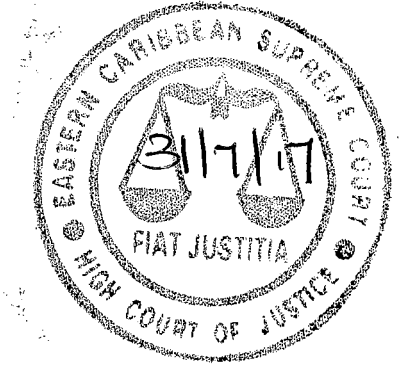


THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES



IN THE HIGH COURT OF JUSTICE

SVGHCV2011/0241

BETWEEN

OLIVE PEGGY DEFREITAS

of Dorsetshire Hill

and

OLIVE PEGGY DEFREITAS

(Beneficiary of the Estate of Gordon Carmichael, Deceased)

CLAIMANTS

and

GEROLD GELLIZEAU

of Level Gardens

DEFENDANT

and

ATTORNEY GENERAL

OF SAINT VINCENT AND THE GRENADINES

ADDED DEFENDANT

Appearances:

Mr. Joseph Delves for the claimants.

Mr. Parnel R. Campbell Q. C. with him Ms. Mandella Campbell for the defendant.

Mr. J-Lany Williams for the added defendant.

2017: Jun. 6 & 15
Jul. 31

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Mr. Gerold Gellizeau lives at Level Gardens with his wife and son. He has been living there from about 1992, except for a brief period when he moved into rented accommodation in Arnos Vale. Legal title to the property is registered in the name of Gordon Carmichael. It was transferred to him in 1970¹ by his sister Theresa Defreitas. She retained a life interest in it and lived there until sometime in the 1990s when she went to live with her daughter Deborah Bacchus and family. Mr. Carmichael died in England in 1984 where he lived for most of his adult life.
- [2] Theresa Defreitas and Gerold Gellizeau were friends. They worked together at T. Geddes Grant Limited for several years. At some point, she consented to Mr. Gellizeau staying at her house in Level Gardens 'the disputed property'). He eventually took up permanent residence at the home. Theresa Defreitas passed away in 1994. Her daughter Olive Peggy Defreitas claimed that she and her sister informed Mr. Gellizeau that he would have to start paying rent.
- [3] She alleged that he resisted her many attempts to collect rent until 2009 when he made one payment of \$250.00. She instituted this action in her personal capacity and as beneficiary of Theresa Defreitas' estate. She seeks recovery of possession of the disputed property; \$10, 500.00 arrears of rent; mesne profits from 1st April, 2011; unpaid water and electricity bills up to the date of delivery of possession and costs.
- [4] Mr. Gellizeau resisted the claim. He contended that Ms. Defreitas does not have the requisite legal standing to bring the claim. He pleaded that Theresa Defreitas' interest to the property was terminated when she passed away and therefore Olive Defreitas was not legally entitled to any part of the property as a beneficiary of her estate. He contended alternatively that Olive Defreitas' right of action did not and could not have accrued within the 12 year period prescribed by the Limitation Act Cap. 129.
- [5] He filed a counterclaim in which he sought damages for harassment, stress and expense. He also seeks a declaration that he is entitled to possession of the subject property; an injunction restraining Olive Defreitas from disturbing him in his quiet and peaceful enjoyment of the property;

¹ By Deed of Gift 1884 of 1970.

and costs. He contended that Ms. Defreitas does not have the requisite legal standing to prosecute the claim in her personal capacity or as beneficiary of her mother's estate. I have found that the subject property is beneficially owned by the beneficiaries of Gordon Carmichael's estate and is vested in the Honourable Chief Justice in trust for those beneficiaries.

ISSUES

[6] The issues are whether:

- (1) Ms. Defreitas has the necessary *locus standi* to bring the claim?
- (2) If so, whether Ms. Defreitas' claim is statute-barred?
- (3) Who owns the subject property?
- (4) To what remedies is Ms. Defreitas or Mr. Gellizeau entitled?

ANALYSIS

Issue 1 – Does Ms. Defreitas have the necessary *locus standi* to bring the claim?

[7] Mr. Gellizeau submitted that because Ms. Defreitas has not obtained a grant of Letters of Administration or Probate in respect of either estate she is not competent to maintain the action as beneficiary of Gordon Carmichael's or Theresa Defreitas' estate or as agent for the beneficiaries of either estate. He first raised that objection prior to the trial. However, no definitive ruling was made at that stage, on the basis that it would have been premature to make a ruling without receiving all the evidence.

[8] At the end of the trial, Mr. Gellizeau submitted that the issue of *locus standi* was still very much alive. He argued that Ms. Defreitas has not provided satisfactory evidence of her legal capacity to proceed against him. He contended that he is entitled to judgment on his counterclaim. It is necessary to consider those matters in light of the evidence.

[9] Ms. Defreitas brought this claim 'as agent and beneficiary in the Estate of Theresa Defreitas'. She submitted that she did not bring any action as administratrix of Gordon Carmichael's or Theresa DeFreitas' estate.

- [10] She testified that Gordon Carmichael was her uncle and that he died in 1984 without making a will. She stated that no Letters of Administration has yet been extracted in respect of his estate. She explained that Theresa Defreitas was her mother and Gordon Carmichael's brother. She indicated that his mother pre-deceased him, he was not married, had no children and his immediate relatives were his three sisters – Bernice Bredwood, Regina Huggins and Theresa Defreitas. She claimed that consequently she is a beneficiary of Gordon Carmichael's estate by virtue of being a beneficiary of her mother's estate.
- [11] Her sister Deborah Bacchus stated that Peggy Defreitas started to administer Mr. Carmichael's estate but she was not sure if it was completed. I accept Ms. Defreitas' account that the estate was not admitted to probate. Mrs. Bacchus testified further that she and her siblings left to 'Peggy' anything that had to do with the subject house. She said that Peggy was in charge.
- [12] Mr. Gellizeau testified that that he paid his legal advisors to carry out appropriate title and administration searches and as far as he is aware no conveyance or disposition of the subject property by Gordon Carmichael is recorded in any public record in the State. His wife Phyllis Gellizeau averred that she was an employed as a data entry clerk at the High Court Registry in the State from 2002 to 2005.
- [13] She indicated that she is thoroughly acquainted with the search procedures at the registry. She attested that she carried out a search at the registry into Mr. Carmichael's deed and found nothing in the public records to show that he ever encumbered or disposed of his interest in the property. Like her husband, she stated that she is not aware of any conveyance or disposition of the subject property by Mr. Carmichael.
- [14] Mr. Gellizeau contended that Ms. Defreitas sued ostensibly in her personal capacity as beneficiary of Gordon Carmichael's estate. He submitted that the onus lay on her to establish the *bona fides* of those alleged capacities.
- [15] Ms. Defreitas rejoined that her claim is not made on behalf of her mother's or uncle's estate but rather in her capacity as beneficiary. She submitted that her claim arises from the law of landlord

and tenant and further that a tenant is estopped from challenging the landlord's title. She contended that it is necessary for the court to determine whether a landlord/tenant relationship existed or exists between her and Mr. Gellizeau.

[16] Ms. Defreitas submitted further that there really is no dispute that she is Theresa DeFreitas' daughter since Mr. Gellizeau asserted as much and her evidence of this was unchallenged in cross examination. She argued that Mr. Gellizeau did not dispute that her mother and Gordon Carmichael were brother and sister. Indeed, Mr. Gellizeau acknowledged the sibling relationship between Theresa Defreitas and Gordon Carmichael and the mother/daughter relationship between Theresa Defreitas and Olive Peggy Defreitas.² He also expressly admitted that Gordon Carmichael's estate has never been 'administrated'.³

[17] Ms. Defreitas submitted further that Mr. Gellizeau did not refute her testimony that Gordon Carmichael died intestate, was not married and had no children. She maintained that she is a beneficiary of the estates of Gordon Carmichael and Theresa DeFreitas and is entitled to bring the claim. She argued that even though entitlement may be indirect, this is inconsequential. She relied on the case of **Luella Mitchell (Administratrix of the Estate of Cornelius Jones deceased) and others v Maurice Jones (Beneficiary of the Estate of Cornelius Jones)**⁴ as legal authority for that proposition.

[18] In that case, the court held that the grandson (Maurice Jones,) of a deceased intestate (Cornelius Jones) obtained a beneficial interest in his grandfather Cornelius' estate, in circumstances where his (Maurice Jones') father was Cornelius Jones' lawful son. The Court of Appeal considered the provisions of section 16 of the Intestates Estates Ordinance, 1947 which outlined the persons who are beneficially entitled to the estate of an intestate.

² In his witness statement filed on 13th May, 2015.

³ Paragraph 2 of the Reply to Amended Reply and Defence to Counterclaim and testimony of Phyllis Gellizeau.

⁴ SVGHC VAP2006/016, CA.

[19] Giving effect to section 61(2) of the Administration of Estates Act which permitted children born in and out of wedlock to equally inherit from their father in the same manner and to the same extent, the court held that Maurice Jones:

1. 'became entitled to a beneficial interest in his father Carlton's estate who it presumed died intestate, in the absence of a will; and
2. '... was quite within his right to seek a declaration to the effect that he was a beneficial owner of the Land.'

[20] The court reasoned that the 'fact that his entitlement may have arisen indirectly is of no moment in respect of his beneficial entitlement as a matter of law.' They reasoned that 'As a person with a beneficial interest in the Land, ... it was also open to him to challenge the correctness' of the grant of administration to Luella Mitchell and her subsequent vesting of the Land to Reginald Jones;'

[21] The Court of Appeal recognized and gave effect to the beneficial interest of a descendant of the deceased, who was excluded from consideration as a beneficiary, by the administratrix. Unlike that case, no Letters of Administration have been extracted in Mrs. Defreitas' or Mr. Carmichael's estates. The principle is nonetheless just as applicable. As lawful beneficiaries of both estates, Ms. Defreitas and her siblings are deemed to each own a beneficial interest in their mother's estate and by extension Gordon Carmichael's estate. Ms. Defreitas may therefore pursue her claims against Mr. Gellizeau without waiting on the extraction of a grant from the probate registry.

[22] Ms. Defreitas contended that as a beneficiary of Gordon Carmichael's estate, she has a better claim to title than Mr. Gellizeau. She argued that because Mr. Carmichael died intestate and his estate has not been administered, legal title is presently vested in the Chief Justice. She submitted that consequently she (Olive Defreitas) is still an equitable owner of the subject property. She added that the fact that her interest is 'indirect' does not strengthen any title Mr. Gellizeau may assert over the subject property or make any such title stronger than hers.

[23] Ms. Defreitas contended that her entitlement as a beneficiary is not negated by her claim form not being so headed. She submitted that *dictum* of Lord Collins in **Texan Management v Pacific Wire**

and Cable Company⁵ is apt, in particular where he stated:

'in the pursuit of justice procedure is a servant not a master'.

The Honourable Attorney General made no submissions on this issue.

Agency

[24] Mr. Gellizeau is entitled to succeed on this issue, if the evidence does not disclose that Ms. Defreitas has a viable claim against him either as a beneficiary of Theresa Defreitas' estate or as agent for the beneficiaries of that estate. It is well-established in law that an agency may be created orally, by conduct or in writing.

[25] Mrs. Bacchus' testimony that Peggy Defreitas is authorized to deal with the property on her and her siblings' behalves is uncontroverted. She did not indicate how the agency was created. That is irrelevant. I believe her and accept her testimony that Ms. Defreitas was authorized by her and her brothers to represent their interest in their mother's estate and by extension any interest they might have in their uncle Gordon Carmichael's estate.

Olive Defreitas as Beneficiary

[26] Mr. Gellizeau accepted that Olive Defreitas is Gordon Carmichael's niece. He also accepted that Mr. Carmichael died in England on 28th March 1984. He indicated that as far as he was aware 'no application has ever been made in Saint Vincent and the Grenadines for either a grant of probate or Letters of Administration in respect of his estate.' He acknowledged that Theresa Defreitas conveyed the subject property to Mr. Carmichael by Deed of Gift No. 1884 of 1970 subject to a life interest in her favour.

[27] Based on the factual matrix, it does appear that Mr. Carmichael died intestate. I infer from all the circumstances that he did, particularly the absence of a will. The Administration of Estates Act⁶ outlines how an intestate's estate is to be administered and identifies the persons who are entitled to his/her estate and their order of priority.

⁵ [2009] UKPC 46.

⁶ Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 62.

- [28] Where an intestate leaves no spouse, children or parents, the law provides that his siblings of the whole blood are the beneficiaries of his/her estate.⁶ It follows that Mr. Carmichael's surviving siblings were the sole beneficiaries of his estate. On their death, their respective heirs succeed to their interest in his estate unless devised otherwise by will. Ms. Defreitas testified that she is a beneficiary of her mother's estate. I believe her. By extension, she is a beneficiary in her uncle Gordon's estate.
- [29] Does her status as beneficiary of her uncle's estate or as her co-beneficiaries' agent clothe her with the requisite authority to take action against Mr. Gellizeau for recovery of the subject property? The law provides that property which is vested in an intestate's estate devolves to his personal representative.⁷ That person is not recognized as legally constituted until he/she extracts grant of Letters of Administration from the probate registry of the High Court.⁸
- [30] The law provides further that until an administrator is appointed, the Honourable Chief Justice holds the intestate's real property on a statutory trust for sale for the benefit of the beneficiaries.⁹ Provision is also made for any person who claims an interest in the subject property to take legal action against persons other than the administrator, to protect or recover such property.¹⁰
- [31] Beneficiaries of the intestate are recognized by law to have such interests. Olive Defreitas in her capacity as agent for her fellow beneficiaries and as a beneficiary in her own right may accordingly prosecute her claim against Mr. Gellizeau to recover possession of the disputed property.
- [32] By bringing this claim for rent, trespass and for recovery of possession of the subject property, Ms. Defreitas has evinced the intention in her dual capacities, to protect and recover the dwelling house at Level Gardens which is registered in Gordon Carmichael's name. She has demonstrated that

⁷ Administration of Estates Act, Cap. 486, section 4.

⁸ Section 2 of the Administration of Estates Act, Cap. 486.

⁹ Section 31 of the Administration of Estates Act, Cap. 486.

¹⁰ Section 5 (3) (d) of the Administration of Estates Act, Cap. 486.

she has the requisite legal standing to pursue her claim against Mr. Gellizeau. I find therefore that Olive Peggy Defreitas as beneficiary of Theresa Defreitas' estate and as agent for the other beneficiaries of Theresa Defreitas' estate has the necessary legal capacity to proceed in the instant claim against Mr. Gerold Gellizeau.

Issue 2 – Is Ms. Defreitas' claim statute-barred?

[33] Mr. Gellizeau contended that if Ms. Defreitas had legal standing to bring this claim or any right of action against him, it is statute barred by virtue of the Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines 2009, because she failed to take action within the 12 year limitation period stipulated in the Act. Ms. Defreitas denied that her claim was statute-barred.

[34] Mr. Gellizeau did not specify which section of the Limitation Act he relied on to ground his assertion that Ms. Defreitas' claim was time-barred. Notwithstanding, Ms. Defreitas joined issue with him and the parties have argued their respective positions in reliance on section 17 of the Limitation Act. That provision provides that actions for recovery of land must be brought within 12 years from the date the cause of action accrued. Mr. Gellizeau also incorporated reference to section 19 of the Act in his written submissions. Section 19 states that the period within which a landowner may initiate action to recover land, is extinguished after 12 years.

[35] Part of Ms. Defreitas' claim relates to rent arrears and trespass. Mr. Gellizeau did not expressly or otherwise raise a limitation defence in his pleadings to that aspect of her claim. Accordingly, her claim for arrears of rent and trespass to land will be considered fully on their merits.

[36] On the limitation issue, Mr. Gellizeau submitted that if Ms. Defreitas is correct in deeming the relationship between them as that of landlord and tenant, he relies on the provisions of the Act pertaining to the relationship of landlord and tenant, namely, sections 17 and Part I, Paragraph 5 of the Schedule. He contended that should the Court find that there was a relationship of landlord and tenant, then the Court would be obliged to specify the precise period over which that relationship subsisted, for no precise period of the alleged tenancy was pleaded or proved.

[37] He submitted that he need not prove that he was in possession for the limitation period as owner. He contended that once he satisfies the ingredients of adverse possession he ought to prevail. He argued that it will be a matter of findings of fact by the Court as to whether he has done so.

[38] Ms. Defreitas She argued that this is important as it affects whether she, in her own right, could have given permission to Mr. Gellizeau, and whether she can maintain an action in trespass. She submitted that as a beneficiary of Gordon Carmichael's estate she has a better claim than Mr. Gellizeau, to title to the subject premises.

[39] She submitted further that Mr. Carmichael died intestate, his estate has not been administered and therefore legal title is presently vested in the Chief Justice. She contended that she is still an equitable owner and the fact that her interest is 'indirect' does not strengthen any title that Mr. Gellizeau may assert.

[40] A decision of whether Ms. Defreitas' claim to recovery of possession is statute-barred presupposes that she has some interest in the subject property. Although Mr. Gellizeau refutes that she has any such interest, his defence necessarily implies a recognition by him, that she might conceivably be so entitled. In view of the statutory provisions outlined earlier and the earlier finding there can be no doubt that Ms. Defreitas, her siblings and aunts each own beneficial interests in the subject property.

[41] The **Luella Mitchell**⁴ decision makes it clear that it is necessary for the court to make a finding regarding who was in 'actual possession' of the subject land. As articulated by George-Creque, J. A.:

'It is trite law that the paper owner of land is deemed to be in possession ... unless his right to possession is lost to the adverse possessor.'

She also opined that the beneficial owner of the land:

'... would be in the position of a paper owner ... and would be a person presumed or deemed to be in possession of the land.'⁴

[42] In similar fashion, Olive Peggy Defreitas, her siblings and her aunts would, in the instant case be presumed to be in possession of the subject land in their presumptive position as the paper title

owners. It is against them and the statutory trustee that Mr. Gellizeau's limitation and adverse possession defences are targeted.

- [43] Ms. Defreitas and her sister Deborah Bacchus gave similar testimony regarding how Mr. Gellizeau came to be living in the subject house. Ms. Defreitas testified that her mother, father, she, her siblings and tenants always occupied the house at Level Gardens. She and Mrs. Bacchus explained that Mr. Gellizeau and their mother became friends at work. They said that Mr. Gellizeau asked the mother if he could stay at the house because he was having problems where he lived. Mrs. Bacchus said that their mother did not mind him sleeping there as this was a form of security for her when she slept there herself and security for the house when she slept in Arnos Vale.
- [44] Ms. Defreitas recalled seeing him when she visited her mother. She said that her mother discussed the proposal with her as a result of which she had a conversation with Mr. Gellizeau in which she told him what was expected. She remembered telling him that he could not bring anyone there if her mother was sleeping there; he was responsible for keeping his room clean, that is, the maid would not clean his room; he was responsible for buying his own groceries; and he would pay for light and water and telephone calls.
- [45] Ms. Defreitas explained that at first Mr. Gellizeau used to come there on some evenings and sleep and eventually he began bringing more and more clothes to the house. She testified that when this arrangement started she was a grown woman, living in her own house. She said that she usually left her infant daughter Karen (who was born in 1988) at the house under the care of a baby sitter. She testified that she would take her to the house to stay while she worked, and did so for years until about 1991. She stated that she kept clothes in the 'girls' room' and had her lunch there every day.
- [46] Mrs. Bacchus recounted that Mr. Gellizeau slept there on and off and was there in the night. She said that she did not see him during the day. The sisters explained that in the daytime they used the house daily to have lunch, rest and relax. This included Peggy, her daughter Karen, Mrs. Bacchus, her husband Dr. Junior Bacchus, their 2 children, and their brother Eddy. They testified that food was cooked at the house by a maid employed by their mum. Ms. Defreitas said that this familial lunch pattern continued even after their mother died in 1994, except that Debbie and her family began going to their own house for lunch.

[47] They also indicated that Peggy had her own key. Mrs. Bacchus stated that to gain access when Peggy was not present, they used a key that was hidden in a flower pot on the porch. Ms. Defreitas could not remember ever meeting Mr. Gellizeau at the house when they gathered there but she knew he was still there because she saw his clothes. She testified that at some point before her death, their mother moved in with Debbie, and she no longer hired a cook or maid to cook or clean. Nevertheless, she said that she would take her lunch there in the mornings, put it in the fridge and return at lunchtime to eat after heating it up.

[48] Ms. Defreitas explained that when Mr. Gellizeau begun staying at the house, it was a fully furnished with beds, stove, fridge, TV, pots, pans, curtains, linen, broom, mops, and everything else a house needs. She stated that over a period of time Mr. Gellizeau brought in some items of his own. She testified that she removed some items like the living room set, a living room table, and a wall mirror, which Mr. Gellizeau helped to install at her house.

[49] Ms. Defreitas said that she and Mr. Gellizeau had a cordial relationship up to and until she raised the issue of rent. She claimed that he used to go to her house in Dorsetshire Hill to help her fix things around the house. Mr. Gellizeau and his wife recalled him doing so only on one instance. Ms. Defreitas alleged that she encouraged Mr. Gellizeau to look for a piece of land to build his own house and she claimed that she put him on to Survey and Land Department, Housing and Land Department, etc. She averred that he did get a piece of land at Ottley Hall which he admitted.

[50] Ms. Defreitas testified that she always had a key to the house and went there whenever she pleased and picked whatever fruits she wanted. She averred that sometimes Mr. Gellizeau would pick mangoes and call her for them. She alleged that she paid the rental for the telephone, while Mr. Gellizeau paid for the calls he made. She explained that she would pay, get a receipt and give him the bill so he could see the number of calls, other related details and pay accordingly. Mrs. Bacchus indicated that Ms. Defreitas paid the phone bill which was in her name. She added that her mother paid the taxes, light and water until she died. She (Mrs. Bacchus) claimed that she now pays the taxes.

[51] The sisters attested that after their mother's death Mr. Gellizeau paid the electricity in their father

Kevin Defreitas' name and water bill in the name of Gordon Carmichael c/o Theresa Defreitas. Ms. Defreitas explained that between 2000-2004, the garage which is part of the house, was used by her brother Manuel Defreitas and his son Anthony Defreitas to store equipment and stock for their business, Tony's Pizza.

[52] She testified that in or about 2003 Mr. Gellizeau requested on several occasions that she fix the leaking roof and defective windows but she did not do so. She indicated that between 2004- 2006 Karen sorted out her mother's bedroom by removing some clothes (which she used in a fashion show). She recalled that from time to time Mr. Gellizeau complained about woodlice infestation and asked her to address that but she did not. She indicated however that she paid Morgan Pest Control \$80.00 on June 15th 2001 to do so.

[53] Ms. Defreitas said that in 2009, Mr. Gellizeau requested permission from her to remove a bathroom cupboard. She said that she gave him permission after inspecting it. She recalled going to the Kingstown Board between 2006-2009 to report a drainage problem regarding water coming down on the property from Mc Kies Hill; making periodic visits to the house to ensure that everything was in order and the yard properly kept between 1994 and 2011. She indicated that up to 2010 her mother's bedroom was still intact and contained her personal possessions. She recalled that her clothes were still in her cupboard and in her chest of drawers and her personal belongings were still on her dressing table.

[54] She explained that in 2009 and 2011 she took surveyor/valuator Mr. McArthur Robertson to the property to conduct a survey. She exhibited a copy of his report dated August 4th 2011. Mr. Gellizeau and his wife remembered that Mr. Robertson did come to the property with Ms. Defreitas around that time. They indicated that they did not participate in or witness the exercise.

[55] Ms. Defreitas testified that between the time her mother died and the 2000s, she and her sister Deborah asked Mr. Gellizeau to pay rent but he always made excuses why he could not pay, including: his wife pregnant and was always in the hospital; his wife was no longer working; he purchased land at Ottley Hall and he was paying mortgage and was unable to pay rent. She stated that he also requested a reduction in the rent and asked for another two months when he should be better off financially. She recalled that he also requested permission to stay longer in the

premises because he was in the process of building. She said that he promised to leave the property once his house was completed.

[56] Ms. Defreitas said that in 2005 Mr. Gellizeau moved out to Arnos Vale with all of all his furniture and stayed there for about 6 months and moved back into the house at Level Gardens in 2006. She stated that she met someone at the premises when Mr. Gellizeau moved out. After speaking with that person, she had him leave. She said she told Mr. Gellizeau that he had no authority to put anyone else there and he did not argue with her or state that he had any such authority. She said she also had the yard trimmed during that time.

[57] Ms. Defreitas testified that after about 6 months of living in Arnos Vale in 2006, Mr. Gellizeau said that the rent he was paying was killing him and he asked to return to the subject house. She claimed that he said he would get some used galvanize to stop some of the leaks which he did, so she relented and allowed him to stay there again.

[58] Ms. Defreitas stated that she visited Mr. Gellizeau at home and at his place of employment on many occasions to collect rent. She alleged that he told her that he was not interested in possessing the property and it was just that he was in financial difficulties. She said that after all the harassing, he finally paid one month's rent of \$250.00 in December 2009. She indicated that she, her mother and family were kind to Mr. Gellizeau and he has repaid the kindness with a claim that the house is his. She expressed deep disappointment in him.

[59] Mrs. Bacchus testified that from time to time, her mother would sleep at her house in Arnos Vale. She testified that when she lived in Villa and was away studying in the 1980s, her mother stayed at her home to help her husband to take care of their children. She explained that when she returned from England the family moved to Arnos Vale where her mother slept often.

[60] She indicated that after her mother suffered a stroke, she lived permanently with her and her family in Arnos Vale and from then Mr. Gellizeau began staying at the house on a more permanent basis. She did not state when this happened. She said that her mother did not go back to her house to sleep but she (Mrs. Bacchus) would go to the house to collect stuff for her, like clothes, preserved fruits, etc. She indicated that on those occasions she would use her mother's key, or Peggy would open for her. She said that she never met Mr. Gellizeau there, but she knew that he was still there

because her mother would communicate with him by phone.

[61] Mrs. Bacchus claimed that Mr. Gellizeau never said that the house was his. She indicated that after their mother died, she and Ms. Defreitas spoke to Mr. Gellizeau about paying rent. She indicated that they went to Courts several times before they eventually caught up with him. She stated that they reminded him that the previous arrangement was for him to stay there for a short while, that he had overstayed his welcome so he needed to start paying rent or leave.

[62] She could not remember the figure suggested to him but stated that he did say he could not pay that much that month, offered a different amount and said he would pay the amount subsequently. She testified that he did pay \$250.00 but made no further payment despite their subsequent visits to him. She recalled him saying something to the effect that he did not want the house; he knows it is not his, he was just helping out Mrs. D; and that he was trying to get himself sorted out.

[63] Mr. Gellizeau testified that he started staying at the subject house on Mrs. Defreitas' invitation. He indicated that around 1992 Theresa DeFreitas invited him to live at the said premises, and he agreed. He denied that his occupation during Theresa DeFreitas' lifetime or continuously after her death was with Ms. Defreitas' consent. He contended that she did not then, and does not now, enjoy any proprietary interest in or claim to the said property as against him.

[64] He explained that when Mrs. DeFreitas invited him to live there, she told him that her daughter wanted her to live with her at Arnos Vale so that she would not be alone at Level Gardens. According to him, she said that she could not get anyone to stay at the house and that she did not want to leave it empty. He claimed that he was still living at home with my parents at Cemetery Hill. He said he spoke to my parents and got their agreement for him to take up the invitation. He claimed that Mrs. Defreitas moved to Arnos Vale; nothing was said about paying rent and Mrs. DeFreitas was happy that he had moved in.

[65] Mr. Gellizeau said that he assumed the responsibility for the payment of the utility bills for the property and he remained living at the property, treating it as his home. He indicated that in 1998 his girlfriend Phyllis Williams moved in to live with him after they had been seeing each other for about a year. They got married in 2003 and had a son David on 23rd January 2005.

- [66] He complained that the house had been badly affected by termite infestation, especially in the roof; the roof was leaking quite a lot, and they used to place a piece of thick plastic overhead to keep off the rain water which leaked down from the roof. He said that they decided to replace the entire roof. He explained that they moved out completely, around July 2005 and rented a house at Arnos Vale for about 6 months while the repairs were done to the roof.
- [67] He testified that he did most of the carpentry on the roof, assisted by two workmen Errie Edwards of Carriere and Liston Lyttle of Kingstown Park and other occasional helpers. He said that when they went to Arnos Vale they left most of their belongings at the said property, and only took the items of personal property they required to use. He explained that he changed almost all of the rafters, the lath boards, and the galvanize and moved back in January 2006 when the renovations had been completed.
- [68] Mr. Gellizeau said that they took the opportunity to carry out more extensive renovations than had originally planned. He claimed that they replaced all external doors because the doors and the doorframes had become termite infested; repaired the windows; re-wired part of the house; replaced almost all of the electricity outlets; changed the toilet tank; repainted the entire house; fenced the back of the premises and dug drains to prevent flooding from storm waters as they were flooded out on three occasions. He testified that they must have spent around \$14,000.00 on the renovations and improvements to the property.
- [69] Mr. Gellizeau averred that he has continued to occupy the property as his home. He denied that such occupation has been with Ms. Defreitas' or anyone else's permission after Theresa DeFreitas' death in 1994. He indicated that sometime Theresa Defreitas' death, Ms. Defreitas visited the premises and removed a quantity of personal effects formerly owned by her mother but never ousted him from his exclusive possession of the said property and never attempted to do so until the letter from her Solicitor in 2011. He maintained that the property is the only home he has known since moving there in 1992 and indicated that he was counterclaiming for the property having been in adverse possession in excess of the limitation period.
- [70] His wife, Phyllis Gellizeau gave almost identical testimony in respect of the termite infestation and repairs conducted on the house. His brother Roy Hamilton testified that Mr. Gellizeau started living

at the disputed property in 1992 when he was about 24 years old. He indicated that Mr. Gellizeau did a lot of renovation work to the house. He stated that at one time he spent about two months living with his brother and he noticed the condition of the rotten roof which was almost caving in. He explained that his brother fixed the roof after he got married. He remembered that Mr. Gellizeau put a lot of work into the house including changing galvanize and a couple of windows.

[71] Mr. Lyston Lyttle is Mr. Gellizeau's friend and co-worker. He testified that he got to know Mr. Gellizeau around 2003 when he was living in a house at Level Gardens where he still lives. He explained that around September 2005, Mr. Gellizeau asked him for assistance with repairs to the roof of the house. He recalled that Mr. Gellizeau had moved his family out of the house during the repairs after and that they moved back soon after the New Year in 2006. His recollection was that they only changed some galvanize, some boards and no windows or doors. His testimony was more credible than Mr. Gellizeau, his wife and brother. I believe him.

[72] Having observed all of the witnesses, I was left with the distinct impression that Mr. Gellizeau, his wife and brother were not being truthful about a number of things. Mr. Gellizeau was particularly cagey and evasive. It was readily apparent that he was not being truthful when he was asked if he had to buy his own groceries when he moved to Level Gardens. At first he said 'no' and on being pressed admitted that he had to take care of his own grocery bill.

[73] Even more fundamentally, his denial that he remained in occupation of the premises after Mrs. Defreitas' death, without anyone's consent is remarkable and incredible. The uncontroverted testimony of Ms. Defreitas is that some of Mrs. Defreitas' belongings including her clothes and personal items are still in her bedroom. Similarly, Mr. Gellizeau did not dispute that Ms. Defreitas, her sister and brother in law used to go to the house for lunch daily. He indicated that he had no evidence of this.

[74] Interestingly, Mr. Gellizeau indicated that he went to Peggy and asked her to make the telephone number to the house private. If he considered himself to be the owner, he had no need to do that. All he had to do was to apply for another line and discontinue the use of the old one. He could also

have applied for a court order to obtain a line if he apprehended any difficulties convincing the service provider of his interest in the property.

[75] I prefer Ms. Defreitas and her witnesses' testimony. In this regard, I accept that she granted Mr. Gellizeau permission to remain in occupation of the property even after her mother died. This accords with logic and reason. To accept Mr. Gellizeau's account would require the court to engage in some mental gymnastics which would lead to a conclusion that all relatives of Gordon Carmichael and Theresa Defreitas for no apparent reason abandoned their interest in a property which had been in the family at least from 1970, where their mother's belongings were housed and where they met regularly. I reject that testimony as it does not make sense.

[76] Even more astonishing is Mr. Gellizeau's admission that he paid rent to Ms. Defreitas on one occasion because she and her sister were harassing him. Mr. Gellizeau presented himself as a reasonably intelligent man who responded to the questions with maturity and full comprehension. He did not appear to me to be someone who could be bullied into doing something that he did not intend to do. I accept Ms. Defreitas' account that Mr. Gellizeau occupied the premises with her permission before and after he moved to Amos Vale. Accordingly, no question of adverse possession or limitation of action arises. In view of the legislative provisions referenced earlier, the property is now held on statutory trust under the Administration of Estates Act until an administrator is appointed.

[77] Ms. Defreitas has urged the court to make a finding that Mr. Gellizeau was her tenant. It is trite law that an important element of a tenancy relationship is exclusive possession of the subject premises. Ms. Defreitas' testimony which I accept, is that she visited the premises from time to time to carry out certain acts. Her daughter also entered and dealt with her grandmother's belongings. Those acts are not consistent with a finding of a landlord/tenant relationship. I conclude therefore that Mr. Gellizeau and his family have occupied the subject premises as her licensee from 1994 when Mrs. Defreitas passed away.

[78] Mr. Gellizeau acknowledged receipt of a letter from Ms. Defreitas' solicitor in 2011 which gave him notice to quit. By this letter, Ms. Defreitas terminated her permission for him to remain in the subject property. His licence ended on the deadline stipulated for him to vacate the premises.

Thereafter he became a trespasser as he had no further legal authority to remain in occupation. I so find. Ms. Defreitas' claim for arrears of rent is dismissed.

[79] I therefore reject Mr. Gellizeau's claims that he has had exclusive, continuous and undisturbed possession of the subject dwelling house and land for a period in excess of 12 years with the requisite intention to own the property. I find that he is in occupation of the disputed property as a licensee. Ms. Defreitas' claim against him is not statute-barred. His defence of adverse possession fails. The disputed property is vested in the Hon. Chief Justice on statutory trusts for the beneficial owners, including Olive Peggy Defreitas, her siblings and aunts. It follows that Mr. Gellizeau occupies the premises as a trespasser. Ms. Defreitas is entitled to recover damages from him for trespass.

Issue 4 - To what remedies is Ms. Defreitas or Mr. Gellizeau entitled?

[80] Based on the foregoing, Mr. Gellizeau is not entitled to any relief. Ms. Defreitas has established her case against Mr. Gellizeau. She is accordingly entitled to recover possession of the property at Level Gardens. It is anticipated that Mr. Gellizeau will need some time to pack and deliver vacant possession. A period of three months should be more than adequate. He is therefore required to vacate the premises by 31st October 2017 and deliver all keys to the registrar of the high court.

[81] Trespass gives rise to a continuing action for damages. An owner who succeeds in a claim of trespass to land may be granted a permanent injunction restraining further trespass if he establishes that there is a strong likelihood that he will suffer grave damage in the future for which an award of damages will be an inadequate remedy. It is an equitable remedy which the court will grant if it appears just and equitable in the circumstances. Having regard to Mr. Gellizeau's posture and in light of the surrounding circumstances, it seems that this is an appropriate case in which to grant a permanent injunction restraining him from trespassing on the said property. Ms. Defreitas is entitled to her costs.

ORDER

[82] It is declared and ordered:

- (1) Olive Peggy Defreitas has the necessary *locus standi* to bring the instant claim, as beneficiary of Theresa Defreitas' and Gordon Carmichael's estates and as agent for her brothers and sisters, co-beneficiaries of Theresa Defreitas' and Gordon Carmichael's estates.
- (2) Judgment is entered for Olive Peggy Defreitas in her personal and agency capacities.
- (3) Gerold Gellizeau's counterclaim is dismissed.
- (4) The beneficial owners of the subject property registered by Deed of Gift No. 1884 of 1970 are the beneficiaries of Gordon Carmichael's estate, including Olive Peggy Defreitas, her siblings and aunts. The estate remains vested in the Honourable Chief Justice on statutory trusts for the beneficiaries.
- (5) Gerold Gellizeau, his servants and agents shall on or before 31st October, 2017:
 - (a) vacate and deliver up vacant possession of the subject property; and
 - (b) deliver the keys to the premises, to the Registrar of the High Court.
- (6) The Registrar of the High Court shall deliver the keys to the subject property to Olive Peggy Defreitas who shall secure the premises, make arrangements for the property to be maintained and delivered to the duly appointed administrator(s) of the estate of Gordon Carmichael deceased when called upon to do so.
- (7) Gerold Gellizeau is restrained whether by himself, his servants or agents from remaining on, trespassing on, or interfering with the enjoyment of the subject property by the administrator(s) and/or the beneficiaries of Gordon Carmichael's estate, from 31st October, 2017.
- (8) Gerold Gellizeau shall pay damages to Olive Peggy Defreitas for trespass, to be assessed on application to be filed and served on or before 31st October, 2017.
- (9) Gerold Gellizeau shall on or before 31st October, 2017 pay to Olive Peggy Defreitas, prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).
- (10) A penal notice in terms of CPR 53.3 (a) is to be endorsed on this order in respect of compliance with sub-paragraphs (5) and (7).

[83] I wish to acknowledged and thank counsel for their helpful written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court



Registrar

