

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCV2011/0232

BETWEEN:

ERNEST NESTY

Claimant

and

ATTORNEY GENERAL

Defendant

**Appearances:**

Mr. David Bruney for the Claimant

Ms Sherma Dalrymple for Defendant

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2013: March 20<sup>th</sup>

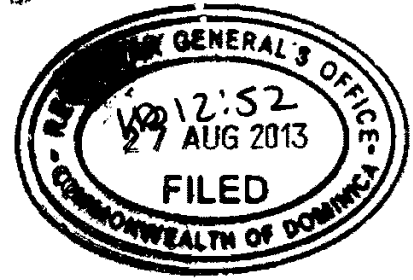
April 2<sup>nd</sup>, 10<sup>th</sup>

August 27<sup>th</sup>

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**JUDGMENT**

[1] **Cottle, J:** The claimant brought a claim against the defendant for negligence and nuisance. In his amended statement of claim the claimant also averred that Ministry of Public Works had responsibility under its maintenance program for the upkeep of a ravine under the Public Works Corporation Act No. 7 of 2006. The claimant says the ministry failed to ensure the proper construction and function of the drainage system servicing the ravine and thereby caused the claimant loss.



- [2] The claimant occupies a parcel of land at the Fond Cole industrial site. He operates a steel fabrication workshop on the site. The claimant says that in or around the year 2000 the Ministry of Public Works constructed a man made ravine and drainage system adjacent to the claimant's property. This altered the original alignment of the then existing watercourse and has led to flooding in the claimant's workshop. The claimant says that there was flooding of his premises in November 2005, August and September 2007, July and September 2009, July and September 2010 and July 2011
- [3] The claim is also said to be in negligence. The particulars aver that the defendant-
- a. *failed to conduct an environmental impact assessment either before or after the construction of the said ravine (The Claimant will rely on the Environmental Health Services Act No. 8 of 1997 for its full meaning and effect.)*
  - b. *Built a 90 degree drain thereby allowing accumulation of debris, thereby creating a flood zone*
  - c. *Failed to construct proper or adequate drains on or around the ravine having regard to the topography of the land.*
  - d. *Failed to clear the artificial ravine regularly*
  - e. *Failed to clear the artificial ravine prior to the rainy season and/or hurricane season*

#### **Nuisance**

- [4] In his closing submissions, counsel for the claimant made reference to section 8 (1) (a) of the Environmental Health Services Act No. 8 of 1997 which reads ***"The Department shall arrange and carry out all functions which are required for the proper discharge of the responsibilities and functions of the Minister under this Act, and without prejudice to the generality of the foregoing, the Department shall –***
- a) ***investigate problems and institute preventive and remedial measures in respect of environmental pollution, the management and disposal of solid, liquid and gaseous wastes, food and drink management, nuisances..."***
- [5] Counsel adopted this course of argument because he was not able to show by evidence that the defendant was an owner of any lands in the vicinity of the claimant's property. Unfortunately there was no pleading which raised the issue of a breach of any statutory duty imposed on the defendant by this statute. In Leaky v National Trust [1980] QB 485 CA it was held that an occupier of land owes a

general duty of care to a neighboring occupier in relation to a hazard occurring on his land whether such hazard is natural or manmade.

- [6] In the circumstances of this case the claimant has led no evidence to show either that the defendant occupied any land in the neighborhood of the claimant or that any hazard occurred on any such land.

### **Negligence**

- [7] In order for the claimant to succeed in a claim for negligence he must show that the defendant owed him a duty of care, that there was breach of that duty and the claimant suffered loss as a consequence. The present claimant complains of the construction or maintenance of a ravine. He says that this has caused flooding of his premises. The claimant called Mr. Cleveland Royer the person who built the ravine. He says he was engaged by Mr. Julius Timothy, the then Minister of Finance to perform the works. He was cross examined. He says that he had no contract with the Government of Dominica. He was not paid by the Government of Dominica. He did not submit invoices for payment to the Government of Dominica. It is unclear why the Minister of Finance would be responsible for the execution of public works. I find that the claimant has failed to show that the ravine he complains of was constructed by the defendant

- [8] The exact cause of the floods is also a matter that the claimant has to satisfy the courts as a failing on the parts of the defendant. The claimant gave evidence. He was cross-examined as to the cause of the floods that occasioned his loss. He said that during periods of heavy rainfall debris would become lodged against a grill in the ravine. This debris would impede the flow of water and there would be a flood of his premises. The claimant's witness, and builder of the ravine Mr. Royer, says that the grill is located on private property owned by persons who are not party to this claim. No evidence was led to show that the defendants are responsible for the installation or maintenance of the grill.

### **Breach of Statutory duty**

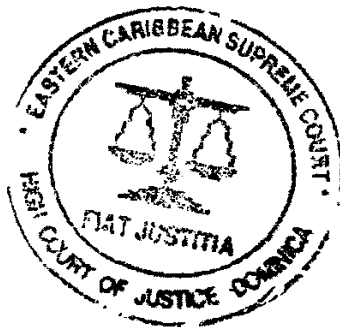
- [9] The case for the claimant is that the Ministry of Public Works had full responsibility for the construction, creation, maintenance and upkeep of the ravine and adjacent drainage system. It is said that the ministry unreasonably failed. In support of this position the claimant pointed to a document produced by Chief Technical Officer in the Ministry, Mr. Kendell Johnson. In that document Mr. Johnson had written that the Ministry of Public Works under the maintenance program had responsibility for

the upkeep of the ravine. The claimant's position is that the defendant failed to upkeep the ravine and thus led to the flooding.

[10] An analysis of the evidence led before this court does not support that position Mr. Royer is his report says the area is swampy and traversed by a number of watercourses. Quarrying done in the area, sedimentation and unregulated construction of houses contribute to the flooding. The claimant identified the grill as part of the problem.

[11] The particular statutory duty pleaded by the claimant as having been breached is said to have been imposed by the Public Works Corporation Act, Act No. 7 of 2006. No particular section is cited. I have examined the act. I cannot discern that it imposes any duty to the claimant owed by the defendant. The act serves to incorporate the Public Works Corporation. It does not impose a statutory duty for the benefit of a limited class of persons of which the claimant would form a part.

[12] I find that the claimant has failed to establish by evidence that the defendant has done any act which would give rise to a claim either in nuisance or negligence. No statutory duty is revealed in the pleadings which it can be said that the defendant breached. In these circumstances the claim is dismissed. I am sensitive to the losses suffered by the claimant. I will therefore make no order as to costs in this action against the state.



*Brian Cottle*  
Brian Cottle

High Court Judge