

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2013/0144

BETWEEN:

CONSTANTINE HALSTEAD

Claimant

AND

WILLIAM BENJAMIN

Defendant

Appearances:

Mr. Peyton Knight for the Claimant

Miss Samantha May for the Defendant

2014: May 10
July 07, 18

ON WRITTEN SUBMISSIONS

- [1] **Cottle, J.:** The facts of this dispute are agreed by the parties. On or about 13th February, 1988, the claimant sold a parcel of land to Mr. Leonard Tim Hector. The parcel was registered as parcel 233 Block 43 1695B in McKinnons. Mr. Hector enclosed the parcel with a fence. The claimant observed that the fence took in more land than had been sold to Mr. Hector. The dispute was brought to the attention of Mr. Hector by the Development Control Authority, no doubt upon complaint by the

claimant. Mr. Hector wrote to the Development Control Authority and undertook not to develop the portion of land in dispute. The letter was under the hand of Mr. Hector's legal representative.

- [2] The dispute lingered. The claimant took no steps to have it resolved.
- [3] The defendant purchased the land in 2003. The purchase was by way of private treaty from the ABI Bank which held a mortgage over the land. The defendant occupied the area enclosed by the fence erected by Mr. Hector in 1988. On 28th February, 2013, the claimant brought the instant claim. He seeks to have the fence removed. He seeks a declaration that the fence is on his land. He prays for damages for trespass and the alteration of the boundaries.
- [4] The defendant filed an application to have the claim struck out as statute barred. The claimant filed an affidavit in response averring that the claim is not statute barred as the fence constitutes a trespass and that each day the fence continues in its position constitutes a fresh trespass, and amounts to a fresh cause of action.
- [5] It is on this single issue that the attorneys for both parties agree that this claim turns. They have helpfully assisted this court by filing written submissions on the point.
- [6] The Limitation Act at section 11 (1) reads:-
"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if first accrued to some person through whom he claims, to that person."
- [7] Counsel for the claimant contends that his claim is one in trespass, a continuing tort. According to Ms. May for the claimant:-
"...the Statute of Limitation does not commence to run until the Claimant has a complete and perfect cause of action. A complete cause of action does not exist until the Claimant has sustained some loss or damage. The Claimant submits that he did not sustain any loss or damage until recent times when he has attempted to sell his land and was unable to so do as a result of the encroachment. The Claimant submits that it was then that his cause of action accrued."

- [8] In support of this argument Ms. May cites Holmes v Wilson (1839) 10 A & E 503. In that case the defendants placed buttresses on the claimant's land to support a sinking road. It was held that they were liable for a further action each day they failed to remove the buttresses unlawfully placed on the claimant's land.
- [9] Applying that reasoning to the present case, Ms. May says the issue of the Limitation Act does not arise as the trespass continues from day to day.
- [10] Mr. Knight for the defendant begins by citing Halsbury's Laws of England Vol. 28 at paragraph 768:-
"Meaning and Effect of "Adverse Possession" – No right of action to recover land accrue unless the land is in the possession of some person in whose favour the period of limitation can run. Such possession is called adverse possession. What constitutes such possession is a question of fact and degree; there is no general principle that to establish possession of an area of land, the claimant must show that he made physical use of the whole of it. On the other hand a claim to prescriptive rights to easements may be so extensive to amount practically to a claim to the whole beneficial user of the servient tenement, in which case it can only succeed as a claim to adverse possession."
- [11] On the agreed facts, the predecessor in title of the defendant had demonstrated clearly that he was in adverse possession of the disputed property since 1988 when he erected a fence to enclose it. It was at that stage that the claimant had a right to bring an action for recovery of possession. Time began to run for the claimant then. I find that I cannot agree with the argument advanced by Ms. May for the claimant. If her contention were correct, there would never be any situation under which the Limitation Act would be applicable. A landowner who sat idly by for 20 years would be able to come to the court and say I am not suing for the past twenty years occupation of my land. I am only seeking to recover possession for yesterday's trespass. That proposition is clearly wrong.
- [12] The present claimant has failed to avail himself of the opportunity to evict a squatter who encroached on part of his land. He did not bring an action within 12 years of the occurrence of the

entry and annexation of his property. In these circumstances he cannot maintain the present claim.

[13] The application by the defendant is granted. The claim is struck out on the basis that it is statute barred. The claimant will pay the defendant the costs of this application in the amount of \$750.00.

Brian Cottle
High Court Judge