EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SVGHCV2011/0241

Between OLIVE PEGGY DEFREITAS

Claimant

and

GERALD GELLIZEAU

Defendant

THE ATTORNEY GENERAL

Added Party

Appearances:
Mr. Joseph Delves of Counsel for the Claimant
Mr. Parnel Campbell Q.C. of Counsel for the Defendant
Mr. J-Lany Williams of Counsel for the Attorney General

2018: September 20
2019: January 29

JUDGMENT

[1] Moise, M.: This is an application for an assessment of damages. On 31st July, 2017 the trial judge delivered judgment in which it was ordered that the defendant ***"shall pay damages to Olive Peggy Defreitas for trespass, to be assessed on application to be filed and served on or before 31st October, 2017."*** The claimant has duly filed her application for assessment and on 12th July, 2018 the court gave directions for the filing of witness statements and legal submissions in support of and in opposition to the assessment. The matter was adjourned for the hearing of the assessment to 20th September, 2018.

[2] On 24th July, 2018, the claimant filed her witness statement to which a valuation report dated 10th November, 2017 was attached. In this report Mr. Franklyn Evans, identified as a Land Economy and Valuation Surveyor, states that the monthly rental value of the property in question is $500.00. The claimant seeks to rely on this in support of the assessment of damages to which she is

entitled. However, at the hearing of the assessment on 20th September, 2018, Counsel for the defendant raised the issue as to whether the claimant is entitled to rely on this valuation, given that this document was not disclosed in keeping with the pre-trial directions given at the case management conference. This raises an issue which often troubles the court; more so when an assessment of damages is conducted by a judicial officer who did not preside over the trial. The question is whether the claimant is entitled, at the hearing of the assessment, to lead additional evidence which may not have been led at trial and to rely on documents which were not initially disclosed during the case management process.

[3] It is often the case at the end of a trial that a trial judge would determine the issue of liability and direct that the issue of quantum be heard on assessment upon application by the party in whose favour the judgment on liability was entered. In many of these instances the application for assessment would be placed before a master who did not have conduct of the trial. There may certainly be instances where it is necessary to file additional and updated documentary evidence; such as updated medical reports and receipts in personal injury matters. But what of the circumstances where the claimant is seeking to adduce fresh evidence altogether which perhaps ought to have been disclosed during the pre-trial process? Further, there may often be genuine disputes between the parties on issues of fact which were in some way litigated during the trial process but not entirely reconciled in the final judgment on liability. The extent to which it is in the purview of the master to revisit such issues is, at times, questionable.

[4] Rule 16.4(2) of the CPR gives the court the discretion to give directions for the trial of the issue of quantum. These directions may be given at a case management conference, the hearing of an application for summary judgment; or the trial of the claim or of an issue, including the issue of liability. The exercise of this discretion would serve the purpose of bifurcating the claim in order to deal separately with the issues of liability and quantum. In accordance with rule 16.4(3), where the court exercises this discretion it may exercise the powers of a case management conference and may make an order for disclosure under Part 28; service of witness statements under Part 29; and service of expert reports under Part 32.

[5] In the instant case, the respondent takes issue with the affidavit of the claimant to which a valuation report was attached. It is argued that this document had not been disclosed during the time period contained in the case management directions given prior to the trial. I note further, that although this court gave directions for the parties to file and exchange witness statements and legal submissions on the issue of quantum, these directions did not contain an order for disclosure and the claimant did not indicate an intention to adduce any additional expert evidence. In fact there was no order for the admission of any expert evidence at all. The question therefore is whether the claimant is entitled, at this stage, to adduce such evidence. The court should also consider whether a report of that nature can properly be placed before it as an attachment to the claimant's affidavit rather than an experts report in keeping with the provision of rule 32 of the CPR.

[6] In the case of *St. Kitts Development Corporation v Golfview Development Ltd et al*[1], Rawlins JA noted at paragraph 22, that ***"there are instances in which an assessment of damages is conducted as a hearing to determine the amount that is to be awarded in monetary terms."*** In effect, such assessments may be deemed to be another trial on the issue of quantum. This, in my view, all rests within the discretion of the judge who may make an order, even during the trial process for assessment to be conducted in that way in accordance with rule 16.4(2) of the CPR. On the peculiar facts of the *Goldview Development* case, the Court of Appeal determined that the trial judge did not make such an order but merely set a date for the assessment on the evidence already heard at the trial. He gave no further directions for the filing of witness statements. It would seem that he was satisfied that the evidence already adduced at trial was sufficient to consider the issue of quantum.

[7] On the other hand, in the present case, after deciding on the issue of liability, the trial judge ordered that the issue of damages would be assessed on an application made by the claimant. When this application was made and presented to this court for hearing, the court proceeded to give directions which included a time frame within which the parties were to file and exchange witness statements. This was clearly an intention to proceed on a separate trial of the issue of quantum. However, these directions did not include leave for further disclosure and the question is whether or not the claimant was entitled to attach additional documents to her witness statement

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which had not been disclosed at the pre-trial stage without leave of the court. Rule 16.4 gives discretion to the court to determine the manner in which to proceed. This does not negate the fact that pre-trial directions had been given directing that the parties were to have disclosed all the documents on which they were to rely, both on the issue of liability as well as that of quantum. Given that the claimant had claimed damages for trespass, I can see no reason for her delay in also disclosing whatever information she was to rely on in support of the assessment of those damages at the pre-trial stage. Whilst I observe that the valuation report was only recently obtained, I am also of the view that the claimant ought to have acquired this information at the pre-trial stage and ensure that it was disclosed in keeping with the directions for pre-trial disclosure.

[8] Quite apart from my conclusions at paragraph 7 of this decision, I am also of the view that the valuation report does not comply with the provisions of Rule 32.14 of the CPR. This is in effect an expert's report and it would not be proper for the claimant to simply attach such a report to her own witness statement in this manner. The report contains nothing which enables the court to deem its maker an expert for the purpose of giving evidence in court and on that basis, as well as those referred to earlier in this decision, I would place no reliance on this report and deem it to be inadmissible evidence.

[9] With regard to the quantum of damages, I refer to paragraph 34-044 of *Mc. Gregor On Damages* which states that ***"the normal measure of damages for trespass to land is the market rental*** *value of the property occupied or used for the period of wrongful occupation or user*." The issue for determination in the present case is therefore a narrow one. Given the express findings of the trial judge, there is not much contention regarding the period of time within which the defendant remained in occupation of the claimant's property. The narrow issue is to determine the monthly rental value. The claimant states that $500.00 monthly is reasonable. The defendant states that this is excessive and that the sum of $250.00 is reasonable.

[10] In his witness statement the defendant states that he expended $14,000.00 of his own funds on repairs to the property. This is an assertion which has already been addressed by the trial judge and, based on her findings, I am not of the view that it is of any assistance to the defendant. What is clear is that the trial judge determined that the defendant became a trespasser on the premises

from the date on which the claimant requested that he quit and deliver up possession of the premises. In accordance with the notice to quit dated 18th March, 2011 the defendant was required to vacate the premises by 1st April, 2011. He did not do so and he is obligated to pay a reasonable monthly rent from that date to the date on which he delivered up possession of the premises in accordance with the trial judge's order. I understand that date to be 31st October, 2017. The defendant was therefore a trespasser on the premises for a total of 79 months.

[11] Having denied the admissibility of the report relied on by the claimant, I am to determine the monthly rental value of the premises on the basis of what is reasonable. In light of that I would take the following facts into consideration:

(a) That the premises was a 3 bedroom, fully furnished house in the vicinity of Kingstown, Saint Vincent;

(b) That the conditions of the property were relatively poor. This much can be gleaned from the trial judge's decision as well as the witness statements of both parties;

(c) The trial judge also accepted that although the defendant was a trespasser, he was not necessarily in exclusive possession of the premises. The facts, as accepted by the trial judge was that the claimant as well as other members of her family would go the premises daily for lunch and that the belongings of her deceased mother remained on the premises even at the time of the trial.

[12] I note in the case of *Anesta Cass Humphrey v Talford Roberts*[2] Henry J concluded that the sum of $375.00 was a reasonable monthly rental sum for the occupation of a dwelling house in Saint Vincent and the Grenadines. The claimant claims a monthly rental value of $500.00 and argues that this is discounted to take into account the conditions of the premises. Taking all of these into account I would award the sum of $400.00 monthly in damages for trespass for a total period of 79 months.

[2] SVGHCV2006/0414

[13] I therefore make the following orders:

(a) The defendant will pay the sum of $31,600.00 in damages to the claimant for trespass;

(b) The defendant will pay the sum of $1000.00 in costs on the assessment of damages.

Ermin Moise
Master

By the Court

Registrar