

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-01371

BETWEEN

Sheila Julumsingh

(Legal Personal Representative of the

Estate of Arthur Ramjit Julumsingh, deceased)

Claimant

AND

John Wilfred Rahael

Anthony Michael Rahael

Defendants

**Before the Honourable Mr Justice R. Boodoosingh**

**Appearances:**

**Mr R. Rajcoomar and Ms A. Khan for the Claimant**

**Mr M. Morgan and Ms K. Persad for the Defendants**

Dated: 25 June 2012

**REASONS**

1. This is a claim for trespass. The Claimant and the Defendant own neighbouring properties.

2. The Claimant is the representative of the estate of the deceased. She was also his wife and lives on the property. She alleges that the Defendants have encroached on her land by the placing of a wall on their property.
3. The Claimant's property can conveniently be called Lot 63. The Defendant's property can be called Lot 62.
4. The Claimant says the Defendants have trespassed on 35 sq. ft in total. The Defendants denied they have trespassed on the property.
5. The Claimant relied on the evidence of Kenneth Sturge, whose evidence was admitted as hearsay, he having since passed away. He was a Land Surveyor. The Defendants also called to give evidence a Land Surveyor, Mr Nasser Abdul.
6. This claim turned on my view of the evidence of the competing experts.
7. Mr. Sturge's report suggests an encroachment of 36 sq. ft on the claimant's land.
8. Mr. Abdul suggested that the wall in question is within the land of Lot 62 except for a portion of the thick upper lip of the wall which protrudes over the boundary line onto Lot No. 63 by an infinitesimal amount, which he estimated to be 7 cm.
9. I should note that both these plots are close to 15,000 sq. feet in size.
10. I preferred, on a balance of probabilities the evidence of Mr. Abdul. This evidence was clear and remained intact after cross-examination.
11. Mr. Sturge's report was inconsistent in two material respects.

12. First, he said he had no problem with Mr. Abdul's survey, which came to a different conclusion from his.
13. Second, he noted that for the Defendants to construct the wall, they had to remove 25 to 30 feet of the Claimant's wall to achieve their objective. This is a variance with his acceptance of Mr. Abdul's survey.
14. Mr. Sturge's report also showed the new wall to be on the Lot 62 side – the Defendants side.
15. Given this, and also that I had the opportunity to assess Mr. Abdul in cross-examination, I was satisfied with his methodology and conclusions.
16. At best, therefore, the Claimant showed trespass of 7cm to the air space of her property for a portion of the wall. This is in the context of the wall being a substantial wall. There is no material effect on the Claimant's property.
17. While I accept that trespass is actionable per se, the Court is not obliged to make any substantial award in a case where no injury has been shown.
18. I do not accept that a full 35 ft. has been trespassed upon.
19. The Claimant has not shown any damage consequent upon this trespass. Any effect is *de minimis*.
20. I will accordingly award nominal damages in the sum of \$1,000.00.

21. Further, I do not think that the Defendants should be made to pay costs for what, at the end of the day, is a 7cm protrusion over part of the claimant's property – this being a protrusion of 7 cm of air space of the lip of the Defendants' wall.

22. This is not the kind of claim that should have occupied so much of the court's resources over the several years it has been before the Court.

23. While the usual order is that costs follow the event, I think the appropriate order in this case is that each party should bear their own costs.

24. There is a stay of execution of 28 days.

**R. Boodoosingh  
Judge**