

IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2010/0105
[CIVIL]

BETWEEN:

ASHWORTH WILLIAMS

Claimant

and

ROYSTON ANDREW

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Edward P. Alleyne for Claimant
Mr. Rene A. Butcher for Defendant

[2012: July 1st]
July 13th]
[2013: January 30th]

JUDGMENT

[1] **COTTLE J:** The claimant is the registered owner of a portion of land at Durham Estate in Giraudel. He purchased the parcel, admeasuring some 3.080 acres in 1993 from Stafford Shillingford. Access to the parcel was then via a footpath which traversed a ravine. The claimant avers that this ravine made the footpath dangerous during times of rain. The claimant and other neighbouring land owners sought and obtained the permission of Louisa Benoit to use a foot path over lands that belonged to the Estate of Bobby Junkere.

- [2] Louisa Benoit is now deceased. She was the daughter of Bobby Junkere. No evidence has been led as to who, if anyone, are the personal representatives of Bobby Junkere. No evidence has been led to show how his estate has been administered or indeed whether it has been administered at all.
- [3] After receiving the permission of Ms. Louisa Benoit in 1994 the claimant and other land owners hired a caterpillar operator who cut an access road through the land of the estate of Bobby Junkere. In his statement of claim the claimant swears that he used this access road without demur until 2004 when the defendant blocked the road and denied him access. He thereupon filed the present claim seeking damages for trespass and mesne profits. He also seeks to be permitted to continue his use of the access road and prays that an injunction be granted prohibiting the defendant, his servants or agents from entering on the road.
- [4] In his defence the defendant says that the access road is on his property and that he has been using it since 1993. He says that the claimant has alternative access to his lands and had been using that access until 2004 when he sought to use the access road over the defendant's property.
- [5] The claimant gave evidence as did two other neighbouring land owners. They testified along the lines of the statement of claim that they received the permission of Louisa Benoit to cut the access road. They cut that road along a previously existing footpath. A surveyor, Mr. Gaetan Seaman was the surveyor who hatched off from the master plan of the Durham Estate the portions of land now owned by the claimant and his two witnesses. He says that on the master plan is shown a footpath "which has been in use from time immemorial and the same path used (sic) to create the access road to the properties including that of Ashworth Williams."
- [6] In his submissions counsel for the claimant argues that the effect of Section 8 of the Title by Registration Act Chap 56:50 of the Laws of the Commonwealth of Dominica is to give his client indefeasibility of title. Next he points to section 19 of the Conveyancing and Law of Property Act Chap 54:01 which reads:

"A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty or privilege in, or over, or with respect to the land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him shall have, use and enjoy the same accordingly.

- [7] Counsel urges that the conjoint effect of these two sections is that all easements or rights which existed over the land now claimed by the defendant which existed when the original owner was in possession, vest in all subsequent owners. Consequently the defendant, as the present owner of the servient tenement, must recognize the claimant's right of access.
- [8] As a second string to his bow counsel says that the claimant and other land owners expended money and arranged their affairs with the expectation that they had access through the lands of the estate of Bobby Junkere. They used the access unchallenged for 10 years. This gave rise to a "legitimate expectation" that the claimant would be permitted to continue using the access road.
- [9] Finally, counsel also raised the issue of an easement of necessity and cited the case of Meyer et al v Charles 43 WIR 169 in support. It is convenient to dispose of the last point first. No easement of necessity can arise where the owner of the dominant tenement has alternative access, albeit difficult access. This is not a case of implied grant of access as in the case of Wheeldon v Burroughs (1878) 12 CHD 3. Here the claimant says that he had alternative access and began using the access over the defendant's land because it was safer and more convenient.
- [10] The evidence that there existed a footpath when all of the land was in single ownership does not assist the claimant. A single owner may access different parts of his land as he will. This does not create any easement by itself. It cannot then be said that they thereby can be viewed as running with the land to confer a benefit on anyone who subsequently buys part of the land. No burden having rested on the original owner can therefore be said to now rest on the defendant. This gives the claimant no right to demand access on this basis.
- [11] I am not sure that the effort by the claimant to extend the administrative law concept of legitimate expectation to this area of law can be entertained. The claimant does not say that the defendant encouraged him to expend money on the basis of any representation by the defendant. Any representation would have been by Louisa Benoit. The claimant has not shown that Mrs. Benoit was the owner of the land now occupied by the defendant and in any position to make such representation. This submission by counsel for the claimant also fails.
- [12] It is to be noted that this claim is for trespass. The claimant has not established that he was in possession of the access road. It does not form part of the land comprised in his Certificate of Title. In fact his pleadings reveal an acceptance that the land over

which the access road runs is the property, not of the claimant, but of the estate of Bobby Junkere. In the circumstances no claim for trespass can arise. As the claimant has not shown any basis for the existence of the claimed right of access it follows that his claim must fail completely.

[13] The claim is dismissed. The claimant will pay the defendant prescribed costs is the sum of \$7,500

Brian Cottle
High Court Judge