

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT AND THE GRENADINES



CIVIL SUIT NO: 93 of 2007

BETWEEN:

WALLACE DEAR

Claimant

AND

CARLITA CORDICE

First Defendant

ARTHUR'S TRANSPORT AND / OR  
HEAVY EQUIPMENT RENTAL CO. LTD.

Second Defendant

Appearances:

Samuel E. Commissiong for the Claimant

Sharon Morris- Cummings for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

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2010: February 8  
March 8  
April 13  
2011:  
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**JUDGMENT**

**INTRODUCTION**

[1] **REMY J.:** The Claimant and the First Defendant in this Suit are beneficiaries of the Will of Wallace Jack (deceased). The property which is the subject matter of this Suit (the Grenville Street property) comprises a portion of land situate on 70 Grenville Street,

Kingstown, with a building erected thereon ( the family house ) and is the subject matter of a settlement created by the Will of the deceased. In his said Will, the deceased created a series of life interests. The current life tenant is the First Defendant Carlita Cordice. The Claimant Wallace Dear will succeed Carlita Cordice as life tenant upon her death. It is the Claimant's claim that the First Defendant wrongfully demolished the building, to the loss and detriment of himself and the other remaindermen, namely the persons who stand to succeed as life tenants after her death.

### **THE PLEADINGS**

[2] On the 15<sup>th</sup> March 2007, the Claimant filed a claim form with a statement of claim against the Defendants, seeking the following reliefs:-

- (a) Damages for trespass against the Defendants;
- (b) Damages for voluntary waste against the First Defendant;
- (c) An injunction to restrain both Defendants, their servants or agents and any other person for whom they act, from further demolishing the dwelling house on the Grenville Street property;
- (d) An order that the Defendants and any other person or persons for whom they act be ordered forthwith to restore the said dwelling house on the Grenville Street property forthwith;
- (e) An order that the First Defendant be restrained from disposing, leasing, renting or trying to dispose, lease and/or rent the said Grenville Street property; (f) Any other relief as to the Court may seem fit; and
- (g) Costs.

[3] On the 12<sup>th</sup> April 2007, the Claimant filed an Amended Claim Form and Amended Statement of Claim, seeking the same reliefs, and pleading the following:-

- (a) That the First Defendant and himself are related and are beneficiaries of the Will of Wallace Jack, deceased and that the Second Defendant is a construction company doing business in Saint Vincent and the Grenadines.

- (b) That the First Defendant is a life tenant of the Grenville Street property and that he will succeed her as life tenant upon her death. Further, that he presently has a “substantial remainder interest” in the said property.
- (c) That it was the specific wish of the deceased, as expressed in his Will, that the Grenville Street property never be sold.
- (d) That the First Defendant lived for some time at the Grenville Street property and operated a small shop there. She also rented a part of the property and collected rent from it. However, he does not know how much of the rent money was spent by the First Defendant to renovate and /or repair the property.
- (e) That when the First Defendant vacated the property she” abandoned it and allowed it to fall into disrepair” She never discussed with him the need to repair the property, but that he was advised that the property was capable of renovation and was “well placed to become a substantial commercial property.”
- (f) That in the month of July 2003, the First Defendant paid the Second Defendant to demolish the building without any discussion with him, and without any authority.
- (g) That the Defendants ceased their demolition of the property only after they were threatened with litigation by his Solicitor, acting on his instructions. But by that time, “substantial damage” had been done to the property, “causing it to fall into waste.”
- (h) That on receipt of a document addressed to the First Defendant and the Solicitor for the Claimant and dated 1<sup>st</sup> February 2007 describing the condition of the property, the Claimant’s Solicitor approached the Chairman of the Physical Planning Unit and informed him that he would take steps to allay the concern of the Physical Planning Authority. It was agreed by the Claimant’s Solicitor and the Chairman of the Board that all efforts would be made to secure the property from being dangerous to

members of the public, i.e – to cut down the tall vegetation, secure all windows and doors to prevent objects from falling on passers-by.

(i) That between the 11<sup>th</sup> and 14<sup>th</sup> March 2007, the Second Defendant, through its workmen, and acting on the instructions of the First Defendant, further demolished the property without the knowledge and consent of the Claimant.

[4] By her Amended Defence filed on the 21<sup>st</sup> May 2007, the First Defendant pleaded that during the lifetime of the life tenant Gwendolyn Dear, herself and the said Gwendolyn Dear shared the expenses of doing whatever repairs and maintenance they could to the property which had already begun to deteriorate.

[5] The First Defendant pleaded that the property is more than 100 years old, and is a two story building, the upper floor being of wood and resting on a ground floor constructed with white lime and bricks. She pleaded that in 1936, a major fire on the eastern side of the property damaged the already “fragile walls” of the building and that these walls were never re - enforced after the fire. Further, that at the time of the death of the life tenant Vivien Jack in 1981, the property was already in a state of deterioration, and by 1990 “deterioration was considerably more advanced.” She further pleaded that in or about 1992, a vehicle ran into the pillar supporting the north western corner of the building and smashed it. As a result, the pillar crumbled; the building tilted and had to be supported by props until the pillar was repaired. In that same year, when a new building on the lot to the east of the property was being constructed, the owner of that new building was obliged to do extensive works to the foundations of the property to prevent it from collapsing onto his building.

[6] The First Defendant denied that she abandoned the property and that she allowed it to fall into disrepair. She also denied that she never discussed with the Claimant the need to repair the property.

[7] The Defendants pleaded that while they admit being engaged in demolishing the wooden upper part of the building, they deny that the demolition was wrongful.

- [8] The First Defendant pleaded that on or about 2<sup>nd</sup> February 2007, she was served with a Waste Order by the Physical Planning and Development Board (the Board) which stated that the building was, among other things, “a threat to public safety due to its dilapidated condition.” It ordered the First Defendant to either take steps to restore the building to a fit condition within 14 days of service of the Order, or otherwise demolish the building, failing which she (the First Defendant) would face severe penalties.
- [9] It is this, the First Defendant pleaded that compelled her to engage the services of the Second Defendant and to instruct them to proceed with the demolition.
- [10] The First Defendant denies that the condition of the building was due to any neglect on her part or to her “deliberate attempt to demolish it.” She further pleads that the Claimant’s accusations against her completely ignore the fact that, as life tenant, she is entitled to the rents she could receive from the property, and it would have been in her better interest to do even minimal repairs, if it were “economic” so that she could rent the property, rather than demolish the building.
- [11] The First Defendant pleaded that, before issuing the Waste Order, the Board engaged the services of a Civil Engineer Brian George to inspect the building and report back to them, and that Mr. George reported that “the structure of the building was unsound.” Further, that, in its condition, the building “was a danger to the public.”
- [12] The First Defendant admits that she was told by the Chairman of the Board to “hold off” for the time being because he had spoken to the Claimant’s Solicitor. She pleaded that she expected to receive a letter from the Board “countermanding the Waste Order thereby relieving her from its penalties and any liability for damage caused to the public from the unsafe building.” She pleaded that she would readily have stopped her attempts to “make it safe” if she had received a letter from the Board, as her intention was to protect herself and the estate ( of the deceased) from any liability for injury caused by an unsafe building.

[13] The First Defendant filed an Amended Counterclaim with the Amended Defence, in which she counterclaimed the following:-

- (a) A declaration that she (the First Defendant) is entitled to have a life interest in the property vested in her.
- (b) An order directing the Claimant to execute a deed vesting a life interest in the property in herself (the First Defendant) when it is prepared and presented to him (the Claimant) for signature and if he refuses to do so she (the First Defendant) shall be entitled to execute the same.
- (c) If the Honourable Court orders that the building (the family house) should not be demolished a further order that notwithstanding her (the First Defendant's) life tenancy, the Claimant undertakes all and any responsibility for any and all damage which may result to any person, member of the public or any other property whether real or personal which may result from the unsafe condition of the building.
- (d) Such other Order as may seem fit.
- (e) Costs.

[14] The Claimant filed a Reply to the Amended Defence in which he pleaded that not only did the First Defendant fail to keep the property "in a fit state of maintenance," but that she "was determined to own it to the exclusion of all others, and that when she failed to realize that objective she adopted the alternative course of trying to destroy it at any cost."

[15] The Claimant in the Defence to the Amended Counterclaim pleaded that "the property in its present condition poses no danger to any member of the public and never did."

## **THE EVIDENCE**

[16] Evidence was by Witness Statements and cross-examination. There were two witnesses for the Claimant and four for the Defendants.

### **The Claimant's Witnesses**

[17] In his Witness Statement, the Claimant stated that, on the death of his mother, the life tenancy of the family home (the Grenville Street property) passed to the First Defendant, and that the First Defendant collected all the rents as from April 15<sup>th</sup> 1990.

[18] The Claimant further stated that during the twelve (12) or more years that the First Defendant lived and operated the store at the family home, she never paid any rent.

[19] The Claimant added that after the death of her brother Oswald, the First Defendant "demonstrated a degree of reckless indifference" toward the family home.

[20] He observed that that she (the First Defendant) "embarked on a plan to demolish the family house", and that she did so without consulting him or any of his siblings, even though they were to succeed her as life tenants.

[21] He went on to state that he expected the First Defendant to have informed him if she believed the family house needed to be repaired and to try to work out a programme of renovation. The witness stated that by letter dated July 9<sup>th</sup> 2003, his Solicitor, acting on his instructions, wrote to the First Defendant expressing his concern about the "poor condition" of the family house which had been closed up for a long time and never repaired.

[22] The Claimant recalled that Michael Bacchus, the Senior Environmental Health officer in the Public Health Department, prepared a document dated 25<sup>th</sup> July 2003 verifying that

he “inspected a building on Grenville Street, Kingstown, on 24<sup>th</sup> July 2003” and made certain findings.

[23] The Claimant stated that by letter dated 11<sup>th</sup> August 2003, the First Defendant’s Solicitor informed Medix Pharmacy Ltd, a tenant at the property that it was to vacate the same because of a recommendation by the Public Health Department to demolish the building.

[24] He contended that the First Defendant knew that the letter of recommendation was unauthorized, but used that letter as an excuse to demolish the family house. This witness further contended that the reasons provided by Michael Bacchus for the destruction of the family house were false, and that Mr. Bacchus was subsequently directed by the Permanent Secretary in the Ministry to withdraw his recommendation.

[25] The Claimant asserted that the Second Defendant had started the demolition “quite clandestinely” from the back of the house, and that the extent of the destruction made the family house uninhabitable and dangerous to occupy. He added that by the time the First Defendant attempted to complete the demolition in 2007, the building had become useless.

[26] The Claimant added that by 2007, the First Defendant again used the Second Defendant to continue the demolition of the family house. He asserted that the First Defendant was determined to demolish the family house completely and that her reason for this was to accommodate the desire of a member of the Syrian business community who wanted to erect a modern building in its place.

[27] The Claimant informed the court that his Solicitor on his instructions sought and obtained an injunction against the Defendants to prevent any further demolition of the family house.

[28] Under cross-examination, the Claimant stated that he lived in Canada continuously from 1973, except for short vacations to Saint Vincent.

[29] He admitted that when he came to Saint. Vincent, he never helped to maintain the family house. The witness stated that he used to send money to his mother, but he was not sure if she used the money to maintain the property.

[30] The Claimant further admitted that it was "quite possible" that the house was over 80 years old in 2003. He informed the court that he was 73 years old and "was told that he was born in the family house."

[31] The Claimant stated that "it is quite possible" that the building was in a dilapidated condition in 2003 when Mr. Bacchus saw it but "cannot say for sure." He admitted that he could not say of his own knowledge whether the family house was being maintained by the First Defendant when she lived there. The Claimant however, later stated that he "would expect that she would have maintained it during the years she lived there."

[32] The Claimant contended that he examined the house's exterior when he visited Saint Vincent in 1990 and observed that the same was "deteriorating." He said that he instructed his Solicitor to write to the First Defendant on the issue. The Claimant admitted that he did not contribute to the maintenance of the house. He further admitted that, as far as he knew, there was no "maintenance fund" for the house.

[33] The Claimant admitted that he was aware that the Planning authorities ordered the First Defendant to tear down the building in 2007 and that he was moreover aware that if the First Defendant was told to do so, then "she had to do it."

#### **Alfred Dear**

[34] The next witness to give evidence for the Claimant was Alfred Dear (Mr. Dear), a brother of the Claimant. His evidence as contained in his Witness Statement was as follows:

- [35] Mr. Dear stated that upon his father's death in 1943 his mother Gwendoline Dear moved the family to Grenville Street (the family house) and continued to live there after the death of his grand-father Wallace Jack in 1945.
- [36] Mr. Dear added that shortly after the death of Wallace Jack, the First Defendant left to pursue studies in England. He informed the court that that in 1979, the First Defendant returned home and took up residence at the family house following which opened a business, occupying the downstairs of the property. He recalled that after his aunt passed away and the property was handed to his mother, the First Defendant who continued to carry on business there for approximately eleven years without paying any rent. He claimed that that his mother continued to maintain the property.
- [37] Mr. Dear stated that after his mother Gwendoline Dear passed away in 1990, the First Defendant was the "next in succession."
- [38] He added that in the late nineties, the First Defendant began renting the upstairs portion of the property and that he observed that the property's upkeep was deficient and that certain areas had been allowed to deteriorate visibly from the outside. Mr. Dear added that he observed that shingles or tiles were missing from the front of the building and that several glass panes were broken and missing. He stated that during "the numerous occasions" that he visited Saint Vincent, he never saw any structural defects in the building, and that the First Defendant never drew his attention to any such defects.
- [39] Mr. Dear alleges that the First Defendant "concocted a scheme saying the property was uninhabitable", and that she did so out of "desperation". He added that he was advised by telephone that the building was being destroyed and contacted his brother who forthwith took action to prevent its destruction. The witness observed that the First Defendant allowed some time to elapse, and again hired a demolition company, this time starting from the rear of the building where it would not be visible from the street, until it was too late. He stated that he was again advised of this by telephone, and contacted his brother who then gave instructions to his lawyer to take the necessary legal steps.

- [40] Under cross-examination, Mr. Dear stated that he resides in Canada, and migrated there in 1967.
- [41] He added that when the First Defendant became the life tenant, he continued to collect the rent and that he did not remit the same to her. The witness stated that the First Defendant asked him for the rent but later in his evidence said that she never asked for the same. He added that the First Defendant never told him that she wanted the (rent) money to use towards the maintenance of the family house.
- [42] Mr. Dear stated that he was not in Saint Vincent at the commencement of the property's demolition in 2003, and that he had not seen the then state of the property.
- [43] Mr. Dear admitted that there was no provision in the will of the deceased Wallace Jack for maintenance of the property. He stated that after the death of the deceased, two persons, namely two life tenants, occupied the family house before the First Defendant, and that they did so between the period 1945 to 1990.
- [44] Mr. Dear admitted that during the eighties, he visited the family house about 3 or 4 times, and that he lived there. He added that between 1990 to 2003 he visited almost every year excepting 1994. The witness recalled staying at the family house in 1990, 1991 and 1992 only.
- [45] Mr. Dear admitted that the family house had several wooden beams inside and that it contained wooden partitions. He further observed that the front of the building was made of wood and also contained a wooden gallery or porch hanging over the sidewalk. He admitted that the partitions and beams were the same ones that were there when the deceased Wallace Jack was alive.
- [46] He stated that he was of the opinion that the First Defendant failed to maintain the property as best as she could.

[47] Mr. Dear admitted that he did not see the state of the building in 2003 when Mr. Bacchus recommended the demolition of the property. He further admitted that he did not see the state of the family house in 2007, but that he saw the property in 2006, and that it manifested a "lack of care". Mr. Dear acknowledged that his observations were of the property's exterior and that "the windowpanes were broken and not replaced." Mr. Dear further acknowledged that he did not go inside the property in 2006.

[48] Mr. Dear stated that it was "possible" that the planning board ordered the demolition of the property in 2007 because the said property was dilapidated.

### **The Defendants' witnesses**

#### **The First Defendant**

[49] In her Witness Statement the First Defendant stated that she is the cousin of the Claimant, was born in the family house in 1925 and lived there until she was 21 years old, when she left to study nursing in England. She stated that during the "50 plus years of occupancy" of the family house by "Aunts Vivian" (Vivian Dear) and "Gwen" (Gwendoline Dear), "there was hardly any regular maintenance work done on the building." She observed that there were virtually no improvements to the house over the years save and except for a "concrete toilet" built upstairs by the Claimant and which replaced the "bucket toilet" downstairs. The First Defendant further stated that the only other change to the property was the addition of a concrete kitchen upstairs which was funded by her before she became life tenant. This kitchen the First Defendant says replaced the downstairs kitchen with the open drain that fed into the public drain. The First Defendant observed that "These were the only major changes to the property in the 35 years since Auntie Vivien (Vivian Dear) took over as life tenant."

[50] The First Defendant further stated that prior to her becoming the life tenant, the property was already aged and in a bad condition. She added that before becoming a life tenant, the floor boards were becoming rotted and termite eaten. She observed that there was "manifest deterioration" evident in this building "whose upstairs comprised mainly of wood." She stated that she recalls as a child that a fire destroyed the two neighbouring buildings to the left of the property (i.e. the family house). She added that firemen soaked the family house to prevent it becoming ablaze with the result that the wall on the side of the burnt houses and the window began to ignite and become severely scorched. This wall she recalled was never replaced. The First Defendant further pleaded that sometime in the 1940's, while she was still living at the family house, a motor vehicle struck and demolished the eastern pillar of the same side of the building that the fire had damaged. This, she stated, "did not help the integrity of the structure at all especially when one considered the fact that the building was always shaking."

[51] The First Defendant stated that when she became life tenant in 1990, the property was not only very aged but deteriorated and that it continued to show its age. She recalled that the floor boards began to deteriorate. The witness explained that partitions were termite eaten and infested and that dust from the deteriorating and aged wood fell from the wooden gallery floor onto the boutique. She added that the building continued to shake and that cracks continued to develop at various places in the wall upstairs. The First Defendant added that the building could not be restored by changing floor boards and leaking galvanise and that she had spent "thousands of her own dollars in trying to upkeep maintain and insure the property."

[52] The First Defendant went on to state that that in July of 2003, she went to the Ministry of Health to obtain assistance because of "the extreme rat infestation". She added that that she was referred to a Mr. Bacchus who then visited the premises (the family house) with her for the purpose of dealing with the rats. The witness noted that after looking at and walking through the building, Mr. Bacchus declared that the building "was in a very bad state and that it had to come down." She stated that she was concerned that "liability could be placed on (her) personally if the building collapsed and injured someone." The

witness stated that through her "then" lawyers Commissiong & Commissiong, she wrote to all the remaindermen, including the Claimant, informing them of her intention to carry out the recommendations of Mr. Bacchus.

[53] Under cross-examination, the First Defendant stated that she became life tenant after the death of Gwendoline Dear in 1990. She stated that she understood her responsibilities as life tenant, which were to make sure that she upkeep the property and to get rent from the property.

[54] She stated that she understood upkeep to mean that if there were leaks or boards that were rotten and that she was to replace them. She stated that she faithfully performed her duties.

[55] She admitted that she and the Claimant were the Executors of the Vivian Doris Jack's Estate.

[56] She stated that she left the family home in 1993 and went to live elsewhere and that she allowed a family member to stay in the family house for 6 months thereafter. The witness observed that at the end of that period, she caused a fellow called Jimmy to stay in and secure the property and that he remained on the same until the demolition commenced in 2003. The First Defendant recalled that Jimmy lived upstairs and cleaned the property and that she was the one who maintained the same and would employ a carpenter to look after it to ensure that the building had a longer life. She recalled that she owned a shop downstairs the property during that time. She added that Medix Pharmacy rented a portion of the downstairs of the property from 1990 until just prior to the demolition in 2003. She recalled that Medix paid the rental to Jack Wear and that the other downstairs tenant called Isles also paid rent.

[57] The witness recalled visiting the Public Health Department because of the problems of rats in the family house and the yard. She added that she and Mr. Bacchus visited the

family house and that he produced a report on 25<sup>th</sup> July 2003 that she carried to her attorney Mr. Bertram Commissiong.

[58] The First Defendant stated that she commenced the building's demolition from the back, before she was stopped.

[59] She observed that after the first demolition in 2003, she could not enter the property as the gate was locked. She added that she was unaware of the extent of the demolition activities in 2003 and that she observed from the front that the building was partly demolished, and that the back of the same was demolished, right up to the middle.

[60] The First Defendant recalled hat that Vivian Jack used to fix the boards etc. in the family house and that during Gwendoline Dear's life tenancy she lived with her in the family house and that they both looked after the place.

[62] The First Defendant observed that the family house shook even during the life tenancy of Vivian Jack, and that fire, earthquake and big things passing down the road caused the cracks in the building.

### **Wendell Lee**

[63] The next witness to give evidence for the Defendants was Wendell Lee (Wendell Lee) .In his Witness Statement Mr. Lee stated that he was a Contractor by profession and that he had been involved in the contracting business for the past 21 years. He stated that he was familiar with the premises (the family house) since he used to frequent the shop/boutique downstairs. He stated that he recalled smelling the "funny odour of rotted building" when he visited that building "through the 1980's and the early part of the 1990's." He stated that in the early part of 2003, he was contracted to erect columns and beams in a building next to the family house (the Moussa building). He stated that it was not until he started working on the Moussa building that he realized the extent of the rot in the family house.

[64] According to this witness, he noticed that in the narrow area between the two buildings, there were wooden beams supporting parts of the house. The wooden beams supported part of the wooden upstairs of the building. He stated that some of the wooden portions of the building were termite eaten and rotted. He further observed that as they (the workers) went up to the second floor of the Moussa building, it was particularly evident as there were holes in the board where the wood had rotted. He stated that they (the workers) nailed some galvanise there to cover the holes. He stated that as one of the main contractors on the Moussa building, he was concerned that the building would collapse on them (the workers) at any moment. As a result, they had to “take steps to ‘shore’ up the building as best they could. The wall of the building (the family house) was extremely close, a matter of only a few inches to the wall of the Moussa building. He also stated that he observed that the mortar between the columns (of the family house) was white and dusty and that the dusty material had termites in it.

### **Kenny Cordice**

[65] Kenny Cordice (Mr. Cordice), the First Defendant's son, was the next witness to give evidence for the Defendants. The evidence as contained in his Witness Statement was that as a child he distinctly remembered the rotted floor boards and partitions in the family house. He recalls that the flooring was very “bouncy – if you walked too hard everything in the immediate area would shake.” The witness further observed that the building was old and the “rotted termite infested wood was quite evident throughout the building. He added that the floor, front section and the gallery that was over the sidewalk all comprised this aging wood.”

[66] He stated that his recollection of the premises in 2002 was that the house was “just a more aged version of what it had been when (he) had last lived there. “ He stated that “...There was no structural improvement to the place. The wooden partitions upstairs were much more deteriorated and termite eaten than they were in the past. They were shell like and hollow belying the fact that their insides had been eaten away by termites. I

had to be careful how I stepped on the flooring for fear that I would fall slip through it or it may give way; it was not solid and it never was. Apart from that, the floor still shook when you stepped on it.” He added that there were a lot of cracks in the walls, including the exterior walls.

### **Andrew Delpesche**

[67] The last witness to give evidence for the Defendants was Andrew Delpesche (Mr. Delpesche). In his Witness Statement Mr.Delpesche stated that he has been a contractor for the past 15 years. He stated that sometime in 2003, he worked on a building which was being constructed for one Mr. Moussa (the Moussa building). The Moussa building was being constructed next to the Grenville Street property. He stated the Grenville Street property was “an aged wooden and brick building”. Although the building was not yet demolished, the witness observed that the columns were not good and that the board columns that were holding part of the upstairs were rotted. He added that his workers had to replace some of the boards to prevent the (Grenville Street property) building from “falling down on them”. He further stated that he noticed that there were cracks on the walls of the building and that there were “big cracks – some ran across by the window area and to the centre of the wall. Some were about 2 feet in length all told.”

[68] Under cross-examination, Mr. Delpeschere-iterated that he was a contractor, although he “had taken no exams for the contracting business.” He asserted that his knowledge of contracting was based on practical work. The witness recalled working on the Grenville Street property in the middle of 2003. He further recalled working with a man called Wendell Lee and that he at the time did not notice the 2<sup>nd</sup> Defendant Arthur or a team of workers working on the said property. Mr. Delpesche further stated that the building was an old building that he in fact he described as being “aged”. He based this on the fact that he himself was 38 years old, and that he recalls that the building was there “since he was a little boy.” This witness further stated that the columns of the building were “not

good", because there was no steel in the columns. Mr. Delpesche admitted that he never went through the inside of the building.

## **SUBMISSIONS OF COUNSEL**

### **The Claimant's Submissions**

[69] In the Pre-Trial Memorandum of the Claimant, Counsel for the Claimant stated the issues in this case to be as follows:-

- (a) Whether a tenant for life is ... allowed to commit any kind of waste by voluntary waste or whether he is under a duty to protect and repair the hedges and the fence.
- (b) What legal consequences flow from his failure to perform his duties as a tenant for life.
- (c) What consequences flow if by the willful and deliberate action the tenant for life destroys the house which is the subject matter of his life tenancy.
- (d) Whether the tenant for life is liable in damages for voluntary waste.
- (e) What is voluntary in the sense referred to in (b) and (d) above.

[70] In the Amended Statement of Claim, the Claimant pleaded that "when the First Defendant vacated the Grenville Street property she literally abandoned it and allowed it to fall into disrepair. She has never once discussed with the Claimant the need to repair the said property."

[71] Further, in his Witness Statement, the Claimant states "...I expected that if she (the First Defendant) believed that the family house needed to be repaired she would have informed me and try to work out a programme of renovation. For years she had lived in

the building and done business there. There is no visible indication that she ever attempted to do any renovations on the building.”

[72] In his Submissions, Counsel for the Claimant states that “...the First Defendant claims to have done that (normal maintenance of the family house) at one time by spending ‘thousands of dollars of her own money in trying to upkeep, maintain and insure the property between 1979 and 2002.’ During this 23-year period, for all her complaints about the termite infested wood she alleges (but the Claimant does not admit), she never once hinted that she ever employed any anti-termite treatment.” Counsel goes on to state “Termite infestation is a fact of life all over St. Vincent and the Grenadines. But once the infestation is known and treated (and the First Defendant was aware of the infestation) she did nothing to remove the danger. What she did not do was to specify in what aspect of maintenance she spent the thousands of dollars in the 23-year period. She could not because it is not true.”

[73] Based on the above, Counsel for the Claimant suggests that the First Defendant is liable for non-repair of the family house.

[74] Learned Counsel for the Claimant in his submissions states:-

- (a) The First Defendant committed voluntary waste by her calculated destruction of the family house between 2003 and 2007.
- (b) Secondly, there was no justification for her so doing.
- (c) Thirdly, she never consulted the Claimant and his siblings who are the remaindermen in waiting, and ...hers was a deliberate act of destruction of the family house.
- (d) Fourthly, the First Defendant is liable for voluntary waste by her deliberate and reckless destruction of the family house for her own selfish and greedy purposes.

[75] Counsel submits that the ancient common law in relation to land is still part of the law of St. Vincent and the Grenadines. He cites Section 5 of **The English Law Act of St. Vincent and the Grenadines** Cap. 8 of the Laws of St. Vincent and the Grenadines and the First Schedule thereto as authority for this. He further submits that “the object of this branch of the law, ancient though it may be, is to prevent limited owners ‘such as a tenant for life’ from despoiling the land to the prejudice of those in reversion or remainder. He cites the case of **Woodhouse v Walker** (1880) Q.B. Vol.V. 404 at 406 as authority for the proposition that “where waste is discovered the remedy is for the remaindermen to sue for damages or to apply for an injunction.”

[76] Counsel further submits that even if a tenant for life is unimpeachable for waste and therefore not liable either for voluntary or for permissive waste, such a tenant for life “has no right to commit equitable waste unless an intention to confer such right appears in the instrument of creation of the settlement,” as, in the instant case, the Will of Wallace Jack (deceased).

[77] Counsel quotes from **The Modern Law of Real Property** 4<sup>th</sup> edition (1937), where the learned author G.C. Cheshire states:-

“...But one restriction has been imposed on him ( a tenant for life) , for Equity has always stepped in to interfere in cases where the tenant, instead of exercising his power fairly, has abused them so as to destroy the subject-matter of the settlement. In other words, if he commits wanton or extravagant acts of destruction, he will be restrained by injunction and ordered to rehabilitate the premises.”

[78] The main thrust of Counsel’s submission is that the First Defendant was “an evil, greedy woman” who “deliberately and mischievously destroyed the family house by her planned destruction of it in 2003,” and further “deliberately destroyed it for selfishness and greed.”

[79] Counsel for the Claimant further contends that the fact that the dwelling house was demolished further in 2007 “ is a question of degree because the demolition of 2003 and the elements of rain and sun had rendered the rest of the family house totally useless. It

was her (the First Defendant's) demolition of it in 2003 which had made the 2007 demolition unavoidable.

### **The First Defendant's Submissions**

[80] In the Pre-Trial Memorandum filed on behalf of the Defendants, Counsel for the Defendants states that the issues in this case to be as follows:-

- (a) Can the First Defendant be held liable for voluntary waste when she acted in good faith upon the lawfully issued instructions of the Physical Planning and Development Board of St. Vincent and the Grenadines.
- (b) Given that the Defendants have acted in obedience to the order of the Board and that the First Defendant who was life tenant at the time of carrying out the order, gave instructions to the Second Defendant to carry out said order, can they be held liable for trespass to the premises and/or damages for same.
- (c) Is the remedy "to restore the said dwelling house" sought by the Claimant one that is legally justifiable in all the circumstances.

[81] Counsel for the First Defendant submits that "based on the provisions of the Application of The English Law Act of Saint Vincent and the Grenadines, a suit for voluntary waste cannot be lawfully maintained against a tenant for life in St. Vincent & the Grenadines and that furthermore, a tenant for life in St. Vincent & the Grenadines can only be liable for permissive waste if it was a condition of the tenancy that the tenant shall keep the premises in repair." Counsel relies on the learned authors of **Halsbury's Laws of England**, Volume 34, 3<sup>rd</sup> Edition. (Appendix 6) at paragraph 1135 thereof:-

"1135. Permissive waste. A tenant for life, whether or not made impeachable for waste, is not liable for permissive waste, that is, an omission whereby damage results to the premises, such as suffering houses to fall into decay. If however, the settler has imposed a condition that the tenant for life shall keep the premises in repair, there is a personal

liability which can be enforced in a court of equity, even in respect of dilapidations existing at the time when the settlement came into force. Damages may be recovered in respect of such liability from the estate of the tenant for life after his death.”

[82] It is the contention of Counsel for the First Defendant therefore, that, “the provisions of the Will of Wallace Jack do not impose any covenant for repair upon the successive life tenants.”

[83] In her submissions, Counsel for the Defendants submits that “even if the claim for voluntary waste can be made against a tenant for life as a matter of law ...the claim for voluntary waste cannot be sustained in this case unless it is proven that such waste was negligent or willful in fact and in law.”

[84] Counsel submits that “it cannot be the case that someone who complies with an order issued under the provisions of the **Town and Country Planning Act** No. 45 of 1992 of the Laws of St. Vincent and the Grenadines can be guilty of waste.”

[85] She quotes Section 20 (3) of the said Act which provides that;

“(3) Any person upon whom a waste order has been served who, without reasonable explanation, fails or neglects to comply with any requirement thereof, or by an act or omission contravenes subsection (7) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and to a further fine not exceeding three hundred dollars in respect of each day during which the offence continues.”

[86] Thus, contends Counsel, the First Defendant complied with the Waste Order issued her by the Board; she “acted under this compulsion and therefore could not have acted willfully.” She further contends that the Claimant’s Counsel was served a copy of the Waste Order and that there is no evidence that the Order was appealed in accordance with the option for appeal outlined in the same Order.

[87] It is Counsel’s submission that there is no evidence that the First Defendant acted willfully and negligently in giving instructions to the Second Defendant to demolish the

dwelling house. Further, that there is no evidence that the life tenancy of the First Defendant “was created on condition that she maintains the property.”

[88] Lastly, Counsel submits “that there is no basis in law or upon the facts to conclude that the First Defendant is liable for voluntary waste of the premises.”

[89] In the view of the Court, the true issue to be determined is whether the First Defendant acted willfully and wantonly to make her liable for voluntary waste.

## THE LAW

### TRESPASS

[90] “Trespass is an injury to a possessory right, and therefore the proper claimant in a claim for trespass to land is the person who was, or who is deemed to have been, in possession at the time of trespass.” – **Halsbury’s Laws of England**, Vol. 45 (2), Fourth Edition at page 338.

The learned authors go on to say, at page 340 that

“If land is in the possession of a tenant, the tenant is the proper claimant to sue for trespass committed in respect of the land, but where the trespass is not merely of a temporary nature, but is injurious to the reversion, although he cannot sue in trespass, may sue for the injury done to his interest... The claim by the reversioner is not a claim of trespass. In a claim of trespass to land the claimant alleges that the defendant wrongfully entered the claimant’s land; whereas, in a claim by a reversioner, the claimant generally alleges that the defendant injured the claimant’s reversion in land.”

### VOLUNTARY WASTE

[91] The doctrine of waste as it pertains to a tenant for life, is described in **Halsbury’s Laws of England**, Vol. 42, 4<sup>th</sup> edition, at page 548, as follows:-

"A tenant for life has the right to the full enjoyment of the land during the continuance of his estate subject to the duty of leaving it unimpaired for the remaindermen. This duty is defined by the doctrine of waste."

Waste may be defined as:-

(a) Ameliorating Waste, which is defined as "an alteration in a property by a tenant for life which permanently enhances the value of the estate."

(b) Permissive Waste

Sampson Owusu in his book "**Commonwealth Caribbean Land Law**" at page 109, defines Permissive Waste as follows: "The neglect or failure or omission to do what will prevent damage or injury to the inheritance is permissive waste." He goes on to say that "Waste may be committed in respect of houses by allowing them to be uncovered or leaving them to fall into ruins. However, a tenant for life is not obliged to repair."

As the learned authors Kevin Gray and Susan Francis Gray state in their book **Elements of Land Law**, Fifth Edition at page 62, " Only if the terms of his grant so stipulate can a tenant for life be made liable for permissive waste, which comprises defaults of maintenance and repair leading to the dilapidation of buildings situated on the land." The learned authors cite the case of **Re Cartwright** (1889) 41 Ch.D 532 at 535 – 6 . In that case, the testator John Cartwright devised land to his daughter, Mary Anne Cartwright, for and during the term of her natural life, remainder to her children and on failure of her issue to the defendant, Newman. There was no provision making her liable for the repairs of the estate. Mary Cartwright died a spinster, leaving the buildings, gates and fences on the devised premises in a dilapidated condition, having failed to make the necessary repairs. The executor of Mary Cartwright's will took out an originating summons to determine whether the defendant Newman was entitled to

be paid compensation for waste, which was estimated ( in 1889) to be 166 pounds 12 shillings and 9 pence. It was held that Mary Cartwright, as tenant for life was not liable for waste as there was no duty expressly imposed on her by the terms of the settlement to repair the property.

(c) Voluntary Waste

Megarry and Wade in their book "**The Law of Real Property**", 7<sup>th</sup> Edition at Page 79 state as follows:-

"Voluntary waste .... is doing that which ought not to be done. The committing of any spoil or destruction in houses, lands etc., by tenants, to the damage of the heir, or of him in reversion or remainder" is voluntary waste. "

The learned authors Kevin Gray and Susan Francis Gray in their book **Elements of Land Law**, Fifth Edition at page 62 state "...More serious is voluntary waste which includes any positive diminution of the value of the land. A tenant for life is liable for such waste unless the terms of his grant give him specific exemption by declaring him unimpeachable for waste."

(d) Equitable Waste

Even if a tenant for life is at common law unimpeachable for waste, in equity he can be restrained from the commission of 'equitable' waste in the form of wanton destruction of the land to the prejudice of the remaindermen."

As the learned author Sampson Owusu states in his book "**Commonwealth Caribbean Land Law**" [supra] at page 115, " Acts of wanton destruction will arise where the acts complained of are such that a prudent man would not do in the management of his own property."

## FINDINGS

[92] Having considered the pleadings in this case as well as the submissions of Counsel, and having weighed all the evidence adduced, my findings are as follows:-

- (1) The first relief sought by the Claimant in his Amended Statement of Claim was damages for trespass against the Defendants. Based on the law as stated above, the Claimant's claim for damages for trespass against the Defendants is unsustainable. The First Defendant is the current life tenant of the property and is therefore entitled to possession thereof. Further, the Second Defendant, at all material times, acted on instructions from the First Defendant. It is significant that no mention was made by Counsel for the Claimant with respect to this issue in his Submissions.
- (2) With respect to the Claimant's claim for damages for voluntary waste against the First Defendant, the uncontroverted evidence is that:-

- (a) The family house was an old building. The evidence of the Claimant is that he was 73 years old and that "he was told he was born in that house." Further, that although he did not know what year the house was built, "it is possible that it was over 80 years old.
- (b) According to the Claimant's evidence, the building was a two-storey building. "The floor on the second storey was board. There was board in the house, the internal partition was board, the roof and ceiling was board; the house was supported in part "not fully" by wooden beams."

[93] I agree with the Submission of Learned Counsel for the First Defendant that there is no evidence that the life tenancy of the First Defendant was created on condition that she maintain the property. Therefore, despite the Claimant's assertions that the First Defendant failed to repair and maintain the family house, as stated above, the law is well established that a life tenant is not liable for permissive waste except where the terms of his grant so stipulate.

- [94] Learned Counsel for the Claimant submits that “the First Defendant is liable for voluntary waste by her deliberate and reckless destruction of the family house for her own selfish and greedy purposes.”
- [95] There is no evidence before the Court of the alleged “malevolence” of the First Defendant. The Claimant’s Pleadings and Witness Statement describe the First Defendant as “untrustworthy, cunning and greedy” and portray her as a manipulative, unappreciative, and selfish individual who embarked “clandestinely” on demolishing the family house in 2003 and attempted to complete the demolition in 2007, and are replete with what Learned Counsel for the First Defendant in her Submissions describes as “a nebulous history of irrelevant and bitter walks through memory lane.”
- [96] The Claimant states that the First Defendant very early on “demonstrated a degree of reckless indifference toward the family house that is difficult to understand.” One is left to speculate as to what the First Defendant’s “selfish motives” are, although the Claimant states in his Witness Statement that “it is clear “why the First Defendant “destroyed” the building. Perhaps the Claimant is inviting the Court to glean these motives from the submissions of his Counsel. Counsel submits that “She (the First Defendant) was already 82 years old. At that age, she could only be interested in destroying the family house for one of three reasons. First, to demolish and rebuild with the assistance of her son; secondly, the demolition and the survey were all done with his knowledge and consent, and it was he who would benefit from its demolition; thirdly, her wish to own the spot on which the family house was built. But this too could only have benefited her son, Kenny. All of this suggests that in spite of his denials the son had a strong interest in demolishing the family house.”
- [97] This argument, however, is without merit, since, as life tenant, the First Defendant could not pass on the Grenville Street property to anyone, including her son.
- [98] He who alleges must prove. The onus is therefore on the Claimant to prove, based on his Submissions, that “the First Defendant committed voluntary waste by her calculated

destruction of the family house between 2003 and 2007. Again, having considered the pleadings in this case and listened to the evidence, my findings with respect to this issue are as follows:-

- a) When she embarked on the demolition of the property in 2003, the First Defendant acted on the recommendation of an official from the Public Health Department, and she gave instructions to the Second Defendant to carry out the said demolition.
- b) In spite of the assertions of the Claimant, there is nothing to persuade or convince the Court that there was any plot or scheme between the said official and the First Defendant to demolish the family house on Grenville Street.
- c) It is significant and quite puzzling that a letter dated Monday 11<sup>th</sup> August 2003 written on behalf of the First Defendant and addressed to the Claimant at his address in Ontario, Canada, informed the Claimant that "it has been recommended by the Public Health Department of St. Vincent and the Grenadines to demolish the Grenville Street property because of its dilapidated and unsafe condition. She will proceed to carry out the recommendation as soon as Mr. Bradley Medica of Medix Pharmacy vacates the premises. A copy of the recommendation is enclosed." What makes this letter puzzling is the fact that this letter originated from the firm of Commissiong & Commissiong. The letter is signed by Bertram Commissiong and the name of the Claimant's Solicitor Samuel Commissiong appears on this letterhead. A similar letter was written to the Claimant's siblings. Even more perplexing is the submission of Learned Counsel for the Claimant that "the six letters written by her (the First Defendant's) solicitor, all of them dated 11<sup>th</sup> August 2003, to the Claimant and his siblings, were cleverly crafted to indicate that she was giving them warning of the intended demolition ... These letters were written in the critical days of the First Defendant's plans to destroy the family house. For about two weeks earlier, July 25<sup>th</sup> 2003, she had already obtained the so-called report from Michael Bacchus, Senior Environmental Officer, Ministry of Health, with a series of imaginable problems with the family house to justify its planned destruction."

- d) The letter written to Mr. Alphonso Medix of Medix Pharmacy Ltd. also dated the 11th August 2003 on behalf of the First Defendant also originated from the firm of Commissiong & Commissiong. This letter was also signed by Bertram Commissiong and the name of the Claimant's Solicitor Samuel Commissiong appears on the firm's letterhead.
- e) It is also significant that the Claimant stated in his evidence that he did not know that the First Defendant "had an order from the health department" when he gave instructions to have the demolition stopped the first time, namely, in 2003.
- f) Again, in 2007, the Claimant was aware that the Planning Board ordered the First Defendant to demolish the building. His evidence at the trial is that "I am aware that the Planning Authorities ordered the (First) Defendant to tear down the building in 2007. I am aware that if she's told to do that, then she has to do it."

[99] In the view of the Court, therefore, based on the totality of the evidence, the Claimant has not established on a balance of probability that the First Defendant, as life tenant, committed an "unauthorized act of waste", or that she acted willfully or wantonly in causing the family house to be demolished.

### **CONCLUSION**

[100] In view of the foregoing, I hold that the Claimant's case has not satisfied me on a balance of probabilities and I therefore dismiss it.

ORDER

- (1) The Claimant's claim is hereby dismissed.
- (2) Judgment is entered for the First Defendant on her Amended Counterclaim as follows:-
  - (a) A declaration that the First Defendant is entitled to have a life interest in the property vested in her.
  - (b) An Order directing the Claimant to execute a deed vesting a life interest in the property in the First Defendant when it is prepared and presented to him for signature and if he refuses to do so the First Defendant shall be entitled to execute the same.
  - (c) An Order directing the Claimant, within 7 days, to furnish in writing to the First Defendant a duly notarized undertaking that, notwithstanding the First Defendant's life tenancy the Claimant is liable for any and all damage which may result to any person member of the public or any other property whether real or personal which may result from the present condition of the building.
  - (d) In the event that the above undertaking is not provided as stipulated, an Order that the First Defendant demolish the building.
- (3) Prescribed costs to the First Defendant in accordance with CPR 2000 Part 65.

  
**JENNIFER REMY**  
High Court Judge