

THE REPUBLIC TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. – CV. 2012- 01425

BETWEEN

Catherine Best-Trouchen

Claimant

AND

Wilbert Trouchen

also called Freddy Trouchen

1st Defendant

Anderson Trouchen

2nd Defendant

P.C. 12828 Dale Roger George

3rd Defendant

The Attorney General of the Republic of Trinidad & Tobago

4th Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. F. Hove Masaisai for the Claimant.

Ms. A. Watkins-Montsein and Ms. J. Chang for the First and Second Defendants.

Ms. Z. Haynes and Ms. P. Rampersad for the Third and Fourth Defendants.

Judgment

1. This claim concerns property situate at No. 6 Mission Road, Crown Street, Tacarigua (hereinafter referred to as 'the disputed property').
2. The First Defendant is the brother of the Claimant's deceased husband and the Second Defendant is the First Defendant's son. The Third Defendant was at the material time a police officer attached to the Piarco Police Station and at all times carried out his duties as agent of the State.
3. The claim shall be disposed of in manner hereinafter appearing:
 - a. The interim injunction is discharged.
 - b. The claim against the First, Second, Third and Fourth Defendants is dismissed.
 - c. The Claimant is to surrender possession of the premises known as No.6 Mission Road Tacarigua to the First Defendant.
 - d. The Claimant is to pay to the First and Second Defendants prescribed costs of the claim in the sum of \$14,000.00.
 - e. The Claimant is to pay to the Third and Fourth Defendants prescribed costs of the claim in the sum of \$14,000.00.
 - f. There shall be a stay of execution of 60 days.

The Claim

4. The Claimant's action is one for trespass to property, trespass to goods, damage to goods, conversion and detinue. This is not a claim by the Claimant in adverse possession. Nor is there a counterclaim on the part of the First and Second Defendants.
5. It is the Claimant's claim that she is entitled to occupation of the disputed property having been living there with her husband (now deceased), Phillip Trouchen, since 1986. The Claimant and Phillip were married on the 23rd March 1990. The Claimant avers that before she entered into occupation in 1986, Phillip had been living there since about 1970

until his death on the 24th December 2009. The Claimant says that during their time in occupation of the disputed property, they carried out several renovations and improvements and paid the land and building taxes which was assessed in Phillip's mother's name, Gertrude Trouchen. The Claimant lists the renovations as: replacing the wooden flooring boards, installing concrete steps inclusive of steel rails both to the front and back of the disputed property, installing steel doors to the front and back of the disputed property, installing burglar proofing and erecting a wire fence around the disputed property with an iron gate at the entrance.

6. According to the Claimant, since Phillip's death, the First and Second Defendants have pursued a threatening course of action aimed at removing her from the disputed property. She avers that they approached her to enter into an agreement for the disputed property and when she refused they threatened to forcibly remove her.
7. Further, the Claimant claims that on the 25th January 2011, the First Defendant instituted ejectment proceedings against her but avers that these proceedings were dismissed on the 28th September 2011. The Claimant says that despite the dismissal in her favour the First and Second Defendants continued to harass her and threaten to remove her from the disputed property.
8. The incident which prompted these proceedings however occurred on the 16th January 2012. The Claimant's version is that she returned home at around 5 p.m. that day to find the First and Second Defendants, accompanied by the Third Defendant, aggressively breaking into her home and throwing her belongings out on the street. She says they changed the lock on her gates and doors, preventing her from entering the disputed property while the Third Defendant and another police officer stood guard with their guns.
9. The Claimant alleges that the First and Second Defendants damaged her belongings valued at \$57,169.00 and that the invasion caused her embarrassment among the neighbours. She further alleges that the Second Defendant told her in the presence of the

Third Defendant that if he could not get the disputed property, he would burn it to the ground.

10. The Claimant's claim against the Third Defendant is that the Third Defendant collaborated or facilitated the actions of the First and Second Defendants and is therefore personally liable for same. The Claimant avers that the Third Defendant was carrying out his duties as an agent of the State and therefore it is in that capacity that the Fourth Defendant was joined as a party to proceedings.

11. Although the Claimant claimed she was dispossessed and that the First and Second Defendants had taken possession of her two water tanks on the 16th January 2012, by order of the court dated the 25th April 2012, the Claimant retrieved her water tanks, moved her possession back into the disputed property and is now in possession of the disputed property until determination of this claim. The Claimant avers that despite this order, on the 15th March 2012, the First and Second Defendants demolished the fence and iron gate on the western boundary of the disputed property.

12. The Claimant therefore claims:

- a. A declaration that she is entitled to occupation of the disputed property;
- b. Injunctions restraining the First and Second Defendants from constructing on, demolishing, or entering into and/or remaining on the disputed property and from interfering with the Claimant;
- c. Special Damages;
- d. Damages for wrongfully breaking and entering into the disputed property and for wrongfully removing and damaging the Claimant's goods;
- e. Damages for trespass to land;
- f. Damages for conversion.
- g. Aggravated and/or Exemplary Damages.

The Defence of the First and Second Defendants

13. The First Defendant claims that he is the owner of the disputed property, having purchased same for \$800.00 in 1960. When the disputed property was purchased, it was a one bedroom wooden house. Subsequent to the purchase however, the First Defendant converted same into a two bedroom and added a kitchen. He and his family lived there until he purchased a home in Macoya Gardens, Tunapuna in or about 1974/1975. In fact, the Second Defendant was born while they were resident at the disputed property in 1968. The First Defendant claims that he and his family relocated to the new home in or about 1975/1976. Nevertheless, the First Defendant continued to maintain the disputed property.
14. Thereafter, his sister approached the First Defendant to stay in the disputed property temporarily. The First Defendant gave her his permission and she stayed there for approximately one year. He was then approached by his niece Joycelyn Trouchen to stay at the disputed property. Having given her permission, she stayed for approximately three years.
15. The First Defendant claims that sometime in 1986, Phillip approached him to stay in the disputed property saying that he was having domestic difficulties. Phillip asked to stay at the disputed property until he could make arrangements or until the First Defendant or his family needed it. The First Defendant agreed. The First Defendant claims that at all times he paid the land and building taxes and not Phillip. However, in 1990, unknown to the First Defendant, Phillip married the Claimant, and without the First Defendant's permission, she moved into the disputed property with Phillip. The First Defendant says that prior to this he had constantly told Phillip that he needed the house for the Second Defendant and Phillip agreed but did not move.
16. Again in or about 1994, the First Defendant approached Phillip for the disputed property, and although he agreed to move he did not. In 2006, the First and Second Defendants approached Phillip for the disputed property and Phillip is alleged to have requested the

sum of \$9000.00 and three months to move. Although the First and Second Defendants initially rejected that request they eventually agreed and paid him the \$9000.00. A receipt and an agreement were drawn up and Phillip agreed to move by the end of 2007.

17. However, by letter from Badrie-Maharaj & Badrie-Maharaj & Associates dated the 13th May 2009, the First Defendant received a cheque in the sum of \$9000.00 purporting to be payment in full and final settlement of a no interest loan previously granted to Phillip by the First Defendant. The First and Second Defendants then took the letter to their attorney who instructed them that proceedings ought to be filed. Proceedings were filed by claim number CV2008-02885 but the matter was settled on terms not disclosed to the court.
18. On Phillip's death, as a result of the terms of the settlement in court, the Second Defendant went to the Claimant and informed her they wanted possession of the disputed property. The First and Second Defendants contend that they were met with aggression and the Claimant started pelting bottles and stones and using threatening language. The incident was reported to the Arouca police station. Thereafter, the Second Defendant issued an eviction notice to the Claimant. On the expiration of the notice however, when the Claimant still had not moved, the Second Defendant again visited her and enquired why she had not vacated and again he was met with aggression and threats.
19. As a result the First and Second Defendants filed a summons in the Arima Magistrate's court in January 2011 with instructions to deliver it to the Arouca Police station for it to be served on the Claimant. That matter was eventually dismissed because the Claimant had been wrongly named and the Defendants were advised to re-file under the correct name. The First and Second Defendants aver that they were subsequently advised that the Claimant was not a tenant and therefore ejection proceedings were not appropriate.
20. As to the events of the 16th January 2012, the First and Second Defendants claim they arrived at the disputed property at about 4 p.m. with the intention of taking possession. They say they removed the gate lock and at that time the Claimant and her mother, sister

and some neighbours came down from her mother's house a little distance away. The First and Second Defendants informed them they were taking possession of the house.

21. When asked for the key to enter the home, the Claimant refused and the door was opened by the Second Defendant. The First and Second Defendants deny that they called the police or that they were accompanied by the police. Nonetheless the police arrived and enquired of the Claimant what was going on. The Claimant told the police that she was being thrown out. The Defendants say that the police asked them what was taking place and the First Defendant informed them that he was the owner of the disputed property and that the Claimant was illegally there. The First Defendant avers that the police officer asked for proof of ownership and he showed him a grant of Letters of Administration for his mother's estate and Land and Building Tax receipts. The police then said that it was a domestic matter and advised them to talk it over or seek legal advice and then left.

22. After the police left the First Defendant, Second Defendant, Claimant and the Claimant's two male friends assisted in the removal of the Claimant's items. The First and Second Defendants specifically deny that the items were thrown out onto the road by them. The items were removed and carried by the Claimant and her friends to her mother's house and a neighbour's garage. After the items were removed, the Defendants asked the Claimant to check to ensure that all her belongings were removed, and the Claimant entered the house and made a final check and told them nothing was left. Thus all damages claimed by the Claimant are denied.

The Defence of the Third and Fourth Defendants

23. The Third Defendant claims that on the 16th January 2014, he and PC Anthony Timothy regimental number 17442 were responding to a report of a family dispute around 4 p.m. at Kelly Trace, Piarco. On completion of enquiries at Kelly Trace, they proceeded to Range Road to speak with an individual in connection with the dispute at Kelly Trace. While on route to Range Road the vehicle was stopped by three men who informed the police that a fight was in progress at a nearby street. The officers proceeded to the area

and observed several men and women gathered in the vicinity of a wooden house. PC Timothy, who had been driving, drove past the house turned around and parked motor vehicle PCL 9753 on the opposite side of the road from the disputed property. The Third Defendant observed three men and a woman (who was later discovered to be the Claimant) removing items from the disputed property and placing them at the side of the roadway and taking them to a house nearby. The Third Defendant claims that although there was a lot of quarrelling among the three men and the Claimant, there was no physical fighting.

24. According to the Third Defendant, while he was still seated in the police vehicle, the Claimant's mother approached the vehicle and had a conversation with the officers. Shortly thereafter, a man also approached the vehicle purporting to be the owner of the disputed property. The Claimant then came to the vehicle and requested that the men who were removing her belongings be arrested. The Third Defendant says he informed her that this was a matter to be settled in the High Court.

25. While the First Defendant claims that he was asked for proof of ownership of the disputed property and states that he produced documentation, the Third Defendant denies that this occurred. He stated that at no time did anyone produce any documentation evidencing ownership.

26. The Third Defendant avers that after 10 to 15 minutes the parties calmed down and continued removing the items from the house. At this time the officers left.

Issues

27. It was contended on behalf of the First and Second Defendants that the Claimant has failed and/or refused to plead the basis in law upon which the claim for "occupation" of the subject premises is made. It was further argued that the Claimant's assertions of fact as to the ownership of the property are contradicted in the evidence that has been led in chief and/or elicited through cross examination. Counsel gives the example that the

Claimant asserts the ownership of the subject property by the deceased, but gives no evidence of the basis for same, then gives evidence solely of occupation and seeks relief solely in relation to occupation.

28. Counsel for the Claimant contended that although neither party has provided evidence of legal ownership of the disputed property, the Claimant may still recover possession of the disputed property, if she shows that she has a greater possessory title to the land than the First and Second Defendants.
29. The court does not agree with Counsel for the First and Second Defendants that the Claimant's legal basis for occupation has not been pleaded. The Claimant has pleaded that she has been in undisturbed possession and occupation of the disputed property since 1986 when she went to live in same with Phillip. She pleaded that Phillip had been living there since 1970.
30. Whether this fact as pleaded is contradicted in the evidence is what determines the issue of the Claimant's entitlement to possession.
31. In the well known authority of *JA Pye (Oxford) Ltd v Graham* [2002]UKHL 30 the law was clearly set out that possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession.
32. Further, Counsel for the First and Second Defendants submitted that based on the facts and matters pleaded by the Claimant it is unclear whether or not she purports to rely on the doctrine of estoppel. With this the court agrees, and further, the court can see no basis for the invocation of the doctrine of estoppel on the Claimant's pleaded case.
33. Thus, the issues to be determined by the court were properly stated by Counsel for the Claimant as:

- a. Whether the Claimant was in possession of the disputed property and whether she was dispossessed by the Defendants.
- b. If the answer to (a) above is yes, whether the First and Second Defendants have shown a better entitlement to possession.
- c. If the answer to (b) is no, whether the Claimant is entitled to damages for trespass, damages for conversion and aggravated and/or exemplary damages.
- d. If the answer to (c) above is yes, whether the Third and Fourth Defendants are jointly liable for the actions of the First and Second Defendants.

The First Issue

34. Although there are varying versions of what took place on the 16th January 2012, the First and Second Defendants have not denied that an entry was made into the disputed property and that the Claimant was put out. In fact there has been an admission in that regard on the evidence albeit not in the manner as testified to by the Claimant. Thus, it is not in issue whether the Claimant was in possession of the disputed property and whether she was dispossessed by the First and Second Defendants. The events of the 16th January would be relevant to the issue of trespass should the court find that the Claimant has a better right to possession than the First and Second Defendants.

The Second Issue

35. Where a Claimant was in possession of property for a number of years without legal title and is dispossessed by a person who could not show a better right, he is entitled to be restored to possession: *Bernadine Seebaran Guy v Selwyn Baptiste Civ. Appeal No.12 of 2001*. The court is therefore concerned with the relative strengths of title. If the First and Second Defendants can show a better title to possession this is the end of the matter and the claim must be dismissed. However, if the Claimant shows a better title to possession it means that the First and Second Defendants wrongfully entered onto the disputed property.

36. This is an issue of fact. The evidence on behalf of the Claimant's case was given by the Claimant, her mother Anestina Best and her neighbour Marlon Bhim.
37. The Claimant gave evidence that she has been in undisturbed possession and occupation of the disputed property since in or about 1986. She testified that she and Phillip were married on the 23rd March 1990. The Claimant also stated that Phillip was in undisturbed possession and occupation of the disputed property since in or about 1970, and he remained therein until his death on the 24th December 2009. After her husband's death, the Claimant continued in sole possession and occupation of the disputed property.
38. Although the Claimant testified that she and Phillip have always paid the Land and Building Taxes for the subject property (assessed in Gertrude Phillips name), she stated that she was unable to retrieve any receipts for same because of the First and Second Defendants actions on the 16th January 2012.
39. In cross examination, the Claimant stated that she was not aware of how Phillip came into occupation of the disputed property in 1970. Further that she had nothing to do with the disputed property before 1986 when she moved in. It came out in cross examination that the receipts proffered by the Claimant as proof of renovations she and Phillip had done during their occupation of the disputed property were actually receipts dated prior to her occupation. The receipts are dated 1978 and 1980 and make no reference to the Claimant, Phillip or the address of the disputed property. No weight has as a consequence been given to these receipts as they do not assist the Claimant in proving that she has a better possessory right.
40. Mr. Marlon Bhim is the Claimant's neighbour and he testified that he has been living opposite the disputed property since in or about 1999. He gave evidence that since that time he has only known the Claimant and her deceased husband Phillip to be living at the disputed property and that he also knew that their daughter Gail Best lived with them up until sometime in the year 2003. He stated that after Phillip's death the Claimant

continued in occupation of the disputed property. Mr. Bhim also testified that he knew the First and Second Defendants as they would sometimes come to the area to visit Phillip. Mr. Bhim's evidence was that he had always seen the Claimant and Phillip carrying out repairs and renovations on the disputed property and had never seen the First and Second Defendants doing same. In cross examination he stated that his knowledge of the Claimant's occupation would not predate 1999 as he had only come to live in the neighbourhood in 1999.

41. Anestina Best is the Claimant's mother. She stated that since 1945 she has been residing at LP No. 7 Mission Road, Crown Street, Tacarigua. It was Ms. Best's evidence that Phillip had been residing in the disputed property since sometime in the late 1960's / early 1970's. Notwithstanding this, in cross examination, Ms. Best testified that she did not know how or when Phillip came to live in the disputed property.

42. Ms. Best gave evidence that sometime in the 1980's the Claimant became romantically involved with Phillip and she and her daughter Gail Best moved into the disputed property. Ms. Best testified that her daughter married Phillip sometime in March 1990 and they continued to live at the disputed property until Phillip's death in 2009. She stated that the Claimant continued to live there even after Phillip's death.

43. Evidence on behalf the First and Second Defendants was given by the First Defendant, Second Defendant and Yvonne Abbey. The evidence bears repeating.

44. Counsel for the First and Second Defendants contended that Phillip came to reside at the property in 1986 with the permission of the First Defendant as a bare licensee and the Claimant moved into the said property by virtue of the deceased's licence and is therefore debarred from asserting a right to occupation greater than that of the deceased. Counsel submitted a time line of events in accordance with the case for the Defendant:

1960 - The First Defendant purchased the property.

- 1960 – 1975/76 - First Defendant and family resided in the property.
- 1975/1976 - First Defendant and family moved from the property.
First Defendant continued to maintain the property.
- 1976/77 - Sylvia Baptiste resided in the property for one (1) year
with the permission of the First Defendant; followed
sometime thereafter by Joycelyn Trouchen for approximately three (3) years;
- 1986 - Phillip Trouchen (the deceased) came to reside in the
property with the permission of the First Defendant.
- 1990 - Catherine Best-Trouchen married the deceased and
moved into the property.
- 1994 - First and Second Defendants first approached deceased
in relation to recovering possession of the property.
- 1994 – 2006 - Further approaches by the Defendants in relation to the
recovery of possession.
- 2006 - Agreement entered in relation to the recovery of possession
by end 2007.
- 2008 - High Court Action filed by Second Defendant against
deceased for recovery of possession; Agreement made.
- 2010 - Claimant approached for recovery of possession.
- 2011 - Magistrate’s Court action in ejectment filed.

45. The First Defendant gave evidence that he purchased the disputed property in 1960 for \$800.00 from a person whose name he could not recall. In cross examination, he explained that he had been working at WASA with Yvonne Abbey's husband, Lester Abbey, and the owner of the disputed property was working there as well and had asked Lester Abbey to sell the place for him. He stated that he did not know the owner and when he said in his witness statement that he could not recall the owner's name it is this man to which he referred and not Yvonne Abbey's husband. He testified that when the property was purchased the house was a one bedroom home which he converted into a two bedroom home with a kitchen. From that time he and his family lived in the disputed house until about 1975/1976 when they moved into a home the First Defendant had purchased in Macoya Gardens, Tunapuna.
46. The First Defendant testified that after he moved out he continued to maintain the disputed property but approximately six to eight months after moving, his sister Sylvia Baptiste asked to live in the disputed property as she was having domestic problems at the time. He stated that Sylvia lived there for approximately one year and sometime after she moved out his niece Joycelyn Trouchen asked for permission to stay there. The First Defendant gave evidence that Joycelyn stayed in the disputed property for approximately three years.
47. The First Defendant's evidence was that in about 1986, Phillip approached him to live in the disputed property as he was having domestic problems and had nowhere to live. The First Defendant stated that Phillip asked him to stay there until he found another place or until the First Defendant or his family needed it. The First Defendant then permitted him to stay in the disputed property. According to the First Defendant sometime in 1990, Phillip married the Claimant and she moved into the disputed house with him without the First Defendant's permission.

48. It is the First Defendant's evidence that repeated requests were made to Phillip to move prior to 1990, in 1994 and several times between 1994 and 2006. In 2006, the First Defendant again approached Phillip to vacate the dispute property and Phillip replied that if the First Defendant wanted him to move he would have to pay him \$9000.00 and give him three months to vacate. Although the First Defendant did not want to, he eventually agreed to pay and did pay Phillip \$9000.00. A receipt evidencing same was attached to the First Defendant's witness statement along with an agreement signed by the First Defendant, Phillip and Yvonne Abbey. The agreement was headed "Sale Agreement" and is dated the 8th October 2006. Phillip told the First Defendant that he needed until 2007 to vacate as he was still constructing his home to the back of his mother-in-law's home. While Phillip accepted the sum, in May 2009, the First Defendant received a letter dated the 13th May 2009, from Badrie-Maharaj & Badrie-Maharaj & Associates enclosing a cheque of \$9000.00 as full and final payment to a no interest loan. The First and Second Defendant then took the letter to their attorney who instructed them that proceedings ought to be filed. Proceedings were filed by CV2008-02885 but the matter was settled on terms not disclosed to the court.

49. When Phillip died in December 2009, as a result of the terms of the above order, the First Defendant went to the Claimant in 2010 and requested that she vacate the disputed property. An eviction notice was subsequently served on the Claimant and when she still did not vacate the First Defendant filed a summons on the 25th January 2011. However, owing to the fact that the Claimant's name was wrongly stated as Carol Best Trouchen, the matter was subsequently dismissed and he was advised by the Magistrate to re-file with the correct name. The First Defendant testified that he was later advised that because the Claimant was not a tenant, ejectment proceedings were not appropriate. This led to the First Defendant's action on the 16th January 2012.

50. The Second Defendant's evidence corroborated that of the First Defendant. However, it was brought out in cross examination that at the time the Claimant alleges Phillip moved

into the disputed the Second Defendant would have been two years old so that no weight ought to be given to his testimony in this regard.

51. Ms. Abbey lives in the same neighbourhood as the disputed property. She testified that she and her husband moved to Mission Road in 1951 and her husband put up a for sale sign in front of the disputed property. She gave evidence that the First Defendant purchased the disputed property from her husband.

52. Ms. Abbey stated that the First Defendant and his family lived in the disputed property for a while before he moved and left the property empty for a while. She testified that after the First Defendant moved, he allowed several relatives to stay at the disputed property and thereafter, the place was empty again. She stated that the First Defendant then allowed Phillip to stay at the property and that he lived there for approximately 23 years. In cross examination she testified that prior to Phillip taking up residence in the disputed property, he had been living with a woman but that she put him out and he had nowhere to go and he asked his brother (the First Defendant) to stay in the disputed property.

53. In weighing the evidence the court considered the fact that the Claimant could not give any evidence as to how Phillip had come into possession of the disputed property to be material. Although there is evidence on the Claimants case from her mother that she knew Phillip to have been living in those premises since the 1970's the nature and circumstances of how he came to live there and remain in occupation are not known to the Claimant or her mother. The only evidence which explains his occupation comes from the First Defendant and this evidence has not been destroyed in material particular by cross-examination. Although the First Defendant could not show a receipt to prove that he had acquired the legal title, he provided reliable evidence that was also not challenged in any material way in cross examination. Thus, to the extent that the Claimant could not provide any explanation for Phillip being in possession, the court believed the evidence of the First Defendant as to how Phillip had been put in possession of the disputed property. So that Phillip was in fact a bare licensee and the court so finds.

54. Further, although the Claimant contended that Phillip paid the Land and Building taxes for the disputed property in the name of his mother, Gertrude Trouchen, she could not provide any receipts evidencing same. The First Defendant, on the other hand, did. Counsel for the First and Second Defendants submitted, and the court agrees that in these circumstances, more weight should be given to the First and Second Defendants' version of events.

55. The court also believed the First Defendant's evidence that repeated requests were made for Phillip to vacate the disputed property. The court believes that a final attempt was made in 2006 when a sale agreement was made. The existence of the sale agreement signed by both the Second Defendant and Phillip makes the contention that the \$9000.00 was intended as a loan unbelievable (see letter dated 13th May 2008). Further, no evidence was lead by the Claimant in explanation of the sale agreement. In cross examination, Counsel for the Claimant in his questioning alluded to the \$9000.00 being payment for the structure being built by Phillip behind the disputed property. However, the First Defendant testified that that structure came in when Phillip was given the \$9000.00 it was only then that he began to build that structure but it was not completed. The First Defendant was then asked how many structures Phillip owned on Mission road and he responded that Phillip owned three. Counsel asked whether the receipt simply stated structure on mission road and the First Defendant answered yes. It seems to the court that Counsel was alluding to the fact that the sale agreement could have been for any structure allegedly owned by Phillip. However, there is no documentary evidence before the court of Phillip's ownership of any other structure. There is also no viva voce evidence from the Claimant or any of her witnesses as to Phillip's ownership of any structure on Mission road. The result is that the court does not think that the receipt referred to any other structure. There is no evidence upon which that conclusion can be made.

56. The court believes the First Defendant's evidence that he shared a good relationship with Phillip. Further, that owing to this good relationship, Phillip was allowed to stay in the

disputed property even after repeated requests for him to give up possession. This is fortified by the fact that a settlement was arrived at between him and the Second Defendant in CV2008-02885. While the First and Second Defendants wanted the disputed property, they were able to come to a compromise because of the good relationship enjoyed among Phillip, the First and Second Defendants.

57. The court considers that, on the evidence, it is more likely than not that the First Defendant obtained the disputed property from Yvonne Abbey's husband and subsequently granted Phillip permission to occupy same. The court thinks that the evidence of the Claimant is lacking on the issue of how Phillip would have come into occupation and this weighs negatively against the Claimant's case.

58. On a final note, the court does not believe the Claimant's evidence that items were damaged or destroyed. The evidence is that the items were removed and placed on the sidewalk without damage. Having regard to the general tenor of the evidence in this case, the court prefers the evidence of the First and Second Defendants that the items were carefully removed and stored by the Claimant at her mother's home and a neighbour's home. The court is not of the view that the First and Second Defendants took possession of the Claimant's goods. It is clear to the court on the evidence that the First and Second Defendants appeared to be acting on the day of the eviction with the fact that the Claimant was a relative and that her mother lived close by as relevant factors in mind when treating with the issue of the eviction. The evidence is supported by the evidence of the police in so far as they have testified that the men they observed were removing items from the house and placing them at the side of the roadway. This is inconsistent with the evidence of the Claimant that her things were being thrown out.

59. Further, the court does not believe the Claimant when she says that the Third Defendant facilitated the First and Second Defendants' actions. The evidence of the Claimant and her witnesses was that the officers never came out of the vehicle and further never instructed the Claimant or any one not to enter the disputed property. The evidence appears to indicate that the police presence was merely to ensure that there was no breach of the peace and had not been planned. On the Claimant's own evidence and that of her

witnesses, the officers did not involve themselves in the dispute. Further, it is the evidence of the police that Ms. Best was asking them to arrest the men but that there had been no breach of the peace and there simply was nothing occurring which would have given rise to an arrest.

60. For these reasons, the First and Second Defendants have shown a better entitlement to possession and the court will dispose of the claim in manner appearing at paragraph 3 above. It is to be noted that while there exists no counterclaim on the part of the First Defendant, the effective disposal of this claim requires the court to act in a manner consistent with its findings and to make orders accordingly. It is in this context that the order for the surrender of possession to the First Defendant has been made.

61. Finally, upon the withdrawal of the application for an injunction against the Third and Fourth Defendants on the 19th April 2012, an order was made that the costs of the Third and Fourth Defendants on the application would be assessed upon determination of the claim. Additionally, by order of the 25th April 2012, this court granted an injunction against the First and Second Defendants and costs of that application was ordered to be costs in the cause. The claim having been determined in favour of the First and Second Defendants, they are now entitled to their costs of the application. The court shall now therefore proceed to assess the costs in keeping with its previous orders herein set out.

Dated the 17th July 2014

Ricky Rahim

Judge