ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2003/0138

BETWEEN

MARIE MAKHOUL

Claimant

And

CICELY FOSTER
LOUIS LOCKHART

Defendants

Appearances:

Mr. Hugh Marshall Jr. and Ms. Cherissa Roberts-Thomas for the Claimant
Sir Gerald Watt QC with Dr. David Dorsett and Mrs. Georgice Mendes-Blackman for the Defendants

....

2009: April 6, 7, 28
May 28

....

JUDGMENT

[1] **Blenman J**: Ms. Marie Makhoul has filed a claim against Ms. Cicely Foster and Mr. Louis Lockhart in which she seeks a declaration of title to the building located at Parcel 117 Registration Section St. John's South Block 66 1692E. She also seeks an injunction against Ms. Foster and Mr. Lockhart restraining them from removing her from the land. She also seeks damages against Ms. Foster. Ms. Foster strenuously resists the claim. Mr. Lockhart says that he has been improperly joined as a party and seeks to be struck out from the claim with costs. Ms. Foster denies that Ms. Makhoul is entitled to the reliefs claimed. She has also counterclaimed against Ms. Makhoul, and seeks to gain possession of the land together with mesne profits from Ms. Makhoul. She also seeks to recover the rents that Ms. Makhoul has been collecting.

[2] **Background**

In 1979, Ms. Marie Makhoul's husband Mr. Elias Makhoul (deceased) leased a portion of land for five years from Ms. Foster's father, Mr. Stanley Walter. Mr. Walter also granted Elias permission to erect a chattel building on the land in order to house a store. The lease expired and a new lease was executed and Elias continued to occupy the land, pursuant to the lease.

[3] Apparently, when Elias habitually failed to pay his monthly rental, Mr. Lockhart served him notices to quit. This matter was eventually resolved and Elias continued to occupy the land. Mr. Lockhart, acting as one of the Attorneys-at-Law for Ms. Foster, caused the tenancy to be continued. He continued to be in default. Ms. Foster, through her Attorney-at-Law, caused several indulgencies to be granted to Elias after the termination of the lease. In 1996 Ms. Foster caused another lease to be executed on her behalf with Ms. Makhoul for the same portion of the land which the original chattel building then occupied.

[4] Ms. Foster lived out of Antigua for most of the time. She utilised the legal services and received advice from the law firm in which Mr. Lockhart was a partner.

[5] Some time later in 1996, without the approval of Ms. Foster or her attorney, the Makhouls caused an addition to be constructed to the store. Mr. Habib George financed the addition and the additional construction was leased to him. Mr. Lockhart, upon learning of the construction, late in 1996, and acting on the instruction of Ms. Foster, caused Ms. Makhoul's tenancy to be terminated. He, acting as Counsel on behalf of Ms. Foster, advised Ms. Makhoul that the construction was unlawful. By now, Mr. George, who was involved in the construction of the additional structure, was contacted and was told that he was occupying it illegally. Subsequently, an agreement was entered into between Mr. George and Ms. Foster. Mr. Lockhart advised Ms. Makhoul that she had no authority to erect the additional construction. Thereafter, Mr. George paid rents to Ms. Foster's agent.

[6] Mr. George assigned his interest to Mr. Wayal Luwisa and a new agreement was entered into. Mr. Luwisa paid rents to Ms. Foster's agent. Meanwhile, in December 1996, Ms.

Makhoul entered into a new agreement for the rental of the land on which the original structure was erected.

[7] Elias died in 2002; thereafter Ms. Makhoul contended that the entire structure belonged to her.

[8] In 2002, Ms. Makhoul sublet the original structure. Ms. Foster says that this is in breach of their agreement and she has terminated the tenancy. She has served Ms. Makhoul a notice to quit.

[9] Ms. Makhoul has filed this claim and seeks an order that the notice to quit is invalid.

[10] This is strenuously resisted by Ms. Foster who counterclaims for possession of the land; mesne profits; damages together with interests and costs. Ms. Makhoul strongly resists the counterclaim. She says she is the owner of the entire building and is entitled to receive the rents.

[11] **Issues**

The issues that arise for the Court to resolve are:

(a) Who is the owner of the additional structure?

(b) Whether Ms. Makhoul is entitled to remain in possession of the land;

(c) Alternatively, whether Ms. Foster is entitled to possession of the land.

(d) Whether Ms. Foster is entitled to have the entire property that was constructed on the land.

(e) Whether the claim against Mr. Lockhart ought to be struck out, with costs.

[12] **Evidence**

Ms. Makhoul testified on her own behalf and was cross examined at length. For the defence, Ms. Foster, Mr. Lockhart, Ms. Linda George, Mr. Wayal Luwisa and Mr. Reuben Everon Zachariah testified and they too were cross examined. The Court also visited the location of the store and several of the witnesses pointed out relevant matters to the Court.

Let me say straight away that I found Ms. Makhoul to be less than a credible or reliable witness. She did not paint a very good picture. In a word, she was less than truthful. In addition, during her testimony, someone in the Court was signaling to her while she was being cross examined. On the other hand, Mr. Lockhart, Ms. Foster and Ms. George struck me as very straight forward and honest. Mr. Luwisa was a simple and forthright witness, unlike Ms. Makhoul who conveniently could not recall most of the important matters on which she was questioned and she was only able to recall when she was pressed during cross examination and had to resile from earlier positions that she had taken. There is no doubt that she is not a particularly truthful person. This was in contrast to the witnesses who testified on behalf of the defendant, all of whom were very straightforward and honest. The Court did not on any occasion have cause to question the credibility of any of the witnesses who testified on behalf of Ms. Foster and Mr. Lockhart. Where there is any conflict between Ms. Makhoul's evidence and that of the witnesses for the defendants, the latter's evidence is preferred.

[13] **Mr. Hugh Marshall Jr's submissions**

Learned Counsel Mr. Marshall Jr. submitted that the material events that have led to this action are as set out: In or about the month of March 1996, Ms. Foster through her Attorney-at-Law, Mr. Lockhart entered into an agreement to lease the land to Ms. Makhoul. Initially, there had been an agreement to lease the same land to Ms. Makhoul's husband. However, in March 1996, it was Ms. Makhoul who enjoyed the lease of the lands at a monthly rental of $500.00 in the first instance which increased to $700.00 per month by the 27th day of September 1996. The existing terms of the tenancy are set out in a letter from Mr. Lockhart to Ms. Makhoul dated the 6th December 1996. Ms. Foster caused a notice to quit and deliver up possession to be issued to Ms. Makhoul, in February 2003. It is that notice which comes to the Court for scrutiny.

[14] **Notice to quit**

Learned Counsel Mr. Marshall Jr. said that under the Rent Restriction Act, the lands let to Ms. Makhoul are regulated. This is so as the lands are building lands within the definition section 2 of the Act and are included in its regulation. By reason of section 12 of the Act,

no notice to quit and deliver up possession shall be valid unless it complies with section 12. This section stipulates the circumstances in which any notice to quit of regulated premises can be valid.

[15] Of importance are the three reasons stated for the notice to quit. These are on the notice and are now reproduced for ease of reference.

"(a) The tenant has sublet the whole or part of the premises without obtaining the consent of the landlord or being expressly authorised by the tenancy of agreement to so do.

(b) The tenant has been guilty of conduct which is an annoyance to an adjoining occupier to wit, Wayel Luwisa t/a Louis Brothers.

(c) The tenant has impugned the title of the Landlord."

[16] The evidence is that in or about early 2003 Ms. Makhoul sublet her store to a third party. It was this which caused the defendants to issue this notice. Learned Counsel Mr. Marshall Jr. said that throughout the trial Ms. Foster and Mr. Lockhart produced no evidence to support the second and third ground relied upon in the notice. Indeed, in their pleadings there is no assertion that the actions of Ms. Makhoul amounted to an annoyance to the adjoining occupiers in any way whatsoever. There was no pleading or evidence that Ms. Makhoul had in any way impugned the title of the landlord. Mr. Marshall Jr. said that the evidence, as does the pleadings, remain clear that the notice to quit emanated out of Ms. Makhoul's desire to sublet to one Mr. Eric Sheppard. This is stated in the pleading of Ms. Foster at paragraph 17(a) of her defence.

[17] Learned Counsel Mr. Marshall Jr. stated that the tenancy by its very nature is created by contract. The contract was between Ms. Makhoul and Ms. Foster acting through her agent and was for a term of years. Following the expiration of the agreed term, Ms. Makhoul would have held over as a periodic tenant.

[18] Further, learned Counsel Mr. Marshall Jr. stated that the land is subject to the Registered Land Act and section 51 of that Act stipulates that upon the expiration of the initial two year

lease, Ms. Makhoul would have held over as a periodic tenant upon the same terms and conditions as the original lease. An examination of the letter which reflects the terms of the tenancy shows no expressed prohibition against a subletting. Learned Counsel Mr. Marshall Jr. said that there being no express condition against subletting, examination must be made of section 53(h) of the Registered Land Act. This section has an implied prohibition against subletting without the landlord's consent. It reads:

> "not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, which consent shall not be unreasonably withheld."

[19] Mr. Marshall Jr. said that note must be had of the fact that Ms. Makhoul at all times is and remains the tenant of Ms. Foster even though she had rented premises to a third party, it was a store unit that was rented. She therefore remained the tenant of Ms. Foster at all times and in occupation of the land leased. Thus, learned Counsel Mr. Marshall Jr. said that there was no subletting by Ms. Makhoul to a third party. In any event, there would have been no breach of the covenant against subletting, if it were found as a matter of fact to be a subletting, by reason of the fact that the failure to give consent was unreasonably withheld.

[20] **Additional structure**

Next, learned Counsel Mr. Marshall Jr. referred the Court to the evidence in which Ms. Makhoul makes clear that her husband extended their building on the land they rented from Ms. Foster. This extension sits on no additional lands. It comprises of one wall from the rear of the building towards the road and a door way. There was no additional roof or flooring. The extension also took in some of the original space that was leased to Ms. Makhoul and which she allocated for the existing store, in particular a store room and changing room. The size of the other store is only sufficient to hold one shelving unit in its center with shelves on either side of the wall.

[21] **Entire building**

Learned Counsel Mr. Marshall Jr. said that the evidence of all the witnesses, save and except Ms. James, is that the two shops are housed in the one building. That building was built by Ms. Makhoul and her husband. When in 1996, Ms. Foster purported to rent the shop premises to Mr. George, she had no authority to do so. The building was not hers in ownership and therefore she could not have rented it. Additionally, the land was rented to Ms. Makhoul at a monthly rental of $700.00 which sum Ms. Makhoul was duly paying. Accordingly, the land was not available to be let to Mr. George unless the tenancy with Ms. Makhoul had been lawfully determined. Learned Counsel Mr. Marshall Jr. therefore urged the Court to hold that Ms. Makhoul is the owner of the entire building, including the additional construction and to order that she is entitled to the reliefs claimed, inclusive of damages.

[22] **Dr. David Dorsett's submissions**

In or about 1979, Mr. Stanley Walter (deceased), father of Ms. Foster, and owner of land in the city of St. John's granted a five year lease to Elias (deceased), husband of Ms. Makhoul, to occupy land and to erect thereon a chattel building for use by him as a store. The parties entered into a fresh lease for the land in 1985. The lease, which fully describes the land, is shown at pages 223-224 of the Trial Bundle. Ms. Foster is now the registered proprietor and the landlord of the land in question. The 1985 lease expired in the process of time but Ms. Makhoul was permitted to remain in occupation of the land as a month to month tenant. On 29th January 1992, Ms. Foster obtained judgment in suit No. 373 of 1991 against Ms. Makhoul's husband for possession of the land on account of being in arrears of rent. The arrears were subsequently paid and the monthly tenancy of Ms. Makhoul's husband was reinstated. Likewise in 1994, Ms. Foster obtained judgment in suit No. 297 of 1994 against Ms. Makhoul's husband for possession of the land on account of him being in arrears of rent. The arrears were subsequently paid and Ms. Makhoul's husband's monthly tenancy was again reinstated. On 30th August 1995, a notice to quit for non-payment of rent was again served on Ms. Makhoul's husband.

[23] On 27th March 1996, Ms. Foster, by her agent Althea James, entered into an agreement for a lease with Ms. Makhoul for a term of two years. The agreement is shown at page 246 of the Trial Bundle. (This agreement inaccurately describes the land situated at the corner of Market Street and Corn Alley. No such land exists, as Market Street and Corn Alley are streets that run parallel to each other. They do not intersect to form a corner. The land properly described is at the corner of Market Street and South Street). It was later discovered that one Mr. Habib George had erected a structure that encroached on Ms. Foster's land – land which adjoined the land leased and occupied by Ms. Makhoul. It was also discovered that Mr. George was paying Ms. Makhoul $1,200.00 per month in rent with respect to the land and was retaining the sum of $1,000.00 which was credited to the costs he incurred in constructing the additional structure.

[24] Subsequently, agreements for leases were entered into with both Mr. George and Ms. Makhoul. The agreement with Mr. George is dated 4th December 1996 (and is shown at page 252 and 253 of the Trial Bundle). The agreement with Ms. Makhoul is dated 6th December 1996 (and is shown at pages 254 and 255 of the Trial Bundle). The duration of the proposed term was two years at the monthly rental of $700.00.

[25] Following the death of Elias, Ms. Makhoul sought permission to rent the original portion of the building, from which she traded, permission which was granted by Mr. Lockhart on condition that half of the rent collected would be allocated to Ms. Foster, or that the building be sold to Ms. Foster. She went ahead and sublet the store without permission. Ms. Makhoul subsequently received a notice to quit, dated the 26th February 2003, to remove the portion of the building being occupied by her, this she said was impossible, as the building had only one partitioning wall and the building would have been damaged if a portion only was to be removed. After being served with the notice to quit, Ms. Makhoul attempted to continue to pay rent to Mr. Lockhart's Chambers, but the office refused to accept it, she therefore initially paid the rent into her attorney's office.

[26] **Notice to quit**

Referring to the notice to quit, Dr. Dorsett argued that upon receipt of the information that Ms. Makhoul was "causing an extension to be built onto the existing building which housed her business", Mr. Lockhart wrote to Ms. Makhoul informing her that she was given no permission to construct the extension, and reminding her that the land rented to her consisted "only of the area occupied by the building constructed by her husband in or about the year 1985 and no more". The letter dated 26th February, 2003 went on to demand that further construction cease, and the new construction be demolished. The letter also enclosed a valid notice to quit dated 26th February, 2003 and gave three reasons for the notice, the first two being as follows:

> (1) The tenant has sublet the whole or a part of the premises without obtaining the consent of the landlord or being expressly authorised by the tenancy agreement so to do.
>
> (2) The tenant has been guilty of conduct which is an annoyance to an adjoining occupier to wit Wayal Luwisa t/a Louis Brothers.

[27] In cross examination, Ms. Makhoul stoutly denied receiving the letter but was forced to change her story when it was pointed out to her that she had admitted in paragraph 12 of her statement of claim to having received the notice to quit dated 26th February, 2003 and which was enclosed in the letter. Notwithstanding the above, Ms. Makhoul has failed and or refused to quit Ms. Foster's land and to remove that part of the building belonging to her late husband. Further, she has, in spite of Ms. Foster's objections, continued to rent the original portion of the building to a series of tenants, initially Mr. Eric Sheppard and presently to Mr. Juan Gua Wang. Mr. Sheppard paid the monthly rent of $6,500.00 and Mr. Wang the monthly rental of $8,000.00. Dr. Dorsett submitted that the notice is a valid notice to quit, for the reasons given in reasons 1 & 2 thereof, reason 1 is valid pursuant to section 12(i) of the Rent Restriction Act and reasons no.2 pursuant to section 12(c) of the Rent Restriction Act Cap 378 of the Laws of Antigua and Barbuda. Notwithstanding, Ms. Makhoul has wantonly refused to quit the premises and in fact continues to rent the property as landlord at vastly inflated rental, while depriving Ms. Foster of the right to occupy and/or rent land which she legitimately owns.

[28] Next, Dr. Dorsett stated that Ms. Makhoul's defence to Ms. Foster's counterclaim is a bare denial and an allegation that the notice to quit of 28th January 2003 does not comply with the Rent Restriction Act. The defence to the counterclaim is wholly inadequate and unsustainable. Section 12(c) of the Rent Restriction Act provides:

> **12.** No notice to quit any building, land or dwelling house or public or commercial building to which the Act applies shall have effect unless-
>
> > (c) the tenant or any person residing or lodging with him or being his subtenant has been guilty of conduct which is a nuisance or annoyance to adjacent or adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated or become insanitary owing to acts of waste by, or the neglect or default of, the tenant or any such person and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the notice to quit, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

[29] Dr. Dorsett said that the evidence shows that Ms. Makhoul, by issuing a notice to quit to the Luwisas was "guilty of conduct which is a nuisance or annoyance to adjacent occupiers". In the circumstances, the defence to the counterclaim fails and judgment should be entered for Ms. Foster on her counterclaim.

[30] **Claim against Mr. Lockhart**

Learned Counsel Dr. Dorsett submitted that Mr. Lockhart is not a fiduciary of Ms. Makhoul, or to use the words of Sir Thomas Plumer MR, Mr. Lockhart is not an "accounting party" of Ms. Makhoul. He owes no fiduciary duties to Ms. Makhoul. He was a partner in the law firm representing the interest of Ms. Foster and as such may be regarded as having fiduciary duties towards Ms. Foster, not Ms. Makhoul. Indeed, at one time he was the executor of

the estate of Ms. Foster's father, and the land that is the subject of the dispute formed part of the estate of Ms. Foster's father.

[31] In Ms. Makhoul's amended claim form vol. 1 pages 70-71 the only remedy claimed against Mr. Lockhart is:

> "A prohibitory injunction to prevent the defendants and their servants or agents from executing the notice to quit dated the 26th day of February 2003 and subsequently served on the claimant until the determination of this suit."

[32] In essence Ms. Makhoul's only claim against Mr. Lockhart is for injunctive relief and which injunctive relief is not based on any legal claim or issue between her and Mr. Lockhart. The claim itself is a claim seeking only a declaration of title to buildings situated on land in which Mr. Lockhart has no legal or equitable or other legal interest. In her statement of claim, Ms. Makhoul merely makes certain factual averments all pertaining to certain legitimate actions by Mr. Lockhart while acting in a professional capacity as the senior partner in the Legal Firm, which at all material times represented Ms. Foster in matters involving the lands and buildings in question. The paragraphs alluding to involvement by Mr. Lockhart are paragraphs 4, 7, 8 & 12. The only reference in the pleadings to Mr. Lockhart is the averment in Ms. Makhoul's reply to Mr. Lockhart's defence that he "has held himself out to be acting on behalf of the First-named Defendant." Dr. Dorsett argued that Mr. Lockhart has been improperly added as a party and the claim against him should be dismissed. Dr. Dorsett submitted that the evidence of Ms. Makhoul (as is contained in her witness statement) discloses no cause of action against Mr. Lockhart. The claim for "an account of all rents and/or profits received by the Second-named Defendant for the duration of the tenancy of the 'Louis Brothers'" is misconceived, in that any sums of rents received by Mr. Lockhart was so done on behalf of Ms. Foster, and he has no legal obligation to account to Ms. Makhoul.

[33] **Visit to the scene**

Dr. Dorsett said that the visit to the locus clearly disclosed the following:

(1) That the original structure as constructed by Mr. Elias Makhoul occupied only a portion of the land, and which could be clearly identified as the land rented by the letter dated 6th December 1996.

(2) There are not one but two partitions separating the original building from the extension as constructed by Mr. Habib George.

(3) It is clear that an additional foundation of concrete was put down to support the extension of the building.

(4) The roof of the original structure was not only lengthened to cover the extension, but protrudes onto and rests on top of the neighbouring building which Ms. Makhoul begrudgingly admitted belong to one Mr. Aflack.

(5) All visible concrete foundations are clearly affixed to the realty, making it impossible to remove the building(s) without destruction of the structure.

(6) It is clear that the extension as constructed created a separate and distinct entity to the original structure constructed by Mr. Elias Makhoul.

[34] **Ms. Makhoul's claim for rent**

Ms. Makhoul claims rent from 1st December 1996 until the present. The evidence shows that from 1st December 1996 Ms. Foster entered into an agreement of lease with Mr. George. This tenancy was eventually taken over by Mr. Wayal Luwisa, trading as "Louis Brothers".

[35] Whilst it is not clearly pleaded, it seems to be the case of Ms. Makhoul that she is entitled to the rent from 1st December 1996 because she has sublet or was entitled to sublet the premises now occupied by the "Louis Brothers".

[36] Dr. Dorsett stated that Ms. Makhoul's claim for rent must be dismissed. Firstly, there was no subletting by Ms. Makhoul. Certainly, in the case of the lands rented by Ms. Foster to Mr. George and now rented by the "Louis Brothers", the lands were never rented to Ms. Makhoul. She cannot sublet or sub-lease lands for which she had no lease or tenancy. Mr. George was discovered to be encroaching on Ms. Foster's land and Ms. Makhoul was

receiving rent from Mr. George for lands that were not hers nor for which she had no interest recognised by law. Secondly, Ms. Makhoul is not entitled to sublet.

[37] **Ms. Makhoul's subletting**

Section 12(i) of the Rent Restrictions Act is clear in its terms:

> No notice to quit any building land or dwelling house shall have effect unless:
>
> > The tenant has sublet, or parted with the possession of the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorised by or under the tenancy agreement or lease so to do.

[38] Any subletting by Ms. Makhoul to Mr. Sheppard and now to Mr. Wang would have been illegal in that the lessor, Ms. Foster has not given "previous written consent" to any subletting. Any subletting granted by Ms. Makhoul would have been an illegal contract. The law is that the Court will not enforce an illegal contract or not come to the aid of a party seeking to benefit from an illegal contract is well settled and recently repeated by their Lordships of the Privy Council. See Lord Mance in **Morrell and Morel v Workers Savings & Loan Bank [2007] UKPC 3 AT [35]**.

[39] Dr. Dorsett submitted that all of the relevant facts are before the Court. Ms. Makhoul wants to be awarded rent that might flow to her from an illegal contract; moreover, she wants to be awarded rent for land that is not hers (hence she cannot lease or rent it) or land for which she has no lawful authority to sublease or sublet (she having no lease or tenancy for it in the first place). The Court cannot be a party to such a scheme and must refuse any invitation to enforce an illegal transaction.

[40] **Store becoming affixed to land**

Dr. Dorsett argued that the store that Elias built has become affixed to the land. The leading case on chattels and fixtures and what is part of land is the House of Lords case of **Elitestone Ltd v Morris [1997] 1 All ER 513**. In that case, the claimant was the owner of a parcel of land divided into 27 lots; the defendant the occupier of a chalet or bungalow on

one of the plots. The claimant wanted to redevelop the lots and issued proceedings for possession. The defendant resisted on the ground that as a tenant he enjoyed certain statutory protection and claimed a declaration to that effect. The judge at first instance, an assistant recorder, having visited the site, found thus:

> "While the house rested on the concrete pillars which were themselves attached to the ground, it would have been clear to anybody that this was a structure that was not meant to be enjoyed as a chattel to be picked up and moved in due course but that it should be a long-term feature of the realty albeit that, because of its construction, it would plainly need more regular maintenance."

The Court of Appeal allowed the claimant's appeal, holding that the bungalow was a chattel because it merely rested on, without being attached to, the concrete foundation blocks. The defendant appealed.

[41] The House of Lords allowed the appeal and restored the judgment of the assistant recorder and lauded the judgment of the assistant recorder as "a judgment which deserves commendation for the detail and care which has gone into it". Their Lordships held that applying a commonsense view, when the bungalow was built it became part and parcel of the land and the absence of any physical attachment to the land is irrelevant.

[42] Lord Lloyd of Berwick stated as follows:

> "If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel."

[43] Lord Lloyd of Berwick applying the dictum of Blackburn in **Holland v Hodgson (1872) LR 7 CP 328 at 334, [1861-73] All ER Rep 237 at 242**, stated that in determining what is (or is not) a fixture, or alternatively in deciding what is (or is not) part of the land there are two factors that are decisive: (1) the degree of annexation to the land and (2) the object of the annexation.

[44] With respect to the first factor, degree of annexation to the land, their Lordships relied on and applied a case emanating from the High Court of Australia, **Reid v Smith (1905) 3 CLR 656** and the various English and American authorities cited therein. The **Reid** case concerned a wooded house that rested by its own weight on brick piers. The house was not attached to the brick piers in order to prevent an invasion of white ants. The High Court of Australia held that the absence of any attachment did not prevent the house forming part of the realty.

[45] Dr. Dorsett said that it was held in **Elitestone Ltd v Morris** ibid that where a house was constructed in such a way that it could not be removed, save by destruction, it could not have been intended to remain a chattel and must have been intended to form part of the realty. With respect the purpose of annexation fact, the second factor that determines whether or not a fixture or alternatively what is (or is not) part of the land, Lord Lloyd of Berwick at 519b-c made it clear:

> "A house which is constructed in such a way so as to be removable, whether as a unit or in sections, may well remain a chattel, even though it is connected temporarily to main services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty. I know of no better analogy than the example given by Blackburn J in **Holland v Hodgson (1872) LR 7 CP 328 at 335, [1861-73] All ER Rep 237 at 242**:
>
> > "Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones stacked on the top of each other in the form of a wall, would remain chattels."

[46] Lord Lloyd of Berwick at 519h puts the matter very plainly:

> "The intention of the parties is only relevant to the extent that it can be derived from the degree and object of the annexation. The subjective intention of the

parties cannot affect the question whether the chattel has, in law, become part of the freehold."

His Lordship also highlighted the point that in considering the matter of whether a fixture has become annexed to land and thus is to be treated as forming part of the land, the matter has to be looked at objectively and the subjective intention has no role.

> "Regard may not be paid to the actual intention of the person who has caused the annexation to be made. In **In re De Falbe [1901] 1 Ch. 523, 535** Vaughan Williams L.J. said that there was not to be an inquiry into the motive of the person who annexed the articles, "but a consideration of the object and purpose of the annexation as it is to be inferred from the circumstances of the case." As Lord Cockburn put it in Dixon v Fisher (1843)5 D. 775, 793 "no man can make his property real or personal by merely thinking it so." The matter has to be viewed objectively.
>
> Accession also involves a degree of permanence, as opposed to some merely temporary provision. This is not simply a matter of counting the years for which the structure has stood where it is, but again of appraising the whole circumstances. The bungalow has been standing on its site for about half a century and has been used for many years as the residence of Mr. Morris and his family. That the bungalow was constructed where it is for the purpose of a residence and that it cannot be removed and re-erected elsewhere point in my view to the conclusion that it is intended to serve a permanent purpose. If it was designed and constructed in a way that would enable it to be taken down and rebuilt elsewhere, that might well point to the possibility that it still retained its character of a chattel. That the integrity of this chalet depends upon it remaining where it is provides that element of permanence which points to its having acceded to the ground."

[47] In the case at bar, the land in dispute was leased for the purposes of housing a store. A store was placed at the site and has been there for years, since 1979, just shy of 30 years. It cannot be reasonably concluded the placement of the store building was occasional. The store was not under a tent but in a building constructed on Market Street. Dr. Dorsett said that it is proper for the Court to take judicial notice of the fact that Market Street is the main

street in the retail district of the capital city of St. John's. Market Street is the heartthrob of the city's commercial district; it is a heavily built up area, and is not a street lined with any chattel buildings. The store building, whose character is the subject of dispute in the case at bar, is a permanent fixture situated on Market Street and not some temporary facility that can be folded up and carted away. It is very much part of the realty.

[48] The Supreme Court of Canada in **Haggert v The Town of Brampton (1897) 28 SCR 174 at 182** held:

> "In passing upon the object of the annexation, the purpose to which the premises are applied may be regarded; and if the object of setting up the articles is to enhance the value of the premises or improve its usefulness for the purposes for which it is used, and if they are affixed to the freehold even in a slight way, but such as is appropriate to the use of the articles, and showing an intention not of occasional but of permanent affixing, then, both as to the degree of annexation and as to the object of it, it may very well be concluded that the articles are become part of the realty.

[49] Dr. Dorsett submitted that any fair and reasonable consideration of the purpose for which the building which is the subject of the case at bar is used shows a clear and present "intention not of occasional but of permanent affixing."

[50] The classic West Indian case of **Mitchell v Cowie (1964) 7 WIR 118** is on all fours with **Holland v Hodgson, Haggert v Brampton, Reid v Smith** and **Elitestone Ltd v Morris.** Wooding CJ in **Mitchell v Cowie** at p 121E made the point that the statement of the common law laid down in **Holland v Hodgson** was deemed to be the law in Trinidad and Tobago. Dr. Dorsett stated that the common law of England, the law of Trinidad and Tobago, and the law in this jurisdiction is the same, on the point of a chattel being affixed to land and forming part of the same.

[51] Dr. Dorsett submitted that the building is part and parcel of Ms. Foster's land and as such it is Ms. Foster, she having not authorised any subletting of the land, who is entitled to any

rent associated with the use and occupation of her land. In the circumstances, Dr. Dorsett said that Ms. Makhoul's claim against both Ms. Foster and Mr. Lockhart must be dismissed and that judgment be entered for Ms. Foster on her counterclaim. Ms. Foster is the lawful landlord and is entitled to rent and possession after issuing to Ms. Makhoul a notice to quit in compliance with section 12(c) of the Rent Restriction Act. Ms. Makhoul is a tenant holding over and as such is under an obligation to pay rent – not to receive rent and mesne profits, as she has incredibly claimed, from her landlord or any other person. She is not entitled to any accounting of rents and/or profits received by Mr. Lockhart on behalf of Ms. Foster.

[52] **Damages**

Ms. Foster issued a lawful notice to quit to Ms. Makhoul. Ms. Makhoul remains in possession of Ms. Foster's land, notwithstanding Ms. Foster's notice to quit and demand that Ms. Makhoul yield up possession. Unjustifiable interference with the possession of land constitutes trespass **Winfield & Jolowicz on Tort, 16th edition, at 13.1**.

[53] Dr. Dorsett submitted that Ms. Foster is entitled to substantial damages having been wrongfully dispossessed of her land since 2003. Damages are due to Ms. Foster on the basis of the "user principle" as applied in the Privy Council case of **Inverugie Investments Ltd v Hackett (1995) 46 WIR 1** in which the proprietor has been wrongfully dispossessed for 15 years. Lord Lloyd of Berwick speaking for their Lordships noted that the "user principle" focuses on the price which a reasonable person would have been prepared to pay for the user concerned:

> "The plaintiff may not have suffered any actual loss by being deprived of the use of his property. But under the user principle he is entitled to recover a reasonable rent for the wrongful use of his property by the trespasser. Similarly, the trespasser may not have derived any actual benefit from the use of the property. But under the user principle he is obliged to pay a reasonable rent for the use which he has enjoyed. The principle need not be characterized as exclusively compensatory, or exclusively restitutionary; it combines elements of both."

[54] Dr. Dorsett said that on the authority of **Inverugie Investments Ltd** ibid that Ms. Foster is entitled to recover, and Ms. Makhoul is obligated to pay, a reasonable rent for the property she has enjoyed since she should have yielded up possession on 31st March, 2003. Dr. Dorsett stated that market rent for Ms. Foster's property since 1st April, 2003 is the reasonable rent that Ms. Makhoul is required to pay.

[55] More than five years ago, on 28th March, 2003 Ms. Makhoul obtained an injunction against Ms. Foster and Mr. Lockhart. The injunction continues. The injunction ought to be discharged forthwith.

[56] **Court's analysis and conclusions**

I have carefully reviewed the evidence that was adduced in the case, together with the agreed bundle of documents and have given deliberate consideration to the submissions of both learned Counsel. The following represents my findings of fact.

[57] Ms. Makhoul and her husband Elias were desirous of renting a portion of land from Mr. Walter (deceased) and a lease for a portion of the land situated at the corner of Market and South Streets was executed. Since the lease related to a portion of the land, the Makhouls were permitted to erect a store on that portion, which they did. I do not for one minute believe that Mr. Walter rented the entire parcel of land to Elias. I am buttressed in my view, having also examined the documentary evidence, and having been afforded the opportunity to visit the scene and to observe the land and the building, as pointed out by the witnesses. This visit proved to be very valuable. Having rented the portion of land, Elias repeatedly defaulted in the payment of rents and the agreement was terminated, only to be reinstated. Eventually, Ms. Foster inherited the land on her father's death and became the landlord. Ms. Foster lived out of Antigua, for the most part, and the law firm of Lockhart and De Freitas, now Lockhart and Mendes, of which Mr. Lockhart is the senior partner, acted as her attorney. In 1996, on the final termination of the agreement with Elias, a new lease was executed on Ms. Foster's behalf with Ms. Makhoul. Ms. Althea James acted as Ms. Foster's agent. This lease was for a period of two years. Unknown to Ms. Foster, her agent or her Attorney-at-Law, early in 1996 the Makhouls had unlawfully

permitted Mr. Habib George to construct an adjoining building on the store, without the permission or consent of the landlord or her agent. In fact, Elias, in seeking to obtain permission from the Development Control Authority to build stated that he was the owner. In November 1996, Mr. Lockhart eventually learnt about what had transpired and both Ms. Makhoul and Mr. George were contacted and they both admitted to the misdeed and Mr. George indicated that he had financed the construction of the additional structure.

[58] Mr. Lockhart told Ms. Makhoul that she acted unlawfully in causing the additional structure to be erected without obtaining either Ms. Foster or her agent's permission. She was also advised that she had no right to receive the rents from the additional structure. I am equally satisfied that Mr. George, in Ms. Makhoul's presence, told Mr. Lockhart that he had agreed to pay Ms. Makhoul $2,200.00 to rent the land and that he was paying her $1,200.00 for the land and retaining $1,000.00 which would result in her eventually owning the building after a stated period. As a consequence, Mr. Lockhart, acting as the Attorney-at-Law for Ms. Foster, determined Ms. Makhoul's tenancy on the basis that she was in breach of the tenancy agreement

[59] Subsequently, on 6th December, 1996, Ms. Makhoul entered a new tenancy (in relation to the original portion of the land). Her rental was $700.00 per month. Mr. George also entered into an agreement with Ms. Foster based on a letter of agreement he signed to lease the parcel of land on which the additional structure was constructed, for a period of two years. The monthly rental was $2,200.00 of which he was required to pay $1,200 in cash and the other $1,000.00 was to have been kept by him for the repayment of his cost of construction. On completion Ms. Foster was to eventually own the building. The intention was that Ms. Makhoul and Mr. George were to have entered into separate leases for their respective portions, but this did not materialize due to the landlord's inability to have the land subdivided. Mr. George continued to occupy the additional portion of the land and paid the rentals. Subsequently, and with the approval of Ms. Foster, Mr. George assigned the portion of the building to the Luwisas. A new agreement was entered into and Mr. Luwisa commenced paying rental for the additional structure to the law firm of Lockhart and Mendes, on behalf of Ms. Foster.

[60] In 2003, Ms. Makhoul caused a notice to quit to be issued to Mr. Luwisa, the latter who consulted Mr. Lockhart. He was advised to ignore Ms. Makhoul's notice. The notice from Ms. Makhoul to Mr. Luwisa was served some 6 years after Mr. George had vacated the additional structure. Ms. Makhoul, apparently, was no longer able to manage her store. Further, I am satisfied that around November 2000, Ms. Makhoul sought permission to sublet the structure that her husband had built and Ms. Foster stipulated terms on which that was to be possible. I have no doubt that she was also told that if the terms were not agreeable, Ms. Foster was prepared to purchase the building. The terms as indicated by Ms. Foster were not agreeable to Ms. Makhoul; nevertheless, the latter proceeded to sublet the original building. She had also caused notices to be sent to Mr. Luwisa claiming that the building he occupied belongs to her. She has caused letters to be written to him and seeks to obtain rents from him.

[61] It was after Ms. Makhoul went ahead and sublet the portion of the building, that her husband had constructed, that Ms. Foster caused a notice to quit and deliver up possession dated 28 January, 2003 to be issued to her. She was also required to remove the additional structure from Ms. Foster's land. Thereafter, Ms. Foster refused to have her attorney collect the rent. Ms. Makhoul has filed this claim and alleges that she had suffered loss and damage reflected in loss of rental from 1st December, 1996 to date. She also seeks a declaration that she is the owner of the entire building.

[62] Ms. Foster has counterclaimed against Ms. Makhoul and seeks possession of the land and the premises, mesne profits and damages. Ms. Foster denies that Ms. Makhoul has suffered any loss. Ms. Foster further argues that the building that Elias constructed has become a part of the land and therefore Ms. Foster is entitled to possession of it, as the owner of the land.

[63] Mr. Lockhart says hat he has been improperly joined as a party to the claim. He asks the Court to dismiss the claim against him with costs.

[64] **Additional structure**

As alluded to earlier, the Court is clear that in March 1996 when Ms. Foster caused the lease to be entered into with Ms. Makhoul, it was only in relation to the portion of land where the chattel building/store was. The Court has no doubt that Mr. Makhoul and later Ms. Makhoul was only leased the portion of land on which the original chattel building rested. The Court is also equally satisfied that Ms. Makhoul and Mr. Makhoul caused the additional structure to be constructed without the consent of Ms. Foster, her agent Ms. Althea James nor her Attorney-at-Law. I simply do not believe Ms. Makhoul when she told the Court that during the construction of the additional structure, that Mr. Lockhart was aware and agreed to the addition. It is equally clear that despite her breaches of the agreement, she was permitted to continue to occupy the land (perhaps in part due to the empathy that was had for her and the fact that Mr. Lockhart was well acquainted with her cousin who pleaded her cause). Added to this, even during her testimony and during the visit to the scene, it was evident that Ms. Makhoul was not vey candid.

[65] The Court having reviewed the relevant evidence, together with the agreed documents, has absolutely no doubt that the additional structure was constructed by Mr. George at his expense. He, having realised his error in agreeing to pay Ms. Makhoul who was not the owner of the land for the structure, properly rectified the error by entering into the agreement through which Ms. Foster became its owner. Mr. George migrated and before this, with Ms. Foster's Counsel, a new agreement was entered with the consent of Mr. George for Mr. Luwisa to take over. There is compelling evidence that Ms. Makhoul's claim to the additional structure only surfaced several years after and for the sole reason of yet again improperly obtaining a financial benefit. The Court has noted that Ms. Makhoul's unabashed desire to continue to reap financial rewards for the property in which she has no interest. She has quite blatantly tried to mislead the Court into thinking that the additional structure was financed by her husband in the face of overwhelming evidence to the contrary. There is not a scintilla of credible evidence to support her contention as to the ownership of the additional structure. Also, at the visit to the scene, Ms. Makhoul pointed out to the Court the original structure as being the extent of the land her husband had first rented. It is clear that the additional structure is owned by Ms. Foster. It is passing strange

that in the face of that, she still insists that her husband financed the additional structure. For what it is worth, the uncontroverted evidence is that her husband was habitually in arrears in the payment of his rents, yet she would have the Court believe that it was he who financed the construction of the additional structure. I pause to note that the additional structure has a separate foundation.

[66] More importantly, the evidence led by Ms. Foster is consistent with her contention that while the Makhouls had unlawfully and without obtaining permission, allowed Mr. George to construct the additional structure, once this came to the attention of Mr. Lockhart, Ms. Makhoul's lease was terminated and a new agreement was entered into by way of letter dated 6th December, 2006. All of this corroborates Ms. Foster's contention as to her ownership of the additional structure, based on the totality of circumstances.

[67] **Whether Ms. Makhoul is entitled to possession of the original structure**

In order to be able to determine this issue, the Court has to examine the relevant circumstances including the notice to quit and whether it was valid. Learned Counsel Mr. Marshall Jr. said that Ms. Foster defended her case based on the allegation that Ms. Makhoul, in allegedly subletting the premises had breached the agreement of tenancy. He said that is clear from the pleadings and the evidence. The Court is of that view since Ms. Foster, in her counterclaim, relied on the notice to quit and has based the termination on the allegation that Ms. Makhoul has sublet the property.

[68] Ms. Foster caused the notice to quit to be given to Ms. Makhoul. The notice states that the reasons therefore are (a) the tenant has sublet the whole or part of the premises without obtaining the consent of the landlord or being expressly authorised by the tenancy agreement so to do; (b) the tenant has been guilty of conduct which is of annoyance to the adjoining occupier, Mr. Wayal Luwisa; (c) the tenant has impugned the title of the landlord.

[69] It is clear to the Court that at paragraph 23 of Ms. Foster's counterclaim, she stated that the notice to quit was based on three grounds. The Court has no doubt that it was Ms. Makhoul subletting the store to Mr. Eric Sheppard and subsequently to Mr. Wang that

caused Ms. Foster to issue the notice to quit. The Court therefore has to ascertain the circumstances under which Ms. Makhoul has rented the store and having reviewed the evidence, the Court is satisfied that Ms. Makhoul has sublet or rented the store without Ms. Foster's permission. As stated earlier, I do not believe for one moment that Mr. Lockhart ever gave Ms. Makhoul permission to rent the store. The Court accepts that Ms. Makhoul was prohibited, and knew that was so, from renting the store to a third party. Further, in determining whether Ms. Makhoul was in breach of the tenancy agreement section 12(1) of the Rent Restriction Act Cap 378 is brought into sharp focus. It is clear and the Court finds as a fact that Ms. Foster has caused the notice to quit to be delivered to Ms. Foster.

[70] I will examine the relevant provisions. Section 12(1) of the Rent Restriction Act stipulates that "no notice to quit any building, land or dwelling house or public commercial building to which this Act shall have effect unless the tenant has sublet, or parted with the possession of, the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorised by and under the tenancy agreement or lease so to do."

[71] Section 2 of the Rent Restriction Act defines "building land to mean land let to a tenant for the purpose of the erecting or placing thereon by the tenant of a building, or to be used for building, or land on which the tenant has lawfully erected or placed such a building."

[72] I am afraid that I am unable to accept the arguments urged on the Court by learned Counsel Mr. Marshall Jr. that in view of the totality of circumstances that Ms. Makhoul has not sublet the land that she has rented from Ms. Foster. It is beyond the Court's imagination what further evidence Ms. Foster would have required to lead in order to show that Ms. Makhoul has sublet the premises. With the greatest of respect, I am of the considered view that based on the clear and unequivocal evidence that has been placed before the Court it is evident that Ms. Makhoul has sublet the premises, not once but on two occasions, without obtaining the consent/permission of the landlord.

[73] As correctly stated by learned Counsel Mr. Marshall Jr. and in any event, there are implied terms that are part of leases by operation of law. Indeed, section 53(h) of the Registered Land Act states that "save as expressly provided it shall be an implied covenant in every lease on the part of the lessee not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, which consent shall not be unreasonably withheld."

[74] In the absence of any evidence of any written consent given by Ms. Foster to Ms. Makhoul, the only issue that remains for the Court to determine is whether the landlord has unreasonably withheld the permission to enable Ms. Makhoul to rent the property. Ms. Makhoul in the Court's considered view has led no evidence which substantiates learned Counsel Mr. Marshall's contention that Ms. Foster has unreasonably refused to grant her permission to lease the property. In fact, to the contrary, the evidence points to Ms. Foster having granted Ms. Makhoul numerous indulgencies. I see no basis for holding that Ms. Foster has unreasonably refused to give her consent for the subleasing of the land.

[75] Interestingly, Ms. Makhoul, during cross examination admitted to having sublet part of the premises that stands on the rented land.

[76] By way of emphasis, the evidential burden is on Ms. Makhoul to prove that Ms. Foster has unreasonably withheld consent, at the very least Ms. Makhoul had the duty to place facts and circumstances before the Court from which the Court can infer that Ms. Foster has unreasonably withheld her consent. There is not a scintilla of evidence on which the Court properly directing its mind can come to that conclusion. In fact, the evidence points the other way namely that after Ms. Foster made the counter offer in relation to the leasing of the property, Ms. Makhoul simply rejected it and proceeded nonetheless to rent the store to two different sets of persons. Her contention that Ms. Foster has unreasonably withheld her permission does not have any evidential basis.

[77] In view of the totality of circumstances, I am unable to agree with learned Counsel Mr. Marshall Jr. that the notice to quit was invalid.

[78] For the sake of completeness, I state that there is absolutely no basis for the Court to conclude that the notice to quit is invalid.

[79] **Conduct annoyed adjoining tenant**

The Court accepts learned Counsel Mr. Marshall's submission that Ms. Foster has led no evidence in support of her contention that Ms. Makhoul, by her conduct caused annoyance to Mr. Luwisa. In fact, Mr. Luwisa testified and the Court was unable to discern any annoyance from him in relation to Ms. Makhoul's conduct. He struck me as a simple witness with no interest to serve, who simply spoke the truth as to what had transpired, particularly in relation to the new structure.

[80] **Mesne profits**

During the course of the trial, the Court was advised that all monies that Ms. Makhoul had owed to Ms. Foster have been paid. If that is so, it is not necessary to make any order for mesne profits, save and except for the month of May.

[81] **Nature of the original structure**

The uncontroverted fact is that the original structure has been on the land for approximately 30 years and that it is annexed to the land by way of foundation. Dr. Dorsett argued that Ms. Foster is entitled to a declaration that she is the owner of the original structure. He says that the store building is a permanent fixture as distinct from a temporary fixture.

[82] This brings me now to address the issue of whether the original chattel building has become a part of the land and are attached to the land. I have paid particular regard to Ms. Makhoul's evidence and that of the evidence of the witnesses called on behalf of Ms. Foster. As mentioned earlier, a visit to the scene proved to be invaluable. I am satisfied that the original chattel building rests on foundation that is attached to the ground. It is clear that the structure was not entitled to be a chattel and to be removed. There is no doubt that the chattel building has become annexed to the land and cannot be moved. In

coming to the above conclusion, I am mindful by the very helpful pronouncements in **Elitestone Ltd v Morris** ibid. I can do better than adopt them. I find the well known principles of law stated in **Mitchell v Cowie** ibid to be very instructive. In the case at bar, where it is evident that the chattel building was constructed in such a way that it could not be removed, save by destruction, it could not have been intended to remain a chattel and must have been intended to form part of the realty.

[83] The building cannot be moved. Further, Ms. Makhoul said during cross examination "I will stay in the building until we come to an agreement. This is my only income so probably she can give me a couple more years."

[84] I have reviewed the evidence in relation to the construction itself and inspected the building. Critically, I have also paid regard to the submissions of Dr. Dorsett on the issue of whether the store had become affixed to the land. The very detailed arguments and authorities provided by Dr. Dorsett are very persuasive in assisting the Court in concluding that the store has become part of the land and affixed to it. The Court is also mindful of Ms. Makhoul's evidence when she stated that the building cannot move and from its own observation of the building, together with the evidence of other witnesses, it is clear that the building has become affixed to the land and is therefore now owned by Ms. Foster.

[85] **Rents from Mr. Luwisa**

In so far as the Court has already held that the additional structure is owned by Ms. Foster, it is therefore unnecessary for the Court to decide whether Ms. Foster is entitled to recover the rents that Mr. Luwisa has caused to be paid to her.

[86] **Claim against Mr. Lockhart**

The Court is of the considered view that neither the pleadings nor the evidence adduced in the trial support any cause of action against Mr. Lockhart. It is passing strange that despite the clear objection of Mr. Lockhart that at all material times, he acted as one of the Counsel for Ms. Foster and therefore ought not to have been joined as a party and despite

this position being taken even as late as during the trial, Ms. Makhoul persisted in her claim against him.

[87] What is more interesting is that she seeks to have him account for all rents and or profits received on behalf of the first defendant for the duration of the tenancy. There is not a scintilla of evidence that any rents that were received by the firm in which Mr. Lockhart is a partner were for his use. In fact, all of the evidence points the other way and shows that the moneys were received by the firm on behalf of Ms. Foster. For what it is worth, it bears stating that Ms. Althea James, who Ms. Foster has appointed as agent for the purposes of dealing with her property has worked at Lockhart and Mendes and its predecessor for several years. It is noteworthy that Ms. Makhoul has not seen it fit to sue her but rather chosen to join Mr. Lockhart as a party. The action against Mr. Lockhart is totally misconceived.

[88] **Conclusion**

Accordingly, Ms. Marie Makhoul's claim against Ms. Cicely Foster is dismissed.

[89] In view of the foregoing, Ms. Marie Makhoul's claim against Mr. Louis Lockhart is struck out.

[90] There will be judgment on the counterclaim in favour of Ms. Cicely Foster against Ms. Marie Makhoul, together with prescribed costs, unless otherwise agreed.

[91] Judgment is also granted on the counterclaim in favour of Mr. Louis Lockhart against Ms. Marie Makhoul, together with prescribed costs, unless otherwise agreed.

[92] Further, it is hereby declared that Ms. Cicely Foster is the lawful owner of the entire property situated at the corner of Market and South Street. It is further declared that Ms. Cicely Foster is entitled to collect all rents due on the property from Mr. Juan Gua Wang. It is further declared that from the date of this order, Ms. Marie Makhoul is not entitled to collect any rent from Mr. Juan Gua Wang.

[93] Ms. Marie Makhoul is to pay Ms. Cicely Foster mesne profits in the sum of $700.00.

[94] It is ordered that the injunction that was granted to Ms. Marie Makhoul is discharged forthwith.

[95] The Court gratefully acknowledges the assistance of all learned Counsel.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda