

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(CIVIL)

CLAIM NO: ANUHCV 2004/0296

BETWEEN:

DOROTHY PELLE
JULIETTE DORSETTE
KEITHLY SPENCER
CORNELIA MICHAEL
RUPERT PELLE
ZEPHANIAH LIVINGSTONE
JOHN PELLE
WELLINGTON PELLE
(All Trading as BUXIES UNITED)
Market Street, St. Johns, Antigua

Claimants

And

DORIAN PELLE
DAMIAN PELLE

Defendants

Appearances:

Mr. George Lake and Mr. Kendrickson Kentish for the Claimant
Mr. Septimus Rhudd and Ms. Gail Pero for the Defendants

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2006: December 06

2007: May 01, July
.....

JUDGMENT

[1] **Thomas J:** On 4th November, 2004 the Claimant filed an amended fixed date claim form and statement of claim.

[2] In the amended fixed date claim form the Claimant, Buxies United of Market Street, Saint Johns claims against the Defendants, Damien Pelle of Willikies Village, in the Parish of

Saint Phillips and Dorian Pelle of Gambles in the Parish of Saint Johns both in the Island of Antigua in the State of Antigua and Barbuda.

- [3] In the amended claim the Claimants seek possession of a plot of land and the containers/buildings thereon situate at Tomlinsons, Saint Johns, Antigua which they contend is occupied unlawfully by the Defendants and damages for trespass to the said land. The Claimants also seek an accounting for any monies had and received from the business, an accounting for any equipment belonging to the said business, an injunction preventing the Defendants and or their agents and or servants from continuing to trespass on the said land and restraining the Defendants and or their agents and or their servants from entering upon or occupying the said lot of land. A declaration is also sought that the Defendants have no legal title to or beneficial interest in the said land or business. Also sought by the Claimants are: costs, damages, interest, legal practitioners fixed costs, process service costs and such further or other relief as the Court deems fit.
- [4] In the amended statement of claim the Claimants contend that it is a family partnership carrying on business as Buxies United which said partnership's name is registered under the Business Name Registration Act, 1989. It is also pleaded that the Claimants carry on the business of general merchandising with a mechanical and tyre repair division at the junction of Tomlinsons and Factory Road. It is further pleaded that the family, and in particular Keithly Spencer, has been in occupation of the lands on which the mechanical and tyre business is carried on at the said junction of Tomlinsons and Factory Road.
- [5] It is the contention of the Claimants that the majority of the equipment in the Claimants' business came from Wellington Pelle's Mechanic Shop in St. Croix, US Virgin Islands. Also that the Defendants' father, Theodore Pelle, deceased, was a stakeholder and field-coordinator in the partnership and that he died on 5th December 2003.
- [6] In the statement of claim the Claimants contend that Buxies United is a company incorporated under the Laws of Antigua and Barbuda and carries on business of general

merchandising with a mechanical and tyre repair division at the junction of Tomlinson and Factory Road.

- [7] It is the Claimants' case that on or about the month of May 2004 the Defendants went into occupation of the premises in which the Claimants' business is located and took over the running of the said business. Further, that this action was taken without the permission or approval of the Claimants' shareholders and directors. That by letter dated 9th June 2004 to the Defendants from the Claimants' Solicitors, the Defendants were informed that they were to deliver up the keys to the premises and all the equipment belonging to the Claimants. Further still, that by letter dated 15th June 2004 from the second Defendant's Solicitor, the Claimants were informed that the second Defendant had received the said letter of 9th June and denied that the equipment referred to in the said letter belonged to the Claimants and further denied being in possession of any keys belonging to the Claimants.
- [8] The Claimants says that despite repeated requests to vacate the said property the Defendants have failed or refused to do so and as a consequence of the Defendants' action the Claimants have suffered loss and damage.
- [9] The particulars of damage pleaded are as follows:
- (a) The Defendants have trespassed on and taken control of the said business to the prejudice of the Claimants.
 - (b) They have operated the said business since taking possession without accounting to the Claimants for any monies made during the period.
 - (c) They have sold, lost or otherwise parted with possession of various items belonging to the Claimants.
 - (d) They have parted the Claimants from operating, managing and profiting from the said business which the Defendants have been in possession.

DEFENCE

- [10] In their amended defence, filed on 22nd November 2004, the Defendants make no admission that there is a partnership as contended by the Claimants. The Defendants also deny that the Claimants are registered as a company that carries on or carried on business described at the location at the junction of Tomlinsons and Factory Road.
- [11] The Defendants contend that Theodore Pelle was the sole and exclusive operator of a business carried out at the location described. Further, it is denied that the majority of the equipment in the business came from Wellington Pelle's Mechanic Shop, St. Croix, US Virgin Islands and that the said Theodore Pelle was never a field co-ordinator or a partner in the business known as Buxies United.
- [12] The Defendants admit that they went into occupation of the premises previously occupied by the Defendants' late father and as such did not take over the running of the Claimant's business. Rather, it is the Defendants' contention that there was no business being conducted by the Claimants.
- [13] In response to paragraph 9 of the Claimants' statement of claim, which alleges that no permission was obtained from the shareholders and directors of the Claimant company, the Defendants pleads as follows: "The Defendants will contend that as the Claimant was not a limited liability company it neither had shareholders nor directors. Further, the Defendants will contend that they did not require any permission or approval from the Claimant to conduct business from the premises previously occupied by their late father."
- [14] In so far as vacating the premises is concerned, the Defendants plead that the Claimants have no legal authority, express or implied to request the Defendants to vacate the subject property.
- [15] Finally, the Defendants make no admission as to the alleged or any loss or damage or as to any entitlement to interest. The Defendants therefore contend that in the circumstances the Claimants are not entitled to the reliefs claimed or any relief.

ISSUES

[16] The following are the issues for determination:

1. Whether
 - (a) the decision taken by the partners of Buxies United to establish a business in the form of a tyre repair shop at Tomlinsons was implemented.
 - (b) if established, it is owned and operated by the said partners; and
 - (c) Theodore Pelle is one such partner.
2. Whether the Claimants are entitled to possession of the land situate at Tomlinsons on which the tyre repair shop is operated.
3. Whether the Defendants are liable in trespass.
4. Whether the Claimants are entitled to injunctive relief against the Defendants.
5. Whether the Defendants acted lawfully in taking over the Claimants' business, namely the tyre repair shop.

ISSUE NO. 1

WHETHER

- (a) THE DECISION TAKEN BY THE PARTNERS OF BUXIES UNITED TO ESTABLISH A BUSINESS IN THE FORM OF A TYRE REPAIR SHOP AT TOMLINSONS WAS IMPLEMENTED
- (b) IF ESTABLISHED, IT IS OWNED AND OPERATED BY THE SAID PARTNERS; and
- (c) THEODORE PELLE IS ONE SUCH PARTNER

[17] In terms of this issue the basic contention of the Claimants is that the land on which the business operated at Tomlinsons, measuring some 2.5 acres, was occupied by the third Claimant for some forty years and at a later date a decision was taken by all the Claimants to consolidate their business. To this end, the immediate objective was the establishment of a tyre repair shop and equipment was brought into the new business by various Claimants in Antigua and Barbuda while other equipment was shipped to Antigua by Wellington Pelle who operated a similar type of business in St. Croix. After the business

was established, it was operated on a day to day basis by Theodore Pelle on behalf of the others.

[18] On the other hand, the Defendants contend that the tyre repair and mechanic shop was owned solely and operated by their father Theodore Pelle, deceased and not on behalf of or in partnership with the Claimants. The first Defendant says that he worked in the business with his late father.

[19] The Defendants therefore deny that the Claimants were part of their father's business and as such their father's business was owned by him. They further deny that the Claimants have interest in the land on which the business was conducted.

[20] The evidence regarding the circumstances of the business in issue, as contained in the witness statements filed on behalf of the Claimants is similar with some variations. That of Dorothy Pelle is representative. This is her evidence at paragraph 1 to 14 of her witness statement.

- "1. My name is Dorothy Pelle of Market Street, St. John's, Antigua.
2. In or about the month of May, 1996 some members of my family got together and decided that we would consolidate the various business enterprises that we were involved in separately, as one entity. At this time Keithly Spencer my brother was operating a Mechanic and body work shop located at Tomlinsons. He had been there for over forty years occupying the said lands.
3. Wellington Pelle was operating Pelle's Service Center in St. Croix USVI and myself with the assistance of other members of the family were operating Life Saver Snackette located at Market and Tanner Streets, Antigua.
4. It was decided that we form a new business entity under which these and other new ventures would operate called BUXIES United. To this end a meeting was called of various family members who were to participate in the venture. This meeting was held on the 6th day of May 1996, all present at this meeting were Keithly Spencer, Cornelia Michael, Rupert Pelle, Zephaniah Livingstone, Theodore Pelle, John Pelle, Juliette Dorsette and Wellington Pelle.
5. Those present voted to decide the relevant responsibilities of various individuals in the new business entity. It was decided that the following persons would hold the following positions.

Chairman
Vice Chairman
Secretary
Treasurer

Wellington Pelle
Keithly Spencer
Juliette Dorsette
Dorothy Pelle

Field co-ordinator
Over seas Field co-ordinator
Public Relations Officer

Zephaniah Livingstone
Rupert Pelle and John Pelle
Cornelia Michael

6. The Chairman suggested that we assess the overall operation of each business which would enable us to decide on areas for new and better ideas for the benefit of BUXIES UNITED.
7. It was then decided that the first business venture that we should focus on was to establish a tyre repair shop at Tomlinson's on some of the lands occupied by Keithly Spencer. The Chairman then informed everyone that he was closing the Mechanic section of his business in St. Croix and over a period of time he would ship the following items to Antigua for use in this aspect of the Business. He indicated he would be sending a 40ft. container, Jack hoist, tyre machine, generator, pumps, vehicles, lathe and other tools. All of which he later did in fact send for use in the business along with start up finances.
8. Keithly Spencer indicate that he would and in fact did contribute the crown lands he was occupying along with truck box to fit a compressor into, twin truck compressor, Lincoln 225 Arc welding Plant, 500 gal. water tank, 10 ton hydraulic jack, 6 ton hydraulic jack large quantity of miscellaneous tools and equipment which he had from his mechanic shop and he would help supervise the running of this aspect of the business. I provided a 20 ft. container and a Dae hung Korean generator Model DG6000S. Theodore Pelle contributed a Fork lift, Mazda pickup truck and a variety of tools, Rupert Pelle supplied a variety of tools and coordinated the shipment of tools and equipment to Antigua. John Pelle contributed spray gun, sander angle, grinder, jack, impact wrenches, set and socket.
9. The logistics of getting together the finances to have the equipment shipped proved more difficult than expected and we were not able to make significant headway until some time in 1998.
10. The containers were placed on site and the tools and equipment put in place and the business began to operate in late 1998. It was decided that steps should be taken to enquire from the Ministry of Agriculture about purchasing the entire parcel of lands at Tomlinsons occupied by Keithly Spencer. This was done.
11. Business was slow at first but picked up as time went on. Theodore Pelle was at the business on a day to day basis. The group would meet at regular intervals informally to discuss how the business was progressing and once a year we would have general meeting. More tools and equipment were purchased and persons were hired to assist Theodore Pelle in the day to day operation. Keithly Spencer supervised and advised on how certain works should be done.
12. On or about the 5th December, 2003 Theodore Pelle passed away suddenly. An extraordinary meeting of Buxies United was called on 19th December 2003. It was decided that Jannine Simon being the oldest child of the deceased on Island at the time should fill the vacancy left by Theodore. It was agreed that an inventory of the items in the container and work area be taken, this was done on or about the 2nd February, 2004. It was further agreed that myself and Cornelia would assist Keithly in the management of the business.
13. A general meeting was held on 3rd May, 2004 with all surviving members present. At this meeting I reported that business was running smoothly and that a portion of the yard area had been paved to facilitate a larger hoist. Wellington expressed disappointment regarding equipment which had been sent but had not yet been put to use and informed us that another generator tyre machine and Heavy duty Compressor was about to be shipped to Antigua for use in the business.

14. On or about the month of May, 2004 the Defendants went into occupation of the premises in which the business was located and took over the day to day running of the business. This was done without the approval or permission of the partners. By letter dated 9th June, 2004 the Defendants were instructed to deliver up the keys for the premises and turn over all equipment belonging to the partners. By letter dated 9th June, 2004 the Defendants were instructed to deliver up the keys for the premises and turn over all equipment belonging to the partners. The Defendants' Solicitors then wrote back declaring that the equipment referred to belonged to their father Theodore Pelle. Despite repeated requests the defendants have failed and or refused to vacate the premises and return the said property to the Claimants. We have been denied access to the property and the income that the business generated in the interim. The Defendants have been operating the said business on a daily business since they have gone into occupation."

[21] In cross-examination by learned counsel for the Defendants, Mr. Septimus Rhudd, Wellington Pelle said that in 1996 a decision was taken to consolidate the business. He said that there were three businesses and he operated the one in St. Croix. He said the meeting was at Lifesavers at Tanner and Market Streets.

[22] In relation to the minutes of the meeting of 6th May 1996, learned counsel put it to the witness that they contain no mention of the business at Tomlinson. The response was that it was the intention of the meeting to open a tyre repair shop at Tomlinson and the omission was probably a typographical error. He further insisted that a meeting was held and in fact they are held once every May so long as he is in Antigua. The witness however agreed that there was no minutes in 1997, 1998, 2000 2001 and 2002 and could not say how many meetings were held between 1996 and 2003 but that he never missed any general meeting.

[23] The witness went on to explain that the whole idea was to make money. He also testified that he was not concerned with the rendering of accounts as he was financing the whole thing. He also said that he expected to make money from the equipment purchased and further that at the time he was not concerned because it was his family involved.

[24] With respect to the property at Tomlinsons, Mr. Wellington Pelle said that he found out the land, which was more than two acres, was owned by the Government of Antigua and

Barbuda and that up to then he thought that it belonged to Keithly. He also said that they tried to purchase it.

- [25] With respect to the alleged take over by the Defendants, the witness' testimony is that it took place in May at which time Dorothy was in charge. He went on to explain that in 1999 Theodore Pelle was to do the day to day business as field co-ordinator and he would say what was needed. He also said that Rupert and John were overseas and they would also assist since they were all working together. It is the further testimony of the witness that he sent back cash to Antigua some of which was to pay Theodore Pelle for his services and some of it also went to Dorothy. He said he did not keep a record as he was sending money to his family. It was then put to the witness that Theodore Pelle was not part of Buxies United to which he responded in the affirmative. The witness went on to say that up to the time of his death Theodore Pelle was a partner and would have been entitled to share in the profits.

EVIDENCE RELATING TO OWNERSHIP AND OPERATION

- [26] Under cross-examination of the various witness of the Claimants there is testimony which can be considered in relation to the matter of ownership.
- [27] Wellington Pelle in addressing the reason for the business said: "The whole idea was to make money. There was no rendering of accounts. I was financing the whole thing. I expected to make money from the equipment purchased. At that time I was not concerned since it was my family and I sent money. I just sent money when they needed money. I am not sure how it went down. I sent money to Theodore and Dorothy. I did not keep a record. I sent cash."
- [28] Keithly Spencer, a family member in giving evidence in cross-examination of the matter of the start-up of the business said this: "The containers were placed at Tomlinsons. There were a few buses we had to move. They belonged to me and my father. We kept them for spare parts and tools. These were moved to put the containers. I supervised the operation."

- [29] Juliette Dorsette was cross-examined on exhibit "BUI" and it was put to her that Theodore Pelles name was not mentioned thereon and as such his business was separate and apart. This was denied by Ms. Dorsette. And later in her testimony the witness testified that: "Theodore Pelle did not have the capital to start the business. I had to support him after 1996. He is a member of Buxie united and is entitled to share in the profits. Buxies United did not make headway until 1998. It had potential. If Theodore Pelle was supervised things would be better. Theodore paid himself with the approval of the partnership members. He was there daily. He had to live so we left him. We agreed that he could pay himself. No figure was put on the payment. I think he discussed the finances with Dorothy. The land on which the partnership operates does not belong to any member of the partnership. The land is owned by the Government of Antigua and Barbuda."
- [30] When it was put to Ms. Dorsette by learned counsel, Mr. Septimus Rhudd, that while in 1996 the family had a business by 1998, Theodore Pelle had decided to have his own business. This was Ms. Dorsette's response: "Theodore Pelle was always accountable to Wellington Pelle. He had the capital. The bulk of the finances came from Wellington Pelle. He (Theodore Pelle) was not running his own business in the same general area. When the items came they came in different names and everything came to Buxie United for the business – not Theodore Pelle personally."
- [31] It was further put to the witness that there was no formal partnership as everybody was doing his own thing. This was denied by Ms. Dorsette.
- [32] Dorothy Pelle in an elaboration on his witness statement said that when the two percent tax was introduced everyone had to register and as a member of Buxies United, she registered the business in Baldwin's name. Ms. Pelle went on to testify that Theodore was never in business on his own as he always had to report to the other members.
- [33] Under cross-examination Ms. Dorothy Pelle in giving testimony on the matter of the setting up of the business testified thus: "Buxies United was set up because as a family we had

eight persons with ability to do many aspects of work that would generate finance. It was set up to generate a profit.”

[34] In re-examination Ms. Pelle testified that at Tomlinsons, Theodore did mechanic work by himself and in this regard he was helped by Keithly Spencer.

[35] Zephaniah Livingstone in an elaboration on his witness statement, filed on 6th July 2006, said that he was aware that things came from Wellington Pelle in St. Croix. Then he added: “To my knowledge Theodore Pelle made no contribution financially. I called him Mc Giver. He was good with his hands. Wellington was the main financier. He is the one with the money.”

[36] At a later stage in his cross-examination Zephaniah Livingstone said that “Wellington Pelle had a mechanic shop in St. Croix. He closed it and shipped the things to Antigua and Barbuda.”

[37] The other side of the equation is occupied by Dorian Pelle and Damien Pelle.

[38] Dorian Pelle in her witness statement filed on 3rd July 2006 says the following at paragraphs 3 to 7:

“3. During my father’s lifetime, he operated a business on Factory Road in the vicinity of Tomlinson’s by the name of Pelle Automotive Service’. Prior to this, the business was called ‘Pelle’s Tyre Service’.

4. The land on which the business was situated is registered as Registration Section: Tomlinsons; Block: 11 1912 B Parcel: 54. The entire area is about 2.5 acres in size.

5. My father commenced his business in or around January 1999. He purchase a container from Dorothy Pelle for EC\$3500 and placed it on the land which belongs to the Government. He used to do tyre repairs and sell automotive items, like bulbs, from the said containers. My father shared a portion of the land with a lady who was operating a snackette.

6. Prior to my father setting up his own business, he and I used to work with Dorothy Pelle in a snack and food business called ‘Lifesaver’. This business was located on Market Street, in the City of St. John’s. There was a family dispute over the running of that business and my father decided to work on his own.

7. When my father started his new business, I used to work along with him and help him with obtaining supplies. I am aware that my father went and had the business registered at the Inland Revenue Department in early 1999. I knew that my father used to send monies to his

brother Wellington Pelle in St. Croix to ask him to purchase supplies for the business. To the best of my knowledge, my father was in the business on his own. He was never part of any partnership or business known as Buxie United. He was never a Field Co-ordinator in any business operated and run by Dorothy Pelle, Wellington Pelle or any other person."

[39] Paragraphs 3 to 7 of Damien Pelle's witness statement, filed on 3rd July 2006 is in similar terms as the foregoing *mutatis mutandis*.

[40] Under cross-examination Dorian Pelle's testimony, in part, is as follows: "I heard him [Wellington Pelle] give evidence. I heard him say what he invested. From my knowledge I saw my father give Wellington Pelle money US\$1000 to US\$500. It was when he worked at Dorothy. I heard my father when he tell Wellington Pelle what he wanted. My father would purchase things. He worked hard." The witness then denied a suggestion put to him by learned counsel, Mr. George Lake, that his father never had that ability. The witness also testified that her father purchased a container from Dorothy Pelle and that he worked private jobs and that he had a bankbook.

[41] In further cross-examination Dorian Pelle testified that she saw a receipt for the container at the house at Potters but that receipt was taken by Dorothy Pelle. The witness then went on to say this: "There is no document to show that my father purchased anything or had money in the bank. There is nothing to show that my father purchased any equipment." And still later she said the following: "Wellington did not send all the equipment from the Virgin Islands. He sent some of it. This does not mean my father had nothing. I know my father. Prior to going to Tomlinson he did other things.

[42] Damien Pelle under cross-examination gave testimony about the equipment which he saw at Tomlinsons said he saw a pressure wash which is still there. He also said that there is a coastal tyre machine which he purchased. He added that there was one there before which is still there.

[43] When the witness was questioned by learned counsel for the Claimants, Mr. George Lake, about a rotunda lathe, the witness said that he knew what it is but he did not see one at Tomlinsons. He also said that he did not see a compressor. Also not seen was an oxygen

tank or water tanks. But he did say that he saw two containers, one jack and a yellow fork lift.

[44] In further cross-examination Mr. Damien Pelle admitted that he hired a backhoe and he also said that there was no evidence that the land belonged to Keithly Spencer. He went on to say that the backhoe was used to push away vehicles left after his father died.

[45] With respect to the matter of his father starting up his own business Damien Pelle disagreed with learned counsel, Mr. Lake, that his father had no money to do so that Wellington Pelle purchased all the equipment or that his father did not pay for any equipment.

[46] In re-examination Damien Pelle said that he had a tyre machine which he purchased from a boy called 'Crazy man'. He also testified that he purchased a compressor from the business place opposite Robinson's gas station and also a pressure wash machine. At the end of his re-examination the witness added that the machine which he found at the business was not working.

[47] As far as the rental of the back hoe is concerned, Damien Pelle's testimony is that he hired it to push down trees and old trucks that were in the part of the land occupied by his father. According to him, Keithly's stuff was on the other side closer to the school.

SUBMISSIONS

[48] In accordance with the order of the Court, Counsel on both sides submitted written submissions.

[49] The following constitutes a summary of the submissions tendered on behalf of the Claimant.

1. The Claimant's evidence is plausible, believable, consistent and corroborated. All of the Claimants gave evidence of the family relationship that was the motivation behind forcing the partnership.

2. The Claimants all gave evidence of Wellington's contribution to the tyre business. This is corroborated by the documentary evidence in the form of invoices, warrants and receipts. The Defendants answer is that their father bought it all himself.
3. [The Defendants] cannot bring one receipt to show that their father even bought one thing relating to the business. Even the containers in which the business was housed and Claimants contend was given to the business by the First-named Claimant as her contribution to the business, the Defendants' explanation for them being that their father brought them from Dorothy ... and yet they cannot find any receipts for this alleged purchase.
4. [Dorian] was asked if she knows what a power wash was; she said she did. She was asked if one was at the tyre shop, she said no there was never any there. Damien in answer to the same questions stated that there had been an old one before and he bought a new one. Dorian did not want to admit that there was a power wash because she is trying to deny that the equipment on the list is correct.
5. Dorian told the court that the reason they cleaned up the area around the tyre shop was because they were ordered to do it by the Ministry of Agriculture. They were forced to push up the Third Defendant's property because they had to clear the area. Dorian was very clear in his answer. He decided on his own that he was going to clean up the 'part his father occupied'. This is important as it shows that the area he considered to be part of the Tyre Shop the Third Claimant had his property. Damian admitted pushing up the trucks and buses belonging to the Third named-Claimant.

[50] The following submissions were made on behalf of the Defendants:

1. In relation to the Claimants' evidence, the Court is again being urged to note the disorganized and *ad hoc* arrangements that existed and find that there was no arrangement for Theodore Pelle to report to any of the Claimants and he was conducting his own business like the rest of the Claimants were doing.
2. In relation to the existence of a car rental business], this again is hard evidence of individual members of Buxie's United doing their own thing to the complete exclusion of the other members.
3. [In relation to the evidence of Zephaniah Livingstone's evidence of arrangements between himself and Wellington Pelle to recover his \$15,000.00 investment], this evidence is clearly supportive of the Defendants' contention that the individual Claimants were conducting their own businesses separately and without regard to the agreed intention to consolidate their individual business under the 'Buxie United' umbrella. It is noteworthy that he was not repaid from funds held for and on behalf of Buxie's United but rather from Wellington Pelle directly.
4. [In relation to the Defendants' evidence]: The Defendants case came by way of evidence elicited from both Dorian Pelle and Damian Pelle. Dorian Pelle ... testified that her father was never part of Buxie United. Her Witness Statement evidence was that he operated a business known as 'Pelle Automotive Service'. Prior to this, it was known as 'Pelle Tyre Service'. She testified that her father previously worked with Dorothy Pelle at Life Saver Snackette but he left due to a dispute with Dorothy Pelle and decided to set up his own business.
5. The evidence of Damien Pelle followed in the same vein. He, too denied that his father was involved in the Buxie's United operations. His Witness Statement evidence is that his father

operated a business by the name of Pelle Automotive Service. His father did tyre repairs and sold small automotive items from a portion of the land at Tomlinson's which he shared with a lady who was operating a snackette at the location.

6. On a consideration of the totality of the evidence presented to the Court by the Claimants, it is being respectfully submitted that, they have failed to discharge the burden placed on them. They have failed to satisfy the Court, on a balance of probability that, their claims are sound. The Claimants evidence, in its totality, has been generally inconsistent, unreliable and lacking in veracity. The Claimants have all given conflicting versions of events. The only consistent element coming from the evidence of the Claimants is that the whole arrangement, surrounding the establishment and existence of Buxie's United, was disorganised, it was, despite the expressed intentions of the Claimants, a 'loose arrangement' where each person did his or her own thing independently of the other.
7. The Claimants case is weak on all fronts. It was generally accepted that the lands at Tomlinson's were owned by the Government and Keithly was squatting there. There was no evidence that Buxie's United, as a legal entity had any claim to those lands. As a result, none of the Claimants had any *locus standi* to bring an action against the Defendants for trespass or possession. Further, they cannot move the Court, to make a declaration that the Defendants have no legal rights in or beneficial rights to the said land. They had no legal authority to seek such a declaration. Only the Government – as owner – could seek such a declaration. Additionally, the Claimants could not claim any injunctive relief to keep the Defendants from going on the lands as they had no legal or equitable interests in the land.
8. The Claimants have not satisfied the Court that the business carried on by Theodore Pelle was carried on for and on behalf of Buxie's United. They cannot therefore claim any accounting in respect of the business for the period that the Defendants took over the operations.
9. The Claimants lack the moral or legal authority to inquire into the business operations of the late Theodore Pelle. Their reliance on the several cargo manifests is misguided. The authenticity of the several manifests has been brought into question. The numbering and sequencing on the documents is questionable. It is being respectfully submitted that the cargo manifests, like the minutes placed into evidence, were concoctions and a fabrication intended to give a false impression of the activities of Buxie's United. Where goods were imported, they were obviously intended for use of the individuals who intended. The use of the name 'Buxie's United' on the manifest was of no great significance. It does not conclusively mean that the items were for use by Buxie's United.
10. In these circumstances, this Honourable Court should dismiss the claim and find for the Defendants. The Court should also award costs in favour of the Defendants.

ANALYSIS

THE ADVENT OF BUXIES UNITED

- [51] The Court accepts the evidence that at a meeting of certain members of the Pelle family held on 6th May 1996 certain decisions were taken with a view of the formation of a business venture. This is reflected in minutes of that meeting as contained in the Supplemental Bundle (SB pages 11-12) filed on 18th October 2006.

[52] The following extract of the minutes is taken from **SB** p. 11:

“Wellington Pelle after taking the Chair, threw out several ideas to include:

- 1) The need for a name for the business
- 2) Designation of officers and responsibilities
- 3) The expansion of existing business
- 4) Types of other business venture to take up”.

[53] At **SB** p. 12 the following is also recorded as part of said minutes:

“Name and Location of Existing Business

1. Keithly Spencer Mechanic and Body Work Shop Location:
Tomlinson’s, Antigua.
2. Life Saver Snackette Location:
Market and Tanner Sts., Antigua
3. Pelle’s Service Centre Location:
247 Estate Glynn St. Croix, USVI

The Chairman suggested that we assess the overall operation of each business which would enable us to decide for new and better ideas for the benefit of ‘BUXIES UNITED’.

The Chairman then informed everyone that he was closing the Mechanic Section of his Business in St. Croix and over a period of time he would ship the items Jack, Hoist, Tyre Machine, Generator, Pumps, Vehicles, Lathe etc. to Antigua.”

[54] Although there was no express decision of the meeting to set up a tyre shop in Antigua, that must be a reasonable inference from the information given to the meeting by Wellington Pelle that he was closing a certain part of his business in St. Croix and shipping certain items to Antigua. This was to be under a business called **BUXIES UNITED**. It is of some interest to note that at paragraph 7 of Dorothy Pelle’s witness statement she does say that: “It was then decided that the first business venture that we should focus on was to establish a tyre and repair shop at Tomlinson’s on some of the lands occupied by Keithly Spencer”. It is of further interest to note again that under cross-examination when it was drawn to Wellington Pelle’s attention that the minutes did not reflect such a decision, Pelle suggested that it was a typographical error since such a decision was taken.

[55] The next record of minutes of meeting of Buxie’s United relates to 3rd May 1999 (**SB** p. 14). Those present at the meeting were: Keithly Spencer, Cornelia Michael, Rupert Pelle,

Zephaniah Livingstone, Juliette Dorsette, Theodore Pelle, John Pelle, Dorothy Pelle and Wellington Pelle.

[56] At paragraphs 8 and 9 of the minutes the following is recorded:

“Theodore told members that besides the paving of certain areas a shed should be erected also. Theodore reported that the business was steadily growing and that with the arrival of the Tyre Repair Machine, Hoist, Pressure Wash and Floor Jack were an asset to the business.”

[57] Simply put, it means that after the decisions of 6th May 1996, it was reported to the 1999 meeting that the business was “steadily growing”. In addition the designated secretary of the new business, Ms. Juliette Dorsette said in cross-examination that: “The business started from 1996 and it took off in 1999.” To the point also is the following as contained at paragraph 9 of Wellington Pelle’s witness statement: “The logistics of getting together the finances to have the equipment shipped proved more difficult than expected and they were not able to make significant headway until some time in 1998.”

[58] Certain members of the family made specific contributions to the assets of the new entity called Buxies United. The extent of these contributions is detailed in the witness statements of some of the witnesses. In this regard at paragraph 7 and 8 of Dorothy Pelle’s witness statement the following is stated:

“The Chairman then informed everyone that he was closing the Mechanic section of his business in St. Croix and over a period of time he would ship the following items to Antigua for use in this aspect of the business. He indicated he would be sending a 40ft container, jack, hoist, tyre machine, generator, pumps, vehicles, lathe and other tools. All of which he later did in fact send for use in the business along with start up finances.

Keithly Spencer indicated that he would and in fact did contribute the crown lands he was occupying along with a truck box to fix a compressor into twin truck compressor, Lincoln 225 arc welding plant, 500 gal. water tank, 10 ton hydraulic jack, 6 ton hydraulic jack, large quantities of miscellaneous tools and equipment which he had from his mechanic shop and he would help supervise the running of this aspect of the business. I provided a 20ft container and a Dae Hung Korean generator Model DG 6000 S. Theodore Pelle contributed a fork lift, Mazda pickup truck and a variety of tools, Rupert Pelle supplied a variety of tools and coordinated the shipment of tools and equipment to Antigua. John Pelle contributed spray gun, sander angle, grinder, jack, impact wrenches set and socket.”

- [59] On the totality of the evidence the Court determines as a fact that certain members of Buxies United made contributions to the assets of the partnership to the extent detailed in Dorothy Pelle's witness statement.
- [60] That the tyre repair shop was in operation is not in doubt. In fact in cross-examination the Vice Chairman of Buxies United testified that it could have been profitable but it was not between 1998 and 2003. However, according to him, it was "going smooth".
- [61] Learned counsel for the Defendants has placed the fulcrum of his submissions on what he termed the *ad hoc* arrangements in the partnership in an effort to show that everybody is doing his own thing and as such Theodore Pelle was no exception.
- [62] Among the issues raised in this context are: the absence of meetings or minutes of meetings for the years 1997, 1998, 2000, 2001 and 2002; the absence of records and in particular financial remedies, the concentration of authority in the hands of Dorothy Pelle; the fact that the businesses that were supposed to operate under the umbrella of Buxies United continued as separate business; the non-production of accounts, the absence of a Buxies United saving account with the entity's income being placed in Dorothy Pelle's personal savings account and in respect of which she was the sole signatory; Wellington Pelle, the main financier of Buxies United was not knowledgeable about the operations of the entity; and the fact that a certain type of business not contemplated by a decision taken by the Buxies United officers was operating to the exclusion of others.
- [63] In this context, as noted above, the Court is urged to note the disorganised and *ad hoc* arrangements that existed and find that there was no arrangement for Theodore Pelle to report to any of the Claimants as he was conducting his own business like the rest of the Claimants were doing.
- [64] The Court cannot accept that these matters which point in a certain direction are dispositive of the sub-issue to be determined. For this reason, it became necessary to

analyse the circumstances and action of Theodore Pelle in the contest of Buxies United and, more particularly, the tyre repair shop.

THEODORE PELLE IN CONTEXT

- [65] Theodore Pelle, deceased was part of the family, and the record (**SB pages 11 & 14**) shows that he was present at the meetings of 6th May 1996 and 3rd May 1999.
- [66] In evidence are two forms in relation to registration for identification tax number. One relates to Baldwin T. Pelle and the other relates to Buxies United. The other form relates to the registration of a business name and it relates to Buxies United.
- [67] The form relating to Buxie's was signed by Dorothy Pelle on 31st August 2000, the nature of business is stated to be shipping agent/general merchandiser and it also states that the business commenced on 12th August 1998. Theodore Pelle is, however, not listed as a partner.
- [68] Under cross-examination Juliette Dorsette acknowledges this omission but went on to testify that Pelle was subsequently registered as a sole proprietor and despite that his business was not separate from that of Buxies United.
- [69] The other form relating to the identification tax number relates to Baldwin T. Pelle. It is signed on 29th September 2000 by the said Baldwin T. Pelle. It gives the business as tyre repairs with a start-up date of January 1999 and the business address as Tomlinsons, Antigua.
- [70] The other registration document in evidence at **SB p. 7** concerns the registration of business name, to wit, Buxies United. The date of registration is 12th August 1998. There is not in evidence any similar registration with respect to Baldwin T. Pelle.
- [71] In terms of Theodore Pelle's employment with Buxies United there is no definitive evidence as to when it would have started, but it must be a reasonable inference that he started at

the inception, given the totality of the evidence in this regard. For one thing Keithly Spencer testified that Theodore and himself were in charge of the tyre repair shop.

[72] One of the more important points however is the fact that Theodore was permitted or authorized to pay himself from the income of the business. This is to be found in the testimony of Dorothy Pelle, Juliette Dorsette and Keithly Spencer. The latter estimated that Pelle would pay himself \$200 to \$300 per week.

[73] Again there is no definitive evidence pointing to the cessation of Pelle's employment by Buxies United having regard to his passing on December 2003. However, he did attend the annual meeting of 3rd May 1999 and Wellington Pelle under cross-examination testified that: "In 1999 Theodore Pelle was doing the day to day business as field co-ordinator. He would say what was needed to be done." Mr. Theodore Pelle was also involved in the sale of the thirty-eight tyres appearing on a cargo manifest dated "7-1-01" shipped by Pelle in St. Croix and consigned to Dorothy Pelle Market Street and on their arrival in Antigua were cleared through customs by Zephaniah Livingstone.

[74] It is the evidence of Leonard Henry under cross-examination that Theodore Pelle operated his own business on the site under the big tamarind tree with the implication this happened before Buxies United was organized. To this must be added the evidence of Dorothy Pelle under cross-examination that Theodore worked with her from 1985 to 1998 when the Lifesaver closed. She also said that he had his own snackette while he worked with her. There is also evidence that he worked for about three years in Barbuda doing mechanic work. Somewhere among all of the foregoing, Pelle also worked in security. It is also the evidence of Keithly Spencer that Theodore Pelle was unemployed for a long time and he had to be assisted.

[75] The evidence is that following the decision in 1996 regarding the establishment of a tyre repair shop, as part of Buxies United, the business got off the ground in 1999. Further to that Theodore Pelle, the field co-ordinator reported to the meeting of 3rd May 1999 that the

business was growing steadily and what the newly arrived equipment meant to the business.

- [76] The Claimants contend that the business continued on this plane, as intended, with respect to the tyre shop and with Keithly Spencer and Theodore Pelle being the two persons on the ground. The Defendants say otherwise. As noted above their contention is that because of widespread and ad hocism at Buxies United, Theodore Pelle was able to establish a similar type of business independent of Buxies United.
- [77] The main item in the armoury of the Defendants is the registration for the purposes effected by Theodore Pelle on 29th September 2000 which in the view of the Court is not conclusive as to whether Theodore Pelle had an independent business existence. Mr. George Lake learned counsel for the Claimants put it differently when he said that: "This evidence must be balanced against the reality of the situation." Thus it may be said that at a basic level a registration is merely the start of the tax process with others to follow.
- [78] At another level, Dorothy Pelle in examination-in-chief said that with the advent of the 2% tax all business had to register. The further point is that if indeed Theodore Pelle had a separate business to repair tyres the question then becomes, whether he had his own equipment or whether he was using those of Buxies United sent to Antigua by Wellington Pelle. Indeed, there is no evidence that Theodore Pelle acquired new equipment. And even if he re-took that which he donated to Buxies he was still at square one since it may be that a forklift and a Mazda pick-up are not even marginally relevant to the matter of tyre repairs.
- [79] The indication of the purchase of new equipment such as a compressor and a tyre repair machine came from Damien Pelle. That said, the point must be made that the purchase of a compressor implies that none existed at the site; and then the question would be whether a tyre repair shop can operate without it. On the other hand, if there was one on site, the purchase of another points reasonably to an attempt to set up a rival business which would obviously not be by Theodore Pelle but by two of his children.

[80] Fundamental to the Defendants' case is the contention of Dorian Pelle that her father was never a part of Buxies United. This contention calls for explanation of the following: 1. His presence at the meetings of Buxies United at the meeting held in May of 1996 and 1999; 2. Pelle's report on the progress of the business; 3. The income he received from the business; and 4. The sale of the thirty-eight tyres and for which, according to Keithly Spencer, he could not account.

[81] The Court accepts the evidence relating to the foregoing as being factual and as such considers that there is no explanation. Therefore, notwithstanding Pelle's registration for tax purposes, the Court determines that he was a partner in Buxies United. And, not only that, according to Wellington Pelle he was entitled to share in the profits thereof. Outside of this the evidence is that he received special treatment by the family and even occupied a family house at Potters.

ISSUE NOS. 2, 3 & 4

WHETHER THE CLAIMANTS ARE ENTITLED TO POSSESSION OF THE LAND SITUATE AT TOMLINSONS ON WHICH THE TYRE REPAIR SHOP IS OPERATED

WHETHER THE DEFENDANTS ARE LIABLE IN TRESPASS

WHETHER THE CLAIMANTS ARE ENTITLED TO INJUNCTIVE RELIEF AGAINST THE DEFENDANTS

[82] The complete answers to these issues lie in the testimony of Keithly Spencer under cross-examination. It is as follows: "I am a motor mechanic. I have been at that location for a very long time. The land is owned by the Government of Antigua and Barbuda. I did not lease it. I squatted. The area occupied is a very large area. It is fairly large about 2 ½ acres. I used the entire acre and the road. It is not my land."

[83] The submission of learned counsel for the Defendants is equally to the points and warrants repetition: "It was generally accepted that the lands at Tomlinson's were owned by the Government and Keithly was squatting there. There was no evidence that Buxies United, as a legal entity had any claim to those lands. As a result, none of the Claimants has any *locus standi* to bring an action against the Defendants for trespass or possession. Further,

they cannot move the Court, to make a declaration that the Defendants have no legal rights in or beneficial rights to the said land. They had no legal authority to seek such a declaration. Only the Government – as owner, could seek such a declaration. Additionally, the Claimants could not claim injunctive relief to keep the Defendants from going on the lands as they had no legal or equitable interests in the land.”

[84] Therefore the determination of the Court is *cadit qaestio*. Put otherwise, the Claimants are not entitled to possession and the Defendants cannot be liable in trespass. And since injunctive relief has as its starting point the existence of rights, in this case rights to land, the matter ends in terms of injunctive relief.

ISSUE NO. 5

WHETHER THE DEFENDANTS ACTED LAWFULLY IN TAKING OVER THE CLAIMANTS' BUSINESS, NAMELY THE TIRE REPAIR SHOP

[85] The evidence is that on 2004 the Defendants, by their own admission changed the locks on the trailers in which the business was housed. But the Court has already determined that the business is owned by the partners of Buxies United and in so doing has rejected the Defendants contention that Theodore Pelle was never part of Buxies United and as such had his own business.

[86] The submission by learned counsel for the Claimants, Mr. George Lake, read thus:

“6. We ... submit that the Court should find that Theodore Pelle never established a Tyre Shop at Tomlinson and there is no allegation that and/or presumption of advancement that the parties gave him the equipment and tools and let him occupy the lands as a gift and that at all times he worked there as a member of the partnership called Buxies United.

7. What therefore if this submission was upheld is the effect of the actions taken by the Defendants in unilaterally moving onto the property occupied by the Claimants wrongfully taking possession of the Claimants business and losing and/or destroying property belonging to the partnership and the Third-named Claimant in particular.

8. The Claimants have prima facie established the cost of the equipment, tools and other parts that were on the premises that have been pushed up, lost or destroyed, and the respondent did not challenge the amounts. The Defendants have a duty to account to the beneficial owners for all materials used, lost or destroyed during the period in which the Defendants have been in occupation. The Defendants have a duty to account to the Claimants for all monies earned by the tyre business during the period.”

[87] In the circumstances, learned counsel for the Claimants tenders the following conclusion with which the Court agrees:

“The Defendants have no right to be in possession of the premises or equipment and tools located thereon. In law the estate of Theodore Pelle is to be dealt with by an Administrator appointed by the Courts. They have interfered with the rights in regards to the Estate of Theodore Pelle. The Beneficiaries of the Estate of Theodore Pelle number at eleven persons (his children). Theodore’s Estate can only amount to what interest he had in the Tyre business. The Defendants acted unlawfully and without authority when they entered the premises took control of the business and prevented their siblings and the Claimants from their use and enjoyment of the Business.”

[88] Given the fact that the unlawful action of the Defendants is not in doubt, the Court agrees with the Claimants that the Defendants must account for the loss or damage to equipment tools and other materials that were on the premises of the tyre shop plus all monies earned by the business during the period of their occupation.

ORDER

[89] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. The decision of the partners of Buxies United to establish a business in the form of a tyre shop was implemented by the Claimants.
2. The business is owned by the said partners and Theodore Pelle was one such partner of Buxies United.
3. The Claimants are not entitled to possession of the land situate at Tomlinsons on which the said tyre shop is operated; and the Defendants have no legal or beneficial interest in the said land.
4. The Defendants are not liable in trespass with respect to the said land situate at Tomlinsons.
5. The Claimants are not entitled to injunctive relief against the Defendants with respect to the said land situate at Tomlinsons.
6. The Defendants acted unlawfully in taking over the Claimants’ business operated on the said land at Tomlinsons.
7. The Defendants must, within thirty days of the date of the service of this order file and serve on the Claimants account supported by affidavit, of loss of or damage to equipment, tools and other materials on the premises of the tyre shop and of all monies earned during the period of occupation.

8. Damages, if any are to be assessed.

Errol L. Thomas
Judge