

**SAINT VINCENT AND THE GRENADINES
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



CLAIM NO. 27 OF 2010
BETWEEN:

ROSLYN WYNNE

Claimant

and

SHENELLE WYNNE

Defendant

AND

CLAIM NO 28 OF 2010
BETWEEN:

ROSLYN WYNNE

Claimant

and

SEBRENA WYNNE

Defendant

AND

CLAIM NO 28 OF 2010
BETWEEN:

ROSLYN WYNNE

Claimant

and

SYLVERNE WYNNE

Defendant

Appearances

Mr Emery Robertson for the Claimant Roslyn Wynne
Mr Duane Daniel and Mrs Anneke Russell for the Defendants,
Shenelle Wynne, Sebrena Wynne and Sylverne Wynne

2014: November 18;19

2015: April 16

JUDGMENT

INTRODUCTORY AND BACKGROUND

- [1] **LANNS, J. [Ag]:** In these consolidated Fixed Date Claims, Roslyn Wynne claims against her nieces Shenelle Wynne and Sebrena Wynne a declaration that by virtue of Deed No 3819 of 2008 she is entitled to possession of that lot, piece or parcel of land, and the building standing thereon situate at Redemption Sharpes, containing by admeasurement 3,757 square feet. Roslyn is also seeking an order for delivery up of possession, damages, mesne profits and costs.
- [2] As against her niece Sylverne Wynne, Roslyn seeks (a) damages for trespass on her property at Redemption Sharpes as described in said Deed No 3819 of 2008; (b) a declaration that she is the owner of all that lot, piece or parcel of land being a portion of land situate at Redemption Sharpes, known as lot #25, containing by admeasurement 3,757 sq feet of land, bounded as shown on Plan G 905; (c) an interlocutory injunction restraining Sylverne, whether by herself, her servants or agents from entering or crossing or occupying the said land or exercising acts of ownership over the said land until the trial of this matter, or until further order; (d) an order restraining Sylverne, whether by herself, her servants or agents, including her children from entering into the porch of the house on Roslyn's property, and creating a nuisance to the occupants of the house; (e) an order restraining Sylverne and her children to stop vandalizing Roslyn's property; (f) costs.
- [3] For convenience and simplicity, and without intending any disrespect, I shall, from here on refer to the parties, witnesses, and other persons involved, whether living or dead, by their first names.
- [4] Sheila died intestate on 27th May 1983, survived by six children, namely, Sylvia, Greta, Trevor, Percival, Uton and Roslyn.
- [5] Greta obtained a grant of letters of administration to Sheila's estate on 6th July 2007.
- [6] At the time of her death, Sheila was the owner in equity of a lot, piece or parcel of land situate at Redemption Sharpes. It is apparent that this lot of land was Crown land and was offered to Sheila for sale by the Housing and Development Corporation in or around October 1980 for \$2,442.05. Sheila was paying for the land by instalments, and up to the time of her death, on 27th May 1983, she had only paid \$290.00; so there was an outstanding balance of \$2,152.05. That balance was paid in the year 2007 by Greta, with money provided by Roslyn, whereupon the

Housing and Development Corporation issued to Greta, as administratrix of Sheila's estate, Deed of Indenture dated 5th October 2007, bearing registration number 4185 of 2007.

- [7] Greta subsequently divested herself as administratrix, and executed a Deed of Indenture numbered 3813 of 2008 in favour of herself, Sylvia, Roslyn, and Trevor. Uton and Percival were by then deceased.
- [8] By Deed of Gift dated 18th August, 2008, and registered as Deed No 3819 of 2008, Sylvia, Roslyn, Greta and Trevor gifted the subject land to Roslyn, in consideration of their natural love and affection.
- [9] All of Sheila's children grew up on the subject land in Sheila's wooden house that she had built. After Sheila's death, Sylvia converted the wooden house into a concrete house and she and her children - Shenelle, Sebrena and Sylverne lived in it until she (Sylvia) got married in 2000, and went to Questelles to live with her husband, leaving her three children in the house that she had built on the land.
- [10] Uton and Percival had also built houses on a portion of the land. Greta went to live with her maternal grandmother nearby, and Roslyn went to live in Canada.
- [11] It is against this brief background, that Roslyn is seeking: a) declaration that she is entitled to possession of the subject land and the building standing thereon situate at Redemption Sharpes, containing by admeasurement 3,757 square feet; b) an order for delivery up of possession, damages for trespass, mesne profits, an injunction (against Sylverne), and costs.

THE CLAIMANT'S CASE

- [12] Roslyn's pleaded case (as put forward by her brother Trevor who is her attorney on record) is that she is the owner of the land which is the subject of this dispute by virtue of Deed numbered 3819 of 2008. Shenelle, Sebrena and were given a notice to quit on 5th November 2009 and the time to quit expired on 6th December 2009. They have refused to quit and are holding over the said premises from Roslyn, and is depriving her from its use and occupation thereof. Roslyn asserts that the said premises could be rented with vacant possession for \$350.00 per month and she says that Shenelle and Sebrena are liable to pay mesne profits from the 6th December 2009 at the rate of \$350.00 per month and costs.

THE DEFENDANTS' CASE

- [13] Shenelle, Sebrena and Sylverne deny that Roslyn is entitled to ownership of the property (notwithstanding her deed) because any title that she (Roslyn) might have had, had long been extinguished by virtue of the continued occupation of the premises by Sylvia, who had lived on the

property from birth until the year 2000 when she became married. They say that Sylvia continued in occupation through her daughters, Shenelle and Sebrena and Sylverne. They say further that they are entitled to remain on the property as they never entered into any lease agreement with Roslyn, and are not liable for any payment of rent, nor have they attorned to Roslyn in any way or form. They counterclaimed for a declaration that they are entitled to an interest in the subject property; in the alternative, they seek an order cancelling Roslyn's Deed of Gift No 3819 of 2008.

THE CLAIMANT'S REPLY TO DEFENCE AND DEFENCE TO COUNTERCLAIM

- [14] Roslyn filed a Defence to the Counterclaim asserting that the Defences are not maintainable as Shenelle, Sebrena and Sylverne have no title to the land, and no deed evidencing title to the land. Roslyn maintained that she is the owner of the land and has been in possession of same since 2008 by virtue of her Deed. She asserts that unless she is dispossessed by Shenelle, Sebrena and Shenelle, she is entitled to the orders sought. She contends that long continuous possession does not give Shenelle, Sebrena and Sylverne title to the property; and that by admitting the notice to quit and its expiration, Shenelle and Sebrena, by holding over and by challenging Roslyn's title automatically brought the tenancy to an end.
- [15] As to the Counterclaim, Roslyn says that paragraph 2 thereof is not maintainable since no issue of adverse possession has been set out or pleaded. Roslyn contends that the land which is the subject matter of the claim belonged to the Housing and Development Corporation subject to an offer for sale to Sheila. Sheila died on 27th May 1983. At the time of her death, Sheila owed the Housing Corporation the sum of \$2242,05, having only paid the sum of \$290.00 before her death. Roslyn and her sister Greta paid the balance of \$2,152.05 to the Corporation whereupon the Corporation, on the 5th October 2007, conveyed the land to Greta as Administratrix of Sheila's estate. By Deed No 3819 of 2008, Roslyn became the owner of the land. The Claimant further contended that the Defendants by Counterclaim has no standing to bring such counterclaim and both their defence and their counterclaim ought to be dismissed with costs.

THE ISSUES

- [16] The main issue which arise for determination is whether, in view of
- (a) the allegations against Shenelle, Sebrena and Sylverne, and the issues arising in the Statement of claim;
 - (b) the undisputed fact that Roslyn is the paper title holder of the land which is the subject of the dispute;
 - (c) the undisputed fact that Shenelle and Sebrena are living on the said land;

- (d) the undisputed fact that Shenelle and Sebrena were each served with notice to quit and deliver up possession of the premises since the 5th November 2009, and that the notice has expired with them still living on the land

the Shenelle and Sebrena have pleaded a viable defence in answer to the claim for delivery up of possession; or has standing to issue a counterclaim for a declaration that they are entitled to an interest in the subject property; or alternatively, for an order cancelling Deed of Gift No. 3819 of 2008.

- [17] The corollary issue is whether in view of
- (a) the allegations and issues arising on the Statement of Claim;
 - (b) the averments contained in Defences and Counterclaims;

the Defences and Counterclaims should be dismissed, and judgment entered for Roslyn against Shenelle, Sebrena and Sylverne in accordance with the reliefs sought in the statements of claim

THE EVIDENCE

Claimant

- [18] Roslyn called two witnesses - Trevor and Jennifer.

Trevor

- [19] By his witness statement Trevor says that he is the Attorney on Record for his sister Roslyn who resides in Canada. His mother Sheila, lived on a piece of land at Redemption Sharpes. She bought the lands from Housing and Land Development Corporation but she died before paying off for the land. His sisters Roslyn and Greta paid off for the land. Letters of Administration to the Estate of Sheila were on the 6th July 2007, issued to Greta. A Deed of Assent was executed by Greta Wynne in favour of the beneficiaries Greta, Sylvia, Trevor and Roslyn. Roslyn decided to pay out the beneficiaries for their share because the piece of land was very small and could not be divided. The property was valued at \$13,860.00 and each beneficiary was informed. Sylvia at the time was living at Questelles with her husband, while Shenelle, Sebrena and Trevor occupied Sheila's home. Sylverne was living on a neighbour's land adjacent to Sylvia. Uton had erected a small house on the piece of land and carried on a shop there. Sheila had blocks in the yard that she had bought during her lifetime with the intention of converting the wooden house to a walled house. Sylvia broke down the wooden house and put up a wall house. Uton, Strongy and Trevor worked on the house free of charge.

- [20] Under cross examination, Trevor said that he used to live on the property but Greta put him out and then he went to live in Uton's house, but his nephew came after him with a cutlass. He now

lives in his aunt's store room. He maintained that Sylvia broke down Sheila's wooden house and turned it into a wall house. He said that Sylvia, Sebrena and Shenelle now live in the wall house. He said that Roslyn gave Greta the money to pay off for the land, and Roslyn gave him \$4000.00 as his share. He was not aware that the land was transferred in the names of all of Sylvia's living children. He is now seeing the Deed reflecting that fact. He remember giving his share to Roslyn.

Jennifer

[21]

In her witness statement, Jennifer, described herself as senior clerk at Law Chambers of Robertson and Robertson. She was the clerk who received information from Greta whenever she came to the Office. Robertson and Roberson Chambers, on behalf of Greta, applied for and obtained Letters of Administration to Sheila's estate. Greta, in her capacity as Administratrix, executed a Deed of Assent No 2413 of 2008 to all beneficiaries including herself. The Deed was duly registered. She was present in the Office when Mr Robertson told Greta that Roslyn would pay them for their share according to the value of the property and Sylvia would be paid whatever she spent on the house.

[22]

Mr Robertson prepared a Deed of Gift for each of them to sign. When Greta and Sylvia came to sign, Mr Robertson read over the Deed to each of them and one of the Clerks went with Greta to the Registry to acknowledge her signature. She (Jennifer) went to the Registry with Sylvia to acknowledge her signature, and Sylvia told the Assistant Registrar Mr Ricky Burnette that she did not know what she was signing to. Mr Burnette then gave her the Deed to read which she did and then signed.

[23]

Under cross examination, Jennifer confirmed that at the stage of the signing of the Deed, Mr Robertson explained that the piece of land was small so everybody cannot get a piece of it. She confirmed too that Trevor took his share of the money, but Greta and Sylvia did not. According to Jennifer, Greta and Sylvia said that they did not sign for money, they signed to get their share of the property and Sylvia was to get her share plus the money she put in the property.

Defendants' evidence

[24]

Shenelle, Sebrena and Sylverne called four witness altogether, namely Sylvia, Shenelle, Sebrena and Greta. Sylverne gave a witness statement but she was not called.

Sylvia

- [25] By her witness statement, Sylvia states that she lives at Questelles with her husband but she is back and forth between Questelles and Redemption Sharpes where she grew up on her mother's property, which is the subject of dispute. She says that her daughters Shenelle, Sebrana and Sylverne presently live on the property in a house which she built. This house, she said was built on the same spot where her mother Sheila had her wooden house, but she had built a concrete dwelling on the spot after her mother died. She built the house around 1989 /1990, because the wooden house was not good; it was stuffed with cloth, and she needed somewhere for herself and her children to live. In 2013, she added a bath room and kitchen. She does not know how much money she spent in building the house.
- [26] Her brother Uton, who died in November 2006, also built a concrete house on the same piece of land. Her brother Trevor now lives in that house.
- [27] Another brother Percival who is also deceased, had also built a wooden house on the same land but that house has since burnt down. She said that the property belonged to her mother, but they all lived there while their mother was paying Housing and Land for the property. When her mother died on 27th May 1983, she still had a balance of over two Thousand dollars owing on the property. She was called to the Chambers of Robertson and Robertson, and it was mentioned that there was a family dispute, but it was explained to her that the land was to be given to all of them so they could get their share. She said she was anxious to see that she got the spot on which she had build her house. According to her, she was told that everybody will get their share and everybody will get their deed, so if they want to go to the bank to borrow money they can use their deed. She was given a paper where she saw that Greta and Trevor had already signed. It was not read to her and she was told to read it, which she did, and she signed it.
- [28] According to Sheila, she never knew that the document was to give Roslyn the property. She would never give Roslyn the property, because her house is on the property, and her children live in it. Since her signing, there was commotion as to why she is still on the property, when she had already signed to give up her share. She went to [Mr Robertson's]Office and she was told that there was \$4000.00 there for her. When she asked what the money was for, she was told it was from Roslyn. She refused the money for she never agreed to sell her share or give her share away.
- [29] Under cross examination, Sheila said that during the lifetime of her mother, she never contributed to the payment of any money towards the purchase of the property. She denied that Strongy, Trevor or Uton assisted her with building her house. It was strangers who helped her she said. She admitted that at one time she and Greta were not getting along.
- [30] Asked whether she remembered signing a Deed giving Roslyn the property, Sheila replied that she knew she signed two documents, but she did not know what she was signing. She admitted however, that no one forced her to sign the document.

Sebrena

- [31] By her witness statement, Sebrena stated that her grandmother owned the property in dispute; that her mother Sylvia got married and left her to live on the property with her sisters Shenelle and Sylverne. She said that the house was originally a wooden house but it was rebuilt by her mother as a concrete dwelling house. She was served with papers by Roslyn, her aunt who claims that they were to move out.
- [32] Under cross examination, Sebrena stated that she does not know who owns the property. She then stated that her grandmother owns the land but her mother owns the house. She acknowledged that she received a letter to quit. Her mother knew she was served with papers but she never told her to move out.

Shenelle

- [33] Shenelle's witness statement is the same as that of Sebrena. She too acknowledged that she received a letter to quit. Her mother Sylvia knew she was served with papers but she never told her to move out. Under cross examination, she admitted that she, Sylvia and Sebrena had dugged a foundation to add a bathroom and kitchen to the house.

Greta

- [34] In her witness statement Greta says that the property in dispute was owned by her mother who went into possession before she was born. Her mother was paying for the property but died before she could complete payment and have the property transferred in her name. A few years after her mother died, Roslyn went to live with her aunt Hermie in Canada. Since her mother died, she (Greta) went to live with her maternal grandmother who lived nearby. After her mother died, Sylvia and her children as well as Uton lived on the property. In 2006, she and Roslyn went to "Housing" and they were told that there was still some money owing on the property. Roslyn volunteered to pay the money that was owing. Roslyn then went back to Canada. Subsequently, she, Greta, was called to the chambers of Emery Robertson and she was told that her aunt Hermie instructed Mr Robertson to fix up the land so everybody could live like a family and get their share, and that Mr Robertson will fix up the papers. A few days later she received a call from Mr Robertson, and she was told to come to his office. She was asked if she had her ID card and she was told to go to the court House. There, she was given a paper to sign which she did. None of the documents were read to her, and it was not explained to her that what she was signing was to give the land to Roslyn alone. She believed it was for all of them to get their share. She never intended to give the land to Roslyn alone. She does not have a place of her own, so she is not in a position to give away what her mother left behind, as it is the only thing she has claim to.

- [35] After she had signed the document, she was offered \$4000.00 for her share of the property. She refused it because she can't live on money. She can only live on land. She believed she went to sign documents "so we could fix up the land". Roslyn is only one of Sheila's the children. She did not build the properties on the land; and she did not live on the land as long as the rest of the children. Greta said that if she knew what she was signing to, she would not have signed.
- [36] Under cross examination, Greta accepted that she was the one who took a grant of letters of administration to Sheila's estate and did the administration of the estate. She maintained, however, that she did not understand the papers because nobody explained them to her. Asked about a letter written to her by Richard Williams dated 3rd January 2007 in relation to this matter, she said she does not remember that; she does not know anything about the letter. When pressed as to whether she had signed papers to administer Sheila's estate, Greta answered "No, I did not administer my mother's estate." She said that she was given two documents by the secretary to sign without any explanation and she signed them. She had never seen the grant before now. She never knew that after the grant, a Deed was made out in the names of all the children who were alive. She only came to know about the Deed of Assent when confusion broke out. That was never explained to her, she said. She does not know anything about deed of conveyance No 4185 of 2007 issued by Land and Housing. When shown Deed No 4185 of 2007, Greta said she did not receive that Deed from Land and Housing; that she was seeing that Deed for the first time. She acknowledged that her name was on it and she accepted that she signed it before the Registrar. Greta denied that she signed a Deed of Gift in 2008 giving the land over to Roslyn. She said that she does not know what a Deed of Gift is. She said that she does not remember signing a Deed of Gift. When pressed, she acknowledged that she signed the Deed of Gift, and that no one forced her to sign it. She was adamant, however, that she did not sign to give her interest over to Roslyn.
- [37] Greta was re-examined by learned counsel Mrs Russell. Under re-examination, Greta said that she did not tell Mr. Robertson to make her administratrix of Sheila's estate, and that she did not instruct him to prepare a Deed of Gift.

SUBMISSIONS

Mr Emery Robertson

- [38] In his closing written submissions, Roslyn's learned counsel Mr Robertson, submitted that the Defendants, being the daughters of Sylvia have no standing to bring any counterclaim, or to claim any interest in Sheila's estate so long as their mother Sylvia is alive. For that submission, counsel relies on the Administration of Estate's Act Cap 486, Volume 14, Section 62 (c). Counsel next referred to section 3 (2) of the Possessory Titles Act Cap 328 which provides that an application for a declaration of possessory title shall not be made in respect of Crown Lands. It was Counsel's submission that Sheila never attempted to set up adverse possession as against

the Crown in her life time, and thus, her children could not attempt to claim by adverse possession now. Counsel pointed out that the Crown only divested itself of its title to the land in 2007, by Deed of Conveyance 4185 of 2007 to Greta as administratrix of Sheila's estate. So far as Mr Robertson was concerned, neither Shenelle, Sebrena nor Sylverne can pray in aid their living on the premises from birth as giving them any right whatsoever to claim any interest in the land.

[39] It was counsel's further submission that neither Shenelle, Sebrena nor Sylverne can claim adverse possession, and in fact no issue of adverse possession arises, as it is settled law that in the absence of evidence to the contrary, the owner with the paper title is deemed to be in possession as being the person with prima facie right to possession. That person, submitted Mr Robertson, is Roslyn. She is the holder of the paper title.

[40] Mr Robertson further submitted that the law will ascribe possession to the paper owner, or to a person who can establish a title as claiming through the paper owner. Mr Robertson further submitted that as Sebrena and Shenelle have ignored the notice to quit which has expired, they continue to trespass and thus, Roslyn is entitled to possession of the property. In relation to Sylverne, Mr Robertson submits that Roslyn is entitled to the injunction and other reliefs as prayed for.

[41] It was Mr Robertson's further submission that the defence of non est factum is not available to the Shenelle, Sebrena or Sylverne since they were not parties to the Deed of Gift. Nor can they seek cancellation of Roslyn's Deed, submitted counsel. The Defendants, argued Mr Robertson, cannot succeed on the limitation plea, as the property was vested in the Housing and Land Development Corporation until 2008. The Claim was issued in 2010, and no time has run in their favour to invoke the Limitation Act.

Mr Duane Daniel

[42] Learned counsel Mr Daniel has submitted that Deed No 3819 of 2008 should be canceled based on the doctrine of Non Est Factum which arises on the witness statements on Sylvia and Greta. To support that submission, counsel referred to the decision of the House of Lords in the case of **Saunders v Anglia Building Society[1971] AC 1004**. After having quoted a passage from the decision, counsel went on to submit that Deed No 3819 of 2008 is fundamentally different from that which Sylvia and Greta intended to sign, as they both believed they would be invested with separate title to a share of the land which formed the estate of their deceased mother; and the deed actually purported to be a Deed of Gift to their sister Roslyn had divested them of their claim to the property.

[43] It was Mr Daniel's further submission that neither Sylvia nor Greta were negligent in signing Deed No 3819 of 2008, and he sets out three reasons why they were not negligent. Counsel then

submitted that on the evidence of Sylvia and Greta, the doctrine of Non Est Factum can be established, and for this reason the deed numbered 3819 should be cancelled.

- [44] Mr Daniel suggested that if Deed No 3819 of 2008 remains valid, then Roslyn would be entitled to possession of the land, and either the diminution in value of the land or the ordinary letting value of the property as opposed to both damages for trespass and mesne profits as claimed. Counsel reasoned that these two claims are one and the same thing, and thus, the court ought not to award separate amounts under each heading, unless the Claimant can show actual damage.

DISUSSION AND DECISION

- [45] Roslyn's claim is centered around trespass to, and recovery of possession of her land registered as Deed No 3819 of 2008, situate at Redemption Sharpes, but it included a claim for a declaration of ownership of the said land; injunctive relief, damages, mesne profits and costs. Roslyn has based her claims to the reliefs sought, on the Deed of Gift No 3819 of 2008. Is Roslyn entitled to the declaration of ownership sought?
- [46] I find that by virtue of Deed of Gift number 3819 of 2008, which, on the face of it was properly executed, Roslyn is the paper owner of the subject land and thus, she is entitled to a declaration as to her ownership thereof, as she has not been, and could have been dispossessed thereof by Shenelle, Sebrena or Sylverne.
- [47] Has Roslyn made out her case for trespass? Trespass to land has been defined to mean 'every unlawful entry by one person on the land in possession of another if he wrongly sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another; or if he discharges water upon another's land, or sends filth or any injurious substance which has been collected by him on his own land onto another's land¹. Did the Defendant trespass on the land of the Claimant?
- [48] In so far as Roslyn is the paper owner of the subject land, and Shenelle and Sebrena have admitted that they are living on the land, without Roslyn's consent, and dug, or caused to be dug, a foundation to erect a kitchen and bathroom on the property without Roslyn's consent; in that sense, they are trespassers. As for Sylverne, she has admitted that she goes back and forth from her grandmother's house on to Roslyn's land. In that regard, she too has been trespassing on Roslyn's property without her consent. I therefore find and hold that Roslyn has made out her case for trespass and delivery up of possession as against Shenelle and Sebrena and as against Sylverne, she has made out a case for trespass as well. I do not discount the contention by Shenelle and Sebrena that they are not required to pay any rent as they did not enter into any lease agreement

¹ Halsbury's Laws of England 4th Ed. Volume 45 (2) Pg. 518

with Roslyn. Indeed, they were put in possession/occupation of the premises by Sylvia, their mother, who, at all times material, (at least up to 2007) would have been entitled to an interest in Sheila's estate. From that standpoint, there was no landlord and tenant relationship between Roslyn and Shenelle and Sebrena. However, at the time of the issuance of notice to quit, the situation had changed, by intervening events because when the notice was issued, Sheila had moved, and Roslyn was the paper owner. Even if it can be said that the notice to quit was null and void, as Shenelle, Sebrena seem to be suggesting, it served to put them on notice that the property belonged to Roslyn, and that they were in fact trespassing. Additionally, as the Deed of Gift was/is a registered document, this is notice to the world, that Roslyn is the true owner of the subject land. I am fortified in this view by Section 5 (3) of the Registration of Documents Act which reads:

"(3) ... The registration of documents required to be registered under this Act shall be deemed due notice of their contents to all persons whomsoever claiming any estate or interest in, or incumbrance on, any real estate comprised in, connected with or affected by the document registered."

[49] In the event that I am found to be wrong, I go on to consider whether Shenelle, Sebrena and Sylverne have put forward a viable answer to Roslyn's claim. The Defences raise the issue of whether Roslyn's interest in the property has been extinguished by virtue of the continued occupation of the premises by Sylvia who, it has been said, lived on the property from birth since 1956 until 2000 when she got married, and whose occupation continued by Shenelle and Sebrena up to present.

[50] This Defence, to my mind, cannot pass muster. Shenelle, Sebrena and Sylverne seem be attempting to put up a defence of adverse possession, which has not been expressly pleaded; nor has the related defence of Limitation been pleaded. Even if expressly pleaded, it will not be a viable defence, for as noted by Singh J.A. in the case of **Julian Ashton v Veronica Forbes**² "Adverse possession means adverse to the true owner. It is my view therefore, that time to commence action cannot run against the true owner, until after he or she becomes the true owner." Indeed, as Mr Robertson rightly pointed out, no application for a declaration of possessory title can be made in respect of Crown lands.

[51] It is pellucid from the evidence, that at all material times, (at least up until the year 2007) the true owner of the disputed land was the Crown. Greta, in her capacity as Administratrix of the Estate of Sheila, acquired a paper title to the disputed land from the Crown in October 2007. And Roslyn became the true owner in 2008 by virtue of the Deed of Gift which was executed by all of her living

² High Court Civil Appeal No 12 of 2000, [St Vincent and the Grenadines]

siblings. Where, as here, the Crown divested itself of title to the land in 2007, and Roslyn became true owner in 2008, the time to commence an action against Roslyn based on adverse possession has not yet run; so the issue as to adverse possession does not arise.

[52] Accordingly, this purported Defence is devoid of merit and is not sustainable.

[53] As to non est factum, this was not pleaded. So the foundation for the purported Defence raised in the Witness Statements of Sylvia and Greta, for the first time, and in the submissions advanced by learned counsel Mr Daniel on that issue was not laid, having not been foreshadowed in the Defences.

[54] CPR 10.5 deals with Defendants duty to set out their case. And CPR 10.7 sets out the consequences of not setting out the Defence: "The defendant may not rely on any allegation or factual argument which is not set out in the defence, but could have been set out there, unless the court gives permission or unless the parties agree."

[55] Additionally, our courts have repeatedly said that the basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party to prepare for it.³

[56] That said, even if non est factum was pleaded, I can see nothing to entitle Shenelle, Sebrena or Sylverne to an order cancelling Deed Number 3819 of 2008, based on that plea. The Deed, is grounded, not only in the law of real property, but it also engages the law of contract. Neither Shenelle, Sebrena or Sylverne were parties to the Deed. They have no privity of contract. And so long as their mother Sylvia is alive, they can have no standing to impeach or impugn what appears to be, on the face of it, a properly and validly executed Deed of Gift to Roslyn.

[57] In the premises, the court is not of the view that Shenelle, Sebrena and Sylverne have provided a viable defence in answer to Roslyn's claim. The Defences therefore stand dismissed and the counterclaims fall away. As learned Counsel Mr Robertson rightly submitted, the Defendants cannot claim any interest in the estate of their grandmother, Sheila, so long as their mother Sylvia is alive. Accordingly, their Counterclaims also stand dismissed.

DAMAGES

[58] As against a trespasser, the owner of land may claim damages for the trespass including compensation for being deprived of the use and occupation of his or her land. Roslyn's claim for mesne profits, must as a matter of law, include the claim for damages for trespass. As Mr Daniel

³ East Caribbean Flour Mills v Boyea, St Vincent and the Grenadines Civil Appeal No 12 of 2006.

has submitted, rightly, in my opinion, damages for trespass and mesne profits are one and the same thing and thus, the court ought not to award Roslyn separate amounts under each head.

(See: **Swordheath Properties v Tablet** [1979]1 WLR 285; **Invergurie Investments Ltd v Hackett**, [1995] 1 WLR 713; and **Genet Iola Burton v Richard Gibson, Claim No SVGHCV2003/0058**, delivered 24th August 2012).

[59] In relation to damages for trespass, there is no plausible evidence as to the extent of damages sustained, and Mr Robertson did not suggest a mathematical figure that the court should award as damages as a consequence of the trespass to Roslyn's land. Mr Daniel has helpfully submitted that the amount which a claimant would be entitled to would be the diminution in value of the land, or the ordinary letting value of the property. However, given the limited evidence, the court is unable to determine the diminution, if any in the value of the land. I must here remind myself that the claim for vandalism and nuisance by Sylverne's children has not been particularised or substantiated. That said, Sylverne has not denied or admitted those claims, and although she provided a witness statement, she was not called to allow for cross-examination. Instead, Sylvia and Greta were called; but for reasons known to counsel, and based on the nature of the evidence proffered by them, the court has given little or no weight thereto, and has refrained from commenting on the evidence proffered by those two witnesses, except to say that a) their evidence has little, if any relevance to the claim as pleaded herein against Shenelle, Sebrena and Sylverne; and b) in my judgment, the evidence given by Sylvia and Greta is self serving and could not be used in these proceedings to challenge or cancel Roslyn's Deed. It would, in my opinion require a separate action brought by Roslyn's siblings for that purpose.

[60] As to mesne profits, this, as indicated before, is usually assessed according to the current value of the land, normally, the ordinary letting value. Roslyn has claimed mesne profits from the year 2009 to 2010 at the rate of \$350.00 per month. Mr Daniel has raised concern as to whether that figure has been substantiated or whether counsel has simply plucked a figure from the air. However, Mr Robertson has consented to a figure calculated at \$100.00 per month from November 2009 to April 2015. That puts the figure for mesne profits at \$6,500.00.

CONCLUSION

[61] I give judgment for the Claimant, Roslyn Wynne, and I grant the following reliefs and orders:

1. A declaration that Roslyn Wynne, by virtue of Deed No 3819 of 2008 is entitled to possession of ALL THAT LOT, PIECE OR PARCEL OF LAND with building standing thereon, being Lot Number 25 in Plan G 905, lodged in the Surveys Office on the 18th November 1977, which said parcel of land contains by admeasurement 3,757 square feet, and is abutted and bounded on the North by

an Access Road; On the South by a Main Road; On the East by Lot Number 22; and on the West by Lot Number 26 together with all buildings and erections thereon or howsoever otherwise the same may be abutted bounded known and distinguished or described.

2. An Order that Shenelle and Sebrena do, within 30 days, or at some future date as agreed by the parties, deliver up possession of the said property which is the subject of dispute and which is described in paragraph [61] 1 above.
3. An order that Shenelle, Sebrena and Sylverne do pay Roslyn mesne profits in the sum of \$6500.00
4. An injunction restraining Sylverne, whether by herself, her servants, agents or howsoever otherwise from entering and or crossing through Roslyn's property, as described in paragraph [61] 1 above, and from causing the said property to be vandalized.
5. An Order that Shenelle, Sebrena and Sylverne pay costs to Roslyn as prescribed under CPR 65. 5 (2) (b) in the sum of \$7500.00.

[62] I am grateful to both counsel for their kind assistance.

[63] Lastly, although the following suggestion does not form part of my decision, I would urge all the parties/individuals living, who feature in this matter, for reasons known to them, to exercise good faith, and attempt to settle their disputes amicably. It is doable.


Pearletta E. Lanns
High Court Judge [Ag]