

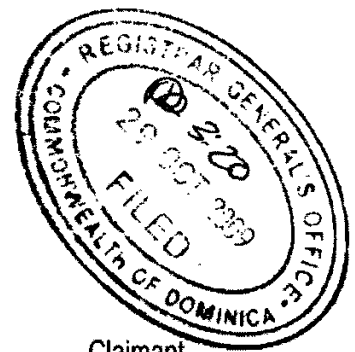
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCV 2005/0347

BETWEEN:

FRANK WATTY



Claimant

and

DOMINICA ELECTRICITY SERVICES

Defendant

Before:

The Hon. Mr. E. Anthony Ross, QC

High Court Judge [Ag.]

Appearances:

Dr. William Riviere for the Claimant

Lisa De Freitas for the Defendant

2009: July 13.


DECISION

- [1] **ROSS, J. [AG.]:** My ruling in this matter is specific to the narrow point of notice by Dominica Electricity Services to enter upon private lands for the purpose of cutting trees that can potentially interfere with the transmission of electrical power.
- [2] I have had the benefit of two rather succinct memoranda filed on behalf of the claimant on 28th April 2009 and on behalf of the defendant on 1st May 2009.
- [3] There is no serious dispute on the facts. This matter is will therefore turn solely on a question of sufficiency of notice by the defendant before entering upon the claimant's lands to perform a function that is authorized by legislation.
- [4] Entry upon private lands for the purpose of clearing power lines is a statutory authorization in favor of the defendant. As to the question of notice, I have

difficulty in that I believe that some process should be in place so that a proper mailing address for land owners should be available to those exercising statutory authority that could impact private rights. The alternative of posting notices on the property, in my judgment, satisfies the statutory requirement, and as such, I am satisfied that the claimant, Frank Watty, had sufficient actual notice that there was going to be the entry upon his land. The statutory purpose was also sufficiently set out in the notice.

- [5] That said I now address to the trees that were cut. In this regard, I find that only the trees that were necessary were cut and these were within the hundred foot radius of allowable cut. I find further that the defendant did know that these trees were cut the and timber was left on his land. He had every opportunity, whether or not he was going to bring a claim against the defendant to salvage that timber, to sell it for whatever he could and then perhaps make a claim for any shortfall between what was a proposed sale price and what he actually would have taken in for the lumber in a distress situation, and that was apparently not done.
- [6] For these reasons, I am not satisfied that the claimant presented anything to the Court to suggest mitigation of damages. I cannot on my own venture into determining what would have been an appropriate amount had there been mitigation, and as such I dismiss the claim as against the defendant Dominica Electricity Services with costs.
- [7] I am reminded by counsel for both parties that there was an agreement that costs following the event would be prescribed costs based on \$19,000.00, the value of the claim.
- [8] This is my ruling. The order is to be drafted by counsel for the defendant.




E. Anthony Ross
High Court Judge [Ag.]