

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(*Civil*)

SAINT LUCIA

Case No. SLUHCV 2001/0538

BETWEEN:

JOHN CADETTE

Claimants

vs

(1) RAPHAEL EPHRAIM
(2) STEPHEN EPHRAIM

Defendants

Appearances:

Ms. D. Thomas for Claimants

Mrs. W. Louis Harris for 1st and 2nd Defendants

2004: September 28
2005: November 25

JUDGMENT

Introduction

[1] **EDWARDS J:** This is a claim for Special and General damages for trespass to chattels. It arose from the destruction of Mr. John Cadet's partially constructed building and wooden shed with building materials in February 2001.

Background Facts

- [2] The land registered as **Block 0233B** situated at Belle Etoile in the Registration Section of Soufriere is owned by the Crown and private persons.
- [3] The relatives of Mr. John Cadet own **Parcel 54**. The Defendants Mr. Raphael Ephraim (**RE**) and Mr. Stephen Ephraim (**SE**) are brothers and Co-owners of **Parcel 38**.
- [4] Mr. Cadet had received permission from his relatives to construct his wall house on **Parcel 54**. In the year 2000 he erroneously began constructing this house on land, which we now know are **Parcels 41** and **40**, according to the Surveyor's Report of Licensed Land Surveyor Mr. C W. Phillips dated 19th March 2004.
- [5] **Parcel 41** is a part of the Old West Coast Highway owned by the Crown **Parcel 40** is probably owned by Mr. Haynes Hippolyte.
- [6] On the morning of the 7th February 2001, Mr. Cadet went to his building site and discovered the destruction of his property. He immediately focused on and identified **RE** and **SE** to the Police, as the persons who were responsible for this destruction.
- [7] By a Writ filed on the 21st June 2001, Mr. Cadet alleged that it was **RE** and **SE**, co-owners of **Parcel 54** who had destroyed his house and building shed with materials. These allegations are grounded partly on the following pleaded undisputed facts.
- [8] On the 26th January 2001 the lawyer for **RE** and **SE** sent a Notice of Trespass to Mr. Cadet. This Notice accused him of constructing on **RE's** and **SE's** lands. The Notice demanded that he "***immediately desist from the said trespass and remove from the said land, anything or material you have placed thereon***". It continued: "***Your said unlawful entry has continued despite the protestations of our clients. Take notice that if you refuse or neglect to abide by the above demand, criminal proceedings shall be instituted against you without further notice***".
- [9] Mr. Cadet ignored this Notice and continued his construction. Approximately 12 days later, the destruction occurred.
- [10] By their Defence filed on the 3rd August 2001, **RE** and **SE** admitted that they did make the demand on Mr. Cadet "***to cease his trespass on their land, and remove the said chatted house, which he has refused or neglected to do, despite the notice to desist***". They denied destroying, or being responsible for the destruction of Mr. Cadet's property.

[11] Pursuant to the Case Management Order dated 27th July 2002, Licensed Land Surveyor Mr. Allan J. Hippolyte, concluded in his report dated 11th April 2003, that Mr. Cadet's house was situated on **Parcel 39** which is owned by Denis and Paula Du John, and not on the lands of **RE** and **SE**.

[12] The subsequent detailed comprehensive report of Licensed Land Surveyor Mr. C.W. Phillip, though differing from the previous Report as to whose land Mr. Cadet had trespassed on, also confirmed that Mr. Cadet's house was not on **Parcel 38**. The report stated that the nearest point to Mr. Cadet's house from Parcel 38 is 45.22 meters or 148.36 feet.

The Evidence

[13] Mr. Cadet made 2 witness statements, the first of which was used by Counsel for **RE** and **SE** in her attempt to destroy Mr. Cadet's credibility. However, I accept the testimony of Mr. Cadet concerning **SE's** admission to the Police that he had destroyed the shed and framework of Mr. Cadet, despite **SE's** testimony denying that he made such an admission.

[14] The Claimant testified further in his witness statement dated 27th November 2003 at paragraph 12 – *"I then suggested to the officer that there was so much destruction that Stephen could not have done it by himself. The officer then asked Stephen whether he had help Stephen said his brother. The officer asked him which brother and he said Raphael Ephraim"*.

[15] In the absence of any admission from **RE** that he participated in the demolition of Mr. Cadet's property, the probabilities are equal in relation to **RE**. The allegations of trespass against **RE** are unsustainable, since Mr. Cadet has failed to prove on a balance of probabilities that **RE** committed trespass to his chattels.

The Pleadings

[16] Learned Counsel Ms. Louis Harris challenged the pleadings of Mr. Cadet. She referred to paragraph 6 of the Statement of Claim which states: *"Sometime during the month of February 2001, the Defendants, their agents and /or servants entered the lands on which the Plaintiff was constructing the said wall house and unlawfully destroyed a partially completed building along with a wooden shed containing building and other materials"*.

[17] Ms. Louis Harris contended that since the allegations pleaded relate to the destruction of goods, then no cause of action is disclosed on the pleadings since destruction of goods does not constitute a cause of action under the law.

[18] By virtue of Article 917 A of the Civil Code of St. Lucia Chapter 243, the law of England for the time being relating to torts mutatis mutandis extend to St. Lucia.

- [19] Counsel for SE therefore argued, that pursuant to Section 1 of the Torts (*Interference with Goods*) Act 1977 U.K, Mr. Cadet's remedy should be a claim for trespass to goods whereby Mr. Cadet must prove that he was in possession of the goods at the time of the alleged trespass.
- [20] Relying on Bullen and Leake and Jacobs, Precedents of Pleadings, 13th Edition, Sweet and Maxwell page 955 as her authority, Ms. Louis Harris submitted that the pleadings were insufficient and defective since they failed to comply with the following requirements - (1) Identify the goods, (2) plead the Plaintiff's actual or constructive possession, (3) Identify any other persons with an interest, (4) particularize the trespass and state the trespass to be intentional and/or negligent (if negligent, with particulars of negligence, (5) plead particulars of damage, unless intentional trespass causing no damage is alleged, and (6) carefully choose the relief sought.
- [21] Ms. Louis Harris urged the Court to dismiss the Claim of Mr. Cadet with costs to the Defendants, since his pleadings evince egregious omissions and a flagrant non-compliance with the requirements stated in Bullen and Leake (*supra*).
- [22] Learned Counsel Ms. Thomas did not address this argument in her closing submissions.
- [23] The avowed aim of the Civil Procedure Rules 2000 is to ensure that matters progress on their merits and not on technicalities (Blackstone's Civil Practice 2002 para. 24:17).
- [24] Pursuant to PART 8.6 (1) (a) and PART 8.7 (1) of the Civil Procedure Rules 2000, Mr. Cadet does not have to plead the tort of trespass to chattels. He is required to file a claim form containing a concise description of the nature of the claim, and the statement of claim must include a concise statement of all the facts on which Mr. Cadet relies. The over-stylised formalistic precedents of pleadings which resulted in tactical considerations and technical objections under the old rules now appear to be inconsistent with the overriding objectives under the Civil Procedure Rules 2000: (Blackstone's (*supra*) para. 24.17).
- [25] Consequently, though Mr. Cadet's pleadings may not conform with the stylised formalistic precedent in Bullen and Leake and Jacobs Precedents of Pleadings, the question to be answered is – Whether the facts pleaded show that Mr. Cadet has a cause of action for trespass to chattels against SE and that he is entitled to recover damages?
- [26] *"In dealing with rights of action arising out of injuries done to property movable or tangible in its nature, there are two main things to be considered: first of all, the nature of the wrongful acts; secondly, the nature of the right or interest which is infringed by such act. It is clear that he who actually damages a chattel belonging to another, whether indirectly by*

reason of some act done to the chattel in the nature of a trespass, is guilty of a wrong": (Clerk and Lindsell on Torts, 12th ed. Para. 891).

- [27] In my view, the pleadings of Mr. Cadet clearly disclose that there was a wrongful act, namely the direct and actual damage to the partially completed building along with a wooden shed containing building and other materials. The pleadings also disclose the nature of the right or interest which was infringed, it discloses that Mr. Cadet was in de facto and wrongful possession of land on which he was building, and that Mr. Cadet was in possession of the partially completed building and wooden shed with building and other materials at the time it was destroyed.
- [28] The significance of pleading that the destruction was unlawful would in my view relate to Mr. Cadet's wrongful possession of land on which he was building. Mere de facto and wrongful possession of land is a valid title of right against all persons who cannot show a better title themselves, and is therefore sufficient to support and action for trespass against such person: (Salmond on Torts (5th ed) page 59).
- [29] Consequently, Mr. Cadet would be entitled to succeed against SE in the circumstances of this case, even though he is not the owner in occupation of the land on which he was building.
- [30] One of the common elements of tortious liability is the mental element of intention. Mr. Cadet can only succeed where he proves that the acts of SE were intentional.
- [31] Though Mr. Cadet's pleadings have not specifically stated that the destruction of his chattels was intentionally done by SE, in my view this is an inference of law which does not have to be pleaded.
- [32] *"As a general rule inference of law should not be pleaded, but only the facts from which such inferences are sought to be drawn. However it may be useful on occasion to state the legal conclusion sought to be drawn from the facts, or the nature of the legal provision on which the party pleading intends to rely, either by way of emphasis or to prevent any doubt in the mind of the other party as to the nature of the case alleged against him. It is bad pleading to state an inference of law without setting out facts by which the conclusion or inference is to be supported, and a pleading which offends in this way will be struck out as bad": (Halsbury's Laws of England 4th ed. Vol. 36 para. 13).*
- [33] The question therefore to be answered is whether Mr. Cadet's pleadings disclose facts which support an inference that there was an intentional interference with the Chattels in his possession?
- [34] In my opinion, paragraph 4 of the pleadings concerning the Notice of Trespass that was sent to Mr. Cadet by the lawyer for RE and SE goes a long way in establishing the consequences that were desired by RE and SE. Looking at the

pleadings of Mr. Cadet as a whole, I am therefore satisfied that he pleaded all the material facts necessary for the Court to infer the requisite intention. I also agree with the submission of Learned Counsel Ms. Thomas who argued that Mr. Cadet by his testimony has proven that he was threatened by **RE** and **SE**, who would have done anything to ensure that Mr. Cadet stopped building on the land. This evidence in my view also proves that **SE** intended to interfere with Mr. Cadet's chattels.

[35] I therefore conclude that Mr. Cadet has proven on a balance of probability that Mr. Stephen Ephraim (**SE**) is liable for trespass to his chattels and I so find.

[36] I note that the 2 Defendants **RE** and **SE** had filed a Counterclaim on the 3rd August 2001 claiming general damages for trespass against Mr. Cadet which was discontinued on the 19th April 2004.

Damages

[37] The normal measure of damages is the market value of the chattels destroyed at the time and place of destruction: (Magregor on Damages (9th ed.) (2003) para 32 – 045. Mr. Cadet must strictly prove the amount of the materials that were taken and or destroyed and their value.

[38] I endorse the submissions of learned Counsel Ms. Louis Harris who by her cross-examination of Mr. Cadet, eliminated 26 receipts totaling \$3, 436.13 from his documentary exhibits.

[39] The receipts that were relevant and consistent with Mr. Cadet's testimony that he started purchasing the materials for building his wall house only in the year 2000, amounted to \$5,501.03 for materials bought. These receipts are for purchase of Cement and transportation on the 4th April 2000 = \$867.00, purchase of building materials from Du Boulay's Building supplies on 18th December 2000 = \$4,344.80, purchase of 800 building blocks on the 24th February 2000 – 100 of which were destroyed = \$250.00, purchase of nails on 3rd February 2001 = \$33.00, purchase of nails on 24th February 2000 = \$6.23. I do not agree with Counsel Ms. Louis Harris, submission, that Mr. Cadet has not established any nexus between his alleged loss and **SE**. I find on a balance of probability that the loss he suffered was directly because of **SE's** unlawful interference with his chattels, amounting to \$5,501.03 in special damages.

[40] However, Mr. Cadet has failed to prove the \$2,000.00 special damages pleaded for cost of transportation.

[41] I have further taken into account the costs incurred by Mr. Cadet in obtaining the 1st Surveyors Report and the contribution he had to make for obtaining the 2nd Surveyor's Report.

[42] Consequently, pursuant to Article 1009 of The Civil Code of St. Lucia Chapter 242, I think it fit in all of the circumstances in this case to order that there be included in the sum for judgment against the 2nd Defendant an amount of \$1,503.09 for interest at the rate of 10% per annum on the amount of \$5,501.03 from the 1st January 2002 to the 31st December 2004.

Conclusions

[43] I therefore enter Judgment for the Claimant against the 2nd Defendant in the sum of \$7,004.12 inclusive of special interest mentioned at para. 42 above, and prescribed costs pursuant to PART 65.5 (2) (a) and Appendix B of the Civil Procedure Rules 2000 being \$2,101.24. There will be interest accruing on this Judgment debt at the Rate of 6% per annum from the date this judgment is delivered until full and final payment.

[44] I also enter Judgment for the 1st Defendant against the Claimant with prescribed costs pursuant to PART 65.5 (2) (b) (1) of The Civil Procedure Rules 2000 calculated at \$2,160.00, and interest thereon on this Judgment Debt at the rate of 6% from the date of delivery of this Judgment until full and final payment.

[45] I further take into account PART 65.3 and PART 64.6 (6) of The Civil Procedure Rules 2000. In particular, I have had regard to the conduct of the 2nd Defendant before and during these proceedings, the manner in which he pursued his defence and counterclaim, and the unreasonableness of his counterclaim. I therefore order that the 2nd Defendant do pay to the 1st Defendant, the costs awarded against the Claimant in favour of the 1st Defendant.

DATED THIS 24TH DAY OF NOVEMBER 2005.

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OLA MAE EDWARDS
High Court Judge