

[2] The claimant is a statutory body established to manage the University Hospital of the West Indies at Mona (“the University Hospital”) and is the occupier of premises, known as the cardiology unit located at the University Hospital. The defendant is a medical doctor who was employed by the claimant at the University Hospital including as a cardiologist and an honorary consultant from January 2009 to 23 April 2012 when her services were terminated. In an Amended Statement of Claim, filed on 14 October 2016, the claimant claims against the defendant damages for trespass to the cardiology unit of the University Hospital and also seeks an injunction restraining the defendant from entering upon the said premises.

[3] The claimant averred that on several days between May 2012 and October 2012, the defendant unlawfully and without the claimant’s consent trespassed on the cardiology unit. According to the claim, the defendant maliciously and solely out of spite and vexation entered upon the premises of the cardiology unit and interfered with the claimant’s operations and its staff members.

[4] The alleged trespass is particularized as follows:

- i. *“Attending the Cardiology Unit without legitimate business;*
- ii. *Entering areas of the Cardiology Unit properly reserved for members of staff, despite protest;*
- iii. *Handling and searching patients’ confidential records without authorization and despite protest;*
- iv. *Molesting, harassing and abusing members of staff, including during the performance of medical procedures on patients;*
- v. *Interrupting medical procedures in progress medically required to be carried out in a quiet environment.”*

[5] As a result, the claimant suffered loss and damage by incurring the expense of providing extra security at the cardiology unit and from the negative effect of the

defendant's actions on the efficiency of the claimant in its management of the University Hospital.

[6] At an *ex parte* hearing on 11 October 2012, the Hon. Mr. Justice Pusey granted a temporary injunction restraining the defendant, among other things, from entering upon the premises of the University Hospital. The restraining orders were substantially relaxed when the injunction was varied by the Hon. Mr. Justice McIntosh on 18 October 2012 and at the *inter partes* hearing on 23 November 2012, he refused the application and so the injunction ceased to remain in force. Nonetheless, the evidence from both parties is that since this matter was commenced the defendant has not attended at the cardiology unit.

THE DEFENCE

[7] In the Defence filed on 30 November 2012 the defendant denied the particulars of the trespass and the loss and damage alleged. She asserted that on all the occasions between April 2012 and October 2012 she lawfully went on to the compound of the University Hospital. She averred that between 1 April 2012 and 23 April 2012 she was entitled to be there by virtue of her employment by the claimant as a sessional cardiologist and an associate lecturer. Further, between 24 April 2012 and 31 July 2012 she was entitled to enter the University Hospital compound in her capacity as an associate lecturer. Thereafter, between 1 August 2012 and 9 October 2012, she was entitled to enter the said compound as a member of the public and as a citizen of Jamaica as the University Hospital is a public place.

[8] I pause here to note that the claim is in respect to the cardiology unit of the University Hospital and not the entire University Hospital compound.

[9] In answer specifically to the particulars of trespass, the defendant contended that she attended the cardiology unit either, pursuant to the terms of her contract(s) as

a sessional cardiologist and associate lecturer, and/or as a member of the public and as a citizen of Jamaica. She did not enter the areas of the cardiology unit that is reserved for members of staff, neither did she search patient's confidential records or molest, harass and abuse members of staff nor interrupted any medical procedures. Further, she was never requested by any authorized representative of the claimant to cease any of acts complained of or not to visit the University Hospital.

- [10] The Defence also claimed that the defendant was unaware of the provision of any extra security at the cardiology unit resulting from of any act committed by her. She denied that the claimant is entitled to the injunctive relief sought, damages for trespass or costs claimed.

THE EVIDENCE FOR CLAIMANT

- [11] The claimant relied on statements standing as the examination-in-chief and sworn testimony of three witnesses - Mr Peter Morris, Dr Charmaine Scott and Dr Oluwayoni Oluguyi. In addition, the evidence of Miss Caradene Campbell in the form of two signed reports relating to incidents involving the defendant were admitted into evidence by virtue of the provisions of Section 31(E) of the Evidence Act.

- [12] After the close of the defendant's case the claimant was permitted to call a witness in rebuttal. This was Ms Janet Powell, an attorney-at-law and Director of Patient Affairs at the University Hospital. Her evidence was on a peripheral issue and I will dispense with summarising it here.

Peter Morris

- [13] Mr. Peter Morris was the Senior Director of Human Resources at the claimant's hospital at the relevant time. His evidence was largely formal and not the subject

of dispute. He established that the claimant oversees the management of the University Hospital and occupies premises at Mona including the cardiology unit.

[14] He said that the defendant's employment as honorary consultant in paediatric cardiology at the University Hospital was terminated on 23 April 2012 by way of a letter dated 20 April 2012 which was communicated to her. This letter was received in evidence and is not disputed.

[15] Mr Morris stated he had seen several written reports made by members of staff of the University Hospital outlining disturbances created by the defendant at the cardiology unit in 2012. These reports included:

"A – Incident report of Georgia Daley dated February 29, 2012 (regarding incident on February 29, 2012)

B– Incident report of Hyacinth Hayles Williams dated February 29, 2012 (regarding incident on February 29, 2012)

C– Incident report of Dr Marilyn B. Lawrence Wright dated March 2, 2012 (regarding incident on February 29, 2012)

D– Incident report of Caradene Campbell (regarding incident on February 29, 2012)

E– Incident report of Angella Irvine Jackson (regarding incident on February 29, 2012)

F– Incident report of Dr Charmaine Scott dated April 18, 2012 (regarding incident on April 17, 2012)

G– Incident report of Caradene Campbell (regarding incident on June 5, 2012)

H– Incident report of Georgia Daley dated June 7, 2012 (regarding incident on June 5, 2012)

I – Incident report of Dr Charmaine Scott dated June 7, 2012 (regarding incident on June 5, 2012)

J – Letter from M Thame to Dr T. McCartney dated October 10, 2012”

- [16] According to Mr Morris, because of these various disturbances the claimant arranged for additional security including stationing a security guard inside the cardiology unit at a cost to the claimant. He did not say what the actual financial outlay was.
- [17] In cross-examination he accepted that he had no personal knowledge of the several allegations of misconduct made against the defendant and had never spoken to her about them.

Dr. Charmaine Scott

- [18] Dr. Scott is medical doctor with over 35 years of experience at the time of her testimony. The evidence discloses that she is considered one of the leading paediatric cardiologists in Jamaica with tremendous experience both in the private sector and public service. She was a consultant paediatrician/cardiologist at the University Hospital from March 2008 to February 2012, and honorary consultant paediatrician/cardiologist there since March 2012.
- [19] It is the claimant’s case that to considerable degree the events relevant to the claim in this case arise from to the relationship between Dr. Scott and her colleague, the defendant. Thus by way of background, I will summarise Dr. Scott’s evidence on how that relationship developed. She said that she knew the defendant since medical school and they were in the same graduating class of 1981. Sometime in the 1990’s, the defendant expressed an interest in training in paediatric cardiology and as she (Dr. Scott) already had been trained in that area of specialty she encouraged and facilitated the defendant in learning some skills doing

echocardiogram before the defendant left for her fellowship in paediatric cardiology in the United Kingdom. On her return, the defendant accompanied Dr. Scott in the cardiac catheterization laboratory at the University Hospital for a few procedures but stopped attending 'after a short stint'. Up to then Dr. Scott was unaware of any problems between herself and the defendant.

[20] Dr. Scott stated that there was no communication between them from the mid 1990's until 2009 when the defendant started working at the Bustamante Hospital for Children where Dr. Scott was also employed at the time. There are indications that by then there were strains in the relationship as, according to Dr. Scott, there were issues that the defendant had with her 'presence at Bustamante' and there were complaints made by the defendant to the Medical Council of Jamaica concerning Dr. Scott. As far as she was aware, nothing came from those complaints.

[21] Dr. Scott testified that, in addition to being the subject of complaints lodged by the defendant with the Medical Council of Jamaica, since 2011 she has been the subject of a sustained campaign of written abuse by the defendant. She said that she had received various emails from the defendant at her personal email address, which were also copied to a large number of persons in the medical community, including persons at the University Hospital and the Medical Council of Jamaica. She did not respond to any of the emails.

[22] Regarding incidents involving the defendant at the cardiology unit at the University Hospital in 2012 Dr. Scott said that she was the only consultant doing paediatric echocardiograms at the cardiology unit of the University Hospital. This is a procedure for obtaining images of the heart which is used to make key management decisions on the child patient's condition. The procedure requires patience and a quiet, comfortable environment preferably with a parent or caregiver present to console the patient. Interruptions must be kept at a minimum.

- [23] Her evidence was that on 17 April 2012 she was at the cardiology unit performing an echocardiogram on an infant patient. Present were the patient's parent and an echocardiogram technician. The defendant entered the room in which the procedure was being done and in a 'brash and intimidating manner' accused her of withholding a report on another patient and then in the presence of all in the room, the defendant went on to make a series of disparaging remarks about her personal life. Dr. Scott said that she left the room and went to the senior technician's room but the defendant pursued her and accused her of trying to get the security to remove her saying that in the past she (Dr. Scott) got a security guard to remove her from a meeting at the Bustamante Hospital for Children. According to Dr Scott she left the senior technician's room and while she was passing through the waiting area on her way back to the echocardiogram room, in the presence of numerous patients and parents, nurses and other staff, the defendant continued to attack her character, integrity, competence and personal life. The defendant then left but returned to the echocardiogram room on two further occasions that morning and repeated the verbal attacks in the presence of patients, patients' parents and technicians.
- [24] She said that she reported these incidents in a letter of 18 April 2012, to the claimant. (Mr. Peter Morris referred to this report in his testimony summarised above). It seems likely that the termination of the defendant's employment by the claimant via letter dated 20 April 2012 followed from this report. Dr. Scott also added that in April, sometime after this incident, the claimant provided additional security for the cardiology unit.
- [25] Dr. Scott testified about another incident on 5 June 2012. She said that she was conducting an echocardiogram on a patient in the echocardiogram room of the cardiology unit. Present were the patient's parent, a nurse and medical students. The defendant entered the room, looked around and then withdrew. The nurse then locked the door. A few minutes later, the defendant returned and began to shake the door 'violently' while yelling repeatedly "*who locked this door, open the*

door". After the defendant stopped the banging and yelling, Dr. Scott allowed the frightened patient, the patient's father, the nurse and medical students to leave to echocardiogram room.

[26] I pause here to recall that Mr. Peter Morris testified that he received written reports from three members of the University Hospital's staff including Dr. Scott regarding an incident at the cardiology unit occurring on 5 June 2012. One of these reports was from Miss Caradene Campbell was received in evidence and will be discussed below.

[27] Dr Scott also testified about events of 9 October 2012 that led to her tendering her letter of resignation. She was scheduled to do echocardiogram sessions at the cardiology unit that day. She said that while she was travelling to there she received a telephone call on her mobile phone from one of her colleagues at the University Hospital, Dr Oluwayomi Olugbuyi, who told her that the defendant was at the time present at the cardiology unit making inquiries regarding her whereabouts. (This is not evidence of the truth of Dr Olugbuyi's statement to her but evidence that he did call her and also explains her state of mind and subsequent conduct.). She said that she then telephoned and told the Chief Executive Officer of the University Hospital, Dr. Trevor McCartney, that this situation caused her a lot of distress and that she decided that she could not go to the cardiology unit. She had decided to resign.

[28] A few days after this event the claimant commenced these proceedings.

Miss Caradene Campbell

[29] The claimant tendered two incident reports of Miss Caradene Campbell who was the acting manager of the cardiology unit in early 2012. The defence objected on the basis that the documents were not authentic or false and were copies of the originals. I did not consider the objection to be of much merit because prior to the commencement of the trial the defendant's attorneys-at-law were served with a

Notice of Intention to Tender these documents and did not respond. The attorneys-at-law for the claimant were therefore not given any notice before commencement of the trial that these were issues to be addressed. The claimant relied on the evidence of Peter Morris including affidavits of 19 October 2016 and 20 March 2016 in support of the application. Having satisfied myself that there was sufficient evidence showing that the reports tendered were true copies of the reports made by Miss Caradene Campbell, that she had left the employment of the claimant and

had migrated to live outside of Jamaica and that it was not reasonably practicable for her to attend to testify in person, I admitted the reports into evidence pursuant to section 31E (4) (c) of the Evidence Act.

[30] The first report of Miss Campbell is in relation to a disturbance that she said was created by the defendant on 29 February 2012. This report is relevant only insofar as it helps in understanding the background to the matters in dispute and I do not consider it necessary to review it in detail. The claimant's case as pleaded relates to the period May to October, 2012. In addition this incident occurred prior to the termination of the defendant's employment at the University Hospital on 23 April, 2012, when she would have been entitled to enter the areas of the cardiology unit reserved for staff members.

[31] The second report of Miss Campbell that was admitted into evidence concerned the incident of 5 June, 2012, that Dr. Scott testified about. Miss Campbell stated that on that day the defendant attended the cardiology unit and told her that she came to collect CDs of echocardiograms that she had performed previously. She said that she advised the defendant that the CDs were the property of the University Hospital. The defendant then left the room where Miss Campbell was located and shortly thereafter she, Miss Campbell, heard a loud banging sound. She went in the direction of the noise and saw the defendant banging on the closed door of the echocardiogram room while screaming 'yes, call security'. The defendant left when the security guard arrived. Miss Campbell added that an

echocardiogram was being conducted on a patient at the time this incident occurred.

Dr Oluwayoni Olugbuyi

[32] Dr. Oluwayoni Olugbuyi was a consultant paediatrician employed to the claimant at the relevant period. He testified that on 9 October 2012 he was working at the cardiology unit when the defendant pushed her head into the examination room and asked about the whereabouts of Dr. Charmaine Scott. After this he called Dr. Scott on her mobile phone and told her that the defendant was there looking for her.

EVIDENCE FOR THE DEFENDANT

[33] The defendant's evidence was presented by way of her witness statement which stood as her examination-in-chief as well as her oral testimony. She is a highly qualified paediatric cardiologist with extensive experience and is the author of a long and impressive list of academic publications in her field. She was employed as an honorary consultant cardiologist at the University Hospital from January 2009 to April 2012. She was also an associate lecturer in the Department of Medicine at the University of West Indies, Mona campus, between January 2009 to the 31 July 2012.

[34] In respect to her employment as honorary consultant cardiologist at the University Hospital, she said that on 23 April 2012, she was called on the telephone by Mr. Peter Morris and told that she was "fired" with immediate effect and that she was to collect the dismissal letter from his office. This is the letter of 20 April 2012 mentioned earlier.

[35] The defendant said that as a result of her position as an associate lecturer she was entitled to and obliged to attend on the compound of the claimant's hospital

for a variety of purposes including teaching, attending presentations and for research and publication.

- [36] The defendant made several complaints regarding the professionalism of Dr. Scott, Dr. Marilyn Lawrence-Wright who was the head of the department of cardiology at the time as well as several other staff members of the cardiology unit, some of whom she accused of spitting in her food among other things. It is not necessary to examine these complaints in any detail as, apart from giving some insight into the context in which this case arose, they do not relate directly to the issues raised on the pleadings.
- [37] She denied that on 17 April 2012 she confronted and abused Dr Scott and disrupted medical procedures that she was conducting at the time.
- [38] As regards the incident in June 2012, in her statement (which stood as her examination-in-chief) she said that during the period April to July 31, 2012, she was undertaking research in respect to the treatment of three heart patients at the University Hospital. On 22 June 2012 she attended at the cardiology unit with two of these patients who had signed the standard University Hospital of the West Indies Authorization for Release of Information form. She waited with them for the relevant data which was handed to her by the manager, Miss Campbell. She maintained that she did not enter the area properly reserved for members of staff and she did not molest, harass or abuse any member of staff as alleged nor did she interrupt any medical procedures.
- [39] Of relevance to the consideration of the date of this event I noted that, during amplification of her examination-in-chief, when she was shown the incident report of Miss Campbell in respect the incident of 5 June 2012 the defendant said that she “attended with a patient *that day* but this did not happen.” (Emphasis mine). Later I shall return to the subject of the date of this incident.
- [40] Regarding 9 October 2012 the defendant stated that she was at the University Hospital where she stopped at the office of the West Indian Medical Journal and

paid her annual subscription. She then stopped at the cardiac catheterisation laboratory to request a letter and then she entered the cardiology unit where she was greeted by a female security guard who advised her that there was a new manager since the departure of Miss Caradene Campbell. She went to the office of the new manager and introduced herself. On leaving the office, the echocardiogram room door was open and she gestured to Dr Oligbuyi and then left after speaking with another staff member. She did not see or speak to Dr. Scott that day, neither did she inquire about her.

- [41]** She further stated that during her time as an honorary consultant there was always a security guard at the cardiology unit and that she became aware of the additional security guard when Dr McCartney (then Chief Executive Officer of the University Hospital) mentioned it at a conciliatory meeting at the Ministry of Labour and Social Security on 25 June 2012. She said that at this meeting Dr McCartney said that he would pay anything to prevent her from returning.
- [42]** In support of her case the defendant also presented the witness statements of Mr Joseph White and Mr Lincoln Hyman which stood as their examination-in-chief and they were permitted to testify. Their evidence was laudatory of the professional qualities of the defendant and critical of other medical doctors including Dr Scott who were involved in the treatment of their children. I find this evidence to be unhelpful in resolving the issues before the court. On reflection, I realise that I should not have admitted any of this evidence.
- [43]** The defendant claimed that since the imposition of the injunction she has suffered great mental and emotional distress rendering her unable to see patients privately, has suffered embarrassment in her profession and lost significant learning opportunities. She said that it has had a devastating effect on her career financially and her family.

SUBMISSIONS

[44] Both parties filed written submissions which I have thoroughly reviewed and considered and I thank them for the effort expended. I intend no disrespect if I do not mention each and every argument or submission advanced.

[45] I should add that in the course of the defence case, the defendant, as is her right, elected to dispense with the services of her attorneys-at-law and thereafter represented herself. She filed her submissions in her personal capacity.

[46] In her submissions the defendant raised the question of whether she should be awarded damages in excess of one hundred million dollars (\$100,000,000.00).

She cited the authorities of *Pfizer Limited v Medimpex Jamaica Limited, Et al* Case Number: C.L. 2002/P040 and *Delia Burke v Deputy Superintendent Carol McKenzie and the Attorney General of Jamaica [2014] JMSC Civ. 139*. The defendant's submissions in respect to damages seem to be based on her belief that in the event that judgment is entered in her favour she is immediately entitled to an award of damages for her losses and expenses incurred and the suffering she endured as a result of the imposition of the interim injunction restraining her activities. However, should such a result come to pass further proceedings on assessment of damages would be necessary. Further, the injunction granted on 11 October 2012 and varied on 18 October ceased to remain in force from 23 November 2012. While the evidence is that the defendant has not attended at the cardiology unit since the initial grant of the interim injunction, there is no extant order of the Court restraining her actions thereafter. At this juncture, it is unnecessary for me to comment further on that matter.

RELEVANT LAW

Trespass to land

[47] A person who enters upon land in possession another person without justification and the latter's consent commits the tort of trespass. Possession means generally

the occupation or physical control of land. See **Clerk and Lindsell on Torts** 19th edition at paragraphs 19-01 and 19-13. *“The law regarding trespass to land does not require a person complaining of a trespass to be the owner of that land. Trespass to land consists of interference with possession.”*: **George Rowe v Robin Rowe** [2014] JMCA Civ 46, at paragraph 15. The tort is actionable *per se* and nominal damages will be awarded if the claim is made out without proof of actual loss or damage. See **George Rowe v Robin Rowe**, *ibid*, at paragraph 54.

[48] A succinct formulation of the relevant law with useful examples of its application is given by the learned authors of **Halsbury’s law of England**, Volume 97 of 2015 paragraph 56:

“A person’s unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another. He also commits a trespass to land if, having entered lawfully, he unlawfully remains after his authority to be there expires”.

[49] In this case there is no issue that the claimant was in exclusive possession of the cardiology unit of the University Hospital at the relevant time. That being so, it is enough to constitute the tort of trespass if the defendant without justification or consent set foot on or entered on the claimant’s land, specifically the cardiology unit of the University Hospital. Even if there was justification or consent to enter the claimant’s property, it expired if, while remaining there, she behaved in a manner that was contrary to the reasons for the justification or the terms of the consent by being abusive of the claimant’s staff members and disruptive of its operations.

[50] Although on the claimant's case there is evidence that an additional security guard was employed at the cardiology unit because of the defendant's attendance there, there is no evidence of any specific sums expended for this. There is, however, some evidence that the defendant's conduct was disruptive of the claimant's operations and even led to such distress in the mind of one employee, Dr Scott, that she offered her resignation.

ISSUES

[51] It would be useful at this stage to set out what I consider to be the central factual issues of the case. This requires me to make some preliminary observations and findings of fact over which there is little dispute. Firstly, the premises which form the subject matter of cause is not the entire premises of the University Hospital but the part known as the cardiology unit, in particular those areas properly reserved to members of staff. As indicated above, it is not disputed that the claimant was in exclusive possession of those premises at the material time.

[52] Secondly, there was some evidence and controversy regarding conduct of the defendant prior to 23 April 2012 as well as allegations by the defendant that she was treated unprofessionally by some members of staff. While all of this is of some assistance in understanding the background to the matter and the personalities involved it is not necessary to make specific findings in regard to these allegation. They relate to the employer and employee relationship and the relationships between employees which are not directly matters forming part of the claim before me.

[53] Thirdly, as accepted by the claimant, while the defendant remained in the capacity of an honorary consultant cardiologist employed at the University Hospital she had

a licence to enter the cardiology unit to carry out her functions. In other words, it was incidental to her contract of employment that she was permitted and authorised to be present at the cardiology unit up to and until the termination of her employment on 23 April 2012. However, I find that the termination of her employment revoked the licence and thereafter the defendant was permitted to enter the areas of the cardiology unit open to the public only with justification, that is, if she had legitimate business there. Further, the defendant was permitted to enter the sections reserved for members of staff only with the authorisation or consent of the claimant. The offices and examination rooms including the echocardiogram room are areas properly reserved for members of staff. After the termination, the defendant had no right as a member of the public to enter the cardiology unit without justification and/or consent.

[54] Even though the defendant may have retained employment with the University of the West Indies as an associate lecturer up to 31st of July 2012, there is no evidence that this authorised her to enter the cardiology unit. Neither did the defendant assert this. While the defendant may have been entitled to attend other parts of the compound of the University Hospital to undertake her duties in that role (see paragraph 18 of her witness statement), I am satisfied that this did not authorise her to enter the cardiology unit.

[55] As regards the correct date of the incident in June 2012, the defendant's evidence was that on 22 June 2012 she attended the cardiology unit with two of her patients to collect their medical records which were handed over by Miss Caradene Campbell. Miss Campbell in her report on the events that transpired on the day when the defendant attended and requested medical records of patients spoke to "today June 5 2012". It is clear that both witnesses are referring to the same event even though they give different accounts of what transpired. There is no evidence of any other incident in June. The report of Miss Caradene was made contemporaneously in contrast to the defendant's statement. In addition, as I noted earlier, when confronted with the report of Miss Caradene referring to "today June

5 2012”, the defendant said that she was there with a patient that day. I am satisfied that the correct date of the incident was 5 June 2012.

[56] Thus, the issues to be resolved in this case are essentially factual and concern the conduct of the claimant after 23 April 2012. The earlier reports are not probative of the facts of those events. The question is whether the defendant trespassed upon the cardiology unit on 5 June 2012 and 9 October 2012 by entering the premises without any legitimate business there. In particular, did she on those days enter the areas reserved for staff members without the consent or authorisation of the claimant and did she harass staff members and disrupt medical procedures that were being conducted there? This requires an assessment of the relative credibility of the witnesses who gave evidence in the trial.

FINDINGS

[57] I bear in mind that the burden of proof for the tort of trespass is on the claimant to establish the truth of the facts in issue and the standard of proof is a preponderance of probabilities. Wherever in this judgment I have made findings of fact I have done so on that standard.

[58] In respect to both the incident of 5 June and 9 October 2012 the defendant accepts that she went to the cardiology unit. However, on the former occasion she merely accompanied two patients who were requesting their medical records. She had legitimate business there and she did not enter any area reserved for staff members. On the latter occasion she entered the cardiology unit and introduced herself to the new manager. She did so as a member of the public.

[59] I did not find the defendant to be credible in her accounts of these events. Overall, I was not impressed by her demeanour and her evidence on important topics appeared to me to be untrue or exaggerated. Sometimes she was non-responsive or argumentative in her answers to questions. This in my view did not result from

lack of understanding of the questions put or ignorance of trial protocols. She presented as a highly intelligent witness. I found that her attitude strongly undermined her credibility.

[60] On several occasions the defendant was openly disrespectful and ill-mannered in addressing counsel who questioned her, including her own. Once, in the face of the Court the defendant using very offensive words abused witness Miss Janet Powell, an officer of the Court, who testified on a tangential issue. The Court was compelled to admonish her for this outburst. However, the defendant seemed so absorbed in her anger that she barely acknowledged the admonition and I formed the view that she was oblivious to the fact that her conduct was unacceptable. I found the defendant to be a witness possessed of a temper that sometimes she cannot govern.

[61] That temperament by itself is no reason to find that the defendant's evidence is not to be believed. However, her inability to control herself even in the face of the Court is of some significance as it may support the claimant's case that the defendant was capable of acting in the abusive manner at the cardiology unit as alleged.

[62] On a related issue, the defendant testified that she bore no malice towards Dr Scott but was merely critical of her professionalism. This was not true. During the defendant's testimony, and indeed at other moments during the trial when evidence touching on Dr Scott arose, I observed from her expression and deportment that she harboured such hostility towards Dr Scott that she was unable to disguise or conceal it. It was plain to see. When the defendant was shown a letter from Dr Nigel Harris, the Vice-Chancellor and head of the University of the West Indies, which effectively dismissed allegations of plagiarism made by the defendant against Dr Scott the defendant adamantly maintained that the allegations were established even though she could provide nothing to substantiate this.

- [63]** This attitude of the defendant towards Dr Scott is relevant in considering any motivation that the defendant may have had to conduct herself in the manner alleged by the claimant's witnesses at the cardiology unit.
- [64]** Dr Scott appeared to be a credible witness, calm, forthright and not prone to exaggeration or histrionics. As regards the incident of 5 June 2012 I accept her evidence that while she was conducting an echocardiogram on a young patient, the defendant entered the echocardiogram room, looked around, withdrew and returned minutes later by which time a nurse had locked the door. The defendant thereafter began to bang on and shake the door while yelling repeatedly about who had locked the door and that the door should be opened.
- [65]** The incident report of Caradene Campbell was received as evidence of the facts stated therein. I bear in mind that the contents of the statement are not conclusive and ought to be weighed in conjunction with all the evidence in the trial. I also take into account that I have not actually seen her testify to be able to assess her demeanour. Neither has she been cross-examined to test her credibility.
- [66]** I have accorded some weight to the evidence from Miss Campbell. In important areas it is substantially consistent with Dr Scott's testimony which I have accepted. In all the circumstances, I find Miss Campbell's narrative of the events more probable than that of the defendant. Indeed, I found it implausible in the absence of further explanation that a medical doctor of her high rank and status would have found it necessary to take time to travel with patients and wait with them in order to collect medical records for which they had already signed the standard University Hospital Authorisation for Release of Information Form. In contrast, I accept Miss Campbell's evidence that the defendant entered the cardiology unit saying that she came to collect CDs of echocardiograms and was advised by Miss Campbell that the CDs were the property of the University Hospital. The defendant then left the room and shortly thereafter Miss Campbell heard and saw the defendant banging on the closed door of the echocardiogram room where an

echocardiogram was being conducted while screaming, 'yes, call security'. The defendant left when the security guard arrived.

[67] I find that the defendant had no legitimate business at the cardiology unit that day. In addition, she was not authorised by the claimant to enter the areas of the cardiology unit reserved for the staff members. Her entry into the echocardiogram room and presence there constituted trespass and her banging on the door and screaming amounted to a deliberate attempt to harass Dr Scott and disrupt the ongoing medical procedures.

[68] I move on to the incident of 9 October 2012. Dr Olugbuyi said that he was working at the cardiology unit when the defendant pushed her head into the examination room and enquired of Dr Scott's whereabouts. Dr Scott said that this was a day of the week, a Tuesday, when she was ordinarily scheduled to conduct procedures at the cardiology unit. Dr Olugbuyi evidence directly contradicts the defendant's testimony that she did not inquire about the whereabouts of Dr Scott.

[69] I found Dr Olugbuyi to be a credible witness with no interest to serve. He is a professional colleague of both the defendant and Dr Scott. When he was crossexamined he was not challenged on the disputed part of his evidence. He was asked about an aspect of his qualifications but there was no suggestion of a motive to lie. It was only during the defendant's testimony when she was asked if she knew of any motive for Dr Olugbuyi to tell a lie on her, that she said that he did this because she had caused him to be disqualified from doing procedures for which he was not qualified.

[70] There are also several troubling aspects of the defendant's account of this incident.

[71] Firstly, it is difficult to reconcile the defendant's explanations for her presence at the cardiology unit on 9 October 2012. In her witness statement she said she attended the University Hospital that day and paid her annual subscription at the West Indian Medical Journal office and then she went to the cardiac catheterisation

laboratory to request a letter. This, I understood was her purpose for being present at the University Hospital that day. She said that she entered the cardiology unit where a female security guard informed her that there was a new manager and she went to the office of the new manager and introduced herself and then left.

What was her purpose for entering the cardiology unit that day?

[72] The defendant in her statement does not give any reason for going to and entering the cardiology unit although in the Defence filed she said she was entitled to attend as a private citizen. The reason for her attendance there to my mind is very important especially having regard to her evidence that at a meeting of 25 June 2012, Dr McCartney, the CEO of the University Hospital, told her in reference to the engagement of additional security personnel at the cardiology unit that he would pay anything to prevent her from returning there. One could reasonably conclude from this that she must have had a good and imperative reason for going there on 9 October 2012. During her cross-examination, when asked about the purpose for being there she replied that she went as a private citizen. But, as counsel for the claimant correctly pointed out in his submissions, a private citizen would not attend a cardiology unit without any reason. On further questioning on this issue she added that she had an appointment with a Professor Morgan. Later she accepted that Professor Morgan worked at another location, close to but not at the cardiology unit.

[73] Another aspect of the defendant's evidence provoked serious concern about her credibility. Her evidence at trial was that there was nothing said by anyone at the cardiology unit about the whereabouts of Dr Scott that day. In cross-examination she was shown paragraph 40 of her affidavit of 21 October 2012 (made in respect to the injunction hearings) that recorded her as stating in clear terms that when she attended the cardiology unit on the morning of 9 October 2012, the office manager, without any inquiry from her, told her of the whereabouts of Dr Scott. In effect, it was put to her, that her version at the injunction hearings that she did not ask for Dr Scott's whereabouts but that it was volunteered to her was significantly different

from that given at trial where she maintained that the subject of Dr Scott's whereabouts was never mentioned. In explanation of the apparent inconsistency she denied that she made the statement in the affidavit. She said that it was a typographical error. Yet she later agreed that she herself typed that affidavit. I cannot accept that explanation. The passage in the affidavit was too lengthy to be a typographical error. And this is a very significant matter which goes to a core issue in dispute, that is, whether there was any question or statement uttered regarding the whereabouts of Dr Scott that morning.

[74] I accept the evidence of Dr Olugbuyi that the defendant attended at the cardiology unit and enquired about the whereabouts of Dr Scott. She had no legitimate business there. When she presented herself at the examination room and pushed her head inside she entered upon a section of the premises reserved for members of staff without the consent or authorisation of the claimant. In so doing she committed the tort of trespass. Further, after considering all the evidence I infer and find that she went there in search of Dr Scott for the purpose of harassing and antagonising her.

DISPOSITION

[75] The claimant is entitled to a permanent injunction restraining the defendant. I would not grant the injunction in the wide terms sought and will limit its operation somewhat. The defendant is a doctor blessed with rare and valuable skills and expertise. She is an asset to her profession and the country. She may in the future course of her work and research have good and sufficient reason to attend at the cardiology unit and interface with the members of staff there. I hope that her relationship with the claimant will be somewhat repaired. However, I think that she must learn to control her temper and treat with disagreements in a calm and respectful manner.

[76] As regards damages, the attorneys-at-law for the claimant in their final submissions did not seek an award of damages beyond nominal damages. There was no evidence of any specific monetary expense incurred. I find that the defendant's trespass and disruption of the claimant's medical procedures on the 5 June 2012 and 9 October 2012 (when her presence caused Dr Scott to withdraw from attending) were very serious and consequential for the patients and staff of the cardiology unit. However, in my view there is insufficient evidence that the trespass resulted in measurable substantial loss and damage to the claimant so there will be an award of nominal damages only.

- (i) Judgment is entered for the claimant against the defendant on the claim.
- (ii) An injunction is granted restraining the defendant from entering the premises of the Cardiology Unit at the University Hospital of the West Indies without the written consent of a duly authorised agent or representative of the claimant that limits the part of the unit and the time that the defendant is authorised to be present there.
- (iii) Nominal damages for trespass to land awarded to the claimant against the defendant in the sum of \$100,000.00.
- (iv) Costs to the claimant to be taxed if not agreed.

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Chester Stamp
Puisne Judge