

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0162

BETWEEN

RITA CUMBERBATCH NÉE MCCLAIN

APPLICANT

AND

RANNIE GLASGOW

otherwise known as Alban Glasgow

RESPONDENT

Appearances:

Ms. Annique Cummings for the applicant.
Respondent in person.

2018: Jan. 22
Feb. 5

DECISION

BACKGROUND

- [1] **Henry, J.:** Mrs. Rita Cumberbatch née McClain claims to be the owner of a parcel of land at Vermont, which her grandmother Irene Straker gave her by Deed of Gift. She alleged that Mr. Rannie Glasgow trespassed onto her land in or around 2012 and constructed a foundation on it. She asserted that Mr. Glasgow has since brought blocks onto the land, evincing an intention to build on it.

- [2] On 15th November 2017, Mrs. Cumberbatch filed a Notice of Application in which she sought an injunction to restrain Mr. Glasgow from entering, crossing, building or finishing any structure on or otherwise interfering with the subject land. She also claimed damages and costs.
- [3] Mr. Glasgow represented himself at the hearing. He testified that his name is 'Alban Glasgow' and not Rannie Glasgow as stated in the Application and supporting documentation. I will refer to him by his correct name - Alban Glasgow - in this decision. Mr. Glasgow denied trespassing on Mrs. Cumberbatch's land.
- [4] He alleged that he constructed the foundation on government reserve property with permission from the government. He claimed that the land on which he built is not part of Mrs. Cumberbatch's property. He strenuously opposed Mrs. Cumberbatch's application.

ISSUE

- [5] The issues are:
1. Whether Mr. Glasgow has trespassed on Mrs. Cumberbatch's property? and
 2. To what remedies is Mrs. Cumberbatch entitled?

ANALYSIS

Issue 1 – Has Mr. Alban Glasgow trespassed onto Mrs. Cumberbatch's property?

- [6] In determining whether Mr. Glasgow has trespassed on Mrs. Cumberbatch's property, the court must decide whether both parties are referring to the same land, and whether Mrs. Cumberbatch has established that Mr. Glasgow has built on her property.
- [7] Mrs. Cumberbatch filed two affidavits¹ which were largely accepted as her evidence in chief. Portions of the first affidavit were excised as they were found to contravene the hearsay rule. Mrs. Cumberbatch was cross-examined by Mr. Glasgow. She testified that her grandmother gave her the subject property in 1983, as evidenced by Deed of Gift No. 1751 of 1983 which she produced.

¹ On 15th November 2017 and 12th January 2018 respectively.

Mrs. Cumberbatch tendered a survey plan - A15/97² - which she said depicts the subject land at Vermont. Mr. Glasgow did not dispute that Mrs. Cumberbatch owns the property conveyed by that deed as illustrated in the survey plan.

- [8] The parcel of land depicted on that survey plan amounts to 5,233 sq. ft. Significantly, it contains an endorsement which states:

‘This plan supersedes a portion of A12/9.’

Another endorsement on it states:

‘Surveyed by me with due authority in December 2017 at the instance of **Rita Mc Clain**’.
(bold mine)

- [9] Mr. Glasgow also produced a survey plan which purportedly shows the land to which he referred throughout as being government reserve land which he received permission to occupy. That survey plan A12/9³ shows a parcel of land amounting to 2,174 sq. ft. It reflected that the survey was commissioned by a government entity. It states in part:

‘Surveyed by me with due authority in April 2010 at the instance of the **Housing and Land Development Corporation**’. (bold mine)

Mr. Glasgow maintained that the lands depicted on his survey plan (A12/9) are not identical to the lands in Deed of Gift No. 1751/1983.

- [10] The law provides that a survey plan that is authenticated by the Chief Surveyor’s signature, shall in any court of law and in any proceeding of a legal nature be conclusive evidence of the survey information comprised in it unless the plan is cancelled. Having regard to the endorsement which states that survey plan A12/9 was replaced in part by plan A15/97, I have no difficulty in finding that:

1. Mrs. Cumberbatch and Mr. Glasgow are claiming interests to the same piece of land; and

² Which was lodged and approved by the Chief Surveyor at the Lands and Survey Department on 14th December 2017.

³ Lodged and approved by the Chief Surveyor at the Lands and Survey Department on 4th June 2010.

2. as regards the disputed parcel of land, survey plan A15/97 is the correct and authoritative representation of the boundaries and other survey data contained in it.

[11] The Schedule to Mrs. Cumberbatch's deed describes two separate areas of land. The first description refers to 'ALL THAT LOT PIECE OR PARCEL OF LAND situate at Very Vine at Francois Mountain ... being 3 acres more or less...'. The second describes the other parcel as:

'ALL THOSE adjoining lots pieces or parcels of land situate at Vermont in the State of Saint Vincent and the Grenadines and is abutted and bounded on the North by lands formerly owned by Hilda Joseph now in the possession of Alphonso Joseph on the South by lands of Joseph Mattis on the East by a road and land formerly owned by Johnathan Moses now in the possession of Samuel Moses and on the West by a public road ...'

[12] In response to questions from Mr. Glasgow, Mrs. Cumberbatch admitted that the deed does not indicate the area of the disputed land but she pointed to the description of the boundaries. She explained that the Schedule states who owns the neighboring lands adjacent to hers. She indicated that the land is bounded on the right by land owned by one Joseph, on the left by the road, and by her cousin David Matthis at the 'bottom'. In response to Mr. Glasgow's questions she denied that a 7 foot road exists close to where the foundation is constructed.

[13] It is worth noting that survey plan A15/97 refers to heirs of Joseph Mattis in respect of the southern part of the subject land and heirs of Alphonso Joseph to the West. The North of the plan depicts the main road while the southern boundary shows an existing road, which based on the legend computes at roughly 12 feet in width. The lands on the eastern side contain the names Johnathan Moses and Kalib Jobe. From the foregoing, it appears that Mr. Glasgow's reference to a 7 foot road is actually representative of the roughly 12 foot road.

[14] Mr. Glasgow's plan names 'D. Isaacs, E. Velox and M.C.W.' as the persons occupying the lands respectively on the northern, eastern and western boundaries. It also shows a 7 foot access road on the South. This plan having been superseded by Mrs. Cumberbatch's survey plan is no longer

valid. It therefore has little evidentiary value except to the extent that it mirrors survey plan A15/97. I hasten to add that neither plan mentions government reserve land.

[15] Mr. Glasgow showed a copy of survey plan A12/9 to Mrs. Cumberbatch. She identified as hers, the land depicted on that plan. However, under re-examination she recanted. She seemed very unsure and contradicted herself on this score. It is understandable that an uninitiated person, unfamiliar with survey drawings would not be sure about what is illustrated, but I am at a loss as to why one would not simply admit such 'unfamiliarity'.

[16] Be that as it may, I am satisfied that survey plan A15/97 reflects in material respects some of the information outlined in Mrs. Cumberbatch's deed. In this regard, both documents identify Alphonso Joseph, Joseph Mattis and Johnathan Moses as adjoining landowners. Even more significantly, the plan depicts an 'L' shaped structure referred to as a 'foundation', part of which traverses the existing road to the South.

[17] It follows that the 5,233 sq. ft. area of land delineated in survey plan A15/97 largely comprises the land described in Mrs. Cumberbatch's deed. It is obvious that the transferee Irene Straker recognized the interests and rights of the Heirs of Joseph Mattis to the land on the South. A wall house occupies part of that property as illustrated in the survey plan. Mrs. Cumberbatch has not claimed an interest in that house or portion of land.

[18] It is not clear if the owner of that lot of land was present when Mrs. Cumberbatch's survey was being conducted, and concurred with the measurements then or subsequently. Mrs. Cumberbatch's present application does not include any claim to title in respect of the existing road, on which part of the foundation rests. She said that she visited the land in 2012 and observed that Mr. Glasgow had trespassed onto it by placing a foundation on it without her permission. She formed the opinion that he intended to build there without her consent.

[19] Mrs. Cumberbatch testified that she had her lawyer write to Mr. Glasgow but he did not respond. Instead, she said that Mr. Glasgow has now placed concrete blocks on the property which suggests that he intends to construct a building. She claimed that the foundation has diminished

the value of her land and has caused her damages and loss. However, she provided no expert or other credible testimony to this effect. I therefore reject that assertion.

- [20] Mr. Glasgow countered that he does not know where Mrs. Cumberbatch's land is located. He denied building his foundation on Mrs. Cumberbatch's property. He claimed that he never received anything from Mrs. Cumberbatch concerning the land. He averred that he was given the opportunity of getting a house from the government and that the government decided to put the house on reserve land which it owned at Vermont. He said that they sent surveyors to survey the land; and that the surveyors came and installed 4 boundaries.
- [21] Mr. Glasgow indicated that the government gave him permission to occupy the surveyed area and as a result he built the foundation on it in 2010. He insisted that he did not go there on his own but had the government's express permission evidenced by a letter dated 22nd June 2010, from the Housing Land and Development Corporation ('HLDC'). He produced the original letter but did not present the author as a witness. The letter rehearsed that the HLCD purported to grant approval to Mr. Glasgow to buy the disputed land. A sale price of \$7,153.10 was quoted. It closed by inviting him to go to the HLDC within 14 days to discuss and settle purchase.
- [22] Mr. Glasgow did not indicate whether he went to the HLDC pursuant to the invitation. He testified that he learnt subsequently that Ms. Cumberbatch is claiming the area. He stated that he never met her face to face before the day of the trial. He said that after he constructed the foundation, a Mr. Sutherland came to him one evening after work and rented from him the section of the land on which the foundation is sited. He indicated that Mr. Sutherland paid him three months' rent in advance and remained there until the bridge was completed.
- [23] He admitted that he had no deed for the land. In response to questions from the court, he said that he had no lease or other similar agreement with the government to occupy the land. It seems to me that Mr. Glasgow did negotiate with the government to purchase the subject land. It is also apparent that he never pursued the opportunity conclude an agreement with them to purchase the land. If he did, he did not so assert. No evidence has been presented establishing that the HLDC has a better title to the land than Mrs. Cumberbatch.

- [24] Mrs. Cumberbatch claimed that about three years ago she rented a part of the land to Mr. Sutherland to erect a contractor's shed on the property for use while he was engaged in construction of a bridge in the area. She alleged that her agent Benjamin Jacobs was responsible for collecting the rent. She claimed that he passed away suddenly and that Mr. Glasgow took it upon himself to collect the rent at that time.
- [25] Mrs. Cumberbatch accused Mr. Glasgow of cutting down her breadfruit and golden apple trees without her permission. She recalled regularly harvesting fruit from both trees which she used to sell, eat and share with family and friends. She expressed concern that Mr. Glasgow would continue to interfere with the land and undertake further construction unless restrained. She prayed that the court would order him to repay her all of the rent he had collected from Mr. Sutherland. She did not attest that she saw Mr. Glasgow cut any trees. I cannot accept her bare testimony that he did.
- [26] She said that one Mr. Eton Neverson lives on the land, looks after it and has done so with her consent for the past five years. He was not a witness. Under cross-examination Mrs. Cumberbatch refuted Mr. Glasgow's suggestions that squatters have built several buildings on the reserve land.
- [27] Both witnesses gave their testimony in a forthright and forceful manner. Neither was contradicted on essential aspects of their case except where Mrs. Cumberbatch appeared to be confused regarding Mr. Glasgow's survey plan. Their respective positions are partially supported by their documentary exhibits.
- [28] In Mr. Glasgow's case, it appears that the HLDC purported to give him permission in June 2010 to occupy and to buy a lot of land at Vermont. He went into possession but does not appear to have pursued the option to buy. If he had, he presumably would have uncovered any defect in title of the potential seller or of Mrs. Cumberbatch's claim to that land. No technical officer employed in the Lands and Survey Department or other government Department or satellite testified or laid any claim to the subject land. No government employee or agent has testified that the land is owned by the Crown.

- [29] As it turns out, the land was gifted to Mrs. Cumberbatch in 1983 and a Deed of Gift registered in respect of it on 3rd September 1983. Although the Deed does not quantify the amount of land transferred to Mrs. Cumberbatch, it describes the adjoining landowners sufficiently to facilitate reasonable appreciation of the general area conveyed. Further, I accept Mr. Glasgow's testimony that there is a road adjacent to the disputed property. It is described on Mrs. Cumberbatch's plan as 'existing road'. Part of the foundation is constructed on that road.
- [30] The Registration of Documents Act⁴ provides that every document registered under its provisions is accepted as conveying or transferring to the named transferee, the right, title and interest of the transferor at law and in equity. The transfer is deemed to have taken effect according to priority based on the date and time of registration. Furthermore, all persons claiming an interest in such property, are deemed to have notice of the contents. This means that the law imputes to Mr. Glasgow, notice of Mrs. Cumberbatch's interest in and title to the disputed land, as from the date when he purported to start exercising rights of ownership over the land.
- [31] He did not seek to establish a defence of prescriptive title or adverse possession. Rather, he relied on what he contended is the government's superior title. Mr. Glasgow would be entitled to avail himself of such superior title as a defence if he could establish that the government had a better title than Mrs. Cumberbatch. The letter from the HLDC without more, does not amount to such proof. In other words, unless he provided proof of the Crown's legal title, Mrs. Cumberbatch's Deed of Gift trumps the written permission which he seemed to have received from the HLDC.
- [32] In view of all the facts as established, I find that Mr. Glasgow trespassed on Mrs. Cumberbatch's property by constructing the foundation on it. This finding is restricted to only that part of the land which belongs to Mrs. Cumberbatch. This ruling does not purport to and cannot be interpreted as conveying ownership rights to Mrs. Cumberbatch in respect of the existing road on which part of the foundation lies. I make no finding that Mr. Glasgow destroyed the fruit trees as alleged. No such suggestion was made to him.

⁴ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 5.

Issue 2 - To what remedies is Mrs. Cumberbatch entitled?

[33] Mrs. Cumberbatch seeks damages for trespass and an injunction. Trespass to land is actionable *per se* and if proved attracts payment of damages. Mrs. Cumberbatch is entitled to recover damages from Alban Glasgow in connection with his acts of trespass in building a foundation on her land without her permission. In this regard, Mrs. Cumberbatch shall file and serve an application for assessment of damages on or before 16th March, 2018.

Injunction

[34] The court may grant a permanent injunction to Mrs. Cumberbatch restraining further trespass by Mr. Glasgow, if satisfied that there is a significant probability that she will suffer grave damage for which an award of damages would not be adequate compensation; and if it appears just and equitable so to do.⁵ Mrs. Cumberbatch has advanced no factual basis from which to conclude that she is likely to suffer substantial damage through Mr. Glasgow's possible future actions. Her application for an injunction is therefore dismissed. Mrs. Cumberbatch is entitled to prescribed costs.

ORDER

[35] It is accordingly ordered and declared:

1. Judgment is entered for Rita Cumberbatch, the legal owner of the subject property registered by Deed of Gift No. 1751 of 1983 and delineated in survey plan A15/97 approved and lodged at the Lands and Survey Department on 14th December 2017 by Chief Surveyor Keith Francis.
2. Alban Glasgow shall pay to Rita Cumberbatch damages for trespass to be assessed on application to be filed and served on or before 16th March, 2018.
3. Rita Cumberbatch's application for an injunction is dismissed.

⁵ *Aslatt v Corporation of South Hampton* (1881) 16 Ch. D. 143.

4. Alban Glasgow shall pay to Rita Cumberbatch prescribed costs based on the quantum of damages awarded pursuant to paragraph 2 of this order.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar