

THE REPUBLIC OF TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No. CV2017-04444

BETWEEN

Quintyn Mahadeo

Kenneth Mahadeo

David Mahadeo

Claimants

AND

Marcilyn Mc Kenzie

First Defendant

Roger Traboulay

Second Defendant

Police Constable Carlos DeAbreau

Third Defendant

The Attorney General of Trinidad and Tobago

Fourth Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: January 30, 2020

Appearances:

Mr. Asaf Hosein and Mr. Emile Pollard Attorneys at Law for the Claimant

Ms. Leandra Ramcharan Attorney at Law for the First Defendant

Mr. Brenston Francois and Ms. Ryanka Ragbir Attorneys at Law for the Third and Fourth Defendants

Judgement

A. Introduction

1. This Claim arises from events that took place in November 2017. Several persons including a Bailiff, a Surveyor, the Second Defendant and the Third Defendant, a police officer, visited the property where the Claimants reside to conduct surveys and clear parts of the land. The First Claimant, Quintin Mahadeo and his sons [“the second Claimant and the third Claimant”] sought to prevent further destruction of their homes and property by filing this claim for injunctive relief.

2. The Claimants believed the actions taken by the Second and Third Defendants were directed by the First Defendant, their non-biological step sister, who is the title holder of the property. Based on years of occupation the First Claimant considered himself the owner and entitled to possession of the property. Accordingly, the Claimants’ Claim seeks declarations as to entitlement to possession and damages for alleged trespass against all the Defendants.

B. Issues

3. The relief claimed by the Claimants is extensively set out in the Claim Form. However, the issues relevant to the Claim are hereby identified as follows:
 - a. Is the First Claimant the owner of the property based on adverse possession?
 - b. Has the Claim, as to liability for Trespass, been made out against the First Defendant and if so what quantum of damages should be awarded?
 - c. Has the Claim, as to liability for Trespass and unlawful actions while on police extra duty, been made out against the Third and Fourth Defendants and if so what quantum of damages should be awarded?

C. Factual Background

4. The First Claimant is the father of the Second and Third Claimants and they all claim that they have acquired possessory title of a parcel of land at 17 ½ Mile Mark, LP No. 8, Soodeen Trace, Balandra, Toco through adverse possession.
5. The First Claimant claims that the First Defendant is his half-sister by their father, Andrew Mahadeo. A paternity application made by the First Claimant has, however, been dismissed by the Courts prior to these proceedings. The First Defendant claims to be entitled to the property through her father's estate. She is the title holder and disputes the Claimants' adverse possession of the parcel.
6. The Second Defendant is a bailiff who entered upon the property, cleared parts of the land and carried out demolition works on the Claimants' buildings. He failed to enter an appearance to the claim and default judgment has therefore been entered against him. The First Defendant denies hiring this person or anyone else as her agent to carry out these works.
7. The Third Defendant is a Police Officer and agent of the Fourth Defendant, the State, who was tasked by the Chief Clerk Officer at the Sangre Grande Police Station with extra duty to keep the peace at the property on the day of the Bailiff's visit. The Claimants claim that the agents of the Fourth Defendant, in particular the Third Defendant, aided and abetted in the unlawful demolition of the Claimants' property and misused their powers to intimidate and prevent the Claimants from protecting their property.
8. The history of the title to the parcel of land begins with ownership by Soodeen Bissoon. Andrew Mahadeo, the First Defendant's father, and Leonora Mahadeo, the First Claimant's mother resided on the parcel until their deaths in 1960 and 2005 respectively. The First Defendant claims that their father first resided at the property with her mother, Theresa Mahaduah, his lawful wife from 1937. Her mother died young in 1949 and she was sent to live with her maternal

grandparents from then on. The First Defendant claims that the First Claimant and his siblings came onto the property with their mother sometime after this.

9. Andrew Mahadeo was bequeathed the property in the will of Soodeen Bissoon (his uncle) and was named as executor of the estate. He, however, died before administering the estate. In 1985, some 25 years after his death, the First Defendant was granted Letters of Administration of her father's estate. Thereafter, she obtained a grant of letters of administration *de bonis non* with Will annexed of the estate of Soodeen Bissoon, whom she refers to as her great uncle. Finally, by Memorandum of Assent dated October 13, 2000, she became the registered owner of the property and this was endorsed on the Certificate of Title.

10. The parties have outlined several past proceedings in Court relating to this parcel of land:

- a. HCA No. 2588 of 2002 – an administration action by the First Claimant's mother which was dismissed
- b. HCA No. 2778 of 2004 – a vesting order application made by the First Claimant which was withdrawn
- c. HCA No. 531 of 2005 – a right of access over the lands to a third party granted against the First Claimant and the First Defendant
- d. CV2010-03569 – action filed and withdrawn by the Claimant for a declaration of ownership of the lands
- e. CV2013-00814 – application for declaration of paternity dismissed against the First Claimant.

11. The Claimants claim that the First Defendant's title is extinguished by virtue of the First Claimant's adverse possession of the land since the time of his reputed father's death in 1960. The First Defendant says that he rented a wooden house on a portion of the land to certain tenants up to around 1967 and since then he has allowed his daughter Rosemarie Mahadeo to reside there rent free. It is labelled on a survey plan attached to the claim as "Rosemarie".

12. The Claimants state that any part of the land that was not used for occupied by houses was cultivated with various fruit trees and there was a duck pen near the First Claimant's home. The First Claimant claims he erected a fence along the roadside but that the other areas were left unfenced. He also claims that he constructed a garage near his dwelling house. His claim is that he occupied the said parcel with the intention of continuing to occupy it to the exclusion of the First Defendant and the world at large.
13. The First Defendant claims that the First Claimant's occupation was with the consent of her great uncle, thereafter their father, and finally with her consent. She claims he built his dwelling house in 1970 and at this time she remains the registered owner of the land and paid all taxes until the taxes were suspended in 2009.
14. Around 2013, the parties began negotiating for the sale of the property to the First Claimant. The First Defendant claims that after the various Court proceedings, the First Claimant accepted her as the true owner of the property. However, negotiations broke down when the valuation was obtained and the Claimant decided to put the property up for sale on the open market.
15. The First Defendant found a buyer in 2017 and entered into an Agreement for Sale with them, agreeing to exclude from the sale the lot of land on which the First Claimant's house stood. However, attempts to survey the land were met with resistance from the Claimants resulting in Police Reports being made.
16. During the time of the negotiations, the First Claimant allowed his children, the other Claimants, to build houses on the land despite written objections from the First Defendant through her Attorney-at-law. At this juncture, the First Defendant avers, she and the potential purchasers agreed to appoint one Jamsheed Khan, a relative of the purchasers, to be the agent of both parties for the purpose of conducting the sale of the land. The First Defendant states that she signed a document to that effect. However, she claims that she never saw any

authorisation letter to Jamsheed Khan signed by the purchasers and therefore does not know what instructions may have been given by them to Jamsheed Khan.

17. On 22 November, 2017, the Claimants claim that a gentleman came to the First Claimant's house and asked who resided in each of the houses on the land. They attach a photograph of a man who the First Defendant states, at para. 16 of her Witness Statement she recognises as Jamsheed Khan.
18. On 25 November, 2017, the Claimants claim that the Second Defendant entered the premises with a group of men, one of whom the Claimants state was the man in the photograph, along with several police officers in uniform including the Third Defendant, and demolished the dwelling houses constructed by the Second Claimant and the Third Claimant. The Claimants claim that the Second Defendant did so on the authorisation of the First Defendant.
19. The Claimants claim that the Second Defendant, after making enquiries for the First Claimant, pronounced that the land belonged to the Marcelyn McKenzie. Thereafter, the demolition of the Second and Third Claimants' houses began amid protests from the Claimants. The duck pen belonging to the First Claimant was also demolished.
20. During the event, the Claimants claim the police officers warned the Claimants not to interfere with the men on threat of arrest. Two of the First Claimant's sons, Michael Mahadeo and the Second Claimant were protesting and they were placed in handcuffs and beaten by the police officers. The Third and Fourth Defendants state that one of the First Claimant's sons was very aggressive, and that he had attacked one of the surveyors by hitting him. This son, they claim, was placed in handcuffs and warned about his behaviour.
21. Before the men left, they purportedly handed the Claimants a document titled "Letter of Authorisation Obtain Recovery of Lawful Possession of Premises". It was composed as an authorisation by the First Defendant, Marcelyn McKenzie to the

Second Defendant, Roger Traboulay to “evict Quintin Mahadeo and all illegal occupants together with their personal belongings” from the property. It was allegedly signed by the First Defendant, Marcilyn Mckenzie. She however denies having signed the document or given any instructions to the Second Defendant. She claims she has no knowledge of him at all and is a stranger to the events that took place on the property.

22. The next day the men returned and in the presence of the police officers began planting fence posts confining the First Claimant’s occupation to about one lot of land. The Claimants at that time sought and were granted an injunction restraining further works on the property until determination of these proceedings.

D. Procedural History, Evidence and Submissions

23. This claim was filed together with an application for injunction on 8 December, 2017. The injunction was granted to the Claimants against the Defendants on 8 December, 2017 restraining the First and Second Defendants from entering onto the parcel of land or interfering with the Claimants’ use of the property. It also ordered that the First and Second Defendants forthwith remove all equipment and materials deposited on the land.

24. Thereafter, the Claimants filed an amended Statement of Case on 12 June, 2019. The First Defendant filed her defence on 19 April, 2018 and the Third and Fourth Defendants filed their Amended Defence on 4 July, 2019. The Second Defendant was served with all documents in the matter by personal service and through advertisement but he failed to file an appearance. As a result, the Court granted default judgment against him on 23 May, 2018.

25. The Claimant filed five Witness Statements and these witnesses were cross-examined at trial:

- a. Quintyn Mahadeo, First Claimant

- b. Kenneth Mahadeo, Second Claimant
- c. David Mahadeo, Third Claimant
- d. Mr Faizal Hosein, Certified Valuator
- e. Dr Dexter Davis, Qualified Photogrammetric Surveyor.

26. The First Defendant filed a witness statement on her own behalf and was cross-examined at trial. The Third and Fourth Defendants filed two Witness Statements and these witnesses were cross-examined at trial:

- a. Carlus Dabreo, Third Defendant
- b. Joel Sifontes, Police Constable.

27. At trial, the First Claimant appeared to believe that he was entitled to five acres of the land in question. He stated that he had planted fruit trees on the land which were all bulldozed in the demolition exercise. He stated that he believed the First Defendant to be responsible for the losses incurred due to the exercise based on indications from the persons who carried out the exercise.

28. He also stated that he gave his sons permission to construct houses on the land, one in 2010 and the other in 2016. He admitted that the police officers did not take part in the demolition. He denied that anyone hit the surveyor.

29. The Second Claimant stated that officers grabbed him and his brother Michael and hit them. He stated that they pulled hard at his moustache and handcuffed them, putting them to lie on the road in the rain.

30. The Third Claimant appears to have been a peaceful observer of the incident. Bird cage in hand, he arrived late to the site. He stated at trial that he remembers his brothers being handcuffed but did not witness any assault. He agreed that the police officers did not partake in the demolition and that their role was to preserve the peace.

31. The First Defendant at trial appeared to have difficulty remembering and it appeared to be due to her age. She was firm, however, in stating that she allowed the First Claimant to build a house on the land after her father died as he had lived there for a long time. She did not respond to many questions posed her about her witness statement and denied knowledge of purchasers or Jamsheed Khan.
32. The Third Defendant did not appear to have any detailed knowledge of the reason they were assigned to the extra duty on 25 November, 2017. He stated, under cross examination, that he was unaware of what documentation is required to carry out a demolition exercise. He was adamant that the buildings were not demolished but merely dismantled.
33. Joel Sifontes, Police Constable and witness for the Third and Fourth Defendants, admitted that he did not see anyone hit the surveyor. He was firm in his testimony, however, that he heard the surveyor call out and observed other officers run to his aid. He recalled that two of the First Claimant's sons were handcuffed until the surveyors finished their job.
34. In compliance with the Court's directions, written closing submissions were filed by all parties concluding on January 9, 2020. The Claimants submit firstly that the First Defendant proved to be an unreliable witness, giving evidence at trial that was inconsistent with her pleadings. The Claimants ask the Court to draw adverse inferences from these inconsistencies.
35. The Claimants submit that the First Defendant's testimony supports their case that the First Claimant was in factual possession of the five acres as she stated that he has been planting the land for over fifty years. They submit also that the First Claimant had the intention to possess. They claim this is borne out by the testimony of the First Claimant in these proceedings including his explanation of the reason for failure of the settlement discussions. He said that talks fell through because he does not need to purchase the land from the First Defendant as it belongs to him. The Claimants further suggest that the admission by the Claimant

that she was afraid to go onto the land as the First Claimant would threaten her, is evidence of his intention to possess.

36. The Claimants submit that the Third and Fourth Defendants are liable in trespass to property and acted illegally in assisting the Second Defendant with the attempted eviction and demolition process.
37. The First Defendant submits that the First Claimant entered onto the property and remained upon it with consent, and further that his possession is not exclusive. Counsel for the First Defendant cites **Maharaj v Almorales CV2011-02771** as authority that for possession to be adverse, there must be something in the nature of an ouster of the true owner by the wrongful possessor. Counsel for the First Defendant highlighted that the property was not fenced, showing a lack of sufficient physical control.
38. Counsel for the Claimant further submitted that the Claimant's feeling of entitlement to the property, as demonstrated in the previous proceedings brought before this Court, appears to be as of right, which is contrary to a claim for adverse possession. She also submits that the First Claimant's claim of exclusive possession is contradicted by the admitted occupation of part of the parcel by Anthony Dennis.
39. The First Defendant also, citing **Bhimlal v Arjoon CV2015-01406**, submits that the failure of the Claimants to add Anthony Dennis to the proceedings is an abuse of process and should result in failure of the claim. The said Anthony Dennis is admitted by the Claimants to be currently residing on the parcel of land. An affidavit by Anthony Dennis in previous proceedings, which was disclosed in the instant proceedings, asserted that he is entitled to one-sixth share in the property.
40. The Third and Fourth Defendants presented evidence and submissions to establish that their role at the property was only in preservation of the peace. Their

evidence was that their actions in restraining the First Claimant's sons was in response to perceived acts of aggression by them against a surveyor.

41. Counsel for the Third and Fourth Defendants cites the case of **Deonarine Sookdeo v AG CV2015-03203** in support of their argument that the police are not required to make a definitive assessment on the validity of documents such as land titles or the eviction authorisation document shown to the Claimants on the day of the attempted eviction. They argue that the police presence does not amount to an assumption of responsibility for the acts of the bailiff on the property. They also cite **Sections 61(1) & (2)** of the **Police Service Regulations** under the **Police Service Act, Chap. 15:01** which empower the Commissioner to assign police officers to perform extra duty to preserve order as required.
42. The Claimants, in reply submissions, introduced a new argument that appears to be based on the un-pleaded point that the First Claimant became a tenant at will on the property.

E. Findings based on Analysis of Law and Evidence

The First Claimant's Claim against the First Defendant for declarations of his possessory title based on adverse possession.

43. This aspect of the Claim fails as the elements of adverse possession have not been proven by the Claimants.
44. The first element that the Claimants were required to prove was that their possession of the property was adverse. The First Defendant cites **Maharaj v Almorales CV 2011-02771** where Seepersad J summarized the law on this point by reference to the explanation given by Denning MR in **Wallis's Cayton Bay Holiday Company Ltd. v Shell-Max and BP Ltd. [1975] QB 94 at 103**, as follows:

“Possession by itself is not enough to give title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another taken it adversely from him.”

45. From the foregoing it is clear that some adverse act, such as an entry without permission, is required. The case of **Powell v MacFarlane (1977) 38 P&CR 452** underscores at 476 that the adverse possession claim is premised on *“a person who originally entered another’s land as a trespasser, but later seeks to show that he dispossessed the owner”*.

46. Belatedly, in Reply submissions, the Claimants put forward the unpleaded alternate scenario that the First Claimant was a tenant at will. They cite **Ramnarace v Lutchman (2001) UKPC 25** as authority that the right of the true owner, here the first Defendant, to bring action accrued one year after the commencement of the tenancy at will. That case is inapplicable however, because neither the First Defendant nor her predecessor in title has sought to bring any action against the Claimants. Instead, it is the Claimants who are challenging the First Defendant’s ownership as title holder. They do so based on adverse possession and accordingly must prove how their possession was adverse to the first Defendant’s title. No tenancy at will has been pleaded or proven in this case.

47. In this case, there is no dispute that the First Claimant was, from at least early childhood, permitted to live at the property with his mother and her spouse, Andrew Mahadeo. This permission or licence is implicit in paragraph 13 of the Amended Statement of Case. The First Claimant’s stepfather, Andrew Mahadeo, was living on the land when the owner, Soodeen Bissoon, was alive.

48. The stepfather, who is also the First Defendant’s biological father, was named executor of the will of the owner Soodeen Bissoon. After Bissoon’s death, the First Claimant’s stepfather remained in occupation of the property with his family, including the First Claimant. The First Claimant, therefore, lived at the property as

a licensee by virtue of the permission given to his stepfather as executor for the deceased owner.

49. After Andrew Mahadeo died, the First Defendant became the administrator of his estate as well as the estate of Bissoon. As sole heir to the estates she vested the property in herself on October 13th, 2000. This was challenged in Court by the First Claimant and his mother on the basis that they claimed to be overlooked beneficiaries. Implicitly from that time almost two decades ago, the First Claimant was claiming entitlement to the property based on succession. It was only after any claim he had to being a biological heir was denied by a Court decision that his claim to the land focused solely on adverse possession.

50. Under cross-examination, the First Defendant admitted that when she became the owner of the land in 2000 she allowed the First Claimant to remain there and build a house because he had been there for a long time. On all accounts, the Claimant's entry to and possession of the land was based on a family arrangement whereby he had permission or a licence to remain on the land. There was no adverse element to his entry or remaining in possession and no tenancy at will has been proven. Accordingly, the adverse possession claim cannot succeed as there was no "adverse" characteristic involved.

51. Even if the Claimants' possession had been adverse, the Claimants have failed to fully prove "possession" as a matter of law. The two elements that had to be proven were factual and intentional possession.

52. As noted in **Powell** at 470-471 cited by the Claimants, factual possession signifies "an appropriate degree of physical control. It must be a single and [exclusive] possession....." Here the Claimants have not established any "exclusive physical control" because they admit that another person, Anthony Dennis, occupies the land as well. Though they say this occupation is by the First Claimant's permission, there is no independent evidence of this as he was neither joined as a party nor called as a witness. The documents disclosed by the First Defendant at the

pleadings stage of this matter reveal that Anthony Dennis has in the past actively challenged in Court the First Claimant's right to possession [See pgs. 271, 278 and 284 of Trial Bundle, Volume 2].

53. There is merit to the First Defendant's submission that the First Claimant ought to have complied with **Rule 19.4 of the Civil Proceedings Rules, 1998 (as amended) ["CPR"]** by joining Anthony Dennis as a party. This was required because he is a person potentially also entitled to claim the relief sought by the Claimants, not only against the First Defendant but against the Claimants themselves.
54. The First Claimant pleads at paragraph 7.1 of the Amended Statement of Case that Mr. Dennis's occupation of part of the property is based on permission granted to him by the First Claimant. Therefore, at paragraph 1 of the Claimant's Claim Form, the claim for possession is narrowed to land not occupied by Dennis. However, it is clear from the record that Anthony Dennis views his occupation of part of the property included in the First Defendant's title but claimed by the Claimants, as an entitlement in his own right. This, on the face of it, undermines the Claimants' case as to exclusive possession.
55. Additionally, the First Defendant by her actions also factually possessed the property. She did so by defending a number of prior Court cases filed against her by the Claimants who kept seeking confirmation of their perceived entitlement to possession over the two decades of the First Defendant's ownership. She also paid taxes on the land and sent a legal letter when she observed additional unauthorised buildings on the land commenced by the First Claimant or his sons. From 2013 to 2017 she negotiated with them, as owner, to sell part of the land to them. Those negotiations fell through and the instant action was commenced.
56. Even the First Claimant admitted under cross-examination that the First Defendant claimed the land all the time, so he kept taking her to Court. All his claims were, however, withdrawn and he was penalised with costs payable to the First

Defendant. He said, "Right through, Ms. McKenzie always threatened to remove me from the land", but he could not prove that she had ever taken him to Court.

57. On a balance of probabilities, I find that the First Defendant always asserted her ownership of the land based on her title but allowed her non-biological stepbrother, the First Defendant, permission to reside there.

58. As to the intentional aspect of the possession, the *animus possidendi* required to be proven by the Claimants is defined in **JA Pye (Oxford) Ltd and Others v Graham & Another (2002) WLR 221** as an intention to exercise custody and control for one's own benefit. Willingness to pay for the land does not necessarily disprove such an intention.

59. The First Claimant can be said to have proven the required *animus possidendi* in this case. This is so to the undisputed extent of his use of violence and threats to keep the First Defendant from visiting the family property where they both lived, at different times, as children. However, intention alone will not suffice. In all the circumstances, no factors of adverse or exclusive possession have been established; so on a balance of probabilities, the claim to adverse possession has not been proven.

60. In these circumstances, there being no adverse possession, the submission in Reply by Counsel for the Claimants at paragraphs 12 and 13 contending that the indefeasibility of the First Defendants title is, by law, subject to adverse possession is irrelevant.

61. Also of note is that the Claimants' claim to adverse possession, made without joining Mr. Dennis as a party, is as alleged by the First Defendant an abuse of process. On two prior occasions the issue of the interest of Mr. Dennis was raised in Court by the First Defendant in response to the First Claimant's challenge to her title. The First Claimant had to withdraw those claims filed in 2004 and 2010. It is inappropriate to have herein raised the same challenge once more without joining

or presenting independent evidence regarding the presence of Mr. Dennis on the land.

The First Claimants Claim against the First Defendant for Trespass

62. The Claim for Trespass is primarily not made out because the First Defendant is the owner of the land in question. She has not been dispossessed by adverse possession and cannot trespass on her own land.

63. In any event, the First Defendant denies any involvement in the actions of the Second Defendant, a bailiff, who entered onto the land and demolished the more recently built structures. She says specifically that she did not sign the letter that the bailiff showed to the Claimants during his demolition exercise.

64. Based on the First Defendant's advanced age and her apparent confused state of mind reflected in some of her answers, I cannot rule out as improbable that someone other than her hired the bailiff. It is not in dispute that the First Defendant was trying to sell the land and even offered to let the Claimants buy part of it. The interested purchasers may, from the oral evidence, also have been possible principals regarding the agency of the bailiff.

65. Overall, the Claimants failed on a balance of probabilities to link the Second Defendant's actions with the First Defendant. The property was owned by the First Defendant and the claim that she trespassed on it fails. The Claimants' case against Traboulay, the Second Defendant, has succeeded by default and declarations as to his trespass and unlawful actions were made prior to the Trial.

The Claimants' Claim against the Third and Fourth Defendants for Trespass and unlawful actions

66. The Claims against the Third and Fourth Defendants were shown to be less probable after full ventilation of the evidence and the findings made above. As

the Claimants failed to prove adverse possession, the First Defendant still owns the property. The pleaded case, however, is that the trespass by all other defendants was initiated by the First Defendant [See paragraphs 26 and 32 as well as Annex “G” to the Amended Statement of Case].

67. The question that remains to be determined is whether the findings made in favour of the First Defendant also logically exonerate the Third and Fourth Defendants as any action taken to keep the peace, while the bailiff cleared her land of recent buildings would not be trespass.

68. However, in the absence of any finding that the First Defendant was the directing force behind the Second Defendant’s actions, including hiring the police for extra duties and for reasons explained below, the possibility remains open that another person may have given those directions. That person may not have been a title holder. Accordingly, as further explained below, the finding that the First Defendant is not liable does not automatically exonerate the other Defendants.

69. **Halsbury’s Laws of England** on Tort (Vol. 97 (2015)) at [575] titled “What constitutes actual possession of land for the purposes of trespass”, states:

“Actual possession is a question of fact. It consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons.”

70. Further at [574] it states:

“It is not necessary, in order to maintain trespass, that the claimant’s possession should be lawful, and actual possession is good against all except those who can show a better right to possession in themselves.”

71. In the present case, it is possible that the Claimants did have actual possession for the purposes of trespass. This possession would be good against anyone except those who can show a better right to possession themselves, as the First

Defendant has. In **Ballantyne v Rampersad CV2016-01616** where a Claimant's adverse possession was not proven, it was stated at para. 85:

"In order to maintain a claim for trespass the Claimant must show that there was some form of unauthorized and unjustifiable entry upon the disputed property and that she was in possession of it. At the time the Defendant entered the disputed property on the 4th October 2015 he was the owner of the disputed property and the chattel house and he had already served the Claimant a Notice to Quit in February 2015 and he had served a notice to quit on the Claimant's sister. At that time the Claimant thought of herself as a tenant but she knew that the person she thought was the owner was not the Defendant. Given those circumstances the Defendant was authorized and justified when he entered onto the disputed property on the 4th October 2015."

72. However, with regard to the Second Defendant, having concluded that the nexus between him and the First Defendant had not been sufficiently established, and due to his non-appearance, the lack of lawful possession of the First Claimant cannot automatically exonerate the Second Defendant's conduct, and therefore that of the Third and Fourth Defendants.

73. As there is no such exoneration, the possibility of the Claimants succeeding against the Third and Fourth Defendants turns on the evidence regarding their actions at the property. There are two differing authorities cited by the parties as relevant to the Court's consideration of the legality of the said actions.

74. The Claimants rely on the Judgment of Gobin J in **Suresh Sohan et al v Bhall et al CV 2014-03471**. The Third and Fourth Defendant's rely on the more recent decision of Harris J in **Deonarine Sookdeo v AG CV2015-03203**.

75. In **Deonarine Sookdeo**, the trial judge held at para. 41:

"On the issue of the trespass of the police on the property of the claimant, I do not get the point. Having regard to the nature of the core claim, this allegation would take on significance if the trespass was constituted by, e.g. the police on

the premises offering guidance to the backhoe; removing the claimant's belongings or directing that operation and the like. Indeed, not only is the claimant's pleadings replete with suggestions of the police involved in removing belongings and actively participating in the demo, but so also is the witness statement. The claimant rolled back his position in cross examination. In any event, upon consideration of all the testimony of evidence, it is clear that the police did neither. There is no satisfactory evidence of that in the video and neither does testimony – witness statement – go beyond the mere bald statements of this. I accept that the police officer did go on to the premises initially to identify himself and purpose, to the claimant. I accept the officer's evidence of this. I am not convinced by any other evidence that the police entered the premises otherwise.”

76. In that case, the Court determined that there was insufficient evidence that the police physically aided the bailiff or physically prevented the Claimant or other persons from stopping the demolition that could not be interpreted as keeping the peace. The crux of the Claimant's contention was the police officers' omission to act to prevent the demolition of their property.

77. Further, in assessing the absence of a warrant/deed/court authorizing document being produced to the police to support their presence on the site, the Court in **Deonarine Sookdeo** was of the view that it is not for the police to make a definitive assessment on the validity of bailiff authorisation or title documents, even at the station. Even if such an assessment is made at the Police Station when extra duty service is assigned, it does not amount to an assumption of responsibility of the police for the private protection of the bailiff.

78. The Court also analysed the concept of “extra duty” of the police, comparing the circumstances where officers are assigned extra duty to keep the peace while a bailiff works to a situation where a bailiff may have commenced work without the presence of the police. The Court observed that in the latter situation if tensions rose and an altercation occurred, both the persons being evicted and the bailiff

would have been entitled to call the police for the purpose of preserving the peace.

79. In **Suresh Sohan**, it was alleged that police officers present during demolition of a property by a bailiff, used their marked vehicles, their equipment, uniforms and weapons, to intimidate the Claimants and to prevent them from resisting the unlawful trespass. The Claimants in that case submitted that the police were present not for preservation of peace but for protection of the bailiff.

80. In **Suresh Sohan**, the illegality of the demolition had already been determined, with judgment entered against the bailiff. The trial judge held that the police officers had actively supported the bailiff in the illegal demolition, intentionally lending colour of State Authority to an illegal operation under the pretext of preserving the peace. This was based on findings that:

- a. the police had assisted by visiting the premises the day before the demolition making enquiries of the claimants about the property based upon a pre-arrangement with the bailiff;
- b. the bailiff's authorisation document contemplated the presence of police during the demolition;
- c. There were both plain clothed police and uniformed police present on the site, the uniformed police carrying exposed weapons for the protection of the bailiff during the demolition.

81. The Court determined, therefore, that in the particular circumstances of that case, the police aided and abetted the demolition and abused their authority.

82. The decision of the Court in **Persad v Debedial & ors CV2016-00810** provides an indication of the caution that must be exercised by police officers on extra duty with bailiffs for eviction and demolition exercises, as follows :

“With alarming regularity bailiffs are used to take possession of land but the law does not authorise them to so do. Generally, a court order and writ of possession is required, and the process ought to be undertaken by a marshal of

the court. and the mere presence of officers at times, can serve to legitimise unlawful activity.”

83. The foregoing was a general comment about extra duty assignments related to the work being done by a bailiff without a Court order. The actions of the police must however, be assessed on a case by case basis. As Harris J expressed in **Deonarine Sookdeo**, police may be called in any circumstance where there is a breach of peace, therefore, responding to a request for their presence where there is the possibility of a breach of peace would not necessarily amount to an abuse of power/authority.
84. My factual finding based on the un-contradicted evidence in the present case, is that the Third Defendant and other police officers on extra duty that day merely stood by and kept the peace. In so doing the bailiff was able to carry out the actions complained of without hindrance. The officers’ action in intervening when they thought a surveyor was under threat and handcuffing the First Claimant’s sons was not inconsistent with the lawful act of keeping the peace.
85. However, the issue to be determined is whether the Third Defendant’s actions even in keeping the peace were illegal since they were not carried out in execution of any statutory or other legal duty. Specifically, the Claimants contend that since the document dated 23rd November, 2017 shown to them by the bailiff on the day of the demolition was not issued by the Court, the involvement of all concerned, including the Third and Fourth Defendants, was unlawful.
86. Importantly, the illegality of the Bailiff’s action has not been proven as Judgment against him was by default. The Bailiff in the instant case attended at the property with an authorisation document which was shown to the Claimants. According to the decision in **Deonarine Sookdeo** officers on extra duties cannot reasonably be expected to decide on the legality of a bailiff’s mandate before keeping the peace in the manner requested.

87. Even if they were so required, it is my finding that they were witnesses of truth to the fact the Claimants' buildings were merely dismantled, even though the word demolished was used in their witness statements. The loss of property, based on dismantling, would be minimal as the Claimants would have the material to rebuild. The Claimants gave no evidence that the materials were either unusable or removed by the Defendants.

88. The Claimants only evidence of the value of property damage, including fruit trees, was an expert's evaluation conducted one year after the fact. The evaluation was expressly based on hearsay i.e. the expert valued what the Claimants told them they lost. For example, they said they lost 100 mango trees and he valued that at \$58,000.00.

89. The loss of 100 mango trees seems far-fetched particularly in light of the photographs put in evidence by the Claimants to prove excavation on the land. There are photographs of some cleared land, the extent of which has not been proven. There are also photographs showing several full-grown trees remaining on the land.

90. In all the circumstances, my finding is that the Third and Fourth Defendants' liability in Trespass has not been proven. Even if the Third and Fourth Defendants had been found liable for Trespass, the award of damages could only have been nominal.

F. Conclusion

91. On a balance of probabilities, the Claimants have not successfully proven at this Trial, the case brought against the Defendants. Accordingly, IT IS HEREBY ORDERED THAT:

- (i) The Claim against the First, Third and Fourth Defendants is dismissed.

(ii) The injunction granted to the Claimants against the Defendants on 8 December, 2017 is discharged.

(iii) The Default Judgment entered against the Second Defendant remains in force.

(iv) The Claimants are to pay the costs in the award of \$14,000.00 to the First Defendant and \$14,000.00 to Third and Fourth Defendants on the prescribed basis.

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely JRC 1