

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2008/0384

BETWEEN

RONALD JOSEPH
TANNIA LAWRENCE

Claimants

AND

OLIVER FRANCIS XAVIER
MARY MARTHA LOUIS
ROBERTA VICTORIA LOUIS

Defendants

Appearances:

Mrs. Cynthia Combie – Martyr for Claimants
Mrs. Shirley Lewis for Defendants

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2008: OCTOBER 30
NOVEMBER 14
.....

RULING

[1] COTTLE J: On July 7 2008 the court granted the Claimant an order which provided in part as follows:

"The Claimants as registered proprietors of the parcel of land registered as 1253 B 500 be and are hereby granted a right way to pass over the parcel of land registered as 1254 B 1271 which has been reserved as an access road by the Development Control Authority".

"The 2nd and 3rd Defendants be and are hereby restrained whether by themselves servants and/or agents from maintaining the locked metal gate obstructing the access road or right of way over the access road registered as 1254 B 1271 to the land owned by the Claimants and registered as 1253 B 500.

[2] The hearing of the substance matter was adjourned to a subsequent date.

[3] On October 14, 2008 the Claimants applied to the court for a variation of the order in the following terms:

"A variation of the Order of the High Court dated the July 7th, 2008 in respect of paragraph 2 to read as follows: The 2nd and 3rd Defendants be and are hereby restrained whether by themselves, servants and/or agents from maintaining the locked metal gate or in any other way obstructing the access road including the driveway encircling the roundabout or right of way over the access road registered as 1254 B1271, to the land owned by the Claimants and registered as 1253 B 500.

[4] A brief statement of the facts is needed to appreciate the application.

- [5] The 3rd Defendant is the owner of several lots of land which abut the parcel owned by the Claimants. The Claimant's close is landlocked. The only access is along a road over parcel 1254 B 1271.
- [6] The original owner of all the parcels had built a road over that parcel. He also created a decorative fountain and caused the roadway to run around the fountain to create a sort of round about. The 3rd defendant has now erected a wall which encloses the fountain. She has left out a roadway of some 15 – 20 feet in width which leads to the Claimants parcel.
- [7] However vehicles which go to the Claimants land can no longer proceed around the fountain and go back along the road. They must either reverse along the driveway or the claimant must create on his land some accommodation to permit these vehicles to turn around before going back along the roadway.
- [8] The Claimants' insists they have a right of way not only to get to their land but to continue around the fountain/roundabout and then back along the road way. The 3rd defendant insists that they have no such right. She maintains that any right if way to pass and repass is to be along the roadway. She has no obligation to provide them with facilities to turn their vehicles around by coming around the roundabout/fountain.
- [9] The court took the time and trouble to visit the locus in quo. With the fountain walled off, the Claimants' vehicles including the lorries which transport the building material for the house the Claimants are constructing on their parcel must now reverse downhill along the

roadway and complete a difficult turning manoeuvre or reverse all the way onto the main road, a dangerous course of conduct at best. Of course the Claimants can mitigate this by creating turning facilities on their own lands.

[10] Having considered the competing arguments the court is being called upon to determine the exact extent of the right of way that belongs to the Claimants over the defendant's parcel.

[11] The easement that the Claimants have over the Defendants land is in the nature of an easement of necessity. There is no necessity for the road to continue around the roundabout, however convenient to the Claimants that might be.

[12] The right of way that the Claimants have is a right to pass and repass along the 20 feet road which ends at the boundary of their parcel. I see no need to infer a right to go further onto the defendants land to turn around and then go back along the roadway that constitutes the right of way.

[13] I therefore refuse the application to amend the order as prayed. I also note that the Claimant's order was obtained on a judgment in default. There was nothing in the original pleadings which would have permitted the defendant to apprehend that the Claimants were advancing a claim not merely to a right of way to their land but also to a right to continue further over the Defendants land to circle back to the roadway.

[14] I award the Defendant the costs of this application which I assess at \$1,400.00 under Civil Procedures Rules 2000 part 65.11 (7).

Brian S. Cottle

HIGH COURT JUDGE