title owner's possession. The evidence of the claimant is that she has always exercised her rights over the house and the property after leaving Belize around 2003-2004. She made annual visits and did enhancement work on the property until she was disposed in 2016.

[37] The defendant's evidence of her possession included that she had enhanced the house on the property by making additions to it. She failed to provide any documentary evidence of the cost of the alterations (whether receipts, oral or otherwise). The court takes notice, however, that there is undisputed evidence that Earl David did make alterations to the house. In fact, the evidence of Earl David was that he expended monies on additions to the house because he, "thought that this would just be a part of the maintenance and upkeep of the Property … [and] to show my appreciation for Maria leaving us to live in her house for all these years. I thought I would help to improve her house for her. Melissa

had no problem with any of this." The court was not informed of the sums spent in making the additions to the house nor was any valuation of the work done and placed before me.

[38] The defendant called the evidence of her sons, Andrew David, and Liston David, to corroborate her narrative on possession. Both sons proved to be unreliable witnesses. Andrew David stated in his witness statement that the claimant required permission to stay at the house during her yearly visits and would ask the defendant for this before arriving. Under cross-examination, Andrew David resiled from this position, by conceding that it was just a matter of the claimant giving notice that she was coming to Belize.

[39] Liston David's evidence was also unhelpful, serving only to re-state the common narrative that his father, Earl David, allegedly always said that the property was for the defendant and her children and that the process of transferring it to the defendant had commenced. I was unsure as to why Liston David was called as a witness since he lacked knowledge about the events that had transpired. Save to say that he grew up on the property, his evidence was of low utility, as seen in his statement, "I cannot say why the transfer was never completed nor can I attest to whether the paperwork was indeed processed … However, I was always reassured by my father, Earl David, that the Property is for my mother and family." Unfortunately, his father's reassurances do not grant prescriptive rights to the property.

[40] I considered the evidence on the property transfer. The evidence was that Earl David made inquiries and took reasonable steps to help the defendant with the property transfer, but the process was not completed. Mr. Williams stated that progress with the transfer was flouted because the claimant was out of the jurisdiction and had not signed a transfer form or given a power of attorney to the defendant. It was not due to any lack of interest on the part of the defendant. This may or may not have been the position, but it does not help the defendant's case. In the present circumstances, the fact that the defendant remained living in the house, during the absence and presence of the claimant in Belize, and/or that repairs and alterations were done by Earl David do not constitute evidence of dispossession. There must have been unequivocal acts and evidence to show that there was dispossession or discontinuance of the possession of the true owner of the property. I find as a fact that this was not the case.

[41] There is no disagreement that the defendant has lived on the property or was in physical possession. Despite this, she has not shown any adverse intent to possess the property as against the claimant's ownership. The evidence supports the position that the defendant never stopped the claimant from entering the property, staying at the house, building a concrete fence, or commencing a new concrete foundation on the property.

[42] I find no favour with the argument of Mr. Williams that there was always an implied request for permission from the claimant to stay at the property. He stated that the court can assume that the defendant gave "indirect" permission to the claimant to stay at the property since the claimant "would check with the Defendant before making her trip to Belize from USA" or "ask in advance before her arrival if it would be okay for her to stay" or if it was a "convenient time to come visit". This argument is rejected outright. Neither "implied request" nor "indirect permission" constitutes evidence of relinquishing of ownership of the property to the defendant or confirmation of the defendant's control of the property.

[43] I am not satisfied that the acts of the defendant constituted unequivocal proof of her intention to dispossess the claimant, as title owner, of the property. It was not until 2016 when she ejected the claimant that the act to dispossess the claimant first crystalized. It was too late. In my judgment, having failed to prove the requisite intention to claim adverse possession, within the statutory timeline, the defendant's claim must fail.

[44] I will order that the defendant has not proven any prescriptive rights over the property.

Issue No. 3: Whether there was trespass to the property and, if so, what is the quantum of damages?

[45] I have found as a fact that the defendant did not seek enforcement of the agreement and has made no claim for possession prior to this action. Having failed to satisfy me that she has obtained prescriptive rights to the property, it leaves only the question of trespass to be ventilated.

[46] Mr. Usher, counsel for the claimant, argues that the defendant can be deemed to have been trespassing on the claimant's property. The claimant is entitled to damages for trespass, from the time of dispossession in 2016. Mr. Usher did not address me on the tort itself but made arguments on quantum.

[47] The person who alleges trespass bears the burden of proof for establishing the trespass on a balance of probabilities.

[48] Trespass requires that the person who alleges the tort (here the claimant) satisfies me that she was in control or possession of the property. The possession must be exclusive at the point she was dispossessed of it or lost possession or control over it. I find instructive the definition of trespass at paragraph 49 below and what is required to be proved to establish liability.

[49] Any "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 …"[3]

[50] It would have constituted trespass when the defendant evicted the claimant and her daughter from the property and removed and/or destroyed the steel in the foundation. The defendant did not deny that she did these acts but sought to justify her actions by claiming she wanted to discourage their fight and that she removed the steel for the safety of other occupants of the property. The claimant's evidence was that she sought to regain possession, but her attempts were unsuccessful. I am satisfied that there was trespass to the property.

[51] The evidence supported unauthorised interference with the claimant's possession of the property. This was seen by the defendant's unlawful destruction of the permanent steel foundation.

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

[52] The next question is the quantum of damages payable to the claimant. Generally, damages for trespass are at large and even where no actual loss is suffered, the successful party may recover nominal damages. Where substantial damages are claimed, there must be proof to recover compensation.[4]

[53] In **Asot A. Michael** v **Astra Holdings Limited** and **Robert Cleveland et al** v **Astra Holdings Limited**,[5] the court stated:

> 56. A claimant who suffers actual damage as a result of a trespass is entitled to be compensated with substantial damages, which he must prove. He must set out in his pleadings the value by which the land was diminished and the expense of removing any debris left by the trespass, if any. On the other hand, he may set out the costs of correcting the damage and restoring the land to its original condition. Where there is a continuous trespass, damages are usually measured by the worth of the use of the land. This would normally be the rental value."

Special Damages

[54] The claimant has a claim for what is essentially special damages. To justify an award of special damages, the court must be satisfied both as to the **fact** of damage and as to its **amount**.[6] If she satisfies the court on neither, her claim will fail or she will be awarded nominal damages, evidencing that a right has been infringed.[7]

[55] The defendant admitted having refilled the hole dug by the claimant for the foundation of the new house but denied cutting the steel. While the defendant has denied cutting the steel, the claimant has provided receipts of BZ$548.25 for the steel bought and left on the property. The steel is no longer on the property. The claimant also claimed that she paid the sum of BZ$2000 for labour to dig the hole and place the steel in the foundation. She claims a total of BZ$2,548.25 in damages. She did not provide receipts for the labour but the fact that the work was done was unchallenged. I accepted her evidence and I exercised my discretion to make the award.

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[4] Halsbury's Laws of England, 4th Ed. Vol 45(2)2.
[5] Civil Appeal 17 and 15 of 2004 ECS paragraphs 56 and 58.
[6] McGregor on Damages 19th ed at para. 10-1001-2
[7] Ibid

[56] The claimant also claimed BZ$1,075 for rental expenses for the time she was disposed from her property. This consisted of BZ$125 per day at a hotel for two weeks after her dispossession, and for a small room at BZ$200 for the month. She then paid BZ$400 per month from 2nd November 2016 to September 2021 whereupon she returned to the USA. The total rental expenses claimed is BZ$24,275.

[57] This claim is substantial, capable of exact quantification and so must be proved. Courts carry out their assessments on some evidential basis and not based on a claimant springing bald figures at them. In **Cedric Flowers v Arturo Vasquez et al**[8] that court was asked to conduct an assessment to value a container, without evidential basis. Young J stated, "The Court must make its assessment on some evidential basis and a figure baldly stated is entirely insufficient and unacceptable… How can the Court simply accept the Claimant's statement that the container had a particular value (stated as an estimated value) … How is the Claimant positioned to give this estimate or make this assessment? Is he making a mere assumption?"[9] Young J. awarded a nominal sum.

[58] In the present case, I find myself in the same position and did consider the possibility of relaxation of the requirement for proof. The jurisprudence is clear that, depending on the circumstances of the case, an award might be made where strict documentary proof has not been forthcoming: see **Trudy-Anne Silent-Hyatt v Rohan Marley et al**.[10] The claim for rental expenses is not buttressed by any proper evidence. There was no attempt to satisfy me with any evidence to corroborate the sums claimed. The claimant did not provide the names of the hotel or of the persons where she stayed after eviction. She did not even provide me with an explanation as to why receipts were not available, or witnesses not called. While I accepted that she would have incurred rental expenses after she was dispossessed, I am not satisfied that it was in the actual sums claimed. If the expenses were as claimed, she should have approached this court prepared to prove her claim. She did not provide documentary proof of this claim. She did not call witnesses to corroborate the claim. A claim that is capable of quantification is a claim that is capable of proof. This is trite law. It is for claimants seeking damages, "to prove their damage, it

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[8] Claim No. 732 of 2018 at pages 12-14, per Young J.
[9] Ibid.
[10] Civ. Appeal [2023] JMCA Civ. 24 pages 24-26.

is not enough to write down the particulars, and so to speak throw them at the head of the Court, saying: 'I ask you to give me these damages.' They have to prove it."[11]

[59] I accepted that there are cases where oral evidence, specifically unchallenged oral evidence, will suffice on a balance of probability to prove a claim. This was stated by the Court of Appeal in Trinidad and Tobago in **Ramnarine Singh et al** v **Johnson Ansola,**[12] where it was stressed that there must be *cogent reasons* for accepting such oral evidence.

[60] In my judgment, the claimant could have produced the documentary evidence and her failure to do so, without cogent reasons, will not be disregarded in favour of making the award. I make no further pronouncements here. I also make no award here.

Mesne Profit

[61] The claimant who remains barred from entering her property since 2016 claims mesne profits. Mr. Usher urges the court to assess the quantum based on a rental value approach. He argued that the court ought to ask itself how much the claimant would reasonably require from the defendant in allowing the defendant to secure the right to do what she did without permission. The defendant ousted the claimant from her house and has remained in continuous possession of the property since 2016.

[62] The claimant stated in her witness statement that the rental value of her home is BZ$400 per month. Mr. Usher argued that since the house was enhanced by Earl David into a three-bedroom house, the rental rate for mesne profit would be about BZ$550-$700 per month. He asked that these figures be used to determine mesne profit from the date of dispossession to the date of vacation of the property by the defendant. He calculated an 86-month mesne profit, using the figures of BZ$550 or BZ$700 rental fee, to equal BZ$47,300 or BZ$60,200 respectively. To be added to either figure is the sum of BZ$24,275 for rental expenses incurred by the claimant. The global claim for mesne profit

[11] Bonham-Carter v Hyde Park Hotek Ltd [1948] 64 TLR 177 at 178 per Lord Goddard.
[12] Civil Appeal 169 of 2008 page 32, paragraph 97.

and rental expenses would be BZ$74,123.25 or BZ$87,023.25, based on the rental value utilized.

[63] The only evidence of rental value came from the claimant. She did not call evidence of properties like hers in the same locality and the sums they attracted as rent. She simply asked the court, without context or evidence of rental values in the locality for houses like hers, to make the award. The claimant simply flung some figures at the court and said she is entitled to mesne profit in that specific sum. Mr. Usher, her counsel, then up the ante by increasing the figure for the likely rental value based on the alterations made by Earl David to the house. He argued that the court must do the best it can with the evidence provided. I was not prepared to take the suggestion of Mr. Usher of the enhanced rental value or the guess of the claimant to determine mesne profit. In my view, this is assessment by guesswork and assumption.

[64] I am prepared only to award a nominal sum as mesne profit. This award is made of $10,000.

Counterclaim

[65] Given the findings above, I will dismiss the counterclaim of the defendant. The defendant has simply failed to provide proper evidence of possession. She has not satisfied me that she holds any interest in and/or has made “gargantuan investments” in the property. I will not grant any declaration that she is entitled lawfully to full possession of the property or order a transfer of the land certificate for the property into her name.

[66] The defendant asked that I determine her “interest” in the property and compensate her for her investments in the property. Mr. Williams submitted that it was Earl David who made the investments for his family to live and reside on the property and asked that the court assess this investment or interest. There is some evidence that Earl David made investments in the property, but the evidence of the amounts or extent was not provided. Apart from the BZ$300 allegedly made towards the fence, and unknown sums spent on alterations to the building, the court was without proper evidence to assess the

defendant's contributions. If a party is making a claim of investments (monetary or otherwise) that party is obligated to put some materials before the court to help it assess the value of that interest. This was not done in the present case. Without evidence to assist with quantifying her interest, I was unable to accede to her request.

[67] The counterclaim has failed.

Costs

[68] The general rule is that the losing party ought to pay the costs of the other side. I will allow the claimant to recover her costs in this matter.

Disposition

[69] It is ordered as follows that:

1. There is judgment for the claimant against the defendant.
2. The claimant is entitled to full possession of the property in Registration Section: Dangriga South, Block No. 31, Parcel No: 277, consisting of 801.19 square meters in Land Certificate, bearing Instrument No: LRS-202101076, dated 5th February 2021.
3. The defendant is to vacate the property on or before **10th June 2024**.
4. The defendant shall pay the claimant special damages for trespass in the sum of BZ$2,548.25 with interest at the rate of 3% per annum from 2nd November 2016 to 9th April 2024.
5. The defendant shall pay the claimant mesne profit in the nominal sum of BZ$10,000.
6. The defendant's counterclaim is dismissed with no order as to costs.
7. Costs of the trial is awarded to the claimants to be assessed or taxed by the Registrar in default of agreement.

Martha Alexander

High Court Judge