ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO ANUHCV1997/0121

BETWEEN:

PSALTER MILLWOOD

Claimant

and

DALE RICHARDS

Defendant

Appearances:

Eleanor R Clarke for the Claimant
Ralph Francis for the Defendant

2002: June 25, July 22, 25

JUDGMENT

[1] **MITCHELL, J**: This is a claim in trespass to goods. The Claimant claims that he was the owner of stables and a storeroom and of horses and various articles of personal property related to the care of horses, all of which he maintained on the premises of the Antigua Turf Club at Cassada Gardens at Antigua. He claims that the Defendant on a date in November 1996 broke down these stables and storeroom and threw the contents into a pond and scattered the Claimant's horses causing him loss, which he particularised, and which totalled EC$17,664.00. The Defendant in his defence pleaded that he was an executive officer of the Antigua Turf Club and he admitted that he did dismantle and remove the stables of the Claimant. He pleaded that the Claimant kept the animals in unsatisfactory condition and that the stables and storeroom had been crudely built. The Request for Hearing was filed on 23 September 1999 and the case has been ready for hearing ever since. At a Pre-Trial Conference held in Chambers on 27 March

2002, directions were given that all evidence in chief was to be in writing with witness statements to be exchanged and filed and all documents to be exchanged by a certain date, no document not so exchanged to be admissible at trial. Costs of trial were agreed at $5,000.00. The matter came up for hearing on 25 June 2002, and was concluded on the same day.

[2] The facts as I find them are as follows. In the early 1960s it was the Claimant who obtained government permission for the Turf Club to hold races on government lands at Cassada Gardens. The Claimant was one of the founders of the Antigua and Barbuda Turf Club. The Club as an unincorporated Association is governed by By-laws, which provide for the expulsion of members whose conduct is likely to injure the Club. While the Claimant was President of the Club his executive committee agreed that members of the Club could keep and maintain their race and other horses on the grounds of the Club. Stables and other facilities were arranged by various members for animals to be kept there. The Claimant has kept his horses stabled on the premises for many years. He was a licensee on the premises. Over the years, and especially with damage caused by the passage of various Hurricanes, the members' facilities became dilapidated and unsightly. At one time, the executive committee of the Club included the Defendant's counsel, Mr Francis, who was President, the Claimant who was Vice President, and, besides another who played no part in the trial, the Defendant was the Secretary. A new executive committee was in due course elected early in 1996 and the Claimant was ousted from his position of leadership of the Club. The new executive committee took a decision that the dilapidated and unsightly stables and other facilities of the Club members must be removed from the grounds of the Club. The Claimant did not agree to remove his. Other members did agree, and they removed their stables from the grounds.

[3] On the day in question, in November 1996, the Defendant apparently authorised by the executive committee of the Turf Club personally destroyed the stables and the shed owned by the Claimant on the grounds of the Turf Club. The Claimant is

presently a very elderly man, and clearly no longer in his prime. Only two years before, in the year 1994, he had been subject to complaints concerning the condition of his horses that he kept on the premises of the Turf Club. The Antigua & Barbuda Humane Society wrote him a letter concerning numerous complaints about he condition of various of his horses on the premises of the Club. At the request of the Society, on 21 February 1994 a veterinarian went to the premises to examine the animals. His findings as reported by the Society to the Claimant in its letter to him of 31 May 1994 were as follows:

> All three horses were suffering from extremely heavy tick infestation of their ears, genitals and feet. This chronic, long established infestation has given rise to a parasitic dermatitis, irritation and inflammation of the skin, broken skin, and oedema. In one case, the rear pasterns and fetlocks were sore and foul smelling and the horse was actually lame.

The Claimant has testified that after that or a similar report was made to him, he took steps to improve the condition of his horses, and there is no reason to doubt him. However, with advancing age, both of himself and his horses, conditions I am satisfied could not have improved to any great degree. I do not accept his testimony that in 1996 his stables were in good condition. I am satisfied that the stables and shed were constructed, or reconstructed after damage by Hurricane Luis on 5 September 1995, from scrap materials, and were of no great value.

[4] The Defendant and the other members of the executive of the Turf Club were entitled to consider that the unsightly structures of the members on the grounds of the Club were an eyesore, and to demand their removal. After due notice to remove from the premises, the Defendant would have become a trespasser. I accept that the Claimant was requested several times to remove his property from the grounds of the Club, but that this was done quite informally. Reasonable force can in limited circumstances be used to remove a trespasser and his possessions. The measure of the forcible breaking down of the property and their dispersal,

without the permission of the Claimant, and against his express wishes, was not a reasonable thing to do. In the circumstances I have described above, the destruction by the Defendant of the stables and shed of the Claimant on the grounds of the Turf Club was a trespass to the goods of the Claimant. He will be entitled to damages.

[5] One procedural point arises. Counsel for the Claimant has submitted that I should take into account the contents of witness statements on file and forming part of the core trial bundle where those witnesses have not been produced and have not been subject to cross-examination. These were not her own witnesses, but witnesses who had provided witness statements for the Defendant. Counsel for the Claimant wishes to rely on them because she considers that they support the case for the Claimant. She has produced learning from the **White Book 2000**, and she also relies on Part 29.8 of **CPR 2000**. Part 29.8 says

> (1) If a party
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> (a) has served a witness statement or summary; and
>
> (b) wishes to rely on the evidence of that witness;
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> that party must call the witness to give evidence unless the court orders otherwise.
>
> (2) If a party
>
> (a) has served a witness statement or summary; and
>
> (b) does not intend to call that witness at the trial;
>
> that party must give notice to that effect to the other parties not less than 28 days before the trial.

Counsel for the Claimant submits based on **the White Book 2000** that I can look at the Defendant's witness statements and consider them and take them into account as hearsay evidence. Counsel for the Defendant had no response to this submission. The **White Book 2000** is not very helpful to us because it refers to the UK position under their statute law governing the admissibility of hearsay

evidence in civil cases, which statute does not apply in the Leeward Islands. In the Leeward Islands, our rules relating to evidence in civil cases is governed by the old **Evidence Act of 1876**, now properly described as the **Evidence Act, Cap 155** of the Laws of Antigua and Barbuda. Under that Act, the common law position is preserved, and hearsay evidence is not generally admissible in evidence in civil trials. The position is otherwise in the Windward Islands where their **Codes of Civil Procedure** permit the modern **UK Evidence Acts** to apply, and hearsay evidence is there admissible in civil trials.

[6] Clearly, the Defendant in this case has been in breach of the requirement to have given the Claimant 28 days notice that he was not intending to call the witnesses whose statements he had filed. Our **CPR 2000** does not, as compared to the position in the UK, provide any remedy or penalty for the breach in question. Unlike the position in the UK, there is no stated consequence that flows from this breach. It would seem that Part 29 of **CPR 2000** does not contemplate the court looking at witness statements when those witnesses have not been produced to the court for cross examination. The result is that such witness statements must be completely ignored by the court in considering the evidence in the case. It is possible that, if I were finding in favour of the Defendant, one consequence of this breach of Part 29 that he might suffer is that he might well be penalised in costs. In this case, as I am finding in favour of the Claimant on the claim partially and generally, there is no consequence adverse to the Claimant from my not accepting his Counsel's submission on this point.

[7] The Claimant has pleaded a long list of particulars of special damage. He has not substantiated the amounts he has put against the value of the various items. He has produced neither receipts nor any independent valuation of any kind. I take the values he has given as, at best, his estimates. He has not made out his claim for special damages with anything like the degree of proof required for special damages. He observed his stables and shed being taken down by the Defendant, but did nothing to rescue any of the items he claims were lost. Perhaps, that was

as the Defendant suggests because there was nothing of value that he wanted to save amongst the rubble. He did nothing to mitigate his damages. This claim is dismissed. He will have general damages for trespass to goods, and his costs. He is entitled to damages not only for the actual trespass to his goods, but for the embarrassment and hurt that he must have felt as one of the founders of the Turf Club when his property was summarily and wrongfully dismantled and ejected from the grounds. I shall have to do my best and place an arbitrary value on this damage. There will be judgment for the Claimant against the Defendant for $5,000.00 general damages and one half of his costs of $2,500.00.

I D MITCHELL, QC
High Court Judge