

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

[Unreported]

Suit No: 2371 of 2007 consolidated
with Suit No: 1956 of 2006

BETWEEN

**GENERAL ASSEMBLY OF THE
CHURCH OF GOD (BARBADOS)**

PLAINTIFF

VS

**DENNIS A. BECKLES
VIOLET BECKLES
(represented by ALEX MITCHELL
her duly constituted Attorney)
KEISHA WOOD
JULIAN SMALL
JOHANNES MITCHELL**

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

4TH DEFENDANT

5TH DEFENDANT

*Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.,
Judge of the High Court*

**2008: April 30
May 16**

Miss. Diana Douglin for the Plaintiff

**The 2nd Defendant represented by her duly constituted Attorney on
record Alex Mitchell; the 1st, 3rd and 4th Defendants in person and
unrepresented and the 5th Defendant not appearing.**

DECISION

- [1] **Crane-Scott J:** This is an application brought by the General Assembly of the Church of God (hereinafter “the Plaintiff”) pursuant to **Order 92** of the **Rules of the Barbados Supreme Court** for the recovery of possession of all that land situate at Chapman Street in the City of Bridgetown.
- [2] The application is brought on the ground that the Plaintiff is entitled to possession and that the person or persons in occupation are in occupation without the licence or consent of the Plaintiff.
- [3] **Order 92 r. 1** of the Rules provides that:
- “Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.”*
- [4] **Order 92 r. 3 RSC** provides that the application must be supported by an affidavit showing the Plaintiff’s interest in the land and the circumstances in which the land has been occupied without licence or consent and in which the Plaintiff’s claim to possession arises.
- [5] The Originating Summons was filed on December 19, 2007 and is supported by an affidavit of Lyall Grantley Marshall, the First Vice-

- Chairman of the Plaintiff, having the necessary authorization to make the affidavit on the Plaintiff's behalf.
- [6] As appears by the Affidavit of Service of Curtis Maloney filed on February 11, 2008, service of the proceedings on the then unknown defendants (the "persons unknown") was effected by affixing a copy of the Originating Summons returnable on February 11, 2008 together with the supporting Affidavit to the galvanized fence surrounding the premises on a conspicuous place on the said galvanized fence.
- [7] When the matter came on for hearing before *Blackman J.* on February 11, 2008, several persons attended the hearing and declared an interest in the said land. Leave was accordingly granted to the Plaintiff to amend the Originating Summons to add as Defendants the names of the persons who had attended the Court. The matter was adjourned to March 4, 2008 to permit the Defendants to file an affidavit in response to the Plaintiff's case.
- [8] When the matter next came on for hearing before *Alleyne J (ag)*, an order was made, *inter alia*, consolidating the current proceedings with an earlier action brought by the Plaintiff against Violet Beckles in Suit No: 1956 of 2006. Leave was also granted for Violet Beckles to be added as a Defendant in the current suit. The Court also ordered the

3rd and 4th Defendants Keisha Ward and Julian Small to be summoned to Court on a date to be fixed.

- [9] Following the filing of an Affidavit of the Truth affirmed by the 2nd Defendant Violet Beckles and filed on April 3, 2008 and the filing of the Amended Originating Summons on April 30, 2008, the application finally came on for hearing on April 30, 2008.

The Plaintiff's Case:

- [10] *Evidence of Lyall Marshall*: Counsel for the Plaintiff, Miss. Douglin referred the Court to the affidavit evidence of Lyall Grantley Marshall filed January 16, 2008 on behalf of the Plaintiff, a body incorporated by statute and having its registered office situate at Chapman Street, Bridgetown.

- [11] In his affidavit Lyall Grantley Marshall deposed, *inter alia*, as follows:

- “1. I am the First Vice-Chairman of the GENERAL ASSEMBLY OF THE CHURCH OF GOD (BARBADOS) and am authorized to make this affidavit on its behalf having responsibility for land...
7. I state that on or about the month of October 2007, I noticed that a wooden structure was being erected on the said land. Copies of photos of this structure in its current state are hereto annexed and together marked “LM2”. I am advised by Pastor Foster and verily believe that he spoke to a young man who was present on the said land and engaging in building the structure. I am advised and

verily believe that the young man refused to vacate the said premises and indicated that he intended to continue his occupation of the said land. Further, the young man indicated that he had purchased the property from V. Beckles and was entitled to possession of the land.

8. I state further that no person have a right to place any galvanize sheeting around that property or erect any structure as it is owned by THE GENERAL ASSEMBLY CHURCH OF GOD (BARBADOS). The General Assembly purchased the said property on the 28th day of October 1997 from Miriam Pearl Hunte. A copy of the Conveyance is hereto annexed and marked **“LM3”**.
9. I state that neither I nor any official of the General Assembly had any knowledge of any claim to that parcel of land and we refute that any person has a claim to the said land.
10. I state that also Miriam Pearl Hunte, the Vendor in the Conveyance to the General Assembly was one of the Purchasers of the property in a Conveyance dated the 27th day of December 1984. The property was purchased by her and Elam Uni Carr as joint tenants. A copy of the Conveyance is hereto annexed and marked **“LM4”**.
11. The said Elam Uni Carr died in this island on the 3rd day of August 1985 and Miriam Pearl Hunte became the sole owner and therefore entitled to sell the property to the General Assembly. A copy of the Death Certificate is annexed hereto and marked **“LM5”**.
12. I do not know the name of the occupant of the land. The occupation of the premises by those who are in occupation is without the consent and license of the Plaintiff, or their agents or any other persons acting on their behalf.”

[12] In answer to a question by the Court as to the existence of a survey plan of the land in question, Lyall Marshall was duly sworn and gave additional evidence as follows:

“I filed an affidavit on January 16, 2008. All the contents of that affidavit are true and correct. This action relates to a parcel of land with which I am familiar.

I am familiar with the square footage of the land and am in possession of a survey plan of the said land. This is a plan of the land which is the subject matter of the action. The Lot is Lot 52 Chapman Street, the City, St. Michael which contains 108.6 square metres.

The plan was certified on July 6, 1984 by Owen Pilgrim, Land Surveyor for one Jon Rogers.”

[13] A copy of the survey plan was entered into evidence and marked “LM6”. In answer to a further question by the Court, Lyall Marshall gave additional evidence concerning payment of land taxes for the land by the Plaintiff since acquiring the land in 1997. He stated:

“The Church has been receiving and paying land taxes for this parcel since the date of the Conveyance, that is, since October 28, 1997. The Land Tax Reference Number for the Plaintiff’s parcel of land is 800102044/4. The Land Tax Bill shows the Church as the owner of the land. The area shown on the Land Tax Bill is 108.6 square metres and the address on the Bill is Lot 52 Chapman Street, Bridgetown.”

[14] Cross-examined by Mr. Alex Mitchell (who was recognized by the Court as the duly constituted Attorney for the 2nd Defendant, Violet Beckles) Lyall Marshall stated, *inter alia*, that after purchasing the property in 1997, the Church had demolished an unoccupied derelict

building on the property. He also stated that the Pastor at Chapman Street, Reverend Foster would have the land de-bushed from time to time.

The case for the Defendants:

- [15] Evidence of the 2nd Defendant-Violet Beckles: At the close of the Plaintiff's case, the duly constituted agent for the 2nd Defendant, Mr. Alex Mitchell referred the Court to the Affidavit of Truth which had been filed by Violet Beckles on April 3, 2008. He stated that the 2nd Defendant was claiming a right to possession of the land described in a Deed dated April 20, 1957 between Harold Proverbs & Company Ltd and one Beatrice Henry.
- [16] He referred the Court to the documents annexed to the Affidavit of Truth which according to him evidenced the 2nd Defendant's entitlement to the land. These were in particular (i) a copy of a Conveyance dated April 20, 1957 between Harold Proverbs and Company Limited and Beatrice Henry; (ii) a copy of the Last Will and Testament of Beatrice Evangeline Henry dated January 17, 1984 devising and bequeathing to Violet Beckles all the rest and residue remainder of her property both real and personal whatsoever and wheresoever situate and (iii) a copy of the Letters of Administration

cum testamento annexo over the Estate of Beatrice Evangeline Henry which had been issued to Violet Beckles on June 19, 1986.

[17] Mr. Mitchell submitted on behalf of the 2nd Defendant that the real estate owned by Beatrice Evangeline Henry had been willed to Violet Beckles in a Will dated January 17, 1984. According to him, Violet Beckles had obtained Letters of Administration *cum testamento annexo* over the estate of Beatrice Henry in 1986 and was therefore the person entitled to the land.

[18] At the request of the Court, the 2nd Defendant, Violet Beckles was affirmed and gave oral evidence concerning whether she paid land taxes for the land in question. She stated:

“I am not in a position to produce to the Court land tax bills or receipts for the parcel of land shown in the Deed dated April 20, 1957 between Harold Proverbs & Company Ltd and Beatrice Henry. I have several houses on the parcel of land at King Street, noone pays me rent.”

[19] Under cross-examination by Counsel for the Plaintiff, the 2nd Defendant, Violet Beckles stated:

“The person who executed the Deed dated April 20, 1957 is not Harold Proverbs & Company Ltd. The Conveyance is executed by Deputy Registrar, A.W. Symmonds. On page 3 of the Deed, the person who signed as purchaser is not Beatrice Henry but Violet Beckles.

The land tax receipts which I have at home are in my name. Beatrice Henry died in 1985. I obtained Letters of Administration in 1986. Nothing was done after 1986 to

transfer the property to me. I have had about thirty attorneys-at-law work for me in relation to this matter. They have all 'mashed up' my claim.

It is not true that I am not represented by Counsel here today because various lawyers have advised me that I have no entitlement. It is not true that the reason why nothing has been done since 1986 is because I am not entitled."

[20] Evidence of the 4th Defendant- Julian Small: The 4th Defendant, Julian

Small was duly sworn and gave oral evidence as follows:

"Around the year 2006, I saw an advertisement in the Nation newspaper stating that there would be a meeting at Wesley Hall School to do with the land in the area. I went to the meeting with my mother-in-law. A Government Minister was also present at the meeting. After the meeting, I went to see Ms. Beckles about renting a house spot. She told me that a surveyor had to do a survey of the area. A week later I saw the lot had been divided into two house spots. I went to Ms. Beckles and advised her that the survey was going on. She told me to check back with her later. When I went back, she sent her son to talk to me. I paid him the rent money for the spot and my child mother, Keisha Wood paid the rent for the other spot. After I paid, I weeded the spot. When as started to put the galvanize on the land, Reverend Foster came across and asked me what I was doing. I did not see Reverend Foster again for a while. Two policemen came to me and I explained that I had paid rent for the spot. I took them to see Ms. Beckles and her son, Dennis. The police spoke to Ms. Beckles and went along. The last time I paid rent to Ms. Beckles was in October 2007. I saw the paper stuck up on the fence and took it to Ms. Beckles and asked her what it is. She told me that she guess the Church people were still claiming the land. I want to say that I never behaved badly as testified by Mr. Marshall earlier today. Also, when I read the Summons, I did not tell the pastor that I had bought the land."

[21] Under cross-examination by Counsel for the Plaintiff, Julian Small

stated:

“I do not claim to be the owner of the land. At the Wesley Hall School meeting, the impression given was that Ms. Beckles was the owner. I estimate that about four attorneys-at-law were present at the meeting. At least six persons, including someone from the Urban Development Corporation and attorneys-at-law were on the podium. Following the meeting, persons were told to pay rent to Ms. Beckles.”

[22] Evidence of the 3rd Defendant- Keisha Wood:

The 3rd Defendant, Keisha Wood was duly sworn and gave oral evidence as follows:

“Following the meeting at Wesley Hall, I heard that the land was owned by Ms. Beckles. I investigated the matter with Miss. Margaret Talma at Urban. I was told that the spot was a tenantry spot owned by Proverbs Tenantry which was inherited by Ms. Beckles.

I questioned them about the specific spot. They said that as far as they knew nothing was sold so I should continue paying the rent to Ms. Beckles. I continued paying the rent. After Pastor Foster spoke with Julian Small, I went to see him. He told me that the spot was the Church’s. I told him that I was willing to rent the land from the correct owner. He told me that the Church was the correct owner and that he was not renting and that he would turn it into a car park. I asked to see the Deed. I told him that I had seen a Deed from Ms. Beckles. He said that he was not in possession of the Deed. A year passed. All that time I continued to pay rent to Ms. Beckles for the spot. We stopped paying rent to Ms. Beckles in October 2007 when the problem started. After the year passed, we decided to put up a structure, although I was still in some doubt about the ownership of the land. I had a building plan prepared by someone from Town and Country Planning Department to construct a wall structure. I had permission from Violet Beckles to construct a wall structure on the land as I was hoping to buy the land. We decided to put up a wooden structure because we couldn’t afford a wall structure. After we started work, we saw the papers came from the Court.

[23] Under cross-examination by Counsel for the Plaintiff, the 3rd

Defendant, Keisha Wood stated:

“I do not claim to be the owner of the property. At the Wesley Hall meeting, Ms. Beckles had attorneys-at-law present.”

Discussion:

[24] The scope and application of **Order 92** of the Rules has been judicially considered in the Barbadian case of *Joan Nall v. Henry*

Cox [Unreported] H.C. B'dos Civil Jurisdiction No. 718 of 1987. In

Nall's case, Chief Justice, Sir. Denys Williams observed that:

“...the corresponding order in the English Rules of the Supreme Court, Order 113, covers two distinct states of fact, the first being that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his and the second being that of the person who has entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in possession without the licence or consent of the person entitled to possession or any predecessor in title. This view of the scope of the Order was confirmed by the Court of Appeal in *Greater London Council v. Jenkins [1975] 1 All E.R. 354* in which **Lord Diplock** said (at p. 356) that **Pennycuick V.C.** [in *Bristol Corpn v. Persons Unknown [1974] 1 All E.R., 593*] pointed out that it is clear beyond peradventure that the Order applies to cases where a person who is alleged to be a trespasser was previously on the premises by licence.”

[25] It is obvious to the Court that the Plaintiff's claim to possession falls into the first of the two fact scenarios identified by Chief Justice

Williams in **Nall's case**, (*above*), namely, this is a claim which was instituted by the Plaintiff against persons who were initially unknown to the Plaintiff and who it was alleged, entered into occupation of the land without the licence or consent of the Plaintiff as the person lawfully entitled to possession of the property.

[26] As appears at paragraph [7] above, following the posting on the land of the Court documents giving notice of the proceedings, several persons attended the hearing before ***Blackman J.*** on February 11, 2008 and declared an interest in the land and were duly added to the proceedings as Defendants.

[27] The evidence now before the Court clearly establishes that two persons, namely, the 3rd and 4th Defendants, Keisha Wood and Julian Small respectively, are in actual possession of the property having built a galvanized fence around the lot and started work preparatory to constructing a house on the land.

[28] According to the oral testimony of the 3rd and 4th Defendants, following a town-hall meeting which had been held in the area at the Wesley Hall School, they had both been led to believe that the property was owned by the 2nd Defendant and had each started paying a monthly rent to her for the occupation of the lot. They also testified

that they had subsequently obtained permission from the 2nd Defendant to construct a house on the lot at Chapman Street the City as she had given them the assurance that they could purchase the land from her at some future date.

[29] It was evident from the evidence of the 2nd Defendant and from the submissions of her Attorney Alex Mitchell, that Violet Beckles (a woman now in her late eighties) sincerely believes that she is the rightful owner of the land and has a right to possession which is superior to that of the Plaintiff. Her right to possession is based on the documents annexed to her Affidavit of Truth which, according to Alex Mitchell, evidenced the 2nd Defendant's entitlement to the land.
[See paragraph 16]

[30] According to the oral evidence, the 2nd Defendant appears to have received support for her claim to ownership of the land from a) a succession of legal practitioners who she had consulted over the years, b) from politicians and c) from public servants attached to the Urban Development Corporation who, as well-meaning "busy-bodies", apparently took it upon themselves on her behalf at a town-hall meeting held at the Wesley Hall School in 2006 to advise occupiers and residents of the Chapman Street area that 2nd Defendant was the

rightful owner of various lands in the “Proverbs tenantry” in the City and that rents should in future be paid to her.

[31] The authenticity of the Deed of Conveyance dated April 20, 1957 between Harold Proverbs & Company Ltd and Beatrice Henry from which the 2nd Defendant claims her entitlement was severely discredited during cross-examination by Counsel for the Plaintiff. Ms. Douglin pointed to numerous irregularities patent on the face of the Deed. She observed among other things, that the 1957 Deed appeared not to be properly adjudicated or stamped and further, had not been executed either by the Company as Vendor or by Beatrice Henry as Purchaser. She also suggested that there was no record of the Deed at the Land Registry and that the Deed was false.

[32] The 2nd Defendant was also unable to produce a survey plan of the land mentioned in the 1957 Deed or to satisfy the Court that the lands described in the said Deed covered the specific area land at Chapman Street over which the Plaintiff claimed ownership. Furthermore, the 2nd Defendant testified that she was not in a position to produce to the Court land tax bills or receipts evidencing payment of land taxes for the parcel of land shown in the 1957 Deed between Harold Proverbs & Company Ltd and Beatrice Henry.

[33] Having considered the evidence adduced in these proceedings, together with the submissions for the respective parties and the applicable law, the Court finds the following facts, namely:

- i) The Plaintiff is, and has since the 28th day of October, 1997 been, the lawful owner of the fee simple absolute in possession of all that land situate at Chapman Street in the City of Bridgetown (being the lot numbered 52 on a Plan made by Owen Pilgrim, Sworn Land Surveyor on the 6th day of July, 1984) containing by estimation 108.6 square metres;
- ii) The Plaintiff has since that date paid land taxes for the said land (Lot 52) under Land Tax Reference No: 800102044/4 and continues to de-bush and to exercise dominion over the said lot as the lawful owner thereof;
- iii) The Deed of Conveyance of April 20, 1957 between Harold Proverbs & Company Ltd and Beatrice Henry which is relied on by the 2nd Defendant as constituting her root of title is on its very face of dubious legal validity;
- iv) Additionally, the 2nd Defendant failed to produce a survey plan of the lands mentioned in the 1957 Deed or to otherwise establish that the lands described in the said Deed encompassed the specific parcel of land (namely, Lot 52 Chapman Street, the City) which is the subject matter of the proceedings and over which the Plaintiff claims to be the owner;
- v) Furthermore, the 2nd Defendant failed to produce to the Court land tax bills or receipts evidencing payment of land taxes for the specific parcel of land (namely, Lot 52 Chapman Street, the City) which is the subject matter of these proceedings;

- vi) In the result, the 2nd Defendant has failed to establish any legal entitlement to or right to possession of the land at Lot 52 Chapman Street, the City which is superior to that of the Plaintiff;
- vii) The agreement between the 2nd Defendant and the 3rd and 4th Defendants for the rental to them of the said Lot as her tenants is null and void and of no legal effect;
- viii) Finally, based on representations made to them by the 2nd Defendant and others, [see paragraph 29] the 3rd and 4th Defendants entered into occupation of the land without the licence or consent of the Plaintiff as the person lawfully entitled to possession.

Disposal:

- [34] In the light of the foregoing findings of fact, it is declared that the Plaintiff is the true owner and the person entitled to possession of the property situate at Lot 52 Chapman Street, the City;
- [35] It is therefore ordered that the Defendants and/or their servants and/or agents be forever restrained from entering the Plaintiff's said land and from purporting to exercise rights of ownership over or otherwise deal with the Plaintiff's said land;
- [36] The Court is satisfied for purposes of **Order 92 RSC** that the 3rd and 4th Defendants are in occupation of the Plaintiff's land as trespassers and that accordingly, the Plaintiff is entitled to the order for possession as prayed.

[37] The 3rd and 4th Defendants shall vacate the Plaintiff's premises at Lot 52 Chapman Street in the City of Bridgetown on or before June 30, 2008.

[38] Prior to vacating the said premises, the 3rd and 4th Defendants shall dismantle or cause to be dismantled and removed at their expense, all galvanized fencing and other structures or materials unlawfully erected or placed on the said land;

[39] The 2nd Defendant shall pay to the Plaintiff its costs of the proceedings certified fit for one attorney-at-law to be taxed if not agreed.

**Maureen Crane-Scott
Judge of the High Court**