THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-03903

Between

ALI DEONANAN AND ASSOCIATES LIMITED

Claimant

AND

NEHEMIAH MANO

(Wrongly sued as Nemiah Mano)

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: 17 May, 2019

Appearances:

Ms. Clair M. Sinanan for the Claimant

The Defendant appearing in person and unrepresented

JUDGMENT

I. Introduction

[1] The Claimant, Ali Deonanan and Associates Limited (hereinafter referred to as "the Claimant"), is a land surveying company. This action was brought by the Claimant for damages for trespass to property and consequential loss suffered by the Claimant consequent to the damage done to the Claimant's Topcon ES-105 Total Station Serial Number GZ 4077 by the Defendant on 26th February 2015 and for the sum of $73,480.00 representing the total damage and costs of the Claimant's Topcon ES-105 Total Station Serial Number GZ4077.

[2] The Claimant's case is that on 26th February 2015, its representatives were at Calcutta Road No 3. Freeport to survey a parcel of land owned by Pittyman Mano when the Defendant, Nehemiah Mano (hereinafter referred to as "the Defendant") grabbed a sledgehammer and struck its Topcon ES-105 Total Station Serial Number GZ4077 (hereinafter referred to as "the surveying instrument") which fell to the ground. As a result of the Defendant's conduct, the hard protective plastic casing of the surveying instrument was smashed and the telescope and other sensitive parts of the surveying instrument were damaged to the extent that it could no longer be used to carry out any surveying work.

[3] The Claim was commenced by Claim Form and Statement of Case filed on 13th November 2015. However, the Claimant filed a Re-Amended Claim Form and Statement of Case on 7th April 2016. The Claimant pleaded that as a result of the Defendant's conduct, the surveying equipment was severely damaged and could not be repaired locally nor was it economically feasible to repair same abroad.

The Claimant seeks the following relief from the Defendant:

(i) The sum of $73,480.00 representing the damage and cost of the Topcon ES-105 Total Station damaged by the Defendant on 26th February 2015;

(ii) Damages for trespass to property and consequential loss suffered by the Claimant which said damage was caused by the Defendant who on 26th February 2015 took up a hammer and struck the Claimant's Topcon ES-105 Total Station while the

Claimant's representatives were in the process of carrying out a land survey at Calcutta Road No 3, Freeport;

(iii) Costs;

(iv) Interest; and

(v) Such other relief as the Court deems fit.

[4] The Defendant, in his Amended Defence, denied the particulars of damages of the surveying equipment alleged by the Claimant in its Re-Amended Statement of Case. The Defendant has put forward a different version of facts as stated by the Claimant. The Defendant alleged that one of the Claimant's representatives, Roopchand Deonanan, became very aggressive and pushed him which caused him to fall back on a piece of the equipment. According to the Defendant, the equipment thereafter toppled over and fell onto the concrete base of a chain link wire fence. The Defendant surmised that if any surveying equipment was damaged, it was as a direct consequence of the actions of the servant(s) or agent(s) of the Claimant.

[5] The Claimant filed five witness statements given by the following witnesses in support of its case, namely: (i) Monique Walker; (ii) Daveanand Ramlochan; (iii) Mewa Mahadeo; (iv) Roopchand Deonanan; and (v) Rodney Mahabal. In opposition, and in support his case, the Defendant filed two witness statements, namely, his own and that of Ramnarine Mano.

The Trial was held on 3rd November 2017. However, notwithstanding the several advices and recommendations made by the Court to the Defendant as regards being legally represented, the Defendant appeared at the trial unrepresented and decided to proceed with the matter on his own.

[6] After trial, the parties filed and exchanged written submissions on 8th December 2017. Submissions in reply were filed by the Claimant and the Defendant on 5th January 2018 and 8th January 2018 respectively.

[7] As aforementioned, the Defendant was unrepresented at the beginning of the trial and the Court proceeded with the matter. At the end of the trial, the Court informed the Defendant that he has to file written submissions based on the evidence before the Court. The Court also informed the Defendant that he could retain an attorney at law to make the submissions on his behalf or retain an attorney at law to assist him in preparing the submissions. However, it is evident that the Defendant did not do either as the contents of his submissions reflect a lack of legal input.

[8] The "written submissions" filed by the Defendant were not helpful to the Court: his submissions did not relate to the evidence given at the trial. The documents filed on 8th December 2017 purporting to be submissions related to the Defendant's dissatisfaction when he received the Trial Bundle for the trial and that notice was not given to him by Ali Deonanan for the surveying of a piece of land at Calcutta No 3., Couva.

The Defendant submitted a document titled "Statements by Nehemiah Mano" which stated, *inter alia*, that the deed used by the Claimant was a false deed and that his father, Joseph Mano, never sold any lands to Deodath Maharaj, therefore, Deodath could not have sold any lands to Pittyman Mano. He also stated that there was a matter before the High Court, San Fernando before the Honourable Justice Seepersad. He attached a copy of deed for the property owned by his father and a copy of the will of his father detailing how the property was to be divided among the brothers. I have not considered these attached documents in my deliberations as these documents were not properly before the Court; they did not form part of the evidence in support of the Defendant's case.

The Defendant in this statement attempted to give further evidence in support of his case. However, I am of the view that the information given in the statement, ought to have been pleaded in the Defendant's Defence/Amended Defence.

[9] The Claimant in its submissions referred to the authority of **Clerk & Lindsell on Torts 17th Edition** for the elements of the tort – trespass to goods. On the question of damages, submissions were only filed by the Claimant. The Claimant cited the case of **Harrypersad**

Angad Lutchman v Shukur Shakeer, Rajaram Lutchman, The Attorney General of Trinidad and Tobago, Syedd Fadil Shakeer[1] wherein Master Alexander summarized the law on assessing damages for trespass to chattel/good.

[10] The Claimant submitted that there were conflicting versions of the incident resulting in the damage caused to the Claimant's Topcon ES-105 Total Station before the Court. It was submitted that in dealing with contesting versions of the event before the Court, guidance can be sought from the dicta of the Honourable Madam Justice Rajnauth-Lee (as she then was) in **Mc Laren v Daniel Dicky**[2] wherein she quoted the dicta of Lord Ackner in **Reid v Charles and Bain**[3].

II. Issues

[11] Having considered the pleadings, evidence and submissions, the Court views that the following are the live issues for determination:

1. **Did the Defendant commit a trespass to the Claimant's Topcon ES-105 Total Station Serial Number GZ4077 by seizing a hammer and striking down same on 26th February 2015?**
2. **If the Defendant is found liable, what is the quantum of damages recoverable by the Claimant?**

III. Law and Analysis

Issue 1: Did the Defendant commit a trespass to the Claimant's Topcon ES-105 Total Station Serial Number GZ4077 by seizing a hammer and striking down same on 26th February 2015?

[12] The action of trespass to goods has always been concerned with the direct, immediate interference with the Claimant's possession of a chattel: [see **Clerk & Lindsell on Torts,**

[1] CV2006-00839
[2] CV2006-01661
[3] Privy Council Appeal 36 of 1987

22nd Edition at paragraph 17-130]. **Halsbury's Laws of England**[4] on trespass to goods stated that:

> *"**687**. The Defendant must be responsible for some physical contact with the Claimant's chattel in order to be liable for trespass to goods… Although physical contact often results in damage to the Claimant's chattel, in the sense of physical change, it need not. Mere unauthorised physical contact, not causing damage, can be sufficient for liability in the tort…"*

Apart from the requirement that the interference must be of a direct nature, there must be some blameworthy state of mind in the trespasser. An accidental interference of a non-negligent nature is not a trespass… On the other hand, to be liable the defendant need not appreciate that his interference is wrongful: [see **Clerk & Lindsell on Torts, 22nd Edition at paragraph 17-132**].

[13] As it relates to the evidence, it is clear that the parties have divergent accounts as to how the damage to the surveying equipment was caused. In deciding whether the tort has been proven, which is a question of fact, the Court has to determine on a balance of probabilities from the evidence presented whether the Claimant has discharged its burden of proving that the Defendant is liable for the damage caused to the surveying equipment on 26th February 2015.

[14] At the trial, Mewa Mahadeo (Mr. Mahadeo), Roopchand Deonanan (Mr. Deonanan), Daveanand Ramlochan (Mr. Ramlochan), Monique Walker (Ms. Walker) and Rodney Mahabal (Mr. Mahabal) gave evidence on the Claimant's behalf. The Defendant's evidence came from himself and Ramnarine Mano (Mr. Ramnarine). Both sides gave wholly opposite versions of the sequence of events on 26th February 2015.

Based on the evidence from the witnesses, there were four persons who witnessed the incident – Mr. Deonanan, Mr. Mahadeo, the Defendant and Mr. Ramnarine. Mr.

[4] 5th Edition, Volume 97 at paragraph 687

Ramlochan was not around at the time of the incident; he came after the surveying equipment was damaged. Both Ms. Walker and Mr. Mahabal gave evidence on the damage the surveying equipment sustained.

[15] Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain**[5]. At page 6, Lord Ackner in delivering the judgment of the Board examined the approach of the trial judge:

> *"[Counsel] in his able submissions … emphasised to their Lordships that where there is an acute conflict of evidence…, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses."*

[16] Accordingly, in determining the version of the events more likely in light of the evidence, the Court is compelled to check the impression of the evidence of the witnesses against (1) the pleaded case; (2) contemporaneous documents; and (3) the inherent probability or improbability of the rival contentions.

[5] Privy Council App No 36 of 1987

Consistency between Claimant's pleading and evidence

[17] The Claimant's case was supported by the oral testimony of its witnesses. According to the Re-Amended Statement of Case, the Defendant arrived at the worksite with another man and demanded to know why the Claimant's representatives were on the roadway at the site. Mr. Mahadeo radioed his supervisor, Mr. Deonanan, who was further east along the road and asked him to come speak to the Defendant. Mr. Deonanan came and informed the Defendant that Pittyman Mano had retained him to carry out a survey of the parcel of land at the location. The Defendant insisted that Pittyman Mano had no lands at the worksite. The Claimant averred that its representatives subsequently produced a copy of Pittyman Mano's deed and showed same to the Defendant who had requested a copy thereof. However, that copy was the only copy in the possession of the Claimant's representatives so Mr. Deonanan volunteered the deed number to the Defendant and told him that he could apply for a copy.

The Claimant contended that the Defendant thereafter became agitated and demanded that the Claimant's representatives, who were standing on the public roadway at the time, leave the worksite. The Claimant alleged that the Defendant did not show its representatives any deed of his own but claimed that the deed in their possession was a forgery. The Claimant claimed that the Defendant 'created a scene', demanding that the Claimant's representatives leave the site. The Claimant further claimed that the Defendant shouted that no survey was going to take place and he grabbed a sledgehammer and struck the surveying equipment, which fell to the ground. The Claimant pleaded that as a result of the Defendant's actions, the hard protective plastic casing of the equipment was smashed and the telescope and other sensitive parts were damaged. As a consequence, the surveying equipment cannot now be used to carry out any surveying work.

The Claimant pleaded that the Defendant, thereafter, walked into a nearby dirt road with the hammer. After a short time, he came out driving a vehicle and drove away. A short while after the incident, the police arrived on the scene and the Defendant returned. The Claimant contended that the Defendant admitted to tossing the hammer in the bushes. The Claimant's representatives, thereafter, made a report at the Freeport Police Station.

[18] Mr. Deonanan's evidence was consistent in his witness statement and during cross-examination. He maintained that he was radioed by Mr. Mahadeo to come speak to the Defendant and he informed the Defendant that he had been retained to carry out a survey of the parcel of land. It is his evidence that the Defendant started to yell that Pittyman Mano had no lands at the site. Mr. Deonanan stated that he showed the Defendant a copy of Pittyman Mano's deed; he maintained this under cross-examination. However, when cross-examined on whether that deed was a forged document, he had no knowledge of such. The Defendant sought to put to Mr. Deonanan that the deed which was in his possession was a fraudulent one. However, this did not form part of his pleaded case.

Mr. Deonanan maintained that the Defendant became agitated and demanded that the Claimant's representatives leave the site. He stated that the Defendant did not produce a deed of his own; that the Defendant claimed that the deed shown to him was a fraudulent one and that he told the person with him to call the Fraud Squad. Mr. Deonanan testified that the Defendant said no survey was going to take place and took a sledgehammer and struck the surveying equipment which fell to the ground. However, he added that the surveying equipment fell on the grass verge of the road. This addition, in my view, is not material as Mr. Deonanan only provides a description of where exactly the surveying equipment fell and it does not affect the credibility of his evidence.

Mr. Deonanan testified that the Defendant, after striking the surveying equipment walked into a small road and later emerged in a goldish coloured vehicle and drove away. He indicated that a few minutes after the Defendant left, the police arrived at the worksite and a short while thereafter, the Defendant returned and was questioned by the police.

[19] Under cross-examination, Mr. Deonanan maintained that when he showed the copy of the deed to the Defendant, he did not do anything to him (the Defendant). The Defendant, though he did not use the word "put", sought to put his case to Mr. Deonanan to the end his cross-examination. The line of questioning ensued suggested that the Defendant was putting his case to Mr. Deonanan. It was as follows:

Q: When I go to turn the page, you pushed me backwards?

A: That is not correct.

Q: And when I go to turn it, you pushed me aside…

A: That is not correct.

Q: And that is how I stumbled because that is how I stumbled on the survey equipment and that is how it fell?

A: That is not correct."[6]

In my opinion, Mr. Deonanan remained unshaken during cross-examination by the Defendant. His evidence remained unchallenged and was consistent throughout.

[20] Mr. Mahadeo's evidence was consistent in his witness statement and corroborated Mr. Deonanan's evidence. He maintained that the Defendant approached him and enquired about what they were doing there. However, he embellished his witness statement by adding that he informed the Defendant that they were doing a survey and that the Defendant asked if they had any documents. This is inconsistent with the pleaded case where the pleaded case is that Mr. Deonanan informed the Defendant about the survey. However, in my view, this inconsistency is immaterial since later on his witness statement, Mr. Mahadeo stated that Mr. Deonanan also told the Defendant that they were there to carry out a survey on the parcel of land.

Mr. Mahadeo confirmed that the Defendant stated that Pittyman Mano had no lands and that Mr. Deonanan showed a copy of the deed to the Defendant. He testified that after looking at the deed, the Defendant in a loud voice said that it was a fraudulent document and called out to the other man to call the Fraud Squad. Mr. Mahadeo confirmed that the Defendant shouted that no survey was taking place and grabbed the sledgehammer and struck the surveying equipment. However, he added that the surveying equipment fell on the grassy verge just off the roadway. In my view, this addition is not material as it only describes where exactly the surveying equipment fell; it does not affect the credibility of this witness' evidence. Mr. Mahadeo stated that he called Mr. Ramlochan and told him to

[6] NOE 3rd November 2017, page 16 at lines 21-44

come back and meet them at the worksite. Mr. Mahadeo also confirmed Mr. Deonanan's evidence that after striking the surveying equipment, the Defendant turned into a roadway and he came out of the roadway, driving a gold coloured Almera. He stated that a short while after Mr. Ramlochan returned with his cutlass sheathed in his belt. Mr. Mahadeo corroborated Mr. Deonanan's evidence by stating that a short while after the police arrived, the Defendant returned to the scene.

The Defendant did not cross-examine Mr. Mahadeo; therefore, his evidence remained unchallenged.

[21] Mr. Ramlochan's evidence that he was not present when the Defendant struck the surveying equipment was consistent in his witness statement and under cross-examination. He confirmed the evidence of Mr. Deonanan and Mr. Mahadeo that Mr. Deonanan was radioed by Mr. Mahadeo to come speak to the Defendant. He testified that he went further east along the road towards the junction when they arrived at the worksite to look for boundary marks and that at all times his cutlass remained sheathed in his cutlass belt.

Mr. Ramlochan testified that a short while after Mr. Deonanan left him, he was radioed by Mr. Mahadeo to come back up the road to where they were. This corroborated the evidence of Mr. Mahadeo and Mr. Deonanan. Mr. Ramlochan stated that he walked back up the road with the cutlass still in his belt; corroborating Mr. Mahadeo's evidence. When he got to the site, he observed that the surveying equipment was on the ground on the grassy verge to the Southern side of the road. Mr. Ramlochan indicated that a short time later, the police arrived on the scene and the Defendant pulled up in a vehicle. This supports the evidence of both Mr. Deonanan and Mr. Mahadeo that the Defendant returned to the worksite after striking the surveying equipment when the police arrived.

Daveanand testified that he did not have any contact with the Defendant and that by the time he returned to the site, the Defendant had already left. He stated that he never cursed the Defendant nor did he threaten him in any manner. During cross-examination by the

Defendant, Daveanand remained unshaken in his evidence. He maintained that he never saw the Defendant until the Defendant returned when the police was there. He also maintained that he never saw how the surveying equipment fell because he was not around.

[22] In my assessment, the Claimant's evidence was consistent throughout; the evidence of the witnesses supported the Claimant's pleaded case. I found the Claimant's witnesses to be convincing and credible. The Claimant's witnesses impressed the Court as witnesses of truth.

Consistency between Defendant's pleading and evidence

[23] The Defendant admitted that it is likely that the surveying equipment was damaged on 26th February 2015. However, he denied the sequence of events pleaded by the Claimant. The Defendant averred that he had no prior notice of any survey pursuant to **Section 3 of the Trinidad and Tobago Surveys Act Chapter 60: (sic)**[7] proposed to be done on any lands. The Defendant contended that the purported survey appeared to have been with respect to lands that form part of the estate of Joseph Mano and upon which he and Mr. Ramnarine reside.

The Defendant alleged that Mr. Ramnarine informed him that there were about eight persons standing in front of his home with what appeared to be land-surveying equipment. They both approached the persons to enquire about their presence on the lands and the Defendant was directed to Mr. Deonanan. The Defendant claimed that Mr. Deonanan enquired whether he had a deed for the property and upon being informed that the entire parcel of land formed part of the estate of Joseph Mano and was being probated, Mr. Deonanan began to use obscene language and insisted that the Defendant and Mr. Ramnarine had no legal rights to any lands since only Pittyman Mano had a deed.

[7] This is exactly how it was stated in the Defendant's Amended Defence. However, it is clear that the Defendant meant to refer to **Section 3 of the Trinidad and Tobago Survey Act Chapter 60:01**.

[24] The Defendant further claimed that when he was confronted with the obscene and abusive language, he instructed Mr. Ramnarine to call the Couva Police Station. He averred that while Mr. Ramnarine was calling the police station, Mr. Deonanan produced a document and claimed that it was a deed for the property to be surveyed and that Pittyman Mano owned it. The Defendant further averred that Mr. Deonanan held onto the deed and allowed him to peruse it. However, when he attempted to turn the page to read the rest of the deed, Mr. Deonanan became very aggressive and pushed him down which caused him to fall back on a piece of equipment. The Defendant claimed that he had been standing near to a chain link wire fencing which was anchored by a concrete base. He further claimed that the surveying equipment, which he fell upon, thereafter, toppled over and fell onto the concrete base of the chain link fence.

The Defendant alleged that when he stood up, he noticed two men armed with cutlasses coming towards him in a threatening manner. He pleaded that he noticed a hammer lying on the ground and promptly picked it up in an effort to defend himself in the event that the two men attempted to strike or chop him. The two men, however, stopped short of physically assaulting him but cursed him and Mr. Ramnarine in the vilest and most obscene language. The Defendant alleged that at no time did he use either physical violence or verbally abusive language to any person throughout the duration of this incident.

The Defendant has pleaded that the servants or agents of the Claimant behaved in an unprofessional, aggressive and high handed manner at all times and that the aggressive and abusive manner of Mr. Deonanan was the direct cause of him falling onto a piece of surveying equipment. The Defendant further pleaded that if any surveying equipment was damaged, it was as a direct consequence of the actions of the servant(s) or agent(s) of the Claimant.

[25] Mr. Ramnarine's evidence in his witness statement was partly consistent with the Defendant's pleaded case. However, during cross-examination many inconsistencies arose which undermined his credibility as a witness. Mr. Ramnarine testified that the

persons were in front of his home as well as the Defendant's home whereas in the pleaded case, the persons were in front the Defendant's home alone; there was no mention that they were in front of Mr. Ramnarine's home as well. In cross-examination, Mr. Ramnarine, however, admitted that the persons were in front of his home and that he did not see any of them go to the Defendant's home as yet. In cross-examination, he initially stated that he watched the men for a couple of minutes before he went across to them. However, when he was asked whether it was a couple of minutes or an hour, he said that he was not sure. In his witness statement, he stated that he first approached the Claimant's representatives to enquire about what they were doing; this contradicts the pleaded case where it was pleaded that both the Defendant and Mr. Ramnarine approached the persons.

Mr. Ramnarine testified that when he was not getting any straightforward answers from the persons, he went to the Defendant's home. However, in cross-examination, he admitted that when he spoke to the persons, they told him that they were there to survey a piece of land. Mr. Ramnarine, later on in his cross-examination, contradicted his evidence – he then said that the persons did not tell him that they came to do a survey. At this point, I sought to enquire from the witness, whether the persons told him that they were there to do a survey or whether they told him nothing; his response was that they told him they were there to do a survey. Counsel for the Claimant continued thereafter and Mr. Ramnarine admitted that the persons did in fact gave him a straightforward answer that they were surveying a piece of land. This is clearly inconsistent with his evidence-in-chief.

Mr. Ramnarine testified that he became very anxious because of the aggressive nature of the men, however, in cross-examination, he admitted that the discussion he had with the persons was amicable and that he had no reason to get anxious. In cross-examination, he admitted that he did not go to the home of the Defendant but instead called him using his cellular phone. He also admitted that at the point when he called his brother on his cellular phone, the persons were not by the Defendant's home. However, when specifically asked if the persons were not by the Defendant's home, he said that he did not know, there were

many of them; he did not know all which part they were. This inconsistency and uncertainty shown by the witness affected his credibility.

[26] Mr. Ramnarine confirmed that the Defendant spoke to Mr. Deonanan and maintained that he was a few feet away from them but he heard some of what was being said. In his witness statement, he stated that Mr. Deonanan used obscene language a few times while talking to the Defendant. However, in cross-examination, he admitted that he did not hear what was being said between the Defendant and Mr. Deonanan and that he did not hear anybody cursing anybody. In fact, he specifically admitted that he did not hear Mr. Deonanan use any obscene language and that during the conversation with the Defendant and Mr. Deonanan, nobody was quarrelling, cursing or arguing. During cross-examination, Mr. Ramnarine also admitted and that he did not hear or see anyone threatening the Defendant or himself. This is undoubtedly contradictory to the pleaded case as the alleged behaviour of Mr. Deonanan is what supposedly led to the fall of the Defendant on to the surveying equipment.

Mr. Ramnarine, in his witness statement, stated that he heard the Defendant telling Mr. Deonanan that the lands belonged to their father, Joseph Mano and that there were issues to be resolved concerning the lands in the High Court. However, he admitted in cross-examination that he did not hear anything that the Defendant said and he could not say whether the Defendant told Mr. Deonanan anything about Joseph Mano. In response to whether paragraph 5, lines 9-11 of his witness statement was correct, his response is noteworthy:

> *"You see, I cannot remember everything I said and, I I cannot remember everything. Is certain things I could remember, is only what, is only only when they were loud speaking."*[8]

Again, this uncertainty affected the credibility and truthfulness of this witness' evidence.

[8] NOE 3rd November 2016 page 45 at lines 13-16

[27] In his witness statement, Mr. Ramnarine stated that he saw when Mr. Deonanan became very aggressive and pushed away the Defendant and the Defendant fell. However, during cross-examination, he said that there was a struggle between the Defendant and Mr. Deonanan concerning a paper and that somebody fell. However, he could not say which one of them fell, whether it was the Defendant or Mr. Deonanan nor could he say how the equipment fell. In response to whether he recalled what took place in paragraph 8, lines 5-8 of his witness statement, he replied that "*somebody fell to close to the equipment or on the equipment or something but somebody fall*"[9]. He could not say for certain who fell or how the equipment fell. This is clearly contradictory to his witness statement and more so the pleaded case.

Mr. Ramnarine, during cross-examination, confirmed the Claimant's evidence and contradicted his case when he admitted that the surveying equipment fell on the grassy verge on the side of the road.

[28] The Defendant, in his witness statement, maintained his pleaded case; however, his evidence was inconsistent and contradictory in certain aspects and was not consistent with that of Mr. Ramnarine.

The first inconsistency I wish to highlight in the Defendant's evidence is the notice of the survey. In his witness statement, the Defendant stated that he did not receive any notice of the survey. During cross-examination by Counsel for the Claimant, initially, the Defendant asserted that he never received any notice. However, he then stated that he was shown a copy of the notice by his then attorney at law, Ms Wendy Ramnath-Panday when he was providing his witness statement. He stated that his attorney at law had received this notice when Counsel for the Claimant filed the documents. Counsel for the Claimant referred to a letter from Ms Wendy Ramnath-Panday dated 3rd March 2015 which was sent to the Claimant. I wish to note at this juncture, that when the Defendant was represented by Ms. Ramnath-Panday she made evidential objections to certain parts of the Claimant's witness statements. Before this trial commenced, I did not give any ruling

[9] *Ibid* page 48, lines 23-34

on the evidential objections filed by the parties due to the fact that the Defendant was then unrepresented and he would not have known what to strike out. I then decided to proceed with the trial to hear the evidence *de bene esse*, and in my decision, the objections would be considered.

One of the objections made by the Defendant was to paragraph 7, lines 6 to 14 of Mr. Deonanan's witness statement where he stated, *inter alia*, that he believed the Defendant did receive the notice as he got a call from a person identifying himself to be Nehemiah Mano and that he also received a copy of letter from his attorney dated 3rd March 2015 making reference to the notice of survey dated 4th February 2015. Mr. Deonanan had also attached a copy of this letter to his witness statement. The Defendant objected to this part of the witness statement as it was not in accordance with the Claimant's pleaded case. I agree with the Defendant that this part of the evidence ought to have been struck out as it was material fact which ought to have been specifically pleaded. Accordingly, I attached no weight to the evidence of the letter from Ms Ramnath-Panday dated 3rd March 2015.

[29] In any event, the Defendant later admitted to have received a notice of the survey dated 4th February 2015 from a Court Marshal but he could not remember the date that he received same. However, he maintained that he never received any notice of any survey from the Claimant. It is my view that the Defendant was attempting to draw special attention to the fact that he did not receive any notice of the survey from the Claimant personally.

However, serving of the notice of the survey is not a fact in issue to be determined. On the other hand, an examination of the Defendant's evidence on the issue of receiving notice of the survey goes towards his credibility as a witness. The Defendant failed to acknowledge that the notice of survey that he received from the Court Marshal was on behalf of the Claimant. He was adamant in accepting that the Claimant served him with notice of the survey as he was expecting to be personally served by the Claimant.

[30] The Defendant, in cross-examination, maintained that Mr. Ramnarine came to his home although Mr. Ramnarine insisted that he telephoned the Defendant. In response to whether Mr. Ramnarine was mistaken when he said that he called the Defendant on the telephone, the Defendant replied that Mr. Ramnarine called on the phone as well but when he (the Defendant) did not respond to that call, he told Mr. Ramnarine to come, Mr. Ramnarine came to him. However, this is illogical; how can the Defendant tell Mr. Ramnarine to come if they did not speak on the phone. The Defendant at this point attempted to corroborate the evidence of Mr. Ramnarine by stating that he did get a call first from Mr. Ramnarine.

The Defendant, in his witness statement, stated that he and Mr. Ramnarine approached the persons who were in front his house and he (the Defendant) asked who was in charge and a short East Indian man came and said he was in charge of the crew. However, in cross-examination, he admitted to have asked Mr. Mahadeo who was in charge and Mr. Mahadeo told him that it was Deonarine Ali (*sic*)[10] who was on the other end of the property about 500 metres away. He also admitted in cross-examination that Mr. Mahadeo had in fact called Mr. Deonanan over.

[31] The Defendant maintained that Mr. Deonanan was very aggressive and that he told Mr. Deonanan that the lands were in the process of being probated in the High Court and that Mr. Deonanan used obscene language. He maintained that Mr. Deonanan held a paper (the deed) for him to read and while reading, he told his brother to call the police. He maintained that when he tried to turn the page, Mr. Deonanan pushed him and he fell back on the surveying equipment and the surveying equipment fell to the ground. However, in his witness statement, he said that he fell sideways and in cross-examination, he sought to clarify it by stating that "*it is natural for a human being that if you go to fall that you would brace yourself and in bracing yourself you will turn sideways*."[11] He, however, thereafter, admitted that he did in fact fall sideways.

[10] It is likely that the Defendant meant to say Ali Deonanan, the name of the Claimant company
[11] NOE 3rd November 2017, page 75 at lines 42-47

The Defendant, during cross-examination, stressed that the document shown to him by Mr. Deonanan was a fraudulent document. However, though this did not form part of his pleaded case, he continuously emphasised that the deed was forged. In my view, the intention of the Defendant was perhaps to show that the surveyor had no authority to survey the land; however, this does not form part of his case and is irrelevant.

[32] The Defendant, in his Defence, pleaded that two men were advancing towards him in a threatening manner who attempted to strike or chop him. However, in his witness statement, he said that the two men were threatening to strike and chop him and Mr. Ramnarine. In cross-examination, on the other hand, he admitted that the men made their threats before Mr. Deonanan showed him the paper (the deed). He, subsequently, admitted that the two men came towards him but they did not threaten to chop or strike him. The Defendant further admitted that he was not afraid that the men were going to strike or chop him as "*people would not chop people just so*"[12].

The Defendant maintained his pleaded case when Counsel for the Claimant put the case to him. However, his strong stance in denying the case of the Claimant does not overcome the inconsistencies raised in his evidence.

[33] In my assessment, the Defendant's evidence was not consistent throughout; the evidence of the witnesses did not support the Defendant's pleaded case. There were too many inconsistencies, contradictions and uncertainty amongst the Defendant's witnesses. I found the Defendant's witnesses to be unconvincing and incredible. My overall impression of the Defendant and his witness from their demeanour was that they were untruthful persons whose intention was to mislead the Court with regard to the way the damage of the surveying equipment occurred. It appeared to the Court that the Defendant and his witness came to tell a certain story to the Court but the inconsistencies raised in their evidence showed that their evidence was unreliable.

[12] *Ibid* page 78 at lines 35-38

The contemporaneous documents

[34] The contemporaneous documents to compare against the witnesses evidence was limited. Only the Claimant exhibited documents in support of its case; the Defendant did not. The contemporaneous documents in support of the Claimant's case consisted of: (1) the photographs taken on 26th February 2015 which were of the location, the Defendant and the damaged surveying equipment; and (2) a letter from the Trinidad and Tobago Police Service, Office of the Inspector Freeport Police Station.

[35] The photographs were exhibited to the witness statement of Mr. Mahadeo as evidence in support of the damage caused to the surveying equipment. However, there were no date and time stamps on the photographs. Nevertheless, in my view, the photographs are contemporaneous documents since one of the photographs shows the Defendant and a police officer present at the worksite which was confirmed by the Defendant in cross-examination.

The photographs corroborate the Claimant's case that the surveying equipment fell to the ground on the grassy edge of the road and that there was no concrete base near any chain link wire fence. Mr. Ramnarine's evidence in cross-examination also confirms what was shown in the photographs, that is, that the surveying equipment fell on the grassy verge on the side of the road and not upon a concrete base near a chain link wire fence.

The photographs also corroborate that the tripod of the surveying equipment was placed as follows - one foot of the tripod was on the grassy verge and the two other feet were on the asphalt paved roadway. The Defendant in his evidence also confirms what was shown in the photographs – that one foot of the tripod was on the grass and two feet were on the road.

[36] The letter from the Freeport Police Station was undated. However, in my view, I consider the letter to be a contemporaneous document since the information in the letter would have been gathered from the station diary at the Freeport Police Station. From the letter, Mr. Deonanan made a police report on the same day of the incident. It corroborated the

Claimant's case that one of its representatives made a report to officers attached to the Freeport Police Station.

[37] Therefore, based on my assessment, in my view the contemporaneous documents supported the Claimant's case.

The plausibility of the rival contentions

[38] Having examined the evidence on behalf of the parties, the Court finds that it is inherently improbable that the Claimant's representative, Mr. Deonanan, would have pushed the Defendant to cause him to fall on to the surveying equipment, thus causing damage to it. Given the inconsistencies and contradictions in the Defendant's evidence with his pleaded case and his lack of corroborating evidence, I have concluded that the Claimant's contention of the incident was more plausible when compared to the evidence of the Defendant's evidence.

[39] I am of the view that the Claimant has successfully proven on a balance of probabilities that the damage caused to the surveying equipment was at the hands of the Defendant on the day in question. The Defendant's actions amounted to a trespass to the Claimant's goods in that there was direct interference with the Claimant's goods when he made physical contact with the sledgehammer. The Defendant also possessed a blameworthy state of mind as he did not want the Claimant's representatives to carry out the survey of the parcel of land as the lands are alleged to be that of his father.

Issue 2: If the Defendant is found liable, what is the quantum of damages recoverable by the Claimant?

[40] The Claimant's claim is for damage caused to its Topcon ES-105 Total Station Serial Number GZ4077. The leading case of **The London Corporation**[13] establishes that the normal ("*prima facie*") measure of damages in the case of damage to goods is the

[13] [1935] P. 70 CA

diminution in value of the damaged chattel, ascertained by reference to the cost of repair[14]. However, as shown in **Darbishire v Warran**[15], the cost of repair is appropriate only if it is reasonable to effect the repair. When it is cheaper to buy a replacement, it may be unreasonable to effect the repair.

[41] The Court is mindful that the Claimant's claim was one that was essentially grounded in special damages for trespass. Thus, the Claimant must provide sufficient evidence of its losses as pleaded. The guiding principle is *restitution integrum*, which mandates that the sum of money to be paid as compensation should be such as would put the wronged party in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation: **Livingstone v Rawyards Coal Co.**[16].

The Claimant has claimed $73,480.00 for its loss. It is clear that to justify an award of substantial damages, the Claimant must satisfy the Court both as to the fact of the damage and to its amount. I have accepted the Claimant's version of events that the damage was in fact caused to the surveying equipment as result of the direct interference by the Defendant; thus, the Claimant has proven the first limb. The Claimant now has to prove the loss that it sustained.

[42] The Claimant pleaded that the surveying equipment was severely damaged and that it could not be repaired locally nor was it economically feasible to repair same abroad. In an attempt to minimize its loss, the Claimant replaced the Topcon ES-105 Total Station Serial No GZ4077 instead of attempting to repair same.

The witnesses who gave evidence on the damage caused and the losses sustained were Mr. Deonanan, Ms. Monique Walker and Mr. Rodney Mahabal. The Court notes that the Defendant did not cross-examine the witnesses on their evidence as it related to the

[14] McGregor on Damages, 19th Edition at para 35-003
[15] [1963] 1 W.L.R. 1067 CA
[16] (1880) 5 App Cas 25

damage caused and the losses sustained. Thus, their evidence remained unchallenged. Nevertheless, I proceeded to examine the evidence placed before me.

[43] The pleaded case is that the Claimant purchased the Topcon ES-105 Total Station Serial Number GZ4077 on 25th November 2014 from L&W Engineering and Equipment Ltd for TT$67,500.00 VAT inclusive.

Mr. Deonanan testified that the surveying equipment at the time of the incident, 26th February 2015, was practically new as it was purchased on 25th November 2014 from L&W Engineering and Equipment Ltd for TT 61,582.00. Mr. Deonanan stated that the blow which the Defendant gave to the surveying equipment was so hard that the hard protective plastic case around the telescope lens was smashed and the telescope was damaged. Mr. Deonanan took the surveying equipment to L&W Engineering and Equipment Ltd for inspection. He was advised that it was uneconomical to fix the surveying equipment since the nature of the damage was such that the telescope would have to be replaced and such repairs would have to be done in the United States of America by the manufacturer/supplier Topcon Sokkia. He stated that the estimated cost of repairs was $52,600 but Topcon Sokkia had a policy of not offering a guarantee on the repairs as the components affected may subsequently fail. He further stated that the estimated costs were minimal and were based only on an external examination of the surveying equipment. He indicated that if internal parts were damaged, it was possible that the costs would be more and could have exceeded the value of the cost price of a new machine.

Mr. Deonanan stated that an adjuster, Mr. Rodney Mahabal, of Armah Adjusting Services Ltd Loss Adjusters and Surveyors, was hired to investigate the incident and advise on whether or not it was cost effective to repair the instrument. Mr. Mahabal advised that the surveying equipment should not be repaired. The investigation and report by Armah Adjusting Services Ltd cost $5,980.00. On the advice of Mr. Mahabal and L&W Engineering Ltd, Mr. Deonanan purchased a new surveying equipment at a cost of TT$67,500.00 from L&W Engineering and Equipment Ltd.

[44] Ms. Walker was a witness on behalf of the Claimant in proving the damage caused to the surveying equipment. Ms. Walker is an employee of L&W Engineering and Equipment Ltd since 1998. She corroborated Mr. Deonanan's evidence that the telescope was extensively damaged. She indicated that given the extent of the damage, it was determined that the damage was too great to be repaired locally and that repairs of such a magnitude would have to be carried out by the manufacturer/supplier Topcon Sokkia in the United States of America.. Ms. Walker stated that the minimum estimated costs of the repairs VAT exclusive were as follows (i) Freight to and from Topcon Sokkia - $4,000.00; (ii) Cost to replace the telescope - $35,600.00; (iii) labour (15 hours minimum - $17,000.00. She added that by this estimation, it was expected that the repair could likely exceed the value of the instrument.

Ms Walker testified that she prepared a quotation for a new Topcon Total Station as the one damaged. She exhibited a copy of the quotation to her witness statement; the quotation for the new Topcon Total Station was quoted at $60,000 subjected to 15% VAT. Ms. Walker stated that the Claimant later purchased a new instrument from L&W Engineering and Equipment Ltd on 5th January 2016 at a discounted price of $65,550.00. However, this contradicts the amount stated by Mr. Deonanan, he stated that the total paid was $67,500.00. There was no invoice attached to any of their witness statements indicating the true total paid on 5th January 2016.

[45] Ms. Walker corroborated the evidence of Mr. Deonanan that the Claimant had recently purchased the Topcon ES-105 Total Station Serial No GZ4077 on 25th November 2014. However, the price given by Ms. Walker was inconsistent to that given by Mr. Deonanan. Ms. Walker stated that the surveying equipment was sold at a discounted price of TT$67,500.00 (VAT inclusive) whereas Mr. Deonanan stated the sum of $61,582.00. This figure is also inconsistent with the Claimant's pleaded case which states the amount as $67,500.00. Ms. Walker did not exhibit any invoices to her witness statement but Mr. Deonanan did.

Mr. Deonanan exhibited an invoice dated 10th October 2014 for the amount of $61,582.50. Three inconsistencies arise from this invoice as follows: (1) the date of the invoice is 10th October 2014 and the evidence is that the Topcon ES-105 Station Serial Number GZ4077 was purchased on 25th November 2014; (2) though minute, there is a difference of 50 cents in the total paid for the Topcon ES-105 Total Station Serial Number GZ4077 from the evidence of Mr. Deonanan; and (3) the description of the Total Station in the invoice is "Topcon GPT 3105W Total Station s/n 8R2161", thus showing that the invoice refers to a different Topcon Total Station and not the one that was damaged by the Defendant.

[46] Mr. Mahabal is the Chief Executive Officer of Armah Adjusting Services Ltd which is involved in the business of Insurance Loss Adjusting. He corroborated Mr. Deonanan's evidence that his company conducted an investigation into the circumstances surrounding damage to the Topcon Total Station. He confirmed Mr. Deonanan's evidence that the surveying equipment was severely damaged. Mr. Mahabal stated that based on the nature of the unit, the damage evident to same, his previous experience and the information he received from L&W Engineering and Equipment Ltd, he recommended that the surveying equipment be written off and replaced; that there would be no salvage to the surveying equipment and that same could not be repaired. Mr. Mahabal indicated that he charged $5,980.00 (VAT inclusive) for the survey and report that he conducted. He exhibited an invoice for his services which supported his evidence and that of Mr. Deonanan's.

[47] In my view, the unchallenged evidence of the witnesses was such that there was nothing to lead this Court to believe that it was not reasonable to replace the damaged Topcon Total Station. However, the evidence of the cost of replacement before the Court is inconsistent. Both Mr. Deonanan and Ms. Walker gave differing purchase prices. There was no invoice for the purchase of the Topcon Total Station on 5th January 2016 or the correct invoice for the Total Station purchased on 25th November, 2014. Nonetheless, it is accepted that the lack of bills or receipts is not necessarily conclusive against the wronged party but just a factor to be considered[17].

[17] **Uris Grant v Mootilal Moonan Ltd Civ App No 162 of 1985**

[48] Based on the evidence before this Court, I accept the cost of replacement for the Topcon Total Station as $65,550.00 VAT inclusive. This was the amount that Ms. Monique Walker, of L&W Engineering and Equipment Ltd, stated that the Claimant paid for the new instrument on 5th January 2016. I accept her evidence on this cost as she is, in my opinion, an independent witness in this matter.

[49] Mr. Deonanan and Mr. Mahabal's evidence on the cost of the adjuster's report was unchallenged and it was accepted as not contradicted. The cost of the adjuster's report was stated to be $5,980.00 which was also accepted.

[50] Accordingly, the damages awarded to the Claimant are as follows:

• Replacement of Topcon Total Station (VAT inclusive)		$65,550.00
• Cost of Adjuster's Report		$ 5,980.00
	Total	**$71,530.00**

[51] In relation to the Claimant's claim for interest, the Court holds that the Claimant has failed to comply with **Part 8.5(3)(b)(i)-(v) of the Civil Proceedings Rules 1998 ("the CPR")**. In this regard, the Court is not minded to award interest on the sum awarded to the Claimant.

IV. Disposition

[52] **Given the reasoning, analyses and findings above, the order of the Court is as follows:**

<u>ORDER</u>:

1. **Judgment be and is hereby awarded in favour of the Claimant against the Defendant on the issue of liability for trespass to personal property.**
2. **The Defendant shall pay to the Claimant damages in the sum of $71,530.00.**

3. **The Defendant shall also pay to the Claimant costs of the Claim quantified on the prescribed basis in the sum of $18,306.00.**

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Robin N. Mohammed
Judge