

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/01223

BETWEEN

FAIRNESS LIMITED

Plaintiff

AND

GREGORY CHIPMAN

Defendant

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Keith Bell for the Plaintiff
Keod Smith for the Defendant

Judgment Date: November 25th 2022

RULING

1. By Summons dated 4th February 2019, the Plaintiff, Fairness Limited (**the “Plaintiff”**) sought an order pursuant to Order 27 rule 3 of the Rules of the Supreme Court (**the “RSC”**) for a judgment on admissions as a result of the Defendant’s, Mr. Gregory Chipman (**the “Defendant”**) admission of facts in his pleadings (**the “Admissions Application”**).
2. By the Plaintiff’s Specially Endorsed Writ of Summons filed 18th October 2018, it sought possession of the 9.685 acres, 2.057 acres and 9,787 square feet of parcels of land situate in the Western district of the Island of New Providence; the parcels being portions of a larger tract of land known as “The Retreat” (**the “Property”**) from the Defendant. They claimed to be the owner of the Property in reversion pursuant to a lease dated 1st July 2018 between them and Harmony Homes Limited (**the “Landlord”**) (**the “Lease”**). They also sought damages as a result of the Defendant’s trespass and an injunction.
3. The Plaintiff alleges that around October 2018 the Defendant was found to be on the Property. Despite numerous requests to vacate the Property, the Defendant refused to do so and prevented the Plaintiff from accessing the Property causing the Plaintiff to suffer loss and damage (**the “Writ of Summons”**).
4. In his Defence and Counterclaim filed 1st November 2018, the Defendant claimed that he was the legal and beneficial owner of the Property and that the property described in the Writ of Summons was different from the property which he owned. He denied that he had prevented or prohibited the Plaintiff from entering the Property and claimed that he

had physically occupied the Property since about 2006. During that time he had never seen the Plaintiff nor its agents on the Property and in turn sought an order that the Plaintiff's had trespassed upon his Property (the "Defence").

5. An interlocutory injunction was ordered against the Defendant by Bethell J (as she then was), prohibiting and restraining him or his agents from trespassing on, affixing signs on, disposing of and/or causing damage to the Property. After several extensions, she ordered that the interlocutory injunction was to remain in place until the determination of the action.
6. In the Affidavit of Tavares Laroda filed 4th February 2019 in support of the Summons and in the Plaintiff's Submissions the Plaintiff claims that the Defendant made certain admissions of fact, namely: -

"The property of the Defendant which was he was standing at the time when he was accosted by agents and/or servants of the Plaintiff on 18th October 2018 were Lots 15, 16 and 17 ("Gregory Chipman Land") of Gambier which were originally granted to Abraham Patton in 1843 as set out on the 'Plan of the Village of Gambier and Vicinity Compiled from Diagrams in Grant Books and from Surveys Made at various Times' that is recorded in the Department of Lands and Survey of The Bahamas as Plan D628".

"Alternatively, the Defendant began to physically occupy the Gregory Chipman Land in or about 2006 as his place of abode also hosting parties for the general public for fees, using the land as a camp site for himself and others, raising palm and other fruit trees for sale".

7. They also claim that there are alleged admissions in the Defendant's Affidavit in support of his Defence and Counterclaim at paragraphs 4, 10 and 13 which state:-

"4. I live in my Lexus-XL300 car (with battery) that was parked on my property at Lots 15, 16 and 17 Gambier Heights.....

10. Before my grandfather died, by a Deed of Gift dated 15th February 1989, he conveyed Lots 15, 16 and 17 to me which parcels are also known to me as the Abraham Patton Tract. My said Deed of Gift is recorded in the Registry of Records in Volume 13003 at pages 294 to 298

13.....as I was sitting in the security booth on stilts that I had placed there two days earlier on my land....."

8. The Plaintiff relied on the following affidavits in support of its Admissions Application: -

Affidavit of Tavares Laroda filed 18th October 2018;
3rd Affidavit of Shurn Henry filed 16th November 2018;
Supplemental Affidavit of Tavares Laroda filed 13th February 2019;
Affidavit of Tavares Laroda filed 4th February 2019;
Affidavit of Warren Andrew Pinder filed 4th February 2019;
Affidavit of Wilshire Bethel filed 4th February 2019;
Affidavit of Shurn Henry filed 4th February 2019;
Affidavit of Basil Damianos filed 4th February 2019;
Affidavit of Joseph Curry filed 4th February 2019.

9. The Defendant relied on the following affidavits in objection to the Plaintiff's Admissions Application.

Affidavit of Gregory Chipman filed 6th November 2018;
Affidavit of Clement Eneas filed 7th November 2018.

THE AFFIDAVIT EVIDENCE

The Plaintiff's Evidence

Affidavit of Tavares Laroda filed 18th October 2018

10. Tavares Laroda, General Legal Counsel of Sunshine Holdings ("**Mr. Laroda**") indicated that the Plaintiff, by the Lease became seised in possession of the Property as Lessor for a term of twelve years ending 1st July 2030. The Landlord was seised in reversion of the Property by, *inter alia*, the following Conveyances: -

- Conveyance dated 30th November 2001 – Taunus Limited to Harmony Homes Limited recorded in Volume 8289 at pages 270 to 275;
- Conveyance dated 30th November 2001 – Taunus Limited to Harmony Homes Limited recorded in Volume 8289 at pages 276 to 280;
- Conveyance dated 30th November 2001 from Taunus Limited to Harmony Homes Limited recorded in Volume 8289 at pages 281 to 286;
- Conveyance dated 30th November 2001 – Taunus Limited to Harmony Homes Limited and recorded in Volume 8289 at pages 287 to 292; and
- Conveyance dated 30th November 2001 – Taunus Limited to Harmony Homes Limited recorded in Volume 8289 at pages 293 to 298. (**the "Conveyances"**)

Each of the Conveyances relate to various parcels of the Property. Harmony Homes Limited is a subsidiary of Sunshine Holdings Limited.

11. Sometime in September 2018 the Plaintiff became aware that garbage and debris were deposited on the Property by unknown persons. During an inspection of the Property at the insistence of the Plaintiff, they were accosted by a man claiming to be the Property's owner. He indicated that his name was Gregory Chipman, the Defendant herein and that he had inherited the land from his grandfather William Chipman.
12. On 11th October both he and the Plaintiff's representatives attended the Property to have a fence erected. They found the Defendant in a security booth with a fence erected across the driveway. He had also spread more debris on the Property and cut down various trees and vegetation which had been planted by the Plaintiff or its predecessor. No building permit was displayed for the work being conducted on the Property.
13. The Plaintiff sought the assistance of the police and the Plaintiff presented the aforementioned Conveyances whereas the Defendant presented a copy of a Deed of Gift signed 15th February 1989 and recorded on 18th May 2018 (**the "Deed of Gift"**). Mr. Laroda reviewed the Deed of Gift and made certain observations with respect to the same: -

- The Deed of Gift indicated that William Chipman was the owner of property by reference to a Deed of Assent recorded in Volume 3483 at pages 375 to 378;
 - The said Deed of Assent related to a tract of land in Gambier measuring 90 feet by 100 feet and known as Lot 18 Gambier;
 - The Deed of Gift purported to convey land described as Lots 15, 16 and 17 Gambier containing 17 or more acres;
14. He then forwarded the Deed of Gift and Deed of Assent to Ms. Shurn Henry, a licensed surveyor ("**Ms. Henry**"), who confirmed that the land described in the Deed of Gift and Deed of Assent are in no way connected to the Property and was situate several thousand feet to the west of the Property in the vicinity of Travelers Rest.
15. Since the Defendant and his agents' occupation of the Property, the Landlord and the Plaintiff have received numerous complaints of the Defendant's conduct including trespass, the construction of a security booth without a building permit and destroying and cutting down trees on the Property and surrounding properties,

Supplemental Affidavit of Tavares K. Laroda filed 13th February 2019

16. Mr. Laroda provided the Court with certified copies of the Conveyances and added that the various parcels had a mortgage over them.

Affidavit of Tavares K. Laroda filed 4th February 2019

17. Mr. Laroda averred that the action related to land described in the Lease, which was a portion of a larger tract of land called "The Retreat". The Property and other adjoining parcels were purchased by the Landlord by various Conveyances. As General Counsel for Sunshine Holdings Limited, it was a primary function of his to inter alia preserve the ownership of the various tracts of land owned by the Landlord. This required that he along with other members of staff make frequent visits to properties to ensure that they were not being encroached upon or trespassed on by squatters.
18. In March 2009 the Property was inspected following the clearing of its boundaries for a valuation of the land and an appraisal report was commissioned and completed by Mr. Wilshire Bethell. In July 2012 he personally visited the Property and an inspection was undertaken by Joseph Curry who also prepared an appraisal report. He saw no evidence of any person occupying the Property at that time.
19. On 19th September 2016 he was again present on the Property during an assessment by Mr. Wilshire Bethell and there was no evidence that anyone was living on any parcels of the Property. Again in December 2017 there was no evidence of the Defendant or any other person living on the Property.
20. On 11th October 2018, after finding garbage and debris on the Property and later being accosted by the Defendant who claimed to own the Property, he along with the Plaintiff's representatives visited the Property to have a fence erected. They found the Defendant in a security booth with a fence erected across the driveway and he had also brought an old vehicle on the Property.

21. More debris was deposited on the Property and various mature trees were cut down which the Landlord or its predecessors had planted. The Plaintiff sought police assistance and upon the arrival provided the police with the Conveyances while the Defendant provided the police with a purported Deed of Gift.
22. As a result, the Plaintiff sought the assistance of the Court and was granted an interlocutory injunction against the Defendant. The next day the Writ of Summons was filed. When the Defendant filed his Defence he admitted that on 18th October 2018 he was found on the Plaintiff's Property although he referred to it as the Gregory Chipman Land.
23. The Defendant further admitted to being on the Property by way of his counterclaim when he stated that he had begun to physically occupy the Gregory Chipman Land in or about 2006 as his place of abode and for the hosting of parties for the general public. He confirmed that he was living in his Lexus-XL300 car on the Property and admitted to sitting in the security booth which was on stilts which he had placed two days earlier on his land.

Affidavit of Warren Andrew Pinder filed 4th February 2019

24. Warren Andrew Pinder, the Vice President of construction of the Landlord stated that he was familiar with the Retreat property which was purchased by the Landlord. Sometime around 2007, the Landlord had made a decision to demolish a mansion which was situate on the Property as it had fallen into a state of disrepair. He organized the demolition and was present at the time to ensure that the mature trees and vegetation were preserved. There was no one living thereon.
25. On 7th October 2018 he noticed the Defendant attempting to construct a wooden shack on the Property as he claimed to be the owner. He took a photograph of what he saw. On 28th October 2018, he again saw the Defendant on the Property whilst he made his weekly visit thereto. He took two photographs of him on the Property.
26. He observed that there was ongoing construction to the said shack and that there was no approved permit number displayed contrary to the Building Controls Act. He was subsequently advised that the Ministry of Works had issued an order for the said shack to be removed immediately due to the lack of permits and it not being built to the requirements of the Building Code.

Affidavit of Wilshire Bethell filed 4th February 2019

27. Wilshire Bethell, a Certified Real Estate Appraiser for more than forty years, averred that he became familiar with the Property about four decades ago when the late Philip Pinder lived there. His family later sold the Property to the Landlord. The home on the Property was in a state of disrepair and was torn down but the driveway, pool and wall remained.
28. He found the Defendant's claim that he was in occupation of the Property for the past twelve years to be undoubtedly false as he personally inspected the Property for the two appraisal reports he conducted on the Property. At no time did he see any evidence of the Defendant or anyone other than the agents of the Landlord on the Property.

Affidavit of Joseph R. Curry filed 4th February 2019

29. Joseph Ricardo Curry, a Licensed and Certified Real Estate Appraiser averred that he was retained by Luxury Homes Ltd. on 30th July 2012 to assess the fair market value of the Property. At the time on his inspection of the Property, there was no evidence that any person was living there. Upon completing his inspection, he prepared an appraisal report and valued the Property at thirteen million, two hundred and eighty-five thousand dollars for the three parcels comprising the Property.

Affidavit of Basil Damianos filed 4th February 2019

30. Basil Damianos, the Director of Security of Precision Security, was responsible for making weekly visits to properties owned by the subsidiaries of Sunshine Holdings Limited, two such subsidiaries were Harmony Homes Limited and Fairness Limited. He was familiar with the Property and in 2009 he began making regular visits. At no time prior to September 2018 did he find any person or any evidence of any person on the Property.

31. In September 2018 he became aware of garbage and debris being deposited on the Property. On 11th October 2018, he and other representatives of the Plaintiff visited the Property and found the Defendant who said that he owned it. He parked an old white vehicle at the front entrance in the driveway and had begun to erect a security booth and a fence across the driveway.

32. On 17th October 2018 at 7:10 p.m., he served several documents on the Defendant inclusive of a Writ of Summons, the Interlocutory Injunction and the Inter-Partes Summons at the Property. He had been previously advised that no permit was issued by the Ministry of Works and upon making inquiries with the said Ministry, he obtained a copy of a Notice which advised the Defendant that the shack was built without a building permit and that it needed to be demolished.

Affidavit of Shurn Henry filed 4th February 2019

33. Shurn Henry, a Land Surveyor ("**Ms. Henry**"), stated that there appeared to be a deliberate attempt by the Defendant to confuse the subject matter of the action. This was based upon her review of the 1st July 2018 Lease and the Conveyances. She was very familiar with the Property which she first visited in March 2008 as a part of a survey team. Following her visit she drew a plan of the Property and had created a proposed road reservation to the West of the Property. The proposal however never materialized.

34. Since her initial visit in 2008, Ms. Henry stated that she had made regular and consistent visits to and regularly passed the Property. At no time did she encounter any evidence of any person occupying any part of the Property prior to her encounter with the Defendant in September 2018. She reviewed the back title deeds to the Property, and confirmed by Conveyance dated 18th December 1975 between Sydeta Securities Limited and Taunus Limited, Taunus became the owner of the Property which it later conveyed to Harmony Homes Limited in 2001.

35. Her last site visit to the Property was in December 2017. The land in the Deed of Gift which the Defendant claims ownership of is in no way related to the Property. In response to the diagram exhibited by the Defendant in his 6th November 2018 affidavit, she states that it was not a survey plan in conformity with the Land Surveyors

Regulations as it was unsigned, undated and incorrect, the location was incorrect and it did not describe the land purportedly conveyed by the Deed of Gift. She had never seen any evidence of any person other than the Landlord and later the Plaintiff on the Property.

The Defendant's Evidence

Affidavit of Gregory Chipman filed 6th November 2018

36. The Defendant averred that he lived in his Lexus XL300 vehicle which was parked on his property which was Lots 15, 16 and 17 of Gambier Heights. Numerous personal items of his were on the Property until the 18th October 2018.
37. He had instructed Mr. Clement Eneas ("**Mr. Eneas**") to conduct an investigation into the title and Mr. Eneas filed his Affidavit evidencing his findings on 7th November 2018 which he adopted. His mother was Shirley Chipman who was one of four children of William Chipman of Gambier Village (his "**Grandfather**").
38. Before his Grandfather's death, he conveyed lots 15, 16 and 17 to him, which lots he knew to be a part of the Abraham Patton Tract. The lots were conveyed by a Deed of Gift dated 15th February 1989 and recorded in the Registry of Records in Volume 13003 at pages 294 to 298.
39. Mr. Eneas had advised him that the Lease upon which the Plaintiff relied was not recorded despite being stamped two days prior to the filing of its Writ of Summons. He was issued building permit no. 126165 by the Bahamas Ministry of Public Works and Utilities which he believed confirmed his ownership of Lots 15, 16 and 17 of Gambier Heights.
40. Despite his ownership of the Property, on 12th October 2018, a group of men, accompanied by a tractor, bulldozer and a 60 foot lowboy entered the Property. Shortly after, uniformed police officers in a marked police car arrived. They called him over to where they were and he and Mr. Eneas went to them. The police identified themselves and ordered him to leave the Property; which he refused to do. He informed the officer that he was the owner of the Property and that he had the paperwork to prove his ownership.
41. He also informed the officer that since 2006 he had camped out on the Property in various vehicles. Mr. Eneas had informed him that his exhaustive search into the title had not shown any company being registered as the Baxter Estate Limited which the Plaintiff's attorney had asserted they had derived their ownership from. He concluded that there was a mistake as to the property known as the Tuckers Estate which the Plaintiff claimed to own as such estate was nearly a mile east of his property and might have even been east of Blake Road.
42. He informed the Plaintiffs that they would need to obtain a court order to remove him but that there was no way the court would rule in their favor based on the documentation he possessed. The officer told the men to leave his property. As he walked back on to his property, the Plaintiff's attorney became loud and aggressive and started to curse at him in an angry and violent manner and said "**If Chipman going back on the property, then we fuckin going on the property too...**" Despite the comment making him afraid

for his life and safety, he told the Plaintiff's attorney that he was being unprofessional and that he should leave.

43. On 17th October 2018 he was informed by his fencing contractor that a woman claiming to have deeds to his property entered thereon and began removing poles from his yard. The woman informed his fencing contractor that if they did not stop she would hire hitmen to kill them. His fencing contractor called the police, however, they did not come to the Property until later that day. The woman was not arrested for trespassing on his property or her threats.
44. On the evening of the 18th October 2018, the Plaintiff's attorney and others including a man known to be an expert karate master, came to the Property and brought documents to serve on him. He did not accept the documents and the Plaintiff's attorney threw them at his feet and told him that he had been served. Mr. Eneas picked them up and later showed them to him. Later that night he left his property because he had recognized what he believed to be a hand gun under the Plaintiff's attorney's right pant leg.
45. After he had retained Counsel and provided him with the documents which were served on him and a survey plan he had commissioned earlier, his Counsel informed him that the Interlocutory Injunction was not in relation to his property but was for property called and known as "Tuckers" which Mr. Eneas had told him was formerly called Orange Hill Plantation, Tusculum, Jaeger and Baxter. His property was never known as any of those names.

Affidavit of Clement Eneas filed 7th November 2018

46. Mr. Eneas, a Land Title Investigator, who states that he was engaged by the Defendant to investigate the Plaintiff's claim of ownership of the Property, stated that the Plaintiff was mistaken in thinking that the Gregory Chipman land was the same as the Property. He made the statement after reviewing the order for the interlocutory injunction and the three conveyances relied on in relation to the same. He was familiar with the Crown Grants issued in the immediate vicinity of the parcels of land referred to in the injunction.
47. Mr. Eneas believed that the Plaintiff knowingly made untrue and fraudulent statements in their Court documents. The Gregory Chipman Land and the property the Plaintiff refers to as "Tuckers" were more than three quarters of a mile apart from each other. Tuckers was some one thousand six hundred feet east of Blake Road which was more clearly set out in the following documents: -
 - "Certificate of Title dated February 1964 and recorded in Volume 846 at pages 339 to 342, a Grants Diagram recorded in BK-A1 at page 228,
 - Conveyance of part of "Tusculum" tract between The Men's Shop Limited (as mortgagee) and The Baxter Estates Limited to Bethell Estates Limited dated 8th July 1966 recorded in Volume 1025 at pages 523 to 521,
 - Confirmatory Grant dated 6th September 1966 of "Tusculum" and "Jaeger" tracts recorded in Volume 1025 at pages 514 to 522".
48. Mr. Eneas produced the said Deed of Gift, the grant to Abraham Patton and Plan D628.

49. After reading the Affidavit of Shurn Henry filed 26th October 2018, he found the affiant to be mistaken as to the location of the Property as the Schedule found on page 5 of the Lease simply stated that the land being leased related to "All those pieces parcels or lots of land situate in West Bay Street in the Western District of the Island of New Providence and known as "The Retreat" which said piece parcels or lots of land has such position boundaries marks shape and dimensions as are shown on the diagram or plan attached hereto and is thereon coloured PINK".
50. There was no legible plan attached to any of the conveyances referenced in the injunction or in the Writ of Summons. There was no reference point provided by the Plaintiff as to exactly where its property was, save for him having to reach each of the schedules and the history related to each property. While the plan to the Lease showed a portion of the Gregory Chipman Land as being coloured suggesting that it is a part of the Property, on close examination of the schedule of the five conveyances listed in the Writ of Summons, he discovered that all of the properties described as being a part of the acreage east of Blake Road called "Tuckers" which were clearly demarcated on Plan NP-1.
51. With regard to service of the documents on the Defendant, he along with three other people were present on the evening of Friday, 18th October 2018 when the Plaintiff's former attorney came onto Gregory Chipman Land in a belligerent and violent manner demanding the Defendant and his guests to leave the land. The Defendant was served by having the Writ of Summons, the Affidavit of Tavares Laroda, the Summons and the Interlocutory Injunction thrown at his feet.
52. The Affidavit of Shurn Henry was not served on the Defendant as he picked up the documents to examine them. No admissions were made regarding the assertions contained in the Affidavits of Tavares K. Laroda and/or Shurn Henry.

The Admissions Application Hearing

53. The hearing of the Admissions Application spanned several sittings. The evidence and submissions of both parties' highlighted the issue of whether the properties referred to by each of them were the same. To assist in determining the issue, an independent survey was ordered and Mr. Thomas Ferguson, a Surveyor within the Department of Lands and Survey ("**Mr. Ferguson**"), prepared reports dated 13th September 2019 and 6th November 2019 (**the "Survey Reports"**) and gave evidence with respect to the same.
54. Mr. Ferguson was cross examined by both Counsel for the Plaintiff and the Defendant. During his cross examination he discussed his findings in each of the Survey Reports. The conclusion of his evidence was that the property referred to by the Defendant in his back title documents was further to the west than the Property.
55. The Court sought to be further satisfied and ordered an independent title search with Computitle. Based on the results of the search, Mr. Ferguson gave additional evidence during cross examination and again confirmed that the property the Defendant claimed ownership of through documentary title and the Property which was the subject of the action were in separate locations.

SUBMISSIONS

Plaintiff's Submissions

56. The Plaintiff relies on **Order 27 rule 3 of the RSC** which states: -
“3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion, or summons.”
57. In **Ellis v Allen [1911 – 13] ALL ER 906** Sargant J expressed that **Order 27 Rule 3 of the RSC** was intended to apply in circumstances where: -
“.....there is a clear admission of fact in the face of which it is impossible for the party making it to succeed”.
58. In an action for trespass where the Plaintiff was seeking judgment on admissions, the Plaintiff needed to only show that the Defendant was found on the land, that there was no lawful authority for being on the land and/or the Defendant had no title (documentary or otherwise) to the land.
59. It was a legal impossibility for the Defendant to show a superior title to the Property. The Deed of Gift was unstamped and could not produce any evidence of documentary title in contravention of **Clause 29 of the Stamp Act** which provides: -
“Every deed of gift or other voluntary transfer of property inter vivos shall be subject to stamp duty based on the value of the property in accordance with the First Schedule. No such deed of gift or other voluntary [transfer] shall be deemed to be duly stamped unless the Treasurer has expressed his opinion as to the stamp duty chargeable thereon”.
60. **Clauses 18 and 19 of the Stamp Act** also provides: -
“No instrument which is required by any Act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped and the stamps thereon cancelled, except as hereinafter provided.....Upon production in evidence in any court of judge's chambers of any instrument required by any Act to be stamped which is not duly stamped and the stamps thereon cancelled, the judge or presiding magistrate may impose a penalty of five hundred dollars on the person required by any Act to stamp the said instrument and on payment thereof together with the stamp duty, or upon payment of the stamp duty only at the discretion of the judge or presiding magistrate, by such person or by the party producing such instrument the said instrument shall (saving all just exceptions on other grounds) be admissible in evidence. The judge or presiding magistrate may, in his discretion, grant any adjournment necessary for the proper stamping of any instrument.”
61. The land conveyed by the purported Deed of Gift was not related to the Property as confirmed by Shurn Henry after reviewing the maps, descriptions, aerial maps and diagrams provided by both parties. The diagram exhibited in GC-5 of the Defendant's 6th November 2018 affidavit was not a survey plan which conformed to the Land Surveyors Regulations as it was unsigned, undated and incorrect, as the land granted by Crown Grant A-375 was some six thousand feet west of Blake Road whereas the diagram

proceedings, the presiding Judge had the discretion to allow it to be admissible in evidence in pursuance of the section being complied with.

69. The issue relating to the failure of stamp duty being assessed on a deed of gift was not one which would advance the Plaintiff's case during an Order 27 rule 3 application.
70. The Writ of Summons failed to draw the Court's attention to any circumstance where the pleading would suggest an admission on part of the Defendant. According to the common law definition of trespass, there was nothing pleaded in the Writ of Summons which amounted to the ingredients required to prove it or that the Defendant admitted to trespass.

DECISION

71. The Plaintiff seeks to have judgment entered in its favor based on the alleged admissions of the Defendant contained in his Defence and Counterclaim and subsequent affidavits.
72. In **Forbes v Ferguson and another [2010] 1 BHS J No. 4**, Hepburn J helpfully and briefly considered the court's jurisdiction with respect to granting a judgment on admissions and the principles which should be applied thereto: -

"33 The court's jurisdiction to give judgment on admissions is set out in Order 27 Rule 3, which reads thus:

34 *Judgment on admissions of facts (O. 27, r. 3).*

"3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

An application for an order under this rule may be made by motion, or summons."

35 Both counsel agreed that the rule applied in circumstances where, in the words of Sargant J in *Ellis v Allen [1914] 1 Ch 904 at 909*, there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.

36 Counsel were also in agreement that the admission may be expressed or implied but the governing principle is that the admission must be clear. (See *Technistudy Ltd. v Kelland [1976] 3 All ER 632 at 634h - I, per Roskill LJ.*)

37 The admission may be made in the pleading or otherwise. Thus the admission may be made in an affidavit or in a letter before or since the action was brought. (See *Ellis v Allen supra.*)"

73. Any pleading, affidavit or document filed in support of an action, which contains the admission of a fact which would answer any question between the parties, would give rise to a court pronouncing a judgment based on the admission. The admission may either be expressed or implied once it is clear.
74. In this case, the Plaintiff as the lessor of the Property since 1st July 2018, claimed that the Defendant was found to be trespassing on the Property as of October 2018. By their evidence provided during and after the execution of the Lease, there was no sign that there was any physical occupation of the Property prior to October 2018. The Defendant on the other hand claims that he had taken possession of the Property since 2006 as a result of the Property being conveyed to him by his grandfather through a Deed of Gift.

75. The elements of a tort of trespass include proving that a person has encroached on a property without permission by the legal and beneficial owner thereof. The Plaintiff's legal and beneficial ownership and subsequently its locus standi was questioned by the Defendant.

76. In **Milton Keynes Council v Wilsher and another [2022] EWHC 578 (QB)** Eyre J relied on Morgan J's summarization in **Food Convertors Ltd & another v Newell & another [2018] EWHC 926 (Ch)** of the approach that should be taken when determining the question of adverse possession

77. I do consider the summarization useful with respect to the possession of land and by extension who can bring a claim with respect to that land. At page 34 of the Morgan J's latter mentioned judgment in Food Convertors Ltd he stated that:

- (1) there is a presumption that the owner of land with a paper title is in possession of the land; (2) if a person who does not have the benefit of this presumption wishes to show that he is in possession of the land the burden is on him to show that he is in factual possession of the land and that he has the requisite intention to possess the land (3) for a person to show that he is in factual possession of the land, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land in question as an occupying owner might have been expected to deal with it and no-one else has done so; (4) whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which such land is commonly enjoyed; (5) the person claiming to be in possession may be in possession through his tenant or licensee, if that tenant or licensee has, on the facts, sufficient control of the land to amount to factual possession ”.

78. Accordingly, the Plaintiff by virtue of the lease from Harmony Homes Limited is the person in possession of the Property, the subject of the lease, and has the locus standi to commence this claim against the Defendant. I have reviewed the Writ of Summons and find that the elements of the cause of action of trespass have been sufficiently pleaded, sufficient for the Defendant to answer to its claims; specifically: -

“1. The plaintiff is a company incorporated under the provisions of the Companies act and having its registered office situate at East Shirley Street and Highland Terrace in the island of New Providence, and was at all material times the Lessor in Possession of Land and premises the Retreat situate on West Bay Street.

2. By Indenture of Lease (“the said Lease”) dated the 1st day of July, 2018 and made between Harmony Homes limited (“the said Lessee”) and the Plaintiff, the said Lessor became seised in possession of all those pieces parcels or lots of land situate in the Western District of the Island of New Providence now known as “the Retreat” as shown on the plan attached to the said Lease (“the said property”) for a term of 12 years ending the 1st of July 2030.

3.....

4. On or about October, 2018, the Defendant without lawful authority, trespassed and intentionally caused damage to the said property and has erected a fence thereon. The Defendant and his agents have placed a security booth on the said property with a view to interfere with the Plaintiff's use of the said property.

is a matter between the Landlord and the Tenant and as there is no intervention by the Landlord, I need not address the issue.

84. In consideration of the foregoing, and upon a review of the evidence and submissions before the Court and the evidence of Mr. Thomas Ferguson, I grant judgment in favor of the Plaintiff based on the admissions and make the following orders:-

84.1 The Plaintiff is in lawful possession of the Property by virtue of the Lease between it and the Landlord who is the documentary title holder of the Property;

84.2 The Property and the property described in the Deed of Gift are two different pieces of property;

84.3 The Defendant admitted to being on the Property; and his presence was confirmed by the Plaintiff's witnesses.

84.4 The Interlocutory Injunction is discontinued against the Plaintiff and the Defendant is permanently prohibited for entering upon the Property whether by himself, his agents, servants or heirs;

84.5 A Registrar of the Supreme Court shall assess any damages which flowed from the said trespass;

84.6 The Defendant shall pay to the Plaintiff the costs of the action to be taxed if not agreed.

Dated this 25th day of November 2022



Hon. G. Diane Stewart