SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2008/1130

BETWEEN:

HOTEL CHOCOLAT LIMITED

Claimant

AND

MAULEEN DIDIER

Defendant

AND

LESTER JOHN

Second Defendant

Appearances:

Mrs. Kimberly Roheman for the Claimant
Mr. Winston Hinkson for the Defendants

2011: 2nd February
2012: 9th February

JUDGMENT

[1] **BELLE. J:** The Claimant, Hotel Chocolat Estates Limited is the registered owner of the properties known as Rabot Estates, situate in Soufriere, Saint Lucia where it is engaged in the business of cocoa production. The Claimant's lands at Rabot Estate are identified as Block 0229B Parcels 100 and 98.

[2] The Defendants are persons occupying land adjacent to Rabot Estate which are registered in the Land Registry of Saint Lucia as Block 0228B Parcel 26, Proprietor,

Heirs of Mandfred Dedier, and Block 0028B Parcel 3, Proprietor, Zhenya Carine Allain.

[3] The Defendants use a right of way situate on Rabot Estate to "pass and re-pass" in accordance with the recorded encumbrance sections of the Claimant's parcels of land.

[4] The Claimant began work to widen the right of way on or about 27th October, 2008 without giving the Defendants notice. Personnel from the company on or about the same date placed a windrow on or near the right of way used by the Defendants on the Rabot Estate.

[5] The Claimant claimed that on or about the 27th October, 2008, the Defendants trespassed on the Rabot Estate and intimidated and threatened the Claimants employees and impeded the work, which resulted in delay in the Claimant's road expansion project.

[6] In paragraphs 10 and 11 of the Claimant's witness statement dated 28th May, 2010 the Claimant states:

> *"The Defendants have become a nuisance and very contentious neighbours recently. The Defendants have sought to exercise rights of possession, dominion and control over the Estate road belonging to the Claimant. The Defendants appear to have a personal problem with the deponent hereto, the servant of the Claimant.*
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> *In or about the 27th October, 2008, the Defendants whether by themselves, their servants or agents, have trespassed onto the Estate, the Claimant's property, intimidated and threatened the servants of the Claimant; obstructed the Estate road, thus impeding the access of the Claimant's servants to and from the Estate and thus impeding the Claimant's work progress; threatened to spray chemicals along the Estate road, tied animals*

along the highway and threatened anyone who dares to remove them, allowed animals to roam unto the Claimants Estate."

[7] The Claimant raised the possibility of the use of chemicals on the Estate having an impact on the Claimant's achievement of "organic status" by possibly forcing the company to extend its planned achievement of "organic status" from (3) years to five (5) years.

[8] A further source of annoyance to the Claimant was an article written in a Newspaper by one Curtis John after the incident on 27th October 2008 criticizing the Claimant Company and its Director Mr. Buckley in a way which according to Mr. Buckley maligned and abused his good name and that of the Company.

[9] The Defendants denied any trespass, threats and intimidation but admitted taking action to protest against the work being conducted by the Claimant which in their view impeded their use of the right of way which they believed to be a public, government owned, right of way.

[10] Based on the evidential background I identify the following issues to be determined by the court:

1. What is the nature of the Claimant's interest in the land described as Block 0229B Parcels 100 and 98?
2. What is the nature of the Defendant's interest in relation to Parcels 100 and 98?
3. Was the Claimant entitled to effect works on the road in dispute?
4. What is the location of the road in relation to Block 0229B Parcel 100 and 98?
5. Did the Defendants' trespass on the Claimant's property or goods?

6. Were the Defendants obstructed by the Claimant's work on the road?

7. Was the right of way conveyed to the Claimant?

8. What quantum of damages should be paid by the Defendant or the Claimant based on the Claim or Counter-claim?

The Nature of the Claimant's interest in Block 0229B Parcels 100 and 98

[11] The Claimant's Director gave evidence that the Company purchased Block 0229B Parcels 93 and 98 for $3,974,492.00 in April of 2006. It is the registered owner of the immovable property known as Rabot Estate situate in Soufriere bearing the Block and Parcel numbers stated above.

[12] This evidence was not contradicted by any evidence from the Defendants. It was supported by Title Deed and Copies of the relevant land register. The Claimant's Director's description of the land the company owns was also supported by a Map Sheet for the area, surveyors' plans and the Expert evidence of John Cenac, which was further supported by the affidavit evidence of Earl Cenac (deceased).

[13] I hold that this is sufficient evidence on a balance of probabilities on which the Court can find that the Claimant company established its ownership of Block 0229B Parcels 93 and 98 known as the Rabot Estate as pleaded . The Claimant also produced evidence of ownership of Block 0229B Parcel 100. This evidence was not contradicted and is accepted as factual.

The Defendants' interest in Parcels 100 and 98

[14] The Defendants have a right to pass and re-pass on a right of way which the evidence of the expert John Cenac asserts is situate on Parcel 100 of Block

0229B. This is not disputed by the parties. This means that the right of way passes over the Claimant's property. But the registered title of the Claimant's property speaks to a "Public vehicular right of way" and a "Private vehicular right of way." Parcel 98 of the Land Register speaks to a 6.2 metre Private Vehicular Right of Way in favour of Parcel 0229B 82 as indicated on survey plan no.1004 B.

[15] It is opportune at this stage to say more about the nature of the Public vehicular right of way being used by the Defendants on Parcel 100.

[16] I am of the view that the features of this right of way are indicative of the creation of a public right of way by dedication and the acceptance of the right away by members of the public who use it. See: Megarry & Wade The Law of Real Property, Sixth Edition, paragraph 18-065.

[17] There is no specific evidence of a formal dedication but there is evidence of recognition of the existence of the right of way in Deeds of Sale and on the land register. The evidence of the Defendants also implies that their understanding was that they had the right to pass and re-pass on the right of way over Parcel 100 even before the Claimant became the owner of Parcels 98 and 100. I am further fortified in this view by paragraphs 2 (c) and (d) and paragraphs 3 (c) and (d) of the expert Mr. John Cenac's report which state:

> 2. (c) " A Public Right of Way can be either privately owned, or Government owned. That ownership is determined on the Registry Map by the way it is denoted. If it is privately owned, it would be denoted by a hatched line, and would be owned by the owner on whose parcel it passes. If it is Government owned, then it would be denoted by two solid lines, which would define its width, and would not have a Parcel Number assigned to it.
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> (d) The Registry Map clearly denotes the Public Right of Way by a hatched line, passing through 0229B 100. Therefore the Public Tight of Way is privately owned by Hotel Chocolat Estates Limited.
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> 3. (c) The location of the public Right of Way was also defined by Survey Plan S1126T (Exhibit B) surveyed by Dunstan Joseph. S1126T

shows the north edge of the Public Right of Way to be the boundary between lands owned by Hotel Chocolat Estates Limited, and lands owned by Alphonsus Stanislaus. The Plan also therefore shows that the entire Public Right of Way is on land belonging to Hotel Chocolat Estates Limited. Further Exhibit C shows the position of the existing access road, which is south of the original raod surveyed in S1126T. This also proves that the existing road is entirely on lands belonging to Hotel Chocolat Estates Limited.

(d) The Public Right of Way was firstly declared as such during the Land Adjudication process, the result of which was the Land Register and the Land Registry Map. The Public Right of Way existed before that, and was used as access to homes and places of employment. However, for all the time, the width had never been explicitly specified. The first registered document to specify its width was Survey Plan S1126T. On that Survey plan, it had an average width of 5 metres (16.4 feet)."

[18] The Land Register of 0229B Parcel 82 notes encumbrances, "Public Right of Way "and "Private Right of Way" as indicated on Registry Map.

[19] However it appears that over the years other land owners and residents in the area had grown accustomed to using the right of way and this included the Defendants. Based on the pleadings both parties accept that the Defendants legally enjoyed the use of the right of way.

[20] However on the registered title for the Defendants the encumbrance section refers to a public right of way which passes through their land. It is not clear whether this refers to the same road which is known as the Belfond road or some other road in the area.

Did the Claimant have the right to effect works on the right of way?

[21] As the registered owner of the land on which the right of way passed the Claimant had the right to effect works. However the right to effect works would be subject to the rights of those who used the right of way. This would mean that the

Defendants should have been informed of the road works and whether there would be any obstruction of the right of way as a result. This is the ordinary way in which Common Law rights analogous to easements, and rights pursuant to servitudes under the Civil Code are exercised by the interested parties.

[22] The duty to inform the Defendants would arise from the acquired right based on the dedication of the right of way to the Defendants and others to pass and re-pass on the Claimant's land. It appears in this case that since the Defendants were not informed of the Claimant's intentions a they came to their own conclusions. In my view a simple lack of communication seems to have resulted in the confrontation which in turn precipitated this law suit.

[23] The evidence shows that the main bone of contention was not the widening of part of the right of way but the placing of a windrow on a section of the right of way causing obstruction thereto.

[24] Although there was verbal objection to the road being widened without any notice, that issue does not appear to have caused the confrontation which occurred on the 27th of October 2008. The evidence of Mauleen Dedier is instructive in this regard. She said at paragraph 10 of her witness statement:

> *"I said friend not doing friend such thing like that by putting a box in the road and blocking it. Where he placed it, the road is about 10 feet wide but is wider further up. I told him from 2006 you stopped us clearing the road saying don't put cows in the road and don't use chemical because you'll take care of the road but up to now you never done what you promised. Instead of clearing the road, you blocking it leaving us only one and a half foot to pass. I asked him who gave him authorization to block the road?*
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> *He answered let me explain. I said no explanation just unblock the road. He said it's here just for a few weeks. I told him so many places you have on the estate you choose to put that tray on the road. He then says that's the only place he has to put it. I said to him the road does not belong to you, it belongs to everybody.*
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> *I asked where will the ambulance pass where will the fire engine pass and other vehicles. I said to him I can't take it anymore. All*

my shoes getting wet and damaged, my dress also and my knees hurting me with arthritis because of the state of the road which you stopped us clearing saying you'll do it. He walked to me and asked me to stop working and put the cutlass down. So I did. And then said Merline you're my friend. Here's a cigarette which he offered me three times, I said you're not my friend and I don't want your cigarette. You're upsetting me with your cigarette.

Then he walked away. Walking away he said help me so I can help you. I said how can we help you. He pointed to the cow and I said that has nothing to do with you because the cow does not belong to me. But the cow was placed there because it helps us clean the road."

[25] The evidence of John Cenac seems to suggest that the windrow never obstructed the entire road, but at its narrowest point left about 7 feet of space for the passage of persons and vehicles. The Defendants say that in fact the space left was about 1ft, which was not enough for a vehicle to pass. The Claimant says that its heavy duty earth moving vehicles and trucks passed the area without any obstruction.

[26] It is my view that both sides exaggerated the true picture. I believe that the space remaining on the right of way after the windrow was placed there was less than seven (7) feet but not as little as 1 ft. The evidence that the heavy machinery was able to pass is not of great moment since we do not know the position of the windrow when these vehicles passed. In other words the question "what happened first, the passage of the vehicles or the positioning of the windrow, " is not answered by the evidence.

[27] The important point is that when the Defendants came to the area they perceived that there was some obstruction of the road. They consequently protested against this state of affairs. However, on the registered title for the Defendants the encumbrance section refers to a public right of way which passes through their land. It is not clear whether this refers to the same road which is known as the Belfond road or some other road in the area.

[28] The evidence of a number of the witnesses and the Defendants themselves leads to the conclusion that the Claimant's Director had around 2006 given an assurance to the Defendants that the Company would clean up the area and that they (the Defendants) did not need to do so. This occurred because the Defendants and others were in the habit of cleaning up the right of way with cutlasses and by putting cattle to graze on it to control the growth of bush. The Claimant's Mr. Buckley had asked that no cattle be placed there and no chemicals be used to kill the vegetation.

[29] According to the evidence of defence witnesses the Claimant did nothing over the two year period to maintain the right of way. They therefore had to resort to maintaining it themselves. There is some mention of government maintaining the road prior to the period 1997 to 2006 but this was some time before the incident which is relevant to this case.

[30] It is understandable then that after two years of doing nothing when the Claimant appeared all of a sudden commencing road works and then placing a partial obstruction in the road this was a step which took the Defendants by surprise. Indeed one of the Claimant's own employees at the time was surprised that the Claimant placed the windrow where it did. There is no explanation given by the Claimant for the choice of the location of the windrow.

[31] Mr Buckley the Claimant's Director seems to be of the view that it was the Claimant's land and the Claimant could use the land however it wished. Indeed it is my view that the Company's intention was to change the user of the right of way to establish the need for any stranger to the Company to obtain the Company's permission to use the right of way.

[32] I am therefore of the view that the Claimant took a decision to deliberately perform highly visible work on the right of way for the purpose of making a statement and

achieving greater control over the right of way. The Company got the predictable reaction to its statement.

Did the Defendants trespass on the right of way?

[33] I am also of the view that the Defendants did not trespass on the right of way on the 27th October, 2008. The Defendants had a right to be on the right of way and a duty to ask that the works cease until they understood what was going on. The evidence is that they went to the right of way to clean it. When they observed the road works and the windrow the Defendants staged a noisy protest. Mr. John was the noisiest of all and said some reprehensible things. But when he was asked to come out of the windrow he stated his condition, which was the Claimant's promise to remove the windrow. Thereafter the Defendant Mr. John removed himself from the windrow and the Claimant removed the window from the spot where it had been placed.

[34] While the windrow was on the Claimant's property it was placed in a position which appeared to be changing the use of the right of way. The Defendants therefore had a right to demand its removal from any encroachment on the right of way and the Claimant agreed to comply with that demand.

[35] Self-help is understandable in those circumstances described in the evidence. Secondly, the Defendant Mauleen Didier did nothing that could be regarded as a trespass. Indeed she merely exercised her freedom of speech and right to protest. There is no evidence that she placed any cattle on the right of way herself and certainly there is no evidence that she placed any cattle near the right of way on 27th October, 2008. There is nothing else done by her on the day of the incident that could be considered a trespass. A demand to workmen to stop causing an obstruction cannot be deemed a trespass.

[36] However I find that Mr. Lester John's wrongful entry onto the windrow could be deemed a trespass. It was not his windrow. He could have protested its location without going onto the windrow.

[37] The Defendants also point to the Claimant's obstruction of the road as a public nuisance and trespass to their rights to pass and re-pass on the right of way. Indeed there is evidence that there was a deliberate attempt to establish control of the right of way. Evidently there was some obstruction. However I agree with the Claimant's counsel that the Defendants can prove no damage as a result of the trespass. The obstruction lasted less than a day and none of the stated fears of impeded traffic were realized. In my view the Defendants' claim for damages for trespass must be dismissed.

Damages

[38] Since I have held that there is one act of trespass by one of the Defendants I would now have to assess any damages flowing there from.

[39] The Claimant produced a sheet on which information about the assessed losses suffered as a result of the alleged trespass by the Defendants was tabulated. The Claimant's Director stated that the company had suffered loss as a result of pipes being broken when Mr. John laid in the windrow. But there is no mention of the nature of the damage, nor the material of which these pipes were made. Neither is there any mention of the person who gave the estimate of the cost of new pipes. There is no bill or receipt for new pipes. The document along with other alleged future damages were referred to as anticipated damages.

[40] I am of the view that this is a totally contrived document intended to punish the Defendants for their acts of protest. Taking it item by item, as far as the loss of man hours for the persons who were supposed to work on the road is concerned I am of the view that there was nothing preventing the road works from continuing,

after the protest was over. Mark Remy one former employee of the company, who gave evidence about the effect of the protest on the work at Rabot Estate, said that the work at the Estate continued as normal after the windrow was moved.

[41] There is no credible evidence that the Estate's workmen or the men working on the right of way were so afraid that they did not want to continue working in the area after the incident. Although there is some reference to a witness saying that another worker said he was scared that is not sufficient to establish that the works had to be stopped because of fear and intimidation.

[42] I find that after the protest the Claimant, out of an abundance of caution with regard to the protest and his legal rights, decided to stop the work and to move the windrow. The Claimant cannot make others pay for its own decision to stop work to avoid further protest action.

[43] No other head of damages has been proved either. The decision to resurvey the land was done to establish the legal right over the right of way. It confirmed that the right of way was on the Claimant's land but it also confirmed the Defendant's right to its use. The survey cannot and did not establish that the Claimant had a right to act unilaterally to widen the road and place the windrow on the right of way without consultation with the other users. There is no reason why any of the Defendants should pay for the survey unless they agreed to do so.

[44] Except for the conversation with the Defendants on 27th October 2008, there is no evidence that the Claimant attempted to negotiate a settlement of the situation and to explain what he was doing and why he was doing it. He kept all of this information to himself. The fact that the company decided to change its plans is not sufficient to make the Defendants pay for the losses caused by that decision.

Was the right of way conveyed to the Claimant?

[45] The issue that the right of way was not conveyed to the claimant was raised by the Defendants. I see no evidence that the land over which the right of way runs was not conveyed to the Claimant. I see no language on any Deed of Sale which could be construed to mean anything other than the fact that the land was conveyed free of encumbrances except for the right of way. Hence the encumbrance of the right of way and its use for persons in the area of the Rabot Estate to pass and re-pass was not affected by the Deed of Sale.

[46] The additional evidence that in the Deed of Donation dated August 4th 1989 Madeline Marie Weber donated to Shirley Anne Rose and Renee Marie Terry what is described as a bye road leading to Belfond which was a boundary also referred to as a "government bye-road" cannot be interpreted as a legal basis for saying that the road was owned by government. There is no evidence that government is claiming it or has paid for it. Indeed the statement that it is a government road could be mistakenly based on the fact that the government maintained it at some time. But the right of way remains on private property. I accept this assertion by the Claimant since it is supported by the weight of the evidence.

[47] There is no evidence that this right of way was a recognised government owned public road. There was no evidence of the statutory process which is required for such to be established pursuant to the Works and Roads Act Cap 8.05 of the Laws of Saint Lucia 2001. Indeed even if the government maintained the road for a while this is not enough for the road to be deemed a government road or public road.

[48] Counsel for the Defendants argued that the land on which the right of way stands may have been dedicated to the users by the previous owners. I have already indicated that I agree with this argument. However certain documents which the Defendants alluded to in their skeleton arguments in support of their claim of government ownership were not disclosed and do not form part of the Core Bundle in the case. Counsel for the Defendants therefore cannot produce such evidence in a skeleton argument.

[49] In the case of the Claimant claim for damages I have concluded that the Defendant did trespass by entering the windrow. Since the specific items of damage outlined in the Claimant's claim were not proved but the Defendant Lester John deliberately committed trespass to property of the Claimant namely the windrow, the Claimant is therefore awarded nominal damages of $800.00 for the trespass to the windrow.

Costs

[50] In my view there should be no order as to costs in this matter since the parties should have sought the intervention of a third party such as a mediator before taking this matter to trial. There was a breakdown of communication which the Defendants may consider to be caused by the Claimant's bad manners in proceeding to interfere with the right of way without consulting them.

[51] On the other hand the Defendant's protest could have been conducted in a more civil manner and it may have received a more civil response. In the premises neither party is deserving of an award of costs.

Order

[52] The Court's order then is that the First Defendant Lester John is to pay the Claimant the sum of $800 .00 for damages for trespass to the Claimant's property namely the windrow.

[53] The case against Mauleen Dedier is dismissed.

[54] I also order that:

(a) All parties should remain free to use the public right away on parcel 100 of the Claimant's land since all parties have acquired this right by ownership or long usage (and impliedly by Dedication).

(b) No party is permitted to make any modifications to any part of the right of way without consulting the other parties and users.

(c) If the right of way is to be maintained by the Claimant Company it shall be on the basis that if the Claimant Company fails to maintain the right of way for a period of more than three (3) months the Defendants and other users of the right of way should and do have the right to take reasonable steps to maintain it, save that the use of chemicals on the Rabot Estate is hereby restrained.

(d) The Court's Order of 4th December, 2008 is hereby discharged.

Francis H. V. Belle
High Court Judge