



[2020] JMSC Civ 192

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION  
CLAIM NO. 2008 HCV 01680**

<b>BETWEEN</b>	<b>ROSEMARIE SAMUELS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JAMAICA PUBLIC SERVICE COMPANY LIMITED</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

**Mr Sean Kinghorn instructed by Messrs. Kinghorn & Kinghorn for the Claimant**

**Messrs. Patrick Foster Q.C. and François McKnight instructed by Messrs. Nunes, Scholefield, DeLeon & Company for the Defendant**

**Heard: February 5, 6, 7, 8 and November 29, 2019 and September 25, 2020**

**Damages – Trespass – Assessment – Expert evidence – Tax element – Effect of taxation on large fund of damages – Basis on which damages is to be assessed – Quantum of damages**

**A. NEMBHARD J**

**INTRODUCTION**

- [1]** The proceedings in the instant matter were begun by way of a Claim Form filed on 3 April 2008. The Claimant, Rosemarie Samuels, claims against the Defendant, Jamaica Public Service Company Limited (“JPS”), damages for trespass to property.

- [2]** Miss Samuels is the registered owner of all that parcel of land, part of Rhymesbury, in the parish of Clarendon, being the land comprised in Certificate of Title registered at Volume 1213 Folio 789 of the Register Book of Titles (“the said land”).
- [3]** In or around the year 1996, JPS trespassed on the said land by unlawfully erecting and maintaining its overhead power lines and poles across its perimeter. Consequently, subsequent to the acquisition of the said land by Miss Samuels, she was deprived of the use and benefit of an area of it, for the purpose for which she purchased it, namely, the rearing of chickens in modernized chicken houses.
- [4]** Miss Samuels seeks the following Orders: -
1. Damages;
  2. An injunction restraining the Defendant, whether by itself, its servants and/or agents from continuing the said trespass of having upon the Claimant’s property, its overhead power lines and poles across the perimeter of the Claimant’s property;
  3. An injunction ordering the Defendant to remove the said overhead power lines and poles across the perimeter of the Claimant’s property;
  4. Interest thereon for such rate and for such period as this Honourable Court deems just, pursuant to the Law Reform (Miscellaneous Provisions) Act;
  5. Costs;
  6. Such further and/or other relief as this Honourable Court deems just.
- [5]** The Orders sought, as stated at paragraph **[4]** 2 and 3 above, have been overtaken by the fact that the trespass ceased on 11 October 2019.

### **The Judgment on liability**

- [6] On 29 January 2010, F Williams J, as he then was, granted summary judgment in favour of Miss Samuels, on the basis that JPS had no reasonable prospect of successfully defending the Claim. JPS appealed this decision. The appeal was dismissed and the Order of F Williams J was affirmed, on the basis that the document by which JPS entered the said land was a contractual licence, which, neither at common law nor in equity, bound the licensor's successors in title. JPS did not register that document on the registered title for the said land, as it was entitled to do during the licensor's lifetime. It therefore failed to secure the benefit of the provisions of section 41 of the Electric Lighting Act, which allowed its licence to be so registered. The Court of Appeal held that JPS' contractual licence ceased immediately upon the land having been transferred to Miss Samuels and that it [JPS] became a trespasser upon that event occurring.
- [7] In the circumstances, the Court of Appeal concluded, the defence, as pleaded, had no chance of success, the summary judgment must be upheld and the matter proceed to assessment of damages, taking into account the date on which Miss Samuels became entitled to possession.

### **The Assessment of Damages**

- [8] On 19 December 2018, Miss Sekayi Ayanna Campbell (Fellow Actuary) and Mr Gary Conrad Francis (Actuarial Consultant) were appointed expert witnesses for the purpose of the hearing of the Assessment of Damages. Permission was also given for the Actuarial Report of the Estimate of Loss, dated 27 February 2017 ("the Actuarial Report"), to be received in evidence as an expert report.
- [9] The hearing of the Assessment of Damages was conducted during the period 5 February to 8 February 2019 and 29 November 2019, during the course of which the Court heard evidence from two (2) witnesses called on behalf of Miss Samuels and one (1) called on behalf of JPS. A Valuation Report, prepared by

Mr Mervyn Down, ("the Valuation Report") was also received in evidence on behalf of JPS.

- [10] JPS did not submit any evidence to contradict the findings of the Actuarial Report.

### **THE ISSUES**

- [11] The following issues are determinative of the Claim: -

- (1) What is the basis on which the Court is to assess the quantum of Damages to be awarded to the Claimant?
- (2) What is the appropriate measure of Damages to be awarded to the Claimant?
- (3) What weight, if any, is to be attached to the Actuarial Report and the Valuation Report?

### **THE CLAIMANT'S SUBMISSIONS**

#### **The claim for future economic loss**

- [12] The claim for future economic loss, in respect of the said land, as well as, future loss to Miss Samuels and to her estate, were abandoned, in light of the evidence of Mr Blaine Jarrett that the trespass to the said land ceased on 11 October 2019.

#### **The claim for loss of use of the said land**

- [13] Miss Samuels avers that she purchased the said land for the purpose of rearing chickens in modernized chicken houses and that she obtained permission from Best Dressed Chicken to construct six (6) chicken houses on the said land. Accordingly, Miss Samuels constructed four (4) chicken houses. She contends that she was prevented from constructing the additional two (2) chicken houses, due to the equipment installed by JPS across the perimeter of the said land.

- [14] As a consequence, Miss Samuels claims the sum of One Hundred Fifty-Seven Million Six Hundred and Eighty-Eight Thousand Seven Hundred and Seventy-Three Dollars and Thirteen Cents (\$157,688,773.13), for the period 2008-2016 and the sum of Sixty-Eight Million Four Hundred Eight Thousand Four Hundred and Three Dollars and Sixty-Eight Cents (\$68,408,403.68) for the period 2017-2020, for damages for loss of use of the said land.

**The claim for loss of house appreciation**

- [15] It was submitted on Miss Samuels' behalf that, had she been able to construct the two (2) additional chicken houses, the value of the said land would have been greater than its current market value. Consequently, she claims the sum of Forty Million Eight Hundred Thousand and Five Dollars and Ninety Cents (\$40,800,005.90), representing damages for loss of house appreciation.

**The claim for flood mitigation**

- [16] It was also submitted that JPS' equipment prevented Miss Samuels from installing a proper drainage system to prevent the flooding of the lower section of the said land. It was further submitted that, Miss Samuels had to build up (land fill) other areas of the said land, in order to construct the four (4) chicken houses. Consequently, Miss Samuels claims the sum of Five Million One Hundred and Twenty Thousand Dollars (\$5,120,000.00), for damages for flood mitigation.

**THE DEFENDANT'S SUBMISSIONS**

**The claim for loss of use of the said land**

- [17] Conversely, JPS contends firstly, that Miss Samuels has not specifically pleaded or specifically proven her claim for loss of past income and secondly, that its equipment was not a hindrance to the construction of the additional two (2) chicken houses.

[18] In this regard, it was submitted that it is settled law that loss of income/earnings is an item of special damages which must be strictly pleaded and/or particularized and strictly proven. In that regard, the Court was referred to the authorities of **British Transport Commission v Gourley**<sup>1</sup>, **Caribbean Cement Company Limited v Freight Management Limited**<sup>2</sup>, **Robert Minott v South East Regional Health Authority & Anor**<sup>3</sup>, **Michael Thomas v James Arscott & Anor**<sup>4</sup> and **Patrick Morton v Ojay Coolers Limited**<sup>5</sup>.

[19] Secondly, JPS did not agree with the method of calculation used by Mr Francis to determine the sums being claimed by Miss Samuels under this heading. It was submitted that Miss Samuels should not be allowed to recover damages for loss of past income for the period 2008-2017. It was submitted that, alternatively, if the Court is minded to award damages for loss of past income, then Miss Samuels should only be allowed to recover for the financial year 2018.

#### **The claim for loss of property development value**

[20] JPS further contends that Miss Samuels has failed to provide any documentary proof as to the value of the chicken houses. It was submitted that it is arguable whether there is a need for the Court to make an award under this heading, since JPS' equipment has been removed from the said land. It was further submitted that Miss Samuels is now able to utilize the remainder of the said land to construct the additional two (2) chicken houses.

[21] Again, JPS was unable to agree with the method of calculation used by Mr Francis, to determine the sum claimed by Miss Samuels under this heading. It was submitted that, should the Court be minded to make an award of damages

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<sup>1</sup> [1955] 3 All ER 796

<sup>2</sup> [2016] JMCA Civ 2

<sup>3</sup> [2017] JMCA Civ 218

<sup>4</sup> (1986) 23 JLR 144

<sup>5</sup> [2015] JMCA Civ 24

for loss of property development value, that award should be in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

### **The claim for flood mitigation**

- [22] Finally, JPS contends that Miss Samuels has not produced in evidence any documentation to prove or substantiate the costs she alleges that she incurred in order to mitigate against flooding on the said land. Consequently, it was submitted, Miss Samuels cannot recover the sum claimed under this heading.

## **THE LAW**

### **The approach to the assessment of damages**

- [23] An assessment of damages requires active consideration on the part of the court and the judicial exercise of its discretion.<sup>6</sup>
- [24] In determining the basis on which the quantum of damages is to be assessed, an analysis of the case of **George Rowe v Robin Rowe**<sup>7</sup> is a useful starting point. This case illustrates the point that, in order to recover more than nominal damages, a claimant must prove actual damage or loss. At paragraph [52] Brooks JA states as follows: -

*“...it is said that trespass is actionable without the need to prove loss. Proof of loss is, however, what is required to assist the court in quantifying the appropriate award of damages.”*

- [25] Edwards JA (Ag) (as she then was) in **Harold Francis Jnr and Elvega Francis v Dorrett Graham**<sup>8</sup>, at paragraph [86], states as follows: -

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<sup>6</sup> See – **Natasha Richards and Phillip Richards v Errol Brown and Anor** [2016] JMFC Full 05, at paragraph [31], per Straw J (as she then was)

<sup>7</sup> [2014] JMCA Civ 46

<sup>8</sup> [2017] JMCA Civ 39

*“To be successful, the plaintiff suing in trespass would...have to prove that the defendant actually entered on the land whilst they were in possession. The tort is actionable per se, so there is no need to prove actual damage, but if there is damage, in order to quantify the amount beyond nominal damages, actual damages will have to be proved.”*

## **Damages in Trespass**

[26] Halsbury’s Laws of England, 4th Edition, Volume 45 provides an important starting point for the determination of the basis on which to assess the quantum of damages for trespass to land. Paragraph 641 reads as follows: -

*“In an action of trespass, if the plaintiff proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the plaintiff actual damage, he is entitled to receive such an amount as will compensate him for his loss. When the defendant has made use of the plaintiff’s land, the plaintiff is entitled to receive by way of damages such a sum as should reasonably be paid for that use.”<sup>9</sup>*

[27] The general rule is that a successful claimant in an action in tort, recovers damages equivalent to the loss which he has suffered. No more and no less. If he has suffered no loss, the most he can recover are nominal damages. Where a claimant has suffered loss to his property or some proprietary right, he recovers damages equivalent to the diminution in value of the property or right.<sup>10</sup>

## **ANALYSIS AND FINDINGS**

### **The Court’s approach to the assessment of damages**

[28] In its approach to the assessment of damages in the instant case, the Court is mindful that it requires active consideration on the part of the Court and the judicial exercise of its discretion.

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<sup>9</sup> See also – **Jamaica Public Service Company Limited v Enid Campbell and Marcia Clare** [2013] JMSC Civ 22, at paragraph [71]

<sup>10</sup> See – **George Rowe v Robin Rowe** (supra), per Brooks JA, at paragraphs [49] to [54]



[29] The Court will be guided by the general principle that, in an action of trespass, if the claimant proves the trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss. Where the trespass has caused a claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. When the defendant has made use of the claimant's land, the latter is entitled to receive, by way of damages, such a sum as should reasonably be paid for that use.

### **What weight, if any, is to be attached to the Actuarial Report and the Valuation Report?**

#### **The expert evidence**

[30] For the purpose of this analysis, the Court will treat firstly, with the issue of the weight, if any, that is to be attached to the expert reports.

[31] A court is not obligated to accept the views of an expert witness, even if his evidence is uncontradicted. The duty of the expert witness is to provide the court with all the requisite information so that the tribunal can make an independent assessment of the information provided by the expert and a determination as to how that information is to be applied to the facts, as found proved, in a particular case.

[32] The English Court of Appeal treats with this issue in **David Ashdown & Ors v John Griffin & Ors**<sup>11</sup>. The court relied on the decision of the Court of Appeal in **Coopers Payen Limited v Southampton Container Terminal Ltd**<sup>12</sup>. There Lord Clarke (with whom Lord Justice Schiemann and Mr Justice Lightman agreed) states as follows: -

*"42. All depends on the circumstances of the particular case. For example, the*

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<sup>11</sup>[2017] EWHC 2601 (Ch)

<sup>12</sup> [2004] 1 Lloyd's Report 331

*joint expert may be the only witness on a particular topic, as for instance where the facts on which he expresses an opinion is agreed. In such circumstances, it is difficult to envisage a case in which it would be appropriate to decide this case on the basis that the expert's opinion was wrong. More often, however, the expert's opinion will be only part of the evidence in the case. For example, the assumptions upon which the expert gave his evidence may prove to be incorrect by the time the judge has heard all the evidence of fact. In that event the opinion of the expert may no longer be relevant...However, at the end of the trial the duty of the court is to apply the burden of proof and to find the facts having regard to all the evidence in the case, which will or may include both evidence of fact and evidence of opinion which may interrelate."*

**[33]** Mr Justice Lightman (with whom Lord Justice Schiemann also agreed) added: -

*"67. Where a single expert gives evidence on an issue of fact on which no direct evidence is called, for example as to valuation, then subject to the need to evaluate his evidence in the light of his answers in cross examination his evidence is likely to prove compelling. Only in exceptional circumstances may the judge depart from it and then for a good reason which he must fully explain. But if his evidence is on an issue of fact on which direct evidence is given, for example the speed at which a vehicle was travelling at a particular time, the situation is somewhat different. If the evidence of a witness of fact on the issue is credible, the judge may be faced with what, if they stood alone, may be the compelling evidence of two witnesses in favour of two opposing and conflicting conclusions. There is no rule of law or practice in such a situation requiring the judge to favour or accept the evidence of the expert or the evidence of a witness of fact. The judge must consider whether he can reconcile the evidence of the expert witness with that of the witness of fact. If you cannot do so you must consider whether there may be an explanation for the conflict of evidence or for a possible error by either witness, and in light of all the circumstances make a considered choice which evidence to accept."*

**[34]** The instant case is not one of a single joint expert. Each party had the opportunity to adduce expert evidence and actuarial evidence in particular. Only Miss Samuels has availed herself of the opportunity so to do. The factual basis

for this Court's decision on quantum is found partly in the facts found by F Williams J, in the judgment on liability and partly in the evidence of Miss Samuels, adduced at the hearing of the Assessment of Damages. In the instant case, the expert evidence of Mr Francis and Mr Down is there and, being relevant, must be taken into account. There is no expert evidence to contradict that of Mr Francis or that of Mr Down. Accordingly, it must be weighed together with all the other evidence, in order to arrive at a conclusion.<sup>13</sup>

**What is the basis on which the Court is to assess the quantum of Damages to be awarded to the Claimant and what is the appropriate measure of Damages to be awarded to her?**

**The claim for loss of use of the said land**

**[35]** The Court has always understood Miss Samuels' claim to be one for Damages in Trespass, for the loss of use of a portion of the said land. Miss Samuels has sought to quantify that loss of use, occasioned by the trespass on the part of JPS. In her effort to demonstrate, to prove and to quantify that loss, she has produced in evidence the Actuarial Report that shows the actuarially computed estimate of the value of the lost opportunity, as a consequence of her inability to use a portion of the said land for the purpose for which she acquired it.

**[36]** In those circumstances, the Court is unable to agree with JPS' submission that the claim for loss of use of the said land is an item of special damages that is required to be specifically pleaded and specifically proven. Even if the Court is wrong on this point, Miss Samuels would still be entitled to recover a sum of money representing damages in trespass for the loss of use of a portion of the said land.

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<sup>13</sup> See – **Armstrong & Anor v First York** [2005] EWCA Civ 277, at paragraph 27, applied by the Jamaican Court of Appeal in **Cherry Dixon-Hall v Jamaica Grande Limited**, SCCA No. 26/2007, judgment delivered on 21 November 2008

**[37]** The Court does agree, however, with the submission made on behalf of JPS, that the claim for loss of use of a portion of the said land has to be examined in the context of the factual evidence that has been presented. The uncontradicted evidence before the Court is that Miss Samuels constructed four (4) modernized chicken houses on the said land, on a phased basis. Two (2) of the chicken houses were built in 2008, the third was built in 2013 and the fourth was built in 2017.

**[38]** Miss Samuels' evidence is that she was given permission by Best Dressed Chicken to construct a total of six (6) chicken houses on the said land. Whilst she has not produced any documentary evidence to substantiate this assertion, the Court is, nonetheless, permitted to assess her, with a view to determining whether she is a credible and a reliable witness. The Court must also assess her evidence and determine whether, on a balance of probabilities, it finds that she has spoken the truth. The Court accepts Miss Samuels as a credible and reliable witness and finds that her evidence in this regard is both credible and reliable.

**[39]** The Court also observes that Miss Samuels has produced in evidence Annual Audited Accounts, for the period 2008 to 2015, which detail the income generated from the operation of the four (4) chicken houses.

**[40]** It would therefore not be correct to quantify the loss of use of the said land on the assumption that Miss Samuels had built all six (6) chicken houses in 2008. Such an approach would not be supported by the evidence.

**[41]** In light of the evidence that the fourth chicken house was built in 2017, it is reasonable to infer that Miss Samuels would have been in a position to construct the two (2) additional chicken houses after the fourth had been built. The Court accepts the evidence of Miss Samuels that, whilst she was able to construct four (4) chicken houses on the said land, on a phased basis, during the period 2008 to 2017, the erection of JPS' equipment across the perimeter of an area of the said land prevented her from building the additional two (2) chicken

houses. It is on this basis that she claims damages, representing the income that would have been generated from the erection and operation of those two (2) additional chicken houses, had she been able to construct them.

**[42]** The Court accepts that, barring any unforeseen circumstances, Miss Samuels would have been able to generate greater income from her operations, had she been able to construct the two (2) additional chicken houses on the said land. She was deprived of the use and benefit of a portion of the said land and suffered loss of income as a consequence.

**[43]** JPS has submitted that, in quantifying the award to be made under this heading, the Real Adjusted Net Income ("Real ANI") per square foot of chicken house, as at 2016, is to be used. That sum, of Three Hundred and Twelve Dollars and Ninety-Six Cents (\$312.96), is to be multiplied by the square footage of the two (2) additional chicken houses (25, 000 square feet each), which would amount to Fifteen Million Six Hundred and Forty-Eight Thousand Dollars (\$15,648,000.00), per year. That would be a total of Thirty-One Million Two Hundred and Ninety-Six Thousand Dollars (\$31,296,000.00), for the years 2018 and 2019, before tax.

**[44]** The Court makes the following observations in respect of the approach suggested by JPS. Firstly, it involves the use of the Real ANI per square foot of chicken house, as at 2016. This presupposes that the Real ANI per square foot generated by Miss Samuels from her operations would have remained constant (neither increasing nor decreasing) for the years 2017, 2018 and 2019, up to 11 October 2019. This is not supported by the evidence.

**[45]** An examination of the Actuarial Report reveals that the Real ANI per square foot for the year 2008 was Ninety-Eight Dollars and Fifty Cents (\$98.50); for the year 2009 that figure was Four Hundred and Twenty-Seven Dollars and Fifty-Four Cents (\$427.54); for the years 2010 and 2011 that figure remained at Three

Hundred and Sixty-Seven Dollars and Thirty-One Cents (\$367.31)<sup>14</sup>; for the year 2012 that figure was Four Hundred and Forty Dollars and Seventy-Three Cents (\$440.73); while for the year 2013 that figure was Four Hundred and Four Dollars and Eighty Cents (\$404.80); for the year 2014 that figure was Three Hundred and Fifty-Four Dollars and Seventeen Cents (\$354.17); and for the year 2015 that figure was Three Hundred and Eighty Dollars and Forty-Six Cents (\$380.46).

**[46]** Secondly, the proposed sum of Thirty-One Million Two Hundred and Ninety-Six Thousand Dollars (\$31,296,000.00), would therefore be low to begin with and would, of necessity, have to be adjusted upward, for the years 2018 and 2019, up to 11 October 2019.

**[47]** The Court is mindful firstly, of the need to carry out a careful consideration of the evidence in this case and for a judicious exercise of its discretion, in quantifying the loss suffered by Miss Samuels, under this heading. Any award made by the Court must be one that is fair, just and equitable, in all the circumstances of this case. Such an award should be in a sum that would be capable of putting Miss Samuels in the position in which she would have been, had the trespass not occurred. Secondly, account also has to be taken of a number of unpredictable contingencies. Such an assessment cannot therefore, by its nature, be a precise science. The presence of so many imponderable factors necessarily renders the process a complex one and one which is incapable of producing anything better than an approximate result.

**[48]** Bearing that in mind and the legal principles that have been outlined above, this Court is of the view that an award of Damages in Trespass is properly to be made under this heading, in the sum of Sixty-Five Million Dollars (\$65,000,000.00), before tax. The Court will also award interest thereon at the

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<sup>14</sup> The uncontradicted evidence before the Court is that Miss Samuels suffered a loss to her operations in 2011 due to theft.

rate of three percent (3%) per annum, from 9 April 2008 to the date of this Judgment.

### **The tax element**

[49] The question arises as to whether the Court is to take into account the element of taxation, in its assessment of damages. The Court is reminded of the general principle, that, an award of damages should be in such a sum that will put Miss Samuels in the same position in which she would have been, had the trespass not occurred. The Court must consider whether the incidence of taxation on an injured taxpayer should be any concern of the wrongdoer and whether it should be used to minimize an award of damages in favour of the former. The authorities are clear that the award of damages should not be inflated as a result of the incidence of taxation. Nor should that award be reduced, in an effort to account for taxation.

[50] The Court has sought to make an award of damages commensurate with the loss suffered by Miss Samuels, under this heading. It is expected that any obligation to pay taxes that might be applicable to that award will be satisfied by her, in accordance with the relevant statutory framework.

### **The claim for loss of house appreciation**

[51] In determining whether there is a basis on which the Court may award damages for loss of house appreciation, it must take into consideration the purpose for which the said land was being utilized by Miss Samuels. The Court must also determine whether the presence of JPS' equipment negatively affected the potential value of the said land.

[52] The Court is unable to agree with JPS' submission that, it is arguable whether or not it is appropriate for an award of damages to be made under this heading, having regard to the fact that its equipment has been removed from the said land.

- [53] This Court is of the view that the fact of the removal of JPS' equipment from the said land does not negate the fact of its presence there, during the period 2008 - 11 October 2019.
- [54] Miss Samuels is in the business of rearing chickens and she utilizes the said land for that purpose. Therefore, it can reasonably be said that the operation of the two (2) additional chicken houses would have increased the value of the said land. The Court finds that, had Miss Samuels been able to construct the two (2) additional chicken houses, the value of the said land would have been greater.
- [55] Miss Samuels has claimed Forty Million Eight Hundred Thousand and Five Dollars and Ninety Cents (\$40,800,005.90), representing damages for loss of house appreciation. She has attributed a value of Twelve Million Dollars (\$12,000,000.00) to the chicken houses (16,000 square feet each). Regrettably, no valuation report was produced in evidence to substantiate this claim. Indeed, Mr Francis, in cross-examination, accepts that that valuation report does not form part of the Actuarial Report. The Court is unable to rely on this evidence, coming from Miss Samuels, as she has not established that she is qualified to give this kind of evidence.
- [56] The Court observes that Mr Francis' calculations in this regard are based on the use of 25,000 square feet and not 16,000 square feet, representing the square footage of the chicken houses that were built in 2008 and which, purportedly, formed the basis of the valuation that is said to have been done in 2008.
- [57] Consequently, the Court adopts the submission advanced on behalf of JPS in this regard and will make an award in a sum that will compensate for the market value of the area of the said land on which JPS' equipment was located.
- [58] In that regard, the Valuation Report is of some assistance. At page 11, Mr Down states as follows: -



*“...we estimate that approximately 1.75 acres or approximately 7100 square metres of the property would be unsuitable for the construction of any additional poultry houses.*

*This would in our opinion reduce the value of the property, based on its current use as a poultry farm, where any additional poultry houses to be erected immediately beside the existing buildings would be impossible. However, there are another four acres or so to the east of the power lines that could be utilised for further expansion of the poultry farm, although for logistic and security reasons this might not be feasible”*

**[59]** At page 12 of the Valuation Report it reads as follows: -

*“The property has been developed as a poultry farm with four large poultry houses and as such we have assumed that the area of the property on which the transmission poles and wires are located would be used for additional poultry houses and the area in question is by our estimation approximately 1.75 acres or approximately 7100 square metres. Base[d] on the foregoing we estimate the value of the approximately 1.75 acres or approximately 7100 square metres to be in the region of One Million Five Hundred Thousand Dollars (\$1,500,000.00).”*

**[60]** On this basis, the Court will make an award in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), representing the market value of the area of the land on which JPS’ equipment was located, as at 20 April 2018, with interest thereon at the rate of three percent (3%) per annum, from 21 April 2018 to the date of this Judgment.

### **The claim for flood mitigation**

**[61]** Finally, Miss Samuels claims the sum of Five Million One Hundred and Twenty Thousand Dollars (\$5,120,000.00) for flood mitigation. The Court has observed that she has not adduced any evidence capable of substantiating her claim for damages under this heading.

[62] Likewise, Mr Francis has not provided any evidence in the Actuarial Report to substantiate his conclusion that Miss Samuels expended the sum of Five Million One Hundred and Twenty Thousand Dollars (\$5,120,000.00) to flood proof the said land.

[63] It is trite law that special damages must be specifically pleaded and specifically proven.<sup>15</sup> Additionally, the **Civil Procedure Rules, 2002** (“the CPR”)<sup>16</sup> outlines the content of an expert witness’s report and indicates specifically that such a report must give details of any literature or other material which the expert has used in making the report.

[64] The Court finds that it has not been provided with any bases upon which it can properly make an award of damages under this heading.

### **DISPOSITION**

[65] It is hereby ordered as follows: -

- (1) The Claimant, Rosemarie Samuels, is awarded Damages in Trespass against the Defendant, Jamaica Public Service Company Limited, in the sum of Sixty-Five Million Dollars (\$65,000,000.00), with interest thereon at the rate of three percent (3%) per annum, from 9 April 2008 to the date hereof;
- (2) The Claimant is awarded Damages against the Defendant in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), representing the market value of the area of the land situate at Rhymesbury, in the parish of Clarendon, being the land comprised in Certificate of Title registered at Volume 1213 Folio 789 of the Register Book of Titles, on which the Defendant’s equipment was located, as at 20

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<sup>15</sup> See – **Caribbean Cement Company Limited v Freight Management Limited** [2016] JMCA Civ 2, at paragraphs [62] and [63]

<sup>16</sup> See – Rule 32.13(1)(b) of the CPR

April 2018, with interest thereon at the rate of three percent (3%) per annum, from 21 April 2018 to the date hereof;

- (3) Costs are awarded to the Claimant against the Defendant and are to be taxed if not sooner agreed;
- (4) The execution of this Judgment is stayed for a period of twenty-eight (28) days from the date hereof; and
- (5) The Claimant's Attorneys-at-Law are to prepare, file and serve the Orders made herein.