

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA S-732 of 1991

CV 2007-02890

Between

CATHY ADAMS

MARJORIE ANDERSON

And

**THE UNITED BROTHERHOOD OF
TIME SPIRITUAL SCHOOL LIMITED**

Claimants

And

DIANNE HARRIS

DEBIANNE ANDREWS

DIANNA FRASER

SHEBA LINDSAY

Defendants

CV 2006-03557

Between

CATHY ADAMS

MARJORIE ANDERSON

And

**THE UNITED BROTHERHOOD OF
TIME SPIRITUAL SCHOOL LIMITED**

Claimants

And

SHERRY ANN AUSTIN PHIL

INGRID REBECCA BERNARD

Defendants

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[Matters consolidated pursuant to the order of the Court made by consent on the 21st October, 2009]

Before the Honourable Madame Justice Rajnauth-Lee

Appearances:

Mr. Kemrajh Harrikissoon instructed by Ms. Hynia Harrikissoon for the Claimants.

Mr. Wilston E.J. Campbell for the First and Second Defendants in the 1991 action.

Ms. Mohanie Maharaj-Mohan for the Fourth Defendant in the 1991 action and the First Defendant in the 2006 claim.

Dated the 1st November, 2012.

REASONS

INTRODUCTION

1. This is a consolidated matter that concerns lands situate at one quarter mile mark, Berridge Trace, Harris Village, Fyzabad (“the disputed property”). The disputed property consists of approximately 16,477 square feet of land which is a portion of a two acre parcel of land described in the Schedule to Deed registered as No. 5758 of 1963 and shown in the Layout Sketch attached to the Claim Form in CV2006-03557.

The First Action - HCA S-732 of 1991/ CV 2007-02890 (“the 1991 action”)

2. The 1991 action was commenced on the 11th June, 1991 by Writ of Summons issued pursuant to the Rules of the Supreme Court, 1975, and was transferred to the Civil

Proceedings Rules 1998, as amended (“the CPR”) pursuant to Part 80.3 of the CPR by notice dated the 15th August, 2007.

3. By an Amended Statement of Claim filed on the 22nd January, 2007 the Claimants claimed *inter alia* against the Defendants:
 - i. damages including aggravated damages for trespass to goods listed in the annexures marked “A”, “B” and “C” or alternatively an order that the Defendants do deliver up to the Claimants the said goods;
 - ii. damages including aggravated damages for trespass to land;
 - iii. a declaration that the Third Claimant is entitled to possession of the disputed property;
 - iv. a declaration that the First and/or Third Claimants have an equitable interest in the disputed property and/or an irrevocable licence to occupy same.
 - v. An injunction restraining the Defendants whether by themselves or by their servants/agents from entering upon and/or remaining upon and/or interfering with the right of occupation of the Claimants of the disputed property.

4. By an Amended Defence and Counterclaim filed on the 24th April, 2007 the First and Second Defendants counterclaimed against the Claimants *inter alia* for possession of the dwelling house on the disputed property and for mesne profits at the rate of \$2,000.00 monthly from the 1st June, 1991 until possession is given up. The Third and Fourth Defendants had filed an Amended Defence and Counterclaim on the 7th June, 1999. An Amended Reply and Defence to the Counterclaim of the Third and Fourth Defendants was filed on the 15th July, 2002. In addition, an Amended Reply and Defence to the Counterclaim of the First and Second Defendants was filed on the 2nd July, 2007.

The Second Action - CV2006-03557 (“the 2006 claim”)

5. By Claim Form and Statement of Case filed on the 9th November, 2006, the Claimants claimed against the Defendants *inter alia* a declaration that the First and/or Third Claimants have an equitable interest in the disputed property and for an order for damages including aggravated damages for the continuing trespass to the disputed property.
6. On the 25th May, 2007 a Defence was filed on behalf of the First Defendant. The Second Defendant failed to enter an appearance and consequently default judgment was entered against her by order of the Court dated the 12th July, 2007. The Claimants filed a Reply on the 29th June, 2007.
7. On the 13th December, 2006 the Claimants were granted an interim injunction against the First Defendant in the 2006 claim *inter alia* compelling her, her servants and/or agents to vacate the disputed property and restraining her from interfering with the Claimants’ right to occupation of the disputed property and/or from entering or remaining upon the disputed property.
8. Having regard to all the evidence advanced on behalf of the parties and the submissions of the various parties (written and oral) the Court gave judgment for the Claimants.

Background Facts

9. The First Claimant and the Second Claimant contend that they are the Leader and Spiritual Mother respectively of the Third Claimant. The Third Claimant is a Church incorporated under the Companies Ordinance Chapter 31 No. 1 with its registered office situate at the disputed property.
10. The First and Second Defendants in the 1991 action are the daughters of one Pearlie Lindsay (“Pearlie”) but they are not the daughters of Pearlie’s husband, one Isaac Lindsay (“Isaac”) and were born before the parties married in 1972. The First and Second Defendants in the

1991 action applied for and were granted letters of administration of the estate of Pearlie.¹ The Third and Fourth Defendants in the 1991 action are the sisters of Isaac. The Third Defendant in the 1991 action died in the year 2002, but to date there has been no substitution. The Defendants in the 2006 claim are the nieces of the Fourth Defendant in the 1991 action and the children of Isaac.

11. In 1972 or thereabouts, Isaac and his wife Pearlie (both deceased) founded a church which they carried on at the disputed property. The disputed property belonged to Rosilia Peters, Isaac's mother; she died in the year 1987. As to the buildings which were constructed/renovated on the disputed property, disputes exist between the parties as to what construction/renovation was done, when the same was done, and who bore the expenses for same.
12. After Isaac died in March, 1988, the Third Defendant (now deceased) and one Valdez Peters objected to Pearlie's occupation on the disputed property. Consequently, Pearlie instituted High Court Action No. S659 of 1989 against the Third Defendant and Valdez Peters ("the 1989 action") contending *inter alia* that she and Isaac lived on the disputed property which she described as matrimonial premises. Pearlie also contended in the 1989 action that she and Isaac at their own considerable expense carried out major renovations and repair works to the matrimonial premises. The 1989 action was dismissed due to want of prosecution, Pearlie having died in the year 1989.
13. On the filing of the 1991 action, the Claimants sought an interim injunction against the Defendants restraining them from entering upon and/or interfering with the right of occupation of the Claimants in respect of the disputed property. When that application came up for hearing on the 9th October, 1991, the Defendants undertook *inter alia* not to enter or remain upon the disputed property save and except to enter the disputed property for the purpose of worshipping; such undertakings were to continue until the hearing and determination of the 1991 action or until further order.

¹ See Inventory at Agreed Document 67.

14. However, the Third Defendant breached the undertakings and contempt proceedings were brought against her by Notice of Motion dated the 26th June, 1995. On the 30th November, 1995, Bharath J. found her guilty of contempt of court by a breach of the said undertakings and ordered that she do pay a fine of \$2,000 suspended provided that there be no further breach of the said undertakings until further order.
15. In the meantime, one Clara Wells, daughter of Rosilia Peters (the legal owner of the two (2) acre parcel of land of which the disputed property forms part) obtained letters of administration of the estate of Rosilia Peters registered as No. 499 of 1994.
16. By Deed of Assent dated the 2nd January, 1995 and registered as No. 884 of 1995 and rectified by Deed dated the 1st September, 1995 and registered as No. 16302 of 1995, the said Clara Wells purported to convey in fee simple the two (2) acre parcel of land to various persons including the Third and Fourth Defendants in the 1991 action.
17. Thereafter, the fee simple owners purportedly partitioned the two acre land and several deeds of gift were executed including Deed of Gift No. DE200503235131D001 whereby part or all of the disputed property was conveyed to the Defendants in the 2006 claim. The 2006 claim was filed after an alleged trespass by the Defendants in the 2006 claim onto the disputed property.

ISSUES

18. The parties have agreed that the following issues are to be determined by the Court:
- (i) Whether the Claimants are entitled to possession of the disputed property;
 - (ii) Whether the Claimants are entitled to the reliefs claimed;
 - (iii) Whether the Claimants are the lawful owners and/or occupiers of the dwelling house standing upon the disputed property;
 - (iv) Whether the said dwelling house formed part of the matrimonial property of Isaac and Pearlie Lindsay.

Accordingly, the Court will consider the issues of proprietary estoppel and adverse possession and will also consider the issues of trespass to goods and trespass to land.

PROPRIETARY ESTOPPEL AND THE EVIDENCE

19. The Claimants have contended that they acquired certain equitable rights and/or interest in the disputed property. I will set out in full their averments at paragraphs 12-18 of the Amended Statement of Claim filed in the 1991 action on the 22nd January, 2007:

12. *At all material times it was represented to the Plaintiffs by Rosilia Peters and/or Isaac Lindsay and/or Pearlie Lindsay to the Plaintiffs and/or members of the church that the church lands and dwelling house was not the personal property of the said Rosilia Peters in her personal capacity but belonged to the Third Named Plaintiff which had been founded and continued to operate there and grow with the encouragement and/or acquiescence of the said Rosilia Peters.*
13. *At no material time or at all did Rosilia Peters, Pearlie or Isaac Lindsay spend any of their own monies on the construction works as they were not employed or in receipt of a fixed income and at all material times same was provided by the members of the Third named Plaintiff by the First and Second named Plaintiffs.*
14. *At all material times it was represented to the Plaintiffs by the said Rosilia Peters and/or by the spiritual leaders of the church Pearlie and Isaac Lindsay that the said church lands and dwelling house and other ancillary religious buildings erected on same were for the sole and exclusive benefit of the Third Named Plaintiff, its leaders and members permanently or for so long as it wished to continue to operate there. It was further represented to them that the spiritual leader of same was entitled to remain in the said dwelling house and maintain and oversee the running of the church and buildings permanently or for so long as the Third named Plaintiff continued to operate there.*

15. *Based on the assurances made by the said Rosilia Peters that the church could occupy the said lands permanently or for as long as it wished to operate there and that the spiritual leader would continue to occupy the dwelling house, and that her other children were already residing and settled on other portions of the two acre parcel of land and were adequately provided for, at no material time or at all did Rosilia Peters convey the said lands to any other party nor did she purport to execute a will bequeathing same to any other party.*
16. *Further, based on the assurances and/or representations by the said Rosilia Peters to Isaac and Pearlie Lindsay that they should incorporate the Third Named Plaintiff and that as the spiritual leaders of the church they would be entitled to remain in exclusive occupation of the dwelling house and lands for so long as they continued to lead the church they duly spent the remainder of their lives happily residing at the said dwelling house and running and administering to the daily functioning of the Third Named Plaintiff secure in the knowledge that same would continue under the control of the First Named Plaintiff as its new spiritual leader after their death.*
17. *Further, at all material times the said Pearlie and Isaac Lindsay and Rosilia Peters represented and/or encouraged the First Named Plaintiff to believe that she as the future intended successor to Isaac and Pearlie would subsequently take over the running of the Third Named Plaintiff and would similarly be able to reside in the said dwelling house and to control the operation and functioning of the Third Named Plaintiff on the said church lands.*
18. *Based on the assurances made at all material times and/or in reliance upon the repeated representations and/or acquiescence of the Lindsays as the Spiritual leaders of the church and/or by Rosilia Peters, the legal owner of the property that all monies contributed towards the construction and renovations would be for the benefit of the church that she would eventually become Spiritual Leader of*

the Church and that one of her entitlements as such would be the right by her to occupy the dwelling house, the First Named Plaintiff, Cathy Adams contributed \$25,000.00 to the said construction and renovations, as it was held out to her by the Lindsays that she would eventually become Spiritual Leader of the Church and one of her entitlements as such would be a right by her to occupy the dwelling house. Further, based upon the said assurances and/or representations and/or acquiescence of Rosilia Peters to the First Named Plaintiff she continued to remain at the said property.

20. On the other hand, the Defendants in both the 1991 action and the 2006 claim have denied the above allegations. The First and Second Defendants in the 1991 action have contended *inter alia* that the dwelling house and the church were built by Isaac and Pearlie principally out of their own monies obtained by them from monetary gifts. In addition, they alleged that the dwelling house was the exclusive property of Isaac and Pearlie and was occupied by them as their matrimonial home.² The First and Second Defendants also alleged that Isaac and Pearlie always considered the church to be their church or their private property.³ On the other hand, the Third and Fourth Defendants contended that Isaac and Pearlie were licencees on the disputed property and the disputed property was never possessed by the Third Claimant. They also alleged that Isaac and Pearlie founded the Third Claimant and considered it to be their personal church or private property.⁴ The First Defendant in the 2006 claim contended that the disputed property belonged to Rosilia Peters and John Lindsay; that at no time was the church the personal property of the Third Claimant and that it was at all material times the personal property of Rosilia Peters up until the letters of administration were done.⁵ In addition, the First Defendant

² See paragraph 8 of the Amended Defence and Counterclaim of the First and Second Defendants in the 1991 action filed on the 24th April, 2007.

³ See paragraph 12 of the Amended Defence and Counterclaim (*supra*).

⁴ See paragraphs 2 and 3 of the Amended Defence and Counterclaim of the Third and Fourth Defendants in the 1991 action filed on the 7th June, 1999.

⁵ See paragraph 11 of the Defence of the First Defendant in the 2006 claim filed on the 25th May, 2007.

alleged *inter alia* that Isaac and Pearlie constructed the subject premises using funds received from an Orisha Priest.⁶

21. I have assessed the evidence given on behalf of the parties. It is fair to say that the key facts and matters in dispute took place a very long time ago. According to the Claimants' main witness, the First Claimant, Isaac and Pearlie from in or about 1972 and onwards renovated the dwelling house, constructed a church on the disputed property and erected various buildings including a chapel, a palais, a building for ceremonies, a kitchen, sacred stools, a feast kitchen and bath, and an area for toilet and bath facilities.⁷ At paragraph 7 of her witness statement, the First Claimant said that all the said works described in paragraphs 4 – 6 of her witness statement were overseen and carried out by Isaac and Pearlie with the financial support of the members of the Third Claimant and with the encouragement and representation of Rosilia Peters that the disputed property belonged to the Third Claimant and that same could be used by the Third Claimant permanently or for as long as it wished to remain there. According to the First Claimant, the Third Claimant was incorporated on the 17th June, 1983 under the Companies Act and subsequently was continued under the 1995 Act.⁸

22. The First Claimant in her witness statement went on to say that Rosilia Peters, Isaac and Pearlie also led her to believe and represented to her that all the financial contributions towards the building works were for the benefit of the Third Claimant. They further instilled in the First Claimant that she was like family as were Pearlie's children. Further, she contended that the First and Second Defendants in the 1991 action were estranged from Pearlie and that the Third and Fourth Defendants in the 1991 action did not understand the importance and spiritual value of the work carried out by the Third Claimant. According to the First Claimant, as a result and relying upon the said representations that were made to her by Rosilia Peters, Isaac and Pearlie that the Third Claimant would continue to operate on the disputed property even after their deaths and that she would be the next spiritual leader with the responsibility of running the

⁶ See paragraph 8 of the First Defendant's Defence (*supra*).

⁷ See paragraphs 4-6 of her witness statement.

⁸ See paragraph 7 of her witness statement.

management of the Third Claimant for which she would be entitled to reside at the dwelling house, she spent over \$25,000.00 of her personal monies in the renovation of the said building works for the dwelling house.⁹

23. The First Claimant has also said that in 1981 she began to live with Isaac and Pearlie at their request. She lived in the dwelling house on the disputed property. She was a member of the Third Claimant and Pearlie treated her like their daughter. In 1984 she was initiated as a teacher and in 1985 as a teacher of the Third Claimant. She said that in 1989 upon Pearlie's death she became the spiritual head of the Third Claimant and as such has continued to occupy the dwelling house since Pearlie's death.¹⁰
24. In cross-examination, the First Claimant said that that she started in full attendance at the church in 1980 and she was about twenty (20) years old when the church was incorporated [1983]. Indeed she was one of the signatories to the Memorandum and Articles of Association. In 1980, she was working as a standing order clerk at Republic Bank Limited earning a salary of \$2,000.00. She said that she also worked for her Godmother's husband, who was a contractor at Dunlop Trinidad Limited, doing book-keeping for him and earning around \$1,000.00 - \$1,500.00 from time to time. She also said that at that time she would purchase her own food and in 1984, she bought a new car for herself. At the material time, the First Claimant was the keeper of the funds of the church.
25. According to the First Claimant in cross-examination, Isaac and Pearlie were not employed. They were supported entirely by the church. She denied that Isaac ever earned an income from selling essences, pepper sauce and other condiments. She admitted that while Isaac was a licensed money lender, he never lent any money. She also stated that Pearlie at one time attempted a business venture, having completed a beauty course with Sacha Cosmetics, but the venture failed within a short time. According to her, the church gave Isaac and Pearlie monthly sums in the range of \$3,000.00 to \$5,000.00 and would also give them money whenever the need

⁹ See paragraph 10 of the First Claimant's witness statement.

¹⁰ See paragraph 12 of the First Claimant's witness statement.

arose such as in 1982 when the church paid Pearlie's medical bills in the sum of \$14,000.00. According to the First Claimant, the church obtained this money through donations from members [the membership being approximately 50-60 persons], contributions in church and fees for thanksgiving and other occasions. She testified in cross-examination that certain church members and visitors to the church [some of whom were key members of the public] would undertake to make significant contributions to the church. According to the First Claimant's evidence, depending on the persons for whom they were doing services, the church would receive sums up to \$10,000.00. In cross-examination, the First Claimant also conceded that she was aware that Pearlie had a bank account and that Pearlie would deposit money therein in the sums of about \$2,000.00 - \$3,000.00 with the largest deposit being \$10,000.00. She maintained that those monies were given to Pearlie by the church and by the First Claimant. She also said in cross-examination that the fixed deposit account in Pearlie's name in the approximate sum of \$77,000.00 originated from a loan taken from Republic Bank which loan was paid back by the First Claimant and which loan proceeds were deposited into a chequing account in Pearlie's name. According to her, when the monies in the account accumulated, the monies were placed in a fixed deposit. As to Isaac, she conceded that while he received gifts of money and other items from persons for whom he did spiritual work, he received same on behalf of the church. She further stated that Pearlie travelled extensively on behalf of the church during her marriage and that the church bore all those expenses.

26. I have considered the cross-examination as to the lack of documentary evidence produced by the Claimants and I accept the First Claimant's explanation that the relevant documents were removed by the First Defendant in the 2006 claim when the First Defendant, her servants and/or agents, went onto the disputed property in the year 2006. In addition, I have considered the First Claimant's evidence when she was cross-examined on Pearlie's affidavit filed in the 1989 action. According to her, the reference by Pearlie at paragraph 8 of her affidavit to the term "**rules of our faith required**" demonstrated that the leaders would speak in their own person, for the church comprised Isaac and Pearlie as the leaders and the people as members of the church. In my view, the contents of Pearlie's affidavit should be considered and weighed in the light of the circumstances which led to Pearlie's commencing the 1989 action and I have done so. In addition, as ownership of two (2) motor vehicles and jewellery by Pearlie, the First Claimant was

adamant that those were all obtained either by contributions of visitors to the church and/or members of the church, or from the monthly sums given to Isaac and Pearlie as support by the church. This explanation I accept on a balance of probabilities.

27. I have also considered the evidence of the other witnesses on behalf of the Claimants. The Claimants' case was supported by the evidence of the First and Second Claimants and by the witnesses, Jennifer Reynolds [who was born at Berridge Trace about one-quarter mile away from the disputed property] and Enid Arrendell [an elder of the Third Claimant who knew Isaac prior to 1972].
28. I have also considered the evidence advanced on behalf of the Defendants in the 1991 action and the main witness, the Second Defendant, Debianna Andrews. The Court observed this witness' demeanour. At paragraph 5 of her witness statement, the Second Defendant said that from 1974 through 1980 she lived with Pearlie and Isaac permanently. When she had her first child [from her oral evidence in 1980] she left the home of Isaac and Pearlie but remained in close touch with Pearlie who visited her regularly to see her grandson. According to the witness statement, following the death of Isaac, she returned to live with Pearlie "***and the Plaintiffs***". She said that the First Claimant started living permanently with Isaac and Pearlie from 1981 and when she [the Second Defendant] got married in 1982, the First Claimant was one of her bridesmaids. For reasons that the Court could not understand, this witness denied the truth of the statement that she had not lived with Pearlie from 1980 until 1988 when Isaac died. She insisted that the statement in paragraph 5 of her witness statement was not correct and that she left to have her baby in 1980 and returned in 1981. According to her, "*I always maintained living there as I never, never, never see myself neglecting that home, at no time*". In addition, when asked again to explain what she meant by paragraph 5 of her witness statement, she said:

"Let me explain. My grandmom grew me up and I would be back and forth and I called both home – by Pearlie and by Rosanna Butler. So when I said I left in 1980, it was to go to my grandmother's home – Rosanna Butler. So home in Berridge Trace was also home. So I had 2 homes. That is what I meant by that."

The Court is of the view that this witness was given to exaggeration and was not a credible witness. I have formed the impression that she appreciated the importance to her case of her residing on the disputed property during the period 1980-1988 and was determined to place herself on the disputed property. In addition, the Court noted that although the Second Defendant acknowledged that the Inventory did not include any personal items as belonging to Pearlie¹¹ she was adamant that the letters of administration authorized her to enter upon the disputed property and remove personal items which she alleged belonged to Pearlie. In addition, this witness agreed that the distance from the dwelling house to the church (building) both situate on the disputed property was three (3) feet.

29. In addition, I have looked at the evidence of the witness, Eva Wells. She is Isaac's sister and the same person named Clara Wells who applied for letters of administration of Rosilia Peters, her mother. According to her evidence in cross-examination, the disputed property was at the time of her evidence an internationally recognized, fairly large complex where persons of repute have visited. Further, according to her evidence in cross-examination, Isaac as the spiritual leader of the church lived for the church; everything he did, he did for the church, and his dream was for the church to blossom into a very big church in Trinidad. This witness agreed that monies given to Isaac for his spiritual services were given in cash and used to expand the church. Further, according to her evidence in cross-examination, Isaac wanted African, Indian and Chinese people to be united and so he incorporated the church to accomplish that unity; his desire was that the church would have *everlasting life*. She further agreed that visitors who came to attend the feasts stayed in the dwelling-house.

30. I have also considered the evidence of the witness, Mary Gonzales. According to her evidence in cross-examination, the church was founded by Isaac and built by the members. They gave time, labour, galvanize, cement. Isaac's only work was that of a spiritual person. She further agreed in cross-examination that when persons came for Orisha Festivals they would stay in the dwelling-house instead of "*coming and going*". Further, persons who came for spiritual help also stayed in the dwelling-house. In addition, her evidence was that persons gave materials and

¹¹ Agreed Document 67

loads of gravel for the building of the dwelling-house. In further cross-examination, this witness said that the church and the dwelling-house were “*in one*”. She also agreed that foreigners came to the church and gave contributions to the church.

31. I have also considered the evidence of the other witnesses, and the witnesses in the 2006 claim. The First Defendant in the 1991 action, Dianne Harris, appeared to the Court not to know much about the disputed property or the church. According to her evidence in cross-examination, Eva Andrews was Isaac’s mother in law and she was one of the founders of the church. I believe her evidence can best be summed up in her reply to one of the questions in cross-examination, when it was suggested to her that she did not know how Isaac began to occupy the disputed property. Her answer was that she had “*an idea*”, and that idea came from what she was told by Isaac and Pearlle. That was the impression she gave to the Court, that her evidence was not based on any personal knowledge that she had. As to the witnesses in the 2006 claim, they had little personal knowledge of the facts and matters in dispute and were generally not credible witnesses.

32. Having considered all the evidence of the parties, the Court prefers the evidence advanced on behalf of the Claimants. In particular, I accept the First Claimant as a witness of truth. I found her at all times to be a forthright and credible witness. On a balance of probabilities, I find that it was the intention of Rosilia Peters, Isaac and Pearlle that the church should live on after the death of its founders and that is supported by the incorporation of the Third Claimant in the year 1983 before the major construction/renovations started. I also find on a balance of probabilities that the construction/renovations of the buildings on the disputed property were carried out with the gifts and contributions of the members of the Third Claimant and of other persons (visitors and the like who came to the church for spiritual help). I also find that these gifts and contributions were made as a result of the representations of Rosilia Peters, Isaac and Pearlle that the disputed property would belong to the Third Claimant. In my view, the Claimants have correctly argued that the monies given to Isaac [clearly a very gifted spiritual man who was much sought after] when he gave spiritual help to persons were given to him on behalf of the church or in his capacity as spiritual leader of the church. Indeed, I agree that the spiritual help which he provided was done on behalf of the church. I also accept that the First Claimant contributed \$25,000.00 towards the construction/renovations to the buildings on the disputed

property and that that contribution was made as a result of the assurances and representations made by Rosilia Peters, Isaac and Pearlie. I also find that the church building and the dwelling house (and the other spiritual buildings/construction on the disputed property) comprised one property with each being an integral part of the operations of the church.

33. It is the view of the Court that this is an opportunity for a court in Trinidad and Tobago to protect the rights and interests of church members who contribute generously and substantially to the building and/or renovations of a church on the representation that the property would belong to the church. It cannot be right in these circumstances that the property should be considered the personal property of the leaders.
34. It has been argued by Mr. Campbell, Attorney for the First and Second Defendants in the 1991 action, that the Third Claimant had no locus to commence these proceedings. Mr. Campbell contended that in the absence of evidence that the Third Claimant was continued under the **Companies Act** Chap. 81:01, the Third Claimant's claim should fail. Mr. Campbell also argued that the Third Claimant ought to have been incorporated by Act of Parliament and without such incorporation the Third Claimant's claim should be dismissed.
35. In order to preserve continuity, former-Act companies such as the Third Claimant were required by section 340(1) of the **Companies Act** to apply to the Registrar of Companies within two years after the commencement date (15th April, 1997) for a certificate of continuance.¹² Section 346(1)(a) of the **Companies Act** provides that one of the consequences for failure to apply for a certificate of continuance within the stipulated time is that the former-Act company may not, without leave, sue or counterclaim in any court. Accordingly, Mr. Campbell contended that in the absence of a certificate of continuance, the Third Claimant could only commence these proceedings with the leave of the Court, which leave was neither sought nor granted.
36. I have considered firstly the pleadings in both the 1991 and the 2006 claim. I have also looked at the Statement of Agreed Issues filed on the 25th January, 2011 upon which the Attorneys relied

¹² The deadline date was extended, but such extension is not relevant for the purpose of this judgment.

in opening addresses as being the agreed issues¹³ and I have observed that the Statement of Agreed Issues contained no issue as to the continuance of the Third Claimant. The Court notes further that there was no issue taken either in opening or in cross-examination that the Third Claimant had not been continued under the **Companies Act**.

37. I have also considered that in the 2006 claim, the First Defendant in responding to paragraph 15 of the Claimants' Statement of Case averred at paragraph 16 of the First Defendant's Defence that she relied on an undated letter (stamped by the Registrar General's Office, Companies Registry on the 29th August 2000) written by one Etherbert Wilson, Director of the Third Claimant, addressed to the Registrar General, Companies Section. In the said letter, Mr. Wilson was seeking to respond to a query of the Registrar General as to why there were no returns for the years 1984 and 1986-1997. According to Mr. Wilson, the organization suffered the loss of both their founders and spiritual parents in 1988 and 1989 and there was a loss of spiritual leadership. The Court notes that by paragraph 16 of her Defence, the First Defendant sought to dispute that the First Claimant was the intended successor of the Third Claimant. The First Defendant never used the letter to contend that the Third Claimant was not continued pursuant to the **Companies Act**.

38. The Court notes that this issue was raised for the first time by Mr. Campbell in his written submissions filed on the 4th May, 2011 after all the evidence was closed. Mr. Harrikissoon responded in his Reply Submissions filed on the 30th June, 2011 stating that a certificate of continuance dated the 13th July, 2000 was obtained.

39. In my judgment, it would be unjust and oppressive to allow such an important issue to be raised for the first time in closing submissions. That would amount to trial by ambush and since the coming into force of the C.P.R. the courts have moved away from conducting litigation in that manner. Accordingly, in my view, the Third Defendant can maintain these proceedings.

¹³ See paragraph 18 of this judgment.

40. In the circumstances of this case, and having regard to my earlier findings, in my judgment, the First and Third Claimants have a proprietary/equitable interest in the disputed property. In the circumstances, I do not find it necessary to determine the issue of adverse possession raised by the Claimants in the 2006 claim. Accordingly, the counterclaims of the First and Second Defendants and of the Fourth Defendant in the 1991 action will be dismissed. As to the Claimants' claims for trespass to land both in the 1991 action and in the 2006 claim, there is no evidence of any specific loss as a result of the trespass and I do not propose to make any award therefor although I do accept that the alleged trespass to land took place.
41. As to the Claimants' claims for damages for trespass to goods, I accept the evidence of trespass advanced on behalf of the Claimants. In addition, having regard to the Inventory placed before the Court¹⁴ I find that the Defendants in the 1991 action had no authority to remove from the disputed property items allegedly belonging to Pearlie. As to damages for trespass to goods, I adopt the principles set out by the Court of Appeal in the case of **Grant v Motilal Moonan Ltd and Another** (1988) 43 WIR 372. In my judgment, although special damage must be pleaded, particularized and proved strictly, the Claimants had *prima facie* established the cost of the items and the Defendants in the 1991 action did not attempt to challenge the values placed on them. Accordingly, I accept the values placed by the Claimants in their Amended Writ of Summons.

ORDER

- 1) **THE COURT HEREBY DECLARES** that the First Claimant and the Third Claimant have an equitable interest in the lands comprising 16,477 square feet more or less situate at ¼ mile mark, Berridge Trace, Harris Village, Fyzabad being a portion of the lands described in the Schedule to Deed registered as DE 200503235131D001 and shown in the Layout Sketch attached to the Claim Form in CV2006-03557 [“the 2006 claim”] and marked “A” [“the said lands”] coupled with an irrevocable licence to occupy the said lands.

¹⁴ See paragraph 28 of this judgment and the Inventory at Agreed Document 67.

2) **THE COURT HEREBY DECLARES** that the First Claimant and the Third Claimant are entitled to possession of the said lands coupled with an irrevocable licence to occupy the said lands.

3) **THE COURT HEREBY ORDERS** that

(a) The First, Second and Fourth Defendants in the matter HCA No. S-732 of 1991/ CV 2007-02890 [“the 1991 action”] do pay to the First Claimant damages for trespass to goods in the sum of \$99,064.00 being the value of the items in Part 1 and 2 of annexure “A” to the Writ of Summons filed in the 1991 action on the 11th June, 1991 [“the said Writ”] together with interest thereon at a rate of 4% per annum from the 11th June, 1991 to the date of judgment.

(b) The First, Second and Fourth Defendants in the 1991 action do pay to the Second Claimant damages for trespass to goods in the sum of \$8,500.00 being the value of the items in annexure “B” to the said Writ together with interest thereon at a rate of 4% per annum from the 11th June, 1991 to the date of judgment.

(c) The First, Second and Fourth Defendants in the 1991 matter do pay to the Third Claimant damages for trespass to goods in the sum of \$13,200.00 being the value of the items in annexure “C” to the said Writ with interest thereon at a rate of 4% per annum from the 11th June, 1991 to the date of judgment.

(d) The Counterclaims of the First and Second Defendants and of the Fourth Defendant in the 1991 action are hereby dismissed.

(e) A perpetual injunction is hereby granted against the First, Second and Fourth Defendants in the 1991 action and the First Defendant in the 2006 claim whether by themselves or by their servants and/or agents or howsoever otherwise from entering upon and/or remaining upon the said lands.

(f) The First, Second and Fourth Defendants in the 1991 action and the First Defendant in the 2006 claim shall pay to the Claimants the costs of the 1991 action and of the 2006 claim respectively to be assessed by a Registrar.

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MAUREEN RAJNAUTH-LEE
JUDGE