

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008 – 01998

BETWEEN

ALBERT GILL

CLAIMANT

AND

WEBSTER PHILLIPS

KENNETH FRANCIS

CHRISTOPER SALINA

LOIS RICHARDS

JACQUELINE RICHARDS

DEFENDANTS

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

Appearances:

Mr Robert Boodoosingh for the Claimant

Ms Patrice Celestine holding for Mr Leonard Birmingham for the fourth and fifth Defendant

Mr Kenneth Francis in person

Mr Christopher Salina, not present and unrepresented

Dated: 25 June 2012

REASONS (DECISION GIVEN ORALLY)

1. The claimant lived in a house at Lopinot Road, Arouca. While his common law wife had gone abroad, he says, he went to stay in another house she occupied. He had been there 3 or 4 weeks when someone came and broke down his house. He brought this claim for trespass to his property. He said he used to pay rent for the land to one Mr Arthur Brown who died in 1996 or 1997. Since that time, he had not paid rent.

2. He alleged the defendants broke the house down by either physically doing so or by having others do so. According to his claim the house was located at 5 $\frac{3}{4}$ mile mark Lopinot Road, Arouca.

3. The claim against the first defendant was discontinued some time ago, with no order as to costs. The claimant alleged that the second and third defendants broke the house down. He also alleged that the fourth and fifth defendants, as the owners of the land, hired the second and third defendants to do so.

4. The second defendant, who lived next door, denied he had anything to do with breaking down the claimant's house. The third defendant was served with the proceedings but took no part in it. He gave no evidence. The fourth and fifth defendants said they do not own any land at 5 $\frac{3}{4}$ mile mark. They said in their defence that the lands they owned were at 5 $\frac{1}{4}$ mile mark. They maintained throughout that they came to answer a

claim that they never had anything to do with breaking down any property at 5 $\frac{3}{4}$ mile mark as alleged in the statement of case. They remained adamant that the only case they were in court to meet is an allegation of breaking a house at 5 $\frac{3}{4}$ mile mark and they were not prepared to say if they had anything to do with breaking a house at 5 $\frac{1}{4}$ mile mark. They produced a survey plan showing their ownership of lands at the time at 5 $\frac{1}{4}$ mile mark.

5. What was clear as the evidence unfolded is that the claimant was completely mistaken as to what was the correct mile mark location of his house. He was clear that his house was broken down. The second defendant accepted that the claimant's house was broken down. The fourth and fifth defendants would not budge from their position that they were only present to answer a case relating to 5 $\frac{3}{4}$ mile mark.
6. From the evidence, however, what emerged was that Francis, the second defendant, lived in a house at 5 $\frac{1}{4}$ mile mark. The claimant lived in a house behind him. It is also clear that the claimant's house was broken down. The fourth defendant was cross-examined. She accepted that she and her sister, the fifth defendant, rented to the second defendant. They knew him. She was asked about a house behind the second defendant's house. She said she knew it as an abandoned shack. When asked pointedly whether she paid the third defendant to break down the structure at 5 $\frac{1}{4}$ mile mark, her answer was she came to answer the claim against her. She did not deny she paid him.

She would only answer about 5 ¾. This evidence was significant. The fifth defendant denied she had told the third defendant to break down any house.

7. The third defendant did not present himself to answer a case that he had physically broken down the house. Of significance, however, the second claimant gave evidence that he had received a call from Ms Richards to break down the house. He told her he did not want any part of that. He also gave evidence in his witness statement, which he was not challenged on, that the fourth and fifth defendants had informed an attorney-at-law in his presence that they wanted to sell the land and they had paid the third defendant \$500.00 to demolish the abandoned structure on the land (paragraph 11). He also gave evidence in paragraph 12 that the third defendant had told the judge in court before whom the matter was on 26 April 2010 that he was given \$500.00 by the fourth and fifth defendants to break down the abandoned house once occupied by the claimant, and he was given permission to salvage what was left from the demolition.
8. I accepted the second defendant's evidence on a balance of probabilities that the fourth and fifth defendant had admitted paying the third defendant to break down the house.
9. It is clear that they considered it was abandoned and they wanted to sell the land. It is likely in that context that they would pay someone to break it down.

10. Mr Boodoosingh in submissions accepted the 5 ¾ mile mark assertion may have been a mistake but he submitted that this was not important. Ms Celestine said the 5 ¾ mile mark assertion was important since that is what her clients were brought to court to answer. I am of the view that the substantial allegation of the breaking down of the claimant's house was the important issue and not the mistaken location of the house. The court would be taking too narrow a view of the claim and the evidence if it simply allowed the case to be decided on whether the defendants came to answer a claim relating to a house at 5 ¾ as opposed to 5 ¼. It was not sufficient to simply answer that "We don't own any land at 5 ¾ and instead we own land at 5 ¼." Clearly this was an allegation by the claimant that his house, located behind the second defendant's house, was broken down and the fourth and fifth defendants do, in fact, rent to the second defendant and own the land behind his house.

11. Another issue important to make a finding on was whether the house was abandoned or not. The fourth defendant says it was an abandoned shack. The claimant says it was his home which he had left for a short while. On this issue, I preferred the evidence, on a balance of probabilities, of the claimant and his common law wife, Ms Holder.

12. I also found that the second defendant was truthful when he said he had nothing to do with the demolition of the claimant's house.

13. The claim against the second defendant is dismissed.

14. I find that the third defendant broke down the house and was paid to do so by the fourth and fifth defendants. By doing so, they trespassed on the claimant's property, his house. There is judgment against the third, fourth and fifth defendants.

15. The final issue concerns damages. Photographs of the house were put in. It showed there were parts built of brick. It is difficult to say what was lost since there is evidence that materials were salvaged. The claimant says he lost about \$45,000.00 worth of items. He produced no details of what he lost. He did say he had won either \$16,000.00 or \$18,000.00 in 1974 which he had invested to build his house. Mr Boodoosingh accepted that only nominal damages could be awarded. This, must, however, be considered in context. This was the claimant's home in which he had lived for a considerable time. It consisted of bricks, at least in parts, and he must have had possessions in it. Given these circumstances, I will make an award of \$12,000.00 as nominal damages against the third, fourth and fifth defendants.

16. The second defendant represented himself, very ably at the trial. But he had attorneys at least up to the pre-trial stage. The claimant must, therefore, pay his costs in the sum of \$7,500.00.

17. Given that he took no part in the proceedings from an early stage, the third defendant will pay the claimant's costs in the sum of \$7,500.00.

18. The fourth and fifth defendants must together pay the claimant's costs in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge