



[2026] JMSC Civ. 95

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV03182

BETWEEN	KAREN MCKENZIE	CLAIMANT
AND	VERONICA FULLERTON	DEFENDANT

IN CHAMBERS

Mr. Ewan Thompson instructed by Ewan Thompson and Associates appearing for the Claimant

Mr. Dalton Reid instructed by Dalton V. Reid & Company appearing for the Defendant

Heard: Heard: May 4th ,5th, 6th and July 30th, 2026

Civil Practice and Procedure — Land Law — Trespass to Land — Whether the Claimant is entitled to damages for trespass — Whether the Claimant is entitled to a declaration that she is the beneficial owner of the disputed area — Whether the Defendant acquiesced in the disputed boundary for a period exceeding seven years — Whether the Defendant trespassed on the disputed area and unlawfully demolished the boundary wall — Encroachment — Adverse Possession — Reputed Boundary Wall — Breach of Boundary Wall — Whether the Claimant and her predecessor-in-title have adversely possessed the reputed boundary wall — Sections 3, 4, 30 and 45 of the Limitation of Actions Act — Civil Procedure Rules, 2002, rule 30.3

INTRODUCTION

- [1] The Claimant, Karen McKenzie, commenced this claim against the Defendant, Veronica Fullerton, alleging trespass to land, the unlawful demolition of a boundary wall situated on her property and interference with land which she claims to have acquired by adverse possession. She seeks, among other reliefs, damages, injunctive relief and declarations concerning the ownership of the disputed area.

BACKGROUND

- [2] The Claimant is the registered proprietor of Lot 5 Coral Way, Duncan Bay, in the parish of Trelawny, comprised in Certificate of Title registered at **Volume 1068 Folio 897** ("the Property"); while the Defendant is the owner of the adjoining Lot 6. The crux of the dispute involves the Claimant's allegation that the Defendant unlawfully entered the Property and caused the boundary wall to be demolished by her servants or agents. The Claimant alleges that for many years the physical boundary between the properties was marked by a concrete boundary wall. She contends that the wall enclosed a portion of the Defendant's registered land and that she and her predecessors-in-title had been in open, undisturbed and exclusive possession of that area for a period exceeding twelve years.
- [3] In support of her claim of adverse possession, the Claimant asserts that her predecessors-in-title, Mr. John Forbush and subsequently Mr. Damon Peddar, remained in exclusive possession of both the Property and the disputed area from September 1987 until December 2020, during which time, the disputed area remained enclosed by the boundary wall.
- [4] The Claimant alleges that on or about May 10th 2021, the Defendant, together with her servants and/or agents, entered onto the Property without her consent and demolished the concrete boundary wall using construction tools, leaving an open

trench. It is alleged that by that entry and demolition, the Defendant committed acts of trespass.

- [5] The Claimant maintains that, by virtue of the continuous and exclusive possession of the disputed area for more than twelve years by her and her predecessors in title, the Defendant had been dispossessed, her title to that portion of land has been extinguished pursuant to the **Limitation of Actions Act** and she has acquired possessory title thereto. She claims that, as a consequence of the Defendant's alleged trespass and demolition of the boundary wall, she has suffered loss and damage.

THE CLAIM

- [6] In her claim the Claimant seeks the following orders:

- i. The Defendant undertake to complete all the works as are necessary for reinstating the boundary wall and making good all the damage done to the Claimant's property and to take all necessary and proper precautions for upholding and preserving the boundary wall upon all that parcel of land called Duncan Bay and known as Silver Sands formerly known as Carey Park and part of Johnson Pen in the Parish of Trelawny being Lot numbered Five (5) on the plan part of Duncan Bay and being land comprised in Certificate of Title registered at **Volume 1068 Folio 897** of the Register Book of Titles (hereinafter referred to as the property).
- ii. An Injunction to restrain the Defendant whether by herself, her workmen, her licensees' respective servants or agents or otherwise from committing any trespass or knowingly entering or remaining upon the property as aforesaid.
- iii. It is declared that the Claimant is the beneficial owner of all that parcel of land (hereafter called the reputed area) comprising 6.3 feet at its widest point being the parcel of land identified as the sketch plan

prepared by Johnson Wiggins & Associates Limited' commissioned land surveyors from a survey conducted on the 2nd of September 2020 and being a part of the land comprised in Certificate of Title registered at Volume: 1065 Folio: 898 of the Register Book of Titles.

- iv. The Registrar of Titles shall rectify the Certificate of Titles registered at Volume: 1068 Folio: 897 and Volume: 1068 Folio: 898 in accordance with the declarations herein contained.
- v. Damages for destruction of property.
- vi. Damages for trespass.
- vii. The Claimant to give the usual undertaking as to Damages.
- viii. Such further and other relief as this Honourable Court shall deem just.
- ix. Interest.
- x. Costs in the cause.
- xi. Liberty to apply.

THE DEFENCE

- [7]** The Defendant's case is that the disputed boundary wall resulted from a long-standing mistake of which neither she nor her predecessors-in- title were aware until approximately 2018, when a prospective purchaser of the Claimant's property commissioned a survey that revealed the encroachment. Upon becoming aware of the discrepancy, she immediately informed the Claimant's predecessor-in-title with the expectation that the encroachment would be rectified before the property was sold.
- [8]** The Defendant contends that she introduced the Claimant to the property as being for sale, informed her of the boundary dispute before the sale was completed and

offered to share the cost of correcting the encroachment. She alleges that the Claimant initially agreed to this arrangement but later refused to cooperate, prompting her to undertake the corrective works at her own expense. She maintains that the Limitation of Actions Act does not assist the Claimant, as she acted promptly upon discovering the encroachment and the Claimant and her predecessor-in-title were aware of the boundary issue before these proceedings.

[9] While admitting the parties' ownership of their respective properties and acknowledging the existence of the boundary wall, the Defendant denies that she or her predecessors were ever dispossessed of the disputed property. She also denies that her entry onto the area constituted trespass, asserting that she entered her own property solely to rectify the encroachment. The Defendant challenges the assertion that the Claimant acquired title by adverse possession or that her title was extinguished under the Limitation of Actions Act.

[10] The Defendant also questioned the extent of the alleged damage on the basis that there were no mature fruit trees, birds of paradise, or other substantial vegetation on the disputed area and any damage occasioned by the works was minimal. She denied liability and asserts that the Claimant is not entitled to any of the relief sought.

THE CLAIMANT'S CASE

Evidence of Damon Peddar

[11] Mr. Damon Peddar stated that he was the registered proprietor of Lot 5, Coral Way, Duncan Bay, Trelawny, from January 6th, 2004 until its sale to the Claimant on or about December 9th, 2020. During his ownership, the Defendant owned the adjoining property at Lot 6.

[12] Mr. Peddar deponed that the boundary wall and fences remained in the same position throughout his sixteen years of ownership and were never altered or relocated. Although he occasionally communicated with the Defendant regarding

the maintenance of the neighboring properties, he insisted that no discussions or disputes arose between them concerning the location of the boundary wall. He stated that he was unaware of who constructed the wall but believed, from his review of the title, that it may have been erected by the original developers in the early 1970s. He averred that neither the Defendant nor any adjoining landowner challenged the position of the boundary wall during his ownership of the property. He also stated that even though he resided abroad, he would visit and stay at the property on occasion and even cut down a coconut tree in the disputed area.

Cross-examination of Damon Peddar

- [13] During cross-examination, Mr. Peddar confirmed that he was the registered proprietor of Lot 5 until its sale to the Claimant on December 9th, 2020. He acknowledged that there had been three prospective purchasers for Lot 5 prior to the sale to the Claimant. He informed the Court that at least one other prospective purchaser had intended to purchase the property for cash but denied any knowledge of the financing arrangements of the remaining two.
- [14] Mr. Peddar agreed that surveys were commissioned by the prospective purchasers during the conveyancing process and accepted that the survey obtained by Ms. Gooden identified an encroachment. He maintained, however, that other survey reports produced differing results, with one indicating no encroachment, another identifying only a minor discrepancy, and another reporting an encroachment of approximately six feet. He asserted that the existence of an encroachment had never been conclusively established.
- [15] He denied that Ms. Gooden had informed him that the encroachment would have to be rectified before she could proceed with the purchase and maintained that she withdrew because she had decided to purchase another property. He rejected the suggestion that concerns regarding the alleged encroachment influenced either the asking price or the eventual sale of the property.

- [16] Mr. Peddar denied that during his ownership of the property, the Defendant had raised any concerns with him regarding the boundary wall or any alleged encroachment. He rejected the suggestion that he had undertaken to rectify the boundary before the sale. He insisted that he never had a business relationship with Ms. Sandra Thorpe-James and stated that it was the Defendant and not Ms. Thorpe-James, who introduced the Claimant as a prospective purchaser.
- [17] Upon being shown email correspondence dated May 10th, 2020 and May 18th 2020, Mr. Peddar accepted that he had received and responded to the emails. He acknowledged that in those emails the Defendant raised concerns regarding the boundary wall and requested that it be corrected. He maintained however that the emails merely reflected the Defendant's allegations and did not establish that any encroachment had in fact existed which needed to be addressed.

Evidence of Karen McKenzie

- [18] Ms. McKenzie stated that she became the registered proprietor of Lot 5, Coral Way, Duncan Bay, Trelawny, on December 9th, 2020. Prior to the purchase, she had a survey conducted, the Surveyor's Identification Report dated September 2nd, 2020 disclosed that the concrete boundary wall along the southern boundary departed from the registered boundary by approximately 6.3 feet at its widest point. The report also disclosed that the dwelling house was situated less than five feet from the boundary, contrary to the restrictive covenant endorsed on the Certificate of Title. She stated that an application had since been commenced to modify the restrictive covenant.
- [19] The Claimant averred that the Defendant has owned the adjoining property since 2003 and the boundary wall was a long-standing structure, having been erected by the original developers prior to 1971, as neither she nor her predecessors-in-title had constructed it. She stated that the wall enclosed a disputed area which had remained in the exclusive possession of her predecessors and herself for well in excess of twelve years.

- [20]** The Claimant further stated that shortly after she took possession of the property, the Defendant confronted her regarding the alleged encroachment and demanded that the boundary wall be removed. She relied on email correspondence from the Defendant and correspondence from the Defendant's Attorneys-at-Law as demonstrating that the Defendant had been aware of the alleged encroachment for nineteen years prior to the commencement of these proceedings.
- [21]** The Claimant deposed that on May 10th, 2021, while she was away from the property, the Defendant, together with workmen in her employment, entered the property without her permission. They demolished the concrete boundary wall, excavated a trench in preparation for rebuilding the wall along a different boundary line and damaged several fruit trees and other vegetation. The incident was reported to the Police who attended the property. Ms. McKenzie stated that she had an ongoing concern that unless restrained by the Court, the Defendant intended to continue interfering with the disputed area.
- [22]** She maintained that the Defendant had always been aware of the boundary's location and by allowing the wall to remain in place for many years without objection, she had acquiesced in Ms. McKenzie's and her predecessor's occupation of the disputed area.
- [23]** In amplification of her Witness Statement, Ms. McKenzie stated that she had pleaded a claim for special damages arising from the destruction of vegetation and the boundary structures, although she was unable to recall the specific cost of the repairs. She testified that a portion of the concrete wall situated within her property was demolished and a pomegranate tree, grapefruit tree, Birds of Paradise plants, shrubs and other vegetation were destroyed. She further stated that a trench, approximately three feet deep, was excavated from the front of her property along the inside of the boundary wall towards the adjoining property.
- [24]** She identified photographs taken shortly after the incident, which she described as accurately depicting the damage to the property. She explained that the

photographs showed the excavated trench, the demolished section of the internal concrete wall, and the destruction of the trees, shrubs, flowers and surrounding earth. She confirmed that the photographs were taken by her and forwarded to her Attorney-at-Law following the incident.

Cross-examination of Karen McKenzie

- [25] Ms. McKenzie agreed that the survey commissioned by her disclosed that the boundary wall for Lot 5 encroached onto Lot 6 by approximately 6 feet 3 inches at its widest point. She explained that she became aware of conflicting survey reports before completing the purchase and therefore obtained her own survey. She acknowledged that the Defendant had informed her of a possible encroachment but maintained that the issue remained uncertain because of the inconsistencies between the various surveys.
- [26] She testified that the Defendant, who had introduced her to the property and with whom she initially enjoyed a cordial relationship, became hostile towards her shortly after the purchase and demanded the return of the disputed land. While she acknowledged that the Defendant had spoken to her mother about the alleged encroachment, she denied that she had ever agreed to rectify it and stated that their relationship deteriorated following the Defendant's demands.
- [27] In relation to the events of May 10th, 2021, the Claimant stated that she arrived at the property and observed workmen digging a trench within her garden using pickaxes. Although she did not witness the trench being commenced, she described it as approximately one-foot-wide and three feet deep. She accepted that the principal damage consisted of the trench and the boundary wall, but maintained that shrubs and small trees and a garden wall were also affected. She acknowledged that the pomegranate tree later regrew but stated that it had initially been destroyed. The Claimant testified that she obtained an invoice for the repair works, which she forwarded to her former attorney but this was not entered as an exhibit during the trial.

Re-Examination of Karen McKenzie

[28] The Claimant was re-examined on the issue of what had been communicated to her by the Defendant in respect of the disputed boundary. She testified that the Defendant had informed her by email that she had obtained a survey approximately 19 years earlier which identified a slight encroachment but, at the time she did not consider it significant enough to warrant any corrective action. She also clarified that although the pomegranate tree had been uprooted during the incident and viewed by her as destroyed, roots remained in the ground, which later allowed the tree to regrow.

Evidence of Charles Johnson

[29] Mr. Charles Johnson, a Commissioned Land Surveyor and Director of Johnson Wiggins & Associates Limited was appointed as an Expert Witness for these proceedings and his affidavit with exhibits attached was agreed. He averred that he was instructed by the Claimant to prepare a Surveyor's Identification Report for Lot 5, Coral Way, Duncan Bay. He visited the property on September 2nd, 2020, to perform physical measurements, make technical observations, and prepare an Identification Survey Report (*Exhibit CAJ*). Upon inspecting Lot 5 Coral Way, Mr. Johnson identified the registered paper boundaries and compared them with the physical structures on-site.

[30] He stated that the concrete wall to the north (bordering Lot 4), the chain-link fence to the east (bordering Lot 10), and the concrete wall to the west (facing Coral Way) all coincided accurately with the registered paper boundaries. He stated that the concrete boundary wall erected along the southern section commenced accurately at the south-eastern corner beacon (the intersection point of Lots 5, 6, 10, and 11). However, moving westward toward the roadway, the physical wall deviated southwards, departing from the registered paper line and encroached onto the Defendant's adjoining Lot 6 by **1.92 meters (6.3 feet) at its widest point** along the road boundary.

[31] Mr. Johnson concluded his observations by noting that the physical boundary structures found on-site, including the encroaching southern wall, appeared to be long standing.

THE DEFENDANT'S CASE

Evidence of Veronica Fullerton

[32] The Defendant testified that she purchased Lot 6 in 2003. Although she obtained a survey at the time, she no longer possessed a copy, having misplaced it over the years. She stated that her original survey revealed a 'slight' boundary discrepancy/encroachment but maintained that it was insignificant and not the substantial 6.3-foot encroachment later identified. She acknowledged that, in a 2020 email to the Claimant, she had stated that her survey conducted approximately 19 years earlier showed that the boundary wall was "*slightly out*" but "*not worth altering.*"

[33] The Defendant stated that it was only after discussions with Ms. Florrett Gooden, around 2017–2018, that she appreciated the potential impact of the encroachment on the marketability of the neighbouring property. She thereafter raised the issue with Mr. Damon Peddar and subsequently obtained a further survey from Gilpin McFarlane & Associates, which confirmed that the boundary wall did not accord with the registered boundary. She stated that after this development she was anxious to have the boundary corrected.

Cross examination of Ms. Fullerton

[34] In cross-examination, Ms. Fullerton confirmed that the boundary wall had existed when she purchased her property. She also agreed that she took no physical steps to alter it until 2021. She admitted that she had engaged a builder and workman to enter the Claimant's property to relocate the wall but insisted this was through a side gate. She said that she instructed the builder to excavate a trench and construct a new wall in accordance with survey pegs identifying the registered

boundary. While she accepted that the workmen dug a trench on the Claimant's property, she denied instructing them to demolish the boundary wall and insisted that they merely removed a small section of an internal garden wall to facilitate the construction. She maintained that she did not witness any extensive damage depicted in the photographs because she had briefly left the property.

[35] Ms. Fullerton stated that following unsuccessful discussions with the Claimant regarding sharing the cost of rectifying the boundary, she proceeded with the work. She accepted that the deterioration of the parties' relationship stemmed from the boundary dispute and that one of her motivations for correcting the encroachment was the potential effect it could have on the future sale of her property.

[36] In response to questions from the Court, the Defendant stated that, although she had previously described the encroachment as a "*small*" or "*very tiny*" breach, she had never been provided with any specific measurements by the Surveyor. She explained that her understanding was based on discussions with a builder and that the encroachment appeared insignificant. She added that the deviation was located towards the rear end of the shared boundary wall rather than at the front.

[37] Mr. Reid was allowed to ask an additional question. He showed one of the photographs taken by the Claimant to the Defendant. She identified the boundary wall topped with white fencing as the only boundary shared between her property and the Claimant's property and confirmed that it extended from the front to the rear of both lots.

Evidence of Florrett Gooden

[38] Ms. Florrett Gooden deponed that in 2017, she entered into negotiations to purchase Lot 5, Coral Way, from Mr. Damon Peddar. Pursuant to their agreement, she commissioned a Survey and Valuation Report and photographed the property. The survey revealed that the boundary wall of Lot 5 encroached onto the adjoining Lot 6 by as much as six feet at its widest point. She stated that, having regard to

the encroachment, the property's valuation and the extent of renovations required, she decided not to proceed with the purchase.

[39] Following her withdrawal, Ms. Gooden sought to purchase an alternative property in the area and approached the Defendant, regarding an available lot. During their discussions, she informed the Defendant about the encroaching boundary wall. She stated that the Defendant appeared surprised by this information, leading her to believe that the Defendant had not previously been aware of the encroachment.

[40] Ms. Gooden said that she later became aware that the property had been purchased by the Claimant. She indicated that when the dispute arose between the parties, she provided the Defendant with photographs she had taken of the disputed area in 2017, which she asserted, showed that there were no mature trees in the area alleged to have been damaged. None of the photographs taken by her were placed into evidence. She stated that prior to approaching the Defendant in relation to the possible purchase of a lot, she had no relationship with her.

Cross-examination of Florrett Gooden

[41] In cross-examination, Ms. Gooden confirmed that her only visit to Lot 5 occurred in 2017 when she was considering the purchase of the property and she had no prior acquaintance with Mr. Peddar. She testified that she took photographs during her inspection, which she later provided to the Defendant. She insisted that based on her observations in 2017, the property contained shrubs but no mature or fruit trees.

[42] Ms. Gooden acknowledged that she had not revisited the property after 2017 and had no knowledge of its condition in 2020 or 2021. Consequently, she was unable to comment on whether mature fruit trees were present there by the time the Claimant took possession or when the alleged damage occurred. When shown photographs from the Claimant's bundle, she was unable to identify the location depicted or confirm that the images were of Lot 5, stating only that one photograph

appeared to show Coral Way. She could not identify the alleged damage shown in another photograph but observed that it resembled a construction site.

- [43] Ms. Gooden confirmed that the survey she commissioned in 2017 was prepared by Mr. McFarlane of Gilpin McFarlane & Associates and that she had retained a copy of the Survey and Valuation Report, portions of which she had provided to the Defendant. This document was not placed into evidence. She acknowledged that, although she had not known the Defendant before 2017, they had since become good friends.

Evidence of Sandra Thorpe-James

- [44] Before the Defendant's next witness was called, Counsel for the Claimant objected to portions of Mrs. Thorpe-James's affidavit, submitting that several paragraphs were inadmissible as hearsay, sought to prove the contents of documents not in evidence contrary to the best evidence rule, or amounted to impermissible self-corroboration. The application was opposed by Mr Reid who contended that the witness's involvement in introducing the prospective purchaser provided a sufficient basis for her knowledge and the affidavit, read as a whole, established her competence to give the impugned evidence.
- [45] In my ruling, I referred to my case management powers to treat with applications of this nature at this stage. I also considered **rule 30.3 of the Civil Procedure Rules** governing the contents of affidavits. I struck out portions of paragraphs 3, 6 and the entirety of paragraph 4 on the basis that they constituted hearsay and in part, sought to adduce the contents of documents not in evidence. I also struck out portions of paragraph 9 as hearsay and impermissible self-corroboration; paragraph 11 was also struck out as it depended upon the inadmissible evidence contained in paragraph 9.
- [46] Mrs. Thorpe-James, a businesswoman and long-time resident of the Duncans Bay community, averred that she introduced a prospective purchaser to Mr. Damon Peddar for the purchase of Lot 5. Following this introduction, discussions were held

in her presence between Mr. Peddar and the individual and it was agreed that a second survey would be conducted.

[47] Mrs. Thorpe-James asserted that Mr. Peddar subsequently reduced the listed purchase price of the property on the understanding that the savings would be used by the purchaser to rectify the boundary issue, but the purchaser ultimately withdrew from the transaction. She stated that the property was later sold to the Claimant, whom she understood to be a friend of the Defendant.

[48] Mrs. Thorpe-James said that she was present on the day the boundary was being cleared. She stated that only bushes and small trees were removed before the Police arrived and directed that the work cease. She maintained that no other damage was caused to the property.

Cross examination of Sandra Thorpe-James

[49] In cross-examination, Mrs. Thorpe-James stated that, on the day of the incident, she was present at Lot 6, not Lot 5 and accompanied the Defendant and her workmen to the gate of Lot 5 after the Police arrived. She observed workmen at Lot 5 carrying out renovation works to the house, while the Defendant's workmen were engaged along the shared boundary. She testified that the Defendant had instructed the workmen to clear vegetation and excavate an area to construct a concrete platform for a picket fence.

[50] Mrs. Thorpe-James acknowledged that the workmen cut an opening approximately eight inches wide through a curved concrete garden wall to facilitate the proposed works. When shown photographs, she identified the opening in the boundary wall but disputed that it constituted a trench. She insisted that it was merely a passage created for the construction works. Mrs. Thorpe-James accepted that rubble was visible in the photographs but could not state with certainty whether it resulted from her workmen's activities as some debris had already been present.

[51] She testified that the workmen entered the property through the Defendant's gate and worked from Lot 6 along the boundary. However, her evidence as to how they ultimately accessed the disputed area was inconsistent. While she initially maintained that they did not enter Lot 5 through its gate and suggested they passed through an opening in the fence, she later conceded that they may have climbed over the fence and ultimately accepted that she did not know precisely how they entered the Claimant's property.

SUBMISSIONS

[52] I am grateful to Counsel for their submissions and the authorities relied upon, all of which have been carefully considered. I have summarized the parties' submissions for the purposes of this judgment and will refer only to those submissions and authorities that are material to the issues for determination.

Summary of the Claimant's Submissions

[53] Mr. Thompson submitted that the Claimant and her predecessor-in-title had been in exclusive, continuous, and uninterrupted possession of the disputed area for well in excess of twelve years, thereby acquiring possessory title by adverse possession and extinguishing the Defendant's title under the Limitation of Actions Act. She further contended that the Defendant had acquiesced in the longstanding boundary for more than seven years and pursuant to section 45 of the Act, the existing boundary should be deemed the true boundary. Reliance was placed on several authorities including ***Thomas Broadie and Donald Broadie v Derrick Allen Resident Magistrates' Civil Appeal No. 10/2008***, ***Loretta Blake v Noel Palmer Resident Magistrates' Civil Appeal No. 18/2004***, and ***Archer et Ux v Georgiana Holding Ltd*** (1974) 21 WIR, ***International Hotel (Jamaica) Limited v Proprietors Strata Plan No. 461*** [2013] JMCA Civ 45 and ***Mount Caramel Investments Ltd v Peter Thurlow Ltd and another*** (1988) 1 AllER 129 in support of the principles of adverse possession, dispossession and acquiescence. Counsel argued that the Claimant was entitled to a declaration of ownership of the

disputed area, together with damages for trespass and property damage. The decision of **George Rowe v Robin Rowe** [2014] JMCA Civ 46 was also cited in respect of an award for damages.

- [54] Mr Thompson further contended that by the Defendant's own admission, she did a survey in the year 2003 when she purchased her property and found out about the breach in the boundary line between herself and the Claimant's property. He argued that the Defendant dragged her feet and sat on her rights for almost eighteen (18) years and acquiesced in the disputed boundary line. The Claimant's predecessor in title, Mr. Damon Peddar was the owner in possession of the Claimant's property from 2004 until 2020 and during his period of ownership and possession the boundary line was never altered, removed or challenged. The Defendant and the Claimant did not agree whether orally or in writing to correct the breach at their shared expense. The Defendant and her servants and agents entered the Claimant's property without her permission and demolished the boundary wall which was of long standing and in doing so committed acts of trespass for which an award of damages and injunctive relief was warranted.

Summary of the Defendant's Submissions

- [55] Mr. Reid questioned the sufficiency of the Claimant's evidence of dispossession, which he contended was limited to an affidavit of the Claimant, affidavit of Mr. Peddar and a report from Mr. Charles Johnson, the Commissioned Land Surveyor. He compared this to the case for the Defendant who relied on her account and that of Ms. Florrett Gooden and Mrs. Sandra Thorpe-James.
- [56] Mr. Reid submitted that the Claimant's argument in respect of the long-standing boundary is unsustainable as she knew that there was an encroachment before she bought Lot 5, Coral Way, Duncan, Trelawny and had agreed to share the costs of rectifying the breach with Defendant and in those circumstances, she would be barred from relying on **Sections 30 or 45 of the Limitations of Action Act**.

ISSUE

[57] The issues that arise for determination are as follows:

- a. Whether the Claimant and her predecessor in title acquired possessory title to the disputed area by adverse possession, having dispossessed the Defendant and remained in exclusive possession for the statutory period under the Limitation of Actions Act.
- b. Whether the Defendant acquiesced in the disputed boundary for a period exceeding seven years so that, pursuant to section 45 of the Limitation of Actions Act, the reputed boundary became the true boundary.
- c. Whether the Claimant is entitled to a declaration that she is the beneficial owner of the disputed area.
- d. Whether the Defendant trespassed on the disputed area and unlawfully demolished the boundary wall, thereby rendering her liable in damages.
- e. Whether the Claimant is entitled to any further declaratory or injunctive relief.

THE LAW

[58] The determination of the issues in this matter is governed principally by the provisions of the **Limitation of Actions Act ("the LAA")**, which prescribe the circumstances in which title may be acquired by adverse possession and the legal effect of acquiescence in a reputed boundary. The relevant statutory provisions are set out below.

[59] **Section 3 of the LAA** prescribes the limitation period within which an action to recover land must be commenced. It provides that:

“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.”

- [60] **Section 3** must be read together with **section 4(a)**, which identifies the circumstances in which the right of action accrues, namely where a person entitled to land has been dispossessed of, or has discontinued possession of, the land. **Section 4(a)** provides:

“The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say – (a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.”

- [61] **Section 30** complements **sections 3** and **4** by providing that, upon the expiration of the prescribed limitation period, the title of the dispossessed owner is extinguished. It states:

“At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”

- [62] In addition, **section 45 of the LAA** addresses disputes concerning boundaries. It provides that where adjoining proprietors have acquiesced in and submitted to a reputed boundary for a continuous period of seven years, that boundary is deemed in law to be the true boundary. **Section 45** provides:

“In all cases where the land of several proprietors bind or have bound upon each other, and a reputed boundary hath been or shall be acquiesced in and submitted to by the several proprietors owning such lands, or the

persons under whom such proprietors claim, for the space of seven years together, such reputed boundary shall forever be deemed and adjudged to be the true boundary between such proprietors; and such reputed boundary shall and may be given in evidence upon the general issue, in all trials to be had or held concerning lands, or the boundaries of the same, any law, custom or usage to the contrary in anywise notwithstanding."

- [63] The area has also been traversed by the Courts. In ***Zephaniah Blake v Almando Hunt*** [2014] JMCA Civ. 25, which concerned an encroachment arising from the incorrect placement of a boundary fence. Brooks J. concluded that the Defendants had succeeded under both **sections 3 and 45 of the Limitation of Actions Act**. His Lordship found that the Claimants' inactivity for a period exceeding twelve years, coupled with their acquiescence in the location of the boundary fence, precluded them from recovering possession of the disputed land.
- [64] In ***Winnifred Fullwood v Paulette Curchar*** [2015] JMCA Civ. 25, the Court of Appeal reaffirmed that title by adverse possession is acquired where the Claimant demonstrates exclusive factual possession and the requisite intention to possess the disputed land for the statutory period, thereby dispossessing the paper owner.
- [65] In ***JA Pye (Oxford) Ltd v Graham*** [2002] UKHL 30, the House of Lords made it clear that adverse possession depends upon two essential elements: factual possession of the land and an intention to possess it exclusively on one's own behalf. Where these elements subsist for the statutory limitation period, the paper owner's title is extinguished.

DISCUSSION/ ANALYSIS

Whether the Claimant and her predecessor-in- title acquired possessory title to the disputed area by adverse possession, having dispossessed the Defendant and remained in exclusive possession for the statutory period under the Limitation of Actions Act.

- [66] In order for the Claimant to establish possessory title under **Sections 3, 4(a) and 30 of the Limitation of Actions Act**, the burden rests on the Claimant to prove, on a balance of probabilities, that she and her predecessor-in-title were in

continuous, exclusive possession of the disputed 6.3-foot strip of land for an unbroken period of at least twelve (12) years prior to the commencement of this action. Thus, the principal issue for determination is whether the Claimant has established that she and her predecessor in title acquired possessory title to the disputed strip of land by adverse possession pursuant to the **LAA**. In determining this issue, the Court must also determine whether the Defendant was dispossessed of the disputed area and whether the Claimant and her predecessor exercised factual possession accompanied by the requisite intention to possess for the statutory period.

[67] It is well established that, for a claim of adverse possession to succeed, the Claimant must establish two essential elements throughout the statutory period. This principle was authoritatively articulated by the House of Lords in **JA Pye (Oxford) Ltd v Graham** [2002] UKHL 30 and adopted by the Court of Appeal in **Winnifred Fullwood v Paulette Curchar** [2015] JMCA Civ. 25. They are as follows:

- i. **Factual Possession:** a sufficient degree of open, undisturbed and exclusive physical control over the land; and
- ii. **Intention to possess:** an intention to exercise such control on one's own behalf and for one's own benefit, to the exclusion of all other persons, including the paper title owner.

[68] In my evaluation of the first element, factual possession, I considered the Survey Report prepared by Mr. Johnson where he commented that the physical boundary which enclosed this disputed area appeared to be long standing. This unchallenged remark provided strong support for the account of the Claimant's predecessor-in-title, Mr. Damon Peddar, who gave unchallenged evidence that the wall was constructed by the developers in the 1970s per the notation on his title. It was never suggested to him that his evidence that the boundary walls were not altered, amended or moved and have always been in the position from the date of

his purchase was untrue. It was also significant that the Defendant acknowledged that when she acquired the title to Lot 6 in July 2003, the wall was already in place.

[69] Although Mr. Peddar accepted that the Defendant had reached out to him by email in 2020 to raise a concern about the encroachment, by the effluxion of time he had already acquired a good title against her for the disputed area and he was able to pass on title for same to his successors in title. By his account he had treated the entire area enclosed within the boundary wall as his and had never sought the permission or approval of Ms. Fullerton or anyone else before cutting down the coconut tree which he said he removed in this area. It was also clear from the evidence of Ms. McKenzie that after purchasing the property, she had also exercised full dominion over the property to include the disputed area as she maintained the garden area and even had construction work taking place in that vicinity. She had even applied to the Court to modify or remove the restrictive covenant given the proximity of the dwelling house to the boundary.

[70] On the other hand, Ms. Fullerton was fully aware from 2003 that the boundary wall was 'out of line' and it meant that some of her property was enclosed within the premises of Lot 5. By her own admission, she didn't think the breach warranted any action on her part and she was only stirred into action when she discovered that the encroachment could affect the marketability of her property and her ability to sell. This did not occur until fourteen years after her initial discovery. Her attempt to argue that she was mistaken as to the size of the breach is without merit as the law does not require that the disputed or dispossessed area be of a certain size to qualify, all that is required is that the dispossessor had exercised open and exclusive possession over same and this Court finds that the Claimant and her predecessors in title had done so.

[71] I find the evidence of the Claimant and her witnesses to be credible and well supported by documentary evidence. While Ms. Gooden and Mrs. Thorpe-James have valiantly sought to show that Mr. Peddar had been informed between 2017

and 2020 that there was an encroachment, this did not undermine the title that he had already acquired and which he was able to pass on to Ms. McKenzie.

[72] It was affirmed by the Court in ***Archer Et Ux v Georgiana Holding Ltd*** (*supra*) that physical enclosure of land within an existing boundary structure is one of the most unequivocal acts of factual possession. The wall physically prevented the Defendant from accessing the disputed strip. I find that Mr. Peddar and subsequently the Claimant, exercised open, undisturbed and exclusive control over the enclosed strip by maintaining trees, fruit trees, flower gardens and a garden wall without license, lease, or permission from the Defendant.

[73] As it relates to the tracking on of successive possessors under **section 3 of the LAA**, the evidence shows that time accrued in favor of Mr. Peddar's predecessor in title from 2003, when Ms. Fullerton received notice of the encroachment and failed to act on it. Mr. Peddar's sixteen years of ownership was tacked on to this period. The overall period of continuous, undisturbed physical occupation by the Claimant and her predecessor ran from at the very least January 2004 until the Defendant's physical entry in May 2021 which is a total period of approximately seventeen (17) years and five (5) months. Even if the calculation was to be determined up to the time when Ms. Gooden did her survey, it would still be a period of thirteen years at the minimum which would be sufficient to dispossess the Defendant under **Sections 3 and 30 of the LAA**.

[74] My finding that the time accrued by the respective dispossessors would be tacked on finds support in the dicta of Morrison JA, as he then was, in the ***International Hotel (Jamaica)*** case where he stated;

'It is clear from the evidence that the possession and use of the disputed land as part of the hotel land continued without interruption, despite changes in the right to possession from 1976 or at latest 1981 (when the fences were erected) to 1999 when this action was filed by PSP. In these circumstances it seems to me IHJL as the ultimate successor in title to RPHL, would be entitled to rely as against PSP on the principle that each one of a succession of squatters gives to his successor a right as against the paper owner which is as good as his own.'

[75] In my analysis of the second element, the intention to possess, I considered the Defendant's contention that the Claimant and Mr. Peddar did not possess the requisite *animus possidendi* because the initial enclosure arose out of a mutual mistake regarding the true survey boundary, rather than a deliberate intention to dispossess the paper owner. The Court rejects this argument as a matter of law. In ***JA Pye (Oxford) Ltd v Graham (supra)***, Lord Browne-Wilkinson made it clear that *animus possidendi* does not require a conscious intention to dispossess the true owner, nor does it require a belief that the possessor owns the land. It simply requires an intention to possess the land in question to the exclusion of the world at large. By abiding within and exercising dominion over the area enclosed by the boundary wall as part of their residential curtilage and through cultivation or removal of trees, vegetation or flowers, Mr. Peddar and the Claimant manifested a clear and outward intention to hold and use the land exclusively as their own.

[76] In respect of the Defendant's contention that she was labouring under a mistake and could not have been dispossessed as she was unaware of the extent of the encroachment, I had a number of questions as to her reliability as a witness. In my examination of this assertion, I observed that there were inconsistencies in this aspect of her evidence. While she maintained that she only appreciated the extent of the encroachment in 2017 or 2018, she also accepted that she knew from the time of her own purchase in 2003 that the boundary wall did not coincide with the registered boundary. The distinction she sought to draw between a "*slight breach*" and a "*significant breach*" did not alter the fact that she was aware that the physical boundary did not reflect the registered boundary. The accounts of Ms Gooden and Mrs. Thorpe-James could not assist her in this regard.

[77] Having assessed the evidence presented as a whole, I am satisfied that the enclosure of the disputed land, coupled with its continuous use as part of the garden of Lot 5, constitutes compelling evidence of an intention to possess to the exclusion of the world at large to include the paper title owner. While the Defendant maintains that she was not dispossessed, she took no action over the period 2003 to 2020, whether through the Courts or otherwise, to assert her possession of the

property enclosed and by this inactivity she was dispossessed by the Claimants and her predecessors in title.

- [78] In light of the oral testimony, documentary evidence and pleadings, I find that the possession exercised by Mr. Peddar, his predecessor in title and subsequently by the Claimant was continuous, exclusive, open and inconsistent with the Defendant's title for well in excess of the statutory twelve-year period prescribed by **sections 3 and 30 of the LAA**. Consequently, the Defendant's paper title to the disputed strip became extinguished upon the expiration of that statutory period.

Whether the Defendant acquiesced in the disputed boundary for a period exceeding seven years so that, pursuant to section 45 of the Limitation of Actions Act, the reputed boundary became the true boundary.

- [79] **Section 45 of the LAA** provides a distinct statutory remedy designed to settle boundary disputes between adjoining proprietors without requiring proof of full adverse possession. Under Section 45, where adjoining owners submit to or acquiesce in a "*reputed boundary*" for an uninterrupted/continuous period of seven (7) years, that boundary becomes, by operation of law, the true legal boundary between the properties. The issue for my determination is whether the evidence establishes that the Defendant, either knowingly or unknowingly, acquiesced in the location of the concrete boundary wall for the requisite statutory period.

- [80] In my examination of this issue, I found the authority of ***Zephaniah Blake v Almando Hunt*** *supra* to be instructive. In that matter, the Court established that the requirements for **Section 45** is physical presence and mutual submission. On the evidence presented before this Court, it is uncontroversial that the concrete boundary wall was constructed before 2003. The Defendant admitted that at the time of her purchase the wall was already fully constructed, clearly visible, and enclosed the disputed 6.3-foot strip within Lot 5. When the Court considers the period from December 2003 until at least 2017, this is a continuous period of fourteen (14) years during which the Defendant failed to take decisive legal steps

or physical action to challenge the location of the wall or to dispute it as a true boundary between the properties. On her account she did not view the deviation as significant or worth the effort.

[81] The decision of **Loretta Blake v Noel Palmer** *supra* is instructive on this point as Harrison JA made it clear that ‘*Where therefore a party has acquiesced in or submitted to*’ the positioning of a particular boundary line ‘*for the space of seven years he shall forever be deemed*’ to have accepted it and ‘*liable to have that boundary adjudged as the true boundary*’

[82] The Defendant contended in her submissions that she did not knowingly acquiesce because she only discovered the extent of the boundary encroachment following a professional site survey in 2018. This Court rejects that argument as a matter of law as **Section 45** operates objectively. Acquiescence in this context does not require active agreement or full technical awareness; it requires factual submission to a physical demarcation separating two parcels of land. By treating the physical wall as the practical division between Lot 5 and Lot 6 without objection from 2003 to 2017 (a period well exceeding seven years), the Defendant acquiesced in law to that wall as the reputed boundary and cannot now seek to take refuge behind her alleged ignorance of the size of the deviation. It is also significant that there was no evidence to show that there had been any interruption of this seven-year period by her which could cause the time to cease to run. Pursuant to **Section 45** of **the LAA**, the long standing boundary wall became the true legal boundary between Lot 5 and Lot 6 by 2010 at the latest.

Whether the Claimant is entitled to a declaration that she is the beneficial owner of the disputed area.

[83] A declaration of beneficial ownership is an equitable remedy by which the Court formally declares and settles the parties' proprietary rights. Where, as here, such a declaration is sought on the basis of adverse possession, the Court's jurisdiction depends upon whether the statutory requirements of the **LAA** have been satisfied

so as to extinguish the paper owner's title and vest a possessory title in the adverse possessor.

- [84] Pursuant to **sections 3, 4(a) and 30 of the LAA**, once the prescribed limitation period has expired following dispossession or discontinuance of possession, the paper owner's title is extinguished by operation of law. Similarly, **section 45** provides that where adjoining proprietors have acquiesced in and submitted to a reputed boundary for a continuous period of seven years, that boundary is thereafter deemed to be the true boundary between the properties. The combined effect of these provisions is that the adverse possessor acquires a possessory estate which is enforceable against the former title holder and all others.
- [85] This Court has already found that the Claimant and her predecessor in title, Mr. Damon Peddar, exercised continuous, exclusive and uninterrupted factual possession of the disputed 6.3-foot strip, coupled with the requisite intention to possess, for a period of almost eighteen years between 2004 and 2021. The Defendant neither exercised possession over the disputed area nor asserted any competing right within the limitation period. Consequently, by December 2015, the Defendant's title to the disputed strip had been extinguished pursuant to **sections 3, 4(a) and 30 of the LAA**.
- [86] I have also determined that the concrete boundary wall constituted the true boundary between Lots 5 and 6. These findings, viewed cumulatively, establish that the Claimant's possessory title to the disputed land has fully been established.
- [87] I then considered the declaratory relief sought by the Claimant. The evidence establishes that on May 10th 2021, the Defendant entered the disputed area, caused works to be undertaken in an attempt to relocate the boundary and asserted a continuing entitlement to the disputed strip. These actions demonstrate that the Claimant's proprietary rights remain in dispute and that there exists a real risk of further interference with her possession. In those circumstances, an award

of damages alone would be insufficient to resolve the controversy or secure certainty of title.

[88] The Court is satisfied that a declaration is necessary to conclusively determine the parties' respective proprietary rights, protect the Claimant's quiet enjoyment of the property and avoid the prospect of future disputes concerning the location of the boundary. A formal declaration will also bind the parties and their successors-in-title, thereby bringing finality to this long-standing dispute.

[89] Accordingly, the Court finds that the Claimant has established beneficial ownership of the disputed 6.3-foot strip forming part of Lot 5 and is entitled to a declaration to that effect pursuant to **sections 3, 4(a), 30 and 45 of the LAA** and the Registrar of Titles is instructed to give effect to these declaration on the relevant Titles.

Whether the Defendant trespassed on the disputed area and unlawfully demolished the boundary wall, thereby rendering her liable in damages.

[90] Trespass to land is committed where there is a direct and unjustifiable physical interference with land in the exclusive possession of another. It is well established that the essence of the tort is the protection of possession rather than title. Accordingly, a person in actual and exclusive possession of land is entitled to maintain an action in trespass against any person who enters the land without lawful authority or consent, including a registered proprietor whose title has been extinguished by operation of law.

[91] In the decision of **George Rowe v Robin Rowe** *supra*, His Lordship Brooks J provided careful guidance on the approach to be taken to this issue of trespass and an award for damages where he stated;

*[50] The general rule that damages are intended to be compensatory for this tort was set out in **Stoke-on-Trent City Council v W & J Wass Ltd** [1988] 3 All ER 394; [1988] 1 WLR 1406. In that case, Nourse LJ explained the rule and the basis of exceptions. The following extracts are taken from his judgment at pages 397-8 of the report:*

*“The general rule is that a successful plaintiff in an action in tort recovers damages equivalent to the loss which he has suffered, no more and no less. If he has suffered no loss, the most he can recover are **nominal damages**. A second general rule is that where the plaintiff has suffered loss to his property or some proprietary right, he recovers damages equivalent to the diminution in value of the property or right. The authorities establish that both these rules are subject to exceptions.” (Emphasis supplied)*

[51] One of the exceptions to that general rule lies in the tort of trespass. Nourse LJ explained that the origins of this exception lay in wayleave cases. He said:

“The first and best-established exception is in trespass to land. It originated in the wayleave cases, where the defendant trespassed by carrying coals along an underground way through the plaintiff's mine. Although the value of his land had not been diminished by the trespass, the plaintiff recovered damages equivalent to what he would have received if he had been paid for a wayleave...”

[52] Based on those origins, it is said that trespass is actionable without the need to prove loss. Proof of loss is, however, what is required to assist the court in quantifying the appropriate award of damages. Nourse LJ pointed out that for residential properties the court would use evidence of the rental value to guide its deliberations.’(emphasis added)

[92] Having reviewed these decisions and the legal principles enunciated therein, the Learned Judge then considered the question of whether nominal damages ought to be awarded in the absence of proof of the value of the damage and stated;

*Finally, the issue of nominal damages for trespass was recently considered by McDonald-Bishop J, as she then was, in **Delia Burke v Deputy Superintendent Carol McKenzie and Another** [2014] JMSC Civ 139. After referring to the general principles governing the award of nominal damages and after referring to **Linneth Vassell and Cyril Vassell v The Attorney General** (1996) 33 JLR 1, the learned judge awarded \$65,000.00 as nominal damages. McDonald-Bishop J made that award after noting that **Vassell** involved an invasion of the claimant's home. She said at paragraph [72]:*

“But in an effort to maintain uniformity and consistency in awards and having looked at the nature and extent of the trespass in this case which took the police in the bedroom of the claimant, I would award \$65,000.00 for damages for trespass.”

*In **Delia Burke**, the trespass also involved the improper invasion of the claimant's home by the police.*

*[62] Although these awards for nominal damages cannot be said to be within a narrow band, it may be said that claims involving personal injuries seem to attract higher awards within the band than claims involving injury to reputation or trespass to land. Even where there is no personal injury, claims arising from tortious high-handed behaviour may result in an increase in the level of the award. Trial judges must be mindful, however, that if they are of the view that only nominal damages are merited, there should be compliance with the principle explained in **The Mediana**.*

- [93] The Court then considered these principles of law and their application to the case involving the Rowe brothers and stated;

*In this case, the learned Resident Magistrate noted that George had adduced no evidence concerning the value of the land. He did not even provide a value for the fence that Robin had destroyed. In his claim, he sought \$250,000.00 as damages for trespass. **There is, however, nothing that would assist this court in that regard. George may, therefore, only recover nominal damages.** (emphasis added)*

- [94] This Court has already concluded that the Defendant's paper title to the disputed 6.3-foot strip was extinguished by December 2015. It follows then that, as at May 10th, 2021, the Claimant was in lawful and exclusive possession of the disputed strip to the exclusion of the Defendant and any entry upon it by her and her servants or agents would constitute a trespass.

- [95] The evidence establishes that on May 10th, 2021, workmen engaged by her through Mrs. Thorpe-James entered the enclosed perimeter of Lot 5 without the Claimant's consent or other lawful justification. The Defendant herself accepted that she instructed the workmen to rectify what she regarded as a boundary breach and that they entered the disputed area to carry out those works. Although there was some disagreement as to the route by which the workmen gained access, it is accepted that they did not enter with the Claimant's knowledge or approval. While Ms. Gooden feigned ignorance of what she was looking at in the photographs of the property, both the Defendant and Mrs. Thorpe acknowledged that some excavation took place though they hesitated to call it a trench. Significantly, the Defendant's witness, Mrs. Sandra Thorpe-James, acknowledged that an opening was cut through the concrete garden wall to facilitate the construction works. The photographic evidence depicts a trench excavated within

the Claimant's garden enclosure together with damage to the surrounding structures and vegetation.

[96] The Court is satisfied that these works constituted a direct trespass on and physical interference with land that was, at all material times, in the Claimant's exclusive possession. The excavation of the trench, the cutting through of the boundary structures, and the resulting disturbance to the Claimant's garden and landscaping amounted to acts of trespass.

[97] The Defendant sought to justify her actions on the basis that she was merely entering upon her own land to correct an encroachment. However, that submission cannot succeed in light of my earlier finding. A person whose title has been extinguished under the Act cannot lawfully resort to self-help to recover possession of the land.

Special Damages

[98] It is well established that special damages must be specifically pleaded and strictly proved. The Claimant claims compensation for the physical damage occasioned by the Defendant's unlawful entry and the excavation works undertaken on May 10th, 2021. Having examined the contemporaneous photographic evidence together with the oral evidence relied upon by the Claimant, the Court must determine whether the items claimed have been strictly proved and where satisfied; award special damages in the amount established by the evidence. In conducting this exercise, the Court is cognizant of the decision in ***Desmond Walters v Carlene Mitchell*** (1992) 29 JLR 173 (CA), which reaffirms the well-established principle that special damages must be specifically pleaded and strictly proved.

[99] Although reference was made to the amended particulars of claim which outlined the value of the losses occasioned, Ms. McKenzie was unable to state what they were. There were no documents presented in respect of a valuation done of the damage to the garden wall or the fruit trees. In the circumstances, the Court

received no assistance as to what would constitute an appropriate award. In the circumstances, while it is evident that damage was done by the Defendant and or her agents, I am constrained to make no award under this head of damages.

General Damages

[100] The authorities show that the Claimant is entitled to damages for trespass. Such damages are recoverable as of right upon proof of trespass and serve to compensate for the unlawful interference with the Claimant's exclusive possession and quiet enjoyment of her property. Accordingly, once trespass is established, a claimant is entitled to an award of damages notwithstanding the absence of proof of actual loss. The purpose of such an award is to vindicate the claimant's possessory rights and to recognize the unlawful interference with those rights.

[101] In assessing the appropriate quantum, the Court has regard to the deliberate and unilateral nature of the Defendant's conduct, the physical damage occasioned to the boundary structures and surrounding garden, the disturbance and inconvenience caused to the Claimant, and the fact that police intervention became necessary to halt the works. These are all relevant considerations in arriving at an appropriate award of general damages.

[102] In the case at bar, while the Court has found that the Defendant unlawfully entered the disputed area and interfered with the Claimant's possession, neither party provided submissions on the appropriate measure or quantum of general damages for trespass, nor were any comparable authorities cited to assist the Court in assessing such an award. In those circumstances, the Court considers it inappropriate to undertake a broad assessment of compensatory damages in the absence of assistance from Counsel.

[103] The absence of submissions on quantum does not disqualify the Claimant's right to relief and the Court finds support for this view in the reasoning of Brook J in **George Rowe v Robin Rowe** *supra*. Having established the tort of trespass, the Claimant is entitled, at the very least, to nominal damages to mark the infringement

of her possessory rights. Nominal damages serve to vindicate those rights by recognizing that a legal wrong has been committed, even where no substantial compensable loss has been proved or quantified. The Court therefore awards the Claimant nominal damages for trespass in the sum of **One Hundred Thousand Dollars (\$100,000.00)**.

Whether the Claimant is entitled to any further declaratory and injunctive relief.

[104] Having determined that the Claimant has established possessory title to the disputed area, that the reputed boundary became the true boundary pursuant to **section 45 of the LAA**, and that the Defendant committed actionable trespass, the Court now turns to the additional reliefs sought.

[105] The Claimant seeks, among other reliefs, a declaration that the boundary wall be replaced by the Defendant and a permanent injunction. In considering whether this remedy ought to be granted, the Court is guided by the findings already made in relation to the parties' respective rights.

[106] In respect of the declaration for the replacement of the wall, it is uncontroversial that the wall was removed by the Defendant or workmen acting at her behest. In fact, it was her evidence that this action was taken in an effort to build a new wall in keeping with the correct boundary. The Court having found that she had been dispossessed of this 6.3 feet of property, it is evident that the declaration sought is just and warranted. In the circumstances, the Court declares that the boundary wall is to be replaced in its original place by the Defendant and at a cost to be wholly borne by her.

[107] An injunction is an equitable remedy granted to restrain actual or threatened infringements of legal rights where damages would not afford an adequate remedy. Having regard to the Defendant's conduct in unilaterally attempting to alter the established boundary and her continued assertion of ownership over the disputed strip, the Court is satisfied that there remains a real risk of further interference with the Claimant's possession unless restrained by order of the Court. The balance of

justice therefore favours the grant of a permanent injunction restraining the Defendant, whether by herself, her servants or agents, from entering upon, remaining on, interfering with, or carrying out any works upon the disputed area.

CONCLUSION

[108] Having evaluated the evidence, the legal submissions, and the applicable statutory framework, the Court finds that the Claimant's possessory title to the disputed 6.3-foot strip of land has been fully established.

ORDERS

[109] Accordingly, judgment is entered for the Claimant against the Defendant as follows:

1. It is declared that the Claimant is the beneficial owner of all that parcel of land (hereafter called the reputed area) comprising 6.3 feet at its widest point being the parcel of land identified as the sketch plan prepared by Johnson Wiggins & Associates Limited' commissioned land surveyors from a survey conducted on the 2nd of September 2020 and being a part of the land comprised in Certificate of Title registered at Volume: 1065 Folio: 898 of the Register Book of Titles.
2. The Registrar of Titles shall rectify the Certificate of Titles registered at Volume: 1068 Folio: 897 and Volume: 1068 Folio: 898 in accordance with the declarations herein contained.
3. The Defendant is to complete all the works as are necessary for reinstating the boundary wall and making good all the damage done to the Claimant's property and to take all necessary and proper precautions for upholding and preserving the boundary wall upon all that parcel of land called Duncan Bay and known as Silver Sands formerly known as Carey Park and part of Johnson

Pen in the Parish of Trelawny being Lot numbered Five (5) on the plan part of Duncan Bay and being land comprised in Certificate of Title registered at **Volume 1068 Folio 897** of the Register Book of Titles (hereinafter referred to as the property).

4. General Damages for trespass are awarded to the Claimant in the sum of **One Hundred Thousand Dollars (\$100,000.00)** with interest at 3% per annum from July 6th, 2021, to July 30th, 2026.
5. An injunction is granted restraining the Defendant, whether by herself, her servants, and/or agents, from entering upon, remaining on, erecting structures, or otherwise interfering with the Claimant's possession and quiet enjoyment of the said disputed land.
6. Costs are awarded to the Claimant, to be taxed if not agreed.
7. The Claimant's Attorney to prepare, file and serve the Judgment herein.