

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

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2012/0011

BETWEEN:

ERIC KNIGHT
ERIC CONSTRUCTION AND HEAVY EQUIPMENT SERVICES LTD.
T/A ERIC CONSTRUCTION EXCAVATOR & TRUCKING SERVICES

Claimants

AND

RONNIE JAMES
SEAN JAMES
(BOTH IN THEIR CAPACITY AS PERSONAL REPRESENTATIVES OF THE ESTATE OF
GERALDINE MARTIN)

Defendants

Before:

Master Charlesworth Tabor (Ag.)

Appearances:

Miss Samantha Marshall for the Claimants
Mr. Laurence Daniels for the Defendants

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2012: November 8
2013: January 18
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RULING

- [1] **TABOR, M (Ag.):** This is an application without notice for summary judgment.
- [2] On 3rd July, 2012 the claimant/applicant filed an application with affidavit in support pursuant to Part 15.2 (b) of the Civil Procedure Rules 2000 seeking summary judgment in terms to be determined by the Court and costs.

Background Facts

[3] The defendants on 5th January, 2012, whilst acting in their capacity as the Personal Representatives of the Estate of Geraldine Martin, entered the property occupied by the claimant and caused damage to the chain link fence that surrounded the property. As a consequence of this incident, the claimants commenced proceedings against the defendants and obtained an injunction on 31st January, 2012 from the Honourable Justice Jennifer Remy in the following terms:

1. The defendants, Ronnie James and Sean James (both in their capacity as Personal Representatives of the Estate of Geraldine Martin) whether jointly or severally are hereby restrained whether by themselves, their servants and/or agents from trespassing, entering and/or remaining on the lands occupied by the applicants situate at Lunar's Estate, St. Peter's Antigua and more specifically described on the land register as Registration Section: East Central Block No.: 13 2390B Parcels: 40 & 41, until further order of the Court.
2. The defendants, Ronnie James and Sean James (both in their capacity as Personal Representatives of the Estate of Geraldine Martin) whether jointly or severally are hereby restrained whether by themselves, their servants and/or agents from demolishing, removing or in any way destroying or causing damage to the applicants property situate on the lands at Lunar's Estate, St. Peter's Antigua and more specifically described on the land register as Registration Section: East Central Block No.: 13 2390B Parcels: 40 & 41.
3. The claimants are granted leave to file and serve on the defendants within 7 days of this Order, a Claim Form and Statement of Claim/Affidavit in Support.
4. The inter partes hearing is adjourned to 14th day of February, 2012 at 9:00 am for further hearing.
5. Counsel for the claimant to have conduct of this Order.

[4] On the return date on 14th day of February, 2012 the Honourable Justice Jennifer Remy ordered that the injunction granted on 31st January, 2012 continue until the determination of the matter.

[5] Pursuant to the Order of 31st January, 2012 the claimants filed the Claim Form and Statement of Claim on 7th February, 2012 and effected service on 13th February, 2012. The defendants filed their acknowledgement of service on 22nd February, 2012 and their defence and counterclaim on 12th March, 2012. In their counterclaim the defendants are claiming the following:

1. Possession of the demised parcels of land described in the Register as Registration Section: East Central Block No.:13 2390B Parcels: 40 & 41.
2. Damages for unlawfully erecting structure without planning permission.
3. Damages for the unlawful occupation of the said property continuing at a monthly rate to be assessed
4. Interest.
5. Costs.

[6] On 26th March, 2012 the claimants filed their reply and defence to counterclaim. At a case management hearing before Master Cheryl Mathurin on 31st July, 2012 the following Order was made:

1. The claimants are hereby granted leave to withdraw the Reply and Defence to Counterclaim of the claimants filed herein on 26th day of March, 2012.
2. The claimants are hereby granted leave to file and serve Submissions on or before the 30th day of August, 2012.
3. The defendants to file and serve their Submissions in Response to the submissions of the claimants on or before the 14th day of September, 2012.
4. If necessary, the claimants to Reply, within 7 days of being served with the defendant's Submissions.
5. Further hearing of this matter is to be on 8th day of October, 2012.
6. The costs of \$850.00 is to be paid by the defendants to the claimants Counsel by the close of business today, failing which the defence of the defendants shall be struck out.

[7] The claimants filed their submissions in support of the application for summary judgment on 31st August, 2012. On the 8th October, 2012 case management hearing before Master Charlesworth Tabor (Ag.), the defendants had not as yet filed their Submissions in Response to the claimants Submissions and they were given 14 days in which to file and serve their submissions and the matter was adjourned to 8th November, 2012. The defendants subsequently filed their Submissions in Response on 17th October, 2012.

Submissions on behalf of the Claimants

[8] Counsel for the claimants contends that John I Martin Enterprises Limited is the sole registered proprietor of the property described as Registration Section: East Central Block No.: 13 2390B Parcels: 40 & 41 situated at Lunar's Estate in the Parish of St. Peter in Antigua and Barbuda and that the claimants are in possession of the said property. Eric Knight, the sole shareholder and named director of Eric Construction and Heavy Equipment Services Limited (trading as Eric Construction Excavators & Trucking Services), entered into an agreement with Mrs. Sylvannie Martin in October 2008 to occupy the property as a tenant.

[9] Subsequent to entering into the agreement, Mr. Knight discovered after a search was conducted at the Land Registry that John I Martin Enterprises Limited is the sole registered proprietor of the said property. It was also discovered that a caution was registered against the property by Mrs. Sylvannie Martin. As a consequence, Mr. Knight ceased the payment of rent to Mrs. Sylvannie Martin until she could prove her entitlement to collect the rent for the property.

[10] On 12th October, 2011 Counsel for the defendants wrote to the claimants requesting that a formal rental agreement be entered into with his clients. In response to this letter, Counsel for the claimants on 31st October, 2011 sought clarification as to who are the clients that defence Counsel represented. In a letter of 7th November, 2011 Counsel for the

defendants disclosed that his clients were the Personal Representatives of the Estate of Geraldine Martin, namely, Messrs Sean James and Ronnie James.

[11] The defendants along with an unknown person on 5th January, 2012, whilst acting in their capacity as the Personal Representatives of the Estate of Geraldine Martin, entered the property occupied by the claimant and caused damage to the chain link fence that surrounded the property. In their Affidavit filed on 7th February, 2012, the defendants do not deny that they entered upon the property occupied by the claimants, but believe that their action was justified on the basis that as the Personal Representatives of the Estate of Geraldine Martin, they are entitled to the legal ownership of the property. With respect to this view though, Counsel for the claimants contends that no evidence has been provided to show that there has been a transfer of title from John I Martin Enterprises Limited to the deceased Geraldine Martin.

[12] The issues to be determined according to Counsel for the claimants are as follows:

1. Whether the defendants unlawfully trespass unto the lands occupied by the claimants.
2. Whether the defendants are entitled to make demands for rent.
3. Whether the claimants are entitled to damages.
4. Whether the defendants conduct amount to malice sufficient to support aggravated damages.
5. Whether the claimants are entitled to interest on the damages.
6. Whether the claimants are entitled to costs.

Submissions on behalf of the Defendants

[13] Counsel for the defendants is advancing the argument that the defendants are the representatives of their deceased mother Geraldine Martin's estate having probated the said estate and that Geraldine Martin was entitled to certain legal and equitable benefits during her life to lands situated at Lunar Park estate that were given to her, particularly lands described in the Register as Registration Section: East Central Block No.: 13 2390B Parcels: 40 & 41. Counsel goes on further to argue that the fact that the Registrar of Lands wrote to Geraldine Martin on 17th January, 2007 to inform her that a caution was registered against the said lands by Sylvannie Martin is an indication that the authorities recognized Geraldine Martin as the owner of the said property.

[14] With respect to the fence surrounding the property that was damaged by the defendants, Counsel for the defendants referred to the Affidavit of the defendants, in particular paragraph 17 of the said Affidavit in which the defendants depose:

That we are entitled to enter upon any property that fell under the command and control of our late mother Geraldine Martin and inspect such property. It was our mother's resources that were used to fence the property which was used as a dog farm. The claimant did not build the fence it was built by my mother when she rented the land. The applicant has no legal entitlement to occupy the property to the exclusion of us when he does not possess title and Ms. Sylvannie Martin's

interest in the property does not give her a legal right to lease the property which is not owned by her.

[15] Counsel for the defendants, like Counsel for the claimants, has acknowledged that legal title to the property is still vested in John I Enterprises Limited. However, he contends that the equitable interest is vested in Geraldine Martin's estate hence the reason why Geraldine Martin dealt with the property as her own during the course of her life by selling or renting it.

[16] The issues to be determined according to Counsel for the defendants are as follows:

1. Whether or not Sylvannie Martin having not purchased the property or registered as the proprietor of the property has unlawfully put the claimant in possession of property as trespasser when she has no title or entitlement to the property.
2. Whether the claimant not being in possession of a lease or license can continue to unlawfully squat upon the land as a trespasser to the exclusion of the defendants.
3. Whether or not the defendants who have been appointed as representatives of their mother's estate are entitled to the legal and equitable rights of the lands which their mother exercised total control over during the period of her life.
4. Whether or not the claimant not having a lease or license is entitled to occupy the land as a trespasser deriving a benefit from his business on the said land to the exclusion of the defendants.
5. Whether the defendants can trespass upon property that their mother exercised control over that now fall to the defendants who are representatives of the estate.
6. Whether the defendants are entitled to possession of the land unlawfully occupied by the claimant where the equitable and legal title falls to Geraldine Martin's Estate, which the defendants are appointed as representatives.

Analysis

[17] This matter has a long history and it is rather unfortunate that it has now reached the stage of litigation. It is a matter that is permeated with a series of irregularities that should have been addressed a long time ago.

[18] The genesis of the matter can be placed at the attempt of Mr. Durham Martin to purchase parcel 40 from Miss Geraldine Martin. It is deposed by the defendants that Mr. Martin made payments on the land for three (3) years between 1997 and 1999 and then fell into arrears for a period of ten (10) years. Exhibited to the Affidavit of the defendants is a letter written by Geraldine Martin on 14th March, 2005 to Mr. Martin indicating that he was delinquent in his payments and that an amount of \$415,500.00 was due and payable. Mr. Martin died on 15th August, 2005 without making any further payments towards the purchase of the land and his wife Mrs. Sylvannie Martin, who was appointed Administratrix of his Estate, made no further payments and the sale was therefore never completed.

[19] The sale having not been completed, there was no transfer of title to the Estate of Durham Martin and the property could not become a part of the corpus of his Estate. Despite this fact, however, Mrs. Sylvannie Martin treated the property as if it was a part of the Estate and proceeded to rent the property to Eric Construction and Heavy Equipment Services Limited. The defendants have deposed that it subsequently came to their attention that Eric Construction was subletting parcel 40 to someone else and that Eric Construction has erected a building without permission from the Development Control Authority, with half of the building on parcel 40 and the other half on parcel 41.

[20] Eighteen (18) years has elapsed since Mr. Durham Martin was attempting to purchase parcel 40 from Miss Geraldine Martin. They are both deceased and the status quo has remained essentially the same with Mrs. Sylvannie Martin, the Administratrix of the estate of Durham Martin, being unable to complete the sale. Further, since 8th December, 2006 a caution has been registered by Sylvannie Martin against not only parcel 40 (in which she would have some interest) but also parcel 41, thus preventing any dealings with both parcels of land without her consent. Clearly, this is an untenable situation which requires a comprehensive resolution of all the existing irregularities.

The Summary Judgment Test

[21] Part 15.2 of the Civil Procedure Rules (CPR) 2000 outline the grounds by which the Court may grant an application for summary judgment. Part 15.2 states that:

The court may give summary judgment on the claim or on a particular issue if it considers that the –

- (a) Claimant has no real prospect of succeeding on the claim or the issue; or
- (b) Defendant has no real prospect of successfully defending the claim or the issue.

Part 15.2 is in similar terms to Part 24.2 of the United Kingdom CPR. Part 24.2 was considered by the Court of Appeal in **Swain v Hillman & Anor** [2001] 1 All ER 91, where Lord Woolf said that “the words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success”. At page 95b Lord Woolf went on to say that summary judgment applications have to be kept in their proper role. They are not meant to dispense with the need for a trial where there are issues which should be investigated at trial. Further, summary judgment hearings should not be mini-trials. They are simply to enable the Court to dispose of cases where there is no real prospect of success.

[22] Clearly, Part 15.2 gives the Court the discretion to dispose of a matter summarily if either the claim or defence has no real prospect of success. Where, however, as Lord Woolf indicated there are issues which should be investigated at a trial, then applying the summary judgment procedure would not be appropriate to dispose of a matter.

[23] Part 15.3 goes on to outline the types of proceedings for which summary judgment is not available and states:

The court may give summary judgment in any type of proceedings except –

- (a) admiralty proceedings in rem;
- (b) probate proceedings;
- (c) proceedings by way of fixed date claim;
- (d) proceedings for –
 - (i) claims against the Crown;
 - (ii) defamation;
 - (iii) false imprisonment
 - (iv) malicious imprisonment; and
 - (v) redress under the Constitution of any Member State or Territory.

Conclusion

- [24] As I have indicated earlier, this is a matter that is permeated with a series of irregularities that were allowed to continue over time and culminating in the present issue which is now before the Court. While the defendants contend that all the land at North Sound registered in the name of John I Enterprises Limited was given to Geraldine Martin, there is no evidence that this land was ever transferred to her. The parcels of land that the defendants contend Geraldine Martin sold were in fact sold by John I Enterprises Limited with the transfer signed by Geraldine Martin as Secretary of the Company and John I Martin IV as Managing Director in every case.
- [25] The failure of Mr. Durham Martin to complete the purchase of parcel 40 and the subsequent renting of the land by Sylvannie Martin, the Administratrix of his Estate, to Eric Construction and Heavy Equipment Services Limited is also an irregularity which requires resolution. This begs the question raised by Counsel for the defendants as to whether Sylvannie Martin had the lawful authority to put the claimants in possession of the property.
- [26] Counsel for the defendants has also raised the issue as to whether the claimants, not being in possession of a lease or license, can continue to unlawfully squat on the land as a trespasser to the exclusion of the defendants. Conversely, though, the issue could as well be raised regarding the rights and interests of the defendants as the Personal Representatives of the Estate of Geraldine Martin, when no evidence has been produced to confirm that parcels 40 and 41 are part of the estate of Geraldine Martin. It is the existence of all these irregularities that make this matter such an unfortunate one for all the parties concerned.
- [27] Counsel on both sides in their submissions have raised issues that properly should be investigated and determined at trial.
- [28] The order of the Court, therefore, is as follows:
- (1) The application filed by the claimants for summary judgment is denied.

- (2) The Rules require that on dismissing an application for summary judgment that the hearing be treated as a case management conference and in that regard the following trial directions are given:
- (1) That there be Standard Disclosure by the parties on or before 22nd November, 2012
 - (2) The Claimants to call 4 witnesses
 - (3) The Defendants to call 3 witnesses
 - (4) That the parties to file and serve witness statements on or before 14th December, 2012
 - (5) That witness statements do stand as examination-in-chief. All witnesses are to attend the hearing for cross-examination, unless the other side dispenses with such attendance by notice in writing
 - (6) Parties may apply for further directions and orders. Applications to be made on or before 18th January, 2013
 - (7) Listing Questionnaire to be filed by 1st February, 2013
 - (8) The estimated duration of trial will be 2 days
 - (9) Pre-trial Review on the 15th February, 2013
 - (10) Trial date to be fixed by the Court.

[29] Given the circumstances of the matter and the irregularities that both the claimants and defendants were faced with, I will make no order as to costs.

Charlesworth Tabor
Master (Ag.)