

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

CLAIM NO: ANUHCV 2006/0110

BETWEEN:

JOYCELYN ROBERTS

Claimant

And

KENRICK ROBERTS
SYLVIA ROBERTS UWANDU
JOSEPH ROBERTS

Defendants

Appearances:

Mr. Steadroy Benjamin for the Claimant
Dr. David Dorsett for the Defendants

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2007: April 23, July 13
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JUDGMENT

[1] **Thomas J:** On 13th April 2006, the Claimant filed an amended fixed date claim form seeking the following:

- (a) A declaration that the first and second defendants and each of them whether by themselves, or by their servants or agents or otherwise howsoever are not entitled to remove, eject or forcefully throw out the Claimant and the Claimant's infant daughter from the family home and premises situate at Jennings Village in the Parish of Saint Mary in Antigua and Barbuda.
- (b) A declaration that the Claimant is beneficially entitled to a share in the family home situate at Jennings Village in the Parish of Saint Mary in the State of Antigua and Barbuda.

- (c) An injunction restraining the defendants and each of them whether by themselves or by their servants or agents or otherwise howsoever from forcefully removing, ejecting, forcefully throwing out or attempting to remove, eject throw out the Claimant and the Claimants daughter from the family home and premises situate at Jennings Village and further from doing or suffering to be done anything on the property which shall in anyway disturb or inconvenience the Claimant.
- (d) Damages for trespass.
- (e) That provision be made for the costs of this application.

[2] In her statement of claim the Claimant pleads that she is the lawful daughter of Joseph Roberts and the late Sarah Roberts all of Jennings Village. It is further pleaded by the Claimant that she has seven other siblings and that the first and second defendants are two such siblings.

[3] At paragraph 4 of the statement of claim the Claimant says that all of her siblings lived at the family home with their parents until everyone except the Claimant left the said family home and went to reside in their own homes and that the Claimant remained in the home, where she has resided from birth to the present time, to take care of her parents.

[4] It is the Claimant's further plea that on or about 28th June 1982, during the course of the marriage between Sarah Roberts and the third defendant, the said third defendant obtained title in his sole name of land and premises referred to in the Land Registry as Registration Section: Jennings; Block 53-1487 D; Parcel 58 ("Parcel 58"). A further averment is that: "Despite the fact that the Land Certificate was in the name of the third Defendant held the said [Parcel 58] in trust for himself and his wife Sarah Roberts."

[5] It is the Claimant's contention that in or about the year 1990 following a discussion between family members, it was decided and agreed that the family residence should be demolished and rebuilt as a family home with monetary contributions to come from all family members.

- [6] The Claimant avers that on completion of the home, the Claimant, the third Defendant and the Claimant resided at the family home until the Claimant's mother's death on 27th April 1992.
- [7] The Claimant says that on 16th February, 2006 she received a letter from the third Defendant asking her to vacate the family home by 28th February 2006, which letter was responded to by the claimant's attorney-at-law. Further that on the afternoon of 28th February 2006 the Defendants arrived and demanded that the claimant vacate and upon the claimant's refusal the first Defendant proceeded to kick down the Claimant's bedroom door and with the second Defendant unlawfully remove the claimants personal belongings and those of the claimant's daughter.
- [8] As a result of trespass to her personal belongings, the Claimant contends that she suffered loss and damage. For this reason the amount of \$4,289.00 is claimed as special damages. Also claimed is a declaration that the Claimant is beneficially entitled to a share in the family house and premises situate at Jennings; damages for trespass and costs.

DEFENCE

- [9] In their defence the defendants aver that the third Defendant is the owner of Parcel 58 where the third Defendant, his wife Sarah Roberts, and the children of the union lived.
- [10] With respect to the Claimant, the defendants say that unhappy differences developed with the third defendant which resulted in the Claimant being locked out the house by the said third defendant in or about 1989. It is further contended that the Claimant lived with a relative and only returned to the third defendant's house in or about 1994 as a licensee or a tenant at will.
- [11] In terms of the ownership of Parcel 58, the defendants admit that it is owned by the third Defendant but deny that the third Defendant held the property in trust for himself and his late wife as there was no such agreement, arrangement or understanding at the time of the acquisition or at any other time. It is further contended that the house was rebuilt pursuant

to discussions and an agreement between the second and third defendants with the financing provided by them from their own means.

COUNTERCLAIM

[12] In their counterclaim the defendants plead that on 30th March 2006, the third Defendant granted a power of attorney to the second Defendant with respect to Parcel 58. Further, that on 16th February 2006 the third Defendant revoked the licence and/or the tenancy at will of the Claimant to abide and remain at the property. Despite this situation, the defendants say that the Claimant has refused to give up possession of the property.

[13] The second Defendant counterclaims:

1. Possession of the property described as Registration Section: Jennings, Block 53 1487 D, Parcel 58 to the second defendant.
2. Rent and or mesne profits until possession is given up by the Claimant to the second defendant.
3. Damages for continuing trespass.
4. Any further or other relief that the court deems just;
5. Costs.

REPLY

[14] In her reply the Claimant joins issue with the defendants on many of the matters alleged in their defence, including the averment that the Claimant was locked out of the family home.

In this regard the following is pleaded at paragraphs 7 to 9 of the reply:

- "7. Except for the period in 1994 when the Claimant left Antigua to give birth to her daughter the U.S.A. the Claimant never left the family home as alleged at paragraph 5 of the Defendant's Defence; the said Claimant merely took some of her clothes to Agatha Peters' house so she could change to go out with her paramour and sleep over sometimes when the Claimant went out at night with her paramour.
8. The Claimant repeats the contents of paragraphs 3 to 7 of her REPLY and avers that she always resided in the family house, never resided with a relative and remained in the family home care for the third Defendant and her mother Sarah Roberts now deceased.
9. As to paragraph 7 of the Defence the Claimant returned to Antigua from the U.S.A. with her infant daughter in November 1994 and resumed her residence in the family home. The

Claimant has resided there ever since as of right and not as a licensee or a tenant at will. There is no dispute over land."

- [15] With respect to the money collected from family members, the Claimant contends that they were placed in an account in the joint name of Sarah Roberts and the third Defendant and that after the death of Sarah Roberts the third Defendant removed her name and replaced it with that of 'ELMEDA JONES' his present wife.

ISSUES

- [16] The following are the issues for determination:
1. Whether the Claimant is entitled to a share of family home on parcel 58.
 2. What is the status of the Claimant's occupation of the family home.
 3. Whether the defendants are liable in trespass.
 4. Whether the second and third defendants are entitled to exclusive possession of the family home.
 5. Whether the claimant is liable for continuing trespass.
 6. Whether the second and third defendants are entitled to rent and or mense profits.

THE EVIDENCE

JOYCELYN ROBERTS

- [17] In her witness statement Joycelyn Roberts says that she is employed at the Antigua Labour Party Secretariat and also that she is one of eight lawful children of the third Defendant and their mother, Sarah Roberts.
- [18] According to the witness Parcel 58 was purchased by the third Defendant in 1948 and the said third Defendant, her mother, her siblings and herself lived on the said property. The witness says further that the said property was purchased by means of a pooling of resources of her father, the third Defendant, and her mother. This pooling went on for approximately four years.

[19] At paragraph 10 to 11 of her witness statement Joycelyn Roberts speaks to a common intention regarding the property in these terms:

“10. In fact, that common intention of the property being bought for my mother and father for themselves and their family can be deduced from the fact that all of my siblings lived on that piece or parcel of land until each either migrated or got married and began his or her own family. I lived on the parcel of land from the date of my birth on 26th November, 1955 up to the present time except for such periods of time as I shall outline hereunder”.

11. At present the second defendant and myself occupy the said premises each with our respective child.”

[20] At paragraphs 13 and 14 of her witness statement the claimant speaks of the agreement to rebuild the family home after the passage of hurricane Hugo.

[21] At paragraphs 37 to 41 of her witness statement Joycelyn Roberts gives testimony as follows:

“37. From the time the second Defendant returned to live in Antigua in 1997, problems developed among the family members and so much so that the second Defendant was about to engage in legal battles with the third Defendant.

38. The second Defendant began to question my right to stay in the family home and she swore that she would do all in her power to make sure that our father got me to leave the family home.

39. As a result of the second Defendant’s harassment of the third Defendant, his attitude towards me changed to one of hostility. In short, the relationship deteriorated between the third Defendant and me.

40. The second Defendant did everything in her power to make life uncomfortable for me and my daughter in the family home.

41. On the 16th February, 2006 I received a letter from my father asking that I vacate the family home by 28th February, 2006; my solicitors replied thereto by letter dated 27th February, 2006.”

[22] According to the witness, on the afternoon of 28th February, 2006 the three defendants came to the family home, demanded that she leave, and upon her refusal proceeded to kick down the bedroom door and forcibly remove her personal belongings and those of her daughter.

[23] With respect to the notion that her father asked her to leave the house the witness said this only happened once which was the latter. She added that she was relying on her father's promise.

[24] Ms. Roberts ended her testimony under cross-examination by saying that she has a right to stay where she now lives and that she wanted her sister to pay for the damage to her things.

FRANCEINE JOSEPH

[25] In her witness statement Mrs. Franceine Joseph says that she is the wife of Egen Joseph, the fifth child of the third Defendant and Sarah Roberts, deceased, the sister of the Claimant and also of the first and second defendants and that at all material times she lived with her husband immediately west of the Roberts' family residence.

[26] With respect to the Claimant the witness says that she remained at the family home in Jennings after all of her other siblings had left to reside in their own home. According to the witness, the Claimant remained in the home to take care of the upkeep of the home and also her parents in various ways.

[27] Concerning her relationship with her siblings and her father, the witness says that they were excellent and that with her father was envied by her siblings.

[28] Mrs. Franceine Joseph says further that with the second Defendant she left Antigua to study in 1983 but while she returned in 1986 the second Defendant continued to live in the United States until 1997 after the death of her husband in 1993.

[29] At paragraphs 6 to 11 of the witness statement the following evidence is given:

“6. Prior to the return of the second Defendant to Antigua the third Defendant, my mother, the Claimant the said second Defendant and myself decided that the family residence should be renovated, modified and extended. The third Defendant and mostly my mother would discuss with me plans for construction.

7. My father repeatedly told me and my husband that he was an old man and that the children would have to “chip in” and contribute to the construction of the house.

8. I repeat paragraph 3 hereof and state that whilst she was living there with my parents in the home, the Claimant contributed significantly to the old house, I recall inter alia the said Claimant fixing the bathroom, tiling the floor and acquiring steel gates for the veranda.
9. Hurricane Hugo passed shortly after the Claimant had spent greatly to maintain the house and a portion of the fence sustained damages.
10. The Claimant repaired the said damages but the decision was taken to renovate, modify and extend the said house; see paragraphs 6 & 7 hereof.
11. The Second Defendant came in 1990 to visit to touch base with the family knowing that the house would be constructed. The Second Defendant left for the U.S.A before the work began.”

[30] With respect to the occupation of the family home the witness says that after her mother death in 1992, her father remarried in 1994 and lived in the said home with his wife together with the Claimant until 1997 when the second Defendant returned to Antigua and took up residence in the same home.

[31] According to Mrs. Franceine Joseph, a dispute arose between the second and third Defendants over money with the respect that the third defendant's wife left the family home and went to reside at Piggotts and was followed by her husband. It is the witness' further evidence that on 28th February 2006 her attention was drawn by the loud shouting of the second defendant in the family home – the second Defendant was demanding that the claimant leave the family home. This resulted in the police coming to the home on three occasions and on one occasion the second Defendant was taken away in a police vehicle.

[32] In cross-examination Mrs. Franceine Joseph testified that the partners to the venture were: herself, her husband, her mother, Joycelyn Roberts and her children who were then at home. The family venture involved discussion about the house, money and labour. The witness also testified that she was part of the venture but got nothing in return. The same was the case with her husband.

[33] It is the testimony of the witness that she had discussions with Sylvia about building the house but did not recall any conversation about buying land. She also said that their relationship was close but they never talked about buying land. According to the witness, the discussion was always about the family home and Joseph Roberts and Sarah Roberts

who lived there would be the owners but the others would have access as they were members of the family.

[34] With respect to the financial contributions by the Claimant, the witness said that the \$7000 was on one occasion; however she was clear in her mind that contributions were made on other occasions but could not say if it was box money. Nor could she give a grand total. The witness further testified as to the Claimant's contribution to the upkeep of the family house. According to her, the Claimant made repairs to the roof after hurricane Luis, she painted it, bought curtains and also purchased items to clean the house. The witness went on to say that because she lives close enough she is aware of these matters and always in and out of the house. The witness went on to say that Sarah does the minimum.

[35] In terms of the relationship between the Claimant and the third defendant, Mrs. Franceine Joseph said that there was a discord. She testified further that she was not aware that Joseph Roberts was trying to get Joycelyn out of the house.

[36] In re-examination Mrs. Franceine Joseph gave evidence that she has a good relationship with her father, the third defendant. She also said that she was not aware of any financial contribution from Sylvia. The witness added that at the time of the discussion regarding the rebuilding of the family home, Sylvia was in the United States of America. Also absent were Kenrick and Fitzroy.

[37] Mrs. Franceine Joseph ended her cross-examination by saying that it was Sylvia who orchestrated the idea of getting Joycelyn out of the house; and that the re-built house was owned by the family members being her father, Joycelyn and Sylvia.

EGEN JOSEPH

[38] In his witness statement Egen Joseph says that he is the brother-in-law of the Claimant and the first and second Defendants and son-in-law of the third Defendant.

[39] At paragraph 3 of the said witness statement the witness speaks thus:

"3. For approximately thirty-two years I used to live and still live adjacent to all the litigants and siblings of the third Defendant and Sarah Roberts, deceased. All the siblings except the Claimant, Joycelyn Roberts left the family home and resided in their own home. The Claimant never lived elsewhere except during the period when I rebuilt the family home at Jennings and later when the said Claimant went to the United States to have her baby".

[40] In so far as the rebuilding is concerned, the witness says further that the construction of the house commenced in October 1990 and was completed by mid 1991. The rebuilding was in cash transaction with money received from Sarah Roberts and to a lesser extent from the third Defendant. The witness says further that he was not paid for his work as contractor except for money he received to pay his utility bills.

[41] With respect to involvement of the Claimant in terms of labour the witness says that she was involved during the demolition of the old house and at all stages during the construction of the new house – even on weekends and she even also cooked for the workmen on the job. For this she never requested payment for her services rendered.

[42] In re-examination Egen Joseph said that in the rebuilding of the family home, some people provided finance while others provided labour. However, as far as Sylvia was concerned, he said that she was not around and he could not say that she provided finance.

[43] In ending his re-examination, the witness testified that before Sylvia returned to the house everyone was on good relations. After that everything became a problem. He ended by saying that Joycelyn was the workhorse of the home.

AGATHA PETERS

[44] In her witness statement Ms. Agatha Peters says that she lives in Jennings Village and that she is the first cousin of the Claimant and her siblings and in fact grew up with the third Defendant, her deceased aunt, Sarah Roberts, on the same property now the subject of these proceedings.

[45] The witness says that during her time at the home there was always a close, loving relationship among the siblings and their parents. This was punctuated by two events.

The first was an extramarital relationship between the third Defendant and one Elmeada Jones who after the death of Sarah Roberts became the said third Defendant's wife. The second was the involvement of the Claimant with a married man. This, according to the witness, led to the Claimant being locked out of the family home causing her to permit the Claimant to sleep at her house for one night.

[46] At paragraphs 19 to 25 of her witness statement, Ms. Peters gives an account of the Claimant's involvement in the reconstruction of the family house and beyond.

[47] With respect to the situation of the family home, Ms. Peters says that it had always been the view held by all concerned persons, to include her dead aunt Sarah Roberts, that the home will always be a family home in which the Claimant was expected to reside. It is the contention of Ms. Peters that she was present at the discussions between the third Defendant and her dead aunt.

[48] In an amplification of her witness statement, Ms. Peters said that while living at the Roberts home she always heard Mr. Roberts say he wanted to buy land. According to her, Mr. Roberts and her aunt worked hard to buy the land. And to this end her aunt used to buy fish to sell over.

JOSEPH ROBERTS

[49] In his witness statement filed on 12th January 2007, Joseph Roberts says that he is the father of the Claimant as well as the first and second Defendants. He also says that he is the registered owner of Parcel 58, the subject of the dispute which he purchased in 1948.

[50] At paragraph 4 of the witness statement the witness details the nature of the dispute with the Claimant in so far as her male companion is concerned, and her attitude towards him and his action in locking her out of his house causing her to seek accommodation with a relative, Agatha Peters. According to the witness, these matters took place in the late 1980's.

[51] At paragraphs 5 to 7 the witness gives evidence concerning the reconstruction of his house and those who did and did not contribute to the process.

[52] The evidence continues at paragraphs 10 to 12 thus:

10. I allowed my daughter Joycelyn to return to my house in 1994. She came with her newborn daughter. As a grown woman she had no right to be in my house but as a matter of fatherly kindness she was permitted to reside in my house with the exception that in a reasonably short time she would get herself on her feet and be living in her own house with her own family. This is the natural order of things.

11. I know nothing about my daughter Joycelyn being called 'Joyce broom' by all and sundry. I also know nothing about Joycelyn assisting in significant or substantial way with the upkeep and maintenance of the house.

12. Over the years I have asked my daughter Joycelyn to leave the house. This I have done repeatedly and to no avail. She has not heeded my request and continues to tarry at my house. She will not move. She will not budge. I am at my wits end. Her continued presence in my house is putting a strain on family relations. Finally in mid-February 2006 I wrote to her asking that she leave my house by the end of the month. When at the end of February 2006 Joycelyn still had not left my house I directed that her property be moved out. On account of what happened then I now find myself in court proceedings fighting to regain control of my own property and who may stay there".

[53] In an amplification of his witness statement Mr. Joseph Roberts further testified that in February last year he was in Jennings at his house at which time he saw Kenrick and Joycelyn but could not remember anyone else being there. But he did recall that Agatha Peters was not present. In fact, according to him, she lives in Golden Grove.

[54] With respect to Egen Joseph, the witness said that he could not recall a conversation with him about the house or about persons chipping in to repair the house. Nor can he remember Agatha Peters being present when any conversation about the house took place.

[55] Concerning Joycelyn Roberts, the Claimant, said he asked her to leave by notice and always told her to find a place to go. He said that he did this because his companion wanted to come to the house.

SYLVIA ROBERTS

[56] In her witness statement filed on 12th January 2007, Sylvia Lolita Roberts says that she is the sister of the Claimant, and the first Defendant and that the third Defendant is their

- father. She also says that the house in dispute is owned by her father and further that on 3rd March 2006 her father “appointed me power of attorney with respect to the property in dispute”.
- [57] With respect to the property in dispute the witness at paragraphs 7 to 12 of her witness statement gives details of the rebuilding and related matters.
- [58] In cross-examination Ms. Sylvia Lolita Roberts testified that she knew Agatha Peters as she cared for her and her siblings and was not sure that she would have reason to lie to anyone of us.
- [59] Concerning the two events of the advent of hurricane Hugo and the locking out of her sister from the family home, the witness testified that Hugo came in November 1989 but she was not in Antigua. However she was present when her sister was locked out in the same month.
- [60] With respect to her relationships with her siblings Ms. Sylvia Roberts had this to say: “In 1990 there was peace and harmony and also in 1992 when I came for my mother’s funeral. In 1997 when I came back there was peace. What Franceine said about this period is a lie. At that time there was Joyce, Michelle and my father’s paramour, Elmeada Jones. My father then got married and went to live in Piggotts. Then it was Joyce and her child and me and my child. I came back in 1997. I was not here when my father got married”.
- [61] Ms. Sylvia Roberts went to testify that she did not want to put her sister on the street. Rather, it was her father who wanted Joyce to leave the house. The witness then continued by saying that she wanted Joyce to leave “because the place was mine”.

KENRICK ROBERTS

[62] In his witness statement filed on 12th January 2006 Kenrick Roberts says that he is a mason by profession and the brother of the Claimant and second Defendant and the son of the third Defendant.

[63] The witness explains his involvement in the reconstruction of his father's house in this way at paragraph 5:

"5. Back around 1990 my father's house was reconstructed. I worked as a mason on the house and received wages. I was paid wages as would be the case if I were working on any other job. I did not make any financial contribution to the building of the house. I was not part of any family venture involved in financing the rebuilding of the house. I find as quite astonishing statements by Joycelyn that she contributed \$32,000.00 towards the building of the house. I do not know of her making any such contribution. In fact over the years Joycelyn has told me upon numerous occasions that she would not contribute one dollar to the reconstruction of the house".

[64] In cross-examination the witness said that the reconstruction of the house took roughly eight months. He also said that he remembered talking to Egen Joseph but he did not tell him about a family plan to rebuild the house even though he had worked for him prior to the event. He said he was paid \$700.00 per week and not \$750.00. The witness added that both of them did most of the work on the house. He also testified that he was not present when Egen and his father discussed the rebuilding of the house.

[65] With respect to assistance in the building process, the witness testified that Franceine and Joyce did not assist with blocks. As far as Mr. Kenrick Roberts is concerned, Joyce did nothing as she was not around. He said that he was the last person to leave the area. He said further that Joyce was not around to sell in the shop. This was done by his father and mother and he assisted in this regard.

WILFRED ROBERTS

[66] Wilfred Roberts in his witness statement filed on 11th January 2007 says that he is the son of the third Defendant and brother of Joycelyn Roberts, Kenrick Roberts and Sylvia Roberts, the other parties to the action.

- [67] At paragraph 4 to 6 of the said witness statement his evidence, in part, is as follows:
- "[4] ... I was living in Antigua at the time my father's house was being rebuilt in or about 1991. I was present at the blessing ceremony for the house.
 - [5] I did not contribute any money to the rebuilding of the house. I was not part of any venture with any other family member or my parents in building the house.
 - [6] I have always known the house to be my father's house. My mother died in 1992. When she died I did not think I was to get a part of the house. It was always clear to me that my father could do as he pleased with his house."

[68] In commenting on the evidence of Egen Joseph, Mr. Wilfred Roberts said he knew the individual but was not part of the venture mentioned by that individual.

[69] In cross-examination the witness said that he worked on the rebuilding on Sundays to help his father and sister. He also said that he was aware that the house was to be broken down and that he had learnt this from his father.

FITZROY ROBERTS

[70] Fitzroy Roberts in his witness statement filed on 11th January 2007 says that he is the son of the third Defendant and the brother of the other parties to the action.

[71] The witness says that he is aware that his father's house was rebuilt in or about 1991 but he was not apart of the rebuilding. Nor was he approached by any party to provide money for the reconstruction of the said house. He added that he did not provide any funds to help rebuild the house.

[72] In commenting on the evidence of Egen Joseph, the witness said that he was not part of any venture or agreement concerning the house.

[73] In cross-examination Mr. Fitzroy Roberts said he was not part of any discussion regarding the house. He also said he did not work on the house.

[74] In re-examination the witness said he has nothing in the house, never chip-in on anything and does not own anything there.

ISSUE NO: 1

WHETHER THE CLAIMANT IS ENTITLED TO A SHARE OF THE FAMILY HOME ON PARCEL 58

[75] The Claimant's case on this issue is based on the existence of an agreement among certain members of her family to the effect that the house which once stood on Parcel 58 was to be demolished and a new home erected, based on contributions 'chip ins' from those said persons.

[76] The applicable principles of law in these circumstances are well settled. In the recent case of GRANT v. EDWARDS [1986] ALL ER 426 the principles were restated by Sir Nicholas Brown Wilkinson VC as follows:

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the Claimant), in order to establish a beneficial interest has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest; (b) that the claimant has acted to his or her detriment on the basis of that common intention."

COMMON INTENTION/AGREEMENT

[77] It follows that the first determination to be made is whether or not there was a common intention or agreement among the parties concerned.

SUBMISSIONS

[78] Learned counsel for the claimant Mr. Steadroy Benjamin has submitted as follows:

"In about the year 1990 Hurricane Hugo struck Antigua and Barbuda and did some damage to the country as a whole. The family house was damaged and discussions ensued among members of the family as a result thereof it was decided to rebuild a family home. There is conflicting evidence as to who the parties to the discussions but we submit that the testimony of Egen Joseph, the contractor who built the house, was credible truthful and honest. In any event the house was built from the combined financial contributions of some of the family members and labour provided by others."

[79] For the Defendants it was submitted by Dr. David Dorsett as follows:

"The Defendants deny that the rebuilding of the house was a result of discussions among family members as alleged by the Claimant. The Defendants contend that the rebuilding of the house was pursuant to discussions and an agreement between the 2nd and 3rd Defendants. Furthermore, the 2nd and 3rd Defendants contended that they financed the reconstruction

themselves and did not solicit monies from other family members (paragraphs 11 and 12 of the Defence).”

[80] As the submissions indicate, there are two versions of a certain event so the question of the Court is which one is credible and accords with the law.

[81] On the Claimant's side the following evidence is contained in her witness statement at paragraphs 13 and 14:

“13. In or about the year 1990 following the destruction done to our home by Hurricane Hugo, discussions were held among family members who lived at home and the Second Defendant who at the time was living in the United States of America. It was decided and agreed that the family residence should be demolished and rebuilt.

14. At all material times it was clearly understood that the house would remain a family house; in fact, the third defendant made it clear that he did not have enough money to undertake the venture solely; as a result thereof he stated that all of the concerned family members would have to chip in and make a monetary contribution towards the proposed construction. Everything was agreed and construction of the new family home commenced in the year 1990.”

[82] In cross-examination, Ms. Joycelyn Roberts testified that at the time of discussion Wilfred, Fitzroy, Franceine Joseph, Egen Joseph their children (then teens) and herself were involved. She added that her father was also involved. When it was put to her by learned counsel that there was no such plan, this was denied and she went on to explain that everyone was to contribute to the family home; but no one was supposed to get anything. The witness explained further that Franceine's contribution was the expansion of the family home on to her land.

[83] Mrs. Franceine Joseph is very much in the equation and at paragraphs 6 and 7 of her witness statement she says as follows:

“6. Prior to the return of the second Defendant to Antigua the third Defendant, my mother, the Claimant the said second Defendant and myself decided that the family residence should be renovated, modified and extended. The third Defendant and mostly my mother would discuss with me plans for construction.

7. My father repeatedly told me that he was an old man and that the children would have to 'chip in' and contribute to the construction of the house.”

[84] In cross-examination Mrs. Franceine Joseph explained that the partners to the venture were herself, her husband, her mother, Joycelyn Roberts and her children who were teens

at the time. According to her, the family venture involved discussions about the house, money and labour. The witness also explained that she was part of the venture but got nothing in return as with her husband.

[85] As far as the implications of the venture are concerned Mrs. Franceine Joseph testified that she could not say that there was an agreement that the children or her husband would own the house. According to her it was not an agreement for individuals, it was a family home and the third Defendant referred to it in this way.

[86] It is the testimony of the witness that she had discussions with Sylvia about building the house but did not recall any conversation about buying land. She also said that their relationship was close but they never talked about buying land. According to the witness, the discussion was always about the family home and Joseph Roberts and Sarah Roberts who lived there would be the owners but the others would have access as they were members of the family.

[87] Egen Joseph in his witness statement says that after hurricane Hugo in 1989 and the severe damage to the family home, he was involved in discussions with the third Defendant, his mother-in-law, Sarah Roberts and the Claimant concerning the reconstruction of the said house. According to the witness, it was agreed to reconstruct the said house; but the third Defendant indicated that he did not have all of the money and his children would have to 'chip in'.

[88] With respect to the second Defendant and the reconstruction of the family home, Mr. Egen Joseph says at paragraph 9 of his witness statement that:

"Of the children living overseas, the second defendant was the only child who came to Antigua before the construction began and was privy to the plans for reconstruction. The said second defendant however left before any work began."

[89] When the witness was cross-examined on his evidence at paragraph 9 of his witness statement that the second Defendant knew about the plan for the reconstruction of the

house, he testified that Sylvia knew about the reconstruction as her parents told her about it and that she, Sylvia, told him about the said plan.

[90] In terms of the financing of the reconstruction, the witness confirmed his testimony in chief by saying he only received money from Sarah and Joseph Roberts. He also said that he was party to a venture involving Sarah and Joseph Roberts, Franceine Joseph, Angel Joseph, Joycelyn Roberts and Wilfred Roberts.

[91] The witness' further testimony is that no calculation was done as to the cost of the house but that it was one that was badly needed. He also said that he was not sure as to the amount of money he received from his deceased mother-in-law Mrs. Sarah Roberts.

[92] Returning to the matter of the agreement, Mr. Egen Joseph said that the idea was that those who contributed would share. According to Mr. Joseph, the third Defendant said he did not want a house – 'me nah want no house'. The witness said that he understood it to mean that he was going to die soon so that all of us would have to build the house but he would be a part-owner.

[93] Joseph Roberts at paragraphs 5 to 7 of his witness statement gives evidence concerning the reconstruction of his house in the following terms:

“5. My house was later reconstructed. The reconstruction started in October 1990 and finished in May 1991. The house was rebuilt with savings of my wife and myself and with financial contribution from my daughter Sylvia. Sylvia had specifically approached me about having the house rebuilt and her contribution to rebuilding the house.”

6. There was no financial contribution from Joycelyn. I must state in the clearest of terms that Joycelyn did not contribute \$32,000.00 as she is claiming. I must confess that I have no idea where this figure is coming from. The supposed \$32,000.00 contribution is an untruth and I am deeply hurt to know that my daughter is making such a statement and a claim.

7. Neither was there any financial contribution from my son Kenrick. My son-in-law Egen Joseph managed the reconstruction of the house. Kenrick who is a mason assisted Mr. Joseph in the physical construction of the house.”

[94] Under cross-examination on the issue of the rebuilding, Mr. Joseph Roberts testified that there was no damage to the house and therefore he had no discussion about building a new house. He went on to testify that in 1990 he had a discussion with Lolita and his wife

about building the house as Lolita felt that the house should be modernized. According to the witness, the modernization was to be effected by way of cash. He noted however that Lolita left in 1989; but he again denied that he held any discussion with Egen Joseph about the new house and that he said 'me old and everyone would have to chip in'.

[95] The witness also said that he paid a man, known to Egen Joseph \$6,000.00 to draw the plan for the house and that he paid Egen's passage twice to go to Puerto Rico and gave him the money he needed.

[96] Sylvia Roberts in her witness statement at paragraphs 7 to 12 speaks to the property in dispute in these terms:

"7. The renovation and reconstruction of the house was principally my idea. The reconstruction of the house started in or about October 1990 and was completed in or about October April/May 1991. The house received its blessing in or about June 1991. It was a momentous occasion. I recorded the blessing ceremony on videotape.

8. Prior to the rebuilding of house I had entertained thoughts of purchasing land and building a house for myself. I raised the idea with my sister Francine with whom I was very close. Francine had suggested to me that maybe I should consider rebuilding the house of our father. I indicated to Francine I was not interested in pouring money into the house we had all grew up in and there arising uncertainty as to whom the house eventually belonged to. Francine told me, "When you put your money into the house it has to be yours."

9. I approached my father and mother on the matter and it was decided that my father and I would rebuild the house and in due course I would be the owner of the house. Both my father and I contributed funds to reconstruct the house. I know nothing about the Claimant contributing \$32,000.00 towards building the house. To my knowledge any statement to the effect that the Claimant had injected the sum of \$32,000.00 into the rebuilding of the house is simply untrue. The rebuilding of the house was not a joint family venture. My brother the 1st Defendant, a mason was paid wages for his work that he did on the house.

10. During the construction of the house I was overseas for approximately four months. Whilst the house was being reconstructed my parents lived with my sister Francine. The Claimant continued to live with Agatha Peters in the village. Prior to reconstructing the house in earnest we rebuilt quarters from which my mother's shop could continue to operate. These new quarters contained space from which my parents could cook their meals and feed themselves.

11. During the period of construction, the Claimant frequented the premises of my parents. On numerous occasions my parents entertained her by providing for her meals.

12. My sister, the Claimant returned to my father's house in or about 1994. My sister at that time had a daughter."

[97] In cross-examination on the issue of the house Sylvia Roberts' testimony is as follows: "While here in 1990 I had thoughts of buying land to build a house. I spoke to my sister. She told me about Fryes. I did not hear my lawyer ask about land in Fryes in Court. She suggested that I repair the house and I told her that I would have to own it. I went to my dad. He said it was ok. I then went to Egen and Franceine and told them that my father had consented. I did not hear anyone ask Egen or Franceine any question on this issue, but I definitely said those words. Egen told me he could use his plan man. The plan man told me what he was going to do and I was satisfied. I did not tell my lawyer about these details about the plan. In terms of the plan I left everything up to my father. I was not in Texas when the question of the rebuilding to the house arose. No call was made to me. It was my father and I alone who contributed to the rebuilding of the house. My mother did not contribute. My father was the financial provider. I discussed the plan with my mother and the money was to come from my father. I told my father that he was in control. My father and I did not go anywhere in connection with the financing of the house. My father and I went to a bank to open an account in 1989. We went to Swiss American. It was located on Upper High Street. It was not in the Bencorp Building. My father took me. He had money on the bank and he would put it with mine. Egen Joseph was supposed to be the builder. He was not in the picture at the beginning."

[98] Kenrick Roberts in his witness statement said that around 1990 his father's house was reconstructed but he was not part of any family venture in this regard. In cross-examination the witness said that he recalled talking Egen, even before the reconstruction; but there was no mention of about the family plan.

[99] Wilfred Roberts also stated in his witness statement that he was not part of any venture with any other family member in connection with the rebuilding of his parents home. In cross-examination he said he was aware that the said house was to be broken down and rebuilt. This he learnt from his father.

- [100] Fitzroy Roberts in his witness statement said that his father's house was to be rebuilt in or about 1991 but he was not part of the process. In cross-examination the witness testified that he was not part of any discussion regarding the rebuilding of the said house.
- [101] Based on the totality of the evidence of the Claimant, the defendants, Francine Joseph, Egen Joseph, Fitzroy Roberts and Kenrick Roberts, it is the finding of fact by the Court that there was more than one meeting at which time the reconstruction of the house on Parcel 58 was discussed. It is also a finding of the Court that there are inconsistencies among witnesses as to who was present at a particular meeting. It is the further finding of the Court that the third Defendant was always part of such meetings. This rests on the evidence of the Claimant, Francine Joseph, and Egen Joseph which was not contradicted in cross-examination.
- [102] The attempts by the third Defendant to extricate himself from the meetings is frustrated by the fact he claimed that the house was not damaged and therefore not in need of repair or rebuilding and also by the fact that he claimed to have had discussions with the second Defendant but later acknowledged that she had left Antigua in 1989.
- [103] In fact Egen Joseph in cross-examination testified that the second Defendant told him that she knew of the plan to reconstruct the house. Further still, given the central function of a contractor in the matter of a construction of a house, the denial by the third Defendant of a meeting with Egen Joseph, who in the end was the contractor, cannot withstand scrutiny.
- [104] Kenrick, Wilfred and Fitzroy Roberts did not admit of being a party to any discussion relating to a family venture; but Kenrick did agree with Egen Joseph to work on the reconstruction of the house before the process started and did in fact work. On the other hand, Wilfred Roberts admitted to working on the rebuilding of the house on weekends.
- [105] In the context of the severe damage to the house, which the Court accepts as a fact, the age of the third Defendant and his deceased wife, (being born in the years 1922 and 1924, respectively) and the matter of reconstructing a house, the statements 'me nah want no

house' and everybody would have to 'chip in' attributed to him by Egen Joseph but denied in cross-examination are accepted by the Court as being factual.

[106] Therefore, in all the circumstances the Court accepts that there was an agreement by the third Defendant with his wife, the Claimant, Franceine Joseph, Egen Joseph to rebuild the family home with everyone chipping in by way of financial contributions and otherwise. The foregoing determination is based on the following:

1. The third Defendant's denial that the house was not severely damaged and hence there was no need to rebuild. This contrasts with the testimony of Egen Joseph, a builder by profession, who said that the house was severely damaged.
2. The third Defendant's denial that he was not present at any discussion regarding the rebuilding of the house.
3. Egen Joseph's role in the plan which necessarily implies his involvement at a very early stage. On that account the Court accepts as a fact that he was present at the discussions regarding the rebuilding of the house. This is contrary to what the second Defendant said under cross-examination.
4. The second Defendant not being present at the discussion but was aware of it and conveyed her knowledge of it to Egen Joseph.
5. In fact during the period 1983 to 1990 the second Defendant gave her whereabouts in relation to Antigua as follows: "In 1990 I passed through Antigua and Barbuda. I left for London in September. Between 1983-1990 I came here in 1989 for about three weeks. It could be before carnival. Hugo was in November 1989. I was not here. I was here when my sister was locked out. The locking out was in November 1989. I cannot recall my father saying I was not here in 1989." These facts arose in cross-examination by learned counsel for the Claimant, Mr. Steadroy Benjamin.
6. The second Defendant at paragraph 11 of her witness statement (**TB p.124**) says that: 'During the period of construction, the Claimant frequented the premises of my parents. On numerous occasions my parents entertained by providing for her meals.' In fact during the period of construction their parents lived at the home of Egen and Franceine Joseph. This at the very least shows that the Claimant was around the reconstruction
7. The fact that during the construction period of eight months Egen Joseph was not paid wages for his work as contractor on the new family home, except for his utilities.

8. The second Defendant's evidence with respect to the house relates to pre-hurricane Hugo while the meetings were post Hugo.
9. Egen Joseph's evidence as the builder/contractor is devoid of any reference to the 'plan man'. Nor was he cross-examined in this regard.
10. Egen and Franceine Joseph agreeing to the new family home being rebuilt closer to their boundary and seeking the relevant approval from the DCA.

DETRIMENT

[107] The submissions on behalf of the Claimant on this sub-issue are as follows:

"We submit that the Claimant is entitled to a share in the property. This submission is not only supported by the oral testimony given in the trial but the case law as is established in matters of this nature.

It is trite law that where two or more individuals jointly contribute to the purchase of land or property but the title is vested in one name only, the legal owner holds the property on trust for himself and the other party each having a beneficial in the property according to their respective contribution to the purchase price. Indeed, the cases including *Falconer v Falconer* [1970] 3 All ER 652, *Gissing v Gissing* [1970] 2 All ER 791; *Grant v Edwards* [1986] Ch 638 and *Green v Green* Privy Council Appeal No. 4 of 2002.

We submit that the cases in this area have usually been founded on the existence of an implied, resulting or constructive trust. This is because there is in the majority of cases, as in this case here, no written document sufficient to satisfy the formal requirements of the Statute of Frauds. No is there usually an express trust with appropriate formalities. It will be seen in the leading decisions a blurring of distinctions between implied, constructive or resulting trusts. Be that as it may, these distinctions are not vital in determining the issues in this case.

On the evidence, we submit that a trust was created in this case despite the fact that the property was vested in 1948 in the third Defendant solely viz:

- (a) There were discussions about the purchase of the property by the third defendant and his wife;
- (b) It was admitted by the third Defendant that the land was purchased with funds they pooled together and that they had contributed financially to its purchase.
- (c) There was a common intention that each would have a beneficial interest in the property – the property was for himself, his wife and family; indeed, the Third Defendant himself admitted that fact.

Further, it is submitted that in addition to the Claimant obtaining a share through the legacy of her deceased mother's estate, the Claimant in her own right obtained a share in the property by virtue of her financial contribution and manual labour performed in the construction of the family home in 1990. From the evidence there was a discussion between the Claimant, the third Defendant, her deceased mother and other family members present that the house was to be reconstructed. In the words of Egen Joseph, the contractor, we ask the court to accept his evidence as being truthful, the third Defendant said: 'me old now – a look me a go look for go dead – me no want no house – make all arwe build is house – ebrebody a go ha fo chip in'.

We ask the court to conclude from the evidence that this was a joint family venture as explained by Francine Joseph in her evidence; that there was an agreement to reconstruct a family home for all the members of the family with persons contributing as they saw fit; some contributed money as was the case with the second and third Defendants; others contributed money and manual labour as was the case with the Claimant; whilst still others contributed labour. The purpose was for members of the home to have a home whenever the need arose.

This fact is borne out by the evidence – the second Defendant lived in that house whenever she returned from the U.S.A.; Wilfred Roberts went to live in the U.S.V.I. and upon his return he went to live in the family house before he went to live at Hatton with his girlfriend; the Claimant herself went to the U.S.A. to have her child and returned to live in that house after she returned to Antigua with her baby.

We ask the Court to find further that the Claimant did make financial contribution towards the house's reconstruction. Not only did she contribute money from box hands she had received from her paramour but it is clear that she assisted in the running of the family retail shop.

In the circumstances the Court can reasonably deduce that it was the Claimant who ran the retail store. The fact that the Claimant worked in the shop is supported also by evidence of Wilfred Roberts who made it plain that when he returned to Antigua from the U.S.V.I it was the Claimant who assisted in the running of the shop.

It is submitted that the Claimant's conduct in the building of the new family home through her contribution of labour and financial resources cannot be the conduct of someone who believes that she did not have or would not have a share in the home. Further, had there been the intention that the Claimant should not share in the home, the third Defendant should not have permitted the Claimant to make any financial contribution toward the building of the house; nor should he have acquiesced in the Claimant sifting sand, carrying blocks, wood, galvanize sheets and cooking food to feed the workmen.

In addition, evidence was led that after the passage of Hurricane Luis damage was done to the property and the Claimant repaired the damaged roof and fence surrounding the property.

The case of *Wyatt v Wyatt* [1970] 16 WIR at page 370 is instructive in this matter. According to Des Iles J:

'Although the traditional trend has been that improvements made by a person who is not the beneficial owner, after the property has been acquired, will not in the absence of agreement entitle that person to acquire any interest in the property, the position is different where the owner has acquiesced in the improvement or enhancement'.

Even though this case deals with an Application made to the Court under the Married Women's Property Ordinance by a disgruntled spouse, it is submitted that the principle advanced in this case applies to the facts of this particular case where the third Defendant acquiesced in the Claimant carrying out the improvements to the family home."

[108] The following submissions written submissions were tendered on behalf of the defendants:

"[31] The onus remains with the Claimant to prove, and not merely aver, that there was an agreement between Joseph and Sarah Roberts and that the beneficial ownership of the property is different from its legal ownership (see *Stuck v Dowden* [2007] UKHL 17 at [56].

- [32] The 3rd Defendant denies that his late wife had an arrangement to share the beneficial interest when the property was purchased and at paragraph 8 of his witness statement (page 12 of TB) he is very clear in his evidence
- [36] It is respectfully submitted that it is the role of the Court to impose its sense of fairness upon the circumstances but to give effect to the agreement spoken to by the 3rd defendant in paragraph 8 of his witness statement (page 127 of TB) which said testimony was unchallenged in cross-examination and accordingly ought to stand.
- [37] The 3rd Defendant was unshaken in his evidence that he had a joint account with the 2nd Defendant. Monies from this account financed the rebuilding of the house. The 2nd and 3rd Defendants had agreed between themselves that she was to acquire legal ownership in due season on account of her contribution to the rebuilt house.
- [38] The Claimant has alleged that the joint account between the 3rd Defendant and the 2nd Defendant came after the rebuilding of the house. This allegation, it is respectfully submitted, has not been proved. Learned counsel for the Claimant in his cross-examination of the 2nd Defendant put it to the witness that there are documents which supports the timing and operation of the joint account, but alas such documents have not been disclosed.
- [39] The case of the 2nd and 3rd Defendants, simply stated, is that the 3rd Defendant has legal ownership and that the 2nd Defendant has beneficial ownership in the property on account of her financial contribution to the rebuilding.
- [40] The Claimant's case is that she has beneficial ownership on account of a contribution of \$32,000.00. The Claimant alleges that there was a family venture with respect to the rebuilding of the house. Various witnesses on behalf of the Claimant gave varying accounts as to exactly who participated in the family venture.
- [45] The case of the Claimant is that the 3rd Defendant holds the property in trust for many persons – herself and others. The witnesses on behalf of the Claimant are not of one mind as to who are the beneficiaries of the trust, that is, who are the persons with a beneficial interest in the property. It is respectfully submitted that the differences among the witnesses is fatal to the establishment of a trust. The purported trust falls for uncertainty, to wit, uncertainty of objects (or beneficiaries).
- [46] A trust is a serious matter and in order for a trustee, who is a fiduciary, to faithfully exercise his office he must know to whom he is a fiduciary [see: Professors Thomas and Hudson, THE LAW OF TRUSTS at 2.01]
- [47] There must be certainty of objects without which a trust fails. [see: *Mc Phail v Doulton* [1970] 2 All ER 228, 246 f].
- [49] The Claimant and her witnesses are not in one accord as to who are the objects of the trust. At best, if the Claimant and her witnesses are to be believed, it seems that the beneficiaries of the trust of the family home are family members, with the 3rd Defendant serving in the office of trustee. The Claimant and her witnesses have not specified persons who constitute the class 'family members' with sufficient particularity. It could include family members who live or reside in the house, past present and/or future. It may include those who contributed to the rebuilding of the house by means of direct monetary contribution, labour or otherwise. It may or may not include relatives overseas. It may or may not include Agatha Peters. It may or may not include Kenrick Roberts, the 1st Defendant. All of this uncertainty must be seen in the context of several purported beneficiaries (to wit, Kenrick Roberts, Egen and Francine Joseph, Wilfred Roberts and Fitzroy Roberts) who expressly deny and desire to claim a share or ownership of the home. The Claimant herself

under cross-examination stated that she does not really want ownership of the house and what she really wanted was to stay in the house.

[50] In the circumstances it is evident that there is uncertainty of beneficiaries and accordingly the trust fail."

CERTAINTY OF OBJECTS

[109] Having regard to the foregoing submission regarding uncertainty of the beneficiaries and the conclusion arrived at, it is necessary to consider the relevant law.

[110] Certainty of persons or objects intended to be benefited is one of three certainties of a trust.

[111] In terms of certainty of objects, in Parker and Mellows, *THE MODERN LAW OF TRUSTS* (3rd ed.) at page 55 state as follows:

"It will be seen that the test of certainty is that the objects should be certain or capable of being rendered certain; that the test was restrictively interpreted in *I.R.C v Broadway Cottages Trust* [1955] Ch 20 to require that the trustees should at any time be able to make a full list of beneficiaries and if the class was unascertainable at any time, the trust would fail for uncertainty; and that, with regard to trust powers in favour of a discretionary class of objects, this test was recently discarded by the House of Lords in *Mc Phail v Doulton* [1971] A.C. 424 and a new test formulated. This test is identical to that used for powers, viz. whether it can be said that of any given person whether or not he is a member of the class."

[112] Lord Wilberforce in *RE BADEN'S TRUSTS (NO.2)* [1972] 2 All ER 1304, following *Mc Phail v Doulton*, supra, explained the test in this way:

"Validity or invalidity is to depend on whether you can say of any individual – and the accent must be on the word 'any', for it is not simply the individual whose claim you are considering who is spoken of – that he 'is or is not a member of the class' for only thus can you make a survey of the range of objects or possible beneficiaries."

[113] The Court has already determined that there is inconsistency in the evidence as to who belongs to the plan for the family home. But the test must necessarily be applied by the Courts in order to determine whether any individual belongs to the class. And the fact that it may yield a negative in a particular case does not make the objects uncertain.

[114] The foregoing conclusion re-introduces the second aspect of the constructive trust – detriment.

- [115] The Claimant both in her witness statement and in cross-examination gives evidence of her contribution to the rebuilding of the house. And it will be recalled that in their defence the defendants aver that they will put the Claimant to strict proof regarding the allegations contained in paragraphs 11 and 13 of her statement of claim.
- [116] Concerning the rebuilding of the house following the passage of Hurricane Hugo, the following is a summary of the Claimant's evidence in chief:
- [117] In so far as contributions by way of time, the Claimant says that her sister's husband, Egen Joseph, a contractor, supervised and assisted in the construction of the family home. Also contributing were her two brothers, Kenrick and Wilfred Roberts with the latter being paid by the said Egen Joseph who in turn was given money by her mother and father to pay those who work on the house and to purchase materials for the construction of the house.
- [118] For her part the witness says that she "worked tirelessly in assisting to demolish the old structure and packing away family belongings in my sister Franceine's home". It is also her testimony that she cooked for the workmen, sifted sand, moved blocks, performed various other forms of manual labour such as lifting galvanize sheets and woods on the construction site. Additionally, according to her, she assisted her mother in the retail shop which operated on the premises.
- [119] In terms of financial contributions, the witness says that the first Defendant did not make any contribution but the second and third Defendants, her deceased mother, herself and others made such contributions. More specifically, Ms. Joycelyn Roberts says that her contribution in cash was \$32,000.00 which came from various sources – earnings, box hands drawn and given to her by her paramour. It is her further contention that after the passage of hurricane Luis the roof of the new house and fence were damaged and she alone provided the finance to repair the same.
- [120] With respect to the occupation of the family home after her mother's death, the witness contends that after the third Defendant's remarriage she lived in the said house with her father and his new wife until the second Defendant returned to Antigua in the year 1997.

Further that about ten months thereafter the third Defendant and his wife left the family home because of a “money feud which existed between the first and third Defendants”.

[121] Ms. Joycelyn Roberts, the Claimant, at paragraphs 31 to 25 outlines the circumstances in which she left the family home for approximately six months but contend that although the third Defendant objected to her male association he never asked her to leave the house. In any event when she did move, only some of her clothing was taken. According to her the real difficulty in staying at the family home came as a result of the second Defendant's return to live in Antigua in 1997.

[122] In cross-examination Joycelyn Roberts testified further her contribution to the family venture was \$32,000.00 and went on to explain that box money is a system of savings whereby different persons make contributions.

[123] With respect to what she expected from her contribution to the family house, the witness said this: “I not looking to get anything. I did contribute \$32,000.00. I only want to be able to remain in the house. As long as I can remain in the house all is well. I want to stay until I decide to leave, but it does not matter that the owner has a different point of view.” And at a later stage in her cross-examination the witness said that: “Joseph Roberts bought the land and he told us that we can live there until we migrated or got married. I cannot recall when he told me that but it was before the house was built around 1990. It was before the house was built.” It was then put to her by learned counsel for the defendants that Joseph Roberts never made such a statement, this was denied by the witness.

[124] Returning to the matter of her financial contribution to the family house Ms. Joycelyn Roberts testified that Agatha Peters and Franceine Joseph were present when she gave \$7000 to her mother on more than one occasion. She also added that her boyfriend gave her money as a contribution to the house which was also given to her mother for the said purpose.

[125] Learned counsel for the defendants has submitted that while the claimant is contending that she contributed \$32,000.00 towards the house she is unable to supply details other than saying she received \$7000.00 for box hand and also \$500.00 from her paramour. According to counsel this leaves \$20,000.00 unexplained or unaccounted for. In actual fact the Claimant did say in evidence that she obtained box hand on more than one occasion. Beyond that, the point is that nothing was put to this Claimant in cross-examination to discredit or contradict what she was saying about her contribution.

[126] On the other hand the second Defendant's contention about \$100,000.00 in a joint account is also devoid of specificity. At the same time the location of the bank at which the account was opened is not free from doubt. This has nothing to do with the onus of proof which rests on the Claimant. It is merely a contrast.

[127] Having regard to the evidence as a whole the Court finds as a fact that the Claimant contributed both in terms of money and labour towards the reconstruction of the family home on Parcel 58. And given the importance of these matters to the question of the matter of a constructive trust and detriment in particular, the Court finds it necessary to restate the relevant aspects of the evidence.

[128] Mrs. Franceine Joseph testified that in terms of contribution by the claimant the \$7,000.00 was on a single occasion but that she was clear in her mind that contributions were made on other occasions but could not say if it was box money. Nor could she give a grand total. The witness further testified that the Claimant even made repairs to the family home after hurricane Luis. Mrs. Joseph went on to say that because she lives close enough she is aware of these matters and often visits the house. She went on to say that Sylvia does the minimum.

[129] Agatha Peters, who also lives in Jennings, was cross-examined extensively said the following in her witness statement at paragraphs 19 to 25:

"19. When the new family home was under construction, I saw the Claimant sifting sand, helping in the retail shop and assisting with other chores such as washing, cleaning and cooking for workers who assisted in the construction on weekends. Indeed, she contributed \$7,000.00 box hand draw towards the construction of the said house.

20. On occasions such as Christmas the Claimant refurbished the house – she would paint the said house, put up curtains, acquire dining chairs and other internal accessories.
21. Further, the roof of the family home and the fence surrounding same were damaged during the passage of Hurricane Luis.
22. The Claimant purchased galvanize and wood and fixed the roof of the gallery.
23. The said Claimant employed one Winston Roberts to repair the said damage.
24. In addition thereto, the Claimant employed another workman ... to repair the damages done to the fence on the east side of the house which had also been damaged during the passage of the Hurricane mentioned at paragraph 21 thereof.
25. I know for a fact that the Claimant worked in the family retail shop with her mother and after her mother's death with the third Defendant. Indeed the Claimant worked in the said shop all by herself and after the third defendant left the family home in 1997 and went to live with is second wife at Piggotts Village."

[130] Egen Joseph testified that he received money for rebuilding purposes from Sarah Roberts and to a lesser extent from Joseph Roberts the third Defendant. With respect to the Claimant he testified that she was involved in the demolition of the old house and at all stages during the reconstruction of the family home – even on weekends and further that she cooked food for the workmen.

[131] On the other side of the equation, this is what the third Defendant said in his witness statement at paragraphs 5 to 7:

- "5. My house was later reconstructed. The reconstruction started in October 1990 and finished in May 1991. The house was rebuilt with savings of my wife and myself and with financial contribution from my daughter Sylvia. Sylvia had specifically approached me about having the house rebuilt and her contribution to rebuilding the house. We, that is, Sylvia and I, put money in a joint bank account for that purpose. It was agreed between us that her contribution to the rebuilding would entitle her to having an interest in the house.
6. There was no financial contribution from Joycelyn. I must state in the clearest of terms that Joycelyn did not contribute \$32,000.00 as she is claiming. I must confess that I have no idea where this figure is coming from. The supposed \$32,000.00 contribution is an untruth and I am deeply hurt to know that my daughter is making such a statement and a claim.
7. Neither was there any financial contribution from my son Kenrick. My son-in-law Egen Joseph managed the reconstruction of the house. Kenrick who is a mason assisted Mr. Joseph in the physical construction of the house."

[132] In cross-examination Mr. Roberts said that while the house was being built he would come and go and never saw Joycelyn sifting sand or Franceine's children lifting blocks. For him all is a lie. He continued by saying that he doubted Joycelyn gave any money to his wife

towards the rebuilding of the house. According to him, he had a joint bank account with Lolita at Swiss and this was used to build the house. When it was put to him that the account at Swiss was a figment of his imagination, this was denied.

[133] With regard to the expansion of the house on the land of Egen and Franceine, Mr. Roberts agreed that they had to give permission for the house to be built but he maintained that it was not a family project – no way. The witness and third defendant added that Joyce did not give money. She did not sift sand. The man who sifted the sand died last week. He continued his testimony by saying that he had a joint account with Sylvia and he also had a different account but that he drew money from the joint account to build the house. He also said that Swiss American Bank was on East Street in 1990. However, based on the testimony regarding the location of the Swiss American Bank, it was put to the witness that the bank was in fact located in the Francis Building and then moved in 1995. Mr. Roberts' response was that Egen told him what money he needed and the amount was left with his wife, Sarah.

[134] The second Defendant in cross-examination was adamant that the Claimant did not work on the house. She said: "I don't know that Joyce worked on the house. My dad hired Kenrick to work. He was in the field. I don't know when Kenrick was paid. It was not a family matter."

[135] Returning to matters financial the witness testified further that the joint account which was established prior to the completion of the house, had over \$100,000.00 and that it was her belief that her father drew money from it. The witness went on to say that she and her father had problems about money and as a result she visited the Chambers of Mr. Justin Simon QC with Franceine; while her father went to Gerald Watt Q.C. According to the witness there was a misunderstanding about money and that is why things went that way.

[136] In re-examination Ms. Sylvia Roberts testified that the funds in the Swiss American Bank account was initially in her name and it was for the purpose of building her own house.

- [137] The case of *CUPID v THOMAS* [1985] 36 WIR 182¹, following a line of authorities, establishes that in the context of constructive trust the contribution must go beyond work done in the house and must be substantial.
- [138] In this case there is no evidence as to the cost of rebuilding the house. In fact Egen Joseph said in cross-examination that he could not accurately recall how much he collected for the purpose. But all is not lost since the cost here does not include the cost of the land purchased in 1948. Further, the cost of the free services of builder/contractor for eight months, an additional mason for approximately twenty Sundays. Additionally, the Court accepts that the Claimant performed the services moving blocks, galvanize sheets, sifting sand and cooking food for the workers.
- [139] All of the foregoing is said to make the point that in that context the Court considers \$32,000.00 to be a substantial contribution. In the recent decision of *GILLET v HOLT* [2000] 2 All ER 289 it was held that detriment itself was not a narrow or technical concept, and it need not consist of the expenditure of money or other quantifiable financial detriment, provided that it was something substantial. Indeed, this case also reminds us that "all the elements of the doctrine were permeated by the fundamental principle that equity was concerned to prevent unconscionable conduct and the court had to look at the matter in the round."
- [140] The fact that both Franceine Joseph and Agatha Peters corroborate the Claimant's testimony in so far as the payment of money to the late Sarah Roberts must be put in context. And the context is that while the house was being reconstructed Mr. and Mrs. Joseph Roberts were the guests of Mr. and Mrs. Egen Joseph. Therefore, this residence could reasonably be construed a family focal point for about eight months. The other factor is that Agatha Peters grew up from a child with Mr. and Mrs. Joseph Roberts and cared for all their children.

¹ *Petit v Petit* [1969] 2 All ER 355; *Cook v Head* [1972] 2 All ER 38; *Gissing v Gissing* [1971] AC 886; *Burns v Burns* [1984] Ch 317

[141] The final submission on the issue by learned counsel for the Claimant goes substantially in the direction of the requirements of the law. It says:

“When consideration is given to all the surrounding facts, it is submitted that the Claimant’s conduct and contribution towards the construction of the home, and her improvements to the said home thereafter was more than what any normal unmarried daughter with a child would do if there was no understanding that she would have a share in the house. We submit that the Claimant is entitled to share in the said property.”

[142] It is therefore the conclusion of the Court that the Claimant has established the constituents of a constructive trust and as such is entitled to a share in the property.

[143] Learned counsel for the defendants has introduced the doctrine of promissory estoppel into the equation – ex pleadings. But in any event it does not help his cause because of this important piece of learning from **Restitution Law Review (1998)** per W.J. Swadling:

“The whole point of estoppel claims is that they concern promises which since they are unsupported by consideration are initially revocable. What later renders them binding and therefore irrevocable is the promisee’s detrimental reliance on them. Once that occurs there is simply no question of the promisor changing his or her mind.”

ISSUE NO: 2

WHAT IS THE STATUS OF THE CLAIMANT’S OCCUPATION OF THE PROPERTY

SUBMISSIONS

[144] The following submissions were made on behalf of the Claimant:

1. It is clear that the claimant was not a tenant under a tenancy agreement.
2. Bearing in mind the evidence in its totality, the claimant could never be considered a bare licensee in the premises.
3. From the facts in the case it is submitted that the claimant is not a licensee because she does have a beneficial interest in the property which creates a right to occupy the property; that is greater than having a mere permission to be there.
4. Indeed it is submitted that the claimant is in fact a co-owner of the family home. From the facts it is obvious that the claimant made a direct financial contribution to the construction of the family home along with the second and third defendants. As the money contributed was in unequal shares, equity will presume that a trust was created and that the parties are all tenants in common by virtue of their unequal contribution, see: Bull v Bull [1955] QB 234.
5. In the circumstances it is submitted that the claimant is an equitable tenant in common of the family home and thus entitled to the use and enjoyment of the land in a proper manner. The claimant, the second and third defendants can turn out one another.

[145] The following are the submissions on behalf of the defendants:

"[61] The Claimant testified that her father, the 3rd Defendant had promised that she could remain in the house. However the Claimant could not recall with any specificity when such promise was made. The 3rd Defendant denies making such a promise, it would not be enforceable as in the context of family relations it could not be expected that such a promise was made with the intention that the parties were to enter into legal relations enforceable in a court of law.

[62] The facts and circumstances of the case may be considered with the facts of Heslop v Burns (1974) 3 All ER 406. The facts of Heslop v Burns may be distilled from the headnote which states:

In 1951 the defendants a married couple were living in an attic. The wife was expecting a baby. The deceased met the defendants and expressed concern at the conditions in which they were living. He bought a cottage for the family to live in. Thereafter until his death in 1970, the deceased provided the defendants with a home. In 1954 they moved to a house owned by the deceased which they occupied at the time of his death. Throughout the period from 1951 to his death the deceased remained a close friend of the defendants, visiting them frequently, sometime twice a day; he became the godfather of one of the defendant's daughters and paid for her education.

[67] Stamp LJ in Heslop v Burns [1974] 3 All ER 406 at 407 gave his assessment as to what was to be inferred from the facts:

On the facts of this case it is, in my judgment, abundantly clear that the parties did not enter into an agreement far less any arrangement intended to create a legal relationship, as to the terms on which the defendants should occupy the property. There was no contract, no arrangement, no statement by the deceased. The defendants, as I see it, were allowed to move into the property and occupy it simply as a result of the bounty of the deceased and without arrangement as to the terms on which they should do so¹. There was no evidence of any discussion whatsoever taking place as to the terms of the occupation. It was by the effect of the bounty of the deceased or, if you will, because of his feelings of affection for Mrs. Burns, that the home was provided, and it was, I think, for those reasons that the defendants remained there.

[68] It is respectively submitted that the same inferences made in Heslop v Burns can be properly made in the case at bar. Indeed, there are numerous reported cases to include Booker v Palmer [1942] 2 All ER 674, 677c, Cobb v Lane [1952], All ER 1199 at 1201a, Barnes v Barratt [1970] 2 All ER 483, 487h 488e and 488h which show that informal arrangements for occupancy within a familial or quasi-familial content have always been liable to be analysed in terms of revocable licence and not a tenancy which gives one a proprietary estate to which is annexed a right of exclusive possession enforceable against all persons including the landlord."

[146] That learned counsel should cited *Heslop v Burns* in this context is, to say the least, abundantly surprising. The basic observation being that in that case there was no allegation of contribution to the purchase or otherwise of the property as there is in this case. Therefore, the starting point must be the determination of the Court that the claimant has an interest in the family home.

¹ Emphasis supplied by learned counsel for the defendants.

[147] Learned counsel for the Claimant has referred the Court to the case of **BULL v BULL** [1955] 1 ALL ER 253 in this regard. The facts are as follows: In 1949 the plaintiff and his mother, the defendant together purchased a freehold house, the plaintiff contributing a larger part of the purchase price than the defendant and the conveyance being in his name. The money contributed by the defendant was not intended to be a gift from her to the plaintiff, and the defendant accordingly became entitled to an equitable interest proportionate to her contribution. The parties lived together in the house until April 1953 when the plaintiff married and it was arranged that the defendant should occupy two rooms and that the plaintiff and his wife occupy the rest of the house. Subsequently differences arose between the parties and the Plaintiff brought an action for possession of the rooms occupied by the defendant.

[148] It was by virtue of the purchase of the house that the plaintiff and the defendant became beneficial tenants in common of the sale of the proceeds of the property which was subjected to a statutory trust for sale, and as such the defendant had a right to participate in the enjoyment of the property until it was sold. Therefore the plaintiff's action for possession failed. Lord Denning, after reciting the facts in the case, reasoned thus:

“Similar circumstances must often arise in families, but strongly there is no authority on the point. The son is of course, the legal owner of the house; but the mother and son are, I think, equitable tenants in common. Each is entitled in equity to an undivided share in the house, the share of each being in proportion to his or her contribution. Each of them is entitled to the possession of the land and to the use and enjoyment of it in a proper manner, Neither can turn the other out; but if one of them should take more than his proper share the injured party can bring an action for an account. If one of them could go as far as to ouster the other, he is guilty of trespass. Such being the rights of legal tenants in common, I think that the rights of equitable owners in common are the same, save only for such differences as are necessary consequent on the interest being equitable and not legal. It is well known that equity follows the law; and it does so in these cases about tenants in common as in others.

I realize that since 1925 there has been no such thing as a legal tenancy in common. All tenancies in common are now equitable only to take effect behind a trust for sale (Settled Land Act, 1925, section 36 (4)). Nevertheless, until a sale takes place, these equitable tenants in common have the same right to occupy the land as legal tenants used to have. Their position was well stated by Maugham J in *Re Warren* [1932] 1 Ch at p. 47. My conclusion therefore as that, when there are two equitable tenants in common, then, until the property is sold, each of them is entitled concurrently with the other to the possession of the land to the use and enjoyment of it in a proper manner; and that neither of them is entitled to evict the other.”

[149] In **BARCLAY v BARCLAY** [1970] 2 All ER 676, 677, Lord Denning MR in revisiting **BULL v BULL** said:

“In the present case there was an express trust for sale; and an implied power to postpone the sale: see S. 25 (1). That makes this case look, at first sight like *Bull v Bull*. But I think that it is distinguishable. In *Bull v Bull* the prime object of the trust was that the parties should occupy the house together. They were entitled to the possession of it in undivided shares. That made them in equity, tenants in common. An equitable tenancy in common arises when ever two or more persons become entitled to the possession of property on the rents and profits thereof) in undivided shares. They may become so entitled by agreement, or under a will, or by inference, as often happens when husband and wife acquire their matrimonial home. The legal owner holds the legal estate on trust for them is tenants in common.”

[150] The Court therefore agrees with the submission of learned counsel for the Claimant that the Claimant's status is that of equitable tenant in common and as such is entitled to use and enjoy the property in a proper manner. As such the Claimant cannot be turned out of the property by the second or third Defendant. Nor can the claimant turn out either the second or third Defendant.

ISSUE NO: 3

ARE THE DEFENDANTS GUILTY OF TRESPASS

[151] At paragraphs 18 to 22 of the statement of claim the Claimant states her case with respect to trespass. It begins with the letter of 16th February 2006 from the third Defendant asking her to vacate the property, being Parcel 58, by 28th February 2006. There was a response on 27th February 2006 and on the afternoon of 28th February 2006 the defendants arrived at the family home and demanded that the Claimant must leave. There was non-compliance since, according to the Claimant, she was aware of her interest in said property.

[152] At paragraph 21 it is stated that the first Defendant thereupon kicked down the door to the claimant's bedroom door and together with the second Defendant unlawfully removed the claimant's personal belongings and those of the Claimant's daughter from the said bedroom.

[153] The Claimant contends that she suffered loss and damage and details of special damages are pleaded which amount to \$4,289.00. The details of the special damages pleaded are as follows:

(a)	One door lock destroyed	\$ 54.00
(b)	One radio destroyed	\$ 250.00
(c)	One electric fan destroyed	\$ 185.00
(d)	One dressing table lamp destroyed	\$ 150.00
(e)	One envelope lost containing	\$1,200.00
(f)	One envelope lost containing US\$300.00 or EC equivalent	\$ 810.00
(g)	One gold chain lost	\$ 600.00
(h)	One pair gold earrings lost	\$ 350.00
(i)	Picture frames	\$ 240.00
(j)	Colognes missing	\$ 450.00

[154] The basic position of the defendants is that the Claimant is a trespasser. On that basis most of the allegations contained in paragraphs 18 to 22 are admitted except for the question of knowledge on the part of the Claimant.

[155] At paragraph 22 of the defence it is pleaded that:

[22] Paragraph 21 of the Statement of Claim is denied. The 1st Defendant used a hammer to remove the lock from the door to the bedroom occupied by the claimant. The 1st and or the 2nd defendant removed the Claimant's personal belongings and that of her daughter but deny that such removal was unlawful, the said removal being consistent with the right of the 3rd Defendant to evict the Claimant after her licence to occupy on tenancy at will was duly terminated."

[156] The loss and damage are denied as is trespass to goods of the Claimant and her daughter. It is contended that the action taken was proper self-help in the circumstances.

[157] In her witness statement the evidence more or less reflects the content of the statement of claim. And in cross-examination the Claimant gave details of the various items that were either destroyed, damaged or which disappeared. When it was put to her that any damage was inconsequential, this was denied.

[158] The second Defendant in her witness statement says that on 28th February 2006 she assisted in the removal of the Claimant's property from the house with the knowledge and consent of her father. She however says that nothing she did involved the destruction of the Claimant's property. This testimony was more or less repeated under cross-

examination except that she contended that she was merely assisting her brother and telling him what belonged to her.

[159] Kenrick Roberts in his witness statement admitted removing the lock from the room occupied by the Claimant as she was no longer entitled to be there. He said he removed personal belongings of the Claimant but denied destroying or steal any such belongings.

[160] Under cross-examination the first Defendant again admitting using the hammer to remove the lock from the door of the room occupied by the Claimant. He also gave evidence of some of the items he removed without destroying them.

[161] The evidence of Agatha Peters contradicts that of both the first and second Defendants on the question of the trespass to the personal items belonging to the Claimant. This is her testimony in cross-examination: "I was there. I saw Kenrick throw items out. When I was there I saw Franceine, Joyce, Sylvia. A lot of people was there. I saw picture frames. I saw Kenrick take a hammer and pound up all kind of things – all kind of them. I was there and saw Kenrick pound up all kind of things. He pound up picture frames. He fling them on the verandah. I was just in front of Ms. Joseph verandah on the outside. Nothing was blocking me. I also saw Egen Joseph on the verandah of his home. I cannot recall a dressing table. I saw an electric fan. He fling the fan on the verandah. The verandah is made of blocks. I did not see a radio. I saw envelopes on the floor. They were on the verandah. I saw Kenrick fling them out. I did see jewellery and earrings. I did see some little bottles. I did not know if they were full or empty. When I got there the police and people were there. The police lock them up. Lolita and Kenrick. The police were observing the destruction. They intervined to stop Kenrick. There were plenty police. Kenrick did what he did despite the presence of the police."

[162] The Court accepts the testimony of Agatha Peters in its entirety. And by way of footnote, the second Defendant did say in cross-examination that she could not think of any reason

why this witness would tell a lie on any of them. In fact Ms. Peters said in cross-examination that she felt strong about the whole matter because she "raise them".

SUBMISSIONS

[163] The following are the submissions on behalf of the Claimant:

"Winfield and Jolowicz in Winfield and Jolowicz on Tort 14th edition define trespass to land as unjustifiable interference with the possession of land. In order to bring an action for trespass to land, the plaintiff must show that he or she has possession of the property and that the interference by the defendant with the plaintiff's possession was direct and immediate. The interference need not necessarily be actual damage to the property but could include interference with the plaintiff's enjoyment of the property.

The question to be answered is whether the actions of the first, second and third defendants amounted to trespass to land. It is submitted that the Defendants are in fact guilty of trespass. The trespass need not only be interference that leads to actual damage to the property but it also includes interference with the Claimant's enjoyment of the property as mentioned above. Having already established that the Claimant has a share in the property this creates a right to the Claimant to also possess the home by way of occupation. By forcibly removing the Claimant and her daughter's personal belongings, the first, second and third Defendants were interfering with the Claimant's right to possess the home in the form of occupying same. Although the second and third Defendants both have rights of occupancy a right similar to that of the Claimant, the said Defendants have however abused that right in their attempt to unlawfully evict the Claimant.

It is further submitted with particular reference to the first and Second Defendants that they are guilty of trespass to the Claimant's goods.

As the facts state, the first Defendant after having knocked the lock from the Claimant's bedroom door he proceeded to remove the Claimant's personal belongings and those of her daughter from the room where they resided without the Claimants consent. This amounted to interference with the Claimant's goods in the form of an unauthorized removal. It is submitted that the Claimant is entitled to recover damages as claimed in all the circumstances."

[164] In a preliminary way it was noted that trespass to land is constituted by unjustifiable interference with possession to land. But it goes further. The following rules also apply. "Mere physical presence on the land on the use or de facto control of it does not amount to possession sufficient to bring an action of trespass. The immediate right to possess signifies when one has it or to acquire it when one does not. Without possession it is not sufficient to support an action for trespass. Interference with the possession of land sufficient to amount to trespass may occur in various ways. The most obvious example is unauthorized walking upon it, or going into the building upon it, but it is equally trespass if I

throw things on your land. The one restriction is that for trespass the injury must be direct and immediate¹.

[165] It has already been determined that the Claimant is an equitable tenant in common of the family home on Parcel 58. This gives her the right to retain possession like the other tenants in common. Therefore, contrary to the contention of the defendants, the Claimant at the material time not a trespasser.

[166] On a review of the evidence the Court has determined that on 28th February 2006, the first Defendant used a hammer to break the lock on the Claimant's bedroom and then along with the second Defendant entered the room and removed the personal possession of the Claimant and her daughter.

[167] These actions constitute unlawful interference with the Claimant's immediate right to possess the property like all other tenants in common. These actions satisfy the constituents of the tort of trespass to land.

[168] On the other hand, trespass to goods is a wrongful interference with them. It may take innumerable forms.²

[169] The evidence is that the Claimants personal possessions and those of her daughter were taken from the bedroom and placed or thrown on the gallery in the course of ejecting the Claimant from the said family house. It was not and could not be cordial or amicable. In fact the police were called and came to the house on three occasions with certain consequences. And because the Claimant was entitled to be in the house the interference was wrongful.

[170] The evidence which the Court accepts is that the door lock, picture frames, radio, electric fan, dressing and table lamp were damaged. On the other hand, two envelopes containing

¹ Winfield & Jolowicz, *op cit.*, p. 487-491

² Winfield & Jolowicz, *op cit.*, p. 593

money were missing and gold chain and gold earrings are lost. The Court must do the best it can in the circumstances¹ having regard to the torts.

[171] Therefore, with respect to the trespass to property the Court awards damages in the amount of \$2,000.00 and with respect to damages for trespass to goods the award is \$3,500.00 in special damages.

[172] The damages for trespass to property must be paid by the first Defendant but with respect to the trespass to goods the first and second Defendants are jointly and severally liable.

ISSUE NO. 4, 5 & 6

WHETHER THE SECOND AND THIRD DEFENDANTS ARE ENTITLED TO EXCLUSIVE POSSESSION OF THE PROPERTY

WHETHER THE CLAIMANT GUILTY OF CONTINUING TRESPASS

WHETHER THE SECOND AND THIRD DEFENDANTS ARE ENTITLED TO RENT AND/OR MENSE PROFITS

[173] These issues can be determined together since they hinge on the determination made by the Court that the Claimant is an equitable tenant in common of the family home on parcel 58.

[174] It follows therefore that the second and third Defendants are not entitled to exclusive possession of the property, the Claimant is not guilty of continuing trespass as she has a right to occupy said property and the second and third Defendants are not entitled to rent and/or mense profits.

DEFENDANTS' COUNTERCLAIM

[175] Having regard to the foregoings determinations of the Court, it follows that the second Defendant's counterclaim must be and is hereby dismissed.

¹ See: *Biggin & Co v Permanite Ltd* [1950] 2 All ER 859; *Thompson and Others v Smiths Shiprepair* [1984] 1 All ER 881,910 per Lord Mustil.

SUMMARY OF CONCLUSIONS

1. The Claimant is entitled to a share in the family home on Parcel 58 by virtue of her contribution of money and labour to the rebuilding of the same.
2. The status of the Claimant is that of an equitable tenant in common of the family home on Parcel 58.
3. The first Defendant is liable for trespass to property and must pay the Claimant \$2000.00 in damages and the first and second Defendants are jointly and severally liable for trespass to goods and must pay special damages in the amount of \$3,500.00.
4. The second and third Defendants are not entitled to exclusive possession of the family home by virtue of the Claimant's rights as an equitable tenant in common.
5. The Claimant is not liable for continuing trespass by virtue of her rights to the property aforesaid.
6. The second and third Defendants are not entitled to rents and or mense profits on account of the rights of the Claimant as determined.

ORDER

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

1. The Claimant is entitled to a share of the family home on Parcel 58 by virtue of her contribution of money and labour.
2. The status of the claimant is that of an equitable tenant in common of the said family home on Parcel 58.
3. The first Defendant is liable for trespass to property and must pay the Claimant damages in the amount of \$2,000.00.
4. The first and second Defendants are jointly and severally liable in trespass to goods and must pay the Claimant special damages in the amount of \$3,500.00.
5. The second and third Defendants are not entitled to exclusive possession of the family home by virtue of the Claimant's rights as an equitable tenant in common.
6. The Claimant is not liable for continuing trespass by virtue of the rights aforesaid.

7. The second and third Defendants are not entitled to rents and or mense profits on account of the rights of the Claimant as determined.
8. Interest on the special damages at the rate of 3% will run from 28th February 2006 to the date of the trial and at the rate of 5% from the date of this judgment.
9. Interest on the general damages will be at the rate of 5% from the date of the filing of the claim.
10. The Defendants must pay costs to the Claimant in the amount of \$25,000.00.

[177] The Court wishes to record its gratitude for the assistance provided by counsel on both sides in this complex and troubling matter.

Errol L. Thomas
Judge