

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2002/1169

BETWEEN:

CONRAD JAMES
JOSEPHINE JAMES

Claimants

and

(1) SOLANGE JN BAPTISTE
(2) CATHERINE JN BAPTISTE
(3) LIVINUS FONTENIO
(4) PAULE JN BAPTISTE
(5) LENNIE AUGUSTIN
(6) KENSLEY JN BAPTISTE

Defendants

Appearances :

Ms. Kim St Rose for Claimants

Ms. Isabella Shillingford for Defendants

2006: September 26;
October 17, November 6, 28.

JUDGMENT

INTRODUCTION

[1] EDWARDS, J.: The parties to this trespass claim live in Jacmel in the Quarter of Anse La Raye, on steeply sloping land formerly owned by Geest Industries Ltd (GEEST).

- [2] The Claimants along with Mary Emmanuel are the registered owners of the land in Jacmel known as Parcel number 0641B-72 since the 27th August 1987. Mr. James who was also registered as co-owner of a contiguous Parcel number 0641B-73 with Margaret Ettoe since the 27th August 1987, has since the 3rd October 2000 been registered as sole owner. Mr and Mrs James occupy both parcels. They live on this land.
- [3] The Defendants are the children, grand children, and or great grand children of Mrs. Agnes Jn Baptiste. She is the registered owner of the land in Jacmel known as Parcel number 0641B-78 since the 3rd November 2000. Though Mrs. Baptiste no longer lives on this land, the Defendants live in 4 different houses on her land.
- [4] The northern boundary of Parcel number 0641B-72 belonging to Mr and Mrs James built and bounds the land of Mrs Jn Baptiste to the south.
- [5] By a Fixed Date Claim filed on the 16th December 2002, Mr and Mrs James claimed possession of their said lands from the Defendants, and an Order for removal of the Defendants' house and pipelines from their property. They also claimed an injunction restraining the Defendants' from trespassing on their said property and/or interfering with them in the use of their land. They are seeking damages, damages for trespass, further on other relief, interest and costs.

THE LAW

- [6] Owners rights to the possession of their land is protected by the tort of trespass. Article 917A of the Civil Code Cap. 242 (St. Lucia) states that the Law of England for the time being relating to torts shall extend to St. Lucia.
- [7] The common law states that trespass to land consists in any unjustifiable intrusion by one person upon the land in possession of another. ". . . **[E]very man's land is in the eye of the law enclosed and set apart from his neighbours; and that either by a visible and material fence, as one field is divided from another by**

a hedge; or by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field:" (Hegan v Carolan [1916] 2 IR R. 27).

[8] Justification for intrusion upon the Claimant's land may be afforded the Defendant's either by the operation of law, or by the act of the Claimants, or their predecessor's in title, where the entry is made under a right of easement, or right of way, or under a licence, (Cope v Sharpe (No. 2) [1912] 1K.B. 496).

[9] Where the right of way is created by express grant or by Act of Parliament, the extent of the right will depend upon the actual terms of the grant on Act as the case may be. Where a right of way is claimed by prescription; the general rule is that the extent of the right is to be gathered from the user: (Clerk & Lindsell on Torts 19th ed., para 19-38).

[10] Article 2103A of the Civil Code states:

"Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

[11] Rule 4 of the Supreme Court – Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules No. 7 of 1979 state:

"An application for a declaration of title to immovable property, or to any servitude or other right connected therewith, under Article 2103A of the Civil Code shall be made by petition to the Court."

- [12] These Rules set out the procedural requirements that must be met before the Court can hear and adjudicate on the petition.

THE PLEADINGS AND EVIDENCE

- [13] Mr. James testified that he lived on Parcel 0641B-73 with his grandfather from when he was 5 years old up until 1978 when his wife Mrs. James joined him and together they occupied the land. According to him, they were the first occupants of that area as no other persons occupied the surrounding area which was bush.

- [14] Though Mr. James did not testify as to when and how he came to own Parcel 0641B-72, Mrs. Agnes Jn Baptiste testified that a lady Ms. Agnes Lionel used to live there, and after she died her daughter was living there in a wooden house on the property. According to Mrs. Jn Baptiste, the daughter of Agnes Lionel borrowed money from Mr. James and could not repay him, so she had to leave the property for him. Thereafter, she testified, Mr. James took a surveyor and surveyed the land. All the witnesses testified that a dumb person presently lives on Parcel 0641B-72 in a wooden house.

- [15] Mr. James' evidence was that he had encouraged his friend and co-worker Whitney Raphael to purchase Parcel 0641B-78 from GEEST. He stated that he permitted Mr. Raphael to pass across his land between his 2 parcels to get to Mr. Raphael's property because it was closer to the road.

- [16] Mr. Raphael who was apparently also called Arthur, had a son Ferguson Jn Baptiste. Arthur Jn Baptiste married Mrs. Agnes Jn Baptiste. During the lifetime of Mr. Raphael, Mr. James allowed the members of Mr. Raphael's household also to pass across his 2 parcels of land in getting to and from Parcel 0441B-78. Upon Mr. Raphael's death, Mr. James allowed this previous arrangement with Mr. Raphael to continue as long as Mr. Raphael's household members remained on good terms with him. There is no evidence as to when Mr. Raphael died. Their usage

of the boundary area right where 'Mr. James' 2 parcels butt and bound each other, in going to and from parcel 0441B-78, caused a foot track to be created on Mr. James' property.

- [17] There is a concrete step leading from the Jacmel Public Road up to the South Western boundary of the James' 2 parcels, where the foot track begins.
- [18] There is conflicting evidence as to how this concrete step came to be built. Mr. James' version is that it was built by him at his expense to access his property better, and Mr. Ferguson Jn Baptiste helped to do the work. However, Mrs. Agnes Jn Baptiste and the Defendants' testimony is that the steps were originally dirt steps, hewn out on the steep slope by her husband, they were subsequently converted into concrete steps with financial and or labour contributions jointly coming from Mr. Jn Baptiste, his family members Mr. James, and other persons who were also using the foot track on Mr. James property to get to and from their land.
- [19] The Surveyor's Report of Mr. Ornan Monplaisir dated the 6th December 2004, as commissioned by the Court. It discloses that Mrs. Jn Baptiste's land is bounded by a Road Reserve in the North. There is also another Road Reserve bounding the 2 parcels of land owned by Mr and Mrs James to the South.
- [20] The owners of the lands surrounding the properties of Mrs. Jn Baptiste and the James' are Egbert Albert, Geest, and Mathias Hollancide.
- [21] Mr. James described the Road Reserve to the North of Mrs. Jn Baptiste's land as an access road that you can walk physically on, which leads to Jacmel Catholic Church. He denied that this Access Road was overgrown with bushes and trees. He agreed that the Road Reserve above the steps is not in existence as it is overgrown with all sorts of prickles and grass.

- [22] The Defendants' testimony and the evidence of Mrs. Jn Baptiste, were substantiated by the Surveyor Mr. Monplaisir. He testified that these 2 Road Reserves were never established as such. He said that the vegetation and the terrain and slope of the land are indicative that no roads were ever established there, though they are on the plan of the area. He testified that the Road Reserve above the concrete steps has an access further to the West about 500 yards from the Junction on the West Coast Road leading to the Catholic Church. He was not aware that there was an extension road leading to the Catholic Church from the Northern Road Reserve.
- [23] Mrs. Jn Baptiste testified that her husband Arthur Jn Baptiste and herself, lived at Jacmel for 40 years and that Arthur worked at GEEST Industries. She said that Agnes Lionel lived on the parcel of land below her, and to get to her land from the Jacmel main road, the Geest watchman had shown them exactly where to pass to get access to their land. The access pointed out by the watchman was bush and prickles. Mrs. Jn Baptiste testified that her husband and children then cut the Access Road to get to their property, and they used the track to the Eastern side of Agnes Lionel's land to get to their land. This footpath is about 1 foot wide.
- [24] Mr. James refuted this testimony. He said that Mrs. Jn Baptiste and Arthur came to live on their parcel of land in 1979, and they previously lived at Glorouge.
- [25] The Defendant Paule Jn Baptiste is the son of Mrs. Agnes Jn Baptiste. He testified that when his father bought the land he was 5 years old, and he is now 42 years old. He said he has lived on the land for about 32 years, and that it was the Geest watchman who showed them where to pass and they cut the path.
- [26] The Defendant Ms. Catherine Jn Baptiste is the daughter of Mrs. Agnes Jn Baptiste. Her inconsistent evidence was that she was brought by her parents to live on the land in question when she was 9 years old and she is now 37 years old.

She witnessed her parents clear the path to have access to their land from the Jacmel Road, she said.

[27] Mr. James testified further that from about February 2000, without any permission from his wife and himself, the Defendants ran water pipes across his land by the footpath leading to their land, and some of his boundary pegs were removed. Subsequently in June 2000 WASCO came on various occasions to connect water from the pipe mains running across Mr and Mrs James's land.

[28] He employed Land Surveyor Mr. Earl Cenac to replace the pegs at a cost of \$1,000.00 on or about the 17th March 2000.

[29] He testified that Mr. Cenac's survey revealed that the Defendants were encroaching on his land. In particular the house of Ms. Solange Jn Baptiste was partly on his land. The Defendants disagreed with the survey, and threatened to remove the boundary pegs, he said. By the 22nd March 2000, the Boundary pegs were missing. Mr. Cenac subsequently replaced them at a cost of \$500.00.

[30] By the 9th October 2002, the boundary pegs on his land were again replaced to show that the size of his land had been reduced. On the 26th October 2002, Mr. Paule Jn Baptiste, Mr. Lennie Augustin and Mr. Kensley Jn Baptiste started to widen the footpath through Mr. James' land into a road of approximately 6 feet wide. Mr. James' evidence was that these 3 Defendants cut the branches of his nearby mango three and 12 pineapple plants valuing \$21.00 each that he was cultivating nearby. They abused Mr and Mrs James when they protested, and threatened to kill the James' if they tried to stop them from passing through their land. The Defendants Kensley and Paule Jn Baptiste, and Solange and Catherine Jn Baptiste denied any involvement in the removal of boundary pegs or threatening and abusing Mr and Mrs James.

[31] Mr. Monplaisir's Survey Report commissioned by the Court, disclosed that Solange Jn Baptiste's house was encroaching on the James' land. Despite the Defence pleaded, denying this to be so, Ms. Solange Jn Baptiste subsequently removed her house from off the James' land.

[32] Mr. Paule Jn Baptiste, while admitting that he was helping to put stones in the muddy footpath to make it better, denied destroying the pineapple.

THE DEFENCE

[33] The Defendants pleaded that "Agnes Jn Baptiste was in occupation of her portion of land 20 years before the Claimants moved to their piece of land below her portion of land and that portion of land was purchased from GEEST Industries and with the Consent of the Vendor, the husband of Agnes Jn Baptiste cleared the path leading up to the property."

[34] They pleaded further that the ". . . path leading from the main Jacmel road which path leads alongside the premises of the Claimants proceeding to the adjoining premises of the Defendants and the Defendants have been using this path for the past 12 years."

[35] By paragraph 13 of the Defence they state – "The 4th, 5th and 6th Defendants . . . state that there had already been in existence a path for a long time, a footpath which the owner of the adjoining land used for over 30 years long before the Claimants purchased their land and that this path is being used for over 30 years continuously and peacefully without interruption by Agnes Jn Baptiste."

[36] Though the Defendants have not Counter-claimed, they requested that the Court do not Order that the pipeline bringing water to their properties be removed, or find that the Defendants their servants or agents are committing any trespass at all, or

are removing any pegs on the boundary or are threatening, abusing or interfering with the Claimants in the use of their land.

SUBMISSIONS OF COUNSEL

[37] Learned Counsel Ms. St Rose has described this Defence as being a misguided defence.

[38] She analysed the evidence of the Defendants, having regard to their Defence. She focused on the Deeds of Sale to Agnes Jn Baptiste and Conrad James by GEEST Industries (Estates) Ltd. They show that Mr. James acquired Parcel 0641B-73 on the 10th August 1978 and Parcel 0641B-72 on the 14th February 1978. This, Counsel argued, has certain implications for the length of time that the Defendants claim to have been in occupation. The very evidence of the Defendants contradict Mrs. Agnes Jn Baptiste's assertions that she has been on her land for 40 years .

[39] In any event, Counsel argued, there is no hope of establishing a prescriptive title since Mrs. Agnes Jn Baptiste conceded that since the Claimants gave permission to pass there, if permission is withdrawn they would have to cease passing through the Claimant's land.

[40] Mrs. St. Rose submitted in substance that the credibility of the Defence witness is in issue, and their defence as a whole is confused. She regarded their testimony as untruthful.

[41] She referred to Article 2057 of the Civil Code which states –

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public unequivocal, and as proprietor.”

- [42] By alleging that they had the Claimant's permission to run the pipelines across the Claimant's land, the Defendants had defeated their defence since a person who has been given permission to pass over land cannot acquire prescriptive title.
- [43] As for Article 2103 A of the Civil Code and The Supreme Court Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules (Reproduced at paragraphs 10 and 11 above), Mrs. St Rose argued, that the Court has no jurisdiction to grant prescriptive title in the absence of a claim in the prescribed manner seeking such an order.
- [44] She urged the Court to find that the Defendants, acting in concert, removed the boundary pegs of Mr and Mrs James' land after threatening to do so. That they limbed the mango tree because it was obstructing the footpath, and they also destroyed the pineapples. She said that the Court should award special damages as pleaded and proven, being \$1,752.00. That the general damages that should be awarded for trespass for 6 years and 9 months @\$240.00 per annum would be \$1620.00. That a further sum of \$5,000.00 should be awarded for the abuse, threats, interference and intimidation. That the Court should issue a perpetual injunction against the Defendants. Finally, that the Court should award prescribed costs of \$14,000.00 on the basis of a stipulated claim of \$50,000.00 pursuant to PART 65.5 (2) of the CPR 2000.
- [45] Learned Counsel Ms. Shillingford submitted that Mr. Monplaisir's findings in relation to the footpath as stated in his report is that because the Claimants and Defendants hold title absolute in respect of their lots, it precluded the **"non establishment of any track or footpath without their respective permission."** Ms. Shillingford relied on Mr. Monplaisir's conclusion where he stated in his report: **"My recommendation under the circumstances then is that the Court should allow the footpath or track to be utilized by both the Claimants and Defendants until such time the road reserve is put in a usable state."**

- [46] She exhorted the Court to conclude that there was no encroachment on the Claimants' land, or alternatively, that any such encroachment found was insignificant and caused the Claimants no quantifiable loss in a compensation sense.
- [47] She submitted that the evidence of the Defendants was credible, particularly Mrs. Agnes Jn Baptiste. This evidence demonstrated that the 1st, 2nd, 3rd and 6th Defendants have been on the land for between 10 to 30 years. They therefore have, Ms. Shillingford said, a prescriptive right to the portion of land encroached upon, bearing in mind that Agnes Jn Baptiste consented to the Defendants remaining on her land. She referred to Articles 2112, 2113, 2116 and 2117 of the Civil Code.
- [48] It follows therefore, Counsel argued, that since the water pipes passed along the track over which there was a prescriptive title, there would be no trespass by the Defendants.
- [49] Besides this, Ms. Shillingford found it unbelievable that the Claimants, having not given permission for the pipes to pass along the track, took no practicable steps to prevent this trespass at the time it happened.
- [50] Ms. Shillingford referred to the vagueness of the alleged threats and abusive language and the absence of identification as to who spoke those words. She questioned the items and sums pleaded as special damages.
- [51] Finally, she argued that in the absence of a formal Application filed for an Injunction, the Claimants are not entitled to an injunction.

FINDINGS

- [52] As a result of the conflicting evidence between Mrs. Agnes Jn Baptiste, Ms. Catherine Jn Baptiste and Mr. Paule Jn Baptiste, I accept Mr. James's testimony that Agnes Jn Baptiste, her husband and other family members began occupying parcel 0641B-78 in 1979.
- [53] I reject Mrs. Agnes Jn Baptiste's testimony that the GEEST watchman showed them the footpath area on the land of Mr and Mrs. James, as their access Road to and from their property. I prefer the testimony of Mr. James that he permitted Mr. Whitney Raphael and his household members to pass over his land which was nearer to the main road. The issue of the Defendants having a prescriptive title therefore does not arise.
- [54] The fact that Mr. James had given tacit approval for Mr. Raphael's family members to continue using the footpath after his death, would not preclude Mr. James' subsequent withdrawal of such approval.
- [55] Though I accept Mr. James' evidence that his boundary pegs were removed, it lacks specificity as to who or which of the Defendants did do this.
- [56] I find that the 3 Defendants Kensley Jn Baptiste, Lennie Augustin and Paule Jn Baptiste destroyed the pineapple plants of Mr. James and cut his mango tree in their quest to widen and improve the footpath passing through Mr. James' land without the permission of Mr and Mr James.
- [57] I find that Mr and Mrs James tacitly consented to the pipelines being laid on their property. However the subsequent misconduct of the Defendants relates back so as to make their original entry tortious. They are licensees who have exceeded their licence.

The Defendants are therefore trespassers. They have no justification under right of way. They are using the Claimant's land after their licence has been revoked by Mr and Mrs James.

[58] The Court cannot ignore the dilemma of the Defendants as it concerns the 2 Road Reserves, and the evidence of Mr. Monplaisir.

[59] Mr. Monplaisir opined that the Development Control Authority in St. Lucia should have supervised the finality of the Subdivision of the Geest Estate Lands into lots. He said that the lots should not have been sold until the roads were established. He observed that one solution to the problem would be to have investigations carried out to find out if any entity of GEESTS Estate is still functioning, and if so, seek their assistance in establishing the Road Reserves as access roads.

[60] Another alternative is to request the Development Control Authority to establish a usable road. He did not consider the footpath on Mr. James' land to be a usable road since it was not motorable.

[61] To the Western side of Parcel 0641B-72 there is a steep gorge extending from the Jacmel Road and as it ascends it gets wider. This gorge is unsuitable as an access road for the Defendants to get to their land.

[62] Mr. Monplaisir indicated that given the nature of the terrain, it would require heavy duty equipment to establish motorable usable access roads to the Defendants' land.

[63] It is well settled that if a Claimant proves that his proprietary rights are being wrongfully interfered with by the Defendant, and that the Defendant intends to continue his wrong, then the Claimant is prima facie entitled to an injunction, and he will be deprived of that remedy only if special circumstances exist, including the

circumstance, that damages are an adequate remedy for the wrong that he has suffered.

[64] The fact that Mr. James had previously permitted the Defendants to pass on his lands, will not after his withdrawal of such permission, disentitle him to a perpetual injunction against the continuance of the Defendants' acts of trespass: (Mc Kennon Industries v Walker [1957] W.N. 401 (PC),

[65] In my opinion, Mr and Mrs James are entitled to a perpetual Injunction against the Defendants, but having regard to the special circumstances presented in this case, the operation of the injunction should be postponed so as to allow the Defendants to have the 2 Road Reserves established for their use.

[66] Mr James is entitled to recover damages for trespass from the Defendants even though he may have sustained no actual loss: (Yelloly v Marley (1910) 27 T.L.R. 20).

[67] If the trespass consists in using a right of way over land, the measure of damages is the usual charge for a way lease in the district: (Jeyon v Vivian (1871) L.R. 6 Ch. 742).

[68] In the absence of proof as to who removed the boundary pegs, Mr. James is not entitled to any award representing the costs of replacing those boundary pegs in my view.

CONCLUSION

[69] I therefore enter judgment for the Claimants against the Defendants in the following terms –

- (1) The Defendants their servants and/or agents are hereby restrained from continuing to trespass on the Claimants land in their use of the footpath on

the Claimant's land to access their property. The operation of this injunction is postponed for a period of 6 months to permit the Defendants to establish the 2 Road Reserves for their use.

- (2) The Defendants their servants or agents are restrained from intimidating or in any other way interfering with the Claimants in their use of their land.
- (3) The Defendants are to pay the sum of \$1,600.00 per annum as damages for trespass for the years 2003 to 2006 and thereafter until they remove their pipelines from the Claimant's land and cease trespassing on the Claimant's land.
- (4) The Defendants Paule Jn Baptiste, Kensley Jn Baptiste and Lennie Augustin are to pay the sum of \$150.00 to the Claimants for the destruction of the pineapple plants.
- (5) The Defendant Solange Jn Baptiste shall pay to the Claimants the sum of \$2000.00 for the encroachment of her house on their land.
- (6) The Defendants shall pay \$14,000.00 for Costs pursuant to PART 65.5 (2) (b) (iii) of CPR 2000.
- (7) The Defendants shall pay 6% interest per annum on the Judgment Debt from the 28th November 2006 until full and final payment.

Dated this 27th day of November 2006

OLA MAE EDWARDS
HIGH COURT JUDGE