

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW and EQUITY DIVISION  
2016/CLE/gen/ 01687**

**BETWEEN**

**KENDALL MARSHALL, JACQUELINE LOCKHART AND GWENDOLYN KING, TRUSTEES  
OF VICTORIA AND ALEXANDRA UNION SOCIETY**

**Plaintiffs**

**AND**

**DELICINA COLLIE SAUNDERS**

**Defendant**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Mr. Michael W. Horton for the Plaintiff  
Mrs. Bridget Butler for the Defendant**

**Ruling Date: 2<sup>nd</sup> June, 2022**

**Civil – Trustees – Legal and Beneficial Ownership of property**

**JUDGMENT**

1. By a Specially Endorsed Writ of Summons filed the 22<sup>nd</sup> December, 2016 (**the “Writ of Summons”**) the Plaintiffs, who claim to be officers and trustees of the Victoria and Alexandra Union Society (**the “Union Society”**) (**the “Plaintiffs”**) seek from the Defendant, Delcina Collie Saunders (**the “Defendant”**) a declaration that they are the legal owners in fee simple of the lot of land and premises located at the junction of Baillou Hill Road and Dunmore Street (**the “Property”**) and that as a result the Defendant is not entitled to enter on the land.
2. The Plaintiffs also seek, an order that the Defendant deliver up possession of the Property, an injunction to restrain her from remaining in or on or continuing in occupation of the Property, a rental payment of six hundred dollars per month or alternatively mesne profits from the date of service of the Writ of Summons to delivery of possession and damages for trespass.
3. The Plaintiffs claim that Union Society purchased the Property as recorded by a conveyance dated the 22<sup>nd</sup> February 1919 and made between Hester Demeritte and John A. Burnside, Richard H. Smith and John A. Ceruti as Trustees (**the “1919 Conveyance”**). They averred that they would regularly hold meetings in a building which had been constructed by the Union Society on the Property. Some years prior to 2006

they leased the building to a number of different individuals and public bodies. The last tenant was the Renaissance Academy, a private high school (the “Academy”), which paid them six hundred dollars per month in rent.

4. On 28<sup>th</sup> December, 2006, the Defendant wrongfully entered the Property and ousted the Academy and by extension deprived the Plaintiff of the use of the building. This caused them the loss of their records inclusive of deeds and other documents which were stored on the premises. Despite written demands to vacate, the Defendant fails to do so.
5. The Defendant denies that the individuals named are even the trustees of the Union Society as a pending matter lists other individuals as the trustees. Aside from acknowledging that the Plaintiffs held meetings in the building on the Property, she denies that the Plaintiffs actually own the Property as the Union Society ceased to exist in or about 1969.
6. By counterclaim, the Defendant claims that by the 1919 Conveyance Hester Demeritte of the one part and John Alexander Adderley, Richard Henry Smith and John Alexander Ceruti (“**John A. Ceruti**”) (Trustees nominated and appointed) of the other part purchased the Property upon trust for the Union Society. John A. Ceruti died as the sole surviving trustee.
7. By a power of attorney dated 4<sup>th</sup> December 1995, Gladstone Harcourt Ceruti granted the Defendant power and authority to manage the Property. By his last will and testament also dated the 4<sup>th</sup> December 1995, the Defendant was appointed as the Executrix and sole beneficiary of his estate. A grant of probate was issued thereafter, authorizing the Defendant to administer the estate as confirmed by a Deed of Assent dated 7<sup>th</sup> July 2009.
8. The Defendant alternatively seeks a declaration that she is the legal and beneficial owner of the Property, an order for possession of the Property and an injunction restraining the Plaintiffs, whether by themselves, their servants and or agents from entering the Property.

## **EVIDENCE**

### **PLAINTIFF’S EVIDENCE**

9. Kendall Marshall, President and Treasurer of the Union Society since 1987 (“Mr. Marshall”), averred that he succeeded the late Cyril Lockhart and Charles Rhodriquez as President (both deceased). Membership and meetings of the Union Society were dwindling as many members ranged in age from their seventies to their nineties, had declining health and some had passed away.
10. The initial trustees of the Union Society were Mr. John Alexander Burnside, Mr. Richard Henry Smith and Mr. John Alexander Ceruti. They took the title to the Property in 1919 as trustees on behalf of the Union. The trustees who succeeded them were Marion Johnson, Mable Bogus, Edith B. Laramore, Ms. Andrews and Ms. Maycock. After their deaths they were succeeded by Cyril Lockhart, Senator Charles Rhodriquez, Marion Johnson, Edith B. Laramore and Margaret Adderley.

11. The last appointed trustees of the Union Society were himself, Jacqueline Lockhart, Minerva Bosfield, Charles Butterfield and Gwendolyn King. Mr. Marshall provided a declaration of trustees dated 18<sup>th</sup> December 2007, prepared by Jacqueline Lockhart, which listed the trustees of the Union Society. Two of the trustees died and only himself, Jacqueline Lockhart and Gwendolyn King remained as trustees. The latter two however, were elderly and not in good health.
12. In addition to leasing the building to the Academy, they also leased the building to a church organized by Pastor Gregory Bethel who held services in the building twice per week and paid a weekly rent of sixty dollars from 1992 to 2002. After the Defendant evicted the Academy, she barred the Union Society and its officers from entering the building.
13. The ouster by the Defendant left them unable to retrieve any of their receipts or records which would evidence payments received from leasing the building. Additionally, the Union Society had no contact for the proprietress of the Academy nor did it have a current address, despite diligent inquiries. It was believed that the Academy may have ceased operation.
14. Despite the Union Society's attempts to remove the Defendant from the Property, through their respective counsel, the Defendant unlawfully remained thereon. Their efforts to obtain details of the Department of Labor's use of the Property were unsuccessful. In 1954, not knowing that the 1919 Conveyance had been lodged for recording, they applied to the Supreme Court for an order to vest the Property in the trustees on behalf of the Union Society. The order was granted on 10<sup>th</sup> July 1954 and a vesting Deed was issued in July of 1954 ("the 1954 Deed") which confirms that the Union Society had undisturbed possession since 1904.
15. The Defendant could not claim to own the Property as the personal representative of Gladstone Ceruti as he never owned the Property which was always in the undisputed ownership of the Union Society until 2006 when the Defendant illegally ousted the Plaintiffs.
16. During cross examination Mr. Marshall stated that he was a trustee of the Victoria Royal Union, appointed by a letter from Mr. Cyril Lockhart who was the last trustee to die. A document dated 18<sup>th</sup> December 2007 was prepared to indicate his appointment and was produced for the action. He could not say whether or not Mr. Ceruti and Mr. Smith appointed any other trustees.
17. Mr. Marshall stated that he became a member of the Union Society from the age of six months old, entering as a juvenile at eight and then into the general body at sixteen in 1955. The Union Society was formed to help the poor black people in the area. At the time of his birth in 1939, the mortality rate was under six months. If a baby lived past that time, the regulations and rules allowed a baby to be registered once the baby's grandmother, grandfather, mother or father was a member.
18. The purpose of the Union Society was to financially assist the poor and sick with burials. At the time, the black people were not allowed private nursing. There was only one Victoria Royal Union. The rules of the Union Society exhibited were referred to as

amalgamated rules as at one time there were three lodges on Blue Bill Road, The Knights of King George, Victoria Royal Union and the Young Ladies Beautiful Lodge.

19. The lodges were established to teach women and men how they should act in public but were dissolved before his time however, the Union Society remained. He was not familiar with the Victoria Alexander Union. Mr. Marshall denied that he did not have any proof that the Defendant removed items belonging to the school or the Union Society out of the building. He was informed by the neighbors and when he attended with the police officers he saw the items in the yard.
20. There were no longer meetings held there although he would periodically check on the premises for the Academy. The ages of the members ranged from 96 to 56 or 57 which prevented them from attending meetings. Sometimes meetings would be held at his house or would be held on the porch of the Union Society building but they did not go inside. The Property is located on the corner of Dunmore Street and Blue Hill Road. The building in question was on the north-western junction of Dunmore and was the same property in the present action.
21. By the 1954 Deed 6 persons were named as trustees. He was a juvenile member at the time. The trustees held the property of Victoria Royal Union for the benefit of the members. During his time. The Knights of King George and the Royal Victoria Society operated separately. He did not know anything about the Knights of King George's operation.
22. During re-examination, Mr. Marshall stated that the building was located at the north-western junction of Dunmore Street and Blue Hill Road. As a juvenile that is where the Union Society met.
23. Ms. Florita Greene, as a former member and having served as secretary of the Union Society ("Ms. Greene"), under Mr. Charles Rodriguez and Mr. Cyril Lockhart, both deceased past Presidents, averred that she always believed that the Union Society was the owner of the Property. On the Property stood a large wooden building with a wraparound porch. She knew of no other claims to the Property. She ceased to be a member in 1986.
24. As secretary, she averred that all records and important papers of the Union Society were kept in a glass case under lock and key, in a room in the northern part of the building. This included the lot papers, membership list and various receipts for money received and paid out for death benefits. Most recently, she had been informed by Mr. Kendal Marshall, President ("**Mr. Marshall**") that all of those documents went missing around the time the Union Society lost control of the building.
25. She had noticed a school being operated from the building for several years. Mr. Marshall had informed her that the building was being leased to acquire funding for its aging members. Upon the end of the school's lease of the building, Mr. Marshall informed her that the building had wrongfully been taken over by individuals using it as a residence.
26. During cross-examination, Ms. Greene averred that she was a member of the Union Society since 1943, when she was five years old and not a member of the Victoria

Alexander Union. She did not know any of the trustees of the latter union. The union she belonged to was a society which had death burials. She was not aware of an amalgamation between the union and other unions.

27. Ms. Greene stopped attending meetings in 1986 as she had become a Seventh Day Adventist, a religion which did not associate with lodges. The union she attended was located on Blue Hill Road. She was never a trustee. She was not familiar with the current membership. Mr. Marshall was a member at the time that she was secretary of the union.
28. Mr. Gregory Bethel knew Mr. Marshall since 1992 after he rented the building to operate a church called Bethel Pentecostal Church of God (the "Church"). Mr. Marshall was the head of the Union Society. The Church paid Mr. Marshall fifty dollars per week and the Church met twice per week, Wednesday evenings and Sundays. Their church meetings did not interfere with lodge meetings which were also being conducted in the building. No one disturbed the Church's use of the building at any time.
29. It was his understanding that the Union Society owned the building. They gave up the tenancy in 2002 after Mr. Marshall informed them that certain renovations needed to be carried out to the building.
30. During cross-examination, Mr. Bethel averred that he had access to the full facility on the Property and that there was not many rooms. He never had any disturbances.

#### **DEFENDANT'S EVIDENCE**

31. The Defendant, the paternal granddaughter of the late Gilbert Symonette ("Mr. Symonette"), averred that her grandfather had worked along with his cousin, the late John Alexander Ceruti and his wife, to develop the over hill area of Grants Town. In the 1990s, they established the first burial society named "The New Road Volunteer Union Society. This was prior to the naming of Baillou Hill Road.
32. John Ceruti and Benjamin Brown along with the help of local carpenters and masons were instrumental in constructing the building on the Property. The burial society was later named "The Victoria and Alexandra Union Society". After John Ceruti and two of his sons' deaths, she was appointed by the youngest son Gladstone Harcourt Ceruti to manage all of his concerns and affairs in her absolute discretion.
33. The Defendant stated that she was involved with the Union Society since childhood, as her mother and grandmothers were members. She had served as a handmaid and would carry a wreath in the mourning march during the burial rite of members. By 1969, most of the Union Society's members had died out and the burial rites were carried out by the Church of God through "Mother Beatrice Butler" who collected dues establishing an Auxillary at the Lily of the Valley Church.
34. The Defendant never knew of any of the trustees named by the Plaintiffs to participate in the burial rites which was the purpose of the Union Society. She knew Jacqueline Lockhart and Gwendolyn King to be members of the Knights of King George Society who rented from the Union Society. Sometime in 1995, Ms. King had approached her

about the properties occupied by members from the Fleming Street area and she advised her that she had no interest in those properties. She directed Ms. King to Rev. Prince Hepburn or Charles Butterfield, both now deceased, and who were members of the Knights of King George Society, who were responsible for collecting rent from the members.

35. The building had been rented to various individuals or organizations including Pastor Jacob Bethel, a Baptist minister and the Honorable Norman Gay, the then Minister of Health who had used it for his constituency office for a time. After Gladstone Ceruti's death no other business was conducted in the building. Between 2006 and 2007 she opened the building on Fleming Street for Henry Wright, one of the Knights of King George. However, after no one attended for months she advised him that she was no longer going to open the building for him. She knew of no other meetings in or near the building.
36. During cross-examination, the Defendant admitted that she lived on the Property on Dunmore Street since 2006. She did not know John Ceruti Sr. The New Road Voluntary Society was on the eastern side of where she lived and was owned by Oscar Ceruti, the grandfather of Gladstone. She did not know who formed that body and she was not a member.
37. She admitted that the Property in issue was not named in the Power of Attorney but averred that she was appointed to handle all of Gladstone's affairs, including the upkeep of buildings and the grounds and to effect repairs.
38. The Defendant stated that she was not maintaining the Property with the intention of owning it, but just to maintain it as it was considered to be a historical building as declared by the Ministry of Works. She stated that the property was not owned by anyone.
39. She assumed that Gladstone thought that he had just as much rights as John Sr. His Last Will and Testament, of which she was executrix and beneficiary, should have included the Property, but she could not recall if it did. She had retained another attorney to probate the Last Will and Testament and she had given him a list of properties.
40. The Royal Union Society was separate from the Union Society. While she assisted Mr. Ceruti with the upkeep of the Property, between 1995 and 2006, she could not say where Mr. Marshall was. As long as Gladstone was alive she never saw anyone except for Renaissance Academy. She never had any problems with the Property before that.
41. She agreed that John Ceruti had died first out of the three trustees. Gladstone Ceruti had instructed her to look after the Property. She was not claiming to own it but to upkeep the building and give back to society. She was teaching people for free and housing people who were homeless in or after 2007. She denied that she had evicted the Academy and maintained that she had traveled and upon her return they were gone. Thereafter, she had her attorney draft a document giving her son, Mr. Stephen Collie permission to be the caretaker for the Property.
42. In response to the attorneys letter asking the Academy to deliver up possession to the Property, the Defendant stated that her attorney was responsible for handling the entire

estate. There was no title deed. Her attorney knew by the Power of Attorney that she was the care taker of the Property despite it not making mention of the Property in the documents. She gave the attorney a bundle of papers received from Gladstone Ceruti.

43. Prior to Gladstone Ceruti's death and that of his brother, he managed the Property for the Union Society from 1953. This was based on the right passed down from their father John Ceruti enabling them to manage the Property. In 1953 Gladstone Ceruti was living in New York but visited The Bahamas twice a year and left Mr. Charles Rodriguez as President of the Royal Union lodge, to handle the affairs when he was abroad. The evidence in her witness statement was based on information provided to her by Gladstone Ceruti.
44. She maintained that the Royal Victoria Lodge was on the grounds of the Royal Victoria Hotel on Parliament Street and not the property in question.
45. During re-examination, the Defendant averred that based on her instructions from Gladstone Ceruti, she was responsible for the upkeep of the building and the Property hence the reason for her making the repairs. Before the execution of the Power of Attorney, the instructions from Gladstone Ceruti were to ensure the place was clean. He told her that the Power of Attorney gave her the power that he had and that she was to act on his behalf.
46. The Power of Attorney did not specifically refer to the Property. She did not assist with the burial of any members other than Mr. Ceruti, when she took over the Property, it was not her understanding that the Union Society or the Victoria Union were still in operation.
47. She accepted that the Property was not listed in the Oath sworn by her in by the Administration of the Ceruti Estate. She clarified that she was only seeking to live on the Property and that she was not entitled to a beneficial interest of it. She did not receive any payment for any of the management duties she conducted on behalf of Gladstone Ceruti. Despite not owning the building the Property, she was asked to upkeep it and she gave her word that she would, which is why she carried out the repairs.

## **ISSUES**

48. By the Plaintiff's Statement of Facts and Issues filed 12<sup>th</sup> February 2020, the Plaintiff claims that the single issue to be decided by the Court is whether the legal ownership of the Property lies in the Plaintiffs or the Defendant.
49. By the Defendant's Statement of Facts and Issues filed 18<sup>th</sup> February 2020, the Defendant claims that there are several issues to be determined, namely:
  1. Whether the Plaintiffs are in fact the trustees of the Union Society and if so how were they appointed?
  2. Whether the Plaintiffs have standing to bring a claim to oust the Defendant from the Property?
  3. Whether the Union Society and the Victoria Royal Union are one and the same?

4. Whether the trust registered – the royal charter is registered under the Union Society or the Victoria Royal Union?
5. Whether the Plaintiffs or the Defendant are entitled to a declaration that they are the beneficial owners of the Property?
6. Whether the Defendant and/or her predecessors have sufficient possessory title over the Property to oust the Plaintiffs?

## **SUBMISSIONS**

### **Plaintiff's Submissions**

50. The Plaintiffs submit that they are the five appointed trustees of the Union Society, having been declared as such by Mrs. Jacqueline Lockhart, the Secretary of the Union Society in December 2007. As such, they are entitled to sue to protect the Property. They also submit that the legal character of the Union Society is similar to that of an unincorporated members club as described in **Halsbury's Law of England, Third Edition , Volume 5, paragraph 586 at page 252 , and paragraph 589 at pages 253 to 254** which states,

**"586. Definition. A club may be defined as a society of persons associated together for social intercourse, for the promotion of politics, sport, art, science, or literature, or for any purpose except the acquisition of gain (a). The association must be private and have some element of permanence. The purpose of social intercourse may be combined with any other purpose, subject to the exception mentioned. The acquisition of gain does not destroy the nature of a club if it is merely incidental to its proper purposes (b). The purposes for which a club exists may be altered or modified, and there is no rule of law that requires a club to fulfil each and every separate purpose for which it was originally formed (c).**

**589. Unincorporated members' clubs. An unincorporated members' club is a society of persons each of whom contributes to the funds out of which the expenses of conducting the society are paid. The contribution is generally made by means of entrance fees or subscriptions, or both (r). The society is not a partnership, because the members are not associated with a view to profit (s), nor, for the same reason, is it an association requiring registration as a company (t). It is not recognized as having any legal existence apart from the members of which it is composed (u).**

**The members for the time being are jointly entitled to all the property and funds of the club, the property usually being vested in trustees. It is only upon a dissolution (a) however, that the individual interests of the members in the property become capable of realization, until then their rights are merely to enjoy the use of the club premises, if any, and other privileges of the society, in accordance with the rules, so long as they duly pay their subscriptions and continue to be members (b); but the contract of membership implies no warranty that the club premises are reasonably safe for purposes for which the members are admitted (c)."**

51. By the 1919 Conveyance, it was clarified that the Property was purchased for the benefit of the Union Society and not owned by Hester Demeritte. It was conveyed to the three trustees John Alexander Burnside, Richard Henry Smith and John Alexander Ceruti for



the benefit of the Union Society. The 1954 deed reveals that the Union Society was organized sometime during the year 1902.

52. The 1954 Deed further recites that the members of the Union Society purchased the property sometime during the year 1904, and from which time it exercised undisturbed possession of the property. The Plaintiffs submit that the property described in the 1919 Conveyance and in the 1954 Deed are the same as the dimensions of the property were updated by the draftsman in the 1954 Deed. Both deeds speak to the Union Society being in possession of the Property since 1904. Also, while the 1954 deed reveals dating discrepancies they were not critical to the issues to be determined.
53. The name of the Union Society was historically the Victoria and Alexandra Union Society but became known as the Victoria Royal Union sometime after the 1919 Conveyance.
54. It is trite law that an unincorporated body or association may not legally sue in its own name but must do so by representative members. Where the property of such a body is concerned, the trustees in whom the property is vested may sue as they are considered to represent the members beneficially entitled. The provisions of the Friendly Societies Act does not require that an unincorporated association be registered under the Act or that in the administration of its affairs, the appointment of trustees, for example, must be approved by the Supreme Court. Only registered friendly societies are covered by the act.

#### **Defendant's Submissions**

55. The Defendant submits that she and her predecessors enjoyed undisturbed possession of the said property. She relies on the Power of Attorney and the last will and testament of the late Gladstone Ceruti in which she claims it was devised that she should manage, upkeep and repair the Property and subsequently be deemed the legal owner.
56. The court must determine whether a trust or power of appointment was created. On the one hand she submits that a trust allows a settlor to transfer property to the trustees to hold for the benefit of the beneficiaries, and on the other hand a power of attorney gives a donee the power to appoint property to the object of the power.
57. The Defendant relies on **Saunders v Vautier (1841) CR & Ph 240 ; S.C. 4 Beav. 115 ;41 E.R.484** where the Court held that as a general rule a trust cannot be varied from its original terms unless sanctioned by the Court. However, beneficiaries under a trust who are absolutely entitled to the entire trust property may bring the trust to an end and thereafter reconstitute the trust under new terms.
58. Further in **Mallot v Wilson 1903 ALL ER Rep**, the Court held that if none of the original trustees are available equity will not allow a trust to fail for want of trustees.
59. The Defendant further submits that subsequent trustees may be appointed in addition to or in place of the initial trustees under a trust instrument pursuant to **section 42 of the Trustees Act**. The number of additional trustees must not exceed four according to **section 41 (2) of the Trustees Act**. Sections 41 (2) and 42 provide:-

**“41 (2) In the case of trusts of land in The Bahamas made or coming into operation on or after the commencement of this Act — (a) the number of trustees shall not in any case exceed four and where more than four persons are named as such trustees the four first named (who are able and willing to act) shall alone be the trustees and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy; (b) the number of the trustees shall not be increased beyond four.**

**42. (1) Where a trustee either original or substituted and whether appointed by the Court or otherwise is dead or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or refuses or is unfit to act therein or is incapable of acting therein or is a minor, then subject to the restrictions imposed wby this Act on the number of trustees —**

**(a) the person or persons nominated for the purpose of appointing new trustees by the trust instrument; or**

**(b) if there is no such person or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being or the personal representatives of the last surviving or continuing trustee, may, by deed, appoint one or more other persons (whether or not residing in The Bahamas and whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.”**

60. There is no evidence of a deed of trust or deed of appointment naming the Plaintiffs as trustees of the Union Society or The Royal Victoria Lodge. There is also no evidence which amalgamated the Union Society with the Knights of King George Union Society and or the Beautiful Ladies League.
61. The Defendant submits that she acts under the authority of the heir of the last surviving trustee Mr. John A. Ceruti Sr. who had not appointed any new trustees nor was their evidence of new Trustees appointed by the Union Society by the Court or otherwise. There is no evidence by the Union Society that the Plaintiffs fulfilled any of its objectives during the period of 1927 - 2007 or 2016 (i.e. members not assisted with burials).
62. The Defendant ultimately submits that the Plaintiff has no locus to seek an Order for possession or a declaration as the legal or beneficial owners of the said property.

## **DECISION**

63. In this action the Plaintiff seeks a declaration that the Union Society is the legal owner of the Property, along with an Order that the Defendant deliver up possession of the Property and an injunction to restrain the Defendant from remaining in or on continuing occupation of the said hereditaments, repayment of lost rental profits, damages for trespass and any further relief as the Court deems fit.
64. The Defendant opposes the Plaintiff's application because:-
  - a. She and her predecessor had undisturbed possession of the said property.
  - b. She had a Power of Attorney giving her authority to manage, upkeep and repair the subject property and the subsequent rights of administration of the Estate of

Gladstone Ceruti deceased, the sole remaining heir of the Estate of John A. Ceruti, Sr.  
("The 1919 Conveyance")

- c. She also acted under the authority of the heirs of the last surviving Trustee Mr. John A. Ceruti Sr. who had not appointed any new Trustees nor was their evidence of any new Trustees appointed by the said Union Society or by the Court or otherwise.

#### **DEFENDANT'S RIGHT TO THE UNION SOCIETY PROPERTY**

65. All of the issues can be dealt with in the determination of the Defendant's right to the Union Society Property.
66. I have heard and seen the witnesses during the trial and prefer the evidence of the Plaintiff's witnesses. In fact, the Defendant in court substantially changed her claim on ownership of the Property.
67. During the trial, the Defendant averred that she was no longer seeking ownership of the Property but was seeking permission to remain there. Her claim to do so was based on the Power of Attorney granted to her by Gladstone Ceruti and by his Last Will and Testament. Mr. Gladstone Ceruti was the grandson of Mr. John Ceruti, one of the original trustees named in the 1919 Conveyance.
68. During the trial, the Defendant conceded that John Ceruti was the first of the original Trustees to die despite the submission that he was the last remaining Trustee to the 1919 Conveyance. What then does this mean for her subsequent actions towards the Property? Section 23 of the Trustees Act provides that where there are two or more trustees the last surviving or continuing trustee shall be capable of exercising or performing any power under a trust document or the personal representative of the last surviving or continuing trustee.

**"23. (1) Where a power or trust is given to or imposed upon two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.**

**(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or the other trustees or trustee for the time being of the trust."**

69. A Trust was created through the conveyance of the Property to the Society upon certain trusts in the 1919 Conveyance. The 1954 Deed was granted by the Court and reaffirmed the Trust established by the 1919 Conveyance. The Trusts established in both Conveyances have charitable purposes. The 1919 Conveyance is relied on by both the Plaintiff and Defendant and in which Mr. Ceruti was designated one of three Trustees and states that the property was conveyed to the Trustees for the uses and purposes of the Union Society established.

70. The Union Society, by its Rules and By-Laws and constitution, evidenced that the role of Trustees were fiduciaries of the Union Society to ensure that its purposes were carried out.
71. There is no evidence which refutes that the Union Society enjoyed undisturbed possession of the Property from 1904 to 2006 when the Defendant had the Union Society's tenant removed from the Property and prohibited the Union Society from conducting its meetings. The Union Society until then had rented the space to inter alia government organizations, a Church and a school to attain funding to enable it to carry out its purposes.
72. There is also no evidence which indicates that Mr. Gladstone Ceruti, as an heir of Mr. John A. Ceruti Sr. had ousted the Union Society from utilizing the Property after his Father's death IF his father was the beneficial owner. Gladstone Ceruti had during his life an opportunity to remedy any defects of title to the Property if he believed his family had a beneficial claim to the Property, but this never occurred until the actions of the Defendant who maintained that she operated on his instructions.
73. Mr. Kendal Marshall in his evidence confirms that he has been President of the Society from 1987, when Mr. Gladstone Ceruti was still alive and again no action was taken with regard to the Property for the benefit of the Ceruti family. The natural inference to be drawn from this lack of action is the Ceruti family recognized that they had no beneficial claim to the Property.
74. The application was made for the probate of the estate of Mr. Gladstone Ceruti, in 2006, sometime after his death which had occurred in 1997. The Return does not list the Property as being owned by him. The Return was completed by the Defendant as his Executrix, who should have knowledge of the properties owned by Mr. Ceruti.
75. The Defendant has not produced any other documents other than that of the 1919 Conveyance which ties Mr. Gladstone Ceruti to the Property through his father as a named Trustee.
76. There is no doubt that benevolent and burial societies existed and exist in the Bahamas' and that Mr. Ceruti Sr. as relied on by both the Plaintiff and Defendant in the 1919 Conveyance was a Trustee of the Victoria and Alexandra Union Society (Victoria Royal Union) for the purpose of transferring the Property to the Society. The Conveyance was held by the Trustees in trust for the benefit of the Society. None of the Trustees had a distinct beneficial interest in the Property.
77. It is also noted that Section 87 of the Trustee Act, addresses the submission of the Defendant that **"a beneficiary under a trust who is absolutely entitled to the entire trust property may bring the trust to an end and thereafter reconstitute the trust under new terms"** as in Saunders v Vautier.
78. Section 87 provides :
- (1) Notwithstanding any rule of equity or practice of the Court to the contrary, neither a beneficiary who is solely interested in the trust property, nor all the beneficiaries who together are all the persons interested in it, shall be entitled, though in existence and ascertained and of full capacity,**

**to terminate or modify the trusts affecting the property, if this would defeat a material purpose of the settlor or testator in creating the trust, unless the settlor is living and also consents.**

**(2) The material purposes of the settlor or testator for the purpose of subsection (1) may be ascertained from the trust instrument.**

79. The material purpose of the trust established in the 1919 Conveyance and reaffirmed in the 1954 Deed is charitable work as set out in the constitutive documents of the Union Society which included burial assistance. The Defendant stated that she was advised by Gladstone Ceruti that the property was to be used for charitable work but the evidence led at trial was that it was being used by her for her own personal living space and personal business and not as requested by Mr. Ceruti and more importantly not in aid of the material purpose emphasized in the 1919 Conveyance of which Mr. Ceruti and the other Trustees were parties.

80. The 1954 Deed also names Trustees of the Society who are, different from the original trustees but, with the same purpose retained to hold the property for the benefit of the Society. In 1954 new Trustees were therefore appointed to hold the Property, none of which were given any distinct beneficial interest.

81. The Power of Attorney granted to the Defendant in 1995 by Gladstone Ceruti does not specifically name the Property and is only a general power which speaks to property owned by Mr. Ceruti. It cannot give any right over property which is subject to a Trust and to which the donor of the power only has a contingent interest if any. Nevertheless, the Power fell away upon the death of Mr. Gladstone Ceruti in 1995, prior to the takeover by the Defendant in 2006.

82. After considering all of the evidence and the submissions I find that:-

1. The Union Society had undisturbed possession of the property from 1904 to 2006 until ousted by the Defendant.
2. Mr. Ceruti did not initiate or bring any action as the purported legal owner of the property having purportedly inherited the same from his father.
3. The Trustees mandate was and is to hold the Property in the interest of the Union Society.
4. The title documents confirm the Union Society's undisturbed connection to the property as compared to that of the late Gladstone Ceruti from whom the Defendant seeks to benefit.
5. The Defendant conceded in the witness stand that she did not have a possessory or any title to the Property.

84. Therefore I declare, that that the legal and beneficial ownership of the Property is vested in the Trustees of the Victoria and Alexandra Society ("The Union Society"), as represented through the Plaintiffs herein.

85. The Defendant is to vacate the Property forthwith and is hereby restrained permanently for trespassing on the property. The Plaintiffs are entitled to damages for the said trespass by the Defendant and her agents such damages to be assessed.

86. The costs of this action are awarded to the Plaintiffs to be taxed if not agreed.

Dated this *2nd* day of June, 2022

  
Hon. G. Diane Stewart