

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 215 OF 2007

BETWEEN:

CORNIEL HENDRICKSON-GERRICK

Claimant

V

ROCK ALEXANDER PUNNETT

Defendant

Appearances:

Mr. C. Dougan Q.C. for the Claimant

Mr. R. Williams for the Defendant

2008: June 19 and 27;
September 22.

JUDGMENT

[1] **MATTHEW J. (Ag.):** On June 21, 2007 the Claimant filed a claim form requesting the following:

- (1) Damage for nuisance, unlawful obstruction and breaches of the Claimant's prescriptive rights;
- (2) A mandatory injunction compelling the Defendant to immediately remove a tractor placed across the Estate road;
- (3) A perpetual injunction restraining the Defendant from blocking the said Estate road; and
- (4) Costs.

[2] Attached to the claim form was a statement of claim that the Claimant is absolute owner in possession of 3 acres and 18 poles of land situated at Queensbury as shown on a plan of survey numbered A 368.

- [3] The Claimant said that on July 1991 the said land was purchased by his father, Lawrence Gerrick, from the Defendant for the sum of \$30,000 and a deed of conveyance, No. 2365 of 1991 was executed in respect of that sale.
- [4] He stated that on June 12, 2007 the Defendant blocked the Estate road shown and described on Plan A 368 by placing a tractor across the road and in consequence he had suffered great inconvenience and consequential loss and damage.
- [5] He said on the same day he spoke to the Defendant who told him that he had the right to block the road and would continue to do so.
- [6] On October 26, 2007 Thom J ordered that the Defendant be restrained from preventing the Claimant from passing or trespassing on the said road.
- [7] The Defendant filed a defence on October 25, 2007 in which he stated that the Claimant's access to his land is by the road from the main Vermont Highway on the South of his land.
- [8] He said the portion of land he blocked is a private road for the land retained by the Defendant on the Northern part of the Defendant's remaining land.
- [9] He stated that the Claimant and his predecessor in title always used the road from the South but the Claimant is now trying to use his private road through his remaining lands instead of the road provided for him.
- [10] He said that the road the Claimant is supposed to use had just been bulldozed by the Government of Saint Vincent and the Grenadines and is accessible to the Claimant and other persons who had purchased lands from the Queensbury Estate.
- [11] In his reply filed on October 30, 2007 the Claimant denied that the portion of land blocked by the Defendant is a private road and stated that the portion of road blocked by the

Defendant forms part of an Estate road established since 1947 as a public byway running through and around the Queensbury Estate.

[12] The Claimant attached a plan A 75 AQ-31 for 337 acres 2 roods and 20 poles which was surveyed by C. Richardson, land surveyor, on June 16, 1947. I regret not being able to decipher the public highway on the plan nor can I place the location of the Claimant's land measuring 3 acres and 18 poles within the 337 acres 2 roods in plan A 75 AQ-31.

EVIDENCE:

[13] At the trial the Claimant gave evidence and called as his only witness, his wife, Anne Hendrickson-Gerrick. The Defendant gave evidence on his own behalf and called as his only witness, Clifford Williams, an experienced land surveyor who once held the office of Chief Surveyor in this country.

[14] The Claimant said that on January 26, 2007 he became the absolute owner in possession of 3 acres 18 poles of land situated at Queensbury which land is shown on plan A 368 having received it from his father by deed of gift, No. 508 of 2007.

[15] He said on June 12, 2007 he tried to gain access to his land by way of an estate road but upon doing so the road was blocked by a tractor which was placed across the road.

[16] Under cross-examination he said his father, who has since died, and who lived not too far from him, used the same disputed road to get to his home.

[17] He said that he was aware that his father bought an additional 12 foot wide strip of land which he used as a road. He said the strip of land was what he used to get to the land he gave to the Claimant.

- [18] He said his land can be assessed from the bottom road (and having visited the locus I take that to mean access from the Penniston end over which I drove to get to the locus) but it could not be accessed when he got the land from his father.
- [19] He said the road can be used now because the Government has recasted it to serve lands purchased in the area. He said he had driven on the road from Penniston to his land.
- [20] He said the first time he drove on the disputed road is when he visited his father from abroad in 1993. They both drove on that road. He said he did not know who cut the road.
- [21] He said he did not know that the reason why his father bought the strip of land was because he could not use the road which the Defendant blocked.
- [22] He said he was the one who paved the strip of land that his father had purchased. He said no one told him he could use the disputed road but his deed says the Estate road runs from Queensbury to Penniston.
- [23] He said he returned to Saint Vincent from abroad on October 2, 2006. When re-examined he said the area of the 12 foot strip of land was about 7,000 square feet.
- [24] The witness summary of Anne Hendrickson-Gerrick was very terse, containing seven short paragraphs. She did not add anything to her husband's testimony. All she said was that she was present on June 12, 2007 when the tractor was placed across the road. That has not been denied by the Defendant.
- [25] Rock Punnett said that the Claimant's father had attempted to use the disputed road and he stopped him. As a result the father retained the services of Mr. Graham Bollers who came to the road with Mr. Lawrence Gerrick and he explained to Mr. Bollers that the road is a private road. Mr. Bollers asked if he could allow Mr. Gerrick to use the road and he said no. It was after that event that Lawrence Gerrick purchased the strip of land referred to earlier to gain easier access to his lands rather than via the Penniston route.

- [26] Having traveled on the strip of land it seems to give even a better access to and from the main road than the disputed road. It appears to be shorter.
- [27] Punnett said that despite the fact that the Claimant's deed shows that his land is bounded on the North by remaining lands of Queensbury Estate he is trying to use a road created by himself and his family to access their land.
- [28] When he was cross-examined he stated that the estate road belongs to his grandmother. He said the two sides where it says remaining lands of Queensbury Estate are owned by himself.
- [29] He said at Court was the first time he was seeing the plan for 337 acres 2 roods and that the estate road runs through the estate.
- [30] Clifford Williams said he is a surveyor by profession and obtained his qualification from the Royal Institution of Chartered Surveyors in the United Kingdom. He said in 1971 he was appointed Chief Surveyor of Saint Vincent and the Grenadines charged with overseeing all land issues in the State. He retired in 2001.
- [31] He said he surveyed the area in question in May 1995 and he exhibited a plan A 247. He attached to his statement a map sheet showing the layout of the road and boundaries surrounding Plan A 247 and Plan A368 owned by the Claimant.
- [32] He said the Defendant subsequently obtained land from his grandmother which is shown as Plan A8/104 on the map sheet and the Defendant constructed a road from the family compound and leading to his property near Plan A8/104 for private use.
- [33] He said in his opinion there appears no reason why other lot owners need to use this road as there already exists a public road for their use. He said he has complied with the

provisions of paragraphs 32.2 and 32.4 of the Civil Procedure Rules as regards an expert's overriding duty to the Court.

[34] Under cross-examination he said the estate road on Plan A 368 runs from South West to North East and does not run through Queensbury Estate. He said the map sheet showed only an outline of what was surveyed.

[35] He said he had worked for the Punnetts for a long time and he had bought land from them.

[36] After the hearing of all the witnesses the matter was adjourned for a visit to the locus the following day. It rained so heavily that the visit was abandoned for the day and scheduled for the following Friday.

[37] The Claimant and his witness were present as were the Defendant and his witness. Counsel on each side were in attendance with the Judge, the bailiff and two police officers. The Court saw the land of both Parties as well as the three roads in issue.

CONCLUSIONS:

[38] The main and perhaps the only issue in this case is whether a Party who has purchased land from a very large estate owner (327 acres. 2 roads) can use any road labeled "estate road" running through the estate despite the fact that a specific road was designated to him to gain access from his land to the public road and vice versa.

[39] An ancillary issue is when an estate owner sells land to a purchaser and designates a road, whose duty it is to maintain the road. I think lurking in the background is the answer to this case.

[40] Upon my visit to the locus I first traveled along the road from the Penniston end to the Claimant's land where his house was in the process of construction. I was well warned that I could not use my car on that road and so I left it parked on the pitched public road.

- [41] That road is wide enough but it is quite rough and it seems to have been deliberately cut to provide access to lands in the area. The Defendant testified that was the road he designated as access to the Claimant's father when he sold the land to him in 1991. That testimony remained unchallenged.
- [42] The road according to the testimony of the Parties became overgrown with trees and hindered access. That is why I said an important consideration is who is responsible to repair and keep in good repair the access road. Punnett says it is purchasers of the land. The Claimant had no views on the matter. I cannot determine that as I have not seen the terms of sale.
- [43] That is a common problem when land developers sell to purchasers of lots in the islands of the Eastern Caribbean. The roads are useable at the time of sale and the purchasers do not think of the years ahead. And here we are considering dirt roads. If the person or persons responsible to repair the road from the Penniston end had done so the Parties would probably not be here today.
- [44] The disputed road is relatively newly cut and who would not prefer to use it; but the same problem would arise in the future if nobody is responsible to maintain it.
- [45] It cannot be doubted that the Claimant's father bought a strip of land on which there is presently concrete paths on either side of the road, no doubt for the wheels of vehicles. The Claimant said it was he who constructed the concrete tracks. The intention could only be to use it as an access to the public road. I traveled on that strip and it appears a rather convenient route to get to the public road.
- [46] It seems to me that the Claimant or his father did so to avoid the rough designated route via Penniston about which I spoke earlier. It has not been denied that the Claimant's father bought that 12 foot strip from the grandmother of the Defendant after he was refused access over the disputed road.

- [47] The Claimant has two access roads to the public road presently; one designated to his father via Penniston and the other constructed by his father and himself which essentially is their private road. How many access roads does he require?
- [48] I am persuaded by the evidence of Clifford Williams, who has worked for a long time surveying those lands, that the road designated for the Claimant ends before it reached the Defendant's land, as was shown to me, and does not continue to the Queensbury end.
- [49] I answer the main or sole issue by declaring that the Claimant is not entitled to drive his vehicles on the road cut by the Defendant on the remaining lands of the Queensbury Estate.
- [50] I dismiss the Claimant's suit. I order the injunction against the Defendant made on October 26, 2007 to be set aside. I award costs to the Defendant in the amount of \$4,000 to be paid by the Claimant.

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Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)
(August 8, 2008)