

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA 893/2005

CV2009-01917

BETWEEN

ELAINE FERGUSON ALSO CALLED

ELAINE FERGUSON-CHARLES OR

ULIN FERGUSON

CLAIMANT

AND

RONALD PERRY

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

APPEARANCES:

Mr. M. George for the Claimant

Mr. A. Douglas for the Defendant

DATED: 25 June 2012

REASONS

1. This was a claim for damages for trespass, possession of lands and for injunctive relief.

A Defence was filed without a counterclaim.

2. The main allegation in the statement of claim was that the Defendant unlawfully came onto the land in question, demolished the Claimant's wooden house, and began construction of a house. The Defendant says he purchased the land in question. He came unto the lands and knocked down the house on it. He says this house was old, dilapidated and abandoned. The Claimant says the house was occupied up to 3 years before it was demolished. It was also used when she and family members visited Tobago. It was not abandoned.
3. The Claimant and her son gave evidence. The Defendant also gave evidence for himself. The evidence regarding the ownership of the land was not clear neither on the Claimant's case nor on the Defendant's case.
4. Both sides were contending the other side was mistaken about who was entitled to be on adjoining plots of land.
5. The cross-examination of both sides was, however, revealing.
6. The Claimant on cross examination stated she is not the owner of the land on which the knocked down house stood. She says it was rented land. The "rent" consisted of a contribution and the payment of taxes for the land. The Claimant's son gave evidence that he did not know the boundaries of the land for which his mother filed the claim. He

said the land on which the house was built was not the same parcel that was transferred from his grandmother to his mother. The Claimant gave evidence that the house was built because she was given permission after Hurricane Flora to build the house.

7. The Defendant in giving evidence also made telling admissions. He said the Claimant did not give him permission to break the house. He accepted he broke the house. He said he had information that the Claimant was the owner of the house before he broke it down.
8. From the evidence led, the Claimant has not proved her ownership of the land.
9. I accept her evidence that she built the house, occupied it, and lived in and eventually rented it out. At the very least she says she rented the land. Neither her evidence nor the evidence of her son assisted me regarding the proper boundaries of the land. The particulars of rental are also not clear from the evidence – for example, when last she paid rent.
10. The house, however, was demolished. The Claimant's evidence was that it was valued \$285,000. She is not a valuator. She gave no evidence of the basis for this sum. The Defendant says it was old and dilapidated and appeared abandoned. No photographs were put in by either side. There is evidence, however, which I accepted, that it was rented out up to 3 years before.

11. In submissions, the Claimant's attorney suggested the Court should order that the quantum of damages for trespass be assessed separately. At the time the claim was filed, the Claimant knew full well that the claim was not being tried as a "split trial". It was open to the Claimant to lead evidence as to what a house like the one demolished would be valued. The Claimant, of course, would have had no reason to have a valuation done before, since she did not anticipate it would be demolished. There was no detailed description of the house. The description given was that it was wooden, had three bedrooms, with toilet and bath, and living and kitchen areas.

12. The Court, quite frankly, was put in a difficult position given that there is no proper basis on which to award adequate compensation for the demolition of the Claimant's house. The Court cannot simply accept the bold figure of \$285,000 set out by the Claimant.

13. Based on the evidence, the Court cannot make an order for possession of the land in favour of the Claimant. At the highest, she was in possession of the house immediately before the demolition which stood on the land. The claim was in trespass only. No alternative basis was claimed. The Claimant has not satisfied the Court on a balance of probabilities to make an order for possession.

14. The best I can do, given that the house was demolished, and this constituted a trespass, is to award damages, conservatively, but more than what ordinarily would be considered as

nominal damages. The award of damages must be related to the context of the case and the court has to do the best it can in the circumstances. This was the claimant's house which was broken down. While she did not live in it permanently, it had been occupied up to three years before. The Claimant could use it when she went to Tobago. She could also rent it out or allow family members to use it. It had some value to her. Given these factors, I award the sum of \$30,000. The Defendant must pay this to the Claimant. The Defendant must also pay the costs as a \$50,000 claim in the amount of \$14,000.

15. There is also an element of aggravation to this award. The Defendant is an Attorney-at-Law and a former Senior Magistrate. His information was the Claimant owned the house. Yet, he did not seek her permission or seek to clarify the status of the house. He simply went on to the land and demolished it.

Order

There is judgement for the Claimant for the Defendant's trespass to the Claimant's house.

The Defendant must pay the Claimant \$30,000 in damages and costs in the sum of \$14,000.

Interest on damages is at 6% from 30 November, 2005 to today.

Stay of Execution: 28 days.

Ronnie Boodoosingh

Judge