ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2002/0318

BETWEEN

URCIL PETERS

Claimant

And

WILLIAM MARTIN

Defendant

Appearances:

Mary E. White for the Claimant
Rosheesh Maraj instructed by Lockhart Mendes & Co for the Defendant

……..
2004: 30th March 26th May;
27th August
……..
JUDGMENT

[1] Joseph-Olivetti J: This case concerns a claim in assault and battery and or trespass to the person and to goods. Essentially, Mr. Urcil Peters claims that Mr. Martin injured him when he picked up a workbench with him on it with in a backhoe and then dumped him on the ground.

[2] I will first rule on three distinct evidential and procedural issues which arose at the trial. They are: -

i. Whether the court can take account of Mr. Martin's conviction for common assault arising out of the same incident which gave rise to this claim,

ii. Whether Mr. Peters can rely on certain correspondence between his lawyer and Mr. Martin's lawyer as evidence of admission of liability, and

iii. Whether Mr. Peters' pleadings are sufficient to make out a claim in assault and battery or

> trespass to the person he having omitted to plead specifically that the action which caused him injury was intentionally caused.

[3] The first issue can be readily disposed of as subsequent to this trial but before judgment Mr. Martin's conviction was quashed by Ferdinand J. in his judgment dated 20th July 2004 in Suit No. 0422/ 2003 - William Martin v. the D.P.P. This decision stands and there is thus no extant conviction for me to consider at this date.

[4] On the second issue, the law relating to privilege granted to "without prejudice" correspondence is well established. See Rush & Tompkins v. G.L.C [1989] A.C 1280. In that case Lord Griffiths at page 1299 letter "D" stated that the 'without prejudice' rule is a rule governing the admissibility of evidence which is based upon the public policy of encouraging litigants to settle their differences rather than litigate them to the finish. He went on to say at letter "G:"

> "The rule applies to exclude all negotiation genuinely aimed at settlement whether oral or in writing from being given in evidence. A competent solicitor will always lead any reporting correspondence 'without prejudice' to make clear beyond doubt that in the event of the negotiations being successful they are not to be referred to at the subsequent trial. However, the application of the rule is not dependent upon the use of the phrase 'without prejudice' and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of these negotiations will, as a general rule not be admissible at the trial and cannot be used to establish an admission or partial admission."

[5] Having looked at the disputed letters at pages 96 - 99 of the core trial bundle, "CTB", they appear, despite the nonchalant wording of the correspondence on behalf of Mr. Martin, to be a genuine attempt at settlement although the words "without prejudice" were not written in any of them which of itself is not fatal. The fact that shortly thereafter Mr. Martin changed his lawyers does not affect the purport of those letters as contended for by Mr. Peters who argued that this was

evidence to show that it was not a genuine attempt at settlement. Without more the letters do not support this view. I therefore find that the letters are not admissible in evidence.

[6] On the third issue counsel for Mr. Martin relied on the cases of Letang v. Cooper [1965] 1Q.B. 232 and Fowler v. Lanning [1959] 1Q.B. 426 among others. First, it is immediately apparent that these cases were decided well before the advent of CPR 2000 and in the days when the courts were to strictly bound by rules of pleadings and procedure. I am mindful that the object of CPR 2000 was to do away with the old forms of actions and to simplify pleadings and that the overriding objective is to deal with cases justly which must mean having due regard to the merits of the case and not to decide them purely on what could be termed procedural issues. Trespass to the person and assault and battery connote a situation where harm was intentionally rather than negligently caused. Mr. Peters did not specifically allege that Mr. Martin intentionally caused him harm but paragraph 11 of his statement of claim in the amended Claim Form filed 3rd January 2003 allege that the defendant drove the backhoe 'maliciously'. It is obvious that what is complained of is the deliberate and intentional action of Mr Martin which allegedly resulted in injury to Mr Peter. He gave sufficient particulars to enable Mr. Martin to defend the case and Mr Martin has defended it vigorously. I also note that this point was taken at the end of the trial and not as a preliminary point at or before case management which is the appropriate time to raise such issues. It is readily apparent that Mr. Martin was not prejudiced in any way, as he knew the case he had to meet and filed a full defence. It is noted that even in Letang v. Cooper itself the court gave the plaintiff leave to amend his pleadings. I have no doubt that if this issue had been taken at the right time that the court would likewise have given Mr. Peters leave to amend his pleadings. In all the circumstances I am of the view that the pleadings are sufficient to make out a claim in trespass to the person and to goods and that this objection has no merit.

[7] Now I shall consider the substantive claim. Mr. Peters allege in his amended claim form that he was injured by Mr. Martin in the circumstances set out in his statement of claim and in particular those at paragraphs 8 to 11 thereof. Mr. Martin in his defence denied that he injured Mr. Peters as alleged and claimed that Mr. Peters was wrongfully interfering with his right of access to his land. See in particular paragraphs 13 and 19 of the amended defence.

[8] The court is called upon to address the issue of liability only by order of the court dated 29th January 2004. Seven witnesses testified. on behalf of Mr. Peters namely Mr. Peters, his wife Geraldine Peters , Yousoma Mannix, Mr Glen Martin, Dr. Raymond Douad and Dr. Cecil Phillip and Sergeant Clayton Davis. Four witnesses gave evidence for Mr. Martin. They were Mr. Martin, Mr. Alex Martin, Mrs. Gwendolyn Nelson and Mr. Terry Ben. I have had special regard to the testimony of Mr Peters, his wife, Yousoma Mannix, Mr. Martin, and Mr. Alex Martin as they were the persons who were present at the scene when the events giving rise to the claim occurred. Based on all the evidence adduced I make the following findings of fact.

[9] The background to the action was a dispute over a right of way. Mrs. Peters owned a parcel of land at Martins Village, St. John's Antigua . It abuts the All Saints Main Road. Their matrimonial home is built on the front portion of the land adjacent to the road . In or about 1992 Mrs. Peters gave her son, Rowan Thomas, the back portion of the land to build his home. The parcel was subdivided and numbered 152. His plan shows an access of 3 meters along the western boundary of the remainder of Mrs Peters land re-numbered Parcel 153. Both the Peters said that the only access to Parcel 152 was from the All Saints Public Road over and along a path on the west side of Mrs. Peters Land. Mrs. Peters said that Rowan only had that access because he was her son and that she did not convey to him that strip of land. Mr Martin claims otherwise i.e. that the strip formed part of parcel 152. However, the plan for the Parcel 152 as registered in the Land Registry, a copy of which is at page 104 of the CTB, shows found 152 as being L

shaped with the longer part of the L being about 3 meters wide and abutting the All Saints Main Road . That strip of land is on the west of Mrs.. Peters land. The Peters deny any knowledge of the road as shown on the plan.

[10] Doubtless, it was never envisaged that Parcel 152 would pass from the son to a stranger but this happened. Rowan mortgaged the land to The Caribbean Banking Corporation ('the bank"). He became unable to meet his obligations and eventually the bank sold parcel 152 by public auction in or about July, 1997. The fortunate purchaser was Mr Martin.

[11] In May or June of 1998 Mr. Martin sent a man with a backhoe to cut a road on the strip no doubt to allow vehicular access to the back portion of Parcel 152. Mrs. Peters stopped him. As far as the Peters were concerned Parcel 152 was to the back of their land and the owner of Parcel 152 had no legal right of way over the western strip. Mr. Martin complained to Mr. Peters who told him that if he wanted a right of way he would have to negotiate with Mrs. Peters. Mr Martin apparently was not minded to heed that advice as subsequent events revealed.

[12] Mr. Martin claims that according to his plan, the strip of land belonged to him and he had no dispute with Mrs. Peters over the ownership and use of the said land. If this is indeed so then the events which gave rise to this claim make very little sense.

[13] On the 8th December 1998 Mr. Peters was in his yard when he saw a backhoe about to enter on the strip and stopped it. The driver prudently complied. Mr. Peters said that the driver was called Pringle and that his wife knew him personally and also identified him as Pringle. Pringle is now deceased. However, Alex Martin testified that he and not Pringle was the driver and having heard him I am satisfied he was the driver and that the Peters were mistaken as to the driver's identity. To my mind nothing of moment hangs on this mistaken identity.

[14] Shortly afterwards Mr. Martin who had followed the backhoe from his business premises in the vicinity arrived at the scene and took over the controls of the backhoe from Alex Martin. The factual disputes centers around what actually happened when Mr. Martin came on the scene.

[15] In his witness statement (paragraph 9) Mr. Martin said he saw Mr Peters standing at the doorway at the side of his house looking in his direction and that as he entered his land driving the backhoe towards his southern boundary he saw Mr Peters run out of the house in his direction and that as Mr. Peters came out he tripped and fell to the ground, that he never stopped but continued to the back of the land and began clearing close to the boundaries. That was hardly the actions of a good Samaritan and why if there was no dispute about the strip did Mr. Peters stop the driver?

[16] In cross examination Mr. Martin admitted that there was a large workbench obstructing his path and that he moved the bench with the backhoe and then dumped it at the back of Mrs. Peters land. It is not disputed that the backhoe could not pass having regard to the size of the strip, proximity of the Peters house to the Health Centre fence which formed the boundary on the western side of the strip and to the size and position of the bench in relation to the backhoe. The backhoe was 12 ft. by 14 ft and the bench 3ft wide by 9ft long with the short side facing the All Saints Road.

[17] Mr. Martin testified that Mr. Peters was definitely not in the yard when he moved the bench and that he caused no injury to him. What is striking is that Mr. Martin never once mentioned in his witness statement that he had removed the workbench from his path and only saw fit to do so in cross-examination. The allegations about the workbench went to the heart of the matter as Mr. Peters claimed that he was leaning on it when Mr. Martin moved it and him and I cannot accept, shrewd businessman as he appears to be, that Mr Martin was not aware

of that and so cannot excuse his omission to mention that he moved the bench in his evidence in chief. I therefore did not find him a credible witness.

[18] In stark contrast to Mr. Martin, Alex Martin said at paragraph 5 of his witness statement that as Mr Martin entered upon the land the man came out of his house toward the backhoe and began to push on a workbench that was on the driveway. As he was doing that the work bench slid and hit the man's foot. The man then returned to the house and Mr. Martin continued to push the workbench along the driveway and to the back of the parcel of land. He said that from where he was standing on the public road he had an unobstructed view of the backhoe and the man at all times. However, in cross-examination Alex Martin said that the backhoe was between him and the man and that he could not see clearly. This strikes me as the truth.

[19] Mr. Peters who was seventy one at the time of the incident testified that he was leaning on the bench which was in his yard near his kitchen when Mr. Martin lifted up the bench with him on it with the backhoe and that he fell from the bench into the bucket of the backhoe and then Mr. Martin dumped him at the side of his house.

[20] Mrs. Peters did not see Mr. Martin driving onto the land but she claimed that she was in the backyard and she heard a big noise like something moving in front of the house and that when she went to investigate she saw Mr Martin with the backhoe and the bench in the shovel and she asked him "Wills, what happen to you, you crazy to be going in the yard so?." She saw him drop the bench under the coconut tree in the yard and then he parked the backhoe on his land. She said she then heard her husband bawling in front of the kitchen and she went round and helped him up from the mud and that she called 911 and gathered him inside with the help of Yousoma as he was in a lot of pain and could not get up by himself . He had a cut on one of his legs, and he could not move his neck.

[21] The only other person who claimed to have been an eye witness to the event was young Yousama Mannix aged 13 at the time, the great niece of Mr. Peters. She was then a third form student at the Antigua Girls' High School. At the date of trial she was 17 and a student at the Antigua State College.

[22] She testified that she was spending time with the Peters at their home on the day in question and that she was looking through the kitchen window when she saw the backhoe coming to the yard. Her uncle was standing close to the bench. A young man was driving the backhoe. Her uncle told the young man to stop and he did. Then Mr. Martin approached the driver, spoke to him and went onto the backhoe. The young man came off and Mr. Martin started up the backhoe and went toward the table on which her uncle was sitting. She said that Mr Martin picked up the table with her uncle on it and then dumped him on the ground by the kitchen steps and that the bench fell out also. She said that she was scared as she thought that he was going to kill her uncle and she was too scared to go outside. She said Mr. Martin then reversed the backhoe, picked up the table again and went into the back of the yard and dumped it out then went further into the land near some bushes. She assisted Mrs Peters to get Mr Peters into the kitchen and that his right foot was cut and bleeding.

[23] Mr. Martin went to some lengths to establish that Ms. Mannix was not present at the scene or even at the Peters home on that day. However, I do not believe his evidence that he saw her in a car at a traffic light just after the incident as he did not convince me that there was anything remarkable about a child whose father did repairs for him to so notice and recall her after he had just being party to an acrimonious incident to say the least.

[24] I accept the evidence of the principal of Antigua Girls High School, Mrs. Gwendolyn Nelson who was called by Mr. Martin that despite what was noted on the attendance record for that day, which was produced, that it was a special day in which there was no school because of certain religious based activities and that

Ms. Mannix , being of a different religion, was excused from the activities and that it was the practice of the school, albeit questionable, to enter all students as being present on that day. I have had regard to Ms Mannix's age at the time and to the years that have elapsed between the event and trial and find that the discrepancies between Ms. Mannix and her aunt as to who called the police and the ambulance and where the uncle was positioned when the ambulance came is of little significance . She impressed me as an honest witness and I accept her evidence that she was present and did see her uncle being picked up and dumped from the backhoe by Mr Martin.

[25] It is clear to me that Mr. Peters was trying to prevent Mr. Martin from driving onto the land and had put the workbench in the way and then leant on it with the hope that his actual physical presence would deter him from driving the backhoe on the land. The workbench was positioned on the doorway in such a way as to obstruct it. Mr. Martin on the other hand was aware that both Mr. Peters and the bench were directly in his path and despite that obstacle he was determined to drive the backhoe along the disputed right of way and so deliberately removed them with the backhoe and in so doing caused injury to Mr. Peters. I find that he was aware of Mr Peters and that he intentionally removed him and the workbench out of the way and in that so doing he caused harm to both Mr Peters and to the bench. Sergeant Davis testified and I accept that the bench was damaged.

[26] In his closing submissions counsel for Mr. Martin submitted that his client was entitled to use reasonable force to clear any obstruction on his land, that the use of the backhoe was reasonable in the circumstances and that any injury resulting therefrom was justifiable.

[27] The ownership of the strip of land marked as a roadway is not strictly before the court and has not been addressed by either counsel as an issue for determination. However, having regard to the submissions of Mr. Martin that he

owns that strip of land and that he was entitled to use reasonable force to remove any obstruction the court must consider whether his actions were justifiable if his belief were correct. One is entitled as the owner of property to use reasonable force to remove a trespasser from one's land. See Hemming & Wife v. Stoke Podges Golf Club Ltd [1920] 1 K.B. 720. Even if Mr. Peters were a trespasser or unlawfully interfering with Mr. Martin's right of way the question remains whether Mr. Martin's actions in using the backhoe in the manner in which he did were reasonable.

[28] Having regard to all the circumstances I am of the opinion that Mr. Martin's actions cannot be regarded as reasonable in any civilized society. This was a simple dispute about a right of way and Mr. Martin's driver displayed more humanity and common sense than Mr. Martin himself. To use a backhoe against any person much less an old man of more than three score and ten simply to gain access to property just because one thinks one can with impunity strikes me as unbelievably brutal and inhumane and evinces a total lack of regard for the consequences. I reject his ostensible excuse for his actions that he was telephoned at about 8.30 a.m. that very morning by someone from the Central Board of Health to clear the land because it was overgrown otherwise he would be fined, as ludicrous. See paragraph 6 of his witness statement. The use of brute force against another by anyone without any regard for the consequences cannot be tolerated as any civilized society. To use the backhoe in this situation to remove both the bench and the old man was wholly unreasonable and wrong. I therefore find that Mr Martin deliberately caused harm to Mr. Peters and that he is liable for damages for assault and battery and trespass to goods.

[29] For the reasons advanced I gave judgment for Mr Peters for damages to be assessed by a Judge or Master in Chambers on the Thursday 21st October 2004, at 9:00 am. All deponents should attend to be cross examined unless attendance is dispensed with by the other party. Mr Peters is to have his prescribed costs based on the damages awarded.

Rita Joseph-Olivetti
High Court Judge