

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NUMBER 2003/0967

BETWEEN:

RONALD BENNETTE

Claimant

AND

CONSOLIDATED CONTRACTORS INTERNATIONAL (UK) LTD.

Defendant

Appearances:

**Mr. Michael Phillip St. Catherine for the Claimant
Esther Greene – Ernest for Defendant**

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2005: January 24, 28
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JUDGMENT

1. **SHANKS J:** Judgment for an amount to be decided by the court was entered in this claim for nuisance on 1 October 2004. Master Cottle gave directions for the hearing requiring the parties to file and serve affidavits. The deponents attended the hearing and were cross-examined on their affidavits.
2. The Claimant is the tenant of a parcel of agricultural land in Dennery on which he plants bananas. The Defendant is a Civil Engineering Company and occupies an adjacent piece of land. In about March 2003 the Defendant in the course of setting up their business carried out excavation works. Since then whenever it rains excavated soil escapes and accumulates on the Claimant's

land thereby causing a continuing nuisance. So much is the basis of liability set out in the statement of claim: although it is unsatisfactory to do so because there is reason to think that not all these facts are entirely accurate and they are not particularized any further the court must proceed on the basis that they are correct given the existence of the default judgment.

3. The evidence presented by the Claimant as to loss and damage was exiguous. He says in his affidavit that whenever it rains water with stones, oil and mud escapes onto his land and as a consequence a portion of the land with banana crops on became unworkable, the drains became filled with debris and the field became water logged. He undertook to have the land cleared on two occasions: once in March 2003 at a cost of \$2,600 and once in April 2003 at a cost of \$2,700. The Defendant had contracted some people to construct a drain to alleviate the problem but nothing happened. In June-July the rains were such that the field became unworkable and the bananas became diseased and he could not sell them and he then had to abandon the field because of the expense of draining the field. In addition to the cost of clearing the site he claimed the sum of \$46,162.50 for the damage to the banana crop.
4. Francis Mathurin made an affidavit designed to substantiate the claim for \$46,162.50. Although his evidence about this could only be of any value as expert evidence there was not the slightest attempt to comply with CPR 32 in relation to it; there was also a large question mark over his expertise given that he states his profession as rural constable and farmer. He states that he carried out an assessment of the field on 8 December 2003 and that it was covered in oil, mud, water and debris and that the drains were blocked. He then itemizes various items of damage to the banana field the main one of which is "Damage to 3000 cartoons at \$15.00 - \$45,000".
5. Mr Jabara, the Defendant's Project Manager, presented documentary evidence that the Defendant did not get approval for the work on site from the Development Control Authority until 16 May 2003. He makes the point that

Dennerly is low lying and prone to flooding and denies that any crop or banana trees of the Claimant have been damaged or destroyed.

6. I am afraid that the Claimant has not satisfied me as to any of the heads of loss for which he claims. As to the claims for \$2,600 and \$2,700 no documentary support for this expenditure was presented when it could easily have been and there is a doubt as to whether the Defendant had carried out its work at the time the expenditure was incurred. As to the claim for \$46,162.50 for the banana crop, it was not clear exactly what this claim was for, there was no evidence that the disease to the bananas was caused by the nuisance and I could not accept Mr. Mathurin's evidence as to valuation in the light of the failure to establish his expertise properly and to comply with CPR 32.
7. I am troubled by this conclusion since the court's default judgment is to the effect that the Defendant is liable to the Claimant for causing a nuisance and because I accept the Claimant's evidence that he suffers problems with water and mud escaping from the Defendant's land and that the Defendant had indicated that something would be done to alleviate the problem, the cost of which would have been the prima facie quantum of damages in my view. In the circumstances I propose to award the Claimant the modest sum of \$5,000 notwithstanding the inadequacy of the claim put forward on his behalf, which sum I am confident is substantially less than the actual loss and damage suffered.
8. I will therefore order the Defendant to pay damages in the sum of \$5,000. Subject to submissions my view is that it would not be appropriate in the circumstances to award any costs.

MURRAY SHANKS
High Court Judge (Acting)