



[2024] JMSC Civ.187

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV01717

BETWEEN	HOPETON HENRY	CLAIMANT
AND	WINSOME WHITE	DEFENDANT

TRIAL IN CHAMBERS

Ms. Symone Mayhew, KC and Miss Ashley Mair instructed by Mayhew Law for the Claimant.

Miss Tavia Dunn instructed by Nunes, Scholefield, DeLeon and Company for the Defendant.

Heard: March 13, 2024, April 19, 2024 and December 19, 2024.

ENTITLEMENT TO LEGAL AND/OR BENEFICIAL INTEREST IN PROPERTY – RESULTING TRUST – CONSTRUCTIVE TRUST - CONTRACTUAL LICENCE - BARE LICENCE - MESNE PROFITS/DAMAGES FOR USE AND OCCUPATION OF LAND – NOMINAL DAMAGES

TRACEY-ANN JOHNSON, J (AG.)

BACKGROUND

[1] The Claimant, Hopeton Henry, and the Defendant, Winsome White, met in Saint Ann sometime in the early 1990s. The relationship became intimate and produced three (3) children, that is, their son and two (2) daughters, who were born in 1998, 2006 and 2008 respectively. The Claimant purchased a property situated at 35

Hart Boulevard, Hope Pastures, Kingston 6, in the parish of Saint Andrew being the land comprised in Certificate of Title registered at Volume 1041 Folio 474 of the Register Book of Titles in 2002 (hereinafter referred to as "the property"). The Claimant solely provided the purchase money from his savings and mortgage financing, which he solely repaid. The Claimant is the sole registered proprietor of the property.

[2] The Claimant continued to reside and maintained his law practice in the parish of Saint Ann. The Defendant and the Claimant's son moved into the property in or around 2003. At the time of purchase, the property was a single dwelling house. The Defendant and their son resided in the original house prior to extensive renovations to the property. Following the renovations, the property comprised of three (3) self-contained flats as follows:

- a) Three (3) bedrooms, two (2) bathrooms downstairs flat along with a large living room and dining room areas and a kitchen, study room, an enclosed front porch, a television and playroom area, a laundry area, patio and garage areas ("major downstairs flat");
- b) Two (2) bedrooms, one (1) bathroom downstairs flat with kitchen, living, dining and laundry facilities; and
- c) Two (2) bedrooms, two (2) bathrooms upstairs flat with kitchen, living room, dining, patio, laundry and ground parking facilities ("upstairs flat").

[3] The Defendant and their son relocated to the upstairs flat of the property following the renovations. The major downstairs flat was rented to a tenant. The Claimant would stay in the upstairs flat with the Defendant and their son/children when he was in Kingston on weekends and sometimes during the week.

[4] After the tenant vacated the property, the Claimant desired to re-rent the flat. The Defendant, without the permission of the Claimant, relocated to the major downstairs flat as she deemed it more spacious and suitable for her and the children. The Claimant became upset and demanded that the Defendant moved

back to the upstairs flat, but the Defendant refused. The Claimant engaged the services of Attorneys-at-Law who effectively wrote to the Defendant demanding that she removed from the major downstairs flat and the property. The Defendant was unwilling and refused to vacate the major downstairs flat and is currently residing in the major downstairs flat. The Claimant initiated these proceedings seeking, among other things, recovery of possession of the major downstairs flat from the Defendant.

THE CLAIM

[5] The Claimant filed a Fixed Date Claim Form in this Honourable Court on May 30, 2022, in which he seeks the following Orders:

- "1. Recovery of Possession of the premises situate (sic) at 35 Hart Boulevard, Hope Pastures, Kingston 6 in the parish of Saint Andrew registered at Volume 1041 Folio 474.*
- 2. Damages for use and occupation of the premises for the period May 2014 until the date the Defendant delivers up possession of the premises.*
- 3. Interest thereon for such rate and for such rate (sic) and for such period as this Honourable Court deems just pursuant to the Law Reform (Miscellaneous Provisions) Act.*
- 4. Costs.*
- 5. Such further and/ other relief as this Honourable Court deems fit."*

THE CLAIMANT'S EVIDENCE IN SUMMARY

[6] The Claimant's evidence is that he is married but physically separated from his wife who lives in Trinidad and Tobago. He became acquainted with the Defendant in 1993, which developed into an intimate relationship. He resided and worked in the parish of Saint Ann during the relationship with the Defendant. He bought the property in 2002, for income earning purposes to supplement his income as an

Attorney-at-Law, retirement pension, and his personal use when he was in Kingston. He permitted the Defendant and their son to move in the property in or around 2004, out of compassion, because the Defendant was experiencing financial difficulties. He was engaged in renovation work at this time.

[7] He visited Kingston from time to time during the renovations on weekends and weekdays. He engaged two (2) crews of competent workmen to conduct the renovations of the property. Upon his visits, the workmen pointed out what they did, which he was able to verify because he knew the property from its original state. The first crew of workmen renovated the downstairs flats, and the second crew renovated the upstairs flat. He is not aware of any renovation work done by the Defendant.

[8] Following the renovations, the property was converted into three (3) self-contained flats including a three-bedroom major downstairs flat and a two-bedroom flat upstairs. The Defendant and their son were staying in the original dwelling/major downstairs flat during and after the renovations. He requested the Defendant to move to the upstairs flat because his intention was to rent the major downstairs flat. Accordingly, the Defendant relocated, and he rented the major downstairs flat to a tenant. In 2014 or thereabout, the tenant who was renting and occupying the major downstairs flat vacated the property. He engaged realtors to re-rent the property. However, the Defendant, without his permission or having any discussions with him, moved into the major downstairs flat. The realtors were therefore prevented from re-renting the flat. As a result, he was deprived of needed rental income to pay the hefty monthly mortgage instalments that had accumulated, and annual property taxes and other ancillary debts and expenses incurred in relation to the property.

[9] It was never his intention or desire for the Defendant or their children to live at the property permanently, or any section thereof, as the property was designed and designated for the purposes of renting to generate income and finance the mortgage payments. The Defendant refused to vacate the major downstairs flat

despite his numerous attempts and requests. In an effort to find a compromising solution, he made countless requests to the Defendant to remove from the major downstairs flat and move back into the upstairs flat to stay temporarily but she has failed or refused to do so.

- [10] In or around December 2021, he instructed his Attorneys-at-Law to write to the Defendant demanding that she vacate the premises. The Attorneys-at-law wrote a letter to the Defendant dated January 5, 2022, requesting the Defendant to vacate the flat and property on or before February 28, 2022. The Defendant has refused and still occupies the flat.

THE DEFENDANT'S EVIDENCE IN SUMMARY

- [11] The Defendant's evidence is that after their son was born she relocated to Kingston. The Claimant and her would discuss their plans for their son. The Claimant's vision for their son was that he would attend Mona Preparatory, Campion College and the h of the West Indies, and he thought it best that they reside in the vicinity of those institutions. On weekends, the Claimant and her started to look for houses in the vicinity of those institutions. They identified the property, and it was agreed that the Claimant would seek to purchase it.
- [12] She moved into the property with their son in or around December 2002. In or around June/July 2004, they commenced renovation works on the property. The Claimant financed the renovations, but she supervised and paid the workmen, dealt with the materials, and arranged the delivery of materials. Around 2004, she lost her job and became engaged full time in the renovation of the property. She solely painted all the grills and the interior walls and even tried to assist in the tiling of the property. This was done by her with the intention to keep the costs down as now that she was unemployed, the financial burdens for the renovations and maintenance of their family rested solely with the Claimant.
- [13] Following the renovations, the property was converted into three (3) self-contained flats including a three-bedroom major downstairs flat and a two-bedroom flat

upstairs. In or around 2006, the Claimant asked her to permit him five (5) years to rent the major downstairs flat so that it could be used towards mortgage payments. She agreed as she thought it was in the best interest of their family.

[14] She became pregnant and gave birth to their two (2) daughters in 2006 and 2008. In 2008, she had two (2) children under three (3) years old including their son who was suffering from chronic asthma. She was unable to work as she did not have a domestic worker or nanny to assist with the care of the children. The Claimant refused to assist with paying for a domestic helper or nanny. At all material times, the Claimant represented to her that they each had an interest in the property and same would be for their joint benefit and future financial viability. Based on the representations, she believed that the property was for their joint benefit.

[15] After the five (5) years, she reminded the Claimant of their intention that their family would move back to the major downstairs flat. The Claimant requested an additional year. The tenant vacated the property in 2013 or thereabout. The Claimant desired to re-rent the property. She had the responsibility of finding tenants for the major downstairs flat. She had discussions with a friend of the Claimant to rent the flat for \$120,000.00 per month. However, sometime afterwards, the Claimant advised her that he had agreed with the friend to rent the major downstairs flat for \$80,000.00 per month. She believed the rental was too low for the major downstairs flat and that if the Claimant was willing to rent the major downstairs flat for \$80,000.00, it was more prudent to rent the smaller upstairs flat for \$80,000.00.

[16] She decided to move back to the major downstairs flat because it was more spacious and suitable for the family so that he could rent the upstairs flat for the \$80,000.00. The Claimant was upset when she called to inform him of her decision. He asked her to move back to the upstairs flat, but she refused. She received a letter from his Attorneys-at-Law demanding that she vacated the major downstairs flat and the property. She refused because she considered the property to be her home and that of their children.

ISSUE(S)

[17] In this case, the two (2) main issues for the Court's determination are as follows:

(1) Whether the Claimant is entitled to recovery of possession of the property situated at 35 Hart Boulevard, Hope Pastures, Kingston 6, in the parish of Saint Andrew?

(2) Whether the Claimant is entitled to mesne profits or damages for use and occupation of the premises for the period May 2014, until the date the Defendant delivers up possession of the said property?

[18] In determining issue (1), there are two (2) peripheral issues that arise for the Court's determination, namely:

a) Whether the Claimant is entitled to the sole legal and beneficial interest in the property; and

b) Whether the Defendant is a bare licensee whose occupation can be terminated upon reasonable notice or a contractual licensee who has acquired a proprietary interest?

LAW AND ANALYSIS

Issue (1) - Whether the Claimant is entitled to recovery of possession of the property situated at 35 Hart Boulevard, Hope Pastures, Kingston 6 in the parish of Saint Andrew?

[19] In order to determine this issue, the Court will have regard to the legal principles surrounding the creation or existence of a legal and/or beneficial interest in the disputed property. The Court must state from the outset that it agrees with the submission of learned King Counsel on behalf of the Claimant, which has not been challenged by learned Counsel for the Defendant, that no claim can properly be brought by the Defendant in this case under the **Property Rights of Spouses Act (PROSA)**, as the Claimant was not a single man at the material time. Additionally,

although the Defendant was in an intimate relationship with the Claimant, which bore three (3) children, she was never a spouse as defined in law. Therefore, the property cannot be considered as the “family home” under **PROSA**. The Court also hastens to point out that there is no claim filed by the Defendant for a Declaration that she has a legal and/or beneficial interest in the property. In such circumstances, while the Court can make a general finding in relation to whether the Defendant holds a legal and/or beneficial interest in the property, since this would impact the Claimant’s interest and, thus, his ability to recover possession of the property, the Court cannot declare any such interest or determine the percentage of any such interest in the property, as there is no evidence before this Court that would enable the Court to make any such assessment.

Issue (1) (a) - Whether the Claimant is entitled to the sole legal and beneficial interest in the property?

[20] In this case, it is not in dispute that the Claimant is the sole legal owner of the property located at 35 Hart Boulevard, Hope Pastures, Kingston 6 in the parish of Saint Andrew being the land comprised in Certificate of Title registered at Volume 104 Folio 474 of the Register Book of Titles, he being the sole registered proprietor of the said land is conclusive evidence of his sole legal interest in the property.¹ The Claimant being the sole legal owner of the property, he is presumptively entitled to the sole beneficial interest in the property. This is so because as expressed by Wolfe-Reece J in **Ubanks v Ubanks and Burnette**², “*When dealing with registered land, the presumption is that the legal interest is parallel to the beneficial interest.*” Prima facie, the legal owner is entitled to exercise all acts of ownership over the property including to claim possession thereof from others. However, as discussed in the case of **Stack v Dowden**³, this is a rebuttable presumption and the law places the onus on the person seeking to show that the beneficial interest is different from the legal ownership. Therefore, where the

¹ Section 68, 70 and 71 of the **Registration of Titles Act**

² [2020] JMSC Civ 117 at para. [20]

³ [2007] UKHL 17 at para. 56

property is owned by one person, it is upon the non-owner to show whether he or she has any interest at all.

[21] Learned King's Counsel submitted on behalf of the Claimant that on the affidavit evidence, it is undisputed that the purchase of the property was financed solely by the Claimant through his own personal funds and by way of mortgage financing. The Claimant denies any common intention to own the property with the Defendant and in his evidence he stated that he bought the property for investment purposes. She further submitted that as there was no agreement, then any evidence of conduct would be to no avail, as it could not show any common intention for the Defendant to have a beneficial interest in the property. It is not enough for the Defendant to have a desire to own a share in the property as the intention must be shared between the parties: **Phillip Henry v Patsie Perkins**⁴.

[22] Learned Counsel for the Defendant contended that there was common intention between the Defendant and the Claimant that the property was for their joint benefit and that of their children and that the Defendant is entitled to a beneficial interest in the property. In support of her assertion, Counsel for the Defendant has asked the Court to have regard to all the circumstances of the case to determine the legal relationship between the parties and the terms of the relationship according to what reason and justice require. She further submitted that the Court is to pronounce in favour of a tenancy or licence, a loan or gift, or a trust, according to which of those legal relationships is most fitting in the situation which has arisen and in this regard, reliance was placed on the case of **Hardwick v. Johnson**⁵.

[23] In **Stack v Dowden**⁶, where the court considered the beneficial interests of spouses in relation to the family home, Baroness Hale considered the distinction between a resulting trust and a constructive trust and stated as follows:

⁴ Claim no. 2008 HCV 30799 (delivered 31 July 2012)

⁵ [1978] 1 WLR 239

⁶ **Stack v Dowden** [2007] UKHL 17 at para. 60

“As K Gray and SF Gray, in *Elements of Land Law*, 4th edition 2005 point out at p 864, para 10.21:

“In recent decades a new pragmatism has become apparent in the law of trusts. English courts have eventually conceded that the classical theory of resulting trusts, with its fixation on intentions presumed to have been formulated contemporaneously with the acquisition of title, has substantially broken down...Simultaneously the balance of emphasis in the law of trusts has transferred from crude factors of money contribution (which are pre-eminent in the resulting trust) towards subtler factors of intentional bargain (which are the fundamental premise of the constructive trust)...But the undoubted consequence is that the doctrine of resulting trust has conceded much of its field of application to the constructive trust, which is nowadays fast becoming the primary phenomenon in the area of implied trusts....The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”

[24] This Court had regard to the approach adopted by Wolfe-Reece J in **Ubanks v Ubanks and Burnette**⁷ where she stated as follows:

*“While the facts of the current case are distinguishable from **Stack v Dowden**, supra, in that the property in dispute in the current case was never the family home, the principles enunciated by the House of Lords in the celebrated case are equally applicable in resolving the issues before the court. It is therefore important to explore the law of constructive trust to determine the common intentions of the parties based on their conduct at the time of purchase and afterwards to determine what the parties agreed concerning their respective beneficial interests. It is also prudent to explore*

⁷ **Ubanks v Ubanks and Burnette** [2020] JMSC Civ 117 at para. [26]

the law relating to resulting trust to determine based on each party's contribution where their respective interests lie.

- *Resulting Trust – whether a resulting trust was created in favour of the Defendant?*

[25] In **Halsbury Laws of England**⁸, it was stated in relation to a resulting trust as follows:

“A resulting trust may arise solely by operation of law, as where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then the presumption of a resulting trust in favour of the person providing the money, unless from the relation between the two, or from other circumstances, it appears that a gift was intended.”

[26] This Court considered the position expressed by Lord Denning MR in the case of **Hussey v Palmer**⁹ where he stated that:

“Although the plaintiff alleged that there was a resulting trust, I should have thought that the trust in this case, if there was one, was more in the nature of a constructive trust; but this is more a matter of words than anything else. The two run together. By whatever name it is described, it is a trust imposed by the law whatever justice and good conscience require it. It is a liberal process, founded upon large principles of equity, to be applied in cases where the legal owner cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or the benefit of it or a share in it. The trust may arise at the outset when the property is acquired or later on, as the circumstances may require. It is an equitable remedy by which the Court can enable an aggrieved party to obtain restitution.”

[27] Having considered the evidence in this case, it is not in dispute that the purchase of the property was financed solely by the Claimant through his own personal funds

⁸ Halsbury Laws of England › Equitable Jurisdiction (Volume 47 (2021)) › 7. Equitable Relief in Cases of Fiduciary Relationship › (1) Trustees and Other Persons in Fiduciary Positions

⁹ [1972] 1 W.L.R 1286

and by way of mortgage financing. There is no evidence before this Court that the Defendant made any direct financial contribution towards the purchase price of the property. The Defendant's main contention is that at all times the common intention of herself and the Claimant was that she would have an interest in the property and in that regard she has, in reliance on that common intention, carried out works in respect of the renovation of the property. She also asserts that because of her other contributions towards the joint household such as caring for the parties' three (3) children as well as for the Claimant during his time of convalescence, she is entitled to obtain a share in the property.

- [28] When the Court examined the evidence as a whole, if there is a trust in this case, it would more be in the nature of a constructive trust. However, the Court bears in mind the approach adopted by *Baroness Hale in the case of **Stack v Dowden*** and is, therefore, mindful that *"the search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it."* Consequently, similar to the approach adopted by Wolfe-Reece J in **Ubanks v Ubanks and Burnette**, this Court will consider the law relating to constructive trust to ascertain the parties' common intention having regard to their conduct in relation to the said property, in order to determine whether there was any agreement between them concerning their respective beneficial interests in the said property.
- *Constructive Trust - Whether there was a common intention for the parties to hold a beneficial interest in the property?*

[29] The Court examined a number of authorities in relation to the establishment of a constructive trust. Some of these principles that are pertinent to this case may be summarised as follows:

- a. Where a legal estate in property is vested in the name of a legal owner and one party claims a beneficial interest in that property, that party can only succeed if he or she is able to establish a constructive trust. Constructive trust is established by (a) evidence of a common intention that each was to

have a beneficial interest in the property and (b) in reliance on that common intention, the Claimant acted to his detriment. In the absence of express words evidencing the common intention, it may be inferred from the conduct of the parties: **Eric McCalla, Jenice McCalla and Anor v. Grace McCalla**¹⁰ and **Phillip Henry v. Patsie Perkins Reid**¹¹.

- b. The principles are equally applicable where the property in question is not matrimonial property.
- c. A party seeking to establish an entitlement to a beneficial interest ought to present to the court more than bare assertions.
- d. The mere fact that A expended money or labour on B's property does not entitle A to an interest in the property, in the absence of either an express agreement or of a common intention to be inferred from the conduct of the parties or any question of estoppel: **Thomas v. Fuller-Brown**¹².
- e. Where there has been construction or improvements, the Claimant will have to show that at the time of the further construction or improvement to the property that (1) there was an express common intention that they should have a beneficial interest in the property; or (2) the conduct of the parties was such that the court could infer that there was an implied common intention that the Claimant should have a beneficial interest in the property; and (3) that they acted to their detriment on the basis of that common intention: **Dean Hinds v. Janet Wilmott**¹³.

[30] In **Gissing v. Gissing**¹⁴, Lord Diplock in considering the relevant intention of the parties stated at page 906 of the judgment that:

¹⁰ [2012] JMCA Civ 31 at para 27

¹¹ [2012] JMSC Civ 109 at para 31

¹² [1988] 1 FLR 237

¹³ (unreported), Supreme Court, Jamaica, Claim No. 2009 HCV00519, judgment delivered 15 July 2011

¹⁴ [1971] AC 886

“...the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party’s words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention unless that inference is one which can reasonably be drawn from his words or conduct.”

[31] Lord Borth-Y-Gest stated at page 898 of the judgment that:

“In the infinite variety of circumstances that may arise there will be cases where...: there may be services rendered or payments made without any thought that any property rights could be or would be in any way affected. When the full facts are discovered the court must say what is their effect in law. The court does not decide how the parties might have ordered their affairs: it only finds how they did. The Court cannot devise arrangements which the parties never made. The court cannot ascribe intentions which the parties in fact never had. Nor can ownership of property be affected by the mere circumstance that harmony has been replaced by discord.”

[32] In order to satisfy the Court as to the existence of a constructive trust, the Defendant has the onus of establishing through the evidence that there was a common intention between herself and the Claimant that she should have a beneficial interest in the property and that in reliance on such common intention, she acted to her detriment. She may also succeed in doing so by demonstrating to the Court that the conduct of the parties was such that the Court could infer that there was an implied common intention that the Defendant should have a beneficial interest in the property. In examining the evidence, the Court considered: (a) the alleged representations by the Claimant that the property was for their joint benefit and future financial viability; (b) renovations made to the property; (c) the Defendant’s other contributions and (d) the circumstances surrounding the rental of the major downstairs flat.

(a) The Alleged Representations by the Claimant that the property was for their joint benefit and future financial viability

- [33] The Claimant's evidence is that he solely purchased the property in 2002 for income earning purposes and his personal use when he was visiting Kingston. He continued to reside and work in Saint Ann and had no intentions of living at the property as it was purchased for income earning purposes. In or around 2003, he allowed the Defendant and their son to move in the property, out of compassion, because the Defendant was experiencing financial difficulties. He was engaged in renovating the single dwelling house for rental purposes. The property was converted from a single dwelling house into three (3) self-contained flats.
- [34] The Defendant asserted that at all material times, the Claimant represented to her that they each had an interest in the property and that the property would be for their joint benefit and future financial viability. Based on those representations, she believed that the property was for their joint benefit. Her evidence is that after their son was born, she relocated to Kingston with their son. The Claimant and her discussed plans for their son. The Claimant's vision for their son was that he would attend Mona Preparatory, Campion College and the University of the West Indies, and he thought that it was best that they reside in the vicinity of those institutions. On weekends, she and the Claimant would search for houses in the vicinity of those institutions. They identified the property, and it was agreed that the Claimant would seek to purchase it. According to the Defendant, there were plans between herself and the Claimant for her and their son to move in the property and accordingly, the Claimant gave her the house key as soon as he received it from the previous homeowner. She moved into the property with their son, which was a single dwelling house on December 27, 2002.
- [35] The Court accepts the Claimant's evidence that he purchased the home for income earning purposes and for his personal use when he was visiting Kingston. The Court finds his evidence credible in this regard having considered the undisputed evidence that he continued to reside and work in Saint Ann and undertook

extensive renovations to convert the single dwelling house into three (3) self-contained flats. The Court had regard to the Defendant's evidence of the reason for the purchase, however, the Court finds that this is insufficient to establish that the Claimant made an express representation or that there was an agreement between the parties or conduct by the Claimant from which the Court could infer that there was an implied common intention that the Defendant should have a beneficial interest in the property.

(b) Renovations made to the Property

[36] Learned Counsel for the Defendant submitted that in circumstances where a mistress has contributed money or money's worth to the building of a house, it can be held that the owner holds it on trust: **Cooke v Head**¹⁵ and **Gordon v Deuce**¹⁶. She also placed reliance on the case of **Hall v Hall**¹⁷, where Lord Denning MR opined that:

"It was clear from the authorities that, although a couple are not husband and wife, the woman can – because of her contributions to the joint household – after a time obtain a share in the house...

*But what should that share be? This is always difficult...It depends on the circumstances and how much she has contributed – not merely in money – but also keeping up the house: and if there are children, in looking after them."*¹⁸

[37] Learned King's Counsel for the Claimant submitted that contrary to the facts of **Cooke v Head**, the Claimant's evidence of contribution and acting to her detriment, that is painting the grill and a room and laying tiles would fail to meet the threshold of what is required to prove detriment as it should properly be regarded as being trifling and transient in character: See **Mariette Taylor v Dazel Alexander**

¹⁵ [1972] 2 All ER 38

¹⁶ [1983] 2 All ER 228

¹⁷ (1982) FLR 379

¹⁸ *Ibid* at p. 381

Tapper¹⁹. Any work done by the Defendant on the premises amounts to meddling as on her own admission, she was not asked by the Claimant to perform these tasks and the circumstances did not warrant her intervention as the undisputed evidence is that the Claimant hired two (2) sets of competent workmen. The actions of the Defendant were, therefore, unauthorised and even if done, were not sufficient or significant enough to result in her acquiring any rights in the property.

[38] The Claimant's evidence is that he shared a close relationship with a hardware store in Papine, which the Defendant admitted. The Claimant stated that if the workmen required materials, he would call the store to credit the materials and they would supply it. He would visit the store to pay for the materials when he was in Kingston. He stated that the Defendant never visited the store on his behalf to pay for any materials. He further stated that he cannot say that she visited the store without his knowledge, but it was certainly not requested by him. He was also not aware of the Defendant performing any renovation work on the property and if she did, 'she was meddling'. His further evidence was that the renovations took a good while to complete because he did not have all the money at once and could only advance the construction for the renovation work when the funds were available to him.

[39] The Defendant's evidence is that she and the Claimant commenced renovation work on the property around June or July 2004. She confirmed that the Claimant financed the renovations. However, her evidence is that she supervised and frequently paid the workmen, dealt with the materials bought, and arranged the delivery of the materials. She solely painted all the grills and the interior walls and even tried to assist in the tiling of the property. These were done by her with the intention to keep the costs down as the financial burdens for the renovations and the maintenance of their family rested solely on the Claimant due to her losing her job during this period. During cross-examination, she confirmed that the Claimant never requested her to perform any renovation work on the property. She stated

¹⁹ [2017] JMSC Civ 101

that she did some of the renovation work because the Claimant was always complaining about money not being available and because of the slow pace of the work. The Defendant's further evidence was that the renovations started about July 2003 and was completed in 2006. She decided to assist in whatever way she could. She further stated that the Claimant was appreciative and commended her for the assistance. She admitted that the Claimant engaged two (2) crews of workmen to include tilers, masons, carpenters, electricians, and painters to paint the outside structure. Her further evidence was that subsequent to moving back into the major downstairs flat, she completed renovation work on the kitchen in 2019, for the children's comfort.

[40] In assessing the evidence, the Court had regard to the principle that the intention must be shared by the parties. It cannot be unilaterally decided by one party, especially the non-owner claiming a beneficial interest, that she will undertake activities towards the renovations or improvement of the property because she hopes to have some proprietary interest in the property. The Court cannot find any conduct on the part of the Claimant regarding the renovations done to the property by the Defendant that could lead to the inference that he represented to the Defendant or conducted himself so as to have her believe that she has an interest in the property. The Court had regard to the reasons that the Defendant advanced for performing and completing the initial renovation work and those in 2019. The Defendant undertook these works for reasons not including representations or conduct to be inferred from the Claimant that she would have or has an interest in the property. The Court also cannot impute intention on the part of the Claimant because he never requested the Defendant to perform such actions. Additionally, there is no evidence before the Court that the Defendant informed the Claimant of her intention prior to performing these actions and that he acquiesced or failed to advise her against same. In the absence of prior knowledge, acquiescence or omission on the part of the Claimant, the Court cannot impute a common intention on the part of the Claimant. The Court finds that the actions of the Defendant in relation to the renovations she carried out on the property was unilateral and, therefore, it cannot be said that the Claimant made any representation or

conducted himself in a manner that can lead to an inference that he intended that the Defendant should have a beneficial interest in the disputed property.

[41] The Court also had regard to the Defendant's evidence that whilst living in the original dwelling house and while renovations were being done, she was not aware of simultaneous constructions being done to the upstairs flat. During cross-examination, she stated that one day she arrived home from work and was unable to drive into the yard. She had to drive pass the house and turn back to park at the gate. It was when she drove above the house that she discovered that construction was being done on the top of the roof to the back of the house. She went inside and became upset with the workmen because they were not supposed to put anything up there. The Defendant confirmed in cross-examination that the Claimant did not have discussions with her regarding his plans to do construction upstairs. Her evidence was that she spoke to the Claimant about the construction when he informed her that they will relocate upstairs in order for him to rent downstairs for income to offset the mortgage payments.

[42] Based on the Defendant's account, she believed that the downstairs flat was where she and their son would live when they moved onto the property. This belief was unilaterally cultivated and held by the Defendant as by her evidence, the Claimant never discussed with her his renovation plans for the upstairs flat. The Court finds that the Defendant being unaware of the construction plans for upstairs and having only found out fortuitously, after it was underway, is evidence that the Claimant did not make any representation to the Defendant or conducted himself in such a manner that would have caused the Defendant to believe she has an interest in the property. The Claimant exercised ownership rights over the property without including the Defendant in pertinent actions or discussions and, therefore, could not have represented to her that she has an interest in the property. Furthermore, the Defendant becoming upset with the workmen is significant in the Court's view, as the workmen could not have initiated such works without instructions from the one exercising ownership rights over the property. The Claimant clearly excluded the Defendant from pertinent discussions and actions concerning the ownership

and development of the property. Therefore, in these circumstances, the Court finds that it cannot be inferred from his conduct that he represented to the Defendant that she has a beneficial interest in the property.

[43] The Claimant confirmed that the Defendant paid the workmen from money provided by him. His evidence is that occasionally when he was unable to visit Kingston to pay the workmen, he would post the money to Kingston for the Defendant to do so on his behalf. He asserted that such occasions were rare. The Court finds that mere supervision and paying of workmen even if frequent, without more, is insufficient to establish a beneficial interest in property, especially in circumstances where the person claiming the interest is living at the property and unemployed during the period of renovations.

(c) The Defendant's other Contributions

[44] The Defendant's evidence was that she attended to the needs of the home and the children, such as buying groceries, payment of utilities, care and upkeep of the home and the maintenance and upkeep of the children. She asserted that by undertaking these expenses, the Claimant would only meet the mortgage payments for the home. In 2008, she was unable to work as she did not have a domestic helper or nanny to assist her with the care of the children. She also gave evidence that the Claimant refused to assist her with paying for a helper or a caregiver.

[45] The Claimant gave no evidence challenging the Defendant's assertions that she was responsible for the care of the children and the upkeep of the property. As the Claimant resided and worked in Saint Ann, the Court accepts the Defendant's evidence that she attended to the needs and upkeep of the home and children. However, based on her evidence relating to the nature of her contribution towards the maintenance of the property, this would not have been major renovation work. Further, during the period when the major downstairs flat was rented, minor upkeep of the downstairs flat would have been the tenant's responsibility.

[46] The Claimant insisted that he was financially responsible for the maintenance of the children and the Defendant. This was somewhat supported by the Defendant's evidence. Her evidence was that she worked at Cellular King for less than a year as Head of its Human Resource and Administration Department and then at Chase Ramson, as Storage Manager, between 2002 to late 2004. Around 2004, she lost her job and the financial burdens for the renovations and maintenance of their family rested solely with the Claimant during the period she was unemployed. She asserted that she started her own confectionery and pastry business and performed temporary jobs to supplement the family's income. In 2006, she became pregnant with their second child and had to stop working. She had their third child in 2008. At this time, she had two (2) children below the age of three (3) years old as well as a ten (10) year old who was attending school and who suffered from chronic asthma. She was unable to work as she did not have a domestic helper or nanny to assist her with the children.

[47] The Court considered the case of **Hall v. Hall**²⁰ (which was cited by learned Counsel for the Defendant), where Dunn LJ stated that:

*“So the first question raised by this appeal is, ‘What should that proportion or share be?... It is true... that certainly until comparatively recently there was the maxim that equality was equity, but there have been a number of comparatively recent cases in which the question of the proper share of a wife or mistress to the equity of the joint home has been considered by this court. In the case of **Falconer v Falconer** [1970] 1 WLR 1333 Lord Denning MR dealt with the question at p.1336. He said this:*

“So long as there is a substantial financial contribution towards the family expenses, it raises the inference of a trust. But where it is insubstantial, no such inference can be drawn...The House did, however, sound a note of warning about proportions. It is not in every case that the parties hold

²⁰ (1982) FLR 379 at p. 383-384

inequal shares. Regard must be had to their respective contributions...”

- [48] In the case before this Court, the Court finds that the periods for which the Defendant was employed, and earning were short and temporary. The Defendant failed to indicate or prove to the Court the amount in expenses that she undertook while the Claimant would meet the mortgage payments. Therefore, the Court is unable to make a finding as to whether such expenses were minimal or substantial to raise the inference of a trust in favour of the Defendant. The Court echoes that the Defendant had a job history of short and temporary jobs when their son was the sole child. Consequently, it cannot be said that because she had two (2) children under the age of three (3) and a ten (10) year old with chronic asthma, she was unable to work. There is no evidence before the Court that there was any agreement or arrangement between the parties that the Defendant would be a ‘stay at home mom’. The Court is, therefore, unable to find that the sole physical care of the children and upkeep of the property are sufficient to infer or impute a common intention on the part of the parties or conduct that is suggestive of any shared intention that the Defendant would have or has a beneficial interest in the property.
- [49] Learned Counsel for the Defendant submitted that the Court should have regard to the Claimant’s evidence in cross-examination of the Defendant nursing him during the period of his convalescence, that is, 2011 to 2013, which she suggested can be viewed as the Defendant’s contribution to the household. The Claimant’s evidence was that the Defendant did something in relation to taking care of him after his surgery but that there was an occasional nurse who came in and checked what was happening. When it was suggested to him that no medical personnel came in, his evidence was that the hospital allowed a nurse to come in but not often and that the nurse came to see how he was doing. The Claimant’s evidence clearly confirms that the Defendant provided care for him during his period of convalescence, especially since the nurses only came in to check on how he was doing and infrequently. In these circumstances, the Court is mindful that the

Defendant's care for the Claimant during such period would have relieved the Claimant of the expense of obtaining external care. However, there is no evidence of any agreement or discussion between the parties that such care was being provided as the Defendant's contribution towards their future or potential household expenses. Further, the evidence in no way suggests that at the time the Defendant provided such care and assistance, that it was within her contemplation or that of the Claimant that this would have gone towards her acquiring an interest in the property. During that period, the parties were still in a relationship and so this was not care being provided by individuals who were operating at 'arm's length' or in circumstances where the party providing the care would have done so in exchange for a mutual benefit. The circumstances are indicative of care being provided having regard to the relationship which existed between the parties at the time. Therefore, the Court is not of the view that in these circumstances, the care provided by the Defendant could lead to a finding that this resulted in her acquiring a share in the property.

(d) Circumstances Surrounding the Rental of the Major Downstairs Flat

[50] The Claimant's evidence is that over the years, he rented the downstairs section of the property, the largest of the flats on the premises. In 2014 or thereabout, the tenant vacated the property. He engaged realtors to re-rent the property. However, the Defendant moved back into the major downstairs flat without his permission or having any discussions with him thereby preventing the realtors from re-renting the property. The Defendant refused to vacate the flat despite his numerous attempts and requests. To find a compromising solution, he made countless requests to the Defendant to remove from the major downstairs flat and move back into the upstairs flat to stay temporarily but she has failed or refused to do. In or around December 2021, he instructed his Attorneys-at-law to write to the Defendant demanding that she vacate the premises. The Defendant confirmed receipt of the letter but averred that she considers the property to be her home and that of their children.

[51] The Defendant's evidence is that following the renovations, the Claimant asked her to move to the upstairs flat and to permit him five (5) years to rent the major downstairs flat to earn rental income to offset the mortgage. He rented the flat and sometime around 2013, the tenant vacated the property. The Defendant reminded the Claimant of their intention that they would relocate to the downstairs flat after five (5) years. The Claimant requested an additional year to rent the property. The Defendant asserted that within the six (6) years, the tenant vacated the property. She had the responsibility of finding tenants for the major downstairs flat. She had discussions with a friend of the Claimant to rent the flat for \$120,000.00 per month. However, sometime afterwards, the Claimant advised her that he had agreed with the friend to rent the flat for \$80,000.00 per month. She believed the rental was too low for the major downstairs flat and that if the Claimant was willing to rent the flat for \$80,000.00, it was more prudent to rent the upstairs flat for the \$80,000.00. She moved back to the major flat downstairs because she deemed it more spacious and suitable for herself and the children.

[52] The Court found inconsistencies in the Defendant's evidence. In her Affidavit in Opposition to the Fixed Date Claim Form, the Defendant averred at paragraph 32 that, in response to the Claimant's evidence that he made repeated requests to the Defendant to vacate the major downstairs flat, she stated that the Claimant at no time had asked her to leave the downstairs flat. However, in cross-examination she admitted that the Claimant was very upset when she called to inform him that she had moved back to the major flat downstairs. The Defendant also stated that the Claimant had asked her to move back upstairs but she refused because of the space constraints. She was aware that the Claimant intended the major flat downstairs to be rental property to earn income since 2014. The Defendant gave evidence that she offered to pay him rent for the downstairs flat when he was relentless about her moving back upstairs but he refused the offer.

[53] The Court finds that the Claimant continued to exercise unilateral control and ownership of the property to benefit his interests. He sought to rent the major downstairs flat despite the Defendant's desire to move back into the flat. He

became upset when the Defendant informed him that she had moved back into the major downstairs flat. He made numerous requests for the Defendant to vacate the flat and instructed his Attorneys-at-Law to serve a notice to quit on the Defendant. The Defendant offering to pay the Claimant rent for the major downstairs flat is not consistent with the action of a party who believes that the property is for her joint benefit. The fact that the Defendant refused to move from the premises aligns with the Court's earlier findings that she believed that the major downstairs flat would be where they would live but this is insufficient for a finding of a common intention for the Defendant to hold a beneficial interest in the property.

[54] The Court also considered the Defendant's evidence that she has a sister who used to stay in the one-bedroom flat downstairs. When questioned on cross-examination whether she is saying that she moved her sister into the Claimant's house, the Defendant responded that, "*No, Mr. Henry gave her permission to stay there for a year.*" The Defendant's evidence is consistent with the evidence that the Claimant continued to exercise unilateral control and ownership of the property. The Court accordingly finds that the Claimant at all material times acted in such a manner that affirms his sole legal and beneficial ownership of the property.

[55] The Defendant in cross-examination admitted that she has lived rent free from 2002. Counsel for the Claimant submitted that because the Defendant was paying rent prior to moving into the property, she has benefitted from living rent free at the property and accordingly has not acted to her detriment. The converse to Counsel's submission is whether having not moved onto the property, the Defendant may have accumulated the necessary resources to own a property of her own. The Court reiterates its findings regarding the temporary and short periods of the Defendant's employment between 2002-2015. The Court agrees with the submissions of Counsel for the Claimant and finds that the Defendant did not act to her detriment by leaving her rental home and moving onto the property from 2002 and living there rent free during the relevant period as the evidence reveals that it is highly improbable that she would have accumulated sufficient resources on her own to purchase a property of her own.

[56] In light of the foregoing, the Court finds that the Defendant has failed to rebut the presumption that the legal interest is parallel to the beneficial interest in the disputed property. She has failed to establish that the Claimant holds the beneficial interest in the property on trust for her. Having examined the whole course of conduct of the parties in relation to the disputed property, the Court finds that there was no “*shared [intention], actual, inferred or imputed*” on their part in relation to the said property. Therefore, the Court finds that the Claimant is entitled to the sole legal and beneficial interest in the property.

Issue (1)(b) - Whether the Defendant is a bare licensee whose occupation can be terminated upon reasonable notice or a contractual licensee who has acquired a proprietary interest?

[57] Counsel for the Claimant submitted that there is no evidence before the Court which can support a finding that the Defendant is a contractual licensee who has acquired an interest in the disputed property, there being no valuable consideration for the said licence. There is no evidence of any agreement between the parties that in consideration for any alleged contribution by the Defendant to the renovations, through the works she allegedly did or by taking care of the children, she would remain in the property. Any finding of the existence of a contractual licence, such licence became terminable once the Claimant’s son left the premises to pursue his education abroad, since the licence to occupy the premises was for the Defendant and her son. Such licence related to the upstairs two-bedroom flat only as the Defendant admitted that her occupation of the major downstairs flat since the tenant moved out was without the knowledge or consent of the Claimant. Additionally, learned King’s Counsel submitted that there is no evidence that the parties intended to have three (3) children when the Defendant moved into the premises in 2002, and therefore, the Defendant’s contention that the Claimant represented that the property would be for their joint benefit and that of their children is unsustainable.

- [58] She further submitted that this case is distinguishable from the case of **Tanner v Tanner**²¹ relied on by the Defendant, in which the court found that the mistress had given consideration for the licence by giving up her rent-controlled flat and, therefore, the licence was not revocable at will. In this case, there is no consideration from the Defendant to support a finding of a contractual licence. The Court was invited to find that the Hope Pastures property was not acquired as a home for the Defendant and the children but as an income generating property for the Claimant and the licence granted to the Defendant to occupy a section of the house was limited to the upstairs flat only, which has been revoked. If as the Defendant stated in cross-examination, she offered to pay the Claimant rent, such an offer was a recognition by the Defendant that she did not have any beneficial interest in the property and no right to continue to remain there as a licensee and was intended to regularize her occupation of the premises.
- [59] It was further submitted that the Defendant was a bare licensee and that such a licence in any event was in relation to the upstairs flat. The Claimant revoked the licence by several demands for the Defendant to vacate any and all parts of the Hope Pastures house, the latest Notice to Quit being the notice dated January 5, 2022, which required the Defendant to remove and vacate the major downstairs flat and the Hope Pastures property by February 28, 2022. As the Defendant has refused to vacate, she remains in unlawful occupation as a trespasser. As the Defendant has no right to the property, legal or otherwise, and there having been a demand for possession, she no longer has any legal right to remain in possession of the property as her licence to remain has been revoked.
- [60] On the other hand, learned Counsel for the Defendant submitted that in the absence of an express agreement, the Court should infer from the conduct of the parties a de facto relationship, a contract which gives certain benefits to the non-titleholder of the property. Counsel relied on the **Tanner** case where Lord Denning MR found that in the absence of an express contract, it may be implied from the

²¹ [1975] 3 All ER 776

circumstances or if need be, a contract is imposed. The Defendant has resided at the property with the parties' three (3) children and continues to do so. It was further submitted that the circumstances of the instant claim are sufficient for a contract to be implied and/or imposed by the court. A common intention can be inferred for the Defendant to have an interest in the property. If the Court is not minded to infer such an intention, Counsel for the Defendant submitted that the Defendant has a contractual licence. On either finding, the Defendant is entitled to remain in occupation of the property.

[61] A licence is a permission given by the owner of land (the 'licensor') to another person (the 'licensee') to enter upon the land for some purpose including to lodge in a room or do acts that might otherwise amount to a trespass.²² There are four (4) types of licence. However, for present purposes, the Court will focus on the bare licence and the contractual licence. A bare licence is one granted otherwise than for valuable consideration. It is a mere permission to enter upon the licensor's land. A bare licence can be revoked at any time by the licensor without notice, but the licensee must be given a reasonable time to leave. A contractual licence, on the other hand, is a licence granted for valuable consideration. It may be short, medium, or long term. An example of a long-term contractual licence is a lodger who is given the right to occupy a dwelling house for a period, such right not amounting to a lease or tenancy.²³ At common law, a bare or contractual licence may be revoked at any time by the licensor.²⁴ However, the court of equity may come to the rescue of a contractual licensee who was conferred a right to enter and remain on land for a particular purpose. In such circumstances, the court may imply a negative contractual term in the contract that the licensor shall not revoke the licence before the purpose is completed.²⁵

²² Gilbert Kodilinye, **Commonwealth Caribbean Property Law, Third Edition** [2011], 76

²³ *Ibid* at p. 76-77

²⁴ **Hardware v Levy** (1971) 12 JLR 330, Court of Appeal, Jamaica

²⁵ **Kodilinye** 2011, 77; **Stephenson Green v June Green** [2018] JMSC Civ. 51

[62] In **Tanner v Tanner**, the Court of Appeal had to determine the issue of whether a contractual licence may be implied in favour of a woman being allowed to remain in occupation of a property while her children were of school age. In that case, the claimant, who was a married man, was involved in an intimate relationship with the defendant. The relationship produced twin girls in 1969. The claimant and defendant decided that a house should be purchased to provide a home for the defendant and her baby daughters. Shortly thereafter, the claimant bought a house on mortgage, and the defendant left her rent controlled flat and moved into the house with the girls. The defendant moved into the ground floor, and they rented the first floor. Three (3) years later the claimant offered the defendant £4,000 to move out of the house. The defendant refused on the ground that the house was hers and the children's until the latter left school. The claimant's attorney-at-law wrote to the defendant purporting to terminate her licence to live in the house and requesting her to leave. When she refused, the claimant commenced possession proceedings for the ground floor on the basis that the defendant was in occupation of the premises as a licensee and/or trespasser following the termination of her licence to occupy. The judge at first instance made an order for possession and the defendant appealed.

[63] The Court of Appeal allowed the appeal and held that the inference to be drawn from all the circumstances was that the defendant had a contractual licence to have accommodation in the house for herself and the children so long as the children were of school age and reasonably required the accommodation and that, accordingly, the order for possession ought not to have been made. The court came to this finding based on the evidence that the house was acquired in the contemplation and expectation that it would provide a home for the defendant and her twin daughters. Lord Denning M.R who gave the judgment noted that:

“It is said that they were only licensees — bare licensees — under a licence revocable at will: and that the plaintiff was entitled in law to turn her and the twins out on a moment's notice. I cannot believe that this is the law. This man had a moral duty to provide for the babies of whom he was the father.

I would go further. I think he had a legal duty towards them. Not only towards the babies. But also towards their mother. She was looking after them and bringing them up. In order to fulfil his duty towards the babies, he was under a duty to provide for the mother too. She had given up her flat where she was protected by the Rent Acts — at least in regard to rent and it may be in regard also to security of tenure. She had given it up at his instance so as to be able the better to bring up the children. It is impossible to suppose that in that situation she and the babies were bare licensees whom he could turn out at a moment's notice. The plaintiff recognised this when he offered to pay the Defendant £4,000 to get her out.”²⁶

- [64] Regarding the Defendant’s evidence that the house was supposed to be theirs until the children left school, Denning MR concluded that:

“It seems to me that enables an inference to be drawn, namely, that in all the circumstances it is to be implied that she had a licence — a contractual licence — to have accommodation in the house for herself and the children so long as they were of school age and the accommodation was reasonably required for her and the children... it was a contractual licence of the kind which is specifically enforceable on her behalf: and which the plaintiff can be restrained from breaking.”²⁷

- [65] The Court of Appeal in **Horrocks and Anor v Forray**²⁸, distinguished **Tanner** and enunciated that the case was decided on its specific facts. In **Horrocks**, the defendant was involved in an intimate relationship with a Mr. Sandford, who remained a married man during the relationship with the defendant. The relationship between Mr. Sandford and the defendant produced a daughter. Mr Sandford wholly maintained and supported the defendant and their daughter providing living accommodation, clothing, holidays and all day-to-day expenses.

²⁶ **Tanner v Tanner** [1975] 3 All ER 776 at p. 779

²⁷ *Ibid* at p. 780

²⁸ [1976] 1 All ER 737

[66] Mr. Sandford bought a house for the defendant and their daughter, but he did not convey it to the defendant, although subsequently he had the intention but declined to proceed for tax purposes. He was killed in a motor vehicle accident a year later. Mr Sanford's wife and executors found out about the house after his death. They commenced proceedings against the defendant for recovery of the premises on the ground that the defendant's licence to occupy the house terminated on Mr Sandford's death. The defendant contended that she had a contractual licence whereby she was entitled to live in the house for her life or while her daughter was of school age. The court at first instance held that it could not infer such an agreement and made an order for possession. The defendant appealed.

[67] The Court of Appeal affirmed the decision of the court below and dismissed the appeal. The court held that the fact that Mr Sandford intended to provide some security for the defendant was not sufficient to bring into existence a binding contract in the nature of a licence and in all the circumstances there was no evidence justifying the inference that the defendant had a contractual licence to live in the same house. Megaw LJ noted that:

*“What was decided in **Tanner v Tanner** was really very simple. It was decided that on the evidence that had been adduced in that case there was a fair inference to be drawn that the man and his mistress had entered into a contract by which the man had agreed, for consideration, that the house which was being bought by him for the occupation of the woman and her children should remain available to her, with a continuing licence for her to occupy it so long, at any rate, as the children were of school age, or unless some other circumstances arose meanwhile which would make it reasonable for the possession to cease. It was, therefore, a decision on the facts of that case that there was a contract.”²⁹*

²⁹ **Horrocks and Another v Forray** [1976] 1 All ER 737 at p. 741

[68] As to establishing a contract, he affirmed the following:

*“Now, in order to establish a contract, whether it be express or implied by law, there has to be shown a meeting of the minds of the parties with a definition of the contractual terms reasonably clearly made out and with an intention to affect the legal relationship, that is, that the agreement that is made is one which is properly to be regarded as being enforceable by the court if one or the other fails to comply with it; and it still remains a part of the law of this country, though many people think that it is time that it was changed to some other criterion, that there must be consideration moving in order to establish a contract. All those elements, on the facts in **Tanner v Tanner** [1975] 1 W.L.R. 1346, and on the evidence accepted by the court, were present.”³⁰*

[69] Megaw LJ stated that the court is entitled to infer the existence of a contract and in the circumstances of **Tanner**, the court inferred that there was a contractual license. He then went on to consider the circumstances of **Tanner** and the reasoning of the court below. He quoted the first instance judge as follows:

*“In the present case I can find no circumstances whatsoever from which to infer an agreement that the Defendant was entitled to live in the house for her life or whilst [the daughter] was of school age. There is a strong moral obligation on a man to provide and care for his illegitimate child and an additional obligation for the deep wrong he has done to that child by inflicting illegitimacy on her: **Re T B**. At common law there was no obligation on the father to provide for his illegitimate child: **Seaborne v Maddy**. It is also well settled that a putative father may make a binding contract with the mother to contribute to the child's maintenance for which her undertaking to care for the child affords the consideration: **Ward v Byham**. In the present case*

³⁰ Ibid at p. 742

*there was no such contract because the deceased provided handsomely for the maintenance of the child during his lifetime.*³¹

[70] Megaw LJ added that:

*“The fact that he had it in mind to seek to provide some security for the Defendant in the event of his death certainly does not go anything like far enough to bring into existence what is necessary to show a binding contract of this nature. Supposing that she had established something which otherwise could be regarded as being a contract, where is the consideration for that contract to be found? In **Tanner v Tanner** the consideration was perfectly clear: the lady had given up her rent-controlled flat as a part of the bargain that she would move into the other accommodation. There is no such consideration here.... I am satisfied that the learned Judge was completely right in his view that the Defendant had wholly failed to show the existence of a contractual licence.”³²*

[71] Scarman LJ. concurred with Megaw LJ concerning **Ward v Byham**³³ and **Tanner**, he added that:

*“In each of those cases, however, the relationship of man and mistress was either broken or on the point of collapse. The parties to the relationship, the man and the woman, had to consider what best should be done for the innocent product of their relationship, the illegitimate children. In a very real sense, both in **Ward v Byham** and in **Tanner v Tanner**, the man and the woman were making arrangements for the future at arm's length. The woman was concerned for herself and her children: the man was concerned to limit and define his financial responsibilities towards the woman and the children. Here is a fertile area for the growth of an inference of a legally binding contract; and for myself I do not find it surprising, when I look at the*

³¹ **Horrocks and Another v Forray** [1976] 1 All ER 737 at p. 743 & 744

³² *Ibid* at p. 744

³³ [1956] 1 WLR 496

facts in *Ward v Byham* or *Tanner v Tanner*, that the court came to the conclusion that a contract was to be inferred from the conduct of the parties.”³⁴

[72] As to the difference between those cases and **Horrocks**, he noted that:

*“Right up to the death of the man there was a continuing, warm relationship of man and mistress. He was maintaining his mistress in luxurious, even, so the Judge thought, extravagant, style, and, we now know, in a style beyond his means; his estate is now at risk of being insolvent.”*³⁵

[73] Scarman LJ construed that the real difficulty that counsel for the defendant faced in asking the court to infer a contract was that:

*“...whatever relationship did exist between these two, it could as well be referable to the continuance of natural love and affection as to an intention to enter into an agreement which they intended to have legal effect. In the other two cases, that relationship had ended, and it was necessary to tie up the bits...Here [present case] was a generous provision made for a woman who was still the mistress and for the child of that relationship. It was generous beyond what one would reasonably expect the man to accept a legally binding obligation to provide. It was generous, not because he was bound, or was binding himself, to be generous, but because he chose to be generous to the woman for whom there was a big place in his heart. Once one reaches that situation, one can see how the Judge inferred that this was a case where there was no contract and where really it was unreasonable to infer a contract.”*³⁶

³⁴ **Horrocks v Forray** [1976] 1 All ER 737 at p. 745

³⁵ *Ibid* at p. 745

³⁶ *Ibid* at p. 745 & 746

[74] It is also necessary to point out that section 8 of the **Maintenance Act** provides that every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried child who is a minor.

- *Was there a contractual licence in this case?*

[75] The Claimant's evidence is that he permitted the Defendant and their son to move into and occupy the original single dwelling house out of compassion because she was experiencing financial constraints and in view of the relationship while he was engaged in extensive renovations to the downstairs sections. Following the renovations, he requested the Defendant to relocate to the upstairs flat, a space he had reserved for his personal use, because he intended to rent the major downstairs flat. The Defendant's evidence is that when she fortuitously uncovered, whilst living in the original house, that the Claimant was constructing an upstairs flat, he informed her that he was making the upstairs section so that they could be there in order for him to rent the major downstairs flat to offset the mortgage. Following the renovations, the Claimant indeed asked that they move upstairs. The Claimant asked her to permit him five (5) years to rent the downstairs flat so that it could be used towards mortgage payments. She reluctantly relocated to the upstairs flat, a smaller space, because she thought it was in the best interest of their family.

[76] The Court finds that construction to the upstairs flat began while the Defendant and their son were living in the original house. If the Court is to accept the Claimant's evidence of the reasons he permitted the Defendant and their son to move into and occupy the original house, then the Court finds it reasonable to conclude that as the Claimant commenced construction of the upstairs flat whilst the Defendant and their son were living in the original house, he had it in his contemplation and expectation, and the Court goes further to say intention, that the upstairs flat was to be utilized for his personal use and as accommodation for the Defendant and their son.

[77] The Claimant's evidence is that it was never his intention or desire for the Defendant and their children to live or stay permanently at the property or any section thereof as same was designated for rental purposes. In cross-examination, the Claimant admitted that he wanted to provide shelter for his daughters who currently reside at the property with the Defendant. He stated that they have lived at the property for most of their lives. He further clarified that the children have lived there since 2002 [in the case of the son but the daughters since they were born in 2006 and 2008]. When the Claimant was asked if he agreed that there would come a time when the children [girls] would want their own space. He answered that:

"It would not last, for instance, it would not mean that they would stay there - for instance, [His son] left and went to a tertiary institution before he became an adult."

[78] The Court considered this evidence, along with the Defendant's unchallenged evidence, which the Court accepts, that their son left Jamaica in 2017. By virtue of his birth date, which was not in dispute, this means that he left home when he was either eighteen (18) or nineteen (19) years old and, therefore, would have become of age by the time he left home. Therefore, it is clear that the Claimant had no issue providing accommodation for his son until he did not reasonably require the accommodation. The Court also considered the Claimant's evidence regarding his children living at the property for the period they were in school, the Claimant stated that:

"There was no time set because the house [was] specifically [for] income earning, number one. Number two, I have a liking for real estate - I could not afford it at the time – I would look at another property if the money came in hand but certainly this was income earning. To add further to that, if that had materialized (because my illness was severe), that I had acquired another property, not for income earning, then once I am certain that these

are my children, I would allow them to stay there if I had gone that far, that is, if I had purchased another property.”

[79] The Claimant, in answer to Counsel for the Defendant, clarified that he has accepted the children as his children. The Court understands the Claimant to be saying that he purchased the property for income earning purposes, but he harboured intentions to purchase another property, if money became available, where the children could stay. Money never became available to purchase another property, but at all material times he had intentions to provide accommodations for the girls, at least until they became adults or until they did not reasonably require the accommodation. This is consistent with the approach that the Claimant adopted in relation to his son.

[80] The Defendant’s evidence is that it was the plan that she would move into the property with their son. Following the Claimant’s Counsel’s suggestion that there was no plan for her to move to the property, the Defendant maintained that there was a plan and that was the reason why the Claimant gave her the key as soon as he received it from the previous owner. The Defendant’s evidence is that the property is the only home their daughters know, and she considers the property to be her home and that of their children. In these circumstances, the Court finds that both parties intended a section of the property to be utilized as accommodation for their son and daughters, and on the part of the Claimant, at least until they became of age or no longer reasonably required the accommodation.

[81] The Claimant’s evidence is that during the renovations, the Defendant was not working. He sent money for the maintenance of the children, which was confirmed by the Defendant. The Defendant’s evidence is that she attended to the needs of their children and the home. Her further evidence was that their oldest daughter is attending university and the youngest is attending high school. She averred that the Claimant no longer supports the girls:

“The last time that he provided was March 12, 2023, and occasionally the girls may have a need and call out to him. One of those occasions was

August last year, when one of the girls needed tuition for [university]. I think he sent \$100,000 to help with the tuition.”

[82] The Defendant stated that the Claimant sent \$20,000.00 in December 2023, to assist with a medical concern for one of their daughters. There was another occasion when both daughters wanted something. They reached out to him, and he sent \$10,000.00. The Defendant further stated that the Claimant does not assist all the time when the girls request assistance. The above were the occasions when they received assistance. Counsel for the Claimant suggested to the Defendant that she was speaking untruths, but the Defendant maintained that she was speaking the truth. There is no evidence from the Claimant that he continues to frequently financially support their daughters who are in high school and university. The Court finds that prior to the breakdown of the relationship between the parties, the Claimant provided maintenance for the children, while the Defendant attended to the needs of the children and the home. The Court also finds that subsequent to the ending of the relationship, the Claimant has somewhat limited his financial responsibilities to the girls.

[83] The Claimant's evidence is that the Defendant was living with her sister prior to moving into the property. The Defendant's evidence is that she was living in a rental flat in Havendale, St Andrew, prior to moving into the property. The Defendant indicated that she was working at the time and paying her rent. The Court accepts that the Defendant moved into the property between 2002-2003. She gave evidence that she was employed at Chase Ramson between 2002 to late 2004 as their Cold Storage Manager. The Claimant confirmed that she was working at Chase Ramson although he was not aware of how long. As there was no evidence presented to the Court to support the Claimant's contention that the Defendant was living with her sister prior to moving into the property, the Court accepts the Defendant's evidence that she was living in a rent controlled flat prior to moving into the property.

[84] To establish an implied contract between the Claimant and the Defendant, this Court must find that there was a meeting of the minds between the parties on the essential elements for a valid contract to exist. The Claimant averred and the Court accepts that the property was purchased for rental earning purposes. However, the Claimant reserved the upstairs section thereof for his personal use which he permitted as living accommodations for the Defendant and their children. The Claimant has alluded to his intentions to provide a shelter for his daughters. There was clear intention on the part of the Claimant to provide accommodation for the girls until they became of age or no longer reasonably required accommodation. He stated that future plans for their other accommodation never came to fruition, but if they had materialized, he would continue to provide a home for them. The Court understood him to be saying that he had no intention to provide permanent accommodation for the children but did not understand him to be saying that the property was bought for rental purposes and as such he had no intention to provide accommodations for the children at the property. The Court finds that the Claimant's compromising solution to utilize the property for both income earning purposes and the current and future accommodations for the girls was for the Defendant and the girls to remain occupying the upstairs section of the property, while the major downstairs flat was rented. Accordingly, the Court finds that both parties' minds met in that a section of the property would be utilized as accommodation for the Defendant and their children, and on the part of the Claimant, until they became of age or no longer reasonably required the accommodation.

[85] As the Claimant continued to live and work in Saint Ann, the Court finds that the parties' minds met in relation to the Claimant continuing to live and work in Saint Ann whilst the Defendant would care for the children and by extension the home. The Court finds that the Defendant's consideration was to care for the children without the assistance of a nanny or domestic worker while the Claimant resided and worked in Saint Ann. The Court also accepts that the Defendant vacated her rent-controlled property to move into the property.

[86] The relationship between the Claimant and Defendant had broken down. Both had to consider what best should be done for their children in relation to their accommodation. The Court notes the Defendant's reasons for moving back to and refusing to move out of the major downstairs flat included it being more spacious, healthy, and appropriate for the children. The Court also notes the Claimant's evidence that in an effort to find a compromising solution, he made countless requests for the Defendant to remove from the major downstairs flat and move back into the upstairs flat. The Court finds that the Defendant has been gainfully employed since 2015 but accepts that the Claimant has limited his financial responsibilities to the children. In this vein, the Court concurs with Scarman LJ in **Horrocks** that this is a fertile area for the growth of an inference of a legally binding contract. The Court notes that the house in **Tanner** and **Horrocks** were purchased for the woman and their daughters while the property in the present case was purchased for income earning purposes. However, where a party purchased property for income earning purposes but reserved a section thereof for his personal use with the intention that such section is to be utilized as accommodation for his children and their mother for a certain period, the Court may infer a contractual licence for such period as the party intended.

[87] However, when the Court considered the issue of the subject matter of this contract, the Court finds that the parties' minds did not meet on this essential criterion for the formation of a valid contract. The Court finds that the Claimant intended the upstairs flat to be utilized for the accommodation of the Defendant and the children while the Defendant intended the major downstairs flat to be utilized as accommodation for herself and the children. The inability of the parties to agree on the subject matter of the contract prevented the formation of a contract. This essential ingredient of a contract being absent, makes it unnecessary for the Court to consider whether the parties had an intention to create legal relations in relation to how they dealt with the property. In these circumstances, the Court finds that a bare licence was granted by the Claimant for the Defendant to occupy the upstairs flat.

- *Whether the bare licence was revoked?*

[88] The Court having found that the Claimant permitting the Defendant to occupy the upstairs flat with their children amounted to the granting of a bare licence, the Court will now consider whether the licence was revoked? Learned King's Counsel for the Claimant contended that if a bare licence was created in relation to the upstairs flat, this was revoked by the Claimant's conduct in removing to the downstairs flat and the notice to quit sent to the Defendant by the Claimant's Attorneys-at-Law which required her to vacate the entire property. To determine this issue, the Court must examine the entire circumstances of the case.

[89] The Court considered the case of **Williams v Straite**³⁷, where a licensee who had an equitable right to occupy, subsequent to the purchase of the said property, threatened to give the new owner trouble and blocked the entrance to the paddock. The court found that conduct consisting of excessive user of the property or bad behaviour to the legal owner could not terminate an equitable licence. In the case before this Court, The Court is of the view that the conduct of the Defendant in moving to the downstairs flat is not material to the issue of whether any licence given to vacate the upstairs flat was revoked, since the Notice to Quit issued to the Defendant clearly indicated that the Defendant was required to vacate the entire property at Hope Pastures, which included both sections of the property. The Notice to Quit was a clear revocation of the licence to the upstairs flat. However, the Court juxtaposed the Notice with the Claimant's evidence in Court to ascertain the Claimant's intention and position in relation to the upstairs section of the property. The Claimant's evidence was that it is unlikely that he would have brought a suit if the Defendant had remained in the upstairs. In cross-examination, the Claimant's evidence was as follows:

“Question: The true issue is that she is living in the downstairs apartment?”

³⁷ [1979] Ch 291

Answer: Yes, because she was told emphatically not to go there.

Question: And you want her to move back upstairs?

It is unlikely that I would have brought a suit if she remained in the upstairs flat.

Question: But you did not have a problem as long as she remained upstairs?

Answer: Would have given it thought and certainly more favourable thought than her remaining downstairs. She clandestinely moved down there behind my back. She was told by the realtors not to move down there.”

[90] This evidence is consistent with the Court’s earlier finding that the Claimant’s clear intention was for the Hope Pastures property to be used for both income earning purposes and for the Defendant and the girls to remain occupying the upstairs section of the property, while the major downstairs flat was rented. It is also consistent with the Court’s earlier finding that both parties’ minds met in that a section of the property would be utilized as accommodation for the Defendant and their children, and on the part of the Claimant, until the children became of age or no longer reasonably required the accommodation. The only issue on which the parties were not agreed was in relation to the area of accommodation.

[91] Having considered the entire circumstances of the case, the Court is of the view that the Claimant’s intention is not for the Defendant and his children to vacate the property as a whole. The Claimant’s evidence makes it clear that the real issue is not the Defendant’s occupation of the premises, but rather the area of the premises being occupied by her and their children. On his account, the claim emanates from the fact that the Defendant continues in occupation of the major downstairs flat, in circumstances where he only gave her permission to occupy the upstairs flat. Consequently, it would be unjust and against the clear intention of the Claimant for the Court to order that the Defendant vacate the property altogether, especially in

circumstances where the Claimant has conceded that this is the only home that their children (the girls) have known. Furthermore, even though both parents have an obligation to provide a home for the children, the Claimant is more capable of doing so.

[92] In all the circumstances of this case, the Court will permit the Defendant and her children to remain in the upstairs flat for as long as the Claimant permits and the said permission may be revoked by the Defendant issuing a Notice to Quit to the Defendant.

Issue (2) - Whether the Claimant is entitled to mesne profits or damages for use and occupation of the premises for the period May 2014 until the date the Defendant delivers up possession of the said property?

[93] Learned King's Counsel for the Claimant submitted that he is entitled to damages for use and occupation, which is to be assessed. It was further submitted that mesne profits may be awarded to a person rightfully entitled to possession of land against the person in wrongful possession for the period of the wrongful occupation.³⁸ The evidence of the Claimant is that the tenant who was renting the major downstairs flat moved out in 2014. Learned King's Counsel conceded that no value of the rental income earned from the property was adduced by the Claimant. However, she further submitted that the evidence presented by the Defendant at the trial is that the three-bedroom major downstairs flat could have been rented for \$120,000.00 which was a fair price at the time based on her checks. In the circumstances, the sum of \$120,000.00 from 2014 until delivery of possession is appropriate. However, if the Court does not find her evidence credible, then the Court could make a nominal award. In relation to learned Counsel for the Defendant's submission that the Claimant had a duty to mitigate his loss, she argued that if this argument is to be made, then the Claimant had to have been put on notice of this. She relied on the authority of **Geest PLC v**

³⁸ **Halsbury's Law** Volume 62 [2022] paragraphs 1-595

Lansiquot (St. Lucia)³⁹ which was applied by Lindo J (Ag.) in the case of **Evoni McLean v Pepsi Cola Bottling Co. Ltd. and Anor**⁴⁰.

[94] Counsel for the Defendant submitted that the Claimant has failed to provide the Court with any cogent evidence as to the loss, if any, sustained by him as a result of the Defendant's occupation of the major downstairs flat. To simply claim that the Defendant says it is \$120,000.00 based on her enquiries, is not a recognised way for assessing loss. The Claimant is under a duty to mitigate his losses, if any. It is not in dispute that the upstairs flat remains vacant and is not being used by the Claimant. This area could have been rented.

[95] In relation to the Defendant's entitlement to damages for use and occupation, the Court had regard to the case of **Pauline Williams v Norman Willis and Anor**⁴¹, where Hart-Hines J (acting as she then was) stated as follows:

The terms "damages for use and occupation" and "mesne profits" are terms which are used in respect of damages for trespass. The term "mesne profits" is usually used where damages are awarded where a former tenant holds over and becomes a trespasser. In an action for mesne profits, a person entitled to possession of land, might recover the damages which he has suffered as a result of being out of possession of the land, or, such sums as he reasonably could have received for the use of the land, but not the Defendants' "profits".

[96] The law further provides that damages are recoverable by a Claimant in an action for mesne profits brought in a joint suit for recovery of possession: **Lilia Neuman v Delroy Salmon**⁴². The **Lilia Neuman** case notes that such damages are restricted to the loss sustained during the period of wrongful occupation of the Claimant's land by the Defendant. The measure of damages is the ordinary letting value of the property occupied or used by the Defendant. The case of **George**

³⁹[2002] UKPC 48 (7 October 2002) PC Appeal No. 27 of 2001

⁴⁰ [2014] JMSC Civ 55

⁴¹ [2021] JMSC Civ 28 at para. [17]

⁴² Civil Appeal No 39 of 2000

Rowe v. Robin Rowe⁴³ was an appeal emanating from the Resident Magistrate's Court (now Parish Courts), which was a claim for damages for trespass to land and for an injunction to prevent further trespass. The Court of Appeal in considering the stance that it should take in relation to the issue of damages indicated the general rule that damages are meant to be compensatory citing the authority of **Stoke-on-Trent City Council v W & J Wass Ltd**⁴⁴ where it was stated that, "*The general rule is that a successful plaintiff in an action in tort recovers damages equivalent to the loss which he has suffered, no more and no less. If he has suffered no loss, the most he can recover are nominal damages....*" In that case, the court went further to point out that trespass to land is "*the first and best-established exception*". At paragraph [52] of the judgment in the **George Rowe** case, the court stated as follows:

"Based on those origins, it is said that trespass is actionable without the need to prove loss. Proof of loss is, however, what is required to assist the Court in quantifying the appropriate award of damages. Nourse LJ pointed out that for residential properties the Court would use evidence of the rental value to guide its deliberations."

[97] In cases including trespass to land, the court awards damages in accordance with the 'user principle' which stipulates that, "*...if one person has without leave of another been using that other's land for his own purposes, he ought to pay for such user*".⁴⁵ This Court also had regard to the methods for assessing damages for mesne profits or for wrongful use and occupation of land, which were outlined by Hart-Hines J (acting as she then was) in the case of **Pauline Williams v Norman Willis and Anor**. Some of these methods include making an award of damages based on the normal measure of damages (the market value of the property occupied or used for the period of wrongful occupation or user); the 'passing rent' method; the 'negotiating damages' method; a percentage of the unimproved value

⁴³ [2014] JMCA Civ 14 at para. [50]

⁴⁴ [1988] 3 All ER 394

⁴⁵ **George Rowe v. Robin Rowe** [2014] JMCA Civ 14 at para. [53]

of the land or the value of the land to the defendant.⁴⁶ The **George Rowe** case also affirmed the principle that where a Claimant is entitled to damages but fails to prove any quantifiable loss, his monetary award should be restricted to nominal damages. The court stated further that, *“Trial judges must be mindful, however, that if they are of the view that only nominal damages are merited, there should be compliance with the principle explained in **The Mediana**.”*⁴⁷

[98] In **The Owners of the Steamship ‘Mediana’ v The Owners, Master and Crew of the Lightship ‘Comet’ - The Mediana**⁴⁸, the learned Lord Chancellor pointed out as follows:

*“Nominal damages’ is a technical phrase which means that you have negated anything like real damage but you are affirming by your nominal damages that there is an infraction of a legal right, which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term “nominal damages” does not mean small damages.”*⁴⁹

[99] The court in the **George Rowe** case recognised that *“locally, the awards for nominal damages have varied significantly as well”*.⁵⁰ After examining a number of recent authorities, the court stated that, *“It may be said that claims involving personal injuries seem to attract higher awards within the band than claims involving injury to reputation or trespass to land.”*⁵¹

[100] In the case before this Court, the Claimant’s evidence is that the Defendant’s occupation of the major downstairs flat has prevented him from earning significant income from the property. The Defendant admitted to relocating to the major flat downstairs in 2014. She confirmed that she knew that since 2014, the Claimant intended the major downstairs flat to be rental property to earn income. She gave

⁴⁶ See paras. [21] to [35] of the **Pauline Williams** case

⁴⁷ **George Rowe v. Robin Rowe** [2014] JMCA Civ 14 at para. [62]

⁴⁸ [1900] AC 113

⁴⁹ *Ibid* at page 116

⁵⁰ **George Rowe v. Robin Rowe** [2014] JMCA Civ 14 at para. [58]

⁵¹ *Ibid* at para. [62]

evidence that the Claimant became upset when she informed him that she had moved back into the flat and that he asked her to move back to the upstairs flat. However, she refused to vacate the major downstairs flat to date. The Court finds that upon the completion of the upstairs flat, the Claimant revoked the Defendant's bare licence to the major downstairs flat and permitted her to stay in the upstairs flat. The Defendant moving back into the major flat downstairs without the permission of the Claimant in 2014, amounts to unlawful entry.

[101] In this case, the Claimant is claiming damages for use and occupation of the premises for the period from May 2014 until the date that the Defendant delivers up possession of the premises. However, the Court finds that the Claimant has not provided any evidence of any quantifiable loss during that period. Additionally, the Court cannot appropriately utilise any of the methods for assessing damages for mesne profits or for wrongful occupation of land that were identified in the **Pauline Williams** case to make an accurate assessment of the damages to be awarded in this case as:

- i. There is no evidence presented to assist the Court in determining a fair market monthly rate for the use and occupation of the property (normal measure of damages);
- ii. The Court cannot have regard to the last rent payable at the end of the last rental of the property as the Court has no evidence that the past rent reflects the current value of the premises. The value of the property and the rental payable may also have correspondingly increased (the 'passing rent' method);
- iii. There is no expert evidence relating to reasonable rates for letting of comparable properties (the 'negotiating damages' method);
- iv. There is no evidence of the value of the unimproved land (the unimproved value of the land method); and

- v. No valuation of the property was provided to the Court and the improvements to the disputed property were primarily undertaken by the Claimant (based on the value of the land to the Defendant).

[102] The Court is in agreement with the submissions of learned King's Counsel on behalf of the Claimant that the Defendant cannot at this stage advance the position that the Claimant had a duty to mitigate his loss, since the Claimant had not been put on notice that any issue would be raised in this regard. The Court made it clear in the **Geest PLC v Lansiquot (St. Lucia)**⁵² case that:

*"...it should however be clearly understood that if a defendant intends to contend that a Plaintiff has failed to act reasonably to mitigate his or her damages, notice of such contention should be clearly given to the Plaintiff long enough before the hearing to enable the Plaintiff to meet it. If there are no pleadings notice should be given by letter..."*⁵³

[103] In this case, the Court considered the nature of the trespass and the fact that apart from living in a more comfortable space, rent free, there is no evidence of any financial benefit to the Defendant. The Court also considered the relationship of the parties and the circumstances which led to the Claimant initiating proceedings for recovery of possession of the disputed property. In all the circumstances of this case, the Court is minded to make an award of nominal damages. The Court acknowledges that nominal damages do not mean a 'trifling amount'. Therefore, in determining an appropriate sum to be awarded, the Court considered the **George Rowe** case, where the Court of Appeal reviewed a number of authorities in which nominal damages were awarded and had regard to the range of awards that have been awarded as nominal damages. This Court also considered in particular, the case of **Delia Burke v Deputy Superintendent Carol McKenzie and Another**⁵⁴ where the 1st Defendant trespassed on the property of the

⁵²[2002] UKPC 48 (7 October 2002) PC Appeal No. 27 of 2001

⁵³ See para. 16 of the judgment

⁵⁴ [2014] JMSC Civ 139

Claimant, including her house and bedroom for over five (5) hours. In that case, McDonald-Bishop J (as she then was) stated as follows:

*“In **Beaumont v Greathead** (1846) 2 C.B. 494 at 499, Maude, J is reported to have said “nominal damages mean a sum of money that may be spoken of, but that has no existence in a point of quantity.” It is a mere peg on which to hang costs”: **McGregor on Damages** 17th edition at paragraph 10-006. The learned authors noted that the English Courts had for centuries awarded nominal damages for no more than £1 until it was increased from that to £2 and then to £5. These cases show that where no loss is proved as emanating from the trespass a substantial sum ought not to be awarded. It would appear that the awards from our Courts in cases for trespass without injury or losses might have started out on the high side as nominal damages. But in an effort to maintain uniformity and consistency in awards and having looked at the nature and extent of the trespass in this case, which took the police in the bedroom of the Claimant, I would award **\$65,000.00** for damages for trespass.”*

[104] The Court notes that the facts of the case before this Court are not similar to the facts in the authorities cited. However, the Court also notes that the approach that was adopted by the Courts in the **George Rowe** case and the **Delia Burke** case was to examine the award of nominal damages generally in order to determine the range of awards and what would be considered appropriate on the particular facts of the case to be decided. The Court considered the circumstances of this case and the awards made in the authorities cited. Unlike in the **Delia Burke** case, there are no aggravating features that have been highlighted on the facts of this case that would justify a high award of damages. In the **Delia Burke** case, the award of \$65,000.00 was made in September 2014 (using a CPI of 86.5). This updates to \$106,630.06 (using the CPI for November 2024 which is 141.9). This amount should be discounted having regard to the circumstances of this case and the fact that there are no aggravating circumstances. Therefore, the Court finds that an award of \$53,000.00 representing nominal damages is an appropriate award in this case.

DISPOSTION AND ORDERS

[105] Judgment is entered for the Claimant against the Defendant in the following terms:

- 1) The Defendant is to quit and deliver up possession of the major downstairs flat and all other areas of the downstairs section of the property located at 35 Hart Boulevard, Hope Pastures, Kingston 6 in the parish of St. Andrew registered at Volume 1041 Folio 474 of the Register Book of Titles on or before February 28, 2025.
- 2) The Defendant and the parties' daughters are permitted to use and occupy the upstairs flat of the property located at 35 Hart Boulevard, Hope Pastures, Kingston 6 in the parish of St. Andrew registered at Volume 1041 Folio 474 of the Register Book of Titles for as long as the Claimant permits. The said permission may be revoked by the Claimant issuing a Notice to Quit to the Defendant.
- 3) Damages are awarded to the Claimant in the sum of \$53,000.00.
- 4) Costs are awarded to the Claimant to be taxed if not agreed.
- 5) The Claimant's Attorneys-at-Law are to prepare, file and serve the Final judgment herein.