

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2016-00810

BETWEEN

UNANAN PERSAD

Claimant

AND

SONNILAL DEBEDIAL

SAMDAYE DEBEDIAL

RAMKARRAN RAMPARAS

THE COMMISSIONER OF STATE LANDS

Defendants

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: March 13, 2019.

Appearances:

1. Ernest Koylass SC. and Debbie Roopchand instructed by Renisa Ramlogan for the Claimant.
2. Ramesh Lawrence Maharaj SC. and Vijaya Maharaj instructed by Nyala Badel for the Defendant.

DECISION

1. Before the Court for its determination is the claim and counterclaim for relief in respect of the tort of trespass over a portion of land (referred to as Lot 1A) located along Rivulet Road, Caroni which is opposite to the Bougainvillea Restaurant and Bar.

The Claimant's case

2. The Claimant's case outlined inter alia that:
 - i. In/or about 1984 the Claimant began residing at Lot No. 83 - the Claimant's lands which was opposite to plot 1A - the subject land.
 - ii. The Claimant was a tenant of the land which he eventually purchased.
 - iii. At that time in 1984 the subject land was partly concrete and partly cultivated in sugarcane – the concrete portion measured about 150 feet in frontage and 100 feet in depth. The remainder of the subject land was cleared and occupied by the Claimant and it was being cultivated with short term crops.
 - iv. In 1984 the Claimant commenced a business on his land – Coastal Engineering Limited and he used the concrete portion of the subject land as a car park and equipment storage for his business. In 1990 that business was moved to Freeport and he opened a restaurant and bar business on the Claimant's lands and used the subject land as car park to service the business.
 - v. In 2003 he extended his car park to the remainder of the subject lands.

3. In the early morning of March 14, 2016 at approximately 2:00 a.m., the Claimant alleged that he was awakened by a loud noise coming from the Rivulet Road which he at first ignored, but at about 3:00 a.m. with the noise becoming progressively louder, he ventured outside of his home where he observed that the 1A parcel which he occupied and at the time used mainly as a car park for his home and business, was overrun with persons (over 20) including armed police officers (3) in uniform and that the civilians under the protection of the armed police officers were using a backhoe to clear the 1A parcel of its fencing and vegetation.
4. Ramkarran Ramparas ("the Third Defendant") who the Claimant knew to be a licensed bailiff, was one of the persons standing on the 1A parcel. The Claimant questioned him as to his involvement in what was unfolding and his response was that he was acting on behalf of Sonnilal Debedial and Samdaye Debedial (the First and Second Defendants) and that as a bailiff he had authority to engage upon the destructive acts that were then being performed on their behalves on the 1A parcel.
5. The Police present at the scene were dismissive of the Claimant's enquiries of them.
6. The police officers then took the Claimant into custody for a long outstanding warrant (17 years) for a traffic offence. He was taken to the Couva Police Station and after his release, he returned to his home later that morning where he observed that the 1A parcel including lands to the east and west of it were enclosed with a wire fence on iron posts and that his fence with wire and iron posts which enclosed the 1A parcel was no more.
7. Arising out of the early morning invasion and destruction on the 1A parcel of which the Claimant claimed to have been in occupation and possession from

about the year 1984, the Claimant issued a Claim Form and Statement of Case on March 18, 2016 seeking injunctive reliefs and substantive relief as follows:

- (i) A Declaration that by virtue of his exclusive and undisturbed possession and/or occupation from the year 1984 to present he is the owner and/or has an equitable interest in the one acre parcel.
- (ii) Damages for Trespass.

8. The Claimant's claim against the third Defendant sought the following reliefs:
- i. An injunction that they remove and break down any barrier and/or obstruction and/or fence enclosing the subject lands
 - ii. An order restraining him from entering the subject lands.
 - iii. An order restraining him from molesting and/or threatening the Claimant.
 - iv. Damages for trespass.

The Defendant's case

9. The substance of the First Defendant's defence was that he and his predecessors were, from 1967, in exclusive occupation and possession of the 1A parcel which formed part of a larger 4 acre parcel. This Defendant asserted as follows:

- (i) From 1967 to 1980 he, his mother and siblings cultivated the 4 acre parcel and planted it with short-term crops.
- (ii) From 1980 he and his mother continued the cultivation of the short-term crops on the 4 acre parcel.

- (iii) In 1980, he erected an animal pen 30 feet by 30 feet on the southern side of the 4 acre parcel in which he reared cows and goats for sale.
- (iv) In 1990, he converted barracks on the 4 acre parcel into a one room galvanize and wooden dwelling house which he used to store garden tools and crops before taking the crops to market.
- (v) In 1997, he informed Caroni (1975) Limited (“Caroni”) the paper titleholder of the 4 acre parcel, of his and his mother’s intention to construct a warehouse and office on the 4 acre parcel and sought a letter from Caroni confirming their long being and in possession of the 4 acre parcel for over 30 years continuously.
- (vi) That following a site visit by Caroni’s Corporate Secretary Ms. Sandra Pujadas he received a letter signed by her dated July 27, 1997 (“the Pujadas letter”) confirming that Caroni’s records supported his claim to having been in continuous occupation of the 4 acres for over 30 years.
- (vii) That he and his mother did not pursue the construction of the warehouse and office but continued to plant crops and rear animals on the 4 acre parcel.
- (viii) That from 1999 his mother stopped cultivating the 4 acres and gave him full control and possession of the same and he continued to make use of the lands for agricultural and animal rearing purposes.

- (ix) The Defendants entered into an agreement to sell the 4 acre parcel to Aronco Services Limited for \$6 million and received a deposit of 2.6 million and Aronco took possession of same.

10. Further, the First Defendant by the Defendants' joint defence admitted that the Third Defendant's entry unto the 1A parcel and commission of the acts upon same, including the enclosing of the 1A parcel together with adjoining lands to its eastern and western boundaries was done by the Third Defendant.

11. The First Defendant consequently counterclaimed inter alia for a Declaration that he is the owner of and entitled to possession of the 4 acre parcel inclusive of 1A.

The Issues

12. The primary issue to be resolved in this matter is whether the Claimant or the First Defendant was in actual occupation and possession of the parcel of land known as 1A and if so, for how long and what were the antecedent circumstances attendant to such occupation and/or possession.

The Evidence

13. The Claimant testified and called four witnesses:

- (i) Russel Boland
- (ii) Roland Ghouralal
- (iii) Lloyd Walters
- (iv) Teeluck Sookhan

All of the witnesses were cross-examined on their respective Witness Statements.

14. The Defendants relied on the evidence of the following witnesses:

- (i) Sonnilal Debedial
- (ii) Ramkarran Ramparas

- (iii) Prakash Ramsaroop
- (iv) Vishnu Lucky
- (v) Azard Hosein

15. Pursuant to an order of the Court, Dr. Dexter Davis was commissioned as a joint expert to investigate and provide a Photogrammetric Survey Report and to address specific issues relating to the nature and character of the 4 acre parcel of land (inclusive of the 1A parcel) as identified in the parties' joint letter of instructions. The expert provided his Report on August 20, 2018 and revised same by a report dated July 10, 2018.
16. The Expert Report provided no evidence in support of either of the parties' claimed acts of factual possession over the time frame alleged in their respective pleadings.
17. The aerial photography of the 4 acre parcel obtained from the Land and Surveys Division over the period 1967 to 2016 did not support the First Defendant's claim as to his and his predecessors alleged cultivation of the 4 acre parcel nor did it provide any evidence of animal rearing for the period 1980 to 2003.
18. The aerial photographs also provided no evidence in support of the Claimant's assertion that upon the land there was evidence of a cleared area or of concrete structures contrary to the assertion that portions of 1A were used as a car park since 1984 or 1990. The report also stated that the photographs did not distinctly show any deposition of aggregate, but the 2014 imagery showed that it was possible that some deposits may have been made to the north-east of the site.

19. Based on the objective documentary evidence presented in the Expert's Report, the parties' respective claims of being in adverse possession of the Caroni lands along the Rivulet Road for the periods which they stated cannot be pursued and each case on this issue is devoid of merit. Accordingly, the Claimant's claim against the First Defendant in trespass and the First Defendants' counterclaim against the Claimant in trespass had to be considered on the basis of their competing claims that they were in actual occupation of 1A at the material time.
20. Essentially, the Court had to determine on a balance of probabilities, the factual issue as to who first entered into occupation of Lot 1A and who was in possession of same when the acts complained of were effected.
21. Where a Court has to determine disputed factual issues between parties, the Court ought to follow the guidance given by Lord Ackner in **Reid v Charles & Bain Privy Council Appeal No. 36 of 1987** at page 6 where his Lordship stated that the Court must check its impression of the evidence which the witness makes upon the Court against (i) the contemporaneous documentary evidence, where they exist, (ii) the pleaded case and (iii) the inherent probability or improbability of the rival contentions.
22. In the case of **Attorney General and Another v Kalicklal Bhooplal Samlal (1987) 36 WIR 382**, Lord Ackner at page 387 stated:

"It is essential when weighing the credibility of a witness to put correctly into the scales the important contemporaneous documents.....and the inherent improbability as the Court of Appeal persistently pointed out..... Thus the balancing operation, which is of the very essence of the judicial function was not properly carried out."

23. In **Mohammed v Bacchus Civil Appeal No. 106 of 2001**, Sharma JA at page 4 stated:

“The fact finding exercise is generally approached by the Judge, by looking at the inherent probabilities of the various versions in order to assist him, together with all the viva voce evidence, in the case. But there is one compelling factor which is of tremendous help in the fact-finding exercise... that is, facts pleaded are quite different from the evidence adduced.”

24. The Claimant’s case stated that from 1984, he conducted a business opposite the subject land and used it as a car park for the customers who patronised his business. By letter of March 4, 2016, he stated that the subject land in 1984 was first used for gardening purposes and from 1990 he began to use it for parking purposes for his business. The position outlined in the letter of March 4, 2016 was inconsistent with the pleaded case given that the foundation of the Claimant’s case in his Statement of Case was that the subject land was used by him as a car park since 1984 and not 1990.

25. The Claimant’s evidence sought to establish that he exercised exclusive physical control and was in exclusive possession of the subject land by having customers’ vehicles parked on the subject land from either 1984 or 1990.

26. The Claimant testified that he operated his business opposite the subject land and his customers used the subject land to park their vehicles. He said that he placed bins on the subject land and an attendant directed customer as to where they should park on the subject land.

27. Based on the information revealed in the expert report, the area was an open space, not fenced and not regulated so as to prevent or restrict anyone from parking his or her vehicle.
28. Given the position outlined in Dr. Davis' report, the Court was constrained to disregard the Claimant's and First Defendant's evidence as to their respective early entry and their evidence in support of their outlined cases in relation to adverse possession.
29. The Claimant's pleading and evidence as it relates to his contention that he was in occupation of Lot 1A outlined suggested, inter alia, that: -
- i. In March 2015 an agent of Aronco Services Limited ("Aronco") spoke to him about vacant lands at the West of the 1A parcel which he identified as being occupied by him. Thereafter, Aronco entered the vacant parcel, graded it and began using it as a car park and storage area for heavy equipment.
 - ii. In January 2016 Aronco encroached onto the Western boundary of the 1A parcel and began grading the land. When the Claimant objected, Aronco desisted.
 - iii. To avoid any future encroachment upon the 1A parcel, the Claimant said that he instructed Teluck Sookhan to fence the 1A parcel at a cost of \$30,800.00 and the fencing was completed on February 25, 2016.
30. It is the erection of this fence which the First Defendant claimed was the Claimant's first entry unto the 1A parcel. It was not disputed that the Claimant lived opposite the 1A parcel and carried on a restaurant and bar at the downstairs of his premises where there is limited garage space. Given the

Claimant's parking constraints, it appeared to the Court to be credible and more probable that the Claimant sought to make use of 1A for parking.

31. The Claimant's witness Lloyd Walters, a retired Caroni Factory Manager, gave evidence that he was a regular customer at the Claimant's restaurant and bar from its opening in 1990 and that he and other customers of the business used the 1A parcel of the unused Caroni lands just over the road from the Claimant's premises as a car park of the business.

32. The witness further gave evidence of having observed fence posts planted along the boundaries of the 1A parcel in February 2016 and that in March 2016 the 1A parcel was fenced off within a wider area. The Court formed the view that this evidence corroborated the Claimant's claim of having used the 1A parcel of land as a car park. Cognizant of the findings in Dr Davis's report, the Court felt that the Claimant exaggerated his use and the extent of the alleged works effected upon same.

33. While there was no cleared concrete area upon which cars parked, the land was vacant, and nothing prevented vehicles from parking. The Court therefore rejected the First Defendant's claim that the Claimant's entry first took place in February 2016 when the Claimant fenced the 1A parcel.

34. The First Defendant outlined that Aronco's first entry was in 2015. It was not disputed that the Claimant installed a fence enclosing the 1A parcel and the Court felt that this action by the Claimant was supportive of his assertion that the land was used as a car park. The Court felt that it was more reasonable to hold that the Claimant's action was executed so as to protect his use of the 1A parcel and to ward off and/or discourage any future attempt at encroachment and capture of the 1A parcel.

35. The First Defendant pleaded and gave evidence that on November 24, 2014 he had entered into a written agreement for sale to sell the 4 acre parcel to Aronco. To date the agreement remains incomplete.
36. By the terms of the agreement, Aronco agreed to “accept such title as the vendor has to the property and shall raise no objection or requisition in relation thereto” (Clause 2). It paid a deposit of \$2.6 million to and completion was set for December 22, 2014.
37. The Court felt that it was plausible and probable to conclude that this agreement provided the impetus for Aronco to seek to test the true value of its purchase by taking active steps to challenge the Claimant’s possession of the 1A parcel and to take such steps so as to secure possession of the entire 4 acres before paying the balance of the purchase price.
38. In that regard, the First Defendant further pleaded and gave evidence that in January 2016 he gave permission to Aronco to fence the 4 acre parcel “pending the completion of the said agreement for sale” and Aronco began to grade along the Eastern boundary of the land.
39. Under cross-examination, no credible explanation was forthcoming from Aronco’s Managing Director, Azard Hosein, as to why Aronco had not completed the agreement. It appeared to the Court to be highly probable that the true explanation was that Aronco sought to ensure that its purchase of the 4 acre parcel, without proper title, was not vulnerable to a claim by a Third Party and in particular, that the Claimant could assert no claim to the 1A parcel. That possibility led it to attempt to encroach upon the 1A parcel and the said encroachment precipitated the Claimant’s fencing of the parcel.

40. It was evident that Azard Hosein had a primary interest to serve and so it was essential that he supported the First Defendant's baseless claim of having been, from 1967, in occupation and possession of the 4 acre parcel. Given the opinion in Dr Davis's report, the Court felt with a degree of certainty that, Hosein's evidence and the First Defendant's evidence was fabricated with the ultimate intent of deceiving the Court. There was no evidence based on the imagery to suggest that any activities connected to cultivation or animal rearing took place between 1980 and 2003. The dishonest position adopted by these witnesses negatively impacted upon their credibility and the Court formed the unshakable view that they were not witnesses of truth.
41. The non-completion of the sale agreement in itself was viewed as cogent evidence that the First Defendant was not in occupation and possession of the 1A parcel and as stated above, the evidence of the Claimant and his witnesses that the Claimant used and exercised a degree of control over the 1A parcel was more probable than the claim as advanced by the First Defendant.
42. The evidence of Prakash Ramsaroop and Vishnu Lucky was adduced in support of the First Defendant's claim to adverse possession of the 4 acre parcel but same was also viewed by the Court as unreliable and valueless given the findings of the expert. Given the lengths at which the First Defendant went to establish a baseless claim of adverse possession, the Court's unease with the First Defendant's evidence was intensified.
43. In arriving at the position that the First Defendant's evidence lacked credibility, the Court also considered the fact that the First Defendant sought to support his claim of occupation and possession of the 4 acre parcel by producing and relying upon the 'Pujadas' letter from Caroni. The Claimant questioned the

validity of said letter in his pleadings. The Pujadas letter was dated July 27, 1997 which was a Sunday and it was purportedly signed by the Company Secretary and not by any officer of the Caroni's Land Department.

44. The letter outlined a private agreement between Caroni and the First Defendant as to the Defendant's payment of Land Tax at the Revenue office at an agreed rate of \$5.00 per acre. Together with the letter, the First Defendant also produced a highly suspicious Certificate of Assessment said to be extracted from the Records of the Revenue Office, Couva dated the said July 27, 1997 (being a Sunday) with respect to the payment of tax for a 4 acre parcel along the Rivulet Road. The said document was headed "tenant", but the Court noted that the First Defendant's case did not outline that he was a tenant of the land.

45. Despite being required to prove the authenticity of the questioned Pujadas letter as well as the other letters which were used as evidence of Caroni's recognition of his long occupation and possession of the 4 acre parcel (these letters are collectively referred to as the challenged letters), the First Defendant did not call their respective authors to give evidence as to their knowledge of and their signing of the challenged letters.

46. The evidence of Russell Boland who held the position of Team Leader Lands at Caroni and who had access to the documents and records of the Company, outlined that the challenged letters formed no part of Caroni's records and were by their terms irregular and inconsistent with the Company's correspondence of that nature. In relation to a letter purportedly signed by him, he positively stated that same was fraudulent. The Court formed the view that he was an honest, forthright witness and accepted the entirety of his evidence on a balance of probabilities. Mr. Boland's evidence severely

impacted the First Defendant's bona fides and provided a clear insight as to the extent to which the First Defendant was prepared to go to falsely establish a claim to the 4 acre parcel of land.

47. In the round, having considered the First Defendant's use of the Pujadas letter, his reliance on the unreliable testimony of Hosein, Ramsaroop and Lucky and given his own tenuous testimony, the Court felt an overwhelming degree of discomfort and alarm and simply did not view the First Defendant as a witness of truth. Accordingly, the Court rejected his claims in relation to the 4 acre parcel of which 1A forms part. While witnesses can make mistakes in relation to parts of evidence, the Court felt that the misrepresentations by the First Defendant were so fundamental and extensive that his entire testimony was discredited.

48. The Court noted with further unease the manner in which the First Defendant used the Pujadas letter and other questionable documentation to secure an agreement for the sale of land over which he had no entitlement at a purchase price of \$6,000,000.00. The Court was also shocked by the recklessness of Mr. Azard Hosein who seemingly accepted the representations as to possessory title and agreed to the said purchase. The factual matrix in this case has exposed possible fraudulent conduct and this Court is of the view that these issues should be directed to the attention of the Commissioner of Police and the Director of Public Prosecutions for immediate attention.

49. In addition, Aronco's current possession of a portion of the 4 acre land for inter alia warehouse purposes, appears to be devoid of regularity. This land is on the perimeter of the Point Lisas estate and must be valuable. If the ownership of same now vests in the State, the Commissioner of State Lands

would be well advised to assert and protect the State's interest against baseless claims of entitlement by unscrupulous business interests. In this regard, this judgment shall be forwarded to the Commissioner of State Lands for immediate attention.

50. In contrast to the First Defendant, the Claimant instilled in the Court the unshakeable view that he was generally a witness of candour. Although he was not consistent in relation to his representations as to the extent of his use of and the works effected upon 1A to enable same to be used as a car park, the Court found as a fact that he did use same as a car park for his business.

51. It was evident that the Claimant sought to embellish his evidence in relation to what existed on the ground to enable same to be used as a car park. Notwithstanding his dishonesty on this issue, the Court as the tribunal of fact and having considered the entirety of his evidence, did not form the view all of his evidence was discredited.

The Law as to De facto possession and possession for the purpose of establishing a claim of trespass to land.

52. In **Halsbury's Laws of England Volume 97 (2015) at paragraph 575**, actual possession of land for the purposes of trespass is defined as follows:

“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. The extent of the control which should be exercised in order to constitute possession varies with the nature of the land; and possession means possession of that character of which the land is capable....”

53. According to Clerk & Lindsell on Tort (supra) at paragraph 19-13 to establish trespass:

“Possession means generally the occupation or physical control of land”

The learned authors in Clerk & Lindsell on Tort (supra) at pages 1337-1338 went on to state that:

“Moreover, to found a claim in trespass, possession must be exclusive..... In terms of understanding what is required by way of the trespasser’s intention, the law has been clarified by the decision of the House of Lords in JA Pye (Oxford) Ltd v Graham. In that case, Lord Browne-Wilkinson indicated that possession requires two elements: factual possession and the intention to possess. In relation to the former he was clear that “an appropriate degree of physical control” suffices while with respect to the intention to possess he expressly approved the dictum of Slade J in Powell v Mc Farlane that there must be “intention, in one’s own name and on one’s own behalf to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as it reasonably practicable and so far as the processes of the law will allow.”

54. In Elements of Land Law Fifth Edition by Kevin Gray possession was described as a conclusion of law defining the nature and status of a particular relationship of control by a person over land. At paragraph 2.1.6 the author stated as follows:

“...Although a central notion, the term ‘possession’ has long lacked any concise judicial explanation. In relation to land, however, its key element is the idea of control. ‘Possession’ is

perhaps best described as “a conclusion of law defining the nature and status of a particular relationship of control by a person over land”.[Mabo v Queensland (No2) (1992) 175 CLR 1 at 207 per Toohey J.] In this sense, the concept of ‘possession’ is a freestanding notion which admits little qualification. In the view of the common law, possession is autonomous and indivisible. Possession is simply a state of overall territorial control.”

55. In Clerk & Lindsell on Tort (supra) at paragraph 19-13 the authors outlined that:

“The degree of physical control necessary to constitute possession may vary from one case to another, for “by possession is meant possession of that character of which the thing is capable.” “The type of conduct which indicates possession may vary with the type of land. In the case of vacant and unenclosed land which is not being cultivated there is little which can be done on the land to indicate possession. In the case of a building possession is evidenced by occupation or if the building is unoccupied, by possession of the key or other method of obtaining entry. In the case of land without buildings, possession is shown by “acts of enjoyment of the land itself, such as by building a wall upon it, shooting over it, taking grass from it, etc.”

56. In the case of Gabriella Belfon v Anil Chotalal CV2012-01479, Rahim J at paragraph 10 page 5 of the judgment stated as follows:

“Where a party shows that he has a greater possessory title to the land than the person alleged to have interfered with this right to possession, he may recover possession of the land. This is because

possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession: JA Pye (Oxford) Ltd v Graham (2002) UKHL 30.

57. In the case of Gayadeen and another v The Attorney General of Trinidad and Tobago (2014) UKPC 16, the Privy Council considered all of the necessary elements to establish physical control through the establishment of car park. In that case, the Claimants constructed, maintained and cleaned the car park and took steps to exclude persons other than their customers from parking there. At paragraph 22 the JCPC stated:

“The First Appellants gave evidence that her parents, she and her husband had asked non customers who parked their vehicles to move their vehicles and that they did not allow vendors to park or sell their wares. She stated that people complied with their requests. She and her husband also gave evidence that they had put up a sign on the doors of their garage and that parking was for customers only.”

58. The Court noted the evidence of Dr. Davis who in his expert report referred to the aerial photographs of 1969, 1980, 1986, 1994, 1998, 2003 and 2014. The expert was asked to answer the joint question as to whether any of the aerial photographs for the period 1984 to 2003 of the subject land showed concrete remnants of the structures forming part of the recreational ground measuring approximately 150 by 100 square feet on the smaller parcel and if yes, to identify the approximate area and location of the concrete remnants. Dr. Davis' answer was:

"The imagery available to assess this period is from 1980 to 2003. None of the aerial photographs show any signs of any concrete remains or structures from 1980 to 2003. The vegetation coverage is very consistent in this period."

59. Dr. Davis was also asked whether any of the aerial photographs from 2003 to 2016 showed aggregate deposited throughout the entire smaller parcel claimed by the Claimant and if yes, to identify the aerial photograph. Dr. Davis' answer was:

"The imagery available to assess this period is from 2003 to 2014. The photography does not distinctly show any deposition of aggregate for this period. There is a cleared area along the northern section of the subject parcel along Rivulet Road that appears in the 2014 image and another smaller area to the north-east of the site where this could possibly take place. "

60. The Court noted that although the photographs did not show cars parked on the entirety of the subject land, it is possible that same may have occurred. It is possible that the photographs depending on the time of day which they were taken, would not have captured parked vehicles, given that cars would only be parked during the restaurant's opening hours. The Court formed the view that the Claimant exercised a measure of control over parcel 1A while the First Defendant did not and had a greater degree of territorial control over same than the First Defendant. The regular directing of customers to park upon same demonstrated an intention to control the space. This intention was also manifested by the subsequent deposit of aggregate upon the land around 2014 and was further established when the Claimant fenced the land on February 26, 2016.

61. It is clear from the evidence that the Third Defendant was acting at all material times as agent for the First Defendant when he entered the subject land on March 2, 2016. The acts of the Third Defendant were unacceptable and violated the Claimant's actual possession of the land as at March 2, 2016 but given that he was acting as the agent of the First Defendant, the claim against the Third Defendant is devoid of merit. This Defendant however had no legal authority to engage in the course of action that was adopted, and the Court rejected the evidence that he was just there to build a wall.

62. 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. Where there is an undisputed entitlement to possession and in response to an evident act of trespass the remedy of self-help may be open to the person entitled to possession but even in such a circumstance, bailiffs have no function. The Court is aware that at some point the Third Defendant was a bailiff and he may still be. As a bailiff he may have developed relationships with the police and very often, extra duty officers are utilised to be present for jobs. Bailiffs are not authorised or empowered to demolish structures or retake possession of lands and the mere presence of officers at times, can serve to legitimise unlawful activity. In this regard, this judgment shall be forwarded to the Attorney General to make a determination as to whether steps should be taken to revoke the Third Defendant's bailiff licence (if he still has one). In addition, the Commissioner of Police should, as a matter of urgency, issue clear directives to police officers that they should desist from taking extra duty assignments to supervise demolitions and/or the taking of possession of lands especially if no court order has been produced. Officers should not in effect facilitate the unlawful activity of

bailiffs and urgent steps have to be implemented to ensure that bailiffs or former bailiffs do not use the police to legitimise unlawful actions.

63. In its analysis of the evidence, the Court finds on a balance of probabilities that it was the Claimant and not the First Defendant who was first in possession of the 1A parcel and the First Defendant engaged the Third Defendant to invade and take over the 1A parcel. This securing of occupation of the 1A parcel was done so as to cash in on the windfall of \$4M payable on the completion of the sale agreement. Consequently, the First Defendant committed an act of trespass against the Claimant.

64. Special damages must be specifically pleaded and strictly proven. The Claimant's evidence as to the cost associated with the construction of the fence which was destroyed was not challenged and therefore he is entitled to be compensated in the sum of \$30,800.00. However, no other evidence was available to the Court for it to properly make an assessment of any other losses occasioned by the Claimant and therefore, the Court is constrained to award nominal damages in the sum of \$5,000.00.

65. For the reasons which have been outlined the order of this Court is as follows:

- i. The First Defendant is to pay to the Claimant damages in the sum of \$30,800.00 for the destruction of the fence and \$5,000.00 for the act of trespass occasioned upon the parcel of land known as Lot 1A Rivulet Road, Couva.
- ii. The 1st Defendant is hereby instructed to ensure that all vehicles and equipment placed by Aronco Services Limited on the 1A parcel of land is removed within 14 days of the date of the order.

- iii. The 1st Defendant is hereby directed to break and remove the barriers and fence erected at his direction so as to enclose the said parcel of land known as 1A within 14 days of the date of this order. In default, the Claimant shall remove same and the cost associated with the said removal shall be borne by the First Defendant.

- iv. The Registrar of the Supreme Court is directed to forward to the Director of Public Prosecutions, the Attorney General, the Commissioner of State Lands and to the Commissioner of Police, the pleadings, witness statements, the expert report and the FTR recording of this trial as well as copies of this judgment within 28 days of the date of this order.

- v. The 1st and 2nd Defendants are to pay costs on the claim to the Claimant calculated on a prescribed costs basis in the sum of \$35,800.00 and on the counterclaim on a prescribed costs basis in the sum of \$14,000.00.

- vi. The 1st and 2nd Defendants shall pay to the Claimant the costs associated with the injunctive proceedings to be assessed by the Court in default of agreement.

FRANK SEEPERSAD
JUDGE