

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2005/0492

BETWEEN:

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Claimant

AND

ANTIGUA AGGREGATES LIMITED
LESTER BRYANT BIRD
ROBIN YEARWOOD
HUGH C. MARSHALL Snr

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mrs. Karen Defreitas-Rait and Mr. Martin Camacho for the Claimant

Ms Rika Bird for the first named Defendant

Mr. Hugh Marshall and Mrs. Cherissa Roberts-Thomas for the second, third and fourth named Defendants

2006: October 19th

2007: January 11th

RULING

- [1] **MATHURIN, M:** On the 12th October 2005, the Claimant (hereafter “the Attorney General”), an action against the Defendants for several forms of relief concerning the purchase of Crown Lands by the first named Defendant (hereafter “Antigua Aggregates”) and the alleged rent free occupation of the said Crown Lands by Antigua Aggregates of the said land from 1982 until the land was purchased in 2002. The allegation by the Attorney General is that the second and third Defendants (hereafter “Mr. Bird and Mr. Yearwood”) who were public officers and servants of the Crown at the material time committed

misfeasance in public office and also acted in breach of public trust by causing the purchase of the said Crown lands in 2002 to be effected at a gross undervalue. The allegation about the fourth Defendant (hereafter "Mr. Marshall") is that during the period of the rent free occupation, he was a member of Parliament, a Minister of Government and a member of Cabinet. This claim further alleges that Mr. Bird, Mr. Yearwood and Mr. Marshall were also substantial shareholders in Antigua Aggregates Limited during the alleged rent free occupation and at the time of the subsequent purchase of the Crown Lands in question and that they used their various offices to secure an unfair advantage and benefit to themselves to the detriment of the Crown.

- [2] On the 13th of June 2006, the Defendants filed an application for the claim against them to be struck out and Judgment to be entered in their favor or in the alternative that Paragraph 8 and certain words in paragraphs 9, 10 and 16 be struck out. I directed parties to file written representations on the issues so that the matter would be determined without an oral hearing in accordance with Rule 26(2) (n). Submissions and authorities were filed accordingly and were taken in to consideration in this ruling.

Estoppel

- [3] The first ground of the application to strike out is that the Claimant is estopped from bringing the action and therefore has no real prospect of succeeding on the claim. The Defendants have submitted that the Attorney General is barred from bringing this action by the doctrine of estoppel by representation. Counsel avers that the necessary conditions have been met to establish an estoppel by representation and states that when the representation was made, it was of an existing fact, it was clear and ambiguous, it was intended that it should be acted upon and was acted upon by the party to whom it was made and that prejudice was suffered. In support of this Counsel states that the representation to Antigua Aggregates was the fact that the Government at the time was acting honestly, fairly, impartially, legally and in the interests of the public when contracting to sell the land in question.
- [4] Counsel for the Attorney General responds that the only material representations made by the Crown were as to the size and location of the subject land and that this is not in conflict and as such the estoppel does not arise.
- [5] The interpretation of the representation by Antigua Aggregates, in my opinion, is misconceived. It is always a presumption that the Crown acts honestly, fairly, impartially, legally and in the interest of the public. The relevant representation would have to be in respect of the land in question and not of the implied bona fides of the Crown. The arguments in relation to the issue of estoppel are at the very least artificial, and in my opinion, would undermine the whole basis of the tort of misfeasance in public office, the essence of which lies in the dishonest abuse of public office, if I were to consider for these purposes that the current office of the Attorney General was complicit in the Cabinet decision and the decision of the Crown to sell the said land by virtue of the continuity of the office. I therefore find it necessary to dismiss the application on this ground.

- [6] The relationship between Antigua Aggregates and Mr. Bird, Mr. Yearwood and Mr. Marshall as public officers in respect of the sale of the land at Crabbes and whether it was occupied rent free or sold at a reduced value at that time in accordance with good governance and in the interest of the public or not still remains a question which in my mind has not been settled in a way in which entitles Antigua Aggregates to summary judgment. The pleadings and documents in support do raise questions as to whether the Defendants, in an endeavor to gain an unfair advantage and benefit, used their offices to cause Antigua Aggregates to occupy Crown Land rent free, or used their offices to cause the land to be purchased by Antigua Aggregates at an undervalue or whether or not this was in keeping with policy at the time.
- [7] The Learned Chief Justice Sir Dennis Byron in **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al** (Civil Appeal No 20A of 1997) stated that the proper principles on which the jurisdiction to enter summary judgment is to be exercised are settled.

" This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court."

In **Swain v Hillman** (1999) The Times, 4th November 1999, Lord Woolf MR said that the words "no real prospect of succeeding" did not need any amplification as they spoke for themselves. The word "real" directed the court to the need to see whether there was a realistic, as opposed to a fanciful prospect of success. The phrase does not mean "real and substantial" prospect of success. Nor does it mean that summary judgment will only be granted if the claim or defence is bound to be dismissed at trial. The Master of the Rolls went on to say that summary judgment applications have to be kept within their proper role. They are not meant to dispense with the need for a trial where there are issues that should be considered at trial. Further, summary judgment hearings should not be mini trials involving protracted examination. They are simply summary hearings to dispose of cases where there is no real prospect of success.

- [8] The court has to caution itself against the exercise of a preliminary trial of the matter without discovery, oral examination and cross-examination. The court also has to give effect to the overriding objective of the CPR2000. It is in the interest of justice to save expense, achieve expedition and avoid the prolonged use of the court's resources by making an early determination as to whether or not the claimant has a case that is bound to fail. It is also however, part of the court's active case management role to identify the issues at an early stage and to decide which issues need full investigation at trial and to dispose summarily of others. At this point it is not possible in my opinion to conclude that , the Claimant has no real prospect of succeeding on its claim or that it is unmeritorious, unsustainable or an abuse of the court without the benefit of disclosure and the evidence of the parties and as such the application on these grounds is dismissed.

Failure to comply with Part 8 of the CPR2000

- [9] The Defendants submit that there has been a failure to comply with Part 8 of the CPR 2000 in that the Claimant has failed to particularize any losses suffered. It is normally necessary to set out what loss has been suffered in consequence of the breaches alleged. It must be remembered that the objectives of particulars of breach are twofold, firstly to describe the nature of the breach and secondly, to do so in such a way that it is clear to the defendant and the court how the breach actually took place.
- [10] I think that the Claim has sufficiently particularized its loss in relation to the claim for payment of the difference between the market value and the actual amount paid for the land in question. The Claimant's responses to the request for information filed on the 10th February 2006 additionally details the difference in the value of the land between what it was worth in 2002 as opposed to what it was sold for.
- [11] The Claimants also seek relief in the form of damages for the use and occupation of Crown Lands rent free and require an assessment of the same to be done. The affidavit of Mr. Martin Camacho filed on 31st July 2006 exhibits an Auditors report of Antigua Aggregates in 1995 from Price Waterhouse which states that among Antigua Aggregates Fixed Assets are *"buildings at a cost of \$248,504 are situated on land owned by the Government of Antigua and Barbuda. A rental agreement has not been entered into and no rent has been charged by the Government."*
- [12] I do however agree that the claim has sufficiently particularized its loss in relation to its entitlement for assessment and payment to the Crown for the use of the lands rent free. Inasmuch as the claim states that Antigua Aggregates did not pay rent, no cause of action and no allegation of a breach of duty has been claimed. There is information to support the claim that Antigua Aggregates would ordinarily even be under any obligation to pay rent. The fact of non payment of rent without more, does not give rise to a cause of action with no material facts establishing a cause of action and as such the relief sought in paragraphs 3 and 8 of the Claim form is hereby struck out. Consequentially, the words *"the continued occupation of the said lands by the first named defendant from 1984 or thereabouts on terms that excluded any payment of rent to the Crown and"* in paragraph 16 of the Statement of Claim are hereby struck out.
- [13] The Defendants have submitted that that paragraph 8 and words in paragraphs 9 and 10 be struck out on the basis that Antigua Aggregates never occupied Crown Lands rent free at Crabbs as alleged by the Claimant but that a company called Antigua Cement Limited occupied the said lands and that Antigua Aggregates was an agent of that company. This without any documentary support or evidence is not sufficient a basis to strike out any part of the claim and as such that application to strike out is dismissed.

Summary of Order

- [14] In summary, the Order of the Court is as follows;

- (a) The application to for summary judgment is hereby dismissed
- (b) The relief sought in Paragraphs 3 and 8 of the Claim form is hereby struck out
- (c) The words "*the continued occupation of the said lands by the first named defendant from 1984 or thereabouts on terms that excluded any payment of rent to the Crown and*" in Paragraph 16 of the Statement of Claim are hereby struck out.
- (d) Costs to the Claimant in the sum of \$2000.00 adjusted to reflect (b) and (c) above to \$1,400.00.

CHERYL MATHURIN
MASTER