



IN THE SUPREME COURT OF BERMUDA

Civil Jurisdiction

2006: No. 89

In the matter of Order 113 of the Rules of the Supreme Court, 1985

BETWEEN:

JOSEPH EDWARD WAKEFIELD
(As Administrator of the Estate of Herman Murray Bascome, Deceased)
Plaintiff

and

TANYA LEE-ANGELA SYMONDS
1st Defendant

CALVIN EUGENE CARMICHAEL
2nd Defendant

JUDGMENT

Date of Hearing: 6 and 7 January 2009 and 2 February 2009

Date of Judgment: 13 February 2009

Mr. Raymond De Silva, Conyers, Dill & Pearman, for the Plaintiff

Both Defendants in person

Introduction

1. These proceedings concern an application for possession of certain property in Southampton Parish, taken by way of originating summons pursuant to Order 113 of the Rules of the Supreme Court 1985 (“RSC”). The property was once known as 27 Whaling Hill, but is now known as 4 Mount Zion Lane, and I will refer to it as “the Property”. There is a dwelling on the Property which is occupied by the first defendant, who now goes by the name of Carmichael, and I will refer to her as Ms. Carmichael. The second defendant is her brother, and he resides in a tent which was advised at the outset is either on the Property, or on the neighbouring property owned by the Mount Zion Church (“the Church”). I am not concerned with any dispute as to the boundary between the Property and the land owned by the Church.

Procedural History

2. As I have indicated, these proceedings were taken by way of originating summons, and were supported by an affidavit sworn by the plaintiff, to whom I will refer either as Mr. Wakefield or the Plaintiff. I will in due course come to the question of his title, but will first deal with the procedural history of matters, not least because it is clear with the benefit of hindsight that these are proceedings where it would have been appropriate for the matter to proceed as if the action had been begun by writ, pursuant to the provisions of Order 28 RSC. This is primarily because the real issue in the proceedings is whether Ms. Carmichael is able to establish a possessory title to the Property.
3. The first return date of the originating summons was 30 March 2006. By that time Ms. Carmichael (whose last name was then Symonds) had entered a memorandum of appearance, and had also filed a document which purported to be a defence and counterclaim, although this document was neither dated, signed, nor stamped. Interestingly, that document first maintained that Ms. Carmichael had been in possession of the Property since 1988, though two paragraphs later, the year became

1984. At about the same time, Lomas and Co., filed a notice of representation, but they were not present on the first return date of the originating summons, when Ms. Carmichael appeared in person. At that time an order was made giving Ms. Carmichael fourteen days within which to file her evidence in reply, with provision for the Plaintiff to file reply evidence within fourteen days thereafter.

4. No such affidavit was ever filed by Ms. Carmichael. Instead, there was a notice of change of attorney filed by Peniston & Associates, and a further document filed by Ms. Carmichael herself which was dated 3 April 2006, and which was headed “2nd Defence”.
5. There followed an application by Ms. Carmichael to have the firm of Wakefield Quin, who were then acting for the Plaintiff, removed from the record, and that summons came before the Chief Justice on 15 June 2006. By that time, the issue was academic, since the firm of Conyers, Dill & Pearman had by then been instructed to act on behalf of the Plaintiff and they filed a notice of change of attorney the same day. Thereafter, there was another change of attorney on the part of Ms. Carmichael, and she subsequently filed a document on 6 July 2008 indicating her intention to act in person. In the meantime, the Plaintiff had applied for one Calvin Eldon Carmichael to be joined to the proceedings, on the basis that he was an interested third party claiming to be in possession of the Property, and I made an order to that effect on 27 March 2008.
6. On 29 August 2008, Ms. Carmichael filed a summons seeking declaratory relief in three respects. First, that the grant of letters of administration, pursuant to which Mr. Wakefield took these proceedings, ought not to have been granted or contained an error; secondly, that Dorothea Beemon and Delbert Bascome, who were entitled to the Property as tenants in common under the will of their late father Herman Murray Bascome, were “time barred” by the Limitation Act 1984, and thirdly, in the same vein, that their title had been extinguished by adverse possession pursuant to the Limitation Act. Ms. Carmichael swore an affidavit in support of that

summons, but also filed yet another purported amended defence and counterclaim. When that application came on for hearing, on 18 September 2008, it was adjourned to the substantive hearing, and there were two other procedural matters dealt with at that time. The Plaintiff was given liberty to make application for an amendment to correct an error in the name of the second defendant, and Ms. Carmichael was given liberty to amend to add her children to the proceedings. The Plaintiff duly made application by summons, returnable at the start of the trial, to amend the name of the second defendant from Calvin Eldon Carmichael to that of Calvin Eugene Carmichael. The former is the name of Ms. Carmichael's father and the latter that of her brother, and the Plaintiff's summons indicated that there had been a genuine mistake as to the correct name, that all the pleadings had in fact been served on Calvin Eugene Carmichael, and that he was the proper party to the proceedings.

7. In relation to the question of the addition of Ms. Carmichael's children to the proceedings, Ms. Carmichael filed a document on 17 December 2008 entitled "Memorandum of Appearance of Added Defendants" which purported to add her three children as additional defendants. The memorandum of appearance referred to the fact that the three children had been served with the order of 18 September 2008, but was a document signed by Ms. Carmichael, and not by the children themselves, or by any attorney on their behalf. The appearance therefore does appear to be irregular, but more significantly, there is nothing on the court file indicating that any further steps were ever taken in relation to the joinder. In these circumstances, I proceeded on the basis that since the Plaintiff was not at this stage seeking orders as against Ms. Carmichael's children, it was, in practical terms, appropriate to proceed only on the basis of the proceedings against Ms. Carmichael.
8. There were two further documents filed by Ms. Carmichael. On 29 December 2008, she filed a document entitled "Defence to Amended Summons", and on 31 December 2008, she filed a document entitled "Defence to Plaintiff Summons 18 December 2008."

9. The above procedural history demonstrates how conversion to a writ action would have benefited the parties, and certainly the Court. However, what was clear was that there appeared to be a genuine issue to be tried in relation to adverse possession, and while there also appear to have been attacks on Mr. Wakefield's position as administrator of the estate of Herman Murray Bascome deceased, there was no proper application in this regard.

10. When matters came on for hearing, the first item of business was the summons seeking to amend the name of the second defendant. Mr. Carmichael was present, and indicated that he lives in a tent right next to the Property, and confirmed that he used the Property as the means of access to the tent. He said that he had done that for close to ten years. He also confirmed that he understood the ownership of the Property on which he lived to be disputed. In the event, I made an order in terms of the summons, but on the basis that I would entertain an application by Mr. Carmichael to adjourn the proceedings as against him. He made that application, and I adjourned the proceedings against him sine die, with liberty to the Plaintiff to restore on twenty-one days' notice. While it may be that proceedings throughout had been served on him, there was no basis on which he would have appreciated that orders relating to him were likely to be made. In the event, the issue became academic when the action against Mr. Carmichael was discontinued on 29 January 2009. Mr. De Silva said that that discontinuance was because the Plaintiff had by then accepted that Mr. Carmichael's tent was on land belonging to the Church.

11. Ms. Carmichael then sought to raise the issue of Mr. Wakefield's status, a matter which was not properly before the Court. I indicated that I would not entertain an oral application to set aside the grant of letters of administration which Mr. Wakefield had obtained from the Supreme Court. Finally in relation to procedural matters, Mr. De Silva submitted that in relation to the issue of adverse possession, which appeared to be the primary issue in dispute, Ms. Carmichael should put her case first. I agreed, and the evidence proceeded accordingly.

The Evidence

12. Before dealing with the oral evidence, I should deal with the affidavit evidence in the form of Mr. Wakefield's affidavit sworn on 9 March 2006. Mr. Wakefield recited the history of the title to the Property, and for these purposes I can start with Herman Murray Bascome, who devised the Property to his children as tenants in common as described in paragraph 6 above. The executors of Mr. Bascome's estate, Ronald Barnard and Emily Bascome, both died without having caused there to be a vesting deed prepared transferring the title in the Property to the beneficiaries. Mr. Wakefield then described how he had previously issued proceedings seeking possession of the Property, and how he had concluded that he had followed an incorrect procedure in relation to those proceedings, which are in fact proceedings number 382 of 2004. Ms. Carmichael has referred extensively to these proceedings in the documents she has filed, but in my view there is nothing of significance in relation to those proceedings affecting the issues in these proceedings. The beneficiaries entitled to the Property subsequently granted powers of attorney to Mr. Wakefield, and this enabled him to make an application for a grant of letters of administration for the unadministered estate of the late Herman Murray Bascome. That grant was made on 6 October 2005 and was exhibited to Mr. Wakefield's affidavit.

13. Turning to the oral evidence, Ms. Carmichael began her recitation of the pertinent events back in 1984 or 1985. She said that she was then residing at her father's nearby residence, that she was a cousin to Victor Lascells Bascome (who was the brother of Dorothea Beemon and Delbert Bascome) and that he had asked her to assist with the maintenance of the Property. I pause to note that Ms. Carmichael was therefore also Mrs. Beemon's cousin. She said that Mr. Bascome's mother, who would have been Emily Bascome, the widow of Herman Murray Bascome, had by then been out of the home for some time, and had become a resident of the King Edward VII Memorial Hospital.

14. Ms. Carmichael indicated that Mrs. Beemon was then living off the Island. She had ended up spending nights at the Property, and said that she had done increased work in terms of maintaining the homestead and the grounds, and that this went on for some time. Victor Bascome became ill and died, but Ms. Carmichael said that she could not recall when. She said that Mrs. Beemon had returned to the Island in the late 1980s, about 1988, that they had gotten to know each other and that Mrs. Beemon had agreed to her remaining in the Property. Ms. Carmichael said that Mrs. Beemon had left again and come back at a later date, by which time she was suffering from a mental illness.
15. Ms. Carmichael indicated that she had starting paying the land tax for the Property, and submitted two land tax bills in support of this contention, although the submitted bills were in respect of the periods ended 30 June 2000 and 31 December 2000. Ms. Carmichael confirmed that was when she had started paying the land tax.
16. Ms. Carmichael then described the periods when Mrs. Beemon had come back to the Island as being in 1988 and 1998, and said that these were for short stays, the first time being for a period of approximately two weeks and the second for a period of approximately two months. Ms. Carmichael described how during Mrs. Beemon's second visit she had taken her to see Dr. Lightbourne, and referred to her medical condition at that time. She said that Mrs. Beemon had then left the Island for the United States in September or October, saying she thought that had occurred on 9 September 1998. Immediately thereafter, she said that she did not know whether Mrs. Beemon had left the Island at that time, simply that she knew that she had left the Property, and that she had not seen or heard from her since. She put in the original power of attorney which had been granted to her by Mrs. Beemon, dated 27 August, 1998; Mr. Wakefield's affidavit had exhibited the document revoking that power of attorney, which had been dated 13 October 1998.

17. Ms. Carmichael then stated that she had remained in occupation of the Property thereafter, caring for the home and the grounds, and referred to the problems that she had had with others seeking possession, which included the Church, and which apparently involved proceedings. I took the view that those proceedings were not relevant to the matters before me. Ms. Carmichael then referred to the letters which she had received from Wakefield Quin, which letters had been exhibited to Mr. Wakefield's affidavit. The first of these was a letter dated 11 July 2001, giving Ms. Carmichael until the end of August 2001 to remove her possessions and leave the Property, with a threat of proceedings should the letter be disregarded. There were further letters sent on 17 October 2002, 28 May 2003, and 13 November 2003. There were then the 2004 proceedings to which I have referred.
18. Ms. Carmichael reiterated that she had been in possession since 1984, and that she had had her children with her throughout those years that she had been in possession of the Property. I pause to note that only Ms. Carmichael's oldest child Teresa had been born by 1984. She said in terms that she had not at any time been the care-giver for Mrs. Beemon, and that she had had no such arrangement. The reason for this evidence being given was no doubt because Mr. Wakefield in his affidavit had indicated (paragraph 9) that Ms. Carmichael had previously resided at the Property with Mrs. Beemon's permission, and had been supposed to provide Mrs. Beemon with care.
19. Ms. Carmichael then indicated that the permission given to her by Mrs. Beemon to stay in the Property in 1998 (she had earlier said the permission had been given in 1988) was not the reason that she had remained there. She said that she stayed because she had been there for so many years, and had put so much time and money into the upkeep and maintenance of the house.
20. In cross examination, Ms. Carmichael again denied that she had been a care-giver to Mrs. Beemon. A document was put to her by Mr. De Silva which Ms. Carmichael was invited to agree she had signed. She was not prepared to accept the signature

on the document as hers. When it was put to her that Mrs. Beemon had been living in Bermuda from 1988 to 1998, she said that she did not know that to be the case. She repeated that she did not know when Victor Bascome had died, and could not say whether this was in 1990, despite being shown a document which apparently gave a date. Specifically, it was put to Ms. Carmichael that after Victor Bascome had died, Emily Bascome and Mrs. Beemon had lived in the Property, that Mrs. Bascome had moved into the extended care unit of the hospital in the mid 1990s and that Mrs. Beemon had remained in the Property thereafter. Ms. Carmichael did not agree that that had been the case. Neither did she agree that her father had been instrumental in setting her up as the care-giver for Mrs. Beemon. Next it was put to Ms. Carmichael that in September 1998 Mrs. Beemon's daughter Fazilet Beemon Drake had traveled to Bermuda, and had returned with her mother to the United States. Ms. Carmichael said that she had no recollection of any part of those events, although she did agree that Mrs. Beemon had left Bermuda in September or October of 1998.

21. Her evidence then turned to her children, whose ages and birthdates were given. Ms. Carmichael had earlier said that the Property had been the children's home all their lives. It was put to Ms. Carmichael that the children had been in foster care, to which Ms. Carmichael indicated that only one child had been in foster care and that it was not true to suggest that the children had not been living with her in 1998, when Mrs. Beemon Drake had come to Bermuda.
22. I allowed an application for Ms. Carmichael's cross examination to be continued after the evidence of her second witness, on the basis that Mr. De Silva had just received further material which he wished to put to Ms. Carmichael. The most important such item was a book said to have been written by Ms. Carmichael under the name of Tanya Hodgson in 1999. Ms. Carmichael initially refused to answer whether this was her book, or whether she was the Tanya Hodgson listed as the author, and said she was not in a position to confirm any of the matters contained in the book without sight of the original. In the event, this was available, and Ms.

Carmichael did then confirm that she had written it, that the picture on the rear cover was her picture, and that Tanya Hodgson was her previous name. Mr. De Silva referred to a substantial passage appearing on page 50 of the book, which I regard as sufficiently important to set out in full in this judgment. It is in the following terms:

“Now back to the present. I was told by my previous landlord that my Dad came by and left an exciting message. For he had a place for me, that belonged to my cousin who had requested that I move in with her – with the condition that I would have to fix it up. I was told that it was not so bad; I would have to put a floor in one of the rooms and care for her. I was happy to find out there was an apartment for me, but rather timid because of the past problems I have had with my Dad. But I really wanted my daughter back and needed a place big enough – and any other alternative would cost too much. So I met with him; he told me all about my cousin who needed me to make sure she took her medicine on time every day and ate regularly. I would also be responsible for major renovations. And it would secure me a stable home for as long as I wanted. Since my husband was the only person working outside of the home, he would pay three hundred dollars per month. That money would be placed in a trust fund for the owner and would be used to bury her after her death. My Dad also said he would type up an agreement and have me sign it about a week or so later.

He called and said it was ready. When I got there, he informed me that he had to write it up slightly different from what he said because there is a certain way he had to do it to make it look professional. I trusted him and acknowledged that it was not his house and he had to do things differently – or so he said. I did not fully understand, but what the heck? As long as I did my part, no problem. My family could finally be together.”

23. Mr. De Silva then asked whether the cousin referred to in the above passage was Mrs. Beemon, to which Ms. Carmichael said that she did not recall the reference to the cousin in the book being a reference to Mrs. Beemon, and that she could not recall the name of the cousin she was in fact referring to. She similarly said that she did not know who the daughter referred to in that passage was, and could not say that it was her daughter Teresa, who had by that time given evidence. Ms. Carmichael then changed her position slightly in relation to the cousin, saying she did not accept that it was Mrs. Beemon. Neither would she agree that the reference

appearing in that passage to “the owner” was a reference to Mrs. Beemon. Again, a document was put to Ms. Carmichael with the suggestion that this was the agreement referred to in the above passage. She said that she did not recall this, and denied that the signature of “Tanya Hodgson” on it was her signature. Since this document was never formally proved, I attach no weight to it.

24. Ms. Carmichael was then referred to the land tax receipts which she had put in, on which she had written her name, and she did not accept that this looked the same as the signature on the agreement. Reverting to the book, Ms. Carmichael was not even prepared to accept that the reference to “He” (at the start of the second paragraph of the passage set out above, as part of the sentence “He called and said it was ready”) was a reference to her father, in the immediately preceding sentence.
25. Ms. Carmichael was then asked to describe the Property, which she did, and was then invited to agree that the description of a property which appeared at the start of page 51 was indeed a reference to the Property. Ms. Carmichael said in terms that that was not a reference to the Property, and was more than likely a place that she had lived in on Parsons Road.
26. There is another critical passage on page 52 of the book, and again I regard it as sufficiently important to set out; it is in the following terms:

“In between work, I took care of my cousin and my daughter. Things were very hectic for a while. I was getting only two hours’ sleep in two days. I brought the house up to living condition, then was able to slow down. I took the elderly lady out everywhere. She had been stuck in that filth for so long without any help or any working light switches – the wiring was incomplete. I took her to my family outings, parties, conventions and church services. My husband provided money to buy her clothes after I ran out of my inheritance money. Her recovery was so good she went from deathbed to life. Before I came, they were going to have her institutionalized if she did not improve.”

27. Again, Ms. Carmichael refused to accept that the reference to “my cousin” was a reference to Mrs. Beemon, or that the reference to “the elderly lady” was such a reference. When asked to whom she was referring, she was unable to say.
28. Then on page 53 there was a reference to the need to have the power of attorney drawn up. Ms. Carmichael had of course by this time put in the power of attorney executed by Mrs. Beemon, but despite this Ms. Carmichael was unwilling to accept that the reference to a power of attorney on page 53 was a reference to the power of attorney which she had produced the previous day. There were further extensive passages in relation to the execution of the power of attorney on pages 54 & 55 of the book. Ms. Carmichael still refused to accept that these were references to the power of attorney produced by her. Then, and finally, there was a reference on page 55 to “the long lost daughter of the elderly lady who lives far away and has not been of any help to her mother.” It was put to Ms. Carmichael that this was a reference to Mrs. Beemon Drake, but Ms. Carmichael did not accept that. Perhaps unsurprisingly, she was unable to say whom she was referring to.
29. The final question asked by Mr. De Silva was whether Ms. Carmichael accepted that the book represented a true account of her life. She refused to give a direct answer to that question, simply saying that it was a story that she had written, and then suggested that the book represented a mixture of fact and fiction, saying that some of the passages which Mr. De Silva had read were fiction and that some parts about the elderly lady and the power of attorney were fiction. I will in due course come to the issue of Ms. Carmichael’s credibility.
30. There were three other witnesses called by Ms. Carmichael, being respectively her daughter, her son, and her brother. I will refer to her daughter and son by their first names to avoid confusion with others with the same last name. Her daughter Teresa said that she had lived at the Property since she was about thirteen. Having been born in November 1983, that would mean from about 1996. She said that from the age of five to thirteen she had not lived with her mother, but had been in care.

During those times she said that she had visited her mother at the Property on a regular basis.

31. In relation to Dorothea Beemon, Teresa indicated that she knew of her because she was a cousin, and although she had not known where Mrs. Beemon had lived in 1988, she said that she had met her when she was younger than fifteen and that would have been when she was in her teens. She did recall seeing her in 1998 at the Property, and said that was over a period of weeks or months. Teresa indicated that she had not heard of Emily Bascome before the trial.
32. Teresa was then asked by Ms. Carmicheal whether she had known Ms. Carmichael to be a care-giver for Mrs. Beemon, which she answered affirmatively, indicating that Ms. Carmichael had helped Mrs. Beemon with everything, helping around the house, cleaning, helping her with her medical products, making sure she took her medication and so on. She said that Mrs. Beemon had left the house a week or so after she (Teresa) had gone back. In this regard, she confirmed that she had seen Mrs. Beemon's daughter, who had come down and taken Mrs. Beemon from the house. She said that she knew it was Mrs. Beemon's daughter because the latter had said so. The daughter (no doubt Mrs. Beemon Drake) had said she had come to take her mother and that was the last time Teresa had seen Mrs. Beemon.
33. Ms. Carmichael's son Giovanni gave evidence that he had resided at the Property for as long as he could remember, and confirmed that photographs which were shown to him were of the Property. He referred to evidence of new windows and doors, and to roof damage sustained in hurricane Fabian. In cross examination, Giovanni confirmed his birth date as 22 June 1988 and said that he had lived at the Property since birth. He was then referred to a lady named Sylvia Symonds, whom he described as his godmother, and although he denied being in her care until the age of fifteen, he then clarified matters by saying that he did not stay with her completely, but that he did stay with her for most of the time, and sometimes stayed with his mother for a period of time, going backwards and forwards between the

two. He said he went back to his mother permanently when he was about eleven, which would of course have been after Mrs. Beemon had left the Property.

34. Finally, Ms. Carmichael's brother gave evidence. Mr. Carmichael confirmed that he had been on the Property for close to ten years, and said that his sister had been there for twenty years or more. He described his cousin Dorothea Beemon as having been there the first time he had gone there, before he had taken up residence in the tent, and stated that she had been there the whole time until she left. When asked how long Ms. Carmichael was living in the house together with Mrs. Beemon, Mr. Carmichael said he could not say for how long, but that it had to have been years. He too was asked whether he had ever known Ms. Carmichael to be a care-giver, and he also responded affirmatively. In re-examination he was asked if he was sure that it had been a number of years that Mrs. Beemon had lived there, and he said that he was so sure.
35. For the Plaintiff, the first witness was Mrs. Beemon Drake, who confirmed that Mrs. Beemon was her mother and that Emily Bascome was her grandmother. She confirmed she was familiar with the Property, that in 1986 Emily Bascome had been living in the house by herself, and that at that time her mother was living with her in the United States. Mrs. Beemon Drake confirmed that her mother had returned to live in Bermuda between September and December 1988, and had at that time returned to the Property. She said that she had first visited her at the Property in 1989 and that she had been there on four or five visits between 1988 and 1998. She confirmed that her grandmother had been admitted to the extended care unit at the hospital in 1992 or 1993. She confirmed that she had kept in regular contact with her mother, particularly after she had a telephone installed, for which she had paid the bill, and through relatives.
36. Mrs. Beemon Drake then described her visit in September 1998, which followed a call from another cousin. She said she was disturbed by the condition of the home and how Mrs. Beemon was reacting to it. Mrs. Beemon Drake resolved to take her

mother back to the United States and said that she had agreed to go. Mrs. Beemon Drake confirmed in terms that she had advised Ms. Carmichael that the Property was not her home and that she was to leave. She had the utilities turned off and locked the Property and said that Ms. Carmichael was not there when she had packed her mother's clothes and left. She produced a copy of her mother's passport which had been issued on 21 September 1998 and which included a US Immigration stamp confirming her travel on that date to the United States.

37. Mrs. Beemon Drake did refer to documents which she said had been received from Ms. Carmichael's father. Again, these documents were not formally proved, and I did not permit Mrs. Beemon Drake to go through them, and I have had no regard to them.
38. Mrs. Beemon Drake indicated that after her grandmother's passing, she and her husband had paid the land tax for the Property, and she showed a communication from the Land Valuation Department which showed the department's address for the Property to be the estate of Emily Bascome, care of herself at her address in Michigan.
39. Finally, Mrs. Beemon Drake indicated that the first time that she knew Ms. Carmichael to be on the Property was when she attended there in September 1998.
40. The next witness for the Plaintiff was Dennis Lister. Mr. Lister said that he knew Ms. Carmichael as the former tenant of a family property which she had occupied in Sandys Parish from about 1994 to 1997. Mr. Lister indicated that he had documentation relating both to Ms. Carmichael's eviction and rent payments, and produced a bundle of documents. I was concerned because none of these documents had been put to Ms. Carmichael, apparently because they had just become available, but in any event I did not allow the documents in, and again I have had no regard to them. However, Mr. Lister did confirm that he had assisted his father with the management and maintenance of family properties, that he had

seen Ms. Carmichael at the family property on various occasions, approximately quarterly, between 1994 and 1997, and that the family's relationship with Ms. Carmichael had ended in court proceedings in which he personally had appeared, and to which Ms. Carmichael had been a party.

41. In cross examination, Mr. Lister confirmed that he had not personally rented the property in question to Ms. Carmichael, and he was asked about others who had resided there. However, it was not suggested to Mr. Lister that he had been in error in relation to the proceedings which Mr. Lister had said were necessary to evict Ms. Carmichael from this property.
42. Mr. Wakefield was then cross-examined on his affidavit, but unsurprisingly there was very little of importance arising from this cross-examination. Ms. Carmichael seemed unable to accept that matters of an alleged conflict of interest or the fact that an associate at a predecessor firm to Mr. Wakefield's had apparently acted for Ms. Carmichael were of any relevance to the issues which fall to be determined in these proceedings. Mr. Wakefield did confirm that the statement made by him in paragraph 9 of his affidavit as to the basis upon which Ms. Carmichael had taken up residence at the Property represented his instructions from his client, and I indicated that I would attached no weight to that evidence, and I do not.
43. The last witness to give evidence was Mrs. Serena Bashir. Mrs. Bashir is the daughter of the late Victor Bascome. Mrs. Bashir confirmed that her father had died on 22 July 1990, and until his death had resided at the Property. She described how she used to go to the Property to give her father his supper, and said that she had visited him at the Property every day from 1985 until his death. She described how her father had lived there with his sister, Mrs. Beemon, and with her grandmother, Emily Bascome. She carried on to say that after her father's death, Mrs. Beemon and Mrs. Bascome had continued to live at the Property, and described how she was the family member who was taking care of her grandmother, and that her grandmother had continued to live at the Property for a further four

years, until she went into the extended care unit of the hospital in about 1994. She carried on to say that after that event, Mrs. Beemon had continued to live at the Property until 1997 or 1998, when she had left after Mrs. Bashir had placed a call to her cousin Mrs. Beemon Drake. Finally, Mrs. Bashir confirmed that Ms. Carmichael was not residing at the Property from 1985 to 1990, and that she had begun living at the Property in 1997, something she said she knew because she had gone there with the Police at that time.

44. In cross-examination, Ms. Carmichael concentrated not on the evidence which Mrs. Bashir had given to the effect that Ms. Carmichael had not lived at the Property before 1997, but rather on subsequent events, and particularly correspondence dealing with Mrs. Bashir's participation in efforts taken on behalf of her family to remove Ms. Carmichael from the Property. It was never put to Mrs. Bashir that her evidence in relation to Ms. Carmichael having taken up occupation of the Property in 1997 was not correct.

Credibility

45. The evidence given by members of Ms. Carmichael's family conflicted with the evidence given by Ms. Carmichael herself, but more particularly, it conflicted with the evidence given by Mrs. Beemon Drake and by Mrs. Bashir. I should make it clear at this stage that I accept both Mrs. Beemon Drake and Mrs. Bashir as witnesses of truth. No doubt Mrs. Beemon Drake could be said to have an interest in the outcome of these proceedings, but so far as I am aware the same cannot be said for Mrs. Bashir. In any event, both appeared to me to be honest witnesses, and of course their evidence was to the same effect, namely that from the mid 1980s until 1990, the Property had been occupied by Mrs. Emily Bascome, and her two children Victor and Dorothea. Then, after Victor's death in 1990, Mrs. Emily Bascome and Mrs. Beemon had continued to reside at the Property until Mrs. Bascome had moved to the extended care unit of the hospital, probably in about 1994. Thereafter, Mrs. Beemon had lived at the Property alone until some time in

1997 or 1998 when Ms. Carmichael had taken up residence in the Property with Mrs. Beemon.

46. I should mention here that I also accept Mr. Lister's evidence to the effect that Ms. Carmichael had been living at one of his family's properties in Sandys between 1994 and 1997. Mr. Lister was quite clear as to his role in proceedings involving Ms. Carmichael, on which he was not challenged.
47. Ms. Carmichael's case that she has acquired a possessory title by reason of twenty years' adverse possession rests primarily on her own evidence. The first critical part of her evidence is her statement that Mrs. Beemon came to the Island in 1988 and 1998 for what she described as short stays, respectively two weeks and two months. This evidence, which is of course highly material, was disputed both by Teresa and more comprehensively by Mr. Carmichael, quite apart from it being entirely inconsistent with the evidence of Mrs. Beemon Drake and Mrs. Bashir. Teresa's description of Ms. Carmichael as being a care-giver for Mrs. Beemon and of how she helped her was also quite inconsistent with short visits, even though Teresa was not clear as to the period of time that she had seen her at the Property, describing it as a period of weeks or months. At the same time, she said she was definitely younger than fifteen (which she would have turned in November 1998) when she first met Mrs. Beemon at the Property. But Mr. Carmichael's evidence was clear that Ms. Carmichael had been living with Mrs. Beemon at the Property for years.
48. So even without the evidence of the book, to which I will shortly turn, I would have no hesitation in finding that Ms. Carmichael was not, as she claimed, resident at the Property from 1984, or for any period in the 1980s, or indeed for most of the 1990s. I have indicated that I accept the evidence of Mrs. Beemon Drake and Mrs. Bashir, and it follows that I reject the evidence of Ms. Carmichael where it was inconsistent with their evidence. The likelihood is that she took up residence some time either in late 1997 or early to mid 1998. It is not of course necessary for me to determine

exactly when Ms. Carmichael did take up her occupation of the Property, but I would put it in this period, and it does seem likely, as both Teresa and Mr. Carmichael said, that Ms. Carmichael had for a period acted as Mrs. Beemon's care-giver. But I am satisfied that this period did not extend into years, as Mr. Carmichael said in his evidence. I do therefore find that Ms. Carmichael took up residence at the Property some time in the late 1990s, and as likely as not relatively shortly before September 1998. I also find, from the fact that Ms. Carmichael was moving into the Property in which Mrs. Beemon was then residing, that Ms. Carmichael initially moved in with Mrs. Beemon's consent or permission, as indeed Ms. Carmichael acknowledged at one point.

49. Such is my finding without even considering the effect of Ms. Carmichael's evidence in relation to the book she wrote. My view is that that evidence completely destroyed any shred of credibility which she might otherwise have had, and was, throughout, thoroughly dishonest. In giving that part of her evidence I found Ms. Carmichael to be evasive, and she frequently paused before answering, as if considering what effect her answer might have on her case. It seemed to me that she clearly recognised the damaging nature of what had been written in the book by her, when compared to the case which she was now seeking to present. I am absolutely satisfied that the references to "cousin", and "elderly lady" were all references to Mrs. Beemon, that the reference to the daughter of the elderly lady was a reference to Mrs. Beemon Drake, and that the references to the property to which Ms. Carmichael moved were references to the Property. And for Ms. Carmichael to seriously suggest that the references to the power of attorney were not references to the document which she had put before the Court is also completely unbelievable. I am quite satisfied that Ms. Carmichael made a conscious decision to lie in regard to this part of her evidence, and I am equally satisfied that Ms. Carmichael's evidence that she lived in the Property since 1984 was a complete fabrication, given with a view to presenting a wholly dishonest case. In short, all the parts of Ms. Carmichael's evidence which were material to her case that she had lived in the Property for more than twenty years were lies, and

I so find. The magnitude of these lies cannot be overstated. For her case to succeed, Ms. Carmichael had to establish that she had been a resident of the Property since about 1984, and that her children had resided there all their lives. Then she needed to establish that Victor Bascome, Emily Bascome and Mrs. Beemon had not lived at the Property respectively until 1990, 1994 and 1998, as was in fact the case. She therefore had to concoct a web of deceit for her dishonest case to succeed, and this she attempted to do.

50. For completeness, I will refer to the evidence of Ms. Carmichael's daughter, son and brother in relation to the length of time that Ms. Carmichael had been at the Property. I do not accept that Teresa had been at the Property from about 1996, which would have meant that she lived at the Property for something like two years. Neither do I accept that Giovanni had resided at the Property "for as long as he could remember." I do not believe that he took up residence at the Property until after Mrs. Beemon had left. And finally, in relation to Mr. Carmichael, I do not accept his evidence that his sister had been living at the Property for "twenty years or more." In relation to these aspects of their evidence, my view, and finding, is that all of these three witnesses gave dishonest evidence with a view to assisting Ms. Carmichael achieve her dishonest objective.

Findings

51. As I have indicated at paragraphs 45 and 48, the likelihood is that Ms. Carmichael took up residence at the Property in 1998, and I so find. However, that initial possession was of course with Mrs. Beemon's consent, as Ms. Carmichael herself said in her evidence, so that there is no question of that initial occupation constituting adverse possession. The position obviously changed after Mrs. Beemon Drake had left Bermuda on 21 September 1998, when she had advised Ms. Carmichael that she must leave the Property, had had the utilities turned off, and had locked the Property. I have no evidence as to when or how Ms. Carmichael gained re-entry to the Property, but I am quite clear that her adverse possession of the Property could not have commenced before 21 September 1998, and I so find.

52. It follows that Ms. Carmichael's claim to have established a possessory title fails. I find in terms that the title of Mrs. Beemon and Mr. Delbert Bascome to the Property has not been extinguished by adverse possession, and that Ms. Carmichael has acquired no interest in the Property whatsoever. Neither has she established any other right to reside at the Property.
53. It does therefore follow that Mr. Wakefield is entitled to an order for possession of the Property as against Ms. Carmichael, and I so order. I will hear the parties as to the date on which possession of the Property should be given, and any other applications relating to that issue.

The Nature of Ms. Carmichael's Case

54. For virtually the entirety of these proceedings, I had understood Ms. Carmichael's claim to be entitled to remain in the Property to depend on having established a possessory title by reason of at least 20 years' adverse possession. That was the case which had been set out in writing, and that was also the gravamen of Ms. Carmichael's evidence. In relation to any role which Ms. Carmichael may have had as care-giver to Mrs. Beemon, Ms. Carmichael's own evidence was not simply that she did not agree that she was a care-giver to Mrs. Beemon (which she said in her evidence-in-chief and repeated in cross-examination), but that she did not agree that her father had been instrumental in setting her up in that role. I have referred in paragraph 20 to the fact that Ms. Carmichael would not accept that a document put to her by Mr. De Silva had been signed by her. I do not know if this is the document which Mrs. Beemon Drake described as having received from Ms. Carmichael's father (see paragraph 37 above). And as I said in that paragraph, I have had no regard to the contents of that or the other documents to which Mrs. Beemon Drake may have been referring.
55. However, during the course of her closing submissions, Ms. Carmichael sought to suggest that she had been prevented from putting forward a case which apparently

did have something to do with her having been a care-giver to Mrs. Beemon. She referred to a life interest, but any arrangements along those lines would have first been entirely inconsistent with Ms. Carmichael's description of the relevant facts, and also would have been completely inconsistent with any claim for adverse possession. Ms. Carmichael sought to suggest that she had been treated unfairly by being asked to go first in relation to her case. But her evidence as to the factual position, which I have of course rejected, was the evidence which Ms. Carmichael gave. Again, it seems to me that by the time matters came to closing submissions, and no doubt having heard the cogent evidence given by Mrs. Bashir, Ms. Carmichael may have had doubts as to whether the version of events which she had chosen to put forward represented her best prospect for success. Given the strength of my belief as to the dishonest case which Ms. Carmichael has presented throughout these proceedings, perhaps there is little point in commenting further.

Costs

56. The originating summons by which these proceedings were commenced sought an order of indemnity costs.
57. It is now well accepted that there is jurisdiction in Bermuda to make such an order – see the judgment of Ground J in *De Grootte –v- MacMillan et al* [1993] Bda LR 66, where Ground J indicated that he considered that an award of indemnity costs as against a defendant should be reserved for exceptional circumstances, involving grave impropriety going to the heart of the action and affecting its whole conduct. In *Reid Minty –v- Taylor* [2001] EWCA Civ 1723, the judge referred to the position as it was in England prior to the implementation of the Civil Procedure Rules, where costs were only to be awarded on an indemnity basis if there had been some sort of moral lack of probity, or conduct deserving moral condemnation on the part of the paying party.
58. In my judgment, this is an exceptional case, and Ms. Carmichael's conduct of the case does indeed call for the strongest possible condemnation from this Court, being

at the extreme end of the scale. I cannot conceive that Ms. Carmichael could say anything to persuade me that an order for indemnity costs should not be made against her in this case, but I will leave that theoretical possibility open.

Dated this day of February 2009.

Hon. Geoffrey R. Bell
Puisne Judge