

IN THE SUPREME COURT OF BELIZE A.D. 2021

CLAIM NO. 138 OF 2021

(THEODORE GRIMWOOD

CLAIMANT

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BETWEEN ( AND

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(PHILIP LEE

DEFENDANT

*BEFORE THE HONOURABLE MADAM CHIEF JUSTICE MICHELLE  
ARANA(Ag.)*

Mr. Allister Jenkins of Magali Marin Young and Co for the Claimant/Applicant  
Iliana Swift of Courtenay, Coye and Co. for the Defendant/Respondent

1. This is an Assessment of Damages arising from the Applicant's successful claim against the Defendant for trespass to his property. This Court gave judgment in favour of the Applicant in Claim No. 562 of 2016 Theodore Grimwood v. Philip Lee on September 9, 2020 declaring that the 51.36 acres property situate at the junction of Cowpen Road and the Southern Highway Stann Creek District was held in resulting trust for the Claimant and Mr. Danny Mittleberg. At the first hearing of the Assessment of Damages, the court proceeded to treat the first hearing as the trial of the matter, pursuant to CPR 27.2 by order of the court dated April 29, 2021 the Claimant was to file

Written Submissions addressing the court on the claim for damages and mesne profits by May 12, 2021 and the Respondent was to file written submissions in Response by May 26, 2021; submissions in Reply (if any) were to be filed by the Claimant by June 4, 2021. The Claimant filed his submissions on May 12, 2021 as ordered by the court. To date, there have been no submissions filed by Counsel for the Respondent. The court now delivers its decision.

## 2. Legal Submissions on behalf of the Claimant

Mr. Jenkins submits on behalf of the Claimant that since the Defendant has continued to occupy the property without the license or consent of the Claimant in defiance of the order of the court in the substantive claim delivered on September 9, 2020, the Claimant is entitled to damages at large for trespass without proof of actual damage. He relies on **Halsbury's Laws of England** Volume 97 (2015) para. 591 which sets out the principles in relation to damages for trespass:

*“In a claim for trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to*

*receive by way of damages such a sum as should reasonably be paid for that use...*”

3. Mr. Jenkins also relies on **Claim No. 586 of 2016 Michael Modiri v. Bradley Paumen** where the Court noted that nominal damages does not mean small damages. In that case there was no evidence of actual damage or loss suffered by the Claimant. Young J. cited explained that damages for trespass to land are said to be at large and that meant 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. Her Ladyship cited *Asot Holding Ltd* on the measure of nominal damages as follows:

“A claimant may recover nominal damages where he had not suffered actual loss or where he does not prove actual loss because it is presumed. The Privy Council reminded us in **Greer v Alston Engineering Sales and Services Ltd. (2003) 63 WIR 388** at paragraph 7 that ‘nominal damages’ does not mean small damages. Greer involved a claim for damages for the loss of use of a backhoe for the period July 1982 to January 1984 and by amendment of the claim, for detinue for a further period of 6 months. Their Lordships stated, at paragraph 9, that although damages for loss of use were not quantified, it was the duty of the court in awarding nominal damages, to recognize the loss by an award that is not out of scale. Their Lordships thought

that the \$5,000 that the Court awarded was low. The daily rates for the use of a backhoe went from \$500 per day in 1982 to \$800 per day by 1984. They confirmed the award of \$5,000 nominal damages on the ground that it was not so low as to warrant their interference.” In the Modiri matter, the court awarded nominal damages of \$40,000 on the Claim and \$20,000 on the Counterclaim.

4. Mr. Jenkins also relies on **Action No. 445 of 2000 Orville Holden v. Ramon Reyes Jr.** where the court awarded the sum of \$8,000 to the Claimant for trespass where actual damage had not been proven.
5. Mr. Jenkins relies on this line of Belizean judgments on nominal damages to support his claim for damages in this case. He asserts that the Claimant has been denied the full use and enjoyment of his 51.36 acre property and for that he claims nominal damages at large at a sum between \$10,000 and 30,000.

## **6. DECISION**

The evidence at trial revealed that the Defendant has been utilizing the property of the Claimant without the Claimant’s consent. I have no evidence before me that the Defendant has ceased this behavior since the court issued its decision in the substantive case of trespass in 2020. There was evidence that the Defendant has been using the Claimant’s property to plant fruit trees, to construct living quarters for himself and to run his business from there, all

without the Claimant's permission. The court agrees with Mr. Jenkins' submission that the award of nominal damages should fall between \$10,000 and \$30,000. I therefore award the Claimant the sum of \$25,000 as nominal damages plus interest of 6% per annum.

Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

Dated this 4<sup>th</sup> day of July 2022

Michelle Arana

Chief Justice (Ag.)

Supreme Court of Belize