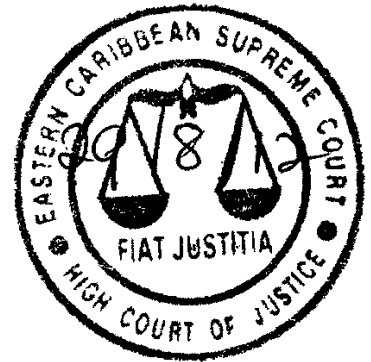


ST VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO SVGHCV2003/0056

BETWEEN:

GENET IOLA BURTON
(Substituted for
Lisle Mc Donald Brooker
pursuant to an order of Court dated 6th October 2004)

Claimant

AND

RICHARD GIBSON

Defendant

Appearances

Mr Samuel Commissiong for Claimant
Mr Olin Denie for Defendant

.....
2009: 22nd April; June 29
2010: March 11;
2011: July 25;
2012: May 10; 23; June 11; August 24
.....

JUDGMENT

Introduction and background

- [1] **LANNS, M:** This is an assessment of damages in relation to a claim for trespass to land. The matter is of some vintage, having commenced in the year 2003. It has met with considerable inordinate delay for various reasons well known to the parties.

- [2] The Claimant is the sister of the Defendant. They own lands adjacent to each other at Lawyer Cain Mountain, Campden Park (Lawyer Cain Mountain). The lands are mostly forested lands, used for animal farming and production of charcoal.
- [3] In the year 2002, the Defendant entered upon the lands at Lawyer Cain Mountain belonging at the time to Mr Lisle Mc Donald Brooker (Mr Brooker) and evicted one, Charles Baptiste, Mr Brooker's servant or agent, and constructed a road through Mr Brooker's land.
- [4] Then in 2003, the Defendant built a pig pen on Mr Brooker's land, and started a pig farm on the land, rearing pigs which he slaughtered and sold as pork. In order to get water from the nearby river for his farming business, the Defendant ran pvc pipes through the land. He cut down trees to burn coal, and started a large vegetable garden – all without Mr Brooker's authority or consent.
- [5] By letter dated 12th November 2003, Mr Brooker's solicitors wrote to the Defendant demanding that he remove himself from the land, and cease all farming and other activities thereon within 48 hours. When the Defendant refused to do what was required of him, Mr Brooker instituted the present action – Claim No 506 of 2003 against the Defendant seeking the following reliefs:
- a) A declaration that the Defendant, his servants and /or agents are not entitled to enter or cross the Claimant's land;
 - b) An injunction to restrain the Defendant, whether by himself or by his servants or agents or otherwise howsoever from entering or crossing or remaining on the Claimant's land for any purpose at all;
 - c) Damages for trespass; further and other relief.
- [6] In or around May 2004, Mr Brooker conveyed the subject lands to Ms Genet Iola Burton. The conveyance is registered as Deed Number 2584 of 2004 in the Registry of Deeds of St Vincent and the Grenadines. By court order dated 6th October 2004, Genet Iola Burton was substituted for Lisle McDonald Brooker as Claimant.
- [7] A Defence was filed, but it was struck out by the Master for failure to comply with CPR 10.4, and 3.12. Pursuant to the Master's order, the Claimant applied to the Court under the procedure set out in CPR 12.10 (4) and (5) for the Court to determine the terms of the Judgment. The Application came up for hearing before Bruce-Lyle J on 11th February 2005, and the learned Judge entered judgment for the Claimant in terms of the Statement of Claim. The Judgment was signed by the Registrar of the High Court on 1st March 2005.
- [8] In Paragraph 3 of the Judgment, Justice Bruce-Lyle ordered that damages and costs be assessed by the Master on a date to be fixed by the Registrar. This is the assessment.

- [9] The Claimant has claimed damages for trespass. She repeated that Claim in her affidavit in support of the assessment, sworn to by Mrs Mildred Hazell, the Claimant's lawful attorney and agent. Mrs Hazell was subject to intense cross examination and, to my mind she was not shaken. She gave her evidence in a forthright manner. I believe her.
- [10] Mrs Hazell states that the Claimant has been trespassing on the Claimant's land for about five years. He continues to trespass, she stated. She stated that she visited the land in April 2008 and January 2009 and the pipes were still there in blatant disregard of the injunction order made by the Court on 12th December 2003. Under cross examination she said:
- "The land has been devalued because you cannot get anybody to work it. You can't get access. Mr Gibson had cut a road in the land and we just can't work the land."
- [11] When learned counsel for the Defendant put to her that the Defendant never prevented anybody from entering the land or working the land, or burning charcoal on the land, Mrs Hazell responded "He put a gate there. He blocked the entrance and prevented other people from entering. " When pressed as to whether it was because Mr Gibson had blocked access or because the Claimant could not find anyone to cultivate the land, Mrs Hazell answered, "Nobody wants to cultivate the land when there is a dispute."
- [12] She says that the Claimant used to produce about 35 bags of charcoal per month from the felled trees and sell it at \$35.00 per bag. She said that in January 2009, she took persons who had expressed an interest in the land to see the land, but she hasn't heard from them since. They never came back.
- [13] The Defendant filed an Affidavit in response to the Affidavit of Mrs Hazell. His affidavit seemed to be an attempt to defend the claim through the back door. Paragraphs 4 and 5 were expunged as being irrelevant or scandalous and Mr Commissiong declined to cross examine him on the remaining portions.
- [14] Mr Nathaniel Adams swore to an affidavit on behalf of the Defendant and was cross examined by Mr Commissiong and reexamined by Mr Denie.
- [15] Upon review, I doubt whether, having regard to the nature of the default judgment, the Defendant was entitled to file affidavit evidence, to cross examine the Claimant, or to be heard on the assessment. The Defendant's rights following default judgment are contained in CPR12.13 which states "Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are:
- (a) an application under rule 12.10 (4);
 - (b) costs;
 - (c) enforcement of the judgment; and
 - (d) the time of payment of any judgment debt."
 - (e)

[16] However, wherever the evidence of, or on behalf of the Defendant conflicts with that of the Claimant, I prefer the evidence of the Claimant.

Mr Commissiong's submissions

[17] Mr Samuel Commissiong, Learned counsel for the Claimant, submits that in a case of this nature the Claimant is entitled to have as damages for the trespass, the value of the property as it would fairly be calculated; and it would be the ordinary letting of the property that would determine the amount of damages. Counsel submitted that the court should impute a value of \$10,000.00 per acre for the nine acres of land trespassed upon, and a monthly rent of \$1000.00. Counsel therefore suggested an award of \$60,000 as special damages, being 5 years x 12 months x \$1000.00). Counsel said he arrived at the valuation figure from a valuation done by Alexander and Alexander. The court has not seen such a valuation and thus, it can give little or no weight to such valuation.

[18] However, the court has had sight of a Certificate of the Inland Revenue Department dated 26th June 2004, wherein the Market Value of the subject lands was given as \$63,000.00.

[19] In support of his submissions, counsel relied heavily on the following cases which he says demonstrate the principles on which damages are assessed in cases of this nature:

- (i) **Inverugle Investments Ltd v Hackett** (1995) 46, WIR p4 paragraph 7 (b);
- (ii) **Swordeath Properties Ltd v Tabet** (1979) 1 All ER 285 at 288;
- (iii) **Stoke-On-Trent City Council v W and J Wass Ltd** (1988) 1 WLR

[20] I find the principles enunciated in those cases to be helpful and applicable in the instant case. The critical passages in **Inverugle Investments** are at 4 j – 7b, and page 6 at letter e

"The Defendant must pay for the use of the apartments for the fifteen years he had occupied them; and he must pay the going rate even though he had been unable to derive actual benefit from all of the apartments for all the time (the chance of making profit from the use of the apartment was not the correct test for arriving at a reasonable rent); ie the wholesale rate paid by tour operators, less any deductions payable under the lease; the fact that he was a hotel operator did not take the case out of the ordinary rule."

"If a man hires a concrete mixer, he must pay the daily hire, even though he may not in the event have been able to use the mixer because of rain. He must pay the going rate, even though in the event he has derived no benefit from the use of

the mixer. It makes no difference whether the trespasser is a professional builder or a do-it-yourself enthusiast."

[21] In **Swordeath Properties** the critical passage is at page 288:

" It appears to be me to be clear, both as a matter of principle and authority that in a case of this sort the plaintiff, where he has established that the defendant remained on as a trespasser in residential property is entitled, without bringing evidence that he could or would have let the property to someone else in the absence of the trespassing defendant, to have damages for the trespass, the value of the property as it would fairly be calculated; and in the absence of anything special in the particular case, it would be the ordinary letting of the property that would determine the amount of damages."

Mr Denie's submissions

[22] The thrust of the submissions of Mr Denie on behalf of the Defendant is that on the totality of the evidence, the Claimant has failed to satisfy the court that she is entitled to any damages at all. There has been no independent evidence to corroborate the claim made by the Claimant that she has been unable to cultivate her land due to the "alleged" trespass on the part of the Defendant. Counsel urges the court to dismiss the claim that there as been a diminution in value of the Claimant's property, because of the Defendant's trespass which he says the Claimant has failed to prove. Counsel concluded his submissions by stating "If however, the court finds that by laying the pipes along the footpath, the Defendant might have inadvertently trespassed on a small part of the Claimant's land, then it is submitted that the Claimant is only entitled to nominal damages."


[23] Mr Denie seems to have ignored the significance of the default judgment. He seems to be inviting the court to open the issue of liability for trespass. The issue of liability for trespass has already been determined and that the court is now dealing with the issue of quantum.

Disposition

[24] Upon considering the evidence, submissions and authorities, and upon the Court having a preference for the submissions of counsel for the Claimant, it is ordered and adjudged that

1. Damages are assessed in the sum of \$42,000.00 (5 years x 12 months x \$700.00).
2. The Claimant is entitled to 60 percent of the prescribed costs in accordance with CPR 65.5 Appendices B and C.

3. This judgment attracts interest at the rate of 6 percent per annum from the date of delivery of this judgment until date of final payment.


Pearletta E. Lanns
Master