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Judgment Book
[2013] JMSC Civ. 187

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2012 HCV 05545

BETWEEN	KEVIN WHITE	CLAIMANT
A N D	ASTLEY MESQUITA	DEFENDANT

Mr. Charles Piper and Mr. Wayne Piper instructed by Charles E. Piper and Associates for Claimant.

Mrs. S. Wilkinson instructed by Wilkinson & Co. for Defendant

Heard on: June 25, 2013, July 11, 2013, July 17, 2013 and 4th October, 2013

Fixed Date Claim Form – Application for recovery of possession – Whether any reasonable defence to claim – Summary Judgment – Meanse profits

Coram: Morrison, J.

[1] In cases, “where there is no real defence, a defendant may to through the motions of defending in order to delay the time when judgment may be entered. It is possible for defendants to put up the pretense of having a real defence to such and extent that some cases run all the way through to trial before judgment can be entered. The CPR provides several ways of preventing this happening. The court can use its power to strike outto knock out hopeless defences, such as those that simply do not amount to a legal defence to a claim. Entering summary judgment is a related procedure and is used where a purported defense can be shown to have no real prospect of success and there is no other compelling reason why the case should be disposed of at trial” – per BLACKSTONE’S CIVIL PRACTICE, 2011, Chapter 34.

[2] The above observation though made in specific reference to the English Civil Procedure Rules is as opposite and applicable, to our counterpart – Civil Procedure Rules 2002 as amended (CPR). In point of fact, Part 15.1 of the CPR states that, “this part sets out a procedure by which the court may decide a claim or a particular issue without a trial”. Adds Par 15.2, “The Court may give summary judgment on the claim or on a particular issue if it considers that –

- a) The claimant was no real prospect of succeeding on the claim or issue; or
- b) The defendant has no real prospect of successfully defending the claim or issue.”

THE CLAIM

[3] The claimant commenced this action by way of Fixed Date Claim Form dated October 9, 2012. His claims against the Defendant are for recovery of possession of lands in the parish by Saint Ann registered at Volume 1024 Folio 232 of the Register Book of Titles, and for mesne of profits.

[4] The Defendant has invoked that he has been more sinned against than he is of sinning. He is not pleased. The source of his vexation is what is contained at paragraph 2 of the Fixed Date Claim Form: “The Defendant, who was a previous registered owner of the said property has retained possession of a portion of the said property despite knowing that the said property has been the subject of sales by public auction. Firstly, to Accord Investment Limited and secondly, to the Claimant, and has continued to maintain possession of the portion occupied by him without the consent, approval or authority of the Claimant and without there being in place any licence, tenancy or leave or other instrument resting in him any permission, right or interest in the said property”.

[5] Paragraph 3 of the said claim says that, “the portion of the said property which is occupied by the defendant is estimated to be of a value of \$17,000,000.00 and the amount at which the portion of the said property...could have been rented from July 2011 to the present is at least \$75,000.00 monthly”.

Accordingly, the claimant asks, inter alia, that:-

- a. An order that the Defendant vacates and delivers up to the Claimant the portion of the said property that is occupied by him forthwith.
- b. Judgment against the Defendant in the sum of \$1,125,000.00 for use and occupation of the said property occupied by him from July 7, 2011 to October 6, 2012 at the rate of \$75,000.00 per month and continuing.

[6] In support of the Fixed Date Claim form the Claimant filed an affidavit dated 9th

October 2012. In it he depones that under an Agreement for Sale dated April 12, 2000 the Defendant sold to the Claimant and the Claimant's mother a portion of property registered at Volume 1024, Folio 232 of Register Book of Titles. The property is known as Coconut Grove and is located in Ocho Rios, Saint Ann along the main road from Saint Ann to Saint Mary.

[7] According to this deponent, the Defendant occupies the northern or seaside portion of the property while he the Claimant occupies a small portion thereto which is on the southern side. He estimates the value of the defendant's portion to be \$17,000,000.00.

[8] On the portion occupied by the Claimant is an establishment known as the Spring Gardens Restaurant and the Claimant avers that he has been in possession of that portion of land since April 10, 2000. Notwithstanding, complains this deponent, "the defendant has not delivered to my mother and I title for the part of the said property which he sold to us". Further, laments this deponent, "the Defendant... has permitted the said property including the portion owned and occupied by my mother and I, to be sold to Accord Investments Limited thereby jeopardizing our ability to obtain title to the portion which he sold to us". Subsequently, he avers, "when the property was again advertised for sale by public auction I had no choice but to attend and take steps to purchase the entire property so as to protect my investment in the portion of the said property which was purchased by my mother and I and which I occupy".

[9] According to paragraph 6 of his affidavit, "the sale to me by public auction was completed and on June 20, 2011, I became the registered owner of the said property". Possession, he declares, was given to him by the vendor's Attorneys-at-law through letter dated July 7, 2011. A number of exhibits in support of the affidavit were annexed. They are:

1. Particulars and Conditions of Sale of Part of Coconut Grove, Ocho Rios, St. Ann.
2. Surveyors Report, Re: Part of Coconut Grove registered at Volume 1025 Folio 232.
3. Agreement for Sale dated 12th April 2000 between Astley Roy Mesquita of the One Part and Kevin White and Nina Small Russell of the Other Part in respect of property registered at Volume 1024 Folio 232.
4. Copy of Certificate of Title in respect of property registered at Volume 1024 Folio 232 showing registered transfer on 10th April 2008 of all estate and interest of Astley Roy Mesquita to Accord Investments Limited and registered mortgage on 10th April 2008 to Victoria Mutual Building Society and registered transfer on 20th June 2011 of all estate and interest to Accord Investments Limited to Kevin White through Power of Sale under mortgage.
5. Letter from Livingston Alexander and Levy, Attorneys-at-law for vendor to purchaser Kevin White dated July 7, 2011 giving possession to the purchaser of June 16, 2011.

SUBMISSIONS BY THE CLAIMANT

[10] First, it is strongly urged by the Claimant that as the claim is not defended, then, pursuant to Rule 27 2(8), the court can proceed to deal with the case summarily. That the summary judgment procedure is apposite as the Defendant/Respondent has failed to file or to serve an affidavit in response to that of the Claimant/Applicant and as this is a case in which there is no reasonable defence, then any such defence should be struck out on that ground.

[11] Second, that the Claimant has the benefit of Sections 70 and 106 of the Registration of Titles Act in that his interest as a purchaser of property under powers of sale arises not at the time of registration of that interest on the title but upon the mortgagee entering into an agreement for sale to a bona fide purchaser for value without notice of any fraud or other encumbrance.

[12] Third, that the Claimant is entitled to be compensated in damages for use and occupation of the portion of the premises which is being occupied by the Defendant since the Claimant received notice of his right to possession to the date of delivery up of possession.

In support of the above submissions the Claimant placed reliance on the following authorities:-

1. **DIV DEEP LIMITED AND OTHERS V TEWANI LIMITED, S.C.C.A. No. 114/08**, delivered on March 26, 2001;
2. **Lloyd SHACKLEFORD V MOUNT ATLAS ESTATED LIMITED, S.C.C.A. No. 148/2000**, delivered on December 20, 2001;
3. **NEW FALMOUTH RESORTS LIMITED V FITZROY ALLEN AND OTHERS, CIAIM No. 2007 HCV 01702**, delivered on April 9, 2009;
4. **LELIA NEUMAN V DELROY E SALMON, S.C.C.A. No. 39/2000**, delivered on June 23, 2003;
5. **SWORDHEATH PROPERTIES LIMITED V TABET AND OTHERS (1978) I.W.L.R. 285**; and
6. **IVERUGIE INVESTMENT LIMITED V HACKETT (1995) I.W.L.R. 713**

SUBMISSIONS BY DEFENDANT

[13] The main concern of the Defendant is grounded on the espoused facts hereunder as submitted by him and on which he pivots.

[14] The Defendant asserts that he was the registered proprietor of the subject property which was subsequently transferred to Accord Investments Limited from Jamaica National Building Society (JNBS) purportedly exercising a power of sale under a mortgage on or about April 10, 2008.

[15] Later, Accord Investments Limited, owing to its default on its mortgage obligation to Victoria Mutual Building Society (VMBS), resulted in the latter's exercise of its power of sale which eventuated in the subject property being sold to the Claimant, some three years adrift of the JNBS redemption.

[16] It is against that background that the defendant has taken issue with the "purported sales". He complains that he was not notified of the sale to Accord Investments Limited nor to the Claimant. He bewails that the property was sold at an undervalue and alleges a conspiracy to deprive him of his property. Further, he contends that the Claimant is not a bona fide purchaser for value without notice.

[17] In support of the above submissions the Defendant recruited the authorities of **INTERNATIONAL TRUST AND MERCHANT BANK V GILBERT GARDINER, S.C.C.A. III/2000**, delivered on March 30, 2004; **CORNWALL AGENCIES LIMITED V BANK OF NOVA SOTIA AND AMALGAMATED DISTRIBUTORS LIMITED**, Claim No.2003 HCV 1652, judgment delivered on January 24, 2008.

THE ISSUES

[18] The central issue here is whether the defendant's defence to the claim is sustainable. In other words, is it legally tenable for the defendant to maintain that the Claimant is not a bona fide purchaser for value without notice of the subject property; that there was conspiracy to deprive the Defendant of his property; whether, should the court find that the Claimant is entitled to recover possession of the property from the defendant, the Claimant is entitled to mesne profits.

[19] In passing, let me temperately say that it would be a very remarkable fact indeed for the subject property to have passed from JNBS to Accord Investments Limited and then from VMBS to the Claimant without notice to the Defendant of the purported sale to either of the latter two. As adverted to earlier the transfers are dated April 10, 2008 and June 20, 2011, respectively, and are correspondingly to Accord Investments Limited and Kevin White.

Let me now engage the legal submissions.

THE LAW

[20] The claim herein was commenced by way of Fixed Date Claim Form pursuant to Rule 8:1(4)(b) and (d) of the Civil Procedure Rules 2002 “CPR”, in virtue of its being a claim for possession of land and as the court’s decision will be based on a question which is unlikely to involve a substantial dispute of fact.

[21] That the court can treat with this matter summarily is sanctioned by Rule 27.2(8) of the CPR: “The court may, however, treat the first hearing as the trial of the claim if it is not defended or the court considers that the claim can be dealt with summarily”. The fact that no affidavit is response to the Applicant’s affidavit has been filed and served on the Applicant does not preclude the court from dealing with the case summarily.

[22] In **DIV DEEP LIMITED AND OTHERS V TEWANI LIMITED, S.C.C.A. No. 114/08**, the Court of Appeal affirmed the order of Marsh, J, who had ruled on the appropriateness and validity of the Fixed Date Claim Form procedure that was used to commence the litigation and about which the defendant had challenged.

[23] In that claim the respondent had asserted that it was entitled to possession of property the basis of being the legal proprietor. The claim form was supported by an affidavit from the Managing Director of the respondent which spoke of his attending a public auction on behalf of the respondent. It had placed a successful bid on the property which was accepted by the auctioneer. In consequence, the respondent paid the purchase price and the property was duly transferred and registered in the name of the Respondent.

[24] Subsequently the Appellants had challenged the Fixed Date Claim Form procedure adopted by the Respondent by way of two Applications For Court Orders with the aim of having the said procedure pronounce invalid. Marsh, J ruled that in none of the affidavits in support of the applications was fraud alleged by the respondents managing director. He ruled that unless fraud was raised against the Respondent there would be no defence to the Respondent’s claim for

possession. Further, that Section 106 of the Registration Titles Act did not grant to the Appellants' any right against the Respondent in respect of the exercise of a power of sale. Marsh, J described as inaccurate the Appellants contention that the claim for possession by the Respondent will involve any substantial disputes of fact.

[25] On the matter of going on appeal Panton, P summarized the Appellants arguments to include, inter alia, that Marsh, J erred in finding that the Fixed Date Claim Form procedure is appropriate for claims that seek possession of property. The Court of Appeal upheld the judgment of the court below.

[26] The **Div Deep** case is useful from the standpoint that it mirrors the substantive fact which engaged both courts attention though the application were interlocutory. The comments that were made on the substantive law by Marsh, J provided a basis for refusal of the Application for Court Orders, are very apposite to the matter at bar here.

[27] To return to the matter at hand a useful starting point is the factual basis of the ownership of the subject property by the Claimant. I now make reference to the Fixed Date Claim Form as filed by the Claimant.

[28] His pleading at paragraph 2 state that the Defendant who was the previous owner of the subject property "has retained possession of a portion of the said property despite knowing that the said property has been the subject of sales by public auction firstly, to Accord Investments Limited and secondly to the Claimant, and has continued to maintain possession of the portion occupied by him without the consent, approval or authority of the claimant and without there being in place any licence, tenancy or lease or other instrument vesting in him any permission, right or interest in the said property".

[29] In his affidavit in support of the Fixed Date Claim Form he depones how he came to be the owner of the property: "On April 12, 2011, I attended an auction at the offices of Access Property Investments Limited at 3 Easton Avenue, Kingston 5 in the parish of Saint Andrew where I placed bids and

eventually had accepted, my bid to purchase property of Coconut Grove, Ocho Rios in the parish of St. Ann registered at Volume 1024 Folio 232 of the Register Book of Titles (hereinafter referred to as "the said property") sic". The claimant avers that he paid a price of \$16,505,000.00 for the property having been sold to him by VMBS under powers contained its mortgage from Accord Investments Limited. In proof of the above a document captioned PARTICULARS AND CONDITIONS OF SALE OF PART OF COCONUT GROVE, OCHO RIOS, ST. ANN Will Be Sold By Public Auction By Access Property Investment At His Auction Room at 3 Easton Avenue, Kingston 6 in the parish of Kingston on Tuesday, the 19th of April 2011 at 10:30 a.m. in the morning.

[30] The "Particulars and Condition of Sale" speaks to part of Coconut Grove, Ocho Rios, St. Ann, which will be offered for sale at public auction by Access Property Investment Limited on Tuesday, the 19th day of April 2011 at his auction room at 3 Easton Avenue, Kingston.

[31] Below the sub-heading "Particulars and Condition of Sale", is another sub-head "MEMORANDUM" wherein Kevin White of Bamboo in the parish of St. Ann acknowledged himself as purchaser of the property as described in the Particulars and Conditions of Sale at the auction held on April 19, 2011 at the price of \$16,505,000.00 and in which he undertook and agreed with the vendor to pay the purchase money, interest and costs in the terms of the Conditions of Sale.

[32] The memorandum was signed by a signatory of Access Property Investments and witnessed. It is dated April 19, 2011.

[33] Further, depones that Kevin White, the portion of the premises which is occupied by the Defendant is valued at \$17,000,000.00 and is on the northern side while the portion which he occupies is on the southern side. The deponent declares that the portion of land which he occupies was sold to his mother and himself by the defendant in April 2000 and on which they have established a business. Despite the above, bewails the deponent, the Defendant has not

delivered to his mother and himself the title for the portion of the said property and has permitted the property including the portion owned and occupied by his mother and himself to be sold to Accord Investment Limited.

[34] Again, in support of his assertion the Claimant attached an exhibit denoted "AGREEMENT FOR SALE" which shows one Astley Roy Mesquita as the vendor and one Kevin White and Nina Small Russell as joint tenants and purchasers of, "All that parcel of land part of Coconut Grove...containing by survey 406.9492M² and being part of the land contained in Certificate of Title registered at Volume 1024 Folio 232 of the Register Book of Titles". The purchase price, as stated in the said agreement, is \$1,250,000.00.

[35] Furthermore, depones the claimant, "when the said property was again advertised for sale by public auction I had no choice but to attend and take steps to purchase the entire property so as to protect my investment in the portion of the said property..."

[36] Subsequently, as the records reveal, a sale of the said property, continues the Claimant, was made "to me by public auction..." and on June 20, 2011, "I became the registered owner of the said property". Yet again, in support of his contention a copy of title for the said property was exhibited. The pertinent transfers noted thereon are Transfer No.1529494 registered on the 10th day of April 2008 of estate and interest of ASTLEY ROY MESQUITA to Accord Investments Limited and Transfer No. 1710426 registered on the 20th day June 2011 of all estate and interest of Accord Investments Limited registered on the 10th day of April 2008 to Kevin White.

[37] The final proof of recognition of his ownership of the land, he declares, is contained in paragraph 7 of the deponent's affidavit. It is a letter of possession from VMBS, the vendor, acting through its attorneys-at-law showing that possession of the land was delivered to him.

[38] In view of all the above and with the Defendant's knowledge of the sales of the said property by public auction, observes the Claimant, "the defendant

continues to occupy the northern portion of the said property... He does not have any authority or consent to remain there and has no licence or rent or lease or other agreement to justify his continued occupation”.

[39] It is in regard of these overwhelming aboveboard circumstances, he asks, that the Defendant compensates him for his occupation of the land at a rate of \$75,000.00 per month from July 7, 2011 and that the court also makes an order for the Defendant to vacate and deliver up possession of the portion of the said property occupied by him forthwith.

[40] As intimated earlier, the Defendant had failed to either file a defence to the claim or indeed an affidavit in response to that of the Claimant's. Accordingly, as Rule 27.2(8) of the CPR allows, “The court may, however, treat with the first hearing as the trial of the claim if it is not defended or the court considers that the claim can be dealt with summarily”. I am persuaded, without being urged to a contrary view, that the Court's Case Management Conference powers must be brought to bear to strike out cases, to knock out hopeless defences as adverted to at the very beginning of this judgment.

[41] The real issue here is whether the Defendant has any purported, prospective or imagined defence to the claim or issue. As I shall demonstrate, the Defendant's position is more akin to that of being defiant as any defence to the claim can only be regarded as being emulously fostered.

[42] In **Lloyd Shackleford v Mount Atlas Estate Ltd.**, *supra*, is a case in which Ellis, J having granted an interlocutory injunction, the Court of Appeal felt obliged in law to reverse. Here are the germane facts. Tersely put, a mortgagee in purporting to exercise her powers of sale under a mortgage on the alleged default in mortgage payments by the mortgagor entered into an agreement for sale to the Appellant. A transfer of the property to the Appellant brought by the mortgagor was duly executed but it had remained unregistered up to the time of the filing of the action. The actions sought declarations to the effect that the exercise of the power of sale by the mortgagee was invalid and of no effect; that

the agreement for sale was unenforceable, and, as against the Appellant, damages for breach of contract and or negligence and or slander of title and or fraud.

[43] In distillation of the facts, Forte, P with whom Harrison and Walker, JAA agreed, concluded that on a simple reading of section 106 of the Registration of Titles Act, it is clear and unambiguous that the legislature intended to give the purchaser the protection as soon as the mortgagee, in the exercise of his power of sale, enters into a contract with a bona fide purchaser for the sale of the mortgaged property. In the final analysis the Court of Appeal concluded that Ellis, J had no jurisdiction to grant injunctive relief in the given circumstances.

[44] In the multi-defendant case of **New Falmouth Resorts Limited v Fitzroy, Allen and (98) others, supra**, Brooks, J (as he then was) asked and answered the question, whether a judge in chambers, on application for summary judgment in a matter commenced by way of Fixed Date Claim Form, for recovery of possession, had the jurisdiction so to do. After a careful analysis of Part 27 of the CPR, the learned judge concluded that the CPR does allow a court at a first hearing of such claims, to give judgment for a claimant who is seeking possession of land.

[45] In **Lilia Neuman v Delroye Salmon, supra**, the Court of Appeal, following **Tinsley v Milligan (1993) 3 ALL E.R. 65** ruled, inter alia, that a Plaintiff was entitled to recover possession because his right of possession did not depend on an illegal agreement but instead on his registered ownership of the land.

[46] In **International Trust and Merchant Bank v Gilbert Gardiner, supra**, the Court of Appeal comprising Bingham, JA with whom Panton and Smith JAA agreed, had to engage the issue as to the manner in which a mortgagee exercised its powers of sale in respect of registered property that was subject to a mortgage.

[47] In the course of its deliberation, the Court of Appeal, after reviewing the law and the facts, concluded, in agreeing with the judge of first instance, that the

manner in which the mortgagee had described the property in the advertisement, the evidence of the plaintiff/respondent as to the conduct of the sale on the day, and, the admission in the defence of the appellant that the sale was by way of private treaty, forced the conclusion that the appellant had failed to obtain a true market value and had failed to obtain the best price.

[48] In the course of his judgment Bingham, JA said: "In the exercise of its power of sale, this power is given to the mortgagee the better to enable it to realize its security held in respect of the mortgaged property. The power of sale however, also has to be exercised with the mortgagor's interest in mind... What it means in effect is that while attempting to obtain a reasonable price the mortgagee in exercise of the power of sale may be held accountable to the mortgagor if he acts negligently or recklessly and disposes of the property at what clearly amounts to a gross undervalue". (Emphasis mine).

[49] In **Cornwall Agencies Limited v Bank of Nova Scotia Ja. Ltd. and Amalgamated Distributors Ltd.**, *supra*, Beswick, J, had to consider the claim of the Claimant for negligence, fraud, conspiracy, loss and damage in which the Defendants allegedly conspired to sell mortgaged premises at a price which was too low thereby causing the Claimant to suffer loss.

[50] In the course of her review of her evidence, Her ladyship observed that at no time during the relevant period did the bank tell the claimant that it was in the process of selling the property or that they may have to vacate the property quickly. She found as a fact that the first defendant had failed to take reasonable steps to obtain the true market value of the mortgaged property on the date when it was decided to sell it. Even so, and, having determined that the second defendant had a good title, proof of fraud, she reasoned would alter the outcome for that proposition. Her ladyship relied on Section 71 of the Registration of Titles Act in concert with the authority of **Christian Alele v Robert Honniball, SCCA No. 111/89**.

[51] In the instant case there is not even a traverse of the claim, nor, for that matter, an affidavit in response by the Defendant to that of the Claimant's, let alone an iota of evidence of collusion or conspiracy between the claimant and VMBS against the landed interest of the Defendant. If anything, and I do not absolutely so assert, what would avail the defendant are claims against Accord Investments Limited and VMBS, not the claimant herein. Thus, I have been driven to the conclusion, to say that whatever semblance of a defence could be offered its prospect of success is at best creative, at worst fanciful. Needless to say, the arguments mounted in disfavor of the application for summary judgment, while attractive, are devoid of merit.

[52] Needless to say, the arguments mounted in opposition to the application for summary judgment, while attractive, are in my view, untenable. Even so I will say a word on the contested view that the current Claimant is not bona fide purchaser for value without notice. Counsel for the Defendant listed some ten indicia of fraud and or collusion on the part of the Claimant and others:

- 1) Selling of the property at an undervalue to Accord Investments Limited.
- 2) Failure of JNBS to notify the defendant of the proposed sale to Accord Investments Limited.
- 3) Failure of the Stamp Office to visit or inspect the property before accepting or processing the claim.
- 4) Exclusion of the defendant and his attorney-at-law from discussions with Accord Investments Ltd., JNBS and the claimant.
- 5) The subsequent Notice of Discontinuance by the claimant of a claim against Accord Investments Limited and JNBS.
- 6) The fact that the claimant was at all material times aware of the defendant's interest in the property.
- 7) The fact that the property was surreptitiously sold to the claimant by VMBS without notice to the claimant and before the defendant could make an offer to purchase the said property.

- 8) The failure of the claimant to notify the defendant of his intention to purchase the property from VMBS.
- 9) The failure of the claimant to notify the defendant that he had purchased the property.
- 10) The sale of the property to the claimant by VMBS at more than twice the value that it had recently been sold to Accord Investments Limited by JNBS.

[53] I will at once make the remarks that the duty of mortgagee to mortgager has been time and time again so stated as to become trite. No such duty has ever been placed upon a purchaser. The law is that legal estates and interests are rights in rem, binding on the whole world. Equitable interests, such as the Defendant's herein, suffer from the infirmity that they are not binding on a bona fide purchaser of a legal estate in the land who has no notice of the existence of the equitable interest under our land registration system, only the titles themselves can be entered fully on the register. Other interest in the land are protected by various methods such as the lodging of a caveat.

[54] There is not one jot or tittle of evidence coming from the Defendant in this regard. The arguments are, at best, at the risk of repetition, nothing more than an attractive exordium.

[55] As to the claim for mense profits, again there is no counter evidence to the Claimant's assertion, in paragraph 7 of his affidavit. Such an assertion, I should think, could only have been challenged by evidence on affidavit.

[56] In **Swordheath Properties Ltd. v Tabet and Others**, reading from the headnote it was held that, where a Plaintiff established that a defender had occupied residential premises as a trespasser, then without adducing any evidence that he could or would have let those premises to someone else had the defendants not been in occupation, he was entitled to damages for trespass which, in a normal case, would be calculated by reference to the ordinary letting value of the premises.

[57] In the subsequent case of **Inverugie Investments Ltd. v Hackett, supra**, it was held that a person wrongfully deprived of his property by a trespasser was entitled to recover a reasonable rent for the entire trespass period.

[58] In the instant case, on the basis of the cited authorities, the claimant is eminently entitled to be compensated in damages by the defendant for the use and occupation of the portion of the premises which he has continued to occupy since the claimant was put in possession to the date of delivery upon possession by the defendant.

[59] In the upshot I make the following orders:

1. The Defendant vacate and deliver up to the Claimant on or before November 30, 2013 possession of all that part of the lands occupied by him, being land part of Coconut Grove formerly called Point in the parish of St. Ann and being part of the land registered at Volume 1024 Folio 232 of the Register Book of Titles.
2. Judgment in the sum of \$2,025,000.00 to the Claimant against the Defendant for use and occupation of the said land for the period commencing July 7, 2011 to November 30, 2013.
3. The Claimant is also awarded mense profits at the rate of \$75,000.00 per month from December 1, 2013 until the Defendant vacates the said premises.
4. Costs to the Claimant to be taxed if not agreed.
5. Leave to Appeal is granted.