



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014

CLAIM NO: MNIHCV2007/0006

BETWEEN:

EDWARD FENTON

Claimant

and

CLAUDE GERALD

Defendant

Appearances:

Mr. David Brandt for the Claimant
Defendant in person

2013: September 23
2014: April 16

Judgment

- [1] **Redhead, J. (Ag):** The Claimant Edward Fenton on 23rd February 2007 filed a Fixed Date Claim in which he claims an Order that the Defendant remove with immediate effect the pegs which he the Defendant placed on his land and right of way by virtue of a survey done on or about the 30th day of May 2004 and restoring the pegs on the Claimant's land as they stood on 15th August 1984
- [2] The Claimant in his Statement of Claim alleges inter alia:
That he through himself and predecessors in title is and was the freehold owner and was possessed of property known as Block 13/7 Parcel 38 in St. Peter's Registration Section and was also entitled to a right of way from the said property to the Brades Public Road and back again from the High way over lands previously owned by Walter Wade to his property since 1961.

- [3] The said land and right of way which is shown on the plan was surveyed by Richard Ryan a licensed Land Surveyor on or about 15th August 1984 and approved by B. B. Burke the then Government of Montserrat Chief Surveyor on 27th April 1988 under the Land Survey Ordinance 1975.
- [4] The Claimant alleges that on or about 30th May 2004, the Defendant either by himself, his servants or agents or otherwise re-surveyed Block 13/7 Parcel 37 St. Peter's Registration Section and while doing so entered Block 13/7 Parcel 38 (Lands owned by the Claimant) St. Peter's Registration Section, the property of the Claimant and demarcated 851 square feet from the Claimant's said land and incorporated it into Block 13/7 Parcel 137 St. Peter's Registration Section.
- [5] That is to say in 1984 the Defendant's land Block 13/7 Parcel 37 measured 7065 square feet and by adding the 851 Square feet of the Claimant's land to Block 13/7/37, the said land now measures 8899 Square feet and this reduced the size of the Claimant's lot by 851 Square feet.
- [6] The Defendant while re-surveying lot 13/7 Block 37 also cut part of the Claimant's right of way as represented on the line A-X-C on the plan.
- [7] The Claimant also alleges that while he the Claimant was abroad, the Defendant removed the stone shoulders which act as a demarcation mark from the Defendant's land to the right of way to increase the size of lot 13/7/37 further on, thereby reduced the area of the right of way further.
- [8] The Claimant alleges that the Defendant by entering upon the land (of the Claimant) and the right of way has caused the Claimant loss and damage.
- [9] The Claimant's father was Simeon Fenton. In his Witness Statement, the Claimant says that around November 1962 he sent his late father monies to purchase two tasks of land identified as Block 13/7 Parcel 38 St. Peter's Registration Section from Richard Allen.

- [10] Mr. Edward Fenton, in his Witness Statement says that he finally received his Land Certificate to Block 13/7 Parcel 38 on 17th August 2006 and he immediately recognized that the boundary markers had been altered or changed.
- [11] In answers in cross-examination to the Defendant the Claimant says that he sent the money to his father to buy the land within a year of going to St. Thomas.
- [12] He says that he first saw the land in 1948 when he went to Brades to live. Mr. Fenton says that initially he was not intimately familiar with the boundaries of the land but his father knew the boundaries which were clearly marked by pegs:
- [13] The Claimant said in answer in cross-examination by Defendant that at one time he had difficulty in finding a particular peg which was close to the Defendant's land. As he was looking for the peg the Defendant came out of his house. The Claimant asked the Defendant if he knew where the peg was. The Defendant pointed out where the peg was.
- [14] Richard Ryan gave a Witness Statement which was filed on 27th September 2008. He says that he is a Professional Land Surveyor.
- [15] In 1984 he was commissioned by Mr. Simeon Fenton, the father of the Claimant to survey Parcel 38 of St. Peter's Registration Section Block 13/7. He performed the said survey and drew a plan evidencing the area surveyed with a right of way as shown on the plan and approved by B. B. Burke Government of Montserrat Chief Surveyor.
- [16] He says at the same time that he was doing the survey for Mr. Simeon Fenton, he was asked by Mr. Claude Gerald to do an independent survey of Parcel 37 Registration Section St. Peter's Block 13/7. He has exhibited the plan of Survey.
- [17] He performed the survey in the presence of both Simeon Fenton and Claude Gerald who were present at the same time and who in the presence of each other pointed out and verified that the

boundaries for Parcels 38 and 37 Registration Section St. Peters Block 13/7 respectively were true and correct.

[18] Both parties paid him separate professional fees indicating that each survey was to be considered a separate entity for title purposes which I find to be remarkable and in fact in my opinion disingenuous on the part of the Defendant; he has brazenly put to Mr. Ryan in Cross examination:

[19] Mr. Ryan had said in answer to a question from the Defendant – **“I did a survey for you after instructions. I produced a plan for you.”** The Defendant then said to Mr. Ryan **I put it to you that “you did not do a survey for me, you took my \$900.00 and you did not work for me!”** To which Mr. Ryan’s response was **“totally false”**.

[20] In view of the plan which is exhibited, how could the Defendant put to Mr. Ryan that he Mr. Ryan did not do any survey for him?

[21] Moreover in his Witness Statement the Defendant in paragraph 11 says:

“In or about the middle year 1984, I engaged Licensed Surveyor, Richard Ryan, showed him the original receipt which I photocopied for reference. I paid \$900.00 for the survey. He ignored the size given and original boundaries shown and instead was wooed by Claimant’s parents, through the lure of ‘more work’ and placed the survey boundaries exactly as told by the parents.”

[22] To my mind this is a far-cry from saying that Mr. Richard Ryan did not carry out a survey but he did so as directed by the parents of the Claimant. In effect accusing the Surveyor of dishonesty.

[23] I accept Mr. Ryan’s evidence as truthful that he did an independent survey for the Defendant in the presence of Mr. Claude Gerald the Defendant and Mr. Simeon Fenton, the Claimant’s father, both pointed out the respective boundaries of those plots.

[24] At the conclusion of the hearing of this matter, I felt that in order to arrive at a fair resolution of this matter a survey of plots should be carried out and report should be presented to this court. It was so ordered and a report was produced by Mr. Ryan filed on 27th November 2013.

[25] In his report Mr. Ryan says **"The problem came into existence when the Claimant (Mr. Claude Gerald) [Defendant] in my opinion forcefully and illegally entered on the property of Edward Fenton the Defendant [Claimant] and engaged the services of Licensed Surveyor Dawn Nicholas to adjust Parcel 13/7/38 in an effort to accommodate and satisfy his intention to increase the area of his abutted Parcel 13/7/37".**

OBSERVATION – SURVEY WORK

[26] "After reliable reconnaissance undertakings, provision survey work was performed and this resulted in the following:-

- a) Survey Markers missing were replaced with a close regard for approved plans and registered data.
- b) Survey Markers found were meticulously checked for completeness and to verify if all field data with respect to the parcels under reference coincide with the Land Registry record.

[27] A cursory glance at field work and computations relative to parcel 38 were [sic] altered causing a negative discrepancy to Land Registry record pertaining to parcel 38 and corresponding positive discrepancy to parcel 37. More specifically, the survey performed by Dawn Nicholas increased the size of parcel 37 from 7065 square feet to 8899 square feet and decreased the size of parcel 38 by the same amount [in square feet]."

[28] Finally Mr. John Richard Ryan says:

"To alter the boundary of any registered parcel within the Land Registry, it is always necessary and mandatory to:

- a) **Notify the Surveyor concerned in writing of the proposal at hand.**
- b) **Briefly notify the owner of the abutting Parcel of your proposed intention.**
- c) **Obtain written directive from the Chief Surveyor after careful consideration.**
- d) **Verify the legality of the proposed activity."**

- [29] It is quite clear that the above was not done in the case at bar. Therefore the purported alteration done by the Surveyor Dawn Nicholas was unlawful and invalid. This was done deliberately by the Defendant in the absence of the Claimant when he was away in St. Thomas. The Defendant obviously was aware of where the boundary markers were as I accept that he was present when Mr. Ryan did the survey. I accept too that he agreed at the time of the survey with where the markers were placed then. Why did he replace them in the absence of the Claimant? The answer to my mind is obvious.
- [30] It is therefore ordered that boundaries of Lots 37 and 38 be readjusted back to its original state as the survey plans showed and drawn by John Richard Ryan on 18th August 1984. This will restore 851 square feet to Claimant's parcel; Block 13/7 Parcel 38 St. Peter's Registration Section.
- [31] Costs to the Claimant on a Prescribed Costs basis.



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Albert Redhead
High Court Judge