EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

[CIVIL]

SAINT LUCIA

CLAIM NO. SLUHCV2024/0158

BETWEEN:

(1) ELIZABETH CHARLEMAGNE POPO
(2) ELIZABETH CHARLEMAGNE POPO Representative party of THE ESTATE OF DONALD POPO

Claimants

and

NADIA JULES as representative party for THE ESTATE OF JOSEPH JULES

Defendant

Consolidated with:

CLAIM NO SLUHCV2022/0030

BETWEEN

(1) ELIZABETH CHARLEMAGNE POPO
(2) ELIZABETH CHARLEMAGNE POPO Representative party of THE ESTATE OF DONALD POPO

Claimants

and

MARIE POPO JULES

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini High Court Judge

Appearances:

Ms Leandre Verneuil for the Claimants
Mrs Esther Greene-Ernest for the Defendants

2025: March 24; 25
May 20
December 31

JUDGMENT

[1] **ST ROSE-ALBERTINI, J. [Ag]:** These consolidated fixed date claims concern a dispute among family members over a parcel of land which the defendants own and agreed to donate and sell in part to the claimants. On the authority of this promise the claimants proceeded to erect their dwelling house and paid for a survey and mutation of a plot of land to facilitate the donation and sale. Through a series of unfortunate events the relationship between the parties broke down, resulting in the agreement not coming to fruition.

[2] Consequently, the claimants filed these actions, initially seeking specific performance of the transfer of the parcel of land on which their house is erected, or alternatively damages for breach of contract, or purchase/ payment of the value of the house by the defendants, amongst other relief. At trial, the claimants chose not to pursue their claim for specific performance, seeking instead only damages for breach of contract or other appropriate relief as deemed fit.

[3] The defendants have vigorously defended the claim asserting that the claimants failed to complete the agreement as intended, and counterclaimed for vacant possession and mesne profits for unlawful use and occupation of the said parcel of land.

The Claimants Case

[4] The first claimant in both claims, Mrs Elizabeth Charlemagne-Popo ("Mrs Popo"), is the daughter-in-law of the defendant in the first claim[1], Mrs Marie Popo-Jules ("Mrs Jules"). The second claimant Mr Donald Popo ("Mr Popo") is deceased, and was Mrs Jules son,

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and the stepson of the defendant in the second claim[2], Mr Joseph Jules ("Mr Jules") who is also deceased.

[5] In summary, the claimants case is that Mrs Jules promised her son, the late Mr Popo, that she would transfer a portion of land comprising approximately 9,500 square feet to him and his wife, Mrs Popo. The transfer would consist of 5,000 square feet of the land as a gift inter vivos, by way of deed of donation solely to Mr Popo, and another portion in the same vicinity comprising approximately 4,500 square feet, would be sold to both claimants in their joint names, for $11,000.00.

[6] The claimants assert that acting on this agreement they commissioned a survey and mutation of a parcel of land, comprising 8,487 square feet which is now registered as Parcel No. 0839B 136, and obtained a loan to pay for the smaller portion of land to be sold to them. The claimants further assert that because Mr Popo was unemployed at the time, and he and Mrs Popo were advancing in age, they required assistance to qualify for the loan. Mrs. Popo's son, Lorenzo John ("Lorenzo"), agreed to assist them. A deed of sale was prepared in favour of the claimants, and a hypothecary obligation ("the mortgage") was prepared in the names of Mrs Popo and Lorenzo as principal debtors, with Mr Popo as surety, based on instructions from their financial institution.

[7] The claimants assert that the defendants were invited to attend the Chambers of their legal practitioner, Mr Cyril Landers ("Mr Landers"), of Cyril Landers & Associates, to sign the deed of sale. They did so, but Mrs Jules refused to sign the deed saying that it was not in the name of her son Mr Popo, but rather in the name of Mrs Popo and her son Lorenzo, and this was not what she had agreed to. Matters came to a halt, and after several efforts which ended in Mrs Jules failing to execute the deed of sale, the loan funds, which had already been disbursed to the claimants' legal practitioner was returned to their financial institution. The claimants assert that apart from the expenses of the survey, they built a home on the property, several years before Mrs Jules' refusal to sign the deed. Consequently, they seek damages for loss and expense incurred.

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The Defendants Case

[8] The defendants do not dispute that Mrs Jules agreed to donate a portion of land solely to her son, the late Mr Popo, and that she and her late husband Mr. Jules agreed to sell a smaller portion of land to the claimants jointly, for $11,000.00. They aver that upon attending Mr Lander's Chambers to sign the deed of donation Mrs Jules was presented with a deed of sale in which Mrs Popo and Lorenzo were the named purchasers, to the exclusion of her son Mr Popo, as donee and purchaser. The defendants further aver that Mrs Jules can read, and knows what she saw, and that her daughter Nadia Jules ("Nadia") who accompanied her to the lawyer's office, also saw what was written on the deed and can attest to it. Thus, she withdrew her decision to donate and sell land to her son as promised, based on what had transpired at Mr Lander's Chambers. Further, the claimants' subsequently decided that they were no longer interested in proceeding with the agreement, which she accepted. Mrs Popo has counterclaimed for vacant possession and mesne profits for use and occupation of the parcel of land.

The Claimants Evidence

[9] Mrs Popo testified at trial. Mrs Shirley Lewis ("Mrs Lewis") the legal practitioner who took initial instructions from the parties and prepared an agreement for sale to reflect their intentions, testified on behalf of the claimants. Regrettably, Mr Landers who was the notary who prepared the deed has since passed away, however, Mrs Euphina Landers ("Mrs Landers"), who was the Office Manager at his Chambers at the time of the transaction, testified on behalf of the claimants.

Mrs Popo

[10] Mrs Popo testified that after marrying her late husband, in 2007, they first cohabited in a rented house at Millet. As they were desirous of building a permanent home, they discussed the matter with her husband's mother Mrs Jules, and his stepfather Mr Jules. They were given permission to construct their home on a portion of land which the defendants owned at Millet. It was agreed that 5,000 square feet of land would be donated

to her husband and a remaining portion of about 4,500 square feet would be sold to them for $11,000.00.

[11] At that time, the land was not surveyed and the defendants requested that the claimants bear the cost of the survey, on the understanding that such cost would be deducted from the final purchase price. Mrs Popo stated that relying on this promise, she paid $4,500.00 to survey the land[3], and a further $500.00 to process the mutation and registration of the parcel of land.[4] The land, which originally formed part of Parcel No. 0839B 74, was subsequently mutated and registered as Parcel No. 0839B 136.[5]

[12] She also produced receipts for other incidental expenses of having the land surveyed including $2.60 for DCA forms[6], $60.00 for registration of the plan[7] and $10.00 for obtaining a land register.[8] She stated that she borrowed $12,000.00 from the Saint Lucia Civil Service Co-operative Credit Union ("the Credit Union") to finance construction of the house and purchased building materials valued at $12,692.32 from Linmore International House Ltd.[9] The house, which is constructed with timber and built on a concrete foundation, was later valued at approximately $60,000.00[10]

[13] Mrs Popo stated that in order to secure a loan to pay for the land, the defendants gave them a letter dated 25th July 2009 addressed to the Credit Union, indicating their intention to sell the land for $11,000.00[11] During the loan negotiation process the Credit Union raised concerns about Mr. Popo's unstable employment. To satisfy the lending requirements, they requested a guarantor, and Mrs Popo's son, Lorenzo, agreed to act as such. Mrs. Popo emphasized that her son's role was limited to facilitating the loan application and that he had no ownership interest in the property. On 1st March 2011, she

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[3] Exhibits EP2j and EP2k
[4] Exhibit EP2h
[5] Exhibits EP1 a and b, EP2b and c
[6] Exhibit EP2f
[7] Exhibit EP2g
[8] Exhibit EP2i
[9] Exhibit EP3
[10] Exhibit EP14a
[11] Exhibit EP5

paid a deposit of $2,000.00 to Mrs. Lewis to be remitted to the defendants.[12] Mrs. Lewis later prepared a written agreement for the sale of the land, which was signed by the defendants on 4th December 2015.[13] Although Mrs. Popo acknowledged that neither she nor her husband signed that document, she agreed that it reflected the mutual understanding and intentions of the parties. Mrs Popo stated that a deed of sale[14] was prepared by Mr. Landers of Landers & Associates upon referral by the Credit Union where she had obtained the mortgage to purchase the land and consolidate other debts. Mr. Landers also prepared a hypothecary obligation in the names of herself and her son Lorenzo as principal debtors, with Mr Popo captured as surety, in accordance with the Credit Union's instructions by letter dated 23rd November 2017.[15] The loan was for the sum of $38,452.03.

[14] Mrs Popo testified that Lorenzo's involvement was purely to support the application and not to hold any ownership interest in the property. She maintained that the intention was always that the land and house would belong exclusively to her and her husband. They both signed the deed of sale, but Mrs Jules refused to sign or accept the cheque for the sale proceeds, stating that she no longer wished to sell the land to her. The cheque remained with Mr Landers Chambers for six months.

[15] Mrs Popo alleged that in February and July 2018 her brother in law, Delarius Popo threatened to physically harm her and to burn the house down if she did not vacate the property by September 2018. She and her husband were asked to remove their house from the property by a letter dated 14th June 2018 from the defendants' legal practitioner[16]. Thereafter as a result of the defendants' refusal to sign the deed, a formal letter dated 20th June 2028 was sent to them by the claimants legal practitioner and a caution[17] was registered over the property to protect the claimants interest.

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[12] Exhibit EP7
[13] Exhibit EP8
[14] Exhibit EP11
[15] Exhibit EP12
[16] Exhibit EP16
[17] Exhibit EP13 - Caution Registered on 7th June 2018 as Instrument No. 2335/2018

[16] There was an exchange of correspondence between the legal practitioners representing both parties culminating in a letter dated 23rd April 2019 in which Mr and Mrs Popo were given notice to vacate the land by 26th July 2019.[18] Thus, from December 2018 Mrs Popo says she has been living in rented accommodations. She explained that from December 2018 she has had to pay both the mortgage and rent and worked at 3 jobs to meet her financial obligations. She stated that as a result of the defendants breach, she suffered loss of $28,559.00 in addition to monthly mortgage payments of $1,100.00.[19] She seeks an order that the defendants pay her the value of her house and reimburse her for all sums expended from relying on the defendants' promise that they would own the land. She seek interest on all such sums and costs.

[17] During cross-examination, Mrs Popo accepted that the deed of sale prepared by Mr Landers did not reference the donation but instead presented the entire parcel of land as being sold for $11,000.00. She agreed that Mrs. Lewis returned the deposit of $2,000.00 to her when the transaction was not completed, and that she subsequently gave the deposit directly to Mrs. Jules. Although she conceded that there was no written receipt from Mrs Jules for the payment, she insisted that it was a cash transaction between family members and that her late husband was the only witness to this. Mrs. Popo also confirmed that the sum of $11,000.00 for purchase of the land was returned to the Credit Union after the deed remained unsigned and unregistered.

[18] Mrs. Popo admitted that she moved out of the house in 2018, but was adamant that she still occupied the property, retaining all her belongings there, and returning frequently to care for her late husband who continued to reside there, until his death on 6th August 2023. She maintained that she was effectively evicted from the property by her mother-in-law Mrs Jules. She says she no longer wishes to proceed with acquiring the land, due to her husband's passing and the breakdown in family relations, but stressed that her original intention was always to complete the sale, having made substantial financial and personal investments in reliance on the agreement with the defendants.

[18] Exhibit EP16

[19] See paragraph 34 of Affidavit of Elizabeth Charlemagne Popo in support of claim sworn to on 7th December 2021

Mrs Lewis

[19] Mrs. Lewis testified that she is an attorney-at-law of over 40 years standing, and was engaged by Mrs Jules to prepare an agreement for sale concerning a portion of land intended for her son, the late Mr Popo, and his wife. She acted for all the parties involved (the vendors and purchasers) due to the close familial relationship. The agreement provided for donation of 5,000 square feet of land to Mr Popo, and sale of the remaining land to the claimants jointly for $11,000.00. Mrs. Lewis stated that she prepared the agreement for sale in accordance with those terms.

[20] During cross-examination she acknowledged that the agreement was never signed by the claimants. She confirmed that she notarized the agreement, which bore the signature of Mrs Jules and the mark of the late Mr Jules. Mrs Lewis confirmed that she initially received a deposit of $2,000.00 from Mrs Popo, but returned it to her when the sale did not proceed. She confirmed that a survey was undertaken at the claimants' expense and to the best of her knowledge there was no contention among the parties at that time, regarding the terms of the agreement. It was only later that disagreement arose concerning payments, and she ceased to be involved in the matter once the transaction stalled.

Mrs Landers

[21] Mrs Landers testified that she is the widow of the late Mr Landers, and the Office Manager at the Chambers of Cyril Landers & Associates. She stated that the claimants were clients of the firm, and were liaising with Chambers through the Credit Union. She was aware that Mr Landers prepared a deed of sale on behalf of the claimants, together with the related mortgage document for Mrs Popo and Lorenzo, with Mr Popo as surety.

[22] She recalled that the defendants along with their daughter, Nadia, visited the office, but Mrs Jules refused to sign the deed of sale, on the basis that the sum of $11,000.00 was inadequate. Further, that objection was voiced primarily by Mrs Jules' daughter Nadia. She stated that Lorenzo's name was not on the deed of sale, but was on the mortgage document. Mrs Landers stated that the loan funds remained at Chambers for at least 3

months before it was returned to the Credit Union. Following the conduct of the defendants as the vendors, a caution was placed on the property.

[23] During cross-examination, Mrs Landers accepted that she did not attend meetings held between Mr. Landers and clients in his office, and could not speak to what was discussed during those meetings. She agreed that the standard practice was for the vendors to review only the deed of sale, and not the mortgage document. She says the mortgage was not shown to the defendants. She acknowledged a discrepancy between the evidence given in her witness statement where she stated that the refusal to sign was because of the price, and the letter issued on 20th June 2018, which referenced issues with names on the deed, rather than the purchase price. She ultimately attributed Mrs Jules objections to signing the deed to both price and identity concerns.

The Defendants' Evidence

[24] Mrs Jules and Nadia testified on behalf of the defendants.

Mrs Jules

[25] Mrs Jules confirmed that she is the mother of the late Mr Popo, and based on the love and affection she had for him, she promised to donate to him a plot of land at Millet, and also agreed that another plot in the same vicinity would be sold to himself and his wife at the discounted price of $11,000.00. She stated that the only reason she agreed to give up part of her property on these terms was because Mr Popo was her son. However when she went to Mr Landers Chambers to sign the deed of sale and deed of donation, she saw that it was Mrs Popo and Lorenzo's name on the document instead of her son's name. Thus, she refused to sign the deed. She stated that the claimants then made it very clear that they no longer wanted to purchase the property. She accepted that position and withdrew her promise to donate to Mr Popo. She testified that far as she understood, that concluded any discussions about the land transfer and the claimants were to remove their house from her property.

[26] Mrs Jules stated that when the parties tried to resolve the matter with the help of their legal practitioners, the claimants again made it clear that they were no longer interested in purchasing the property, consequently she is not liable for any money spent by them to prepare documents which did not reflect what she had agreed to. She states that the property is valued at more than $11,000.00 and that the claimants have been in occupation of her property for about 13 to 14 years without paying any rent. She admitted asking her legal practitioner to issue a notice to the claimants to vacate her land by 30th September 2018 and thereafter by 26th July 2019, and the claimants have been in unlawful occupation of the property since then. She estimated the rental value of the land as $200.00 monthly.

[27] During cross-examination Mrs Jules stated that the sale price was determined by her husband the late Mr Jules, and while she may have signed an agreement for sale, she did not understand or fully read it, and was unaware that it referred to the 5,000 square feet of land as a donation to her son. She denied having any knowledge of the precise square footage involved, while maintaining that she only ever intended to give two "house spots" to her son. She confirmed that she instructed Mrs. Lewis to strike out the clause concerning survey fees, asserting that she would not pay for a survey when she was already gifting land to her son. She also admitted to placing her initials next to the crossed-out portion of the agreement, but denied having read the remainder of the document. Mrs. Jules asserted that she never agreed to donate any specific area of land and maintained that any donation was her decision alone while the sale was her husband's.

[28] She confirmed that she went to Mr. Landers' Chambers on two occasions, once alone and once with her daughter Nadia. She claimed to be confused over the documents presented to her at Mr. Landers' office, alleging they contained incorrect names specifically that of Mrs Popo and Lorenzo, and that she refused to sign due to the discrepancies she had seen. She admitted that her relationship with Mrs Popo has deteriorated and she ultimately decided against completing the transaction. Nonetheless, she agreed that she had previously given her blessing for the house to be built on the land, and that the claimants had spent their money in this regard. Mrs Jules maintained that she seeks vacant

possession of her property and damages for the claimants' unlawful occupation, since being served with the notice to vacate.

Nadia

[29] Nadia testified on behalf of the Estate of Mr Jules. S**he** is the daughter of the defendants and sister of the late Mr Popo. She stated that her mother had agreed many years ago to donate one lot from her share of the land to Mr Popo, and sell one lot to him and his wife at a discounted price of $11,000.00. Her father agreed with her mother's desire regarding the sale and did not oppose her decision to donate from her share of the land. She testified that her father was unable to read and write and that the contents of the purported documents dated 25th July 2009, 4th December 2015 and 6th June 2017 did not accord with the defendants intentions and are not enforceable.[20] She acknowledged being present at the Chambers of Cyril Landers & Associates on two occasions, when she accompanied her mother. She stated that her mother refused to sign the deed of sale because it did not reflect that she was transferring the land to the claimants but instead reflected a transfer to Mrs Popo and Lorenzo. She also stated that her mother informed her that she withdrew her promise to donate property to Mr Popo during his lifetime, because he showed her ingratitude and disrespect.

[30] In cross-examination, Nadia admitted that she was not present during the original discussions regarding the donation or sale of land, as she resided in the United Kingdom until around 2015. She confirmed she was not involved in drafting or negotiating the agreement for sale. She denied that she discouraged her mother from signing the deed, stating instead that she remained neutral and left the decision to her mother. She maintained that she saw the names of Mrs Popo and Lorenzo on the deed and denied that her brother's name appeared on the document.

Preliminary Point

Is the claim against the Estate of Mr Jules (SLUHCV2024/0158) prescribed?

[20] See Exhibits EP5, EP8 and EP10

[31] Prescription was raised as a bar to the claim against the Estate of Mr Jules, at paragraph 4.8 of the affidavit of in Nadia Jules filed on 12th August 2024. In essence she asserts that any cause of action against the Estate, which is premised on the alleged agreement, is prescribed by law, and that any claim which the claimants would have against this defendant is completely extinguished by operation of law.[21] Counsel for the defendants provided no written or oral submissions to assist the Court on the point.

[32] Counsel for the claimant submitted that the breach occurred when the defendants by letter dated 23rd April 2019 gave an ultimatum to the claimants to give vacant possession of the property on or before 26th July 2019. Thus, the second claim was filed on 13th June 2024, and is within the prescribed period of 6 years.

Discussion

[33] Article 1069 of the Civil Code[22] ("the Code") provides that obligations may be extinguished by prescription. As defined by Article 2047 prescription operates to discharge an obligation through the lapse of time, subject to conditions established by law, and is a complete bar to any action for fulfilment of the obligation, where a party has not asserted the claim within the legally prescribed period.

[34] Article 1 of the Code at paragraph 12 defines a debtor as ***not merely one who owes money, but one who owes or is subject to any kind of obligation****, whether arising from contract, quasi-contract, delict, quasi-delict, or any other source.* At paragraph 13 ***"In default" is predicated of a person who has failed to fulfil an obligation*** *or to obey the order of a court of justice, and so long as the failure continues…"* Article 999 identifies circumstances in which a debtor may be placed in default; namely by (i) the terms of the contract, (ii) operation of law, (iii) filing a suit, or (iv) written demand, except in the case of a verbal contract. In this jurisdiction, concerning breach of a contractual obligation, other than a debt, a party is said to be in default once the breach has been identified and is

[21] See paragraph 4.8 of Affidavit of Nadia Jules

[22] Cap 4.01 of the Revised Edition of the Laws of Saint Lucia

formal written communication is sent to the debtor. Additionally, default may be operation of law where a debtor has expressly refused to perform.

[35] It is worth noting here that when the first claim was filed on 25th January 2022 Mr Jules was deceased. Mrs Jules and his Estate were named as the defendants. The claim was served on Mrs Jules but not on the Estate. On 28th June 2022 the claim was stayed, as the parties elected to engage in mediation. Mediation was unsuccessful, and the stay was lifted on 30th March 2023. By 30th April 2023, the claim against the Estate had expired, with no timely application to extend the life of the claim, in relation to this defendant. The second claimant Mr Popo passed away before the second claim could be refiled. Letters of administration was obtained on behalf of his Estate. By order dated 11th June 2024, Nadia was appointed as the representative party for the Estate of Mr Jules following which the second claim was re-filed on 13th June 2024 and served on her on 12th July 2024.

[36] Having elected not to pursue the claim for specific performance, the alternative cause of action against the defendants was for special and/ or general damages which flowed from the alleged breach of an agreement among family members to donate and sell land, if the claimants are able to succeed on their claim for such breach. Alternatively, the claimants asked to be compensated for loss and expenses incurred by their reliance on the agreement, and for payment for the value of the house constructed on the land.

[37] The evidence is that the defendants went to Mr Lander's Chambers to sign the relevant deed, sometime after the instruction letter dated 23rd November 2017 was sent by the Credit Union, to Mr Landers. Mrs Jules refused to execute the deed, which the claimants argued was a breach of the agreement. By letter dated 20th June 2018 the claimants through their legal practitioner notified the defendants of the alleged breach. Although the precise date of the failure to execute the deed is not evident from this letter, I accept that pursuant to Article 999 of the Civil Code[23] the prescriptive period would have commenced no earlier than 20th June 2018, when the facts surrounding refusal to sign the deed were put to the defendants in a letter.

[23] Cap 4.01 of the Revised Edition of the Laws of Saint Lucia

[38] In this jurisdiction claims of a contractual nature are generally said to be prescribed by 6 years on the authority of Article 2121, and in particular 2121(4). Nonetheless, such categorization would of necessity, be fact specific. It states:

> ***"Section V Certain Short Prescriptions***
>
> *2121. The following actions are prescribed by 6 years:*
>
> *1. For professional services and disbursements of advocates and attorneys, reckoning from the date of the final judgment in each case;*
>
> *2. For professional services and disbursements of notaries, and fees of officers of justice, reckoning from the time when they became payable;*
>
> *3. Against notaries, advocates, attorneys, and other officers or functionaries who are depositaries in virtue of their office, for the recovery of papers and titles confided to them; reckoning from the termination of the proceedings in which such papers and titles were made use of, or, in other cases, from the date of their reception;*
>
> *4.* ***Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; bank notes, however, being excepted from this prescription;***
>
> *5. Upon sales of movable effects between non-traders, or between traders and non-traders, these latter sales being in all cases held to be commercial matters ;*
>
> *6. For hire of labour, or for the price of manual, professional, or intellectual work and materials furnished, saving the exceptions contained in the following articles;*
>
> *7. For visits, services, operations and medicines of physicians or surgeons, reckoning from each service or thing furnished."*

[39] The claim was properly filed in the Civil Division of the High Court, and may not be categorized as a claim of a commercial nature, nor does do not fall within the scope of commercial claims as described by Rule 71.1 (2) and (3) of the Civil Procedure Rules (Revised Edition) 2023. Additionally, it does not fit into any of the descriptions contained in Article 2121. In **Nelson and Others v First Caribbean International Bank (Barbados) Limited**[24] the Privy Council questioned whether Article 2121(4) applied to a claim for damages following from contractual default as that Article speaks of the six-year prescriptive period running from "maturity". Although the Board did not decide the point

[24] [2014] UKPC 30 at paragraphs 19-20

then, it was said that it appears very arguable that claims for damages for breach of a contractual obligation are subject to the thirty-year prescription under Article 2103 of the Code, which states:

> *"2103. All rights, things and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith."*

[40] It is well settled that a judicial demand in proper form, duly served upon the person whose prescription it is sought to hinder interrupts prescription.[25] In **David Sweetnam et al v The Government of Saint Lucia et al**[26], cited with approval in **Dorina Joseph et al v Nora St Louis**,[27] Gordon JA stated that, *"[p]rescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with the plain ordinary meaning of the language of article 2085."*

[41] Thus, in relation to the second claim, for which the prescription point was raised, I am of the view that Article 2103 is the most practical and plausible prescriptive provision, and the limitation period would be 30 years. Assuming, as stated above, that time commenced to run from 20th June 2018, as the date the alleged breach was identified and communicated to the defendants, the second claim was filed on 13th June 2024 and served on 12th July 2025, which would have been well within the 30-year period prescribed by law. Thus, the second claim remained viable at the time of filing, and constitutes a lawful and timely invocation of the claimants rights.

The Issues

[42] The issues to be resolved in relation to both claims are as follows:

1. Was there an agreement between the claimants and defendants?
2. Was the deed of sale in the name of the first claimant and her son, to the exclusion of the second claimant?

[25] Article 2085 of the Civil Code of Saint Lucia

[26] Civil Appeal No. 43 of 2005 per Gordon JA at [11]; Dorina Josephet al v Nora St. Louis et al Saint Lucia HCVAP2008/025 (delivered 6th July 2009, unreported).

[27] SLUHCVAP2008/025 delivered on 6th July 2009.

3. Did the defendants breach their agreement with the claimants, or did the claimants repudiate the agreement, and if so, was such repudiation accepted by the defendants thereby bringing the agreement to an end?
4. Are the claimants entitled to damages, and if so what is the measure of such damages?
5. Are the defendants entitled to vacant possession of Parcel No. 0839B 136?
6. Should the defendants purchase the house or pay its value to the claimants?
7. Are the defendants entitled to mesne profits for the claimants' occupation of Parcel No. 0839B 136?

Issue 1 : Was there an agreement between the claimants and defendants?

[43] Counsel for the claimants submitted that a binding agreement existed between the claimants and the defendants, whereby the defendants agreed to donate 5,000 square feet of land to Mr Popo and to sell a smaller portion to both claimants for $11,000.00. Counsel stated that relying on this promise, the claimants paid a deposit of $2,000.00 and acted to their detriment by constructing a dwelling house on the land, paying for the survey and mutation of the parcel of land, and securing a loan from the Credit Union to complete the purchase. The requisite deed of sale was also prepared, for execution by the parties.

[44] Counsel for the defendants submitted that no binding agreement was formed between the parties for the sale of Parcel No. 0839B 136. Counsel contends that while a document styled as an agreement for sale existed, it lacked essential validity as it was not signed by all parties, and neither of the claimants signed it.

[45] Counsel also argued that there was no meeting of the minds between the parties, as the deed of sale failed to reflect the true intentions of the defendants, namely the donation of a portion of the land to Mr Popo and the sale of a smaller portion to both claimants. Thus there is no enforceable agreement. Additionally, the deed of sale prepared and presented for signature included the names of Mrs Popo and her son Lorenzo, to the exclusion of Mr Popo, thereby deviating substantially from what was originally contemplated. Counsel further argued that the deposit was returned to the claimants, thus no consideration passed.

Discussion

[46] **Halsburys Laws**[28] states that a valid contract requires: (1) an agreement; (2) an intention to create legal relations; and (3) consideration. A contract is also generally defined as a promise or set of promises which the law will enforce.[29] It is trite that for a binding contract to crystallize, there must be an offer capable of acceptance, an unequivocal acceptance of that offer, and consideration moving from the promisor to the promisee. The court must also find that the parties intended to create legal relations.

[47] It is common ground between the parties that an agreement existed between them for transfer of two portions of land partly by donation and partly by sale to the claimants. It is not disputed at all, that the parties agreed that the claimants would purchase a smaller parcel of land (about 4,500 square feet) from the defendants for the sum of $11,000.00 and a separate portion of land (about 5,000 square feet) would be donated to Mr Popo by the defendants as his mother and stepfather. On that basis the claimants advanced a deposit of $2,000.00 to Mrs Lewis in pursuance of the sale component of the agreement.

[48] The parties attempted to reduce the terms of this oral agreement into writing by an Agreement for Sale dated 4th December 2015. That agreement is signed by or on behalf of both defendants, which was accepted by Mrs Jules, but it is not signed by the claimants. In cross examination both Mrs Popo and Mrs Jules accepted that the agreement for sale accurately reflected the agreement contemplated by the parties. Mrs Lewis confirmed that in consideration of the transaction, Mrs Popo paid a deposit of $2,000.00 to her, and that at the time she represented both parties because of their familial relationship. She admitted to having issued a receipt to Mrs Popo for the deposit, which was tendered in evidence as exhibit EP7.

[49] While I accept Mrs Jules evidence that she had no knowledge of the precise square footage involved and that she only intended to give two "house spots" to her son, I did not consider this evidence to be demonstrative of the fact that the parties were at odds on any

[28] Volume 22(2025) at paragraph 31
[29] Pollock's Principles of Contract 13th Edition

of the material term of the agreement. In fact, based on the understanding between them, the claimants proceeded to construct their home on the land over several years, and undertook a survey and mutation of a parcel of land which encompassed the area on which their house was constructed. Thereafter the defendants attended at Mr Landers' Chambers to sign the deed(s) in favour of the claimants. This evidence is demonstrative of the parties' common intention to create legal relations, in the circumstances of this family arrangement.

[50] The parties were unequivocal in their understanding that the agreement was for a donation of about 5,000 square feet of land by Mrs Jules to Mr Popo, and sale of a portion of land within the vicinity of about 4,500 square feet, to the claimants jointly, at the discounted price of $11,000.00. There was agreed consideration, and a deposit was paid towards the sale price. The claimants obtained a loan to pay for the smaller portion of land, which was disbursed to their legal practitioner, for payment to the defendants. On the totality of this evidence I accept that in the absence of a written agreement duly signed by all parties, there was an oral agreement and understanding between the parties, which contained all the essential elements of a valid contract.

Issue 2 : Was the deed of sale in the name of the first claimant and her son, to the exclusion of the second claimant?

[51] This issue is factual and may be disposed of succinctly. The defendants assert that the deed of sale listed Mrs Popo and Lorenzo as the purchasers, thereby excluding Mr Popo, who was intended to have sole ownership of the greater portion of the land. The claimants deny this, referring to the Credit Union's letter instructing Mr Landers of Mr Popo's role as surety in relation to the mortgage. Counsel for the claimants submitted that the only reason Mr Popo would be listed as the surety in the mortgage was because he was to be the co-owner of the land, alongside the first claimant.

[52] It is trite that he who asserts must prove. Only one deed was presented in evidence, by the claimants, and it is clearly stated that the claimants are the purchasers of a portion of land registered as Parcel No. 0839 136. Although the defendants say otherwise, I do not accept

this to be the case, as the deed exhibited is in typical form for these circumstances. The instruction from the Credit Union was for preparation of a mortgage in which the Mr Popo was to be captured as surety, he being part owner of the land. The claimants explained that Lorenzo featured as principal debtor along with Mrs Popo, in the mortgage in order to qualify for the loan. Such transactions are not unusual, and in such a case the deed of sale captures the purchasers, whilst the hypothec captures the principal debtors and surety.

[53] I therefore conclude that on a balance of probabilities the deed presented to the defendants at Mr Lander's Chambers is the same one which was adduced in evidence and shown as exhibit EP11. It captured the names of both claimants only, as the purchasers of the land. In the circumstances, the evidence of the claimants is preferred over that of the defendants.

Issue 3 : Did the defendants breach their agreement with the claimants, or did the claimants repudiate the agreement, and if so, was such repudiation accepted by the defendants thereby bringing the agreement to an end?

<u>Breach of Contract</u>

[54] Counsel for the claimants contend that the defendants breached the agreement by refusing to sign the deed of sale and issuing a letter dated 14th June 2018 demanding vacant possession of the land. Counsel further submits that there was no valid reason for the defendants refusal to sign the deed.

[55] Counsel for the defendants submitted that the defendants were justified in refusing to execute the deed as it did not conform with the agreement between the parties, and the deed presented purported to sell the entire parcel of land to the claimants with no reference to a donation to Mr Popo, as agreed. Further, the defendants were not, and could not be put in default, as the agreement was for part donation and part sale of land, whereas the deed presented for signature did not reflect what they intended to convey. Counsel further submitted that as the deed contained no reference to a deed of donation to Mr Popo but rather the entire property was reflected as being sold for $11,000.00, which

was never the agreement. Moreover, the effect of the deed as presented was that Mr Popo would have acquired only a one half share of 8,478 square feet of land, when it was intended that he would have a house spot (5,000 square feet) donated solely in his name, as well as ownership of one half of the lot to be sold.

Discussion

[56] Upon examining the deed, I observe that it does not accurately reflect the oral agreement between the parties. Instead it records a transfer of 8,478 square feet of land to the claimants jointly for the sum of $11,000.00. Both parties acknowledged that the true intention was for a larger parcel equivalent to a house spot to be donated solely to Mr Popo, and a smaller parcel to be sold to both claimants.

[57] The confusion appears to have originated from two letters of intent addressed to the Credit Union[30] which the claimants admitted was for the purpose of obtaining the loan to purchase the land. They were both signed by the defendants before a Justice of Peace. The letters stated the following:

> *"I, Nicholson Jules, and Marie Jules of Millet have agreed to sell 9,500 square feet of land in Millet to Elizabeth Charlemagne Popo and Donald Popo of Millet for $11,000."*

[58] It appears that these terms were ultimately reproduced in the deed, albeit that the parcel described in the deed was slightly less than 9,500 square feet.

[59] I accept that Mrs Jules attended Mr Landers Chambers to sign a deed of sale in favour of the claimants jointly and a deed of donation in favour of her son, Mr Popo. The deed presented to her, although naming the claimants as the purchasers would not have been in conformity with what was agreed by the parties. She refused to sign it, albeit for a different reason (that her son's name did not appear on the deed). Based on the agreement the defendants ought to have been presented with a deed of donation for 5,000 square feet of land to Mr Popo solely, and a deed of sale for a smaller portion of land (about 4,500

[30] See Exhibits EP5 and EP10

square feet) to Mr and Mrs Popo for $11,000.00. I accept that this was the bargain that the parties intended and admitted in evidence.

[60] In light of this departure from the agreed terms, the defendants would have been justified in refusing to sign the deed of sale in the manner presented. It appears that there was no subsequent revision to the deed, nor was a deed of donation presented, which would have enabled the parties to conclude the agreement as intended. It therefore could not be said that the defendants had breached the agreement by failing to sign the deed.

[61] I disagree with Counsel for the claimants, that there was no valid reason for refusing to sign the deed. Indeed, it did not conform to the agreement, as the defendants did not agree to sell 8,478 square feet of land to the claimants for $11,000.00. The fact that the letter of intent sent to the Credit Union stated something different to what the parties agreed does not change the oral agreement. The onus was on the claimants to ensure that the accurate position was conveyed to the Credit Union. It would have been confusing to the defendants to be presented with only a deed of sale reflecting sale of a parcel of land almost twice the size initially intended to be sold, at the same price of $11,000.00.

[62] Having failed to correct this error, it could not be said on the preponderance of the evidence, that the defendants had breached the agreement by refusing to sign the deed. I therefore conclude that claimants have not established the alleged breach that they seek to rely on, in pursuance of their claims.

Repudiation

[63] Counsel for the defendants submitted that the claimants repudiated the agreement by expressing an unwillingness to proceed and specifically refusing performance in accordance with the agreed intentions of the defendants. Counsel further submitted that the defendants accepted this repudiation, which brought the contractual obligations to an end. Additionally, as the intended deed of donation was never presented or executed by defendants and never accepted and registered by Mr Popo, Mrs Jules was entitled to revoke her intention to donate without any liability to the claimants.

[64] In response, Counsel for the claimants argued that the claimants continuously sought resolution and acted in good faith to complete the transaction. They were willing and offered to pay the full market value of the land. Further, the reasons given by the defendants for withdrawing from the agreement, including alleged disrespect or ingratitude were "after the fact" justifications, which were unsupported by evidence.

Discussion

[65] Lord Wilberforce in **Woodar Investment Development Ltd v Wimper Construction Ltd**[31] described repudiation of a contract as:

> *"...a drastic conclusion which should only be held to arise in clear cases of a refusal, in a matter going to the root of the contract, to perform contractual obligations."*

[66] It is settled law that in order for a communication, or conduct, to be repudiatory, it must be capable of demonstrating an intention not to be further bound by the contract. In the case of **Spiricor of Saint Lucia Limited v Attorney General of Saint Lucia,**[32] cited by Counsel for the defendants, Byron CJ, as he then was, stated:

> *"The legal principles are not controversial. It is clear that conduct, which inevitably leads to the conclusion that a party to a contract will not be able to perform, amounts in law to a repudiation of the contract. Willingness to perform is irrelevant if it is evident that there is no ability to do so. The contract becomes determined if the other party adopts the repudiation by so acting as in effect to declare that he too treats the contract as at an end."*

[67] Counsel for the defendants also referenced **Halsburys laws of England at Volume 9 paragraph 548** which states:

> *"Repudiation may be an express renunciation of contractual obligations. However, it is more commonly implied from failure to render due performance or, in cases of anticipatory repudiation, by the party in default putting himself in such a position that he will apparently be unable to perform when the time comes. A party seeking to rely on repudiation implied from conduct must show that the party in default has so conducted himself as to lead a reasonable man to believe that he will not perform or will be unable to perform at the stipulated time".*

[31] [1980] 1 All ER 571

[32] Saint Lucia Civil Appeal No.3 of 1996 pages 15-16

[68] The evidence revealed that the claimants made efforts at concluding a sale, albeit not in the agreed terms. By the letter dated 20th June 2018 the legal practitioner for claimants informed the defendants of the claimants willingness to pay the market value of the land. Mrs. Landers testified that the loan proceeds remained with the Chambers for at least three months before it was returned to the Credit Union. To my mind, this does not amount to an intention or willingness to conclude the agreement in accordance with the terms agreed by the parties. What it conveys is a reasonable offer for a different arrangement, which the defendants were free to accept or reject.

[69] Upon refusing to sign the deed as presented, by letter dated 14th June 2018[33] the defendants demanded that the claimants remove their house from the land and vacate the property. In reply, the claimants informed the defendants that a caution had been registered over the land to protect their interest.[34] By letter dated 15th August 2018 the claimants expressed a willingness to vacate the property, but found the notice period to be short. Additionally, they requested that the parties meet to settle the matter in a more amicable manner.

[70] By letter dated 14th November 2018, Counsel the defendants informed Counsel for the claimants that at a meeting held on 13th November 2018 the defendants gleaned that the claimants were no longer interested in purchasing the property which was offered, and that they would no longer be making a gift inter vivos to Mr Popo. Thereafter by letter dated 23rd April 2019 Counsel for the claimants was informed that as no resolution was forthcoming over the past 6 months the claimants were required to vacate the property by 26th July 2019. Subsequently, by letter dated 14th April 2021 Counsel for the claimants informed that the claimants were extending a final settlement proposal that the land be sold as promised or that the defendants purchase the house which they had built, relying on the promises made to them by the defendants. It is said that there was no response to this letter.

[33] Exhibit EP16
[34] See letter dated 20th June 2018

[71] Repudiation in its simplest form is clear and unequivocal statements or conduct which shows an intention not to fulfil the contract as agreed. The failure to take steps to conclude the transaction in accordance with the agreed terms, whilst making offers which were different, albeit reasonable, was indicative of the claimants refusal to present the transaction as a deed of donation for a portion of land of about 5,000 square feet and a deed of sale for about 4,500 square feet of land, as agreed. Mrs Popo also agreed in cross examination that she was no longer interested in proceeding with the agreement.

[72] In the circumstances, I am constrained to conclude that it was the claimants who appeared to have repudiated the agreement, by repeatedly making requests to conclude the agreement in a manner which did not accord with the oral agreement. Moreover, they repeatedly requested that the defendants sell the entire parcel of land to them at the market value, which terms the defendants were not obligated to accept, even if they could have, to resolve the dispute.

Issue 4 : Are the claimants entitled to damages? If so, what is the measure of such damages?

[73] The claimants seek compensation for expenses incurred in this venture, including survey costs, legal fees, construction expenses and accommodation amounting to $28,559, or in the alternative that the defendants purchase the dwelling house which is erected on Parcel No. 0839 136 at its market value of $60,000.00.

[74] Counsel for the defendants submitted that no damages, whether special or general, could follow as the defendants are not in default. Further, there has been no unfulfillment of any binding obligation by the defendants to warrant general damages. Counsel argued that the uncontroverted evidence is that the $2,000.00 deposit was returned by Mrs Lewis to Mrs Popo, the Credit Union reclaimed the disbursed loan funds, and the claimants' claims for survey costs, legal fees, and rental expenses are either unsupported by credible evidence, unrelated to any breach by the defendants, or otherwise too remote to be recoverable in law.

[75] More particularly, the defendants reject liability for any rental payments incurred by Mrs Popo after she voluntarily vacated the house, noting that she continued to occupy the premises with her belongings which were left there, and by making regular visits to take care of Mr Popo who continued to reside on the property. Further, there was no proof of rental payments by way of a lease agreement or receipts. Counsel contends that special damages must be proven to be a direct consequence of the non-fulfilment of an obligation, and the claimants have not been able to prove any special damages incurred as a direct result of any breach by the defendants. Counsel further argued that the non-fulfilment of the obligation imposed by the agreement, for execution of a deed in favour of the claimants, was not for a cause which could be imputed to the defendants, and that damages should be reasonably foreseeable at the date of the contract, to be recoverable.

Discussion

[76] In her oral testimony Mrs Popo indicated that she no longer wished to proceed with the purchase of the parcel of land due to the strained family relationship. Having concluded that the defendants did not breach the contract by refusing to sign the deed of sale in the form presented, and without a subsequent amendment to reflect the agreement between the parties, it follows that the claimants would not be entitled to any of the heads of damages which would ordinarily flow, had the defendants breached the agreement.

[77] Concerning the claimants' request for special damages, Article 1001 of the Civil Code stipulates that "damages are not due for non-fulfilment of an obligation until there has been default under some one of the provisions of the preceding section." The preceding section deals with default. I acknowledge that certain expenditures such as the surveys, legal fees, and part construction were undertaken in reliance on the oral agreement. However, having determined that the defendants were not in default, and had not breached the contract by refusing to execute the deed of sale, the claimants are not entitled to an award of the special damages, which they have claimed.

Issue 5 : Are the defendants entitled to vacant possession of Parcel No. 0839B 136?

[78] The defendants claimed entitlement to vacant possession of Parcel No. 0839B 136 as the registered owners, and by letter dated 23rd April 2019 had demanded that the claimants vacate the land on or before 26th July 2019. The claimants argued that they occupied the land under an equitable interest arising from the promise to sell[35] and were in possession with the defendants full consent. Counsel submitted that the demand for possession was not in compliance with Article 1515 of the Civil Code, and thus void.

[79] Article 1515 of the Civil Code states:

> *"Persons holding real property by sufferance of the owner without lease are held to be lessees and bound to pay the annual value of the property. Such holding is regarded as an annual lease...terminating on the first day of May of each year. It is subject to tacit renewal and to all the rules applicable to leases."*

[80] The evidence confirms that Mrs Popo voluntarily vacated the property in December 2018 due to family disturbances. Mr Popo remained in the house and in occupation of the land until his untimely passing in August 2023. The claimants house which is built with timber on a concrete foundation is still on the defendants land. Counsel for the claimant's submitted that they could not be regarded as trespassers, by virtue of a wrongful notice to vacate.

[81] In my view, although the claimants never became registered owners of the land, their possession was initially lawful based on the defendants invitation and promise. However, as the oral agreement never came to fulfillment, the claimants could not be entitled to remain on the land indefinitely. They would have been unauthorized to remain on the land after the final demand for vacant possession was made in April 2019. The claimants were not tenants at sufferance under Article 1515 of the Code, as suggested by Counsel, they never having been tenants, who remained on the premises, upon expiration of a lawful lease agreement.

[35] Evidenced by the caution

[82] I therefore conclude that in these circumstances the defendants would be entitled to vacant possession, having informed the defendants to vacate the premises, on two occasions.

Issue 6 : Payment for the house

[83] In written closing submissions Counsel for the claimants argued that this case ought to be treated differently to those where a possessor had acted in bad faith and as a result to his or her own peril and detriment. Counsel posited that the claimants at all material times acted in good faith and on the understanding that the land would belong to them. They continued to have discussions, in the hope that the parties would arrive at a positive result and the land would be transferred to them. Counsel says the house was built with the permission of the defendants and is made of timber on a concrete foundation, and is not merely a chattel house, which can be easily dismantled. This, Counsel says was not done in bad faith, and was good faith conduct in all circumstances of this case. Further, it would not be possible to remove the house from the land without substantial loss and destruction. As the expectation was that the land would belong to them, they acted on that promise and did all that they possible could to fulfill their obligations in this regard.

[84] In response the defendants contend that they are not at fault, and did not breach the agreement, and may not be compelled to buy the claimants house.

[85] I note that, the house is an improvement to the land, built by the claimants, with the permission of the defendants, in expectation of the subsequent acquisition of the land by the claimants. Thus the surrounding circumstances of how the house came to be on the land would be paramount. They did so in good faith and on the express promise that they would eventually own the land. Mr Popo lived in the house until his untimely passing in August 2023. Mrs Popo, although admitting that she left the house due to family disturbances, left her belongings there and returned periodically to care for her husband during his time of illness. When the terms of the oral agreement were not fulfilled, the claimants made a reasonable offer to purchase the property at the market value. They had already undertaken a survey and mutation, and the area was less than 9,500 square feet.

[86] From the evidence, Mr Popo seemed ready to forgo the three-quarter share in the property, which the initial agreement would have afforded him, and instead take the entire property jointly with his wife, and was willing to pay the fair market price for it. The defendants did not agree. In my view, this offer could have brought about a very reasonable conclusion to this matter. In this regard, I found the defendants refusal to be unreasonable.

[87] To require the claimants to dismantle the structure is not a satisfactory remedy, and would be nothing short of onerous and unjust, in circumstances where the house was erected with the permission and blessings of the defendants. Although it is true that the failure to fulfil the agreement was through no fault of the defendants, and that it was open to the Mrs Jules to withdraw her promise to donate, it is also true that the house was erected over several years, with permission, and in good faith by the claimants. The house remains an improvement to the land, and the parcel of land on which it sits has already been surveyed and mutated by the claimants. It can be put to use by the defendants (rental or outright sale), should they choose to. As they were unwilling to sell the land even at the fair value, they must retain the house and pay its value to the claimants.

[88] In these circumstances, the claimants are entitled to be compensated pursuant to Article 372 of the Civil Code, which is instructive on the law, in such cases. It states as follows:

> *"372. When improvements have been made by a possessor with his or her own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor.* ***If they were necessary, the owner of the land cannot have them taken away. He or she must, in all cases, pay what they cost, even when they no longer exist; except, in the case of bad faith, the compensation of rents issues and profits****.* ***If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented****."*

[89] Regarding the value of the house the claimants relied on exhibit EP14 which shows photographs of the house, and a document dated 3rd December 2018 showing a total value of $60,000.00 for the building. I do not accept this as a suitable valuation.

[90] Consequently, I will order that the parties jointly appoint a quantity surveyor to determine the value of the house, and the defendants shall pay the claimants the value of the house, as determined by the appointed quantity surveyor.

Issue 7 : Are the defendants entitled to mesne profits for the claimants' occupation of Parcel No. 0839B 136?

[91] Counsel for the defendants submitted that the claimants' having been given notice to vacate the property on or before 30th September 2018 and having failed to vacate the property are in unlawful possession of the defendant's property. The defendants claimed $200.00 per month in mesne profits from October 2018 until the date of delivery of possession.

[92] On the other hand, Counsel for the claimants contends that the defendants should not be award mesne profits having regard to all of the circumstances of this case. Counsel submitted that the claimants had an equitable interest in the land given the promise to sell and the investments made to the property based on that promise.

Discussion

[93] The law concerning damages for trespass to land is explored in **Halsbury's Laws** which states as follows:

> *"A plaintiff is entitled to nominal damages for trespass even if no damage or loss is caused: if damage or loss is caused, he is entitled to recover in respect of his loss according to general principles... Where the defendant has by trespass made use of the plaintiff's land the plaintiff is entitled to receive by way of damages such sum as should reasonably be paid for the use. It is immaterial that the plaintiff was not in fact thereby impeded or prevented from himself using his own land either because he did not wish to do so or for some other reason."* [36]

[94] From the evidence, after the defendants refused to sign the deed as presented, by letter dated 14th June 2018 the defendants made a demand for vacant possession on or before

[36] Halsbury's Laws of England, 4th Ed. Vol. 12 at paragraph 1170

30th September 2018. Thereafter, the parties continued to engage in settlement discussions. No agreement was reached and a second letter dated 23rd April 2019 was issued, demanding vacant possession on or before 26th July 2019. I accept that from this point onwards, the claimants remained in possession without lawful authority.

[95] Taking 26th July 2019 as the starting point, the defendants seek mesne profits for the claimants' unlawful occupation of the land over the period of 87 months (26th July 2019 to 31st December 2025), at the monthly rate of $200.00. There was no evidence to substantiate the rate provided by the defendants as the prevailing rental rate for land in question.

[96] Consequently, given the nature of the relationship between the parties and the improvements made by the claimants to the parcel of land, and there being no evidence of any loss occasioned by the defendants, during such occupation, I awards **nominal mesne profits** of $7,000.00 to the defendants. This sum shall be set off from the value of the house when same has been valued, and payment is to be made by the defendants, to the claimants.

Conclusion

[97] In light of the foregoing, I make the following orders:

1. The claim for breach of contract fails.
2. The claimants are hereby ordered to deliver up vacant possession of the portion of land known as Parcel No. 0839B 136 and vacate the building erected thereon within 30 days of the date of this judgment.
3. The defendants shall pay the claimants the monetary value of the house erected on the said land, as agreed or determined by a mutually appointed quantity surveyor, whose cost the parties shall bear equally.
4. The claimants shall pay the defendants the sum of $7,000.00 as mesne profits for the use and occupation of Parcel No. 0839B 136 for the period of unlawful occupation, which shall be set off from the value of the house.

5. As both parties have enjoyed a measure of success, they will each bear their own cost of these proceedings.

Cadie St Rose-Albertini
High Court Judge

By the Court

Deputy Registrar