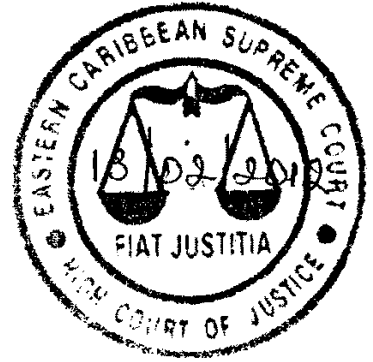


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 422 OF 2008



BETWEEN:

DAVID RICHARDS

Claimant

v

CORNELIUS OLLIVIERRE

Defendant

Appearances:

Mrs. Kay Bacchus-Browne, for the Claimant

Mr. Ronald Marks and Ms. Elizabeth Ryan for the Defendant

2011: June 22
2012: February 13

JUDGMENT

- [1] **THOM, J:** David Richards is a farmer. Cornelius Ollivierre is a businessman who in March 2007 was in possession of a parcel of land at Jennings Valley in the Congo Valley.
- [2] In March 2007 David Richards and Cornelius Ollivierre entered into an agreement for David Richards to take care of Mr. Ollivierre's pigs at a monthly salary of \$600.00. The pig pens were situated on the said land in Jennings Valley.
- [3] David Richards also alleges that himself and Mr. Ollivierre also entered into a contract for him to cultivate six acres of Mr. Ollivierre's land for a period of two years on an 80%/20% basis with Mr. Ollivierre receiving 20% of the profit and he would retain 80%.

- [4] In March 2008 the relationship between Mr. Richards and Mr. Ollivierre broke down. Mr. Ollivierre terminated the agreement for Mr. Richards to take care of his pigs. Mr. Richards alleges that Mr. Ollivierre also terminated the contract to cultivate the land.
- [5] Mr. Richards instituted these proceedings in which he claimed a sum of \$6,000 being wages for overtime work on Saturdays and Sundays. He also claims \$74,292.00 being loss of profit as a result of the termination of the contract to cultivate the land. Mr. Richards also claims general damages for breach of contract, interest and costs.
- [6] In his defence Mr. Ollivierre admitted that he entered into a contract with Mr. Richards to take care of his pigs. He alleges that he gave Mr. Richards permission to cultivate his land. At Mr. Richards' insistence he agreed to accept 20% of the profit. Mr. Ollivierre further alleges that he terminated the agreement with Mr. Richards for him to take care of the pigs because Mr. Richards was neglecting the pigs. On the termination of the agreement Mr. Richards decided to leave the land.

EVIDENCE

- [7] Mr. Richards gave evidence and he called one witness Mr. Sydney Sutherland. Mr. Ollivierre gave evidence and he called five witnesses, being Walter Goodluck, Joseph Da Silva, Willard Clarke, Raymond Theobalds, and Frederick Ollivierre.

EVIDENCE ON BEHALF OF MR. RICHARDS

- [8] The evidence of Mr. Richards is that he worked with Mr. Ollivierre as a labourer taking care of Mr. Ollivierre's pigs. He had access to a wall house on the property. He worked overtime on Saturdays and Sundays. Mr. Ollivierre did not pay him for the overtime work. In March 2007 he also entered into an agreement with Mr. Ollivierre to cultivate approximately six (6) acres of Mr. Ollivierre's land at Jennings Valley with Mr. Ollivierre receiving 20% of the profit. He spent several months preparing the land. He purchased seedlings of tomatoes, cucumbers and sweet peppers and planted them.

- [9] He requested his overtime pay from Mr. Ollivierre. Mr. Ollivierre refused to pay him and told him to leave his land. He left the land and the Agriculture Inspector Mr. Sydney Sutherland visited the land and valued his vegetables at \$4,292.00. He had intended to reap his crop in April 2008. Since he was unable to do so he had to buy produce to sell to his customers with whom he had agreements to supply. He did so at a loss of profit in the sum of \$70,000. Further he was unable to meet his loan repayment.
- [10] Under cross-examination Mr. Richards testified that his personal effects were stored at the house on the farm but he was not living there, he was living with his girlfriend at Park Hill. He maintained that he cleared the land which was approximately five acres and he cultivated tomatoes, cucumbers and sweet peppers. He never reaped anything from the land. He also testified that he had a broken hand and it was affecting him as he had to constantly scrub the pig pens. One Friday he consulted a doctor and he tried to get in touch with Mr. Ollivierre but was unsuccessful. He denied that he performed his duties negligently on several occasions. He claimed that Mr. Ollivierre never told him he was neglecting the pigs. It took three days before he was able to see Mr. Ollivierre, and when he saw him, Mr. Ollivierre told him to leave his land. Mr. Ollivierre told him, if he cannot look after his pigs he could not work the land.
- [11] Mr. Sydney Sutherland an Agricultural Instructor testified on behalf of Mr. Richards. In his witness statement he stated that on April 28, 2008 he visited the farm of Mr. Ollivierre at Jennings and inspected crops that were at seedling stage on the said land. He valued the seedlings at \$4,292.00.
- [12] Under cross-examination he testified that he visited the farm on 7th April 2008. There were cucumbers, tomatoes and sweet pepper seedlings on the land. The seedlings were in cotyledon stage, they only had two leaves. The cucumbers were planted while the tomatoes and sweet peppers were not planted they were in boxes. Mr. Sutherland further testified that the land was not cleared.

EVIDENCE ON BEHALF OF MR. OLLIVIERRE

- [13] Mr. Ollivierre testified that he is a businessman. He leased about one acre of land from Mr. Rodriguez at Jennings Valley. It had a concrete structure on it. In the early part of 2007 Mr. Richards went to him and informed him he had no place to live. He permitted him to live in the concrete house. At that time they did not discuss taking care of the pigs. Subsequently he had a discussion with Mr. Richards about him taking care of the pigs. They agreed that Mr. Richards would take care of the pigs Monday thru Friday at a salary of \$600.00 per month. Mr. Ollivierre would sometimes take groceries for Mr. Richards and would lend Mr. Richards money and not expect any repayment. Mr. Ollivierre further testified that about two months after Mr. Richards offered to take care of the pigs on week-ends. Mr. Richards made no request for any further payment. There was no agreement for any further payment.
- [14] Some time later Mr. Richards expressed an interest in cultivating the land but stated he did not have the requisite finance. He encouraged Mr. Richards to take a loan from the National Commercial Bank. In order to assist Mr. Richards to get the loan he wrote a letter to the Bank stating that Mr. Richards was employed by him as a farmer. To further assist Mr. Richards in getting the loan he paid the Bank \$1000 to clear the arrears on another loan which Mr. Richards had with the Bank shortly after Mr. Richards received the loan he rented a jeep for about two months. He did not cultivate the land.
- [15] After a while Mr. Richards became very delinquent in caring for the pigs. He received complaints about the stench of the pens. Mr. Richards frequently telephoned him to tell him he could not look after the pigs. After Mr. Richards had not fed the pigs for about three days, he told Mr. Richards about his neglect of the pigs and he told him to stop caring for the pigs but he could continue on the land. Mr. Richards became very annoyed and said since he did not want him to look after the pigs he would leave the land. When Mr. Richards was leaving he said he had some cucumbers by the bank. Mr. Ollivierre said he never saw the cucumbers. He denied that Mr. Richards had the quantity of seedlings set out in the report of Mr. Sutherland.

[16] Under cross-examination Mr. Ollivierre agreed that he made no payment to Mr. Richards for week-end work. Mr. Richards only requested payment for week-end work after the claim was filed. He agreed that the agreement to work the land was for two years.

[17] All of the witnesses called by Mr. Ollivierre were his friends or relatives and their evidence supported his testimony. They testified that they did not see Mr. Richards cultivate the land and that there was a stench from Mr. Ollivierre pig pens.

SUBMISSIONS

[18] Learned Counsel Mrs. Kay Bacchus-Browne urged the court to accept the evidence of Mr. Richards. Learned Counsel referred the court to the letter that Mr. Ollivierre wrote to the Bank in October 2007 in which he stated that Mr. Richards was a person of integrity.

[19] Learned Counsel conceded that the \$6,000 claimed for week-end work was not itemized. Mr. Richards did not show how he arrived at the figure. However Learned Counsel urged the court to adopt the principles in Bonham-Carter v Hyde Park 1984 TLR p.178 and Greer v Alstons Engineering, Sales and Services Ltd. (2003) 63 WIR p.388, that the Court has the authority to make an assessment on the primary facts presented once satisfied on a balance of probabilities that some loss resulted.

[20] In relation to the claim for loss of profit, Learned Counsel submitted that Mr. Richards evidence that he sold produce to various entities and supermarkets was not contradicted. Learned Counsel conceded that it was difficult to prove the special damages and requested the Court to make an award for general damages for the breach of the contract. Learned Counsel urged the Court to accept Mr. Richards evidence that Mr. Ollivierre ordered him to leave the farm and he had to leave all his seedlings.

[21] Learned Counsel Ms. Ryan submitted that the claim for \$6,000 was a bald statement that was not supported by any evidence. There is no basis for the claim. Mr. Richards did not show how he arrived at the sum of \$6,000. Also there was no agreement for Mr. Ollivierre to pay Ms. Richards for taking care of the pigs at week-ends.

[22] In relation to the claim for loss of profit, Learned Counsel urged the Court to accept the evidence of Mr. Ollivierre that he did not request Mr. Richards to leave the land, it was Mr. Richards who left on his own volition.

[23] Further Mr. Richards failed to cultivate the land, this amounted to a failure to accept the offer to cultivate the land since a reasonable time had elapsed, Ramsgate Victoria Hotel v Mountefiore 1865-1866 L.R. 1 Ex 109. It was almost one year after the offer was made that Mr. Richards took seedlings unto the property. Also there was no performance of the contract by clearing of the land. Mr. Sutherland who testified on behalf of Mr. Richards said the land was not prepared for the planting of seedlings. The stage of development of the seedlings is clear evidence that they were purchased after the relationship between Mr. Ollivierre and Mr. Richards had broken down. There was no contract between the parties.

FINDINGS

[24] Neither Mr. Richards nor Mr. Ollivierre told the whole truth in their testimony. Mr. Richards sought to exaggerate his alleged loss. Mr. Richards admitted that initially he did not work on week-ends but his claim is for more than week-end work from the commencement of the contract at double pay. Mr. Richards testimony was contradicted by his witness Mr. Sutherland. Mr. Sutherland testified that the land was not prepared for cultivation. Mr. Sutherland also contradicted Mr. Richards testimony that he planted tomatoes, cucumbers and sweet peppers. In paragraph 5 of his witness statement he stated:

"I purchased seedlings of tomatoes, cucumbers and sweet peppers and planted them."

Mr. Sutherland testified that it was only the cucumbers that were planted. The tomatoes and sweet peppers were still in boxes. Mr. Richards also testified he was to reap his crop in April 2008. However Mr. Sutherland testified that when he visited the land on April 6, the plants were all at seedling stage.

[25] Mr. Ollivierre on the other hand testified when he told Mr. Richards to stop feeding the pigs he told him he could continue on the land. However Mr. Ollivierre also testified that Mr. Richards was not cultivating the land even though he had assisted him in getting a loan to

do so. Mr. Richards had rented a jeep shortly after he obtained a loan and did not invest in cultivating the land. In paragraphs 23 and 24 of his witness statement Mr. Ollivierre states:

[23] Two days after the Claimant obtained the loan he rented a jeep which he kept for about two months or more.

[24] For the time that the Claimant remained on the land I did not see him make any use of the loan proceeds to cultivate the land."

Mr. Ollivierre also testified that Mr. Richards brought seedlings on the land but he never bothered to plant them and they died. In view of Mr. Ollivierre's testimony that Mr. Richards was not cultivating the land, I do not believe that Mr. Ollivierre told Mr. Richards he could remain on the land.

WEEK-END PAY

[26] Mr. Richards claims \$6,000 being wages for work at week-ends. It is not disputed that initially there was no agreement for Mr. Richards to work on week-ends. Both sides agree that the initial agreement was for Mr. Richards to be paid \$600 per month for a five day work week being Monday thru Friday. Mr. Ollivierre would take care of the pigs on the week-end.

[27] The onus was on Mr. Richards to prove his claim on a balance of probabilities. The totality of Mr. Richards evidence in relation to his claim for \$6,000 being week-end wages is to be found in paragraph 6 of his witness statement where he states as follows:

"6. I worked overtime on Saturdays and Sundays for a total of \$6,000. overtime."

[28] Under cross-examination he admitted that when he commenced working for Mr. Ollivierre he did not work at week-ends.

[29] I agree with the submission of Ms. Kay Bacchus-Browne that in the absence of evidence of the amount of loss the Court may award nominal damages - see Mc Gregor on Damanges 15th ed at paragraph 29.5 where the Learned Author stated:

"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a

subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss.”

[30] The question however in this case is what was the agreement between Mr. Ollivierre and Mr. Richards in relation to taking care of the pigs on weekends. The onus was on Mr. Richards to prove on a balance of probabilities that there was an agreement for Mr. Ollivierre to pay him to take care of the pigs on weekends. Mr. Richards led no such evidence. Further Mr. Ollivierre led evidence which was not contradicted that he was taking care of the pigs at week-ends. He testified that himself and Mr. Richards had a very good relationship. He permitted Mr. Richards to live in the house on the land for which he was not required to make any payment. He would lend money to Mr. Richards but not expect to receive any payment. On occasions he took groceries for Mr. Richards. It was on account of this good relationship that Mr. Richards offered to take care of the pigs for him at week-ends. This was about two months after he commenced taking care of the pigs. I believe this testimony of Mr. Ollivierre.

[31] I also note that Mr. Richards testified that the agreement was terminated because he requested payment from Mr. Ollivierre for week-end work. If indeed Mr. Ollivierre had owed Mr. Richards for week-end work, it would have been for a period of approximately ten (10) months. I do not believe that for ten months, Mr. Richards would have received his salary but not his week-end pay and Mr. Richards would only make a request for payment after approximately ten months. I believe the testimony of Mr. Ollivierre that one of the reasons why he paid the arrears of \$1000 which Mr. Richards owed the Bank was because Mr. Richards was taking care of the pigs on week-ends.

[32] In view of the above I find that there was no agreement for Mr. Ollivierre to pay Mr. Richards for week-end work. Mr. Richards volunteered to take care of the pigs on the week-end because of the good relationship that existed between himself and Mr. Ollivierre.

LOSS OF PROFIT

[33] Mr. Richards claims \$70,000 being loss of profit as a result of the termination of the agreement for him to cultivate the land.

[34] I do not agree with Ms. Ryan's submission on behalf of Mr. Ollivierre that there was no contract for Mr. Richards to cultivate the land in view of Mr. Ollivierre's admission under cross-examination that there was an agreement between himself and Mr. Richards for Mr. Richards to cultivate the land for a period of two years on a profit sharing basis of 80%/20%. Mr. Ollivierre's testimony is that he was instrumental in getting a loan for Mr. Richards to cultivate the land. Mr. Ollivierre further testified that on occasions Mr. Richards took seedlings to the land but he did not transplant them, he neglected them and they died.

[35] The issue is what loss was suffered by Mr. Richards as a result of the termination of the agreement. The agreement was terminated approximately one year early.

[36] Special damages must be strictly proved. The onus was on Mr. Richards to prove that he suffered loss as a result of the termination of the contract and also the quantum. A person does not prove the quantum of his loss by simply stating a figure. The evidence in support of Mr. Richards claim for \$70,000 is simply that he had agreements with some commercial entities and individuals for the supply of vegetables which he had intended to produce from the land. Because of the termination of the agreement, he had no land to produce the vegetables and he had to purchase vegetables to fulfill his agreements and he did so at a loss of \$70,000. Mr. Richards had no evidence to show how he arrived at the loss of \$70,000. This is just a broad figure stated in his testimony. His Counsel therefore rightly conceded that it was difficult to prove the special damages and requested the Court to make an award for general damages for breach of the contract.

[37] A similar submission was made in Greer v Alston Engineering referred to by Learned Counsel Ms. Kay Bacchus-Browne. In Greer's case the Appellant had proved that he suffered loss of use of his backhoe when the Respondent wrongfully detained it, but the Appellant had not led evidence of the quantum. It was submitted on behalf of the Appellant

that where there was a difficulty in computing special damages the Appellant was entitled to general damages which should be substantial. The Privy Council held that although the loss was unquantified it was the duty of the Court to recognize it by an award that was not out of scale.

[38] Before general damages could be ordered there must be proof of loss. Did Mr. Richards suffer loss as a result of the termination of the agreement?

[39] The evidence of Mr. Richards is that he had agreements with commercial entities and individuals for the supply of vegetables and to fulfill these agreements he had to purchase vegetables because he had no land to cultivate. He was expecting to reap his crop in April 2008. However the evidence of Mr. Richards' witness Mr. Sutherland whose testimony I believe is that when he visited the land on April 6, 2008 the land was not cleared for cultivation. The tomatoes and sweet pepper seedlings were in boxes. The cucumbers were planted, however they were at cotyledon stage, they only had two leaves. These cucumbers he valued at \$240. The sweet peppers and tomatoes he valued at \$4,050.00. I therefore find that Mr. Richards has suffered loss as a result of the termination of the agreement.

[40] It is settled law that a person has a duty to mitigate his loss. Mr. Richards did not lead evidence any steps he took to sell the seedlings or to acquire other lands to cultivate them. Mr. Sutherland testified that the tomatoes and sweet peppers that were in boxes could have been easily removed. Mr. Richards testified of agreements that he had with commercial entities to supply vegetables however Mr. Richards does not give any evidence when these agreements were made. He makes a general statement that he began supplying his customers in 2007. I bear in mind that almost one year had elapsed since Mr. Richards and Mr. Ollivierre had agreed for Mr. Richards to cultivate the land and based on the evidence of Mr. Sutherland Mr. Richards had done virtually nothing at the time of the termination of the contract. Mr. Sutherland visited the land on April 6, 2008. The agreement was terminated in March 2008. Mr. Richards does not give a date in March 2008 when the agreement was terminated. This is significant in view of the very early

stage of the cucumbers which I repeat Mr. Sutherland testified was at cotyledon stage. The only reasonable conclusion that could be drawn from the evidence of Mr. Sutherland is that the cucumbers were recently planted.

[41] In view of all of the circumstances of this case I find that damages in the sum of \$5,000, would not be out of scale.

[42] In conclusion I find that Mr. Richards has failed to prove on a balance of probabilities that there was an agreement between himself and Mr. Ollivierre for him to be paid for care of the pigs at week-ends. I find that in relation to the agreement for the cultivation of the land damages in the sum of \$5,000 should be awarded to Mr. Richards.

[43] It is ordered:

- (1) Judgment is entered for the Claimant in the sum of \$5,000.
- (2) The Defendant shall pay the Claimant costs in the sum of \$750.


.....
Gertel Thom
HIGH COURT JUDGE