

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2016-01885

BETWEEN

SUSAN BAIN

Claimant

AND

RODERICK HARRIS

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances

1. Mr Delzin instructed by Ms D. Mano for the Claimant.
2. Mr Blaize instructed by Ms Blaize for the Defendant.

Date of Delivery: 15th May, 2018

Oral decision reduced into writing

Overview

1. The instant action was instituted following alleged acts of trespass by the Defendant onto one lot of the Claimant's lands in Carenage. The Claimant's case is that in or around January, 2013, the Defendant and/or his agents unlawfully and without consent entered on to the subject land and constructed a wooden structure from which he operated a fruit stall. In April of the same year, the Claimant's agent Marilyn Gordon informed the Defendant that he was trespassing and made a verbal request that he vacate the premises. Notwithstanding the request, the Defendant proceeded to improve upon the structure by reinforcing it with concrete. These verbal requests continued and on the 20th August, 2014 written notice was served on the Defendant by Ms Gordon to vacate and remove the structure by the 15th September, 2014.
2. The Defendant did not comply with the notice. On 28th October, 2014 the Claimant through her agent, proceeded to evict the Defendant and demolished the concrete structure save for the foundation. In December, 2014 the Defendant re-entered the premises and reinstalled a roof on the structure and subsequently in April, 2015 excavated the land to install a cesspit and soak-away. The Defendant was served with a pre-action letter dated 11th May, 2016 concerning his illegal occupation of the premises and his refusal to vacate it. Until the date of filing of the claim, the Defendant refused to take heed of any notices to quit or demands that he vacate the premises.
3. By this claim the Claimant sought the following reliefs:
 - a. An order that the Defendant immediately quit and deliver up possession of the subject property.
 - b. An injunction requiring the Defendant to immediately remove from the subject property any structure(s), material(s) and/or waste thereon as a result, whether directly or indirectly, of his trespass.
 - c. An injunction prohibiting the Defendants, his servants and/or agents from entering onto and/or remaining on the subject property and erecting any buildings, structures and/or infrastructure thereon.
 - d. Mesne profits, and/or damages for trespass.

- e. Interest on the judgment sums pursuant to section 25 and 25A of the Supreme Court of Judicature Act Chap 4:01.
 - f. Costs.
 - g. Such further and/or other relief that the Court deems fit and just in the circumstances.
4. The Defendant in his defence challenged that the Claimant is the owner of the one lot portion in question. His pleaded case is that even if the Claimant is proven to be the owner, that by virtue of sections 3 and 22 of the Real Property Limitation Ordinance Chap 5 No. 7, the Claimant's rights and entitlement to the one lot portion have been extinguished by virtue of his adverse occupation of same.
5. It is the Defendant's contention that his grandfather Joseph Harris occupied the subject property since the 1950s as he was in the business of repairing and restoring boats and selling fish. He avers that his father Cedric Harris assisted Joseph in running the business and in 1984 when his father Cedric Harris retired, he assumed the role of running the business and he converted the business into a fruit stall and mini mart in 2010.
6. In 2013, the Defendant admits that he did improve upon the stall, extending it to accommodate a breakfast stall and clothing store and stated that his sole source of income was derived from his business operations.
7. On 28th October, 2014, the Defendant stated that he received a call that his stall and its contents were being destroyed by a group of men who were then identified as the agents of the Claimant. As a result, of the actions of the Claimant's agents, the Defendant filed a counterclaim and sought the following reliefs:
 - a. An injunction preventing the Claimant from committing any further acts of trespass to the Defendant's land, property and goods.
 - b. Damages for trespass.
 - c. Exemplary damages.
 - d. Aggravated damages.

- e. Interest pursuant to the Supreme Court of Judicature Act.
- f. A declaration that the Defendant is the owner of the Defendant's land by virtue of the operation of sections 3 and 22 of the Real Property Limitations Ordinance Chapter 5 No. 7, in that the title and the right of the claimant, or whosoever else may own or have an interest in the Defendant's land, to make an entry or distress, or bring any action or suit for the recovery of the Defendant's land has been extinguished by virtue of the Defendant's adverse occupation of the Defendant's land for in excess of 16 years prior to the initiation of these proceedings.
- g. Costs.
- h. Such further and/or other relief as the Court deems just.

Findings and Analysis

8. The first issue that the Court addressed its mind to is whether the Claimant is the paper title holder of the portion of land that is the subject of dispute in this matter. In resolving this issue the Court had regard to the statement of case filed by the Claimant and in particular paragraph 1 where the description of the land was referred to. This land was described in a Deed of Assent dated the 27th July, 2004. The Court also had regard to the deed which was annexed to the trial bundle at page 113 which was the Deed of Conveyance to Mr Percival Bain in 1995 and noted firstly that the description in the schedule of the 1995 deed accorded with the schedule of the Deed of Assent.
9. With respect to the issue of Mr Laughlin and Mr Williams's evidence, these are persons whom the Claimant engaged to use the Deed of Assent in her possession and to determine on the ground, the boundaries of the land as referred to in the Deed of Assent and any previous deed with respect to the property. This Court did not consider Mr Laughlin and Mr Williams as Court experts but considered their evidence in the context that they were the Claimant's witnesses who were hired to determine the connection between what was on the ground and the description on the schedule to the deed. The Court then had to determine on a balance of probabilities whether it was more likely than not that the piece of land referred to in the schedule to the Deed of Assent and in the schedule to the 1995 deed is the same piece of land upon which the Defendant erected a structure which was

demolished by the Claimant and whether it is the same portion of land that the Defendant is still in occupation of. What was evident to the Court was that the piece of land in issue, is a piece of land which can be identified by certain clear and undisputed boundaries. One boundary is the sea, the other is the Western Main Road and to the east is the road reserve/ roadway to the St Peter's Chapel.

10. The Defendant's case when considered in the round, is confined to the occupation of a one lot portion of land described in the defence and counterclaim as being the corner of the chapel and the Western Main Road. Having identified by virtue of those boundaries where the land is, the Court had to consider on a balance of probabilities whether the portion occupied by the Defendant forms part of a larger portion of land owned by the Claimant and whether that larger portion of land is referred to in the Deed of Assent or in the 1995 deed. In resolving that issue the Court had regard to the Ilesi Limited Map which was annexed to the Laughlin witness statement. The Court also considered the sketch done by Mr Burton Williams on the 2nd November, 2015 which incorporated plans which were disclosed by the Defendant and annexed as pages 261 and 263 of the Trial Bundle, and the plan endorsed with the number FA139. The plan at page 261, FA139, was also a plan referred to in the Williams document of November 2015. There is a description which it related the beach club and jetty which bears some correlation with the schedule of the portion of land described in the 1995 deed as well as with the schedule of the portion of land described in the Deed of Assent. In addition and more importantly, the Court also noted that FA139 referenced the three boundaries as outlined earlier. On FA139 the clear boundaries are the road to the chapel, and the road to the top which is the Western Main Road.

11. On a balance of probabilities therefore and in the absence of any evidence adduced by the Defendant to the contrary, the Court found that it is more likely than not that the disputed portion of land in this matter which was described by the Defendant in his defence and counterclaim as bounded by the sea, the chapel and the Western Main Road which forms part of the larger portion of land owned by the Claimant by virtue of the Deed of Assent which said piece or portion of land was acquired by Bain in 1995.

12. The next issue that the Court had to consider was whether the Claimant's entitlement to the said portion of land has been extinguished by the Defendant's occupation and possession of a one lot portion of same. In resolving that issue, the Court considered what was pleaded in the Defendant's defence and counterclaim at paragraphs 5 to 8. At paragraph 5 the Defendant indicated that his grandfather Joseph Harris was in possession of the disputed portion since the 1950s where he was in the business of selling fish and repairing and restoring boats. At paragraph 7 he went on to say that in or around 1984, Cedric, who was his father, had retired from the business and the Defendant continued until 2010 when he decided to convert the business into a fruit stall and mini mart, erecting a wooden structure to accommodate same.

13. Nowhere in the Defendant's pleaded case did he establish that the entirety of the one lot portion was used by the erection of two separated structures. The case as pleaded was that they were in the business of repairing boats and selling fish. The evidence adduced by the Defendant's witness and by the Defendant himself established that the boat repairing operation was done closer to the sea and that there was some a distance between the boat repair area and where the fish was being sold. The evidence was that the fish was also being sold closer to the Western Main Road and this position, on a balance of probabilities, was more plausible as one would want to be closer to the traffic to maximise sales. In the Defendant's witness statement he did not particularise how his control over the one lot portion was exercised nor did he clearly demarcate the boundaries to the one lot portion upon which he exercised control. In addition, he adduced no evidence to enable the Court to conclude on a balance of probabilities, that his use of the boat shed area and/or of the fishing shed area was exclusive to him.

14. On the older plans and diagrams, the width of the respective roadways and in particular the road to the chapel, seemed not to be of even width and the Court found that to be quite an important detail in its consideration. The road reserve or the chapel road seemed wider in the area closer to the Western Main Road and got narrower as it went down. At paragraph 7 of the Defendant's defence, the Defendant stated that in 2010 he decided to convert his business into a fruit stall and mini mart, erecting a wooden structure to accommodate same

but was served with a stop notice by the city corporation which led him to move the business on to the lands. On a balance of probabilities it is more likely than not that when he first erected his fruit stall and mini mart, the structure was more on the road reserve which led to the chapel and when he got the stop notice, the Defendant then removed same and rebuilt on the adjacent land. In answer to a question posed by the Court, he accepted that previously there was no structure on the portion of land where he erected his stall. On a balance of probabilities, the Court concluded that in 2013 the Defendant rebuilt a structure away from the road reserve and onto a portion of land which was not the same portion of land up to where the boats were repaired.

15. The Court found that Ms Gordon's evidence was particularly helpful. Her evidence was not discredited in cross-examination and was material insofar as she stated that the only structure that she noticed on the Bain lands was the one erected by the Defendant on or about 2013. She said she became aware of an issue when she saw an encroachment on the lands that she supervised for the Bains in 2013. This occurred after the Defendant got a stop notice and relocated his business. The Court also considered the correspondences between Ms Gordon and the Defendant and noted that there were discussions for a contractual licence. The tenor of the communication did not, in the eyes of the Court, portray that the Defendant perceived at that time that he had a right to possession nor did he assert that he was in occupation of the lands for a number of years.

16. The Court also considered the "Sebastian legal letter". That letter clearly defined the Defendant's occupation of the disputed area as having commenced in 2010. In the round, when the Court considered the Defendant's evidence, it was not satisfied on a balance of probabilities that the Defendant was in occupation of the lands described in his claim, coupled with the requisite intent to possess, for a continuous and undisturbed period of sixteen years or more so as to extinguish the paper title holder's rights in respect of that portion of land.

17. The next issue to which the Court addressed its mind was the demolition of the Defendant's structure by the Claimant. This Court in Steve Chairman v Samuel Saunders CV2012-

01670 considered the circumstances where self-help is available as a remedy. The Court disagreed with Mr Delzin that the Claimant had no other option. There was a course of dealing with the Defendant. The structure was not erected overnight and there were discussions between Ms Gordon and the Defendant as to a way forward. The Court joined issue with the Claimant's decision to exercise the remedy of self-help in those circumstances. It is not in dispute that the structure was removed. Ms Gordon stated that the goods were packed up and the Defendant was allowed to remove same but she was not present at the time.

18. In the counterclaim, the particulars of damage and loss were itemised at paragraph 20 of the Defence. As established in the case of **Grant v Motilal Moonan Limited and Rampersad Civ App No. 162 of 1985**, special damages have to be specifically proved. The Defendant explained that his bills were lost when his structure was demolished but nothing prevented him from calling witnesses who were engaged in the exercise of the construction of his structure or from adducing evidence from his suppliers so as to demonstrate whether goods at a certain value were supplied to his establishment on or about the last week of October, 2014. There was no evidence before the Court in support of the matters pleaded at paragraph 20 of the Defence. The Court considered the legal letters which were sent by his lawyer and noted that there was no reference to \$27,000.00 in cash being lost. On the claim for loss of earnings there was also no evidence as to what the business was earning. Ultimately, the Court found that the Defendant did not discharge the burden of proof in relation to the items of loss or damage as outlined in his defence.

19. The Court also had the benefit of the photographs which showed the structure before it was demolished and after demolition. Having looked at the photographs, it did not seem plausible or probable that the structure depicted in the photograph was one which was built at a labour cost of \$60,000.00 as particularised in the counterclaim. In the counterclaim, the Defendant also sought aggravated and exemplary damages. The Court took note of the actions undertaken by the Claimant to remove the Defendant with the help of Mr Ramparas, a General Licenced Bailiff. The Claimant should not have availed herself of the remedy of self-help and should have proceeded to the Court to get an order for the removal of the

structure. This unilateral type of activity that moneyed interests tend to resort to, so as to solve the problem on the ground, is a course of action which this Court deprecates. Accordingly, while the Claimant is entitled to the relief sought in relation to possession of the land, the Court is also of the view that the issue as to an entitlement to damages does arise in relation to the acts of demolition in October, 2014.

20. For the reasons outlined, the Court does not however have the requisite evidence before it to support the particulars pleaded by the Defendant save and except the photographs prior to and after demolition. From the photographs, only rubble was evident and there appeared to be no destroyed goods or produce as claimed by the Defendant. On a balance of probabilities it is more likely than not that the Defendant's goods were removed before the structure was demolished. The Court is of the view that the sum of \$10,000.00 would be a reasonable quantum for nominal damages.

21. On the issue of aggravated damages, the Court is of the view that the sum of \$18,000.00 is appropriate in the circumstances where the Claimant without justification engaged the remedy of self-help.

Orders

- a) The Defendant is to deliver up vacant possession of the property occupied by him, situate at the eastern corner of the Western Main Road and chapel corner, Carenage on or before 30th June, 2018. In default, leave is granted to the Claimant to issue a writ of possession.
- b) The Defendant with effect from the 30th June, 2018 shall be prohibited whether by himself, his servants and/or agents from entering upon or engaging in any works on the said portion of land which he occupied.
- c) On the counterclaim, the Court declares that the remedy of self-help ought not to have been exercised by the Claimant in the circumstances and finds that the Defendant is entitled to nominal damages and aggravated damages. The Claimant is therefore ordered to pay to the Defendant the sum of \$10,000.00 by way of nominal damages

and the sum of \$18,000.00 as aggravated damages. The aforesaid sums shall be paid to the Defendant within 21 days of the date of this judgment.

- d) Both parties have obtained some measure of relief claimed and the Court is of the view that each party should bear their respective legal costs both on the claim and counterclaim.

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FRANK SEEPERSAD

JUDGE