THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2013/0271

BETWEEN:

GLENFORD TURNER

Claimant

AND

PATRICK SEGAL

JANIE SEGAL

Defendant

Appearances:

Ms. Samantha May and Mrs. Kivinee Knight-Edwards for the Claimant
Mr. John Fuller for the Defendants

2017: March 29

JUDGEMENT

[1] HENRY, J.: By the Amended Claim Form filed herein the claimant (Mr. Turner) seeks damages for trespass at the rate of US$50.00 per day, alternatively the sum of US$50.00 per day for the defendants use of his land from August 5, 2009 to October 22nd 2010 and the sum of EC$9,421.17, the cost of repairs to his fence plus costs and interest.

[2] Mr. Turner is the registered proprietor of property described as Registration Section: South West; Block 55 1182D; Parcel 46. The defendants (the Segals) are the joint proprietors of the adjoining parcel 47. Mr Turner asserts in his claim that in or about August 2009, the Segals were involved in the construction of their residence on parcel 47. On or about August 5, 2009, Mr. Turner indicated to the Segals his willingness to grant to the Segals, their servants, employees and agents permission to enter upon his property to access their property in order to facilitate construction works upon

certain conditions. According to Mr. Turner the conditions were the payment to him of a fee of US$15,000.00 and the paving of a portion of the driveway to Mr. Turner's property. Accordingly, from August 5th 2009 to July 26th 2010 the Segals, along with their servants and employees used Mr. Turner's property to access their property. Mr. Turner alleges that the Segals have failed to pay the sum of US$15,000.00 and have failed to pave the driveway.

[3] Furthermore, the claimant alleges that in or around July 26th 2010 the claimant pad locked the entry gate of his premises and displayed a "No Trespass" sign on his gate and conveyed to the Segals that he was charging a fee of US$50.00 per day for the use of his land. Notwithstanding, the Segals by themselves, their servants, employees and or agents wrongfully continued to make use of Mr. Turner's property for purposes connected with the construction of the Segals' home and to pile up top soil. By reason of these matters Mr. Turner alleges that he has suffered loss and damage as set out above.

[4] In their Amended Defence, the Segals plead that there was an oral agreement with Mr. Turner made on 5th August 2009, whereby it was agreed that, in consideration of the payment of US$10,000.00 and the paving of a portion of Mr. Turner's driveway, the Segals would have the right to a pedestrian and vehicular right-of-way over a portion of Mr. Turner's land. In pursuance of the said agreement, the Segals instructed their Attorney to prepare a written agreement setting out the terms of the oral agreement including the grant of an easement. In or about September 2009, the Segals' Attorney delivered the documents to Mr. Turner together with a copy of a bank draft in the sum of US$10,000.00 and informed the claimant that upon his executing the said documents the draft would be delivered to him and the driveway would be paved immediately. However, Mr. Turner did not sign the documents for the following six months. He informed the Segals' Attorney that he was awaiting his Attorney's advice.

[5] Meanwhile, according to the Segals, throughout the six months Mr. Turner gave permission for the Segals' contractor to use the portion of the claimant's land over which the right-of-way was agreed to deliver materials to the Segals' land. During that time, a portion of Mr. Turner's fence was removed, with his permission, to facilitate the delivery of materials. The Segals undertook to replace the fence, and have done so. The Segals therefore admit that from August 5th 2009 to July 26th 2010 they used Mr. Turner's property to access their property to facilitate the construction of their home. They assert that the said use was pursuant to the original agreement and was done with the permission of Mr. Turner.

[6] By letter dated the 3rd March 2010, Mr. Turner's Attorney responded to the documents delivered to Mr.Turner in September 2009. The Segals allege that the letter purported to fundamentally alter the oral agreement and demanded a "licence fee" of US$1,000.00 per year and EC$9,421.17 for repairs to the fence in addition to the paving of the driveway. This proposal was not accepted by the Segals. Further discussions took place between the parties. The Segals allege that Mr. Turner continued to insist on a "license fee" which was unacceptable to them.

[7] The Segals` pleaded position is that up to the 26th July 2010 they had permission to use the portion of Mr Turner's land with no charge whatsoever. They deny Mr. Turner's assertion that having padlocked his entry gate and displayed a "no trespasser" sign, and having conveyed to them the charge per day for the continued use of his land that the Segals by their servants, employees and or agents wrongfully continued to make use of Mr. Turner's property. They cite one exception: an instance in October 2010, when an independent contractor delivering top soil to the Segals', dumped top soil on a portion of Mr. Turners land, which was immediately removed.

[8] With regard to the amount claimed for repairs to the fence, the Segals assert that the fence has already been repaired at their own expense.

[9] In reply, Mr. Turner denies that there were discussions for a pedestrian and vehicular right of way over a portion of his land. He avers that the oral agreement was for the purpose of granting the Segals a way of access to their land during the construction of their property. He states that at no time did he intend or agree to provide the Segals with a right of way over his land, nor did he intend to provide them with access after construction. The discussions at all time were in regard to a temporary arrangement until the construction of the Segals' property was complete. Mr. Turner maintains that his fence is still in need of repairs.

Trespass

[10] The act of remaining or entering on land without a right to do so is generally regarded as a trespass. It is the unauthorised and unjustifiable entry of land in the possession of another. The Segals admit that they, by their servants and employees, entered upon Mr. Turner's land. However, they assert that they did so with his permission and therefore have not committed a trespass.

[11] The evidence which the court accepts is that Mr. Segal having approached Mr. Turner with regard to allowing some sort of passage through Mr. Turner's land, the parties entered into negotiation. The court does not accept that there was an agreement for the Segals to pay US$15,000.00. Mr. Turner on cross examination gave evidence that Mr. Segal did not agree to that sum and that, as a result, they met and agreed to US$10,000.00 in addition to Mr. Segal paving a part of the driveway. This was in August 2009. The intention as revealed in the evidence was that a written agreement be prepared. However, the parties between August 2009 and July 2010 never executed the written agreement. However, during this period, the Segals, by their servants and employees, passed and repassed over Mr. Turner's land as construction continued. This entry, the court finds was with the permission and knowledge of Mr. Turner. Mr. Turner's evidence on cross-examination is that he gave permission over his land during the construction of the Segals' home. He further indicated that he unlocked the gate leading into his property after he met with Mr. Segal. Without his unlocking of the gate no entry could have taken place.

[12] Once Mr. Turner's Attorney finally reviewed the draft document, it became apparent that the parties were in disagreement as to the nature of the right to be granted.

[13] In fact, Mr. Turner's Attorney responded to the draft agreement by letter dated 3rd March 2010 in the following terms:

> "We act for and on behalf of Mr. Glenford Turner of Turners in connection with your clients' offer to purchase our easement over a portion of his land at Turners to facilitate easier access to their property which abuts and abounds our client's land.
>
> Our client has carefully review your proposal but rejects the same and instead is prepared to grant to your clients a license over the demarcated area for a period of 20 years upon the following basic terms:
>
> 1. That a license fee of US$1,000.00 per annum shall be payable on the 1st August each year commencing 2009.
> 2. That your clients shall pay to Mr. Turner the sum of $9,421.17 as per the attached supporting documents for damage caused to his fence.
> 3. That your clients shall construct a paved road to run a distance of 47 meters from the entrance and at a width of 15 feet with proper guttering to be placed at both edges of the said road."

[14] By June the matter had not been resolved and Mr. Turner's Attorney again wrote on 22nd June to Mr. Fuller:

> "Further to our letters to you on the 3rd and 29th March 2010 to which we have received no response to date.
>
> Please be put on notice that in the event that we fail to have a response from you within 10 days hereof, we will be forced to block off the access road and deem any attempts by your clients to remove the same as a continuing act of trespass, and will accordingly take the necessary legal action to restrain them from so doing."

[15] A further letter was written to Mr. Fuller dated 14th July 2010. It reads in part:

> "Further to our discussions of Monday 12th July 2010 please be advised as follows:
>
> My client maintains that there was no concluded agreement in place and upon your Chambers preparing the requisite paperwork our client sought legal advice to interpret the documents produced. Based upon our client's instructions we duly issued a counter proposal on 3rd March, 2010 having heard nothing further from you in spite of our subsequent letters of 29th March and 22nd June 2010. On 7th July, upon our client's instructions, we duly advised that on 12th July our client would close the gate to his premises until this matter was resolved.

In the spirit of compromise, and in a show of good faith, our client has agreed to allow uninterrupted access through his gate until we have an opportunity to meet further on this matter on Monday 26th July at 2 pm at your chambers.

Having taken your concerns as to the grant of a license into consideration we would be prepared to extend the term of the license to 50 Years.

Also, your client would pay for the term in 1 lump sum and thereby secure the entire term.

Alternatively, if no agreement can be reached our client proposes that he be paid rental for the use of his land from 1st August 2009 to 1st August 2010 at a rate of US $50.00 per day and that thereafter your clients would create alternate access to their premises."

[16] The final letter to Mr. Fuller is dated 21st October 2010 and reads in part:

"Further to our letter of 14th July 2010 to which we have had no response to date, and since your cancellation of the proposed meeting of 26th July 2010, no further attempt has been made by your client with respect to payment for a right of way. As such the penultimate paragraph of our letter stands and our client accordingly demands rent/damages in trespass in the sum of US$50.00 per day from 1st August 2009 through 22nd October 2010 both days inclusive in the sum of US$22,400.00

Please note that from 23rd October 2010 our client will not permit your clients either directly or indirectly through their servants or agents to enter upon his property and any violators will be ejected from our client's premises."

[17] By the letter of 14th July 2010, continued uninterrupted access was given to the Segals by Mr. Turner until the parties could meet for further discussions. The Segals therefore cannot be said to have committed trespass during this period. Further by the letter of 22nd October 2010, Mr. Turner made it clear that permission was withdrawn from 23rd October 2010. Therefore no question of trespass can arise prior to 23rd October 2010.

[18] The issue is whether Mr. Turner is entitled to be compensated for the use of his land during the relevant period or whether as asserted by the Segals, there was an intention that the use be free of cost. From the evidence the focus from the beginning was on the sum to be paid and less on the nature of the right to be granted to the Segals. Mr. Turner's evidence, which I accept, is that he was first approached by the contractor Mr. Hall, who asked him for access through his property to the Segals' property. Mr. Turner's immediate response was who is going to be the one to pay me? Mr. Turner told him he would need to meet with the Segals. At the subsequent meeting with the Segals, again the focus was on the sum to be paid. In the letter of 14th July 2010, Mr. Turner made an alternative offer for the payment of a sum for use at a particular rate. The offer was never accepted by the Segals. No response was made by them to the offer.

[19] In the letter of 21st October 2010, Mr Turner reasoned that since the Segals had not responded that the said terms for the payment of use stood and he demanded payment of the sum of US$22,400.00 for the period 1 August 2009 to 22nd October 2010 at the rate of US$50.00 per day.

[20] In 1976 Megaw LJ observed that:

> "In order to establish a contract, whether it be an express contract or a contract implied by law, there has to be shown a meeting of the minds of the parties, with a definition of the contractual terms reasonably clearly made out, with an intention to affect the legal relationship.[1]

[21] On the evidence, there was no agreement for the payment of the rate demanded by Mr Turner. However, the evidence does show that it was the intention that Mr. Turner be compensated for the use of his land for the entire period of use. This was the subject of the negotiation. Mr. Turner is entitled to a reasonable sum for the use of his land for the period August 2009 to 22nd October 2010. There is no evidence of use of the land by the Segals after October 22nd 2010. There is insufficient evidence to enable the court to make such an assessment. Therefore reasonable use to be assessed is awarded to Mr. Turner.

Damages for fencing

[22] At trial the sum claimed for repairs was reduced from EC$9,421.17 to EC$7,182.00. The Segals admit that they agreed to repair any damage done to the fence and they admit that the contractor removed a part of the fence to facilitate delivery of materials. They assert however that the fence was repaired. The contractor, Mr. Hall, gave evidence that at the end of the construction, he repaired the fence better than they met it. His view is that they improved on what was there. Mr. Turner asserts however that the fence has not been repaired to his satisfaction; that it is not in the same condition it was in when it was removed and that he is entitled to have it so restored. He cites two areas of dissatisfaction: (1) the restored wire fence is rusty and (2) the fence poles are placed on the wrong side so that the fence now appears to be the property of the Segals.

[23] With regard to the condition of the fence, Mr. Hall's evidence is that the fencing once removed was kept on site out in the open. He expressed the view that one does not normally cover fencing material. With regard to the poles, he could not say what side the poles were on before he took the fence down. But according to him, it does not matter which side the posts are on, as long as they are on the boundary line, which they are.

[24] Mr. Turner was entitled to have the fencing restored to the condition it was before it was damaged and parts removed. There is no evidence that the fence was rusty when it was removed. Therefore Mr. Turner is entitled to have the rusty fencing replaced. There is no evidence that the poles were unfit. Therefore the court will award the cost of the fencing only plus labour and trucking costs.

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[1] Horrocks v Foray [1976] 1 All ER 737 at 742, [1976] 1 WLR 230 at 236.

Conclusions

[25] The court finds that during the period August 2009 to 22nd October 2010, the Segals used Mr. Turner's land as a means of access during the construction of their property. The use was with the full knowledge and consent of Mr. Turner. Accordingly, the Segals could not be held to have committed a trespass. However, the court finds that there was no agreement that the Segals would use Mr. Turner's land free of cost. In fact the parties contemplated that Mr. Turner would be compensated for the use of his premises and had entered into negotiations. Accordingly, Mr. Turner is entitled to reasonable compensation for the use of his land during this period. Mr. Turner is also entitled to replacement of the rusty fencing wire together with labour and transportation costs: as follows: Fence wire and tie wire the sum of $1,935.00; labour $1,500 and trucking cost $300.00

[26] Accordingly, Judgment is granted in favour of the Claimant, Mr. Turner, as follows:

1) A sum to be assessed if not agreed for the defendants` use of the land for the period August 2009 to 22 October 2010;
2) Cost of repairs to fence in the sum of $3,735;
3) In regard to the assessment the court office is to fix a date for the assessment during the next term;
4) Parties are to file and serve witness statements within 30 days;
5) Parties are to comply with CPR part 32 in respect of any expert reports to be filed.
6) Prescribed cost to be determined at the assessment;

CLARE HENRY
High Court Judge
Antigua & Barbuda