

**IN THE SUPREME COURT OF BELIZE, A. D. 2015**

**CLAIM NO. 716 OF 2015**

**BETWEEN:**

**(HARRIET WADE**

**CLAIMANT**

**(Lawful Attorney of Kiphanie Wade**

**(**

**(AND**

**(**

**(ADELSO FLORES**

**DEFENDANT**

**BEFORE THE HON. ACTING MADAM CHIEF JUSTICE MICHELLE  
ARANA**

**Mr. Brandon S. Usher, Attorney-at-Law of Nikao Chambers for the  
Claimant/Applicant**

**Mr. Orson J. Elrington of Elrington & Associates for the  
Defendant/Respondent**

**J U D G M E N T**

[1] This is an Application for Assessment of Damages. The substantive claim was a claim for an order of eviction where the Claimant as the holder of a 30 year lease to a parcel of land in Caribbean Shores, Belize City sought to have the Defendant removed from her land as a squatter. The Defendant had built a house for himself and his family on the property and he refused to vacate the premises. A protracted and acrimonious dispute ensued between the parties. The court found in favor of the

Claimant and ordered the Defendant to vacate the property. The court now considers submissions on the quantum of damages to be awarded to the Claimant for the Defendant's depriving her of the use of her property.

### **Legal Submissions on behalf of the Claimant/Applicant**

[2] In or around March of 2013, the Claimant's mother, Harriet Wade, along with a Lands Department personnel visited the property **Registration Section: Caribbean Shores/Belize, Block: 16. Parcel 4949/1, being Certificate of Lease LRS – 201101616, dated the 4<sup>th</sup> day of February, 2011, comprising of 557.42 Square Meters** (hereinafter "**the Property**") from the Government of Belize in 2011; a property located in a new area of the city called Belama Phase 4 where they noticed that the Defendant and his family were in possession of the said parcel of land, where they had erected a wooden structure<sup>1</sup> on the said property.

[3] The Claimant's mother, who holds a Power of Attorney<sup>2</sup> document for her, then gave the Defendant and his family their first warning to vacate the property. This would spark what would be many warnings afterwards, as well as court proceedings brought against the Defendant. After many attempts to eject the Defendant and his family from the Property, the Claimant, through her mother

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<sup>1</sup> Attachments "**HW-3**" "**HW-4**" and "**HW-6**" in the Affidavit of Harriet Wade dated the 6<sup>th</sup> day of January 2021

<sup>2</sup> Attachment "**HW-1**" in the Affidavit of Harriet Wade dated the 6<sup>th</sup> day of January 2021

initiated a Supreme Court Claim on the 17<sup>th</sup> day of December, 2015 for the following orders:

- a. A Declaration that the Defendant is unlawfully and without the consent of the Claimant, constructed a dwelling and is living on the Claimant's property, located at Lot 137 Belama Phase 4, Belize City, Belize and described on Certificate of Lease LRS-201101616 dated the 4<sup>th</sup> day of February 2011 as 557.42 S.M. in the Caribbean Shores Registration Section, Block 16, Parcel 4949/1;
- b. Possession of the Property located at Lot 137 Belama Phase 4, Belize City, Belize and described on Certificate of Lease LRS-201101616 dated the 4<sup>th</sup> day of February 2011 as 557.42 S.M. in the Caribbean Shores Registration Section, Block 16, Parcel 4949/1 (hereinafter "**the Property**");
- c. Permanent injunction restraining the Defendant, whether by himself, his servants or agents from accessing, entering or using or remaining on the Claimant's property;
- d. An Order requiring the Defendant whether by himself, his servants or agents to remove all structures constructed on the property and all things whatsoever associated with the structure placed on the property by the Defendant;

- e. Damages for trespass;
- f. Interest;
- g. Costs; and
- h. Such further or other relief as this Honourable Court may deem fit to order.

[4] The Claim endured many adjournments since then, due to many failed attempts to settle the matter, until the Attorney-at-Law for the Claimant applied for Summary Judgment against the Defendant, where on November 5<sup>th</sup>, 2019 such Summary Judgment was granted by the Honourable Madam Justice Michelle Arana in the following orders<sup>3</sup>:

- i. *“The Defendant’s Defence be struck out as the Defendant has failed to comply with the Unless Order which was ordered by the Court on the 13<sup>th</sup> day of July, 2017;*
- ii. *Summary Judgment be entered for the Claimant against the Defendant;*
- iii. *A Declaration that the Defendant is unlawfully and without the consent of the Claimant, constructed a dwelling and is living on the Claimant’s property, located at Lot 137 Belama Phase 4, Belize City, Belize and described on Certificate of Lease LRS-201101616 dated the 4<sup>th</sup> day of*

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<sup>3</sup> Attachment “**HW-8**” in the Affidavit of Harriet Wade dated the 6<sup>th</sup> day of January 2021.

*February, 2011 as 557.42 S.M. in the Caribbean Shores Registration Section, Block 16, Parcel 4949/1;*

- iv. Possession of the Property located at Lot 137 Belama Phase 4, Belize City, Belize and described on Certificate of Lease LRS-201101616 dated the 4<sup>th</sup> day of February, 2011 as 557.42 S.M. in the Caribbean Shores Registration Section, Block 16, Parcel 4949/1 (hereinafter “**the Property**”);*
- v. Permanent injunction restraining the Defendant, whether by himself, his servants or agents from accessing, entering or using or remaining on the Claimant’s property;*
- vi. An Order requiring the Defendant whether by himself, his servants or agents to remove all structures constructed on the property and all things whatsoever associated with the structure placed on the property by the Defendant;*
- vii. Damages for trespass;*
- viii. Interest;*
- ix. Costs; and*
- x. Such further or other relief as this Honourable Court may deem fit to order.”*

[5] Subsequently, a Writ of Possession<sup>4</sup> was issued against the Defendant on the 5<sup>th</sup> day of May, 2020. Since June of 2020 to October 9<sup>th</sup>, 2020, the Claimant has been giving the Defendant time and time again to remove themselves of the Property.

[6] During these times, the Claimant experienced interference from the Attorney General, then Michael Peyrefitte, and the Commissioner of Police, Clyde Chester Williams, which saw the Claimant, her Attorney, two court marshals and four workmen being threatened to be arrested for executing the Writ of Possession.

[7] Finally, on the 9<sup>th</sup> day of October, 2020, the Defendant and his family vacated the property after dismantling their own home and moving it elsewhere.

[8] Due to the level of interference encountered, the Claimant was forced to vary the Judgment Order to include penal orders to prevent further interferences from occurring.

[9] It has been 7 years and 7 months of trying to remove the Defendant and his family off the Property, which could have been 7 years and 7 months of the Claimant and her family enjoying their Property.

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<sup>4</sup> Attachment “**HW-9**” in the Affidavit of Harriet Wade dated the 6<sup>th</sup> day of January 2021.

[10] The Claimant, therefore, by Application for Assessment of Damages, which she is entitled to, granted by Supreme Court Order on November 5<sup>th</sup>, 2019, now makes the following submissions on the quantum of damages.

### **Law and Applicability**

[11] While statute does not quantify the amount which shall be given in cases of damages to trespass, the Claimant relies on the 2016 Belizean Supreme Court case of *Modiri v Paumen et al*<sup>5</sup>.

[12] This matter saw Mr. Michael Modiri owning a piece of land, where Mr. Bradley Paumen created a road through such land to facilitate his company's operations, Daylight and Darknight Caves Adventure Limited, which is a tourist attraction, which would conduct tours and host tourists generally.

[13] The matter was determined by the Honourable Madam Justice Sonya Young, who determined that Mr. Paumen had no such right in doing so. In a subsequent claim, due to Mr. Paumen continuing to trespass again, both the Claimant and the Defendant sought an assessment of damages for trespassing.

[14] In assessing the quantum of damages, the learned judge stated the following at paragraph 36 of her judgment:

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<sup>5</sup> Claim No. 586 of 2016 – Michael Modiri v Bradley Paumen and Daylight and Darknight Caves Adventures Limited. [TAB 1]

*“Damages for trespass to land are said to be at large. This means that the court must consider all the relevant circumstances when making the assessment. Even where the successful party may not have suffered any actual loss he is still entitled to recover nominal damages.”*

[15] She continued by stating that Counsel for the Claimant relied on the case of *Asot A. Michael v Astra Holding Limited; Robert Cleveland and others v Astra Holdings Limited Eastern Caribbean Supreme Court* Civil Appeal 17 and 15 of 2004, which explains at paragraph 56:

*“56. A Claimant who suffers actual damage as a result of a trespass is entitled to be compensated with substantial damages, which he must prove. He must set out in his pleadings the value by which his land was diminished and the expense of removing any debris left by the trespass, if any. On the other hand, he may set out the costs of correcting the damage and restoring the land to its original condition. Where there is a continuous trespass, damages are usually measured by the worth of the use of the land. This would normally be the rental value.”*

[16] In the Modiri case, the learned judge assessed the quantum at rental value and continued by asking how much would the Claimant reasonably require from the Defendant in allowing the Defendant to secure the right to do what they had done without permission.



[17] The Defendant and his family, in the instant case, lived in a wooden structure, completed with a concrete attachment for approximately 7 years and 7 months. The time here is crucial as we think about the years that the property could have been reasonably rented for or even utilized by the Claimant, as she had plans of erecting a house for her leisure.

[18] Belize City, unlike many other parts of the country has a high rental rate in both commercial and residential areas, with rates ranging from five hundred Belize dollars (BZD \$500.00) per month to one thousand five hundred Belize dollars (BZD \$1,500.00) per month.

[19] In being reasonable, the Claimant would propose that a rental of about seven hundred Belize dollars (BZD \$700.00) per month would be appropriate.

[20] Therefore, with this being said, it is proposed that damages be calculated as follows:

$$\text{BZD } \$700.00 \times 91 \text{ months (7 years and 7 months)} = \text{BZD } \$63,700.00$$

It is then proposed that the damages for trespass be quantified at SIXTY-THREE THOUSAND SEVEN HUNDRED Belize dollars (BZD \$63,700.00).

[21] This is the sum that is proposed by the Claimant in being the quantum of damages for trespass; however the Claimant remains amenable to the court's discretion in other factors that may be assessed in quantifying the damages.

## **Conclusion**

[22] The Claimant humbly submits that the Defendant, having been found liable for trespassing onto the Claimant's property, shall be liable to pay the amount of SIXTY-THREE THOUSAND SEVEN HUNDRED Belize dollars (BZD \$63,700.00) for remaining in the Claimant's property for 7 years and 7 months before being ejected from the Property. Along with this sum, it is proposed that interests be levied upon this sum at the statutory rate of interest, as was rewarded to the Claimant by order of the court dated the 5<sup>th</sup> day of November 2019, until the judgment debt has been paid. Apart from the damages found and the interest levied, the Claimant has also been awarded costs, which shall be taxed by the Court.

## **Legal Submissions on behalf of the Defendant/Respondent**

[23] The defendant is a hardworking and humble man of little means whom like many other Belizeans simply needed a safe place where he could put a roof over the head of his family.

[24] In 2009 he found a property he believed was available and could make his dream of being a homeowner a reality. The property was uninhabitable as it had no road access, no access to utilities and was nothing more than a swamp. But the defendant had a dream therefore began to clear the property, fill it up and started the construction process. Four years later in 2013 the defendant completed construction of a humble dwelling and started to live on the property with his wife and 3 children.

The defendant followed what he thought was the proper legal procedure to obtain a piece of land but was obviously mistaken.

[25] On or about 2015 it was brought to the attention of the defendant that the Claimant had a claim to the property. The defendant and government officials shortly thereafter commenced negotiation with the claimant so that the defendant could remain on the land and secure good title for the property. The claimant had agreed to accept an alternative property to be issued by the Government of Belize. The defendant was therefore of the belief that the matter had been resolved. Regrettably the compensation never materialized as the claimant refused to visit the Lands Department in Belmopan to execute the land swap.

[26] On the 9<sup>th</sup> of October, 2020, the Defendant and his family complied with the order of the court to vacate the property.

### **Law and Applicability**

[27] In *Modiri v Paumen et al* Honorable Madam Justice Young at paragraph 36 said “*Damages for trespass to land are said to be at large. This means that the court must consider all the relevant circumstances when making the assessment.*”

[28] She most importantly cited *Asot A. Michael v Astra Holding Limited; Robert Cleveland and others v Astra Holdings Limited Eastern Caribbean Supreme Court* Civil Appeal 17 and 15 of 2004, which explains at paragraph 56:

*“A Claimant who suffers actual damage as a result of a trespass is entitled to be compensated with substantial damages, which he must prove. He must set out in his pleadings the value by which his land has diminished and the expense of removing any debris left by the trespass, if any. On the other hand, he may set out the costs of correcting the damage and restoring the land to its original condition. Where there is a continuous trespass, damages are usually measured by the worth of the use of the land. This would normally be the rental value.”*

[29] In the instant case, the Defendant and his family did not leave the property in a diminished state and covered the cost of removing debris. Furthermore, rather than leaving the property in a diminished state, the property has been appreciated by investments made in the property that remain. This includes but is not limited to filling of the property, landscaping with fruit trees and basic foundation at an approximate value of \$20,000.

[30] In the present case when the Defendants began working on the property it was uninhabitable, it was through their investments that it became inhabitable. In the case at bar, the claimant has not proven actual damage.

[31] In *Modiri v Paumen et al* it was held that while actual damage was not proven both made use of each other’s land and ought to be compensated in a sum which is

reasonable payment for that use. *“A proper assessment ought to be made using the ‘rental value’. In essence, how much the Claimant or Ancillary Claimant would reasonably have required from the Defendant or Ancillary Defendant, respectively, to secure the right to do what they had done without permission.”*

[32] It is our submission that the rental value of the land i.e. reasonable payment for use is clearly stated in the lease agreement with the Government of Belize as \$60.00 per annum. **Marked HW-2 and referred to in the Affidavit of Harriet Wade sworn to on the 6<sup>th</sup> day of January, 2021.**

[33] Therefore, with this being said, it is proposed that damages be calculated as follows:

$$\text{BZD } \$60.00 \times 8 \text{ years} = \text{BZD } \$560.00$$

[34] While actual damage was not proven the defendant concedes he did use the land and if the claimant is compensated it ought to be compensated in a sum which is reasonable payment for that use; the sum of \$560.00 is the sum submitted by the Defendant as being that quantum. The defendant is an unemployed man of very little means and even the sum of \$560.00 is a sum he will find great difficulty in paying.

[35] Defendant therefore prays that the court considering all the circumstances exercises its discretion in favor of the submissions offered.

### **Conclusion**

[36] The defendant humbly submits that considering all the circumstances of the case, he should be liable to pay the sum of \$560.00 and reasonable cost.

### **Ruling**

[37] I thank both counsel for their submissions on this Assessment of Damages. Unfortunately, neither counsel has submitted any valuations which would have assisted this court in determining the value of the property subject of this claim. Mr. Usher submits on behalf of the Claimant that the Annual Rental Value for this parcel of land would be around \$700 per month as Caribbean Shores is located in Belize City where property values are very high. Mr. Elrington submits on behalf of the Defendant that the government lease for this property states that the rent is \$50 per year so that should be the value used by the court in this assessment. The court finds that neither proposed figure is of much assistance in this assessment. These are the factors which I now consider in assessing the quantum. The Defendant now concedes that he made use of this property for 7 years and 7 months when he had no legal right to do so, thereby depriving the lawful owner of her property for this extended period of time. I also take judicial notice of the fact that Caribbean Shores, particularly the Belama Area where this lot is located, is a highly sought after residential and commercial area in Belize City where the property values are increasingly high; in light of this, I consider the figure of \$700 per month to be a conservative figure. I also take into account the Defendant's submission that he is a

man of little means and that he built the house on this property because he thought the land was available and he needed to provide shelter for his family. However, I weigh that fact against the fact that the Defendant was warned, in writing, by the police since 2017 and by the Ministry of Lands that this land legally belonged to Ms. Wade and that he was in illegal occupation of the land; yet he stubbornly persisted in remaining on the land and resisted any and all attempts by the lawful owner to remove him. Applying the value of \$700 per month to the period of 7 years 7 months for the time that Mr. Flores was in illegal occupation of this property, the figure would be \$63,700. I set off against this amount the sum of \$20,000 as the sum proposed by Mr. Flores as the cost of his developing this land that was uninhabitable at the time he took possession of it by planting fruit trees and filling it up over the years; this sum has not been contested by the Claimant. This leaves the sum of \$43,700 awarded as general damages to the Claimant for the trespass to the property committed by the Defendant as compensation for depriving her of the use of her property for the past 7 years and 7 months. Interest is also awarded on this sum at the statutory rate of 6% until the judgment debt is paid in full.

**[38]** Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

*Dated this 12<sup>th</sup> day of April, 2022*

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**Michelle Arana  
Chief Justice (Ag)  
Supreme Court of Belize**