

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY SAN-FERNANDO**

CLAIM NO: CV2015-02561

BETWEEN

ANTHONY BYRON

FIRST CLAIMANT

KRISTELLE GEORGE

SECOND CLAIMANT

AND

ANCIL COZIER

DEFENDANT

EMELDA COZIER

INTERESTED PARTY

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: 24th May 2019

Appearances: Mr. Haresh Ramnath for the Claimants
Mr. Samuel Saunders for the Defendant

JUDGMENT

Introduction

1. Anthony Byron (“Anthony”) and Kristelle George (“Kristelle”) are the children of Beverly Cozier (“Beverly”) and grandchildren of the interested party, Emelda Cozier (“the interested party”). Beverly and her two children cohabitated with Samuel Alleyne (“Samuel”) on the parcel of land comprising 786.9 square meters located at No. 1 James Crescent, off Renne Avenue, Palmiste (“the subject property”), until their respective deaths. Beverly died intestate on the 14th May 2005 and Samuel also died intestate on the 10th February 2013.
2. By virtue of an order of the Honorable Mr. Justice Rahim dated the 12th December 2014 Anthony and Kristelle were appointed to represent the estates of Beverly and Samuel. This claim was brought by Anthony and Kristelle in their representative capacities.
3. The interested party, together with her late husband James Cozier were the owners of the lands at Palmiste comprising approximately one acre. The interested party and her husband divided the lands into six equal portions with the intention to bequeath one portion to each of their six children namely John Cozier, Deborah Cozier, Suzette Cozier, Beverly Cozier, Stephanie Cozier and Ancil Cozier.
4. The Claim Form and Statement of Case filed on the 28th July 2015, sought the following reliefs for the two estates against the defendant:
 - i. A declaration that the Claimants are lawfully entitled to the entire parcel of land described as All and Singular that piece or parcel of land situated in the Ward of Naparima and known as No. 1 James Crescent, Off Renn Avenue, Palmiste in the Republic of Trinidad and Tobago, comprising of seven hundred and eight six point nine

(786.9) square metres more or less bounded on the North by other lands of Palmiste Estate Limited Field Canaan 41, on the South by lands of Estate Trace, on the East by other lands of Palmiste Estate Limited Field Canaan 41 and on the West by other lands of Palmiste Estate Limited Field Canaan 41 via Intestacy Rules under s.24(2) of the Administration of Estates Act, in which the Defendant must vacate the said premises;

- ii. Damages for trespass and unlawful occupation to the said parcel of land by the Defendant;
 - iii. Damages for harassment;
 - iv. Aggravated and/or exemplary damages;
 - v. An injunction restraining the Defendants and/or its servants and/or its agents from entering, occupying, obstructing or in any way unlawfully interfering with the use, occupation, possession and/or the peaceful enjoyment of the subject premises and from harassing the Claimants;
 - vi. Monies owed to the Claimant by the Defendant; the sum of two thousand and six hundred dollars (\$2,600.00);
 - vii. Costs;
 - viii. Interest pursuant to the Supreme Court of Judicature Act at such rate and for such period as the court see fit; and
 - ix. Such further and/or other relief as the nature of the case may require.
5. The relief vi. above was settled before the commencement of the trial of this claim, as it relates to the sum of two thousand and six hundred dollars (\$2,600.00), being the monies owed by the defendant to Anthony.

Issues

6. The issues that arose in these proceedings were whether:
 - i. the estates of Beverly Cozier and Samuel Alleyne are properly represented by Anthony and Kristelle;
 - ii. the estates of Beverly Cozier and Samuel Alleyne have a legal or equitable interest in the subject property;
 - iii. Anthony and Kristelle or the estates of Beverly Cozier and Samuel Alleyne could maintain an action for trespass against the defendant; and
 - iv. the defendant was liable to Anthony and Kristelle for harassment.

Summary of Findings

7. The court is satisfied on a balance of probabilities that Beverly was granted a licence by her mother, the interested party, to build and live on the subject property. That licence ended when she died. The estate of Beverly as it relates to the subject property, from the date of her death, had no interest which was capable of demise to her children Anthony and Kristelle.
8. With respect to Samuel's estate, the representation of the interest of his estate is one issue. That representation is separate and apart from whether Anthony and Kristelle can successfully show that the estate's interest redounds to their benefit. The evidence has established that neither Anthony nor Kristelle are Samuel's children. This fact is proven definitively by Anthony's and Kristelle's birth certificates that names another man as their father. Those birth certificates have created a presumption in law about their paternal lineage. No evidence in this case has displaced that legal presumption. Whatever the composition of

Samuel's estate, such estate, by virtue of the Administration of Estates Act, will not devolve to Anthony and Kristelle

9. This finding does nothing to prevent Anthony and Kristelle from representing his estate in this claim by virtue of the court order made on the 12th December 2015.
10. With respect to Samuel's estate, the court has determined that Samuel was granted a licence by the interested party, after Beverly's death. That licence permitted Samuel to live on the subject property during his lifetime. That licence ended upon Samuel's death. From the date of his death, the estate of Samuel Alleyne had no interest in the subject property.
11. As between Anthony and Kristelle and the defendant, the court is satisfied on a balance of probabilities that the defendant is the person with the better right of possession in the subject property. The interested party, the undisputed person with legal title, granted the defendant permission to deal with her property in a manner that she directed and approved. The interested party directed and permitted the defendant to enter into possession of the subject property.
12. The court finds that Anthony and Kristelle have converged personal actions on their behalf with this their representative action. The reliefs sought, in the main, are reliefs that would redound to them in a personal capacity and not to the estates that they represent by order of the court made on the 12th December 2014.
13. Anthony and Kristelle have failed in proving all heads of their claim.

The Claimants' Evidence

14. Anthony is the son of Beverly and Dale Byron as certified by his certificate of birth with Pin Number 0119092970. Anthony was born in 1990. Kristelle, was born in 1992 and is the daughter of Beverly. Kristelle's certificate of birth with Pin Number 9656408804, names Dale Byron as her father. Kristelle asserts however that Samuel is her father. Anthony and Kristelle, as noted earlier, are the Legal Representatives of the estates of Beverly and Samuel pursuant to the Order of the Honourable Mr. Justice Rahim dated the 12th December 2014.

15. The interested party and her husband by virtue of the Deed of Conveyance DE197310487000 was the owner of the lands in Palmiste which was divided into six equal lots. Anthony and Kristelle's evidence is that they were told by their mother Beverly in 2003, that in or around 1993, the interested party promised her the parcel of land comprising 786.9 square meters located at No. 1 James Crescent, off Renne Avenue, Palmiste. As a result, Beverly and Samuel built a wooden house and began to reside thereon with Beverly's children.

16. Anthony and Kristelle assert that over the years due to the deterioration of the wooden house, in their presence, the interested party granted Beverly and Samuel permission to construct a flat concrete house in 2004. Anthony and Kristelle contend that they occupied the lands with the belief that the concrete house thereon was being built for them.

17. The defendant was hired and paid to assist with the construction of the house. No other relative assisted in this regard. Anthony and Kristelle aver that Beverly financed the construction of the concrete house from various sources. Beverly's money came from: a loan she took from a credit union,

money from a sou sou, salary as a teacher at the YTEPP College in Chaguanas, as well as monies earned from a hair salon owned by her.

18. Beverly died in 2005 when Anthony and Kristelle were fifteen and thirteen years of age respectively. Anthony and Kristelle say that their relatives took possession of all the documents and bills in Beverly's name. At the time of Beverly's death, construction on the concrete house was still ongoing; its foundation along with the walls (up to the ring beam) were completed. Thereafter, Samuel continued the construction work to the concrete house. He did all the electrical works on the house and hired workers to construct the ceiling, tile the floors and build wardrobes in the bedrooms. Kristelle also contributed in 2007 when she purchased six buckets of paint and tiles for the house. At that time, Anthony and Kristelle continued to live with Samuel. While all Anthony's and Kristelle's belongings remained in the initial wooden house, they spent several nights by their aunt Suzette Cozier who would cook for them and take them to school.

19. Upon the completion of the concrete house in 2008, Samuel, Anthony and Kristelle resided therein, after vacating the wooden house which was subsequently demolished. The concrete house was fully furnished with three beds, three closets, one couch set, one dining room set, built in cupboards, one entertainment set inclusive of a radio, one microwave, one refrigerator, one stove, two televisions, two chest of drawers, one master bath, one air conditioning unit, a wooden buffet, music system, three piece living room set a washing machine and a dryer.

20. In 2011, Kristelle took up alternative residence. After Samuel's death in 2013, his relatives took possession of all the bills and documents in his name. After Beverly's death, Anthony and Kristelle were unable to pay any bills as they were still attending school. Stephanie Cozier volunteered to

pay the water bill and it was agreed that she would be reimbursed upon the receipt of Samuel's insurance money. However, she refused to accept same. Anthony took over payment of the water bill when he became employed at the end of 2013 up to the 31st May 2014. He also paid the electricity bill which was in Samuel's name.

21. When Samuel died, Anthony and Kristelle say, the defendant moved into the concrete house on the subject property to keep Anthony company. Anthony and Kristelle aver that the defendant would verbally abuse Anthony and threaten to destroy the subject property. The defendant took the first claimant's room, would use up the groceries and not contribute towards the household as he never had money. The first claimant assisted the defendant by hiring him to prime the concrete house in exchange for the sum of \$7,000.00; he also loaned the defendant \$2,600.00.
22. Around 2014, wooden boards were placed on the doors of the house by the defendant, restricting Anthony's access. As a result of police intervention the boards were removed. However, the defendant's abusive and threatening behavior caused the first claimant to leave the subject property and stay with his father until 2014. In 2014, the defendant, Stephanie Cozier and Suzette Cozier told the first claimant that he had to leave the subject property in an abusive manner, using obscene language. The defendant then threw out the first claimant's clothes on the road which prompted the first claimant to stay with his father.
23. In March 2014 a meeting was held amongst the claimants, the defendant and his sisters. They told the claimants that they were not allowed to enter the subject property and took the furnishing that were contained in the concrete house. The claimants assert that no arrangements were made for them to retrieve the said furnishings.

24. During the months of July to November 2014, the second claimant and her husband was exposed to acts of harassment and intimidation by the defendant. The second claimant state that the defendant would attempt to run their vehicle off the road by driving closely to same with his headlights on. On another occasion, after blocking the road with his van, the defendant approached the second claimant and her husband with a piece of iron and threatened that he would come for them and that he knew where they lived.

The Defendant's Evidence

25. The defendant confirms that his parents, James and Emelda Cozier, were the joint owners of an acre of land situate in Palmiste evidenced by Deed of Conveyance DE197310487000. In 1993 his parents surveyed and sub-divided the land into six separate parcels of land known as Lot Nos. 1 - 6. James and Emelda Cozier told all their children, including the defendant that if they each paid a share of the surveying cost incurred to sub-divide the land, along with a share of the cost to construct the road, install electricity and water and the legal costs to prepare and register the deed ("conveyance cost"), they would transfer one lot to each of them. Lot No. 5 was to be transferred to the defendant under the aforementioned conditions.

26. The conveyance cost amounted to \$10,475.00 each. Each child had to pay that sum before one of the six lots would be transferred to them. James and Emelda Cozier transferred, Lot No. 4 to Deborah Cozier; Lot No.6 to Stephanie Cozier; Lot No. 3 to Suzette Cozier; and Lot No. 2 to John Cozier. Those transfers were made after each paid the said sum of \$10,475.00.

27. Beverly and the defendant did not meet the prerequisite for transfer, the conveyance cost. Consequently, no lots were transferred to either Beverly

or the defendant. James Cozier died on the 22nd June 1991 leaving Emelda Cozier as the sole owner of the remainder of the land situate in Palmiste namely, Lot No. 1 and Lot No. 5.

28. Before the surveying and subdivision of the acre of land into the six lots, in or around 1990 Beverly and the defendant sought permission from their parents to construct wooden houses on the land in Palmiste. Beverly was allowed to build in the area that became Lot No. 1 and the defendant on the area that became Lot No. 5. After the lands were surveyed and subdivided, it was agreed that Beverly and the defendant were permitted to live on the respective lots; either until the payment of the conveyance cost after which the transfer of the lot would be effected or on non-payment, upon their respective deaths.

29. After the wooden house was completed on Lot No. 1, Beverly, Samuel and the claimants moved into and began living in same. In 2003 Beverly's wooden house deteriorated to a dilapidated state. Consequently, Beverly, Emelda, Deborah Cozier, Suzette Cozier and the defendant pooled resources together to build a concrete house on Lot No. 1. Emelda, Deborah Cozier and Suzette Cozier contributed through the purchase of building materials. The defendant contributed his expertise as builder, constructing the foundation and the floor of the house as he was never paid for these works. For this purpose, Beverly took a loan from the Duncan Village Credit Union in the amount of \$40,000.00. The defendant asserts that his mother repaid most of this loan on Beverly's behalf.

30. On the 14th May 2005 when Beverly died, construction had progressed up to the foundation and the floor. Samuel Alleyne who lived with Beverly at the time of her death, received permission from Emelda to reside on Lot No. 1 until his demise. At that time, the first claimant and second claimant

were young and still attending school. As a result, the claimants went to live with Suzette Cozier who was responsible for their maintenance, care and upbringing. They all lived at Lot No. 4 in Deborah Cozier's home; Deborah was living abroad at the time.

31. Approximately one year after Beverly's death, construction on the concrete house resumed. Suzette Cozier and Emelda Cozier hired workmen and paid workmen; they also bought materials inclusive of the floor tiles for the construction of the house. The defendant again offered his expertise (without payment) as he worked alongside the workmen to erect the blocks, plaster the walls, paint the outside of the house, install the windows and construct the roof. Samuel also contributed his services. He wired the house, paid for the supply of electricity, installed the gypsum ceiling and painted the inside of the house.

32. The concrete house was completed in 2008. The defendant obtained permission from his mother to demolish the wooden house on Lot No. 1. Samuel, with Emelda's permission moved into the concrete house. Samuel continued to live alone in that house until his passing on the 10th February 2013. Thereafter, the defendant with Emelda's permission moved into the concrete house in May 2013 and is still in current occupation of same. The defendant, Emelda and Suzette Cozier in 2013 fenced all the lots of land (except Lot No. 2 which was sold) with blocks and chain link wire. Emelda and Suzette Cozier bore the associated costs and the defendant contributed his expertise in exchange for the sum of \$6,000.000.

33. In or around July-August 2014, the first claimant, Stephanie Cozier and the defendant had an altercation which caused the first claimant to leave with all his belongings and reside with his father. At this time, the second

claimant had already ceased to live with Suzette as she moved out on the 12th January 2012.

34. The defendant avers that the claimants had no belongings at the subject property as the concrete house was largely furnished by Suzette Cozier and Emelda Cozier. The only items of Samuel's that remained were a dining room set, a wooden buffet, a refrigerator, a three piece living room set, a washing machine, a dryer and a music system. During the meeting held on the 31st March 2014 amongst the claimants, the defendant, Dale Byron, Joanna Byron, Deborah Cozier, Stephanie Cozier and Suzette Cozier, the latter party ask the claimants to remove Samuel's belongings from the subject property. However, they have failed to do so.

Law and Analysis

i. The claimants' capacity to represent the estate of Samuel Alleyne

35. Prior to the commencement of these proceedings, the claimants by Claim No. CV04280-2014 were appointed by virtue of the order of the Honorable Mr. Justice Rahim dated the 12th December 2014 to represent the estates of Beverly Cozier and Samuel Alleyne. The appointment was made pursuant to Part 21.4 of the Civil Proceedings Rules which state:

“Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and the construction of written instruments

21.4 (1) This rule applies only to proceedings about—

- (a) the estate of someone who is dead;
- (b) property subject to a trust; or
- (c) the construction of a written instrument.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether at present or for any future, contingent or unascertained interest) where—

- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
 - (b) the person, or the class or some member of it, though ascertained cannot be found; or
 - (c) it is expedient to do so for any other reason.
- (3) An application for an order to appoint a representative party under this rule may be made by—
- (a) any party; or
 - (b) any person who wishes to be appointed as a representative party.
- (4) A representative appointed under this rule may be either a claimant or a defendant.
- (5) Where there is a representative claimant or representative defendant, a decision of the court is binding on everyone he represents.”

36. The defendant submitted that despite the claimants’ assertions in their pleadings and witness statements that they are the legal representatives of Beverly and Samuel, there is no evidence to substantiate any claim of the claimants being legal personal representatives for the estates of either Beverly or Samuel.

37. As it relates to the effect of the order appointing the claimants as representatives of the estates of Beverly and Samuel, the court finds that the claimants are empowered to represent the aforementioned estates. Part 21.4 of the Civil Proceedings Rules empowers the court to appoint a person(s) to represent another (person(s)) who cannot be ascertained or found due to death; and who may have an interest in or may be affected by proceedings. These are exactly the circumstances of the instant proceedings. While it is true that the claimants have not applied for Letters of Administration appointing them as the legal personal representatives in the estates of Beverly and Samuel (for the purpose of distributing the estates), the order of Mr. Justice Rahim permits the claimants to represent any interests that Beverly and Samuel may have in these proceedings.

38. With respect to the claimants' assertion that Samuel Alleyne was the father of the second claimant and therefore according to the rules of intestacy his heir, the evidence does not support this. The second claimant's birth certificate names Dale Byron as her father. The presumption of parentage cannot and was not displaced by Dale Byron's concession under cross-examination that he not her father. The court cannot accept the evidence of the claimants that Samuel Allyene was the father of the second claimant. Paternity issues are not settled in that manner. The paternity of the second claimant is not part of this claim against the defendant. Such assertion, to displace the legal presumption of paternity, would have to be made in a separate claim.

39. The evidence satisfies the court that, as it stands today, neither claimant has the requisite blood nexus with Samuel Alleyne to inherit any part of his estate under rules of intestacy pursuant to section 24(2)¹ of the Administration of Estates Act Chapter 9:01.

40. The opposite is true as it relates to Beverly's estate. By virtue of the Administration of Estates Act and the fact that Beverly died, apparently intestate, leaving two children alive at the time of her death, those children are entitled, *per stirpes*, to an equal share of Beverly's estate.

ii. The claimants' claim for Beverly Cozier's and Samuel Alleyne's interests in the subject property

41. It is the claimants' pleaded case that Emelda Cozier by virtue of the Deed of Conveyance DE197310487000 is the owner of the lands in Palmiste. In 1993, Emelda promised their mother Lot No. 1 which caused Beverly and

¹ 24(2) Where an intestate dies leaving issue, but no spouse, his estate shall be distributed *per stirpes* among the issue.

Samuel to construct the wooden house. In 2004 Beverly and Samuel obtained further permission to construct a flat concrete house on Lot No.1 which was done during the period of 2004 to 2008.

42. The claimants' evidence suggest that only Beverly and Samuel contributed to the construction of the concrete house. During Beverly's lifetime moneys obtained pursuant to a loan, from a sou sou and from her two jobs were used to construct the concrete house. After Beverly's death, the house was not yet complete as it was built in parts due to financial constraints. She also did not accept help from her mother or siblings. As a result, Samuel took over and performed the electrical works on the house and hired workers to construct the ceiling, tile the floors and erect built-in wardrobes in the bedrooms.

43. On the basis of Emelda's promise to the claimants' mother and the respective contributions of Beverly and Samuel to the construction of the concrete house, the claimants claim that they are lawfully entitled to the subject property.

44. From the facts of this case it is pellucid that a conditional promise was made. The defendant's evidence corroborated by that of the interested party is that the entitlement and subsequent transfer of Lot No. 1 was conditional upon the payment of the conveyance costs. Further, the defendant's and interested party's evidence illustrates that this condition of entitlement and subsequent transfer of legal ownership was not exclusive to Beverly but was the same for her other siblings. The claimants based on their respective ages, are not positioned to dispute the arrangements made between the interested party and Beverly.

45. Based on the holistic evidence of this case, the court is satisfied that while there was a promise that Beverly would obtain Lot No. 1 she had to pay her conveyance costs which she failed to do. As a result, Emelda remains the legal paper title owner of Lot No. 1 as same was never transferred to Beverly and as such she nor Samuel has legal interest in the subject property.
46. The interested party permitted Beverly to enter upon the land, build a house and live thereon. In furtherance of that, Beverly did enter and live in a wooden house; that overtime, became dilapidated. Before her death, Beverly with the assistance of the interested party and other family members commenced construction of a concrete house. The court is satisfied that Beverly did not act to her detriment, she acted in accordance with the licence. The evidence does not establish any other interest given to Beverly. The evidence does not establish the creation of any equitable interest.
47. It is further noted that the claimants did not plead proprietary estoppel or promissory estoppel. The court agreed with the defendant's submissions that in order for Beverly and/or Samuel to acquire any equitable interest in the subject property, it was imperative for the claimants to plead that Beverly and/or Samuel built the house at their expense on the basis of representations made by Emelda, thereby acting to their detriment.
48. The fact that the first named claimant paid the water bill which was in his mother's name, does not provide evidence of an equitable interest. Rather it is consistent only, with the licence that the interested party gave to Beverly.

49. With respect to Samuel, he too received permission from the interested party to remain on the lot until his death. In a similar way, the fact that the first claimant paid the electricity bill which was in his step father Samuel Alleyne's name, was not illustrative of Samuel's ownership or any more than the licence granted by the interested party.

50. Further, whatever the nature of Samuel's estate, the claimants by virtue presumption created in law, are not Samuel's children and are not entitled to share per stirpes as issues pursuant to s.24(2) of the Administration of Estates Act Chapter 9:01.

51. The claimants in their reply, put forward details relative to the establishment of an equitable interest in the subject property, namely:

- a. Beverly was promised the subject property by the interested party and thereafter she lawfully resided and obtained a beneficial interest in the same;
- b. Beverly did not have sufficient funds to complete the said concrete flat in 2004 as a result of which the same was completed in 2008;
- c. Beverly took a loan from a credit union in Duncan Village;
- d. received money from a sou sou and from Samuel Alleyne;
- e. Beverly with the assistance of Samuel constructed the concrete house without assistance from the interested party or any of her relatives;
- f. The defendant was hired for construction works at the subject property;
- g. The first claimant hired the defendant to prime the said concrete house in 2013 in exchange for the sum of \$7,000.00; and

h. The interested party had promised Beverly the subject property and she acted upon the same to her detriment and constructed the concrete house for her family.

52. The defendant submitted that pursuant to Part 8.6² of the Consolidated Civil Proceedings Rules 2016 the claimant has a duty to set out his case including all the facts on which he relies. In the case of Civil Appeal No. P231 of 2011 *First Citizens Bank Limited -v- Shepboys Limited and Anor*³ the learned Mendonca J.A. referenced Blackstone Civil Practice 2012 para 27.2 which spoke to the contents of a reply. He stated that the sole purpose of a reply is to respond to disjunctive matters raised in the defence that require a response but which were not and should not have been dealt with in the particulars of claim. A reply is not a second statement of case and cannot be used to cure deficiencies in the pleaded case.

53. It is the court's view that if their claim for a beneficial interest is to be buttressed by developmental works by Beverly and/or Samuel, the sources of funds used for the construction of the concrete house and the contributions of the respective parties in acting to their detriment were critical and ought to have been pleaded in the claim form and statement of case. Those are not disjunctive matters that are appropriate for the reply.

54. In any event, the court was satisfied that neither Beverly nor Samuel acted to their detriment in the manner suggested by the claimants. The source of funds, labour and all else required to commence and eventually

² 8.6 (1) The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies. (2) The claim form or the statement of case must identify or annex a copy of any document which the claimant considers necessary to his case.

³ At paragraph 39

complete the home on Lot No. 1 was a family effort. Beverly, Samuel, the defendant, the interested party and other members of the Cozier family all pitched in. Beverly's and Samuel's efforts and contributions were in keeping with the licence granted to them to live on the land for the remainder of their lives – except if Beverly was able to meet the condition for the transfer of legal title.

55. In the case of CV2015-00194 *Josephine Thomas -v- Phillip Thomas* the learned Rajkumar J at paragraphs 19 and 20 decided that when the claimant granted the defendant permission to occupy her lands and construct a dwelling on same which he resided in for over a decade, a licence coupled with a life interest to occupy the structure he built was established. It was a family arrangement and no time limit was placed on his occupation.

56. For these reasons, the court is satisfied that there is neither a beneficial interest nor a legal interest in the subject property in favour of Beverly or Samuel by which the claimants can represent in the estates they represent or have a claim to.

iii. Trespass

57. The case of *Bernadine Seebaran Guy -v- Selwyn Baptiste*⁴ is support for the proposition that a claim of trespass can successfully be made by the person in actual possession of lands, against another person who entered upon that land. The person in actual possession must show that he has a better right or interest to the land than the person that enters. Hamel Smith J.A. described the elements of a claim of trespass:

⁴ PCC App No. 12 of 2001

“7. ...If a trespasser peaceably enters or is on land, the person in actual possession or the person entitled to possession may request him to leave, and if he refuses to leave, may remove him from the land, using no more force than is necessary (see *Hall v Davis* (1825) 2 C & P 33). To justify the expulsion of a trespasser, however, the person must be in possession or acting under the authority of the person in possession. (see *Monks v Dykes* (1839) 4 M & W 567).

10. It follows that the person in possession can maintain an action against the trespasser to recover possession without having to prove ‘title’, whether the property is realty or personal. Possession is the key to recovery in such circumstances.

12. ...all the Appellant had to establish was that she was in actual possession of the land and that the respondent had entered the land without her consent. Whether the appellant was a squatter was not material to the claim.”

58. It is the claimants case that in or around February 2013, the defendant who resided at Lot No. 6 Papourie Road, Duncan Village wrongfully trespassed onto and took possession of the claimants’ home situate at No. 1 James Crescent, Off Renn Avenue Palmiste.

59. The court did not accept the claimants’ evidence that after the death of their mother in May 2005, they continued to live with Samuel at the wooden house. It seems more likely that the claimants being young and attending school when their mother died, went to live with their aunt as the defendant and the interested party said. Further, the evidence established, that at the time of Beverly’s death, the house was far from complete. The court accepts the evidence that their aunt, Suzette Cozier cooked, cared for, and took them to school.

60. In any event, in 2011, the second claimant’s evidence is that she was not in occupation or possession as she moved out of the subject property.

61. The first claimant claims to have been in possession of the subject property for approximately 10 years until 2013. After the death of Samuel in 2013, the first claimant avers that the defendant moved into the subject property, spending nights to keep him company. Shortly after, the first claimant's access was restricted by the defendant. Anthony averred that it was only after police intervention he regained access to the subject property as the boards were subsequently removed.

62. The first claimant was then forced to move out of the subject property as a result of physical abuse and threats to destroy the house on the subject property meted out to him by the defendant. In or around 2014 he moved back into the subject property and was then aggressively asked to leave by the Defendant, Suzette Cozier and Stephanie Cozier. The first claimant has since sought alternative residence.

63. As noted earlier, the court is satisfied that the first claimant lived with his aunt after his mother's death. No doubt the claimants visited Samuel over the years. Samuel was their step-father and a person they knew as their mother's husband. The court is also satisfied that the claimants may have also spent time at the house on the subject property.

64. Actual possession is a question of fact comprising two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons: Halsbury's Laws of England Volume 97 (2015) at paragraph 575.

65. The court is not satisfied that the claimants had and/or have the necessary intention to possess on the basis of the claim. They claimed legal entitlement to the subject property and occupied same as if it were their own after Beverly's and Samuel's death. The court is not satisfied that they

occupied the premises with the intention to possess at the exclusion of the defendant or the interested party. The first claimant may have paid bills in or around May 2014 and perform chores at the subject property – but the court determines that such was consistent with his use and not illustrative of control. By that time Anthony was a young adult and in the court’s view entered the subject property under the impression that it was left to him and his sister. Anthony as a matter of fact, had no legal authority to refuse to permit Suzette Cozier to use the subject property for business purposes⁵. Such refusal is not material to the determination of this claim.

66. The court is satisfied that after Samuel’s death, the house was empty – Anthony and Kristelle were at that time living by their aunt. In those circumstances, the interested party asked the defendant to move into the home that became vacant upon Samuel’s death. The defendant moved into the home in May 2013. He continues to reside thereon to date.

67. At some point in time after Anthony moved into the house with the defendant it became apparent that for a variety of reasons, they did not get along. Some of the discord had to do with who paid the bills, about groceries and food. The discord also appears to have resulted in Anthony deciding to exercise what he considered to be his right to be there.

68. The court has already determined, that in fact, Anthony and Kristelle have no such right of inheritance from their mother or from Samuel in the subject property. The estates of Beverly and Samuel, which the claimants represent, also have no interest in the subject property.

⁵ Witness statement of Anthony Byron filed 13th June 2017 at paragraph 23

69. As a result, the court is not satisfied that the claim of trespass was sufficiently proven by the claimants. Apart from Anthony's deficiencies in actual possession, the defendant had a better right to possession than the first claimant. The interested party instructed the defendant to stay in the subject property and he obeyed. He was therefore on the subject property by virtue of a license. Accordingly, the claimants' claim for trespass against the defendant is dismissed.

70. The evidence established that whatever property Samuel had at the time of his death, remained in the house. Such property would belong to Samuel's estate. However the claimants' have not made any claim for the return of, or for compensation on behalf of Samuel's estate for those personal effects.

iv. Harassment.

71. The claimants aver that during the months of July to November 2014 the second claimant and her husband experienced acts of harassment and intimidation by the defendant. She states that the defendant attempted to run their vehicle off the road and on another occasion threatened them with a piece of iron stating that he would come for them as he knew where they lived. These acts along with the prior abuse meted out to the first claimant caused both claimants to suffer from anxiety and distress. As a result, they claim general damages under the tort of harassment and have particularized and relied on these allegations for a claim of aggravated and/or exemplary damages.

72. The starting point for the court, is that this claim is brought in a representative capacity. There is no claim brought by the claimants in their

individual personal capacities. On that basis alone this head of the claim must fail.

73. Fundamentally however, the laws of Trinidad and Tobago do not recognize a common law tort of harassment. In the case of *Khorasandjian -v- Bush* [1993] 3 WLR 476 the Court of Appeal did decide that there was such a tort. However, this position was overturned by the House of Lords in *Hunter -v- Canary Wharf* [1997] 2 All ER 426. In England the later enactment of the Protection from Harassment Act 1997 created the tort.

74. The court is satisfied, as was Justice Kokaram in CV2019-00550 *Tricia Brown -v- Elroy Julien and the National Commission for Self Help Limited* that the present state of the law is that there is no tort of harassment in Trinidad and Tobago. Accordingly, for these reasons, this head of the claim also fails.

Disposition

75. Having regard to the court’s findings, it is HEREBY ORDERED that:

- i. the claimants’ claim against the defendant is dismissed; and
- ii. the claimants’ are to pay the defendant’s costs, as prescribed, in the sum of \$14,000.00.

.....
Justice Avason Quinlan-William

JRC: Romela Ramberran