

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT
CASE MNIHCV2018/0018
BETWEEN

CATHERINE M. TUITT
(THE LAWFUL ATTORNEY FOR MARY SKELTON) CLAIMANT

AND

ANN THOMAS & JUSTIN THOMAS DEFENDANTS

APPEARANCES

Mr Ralph Francis for the claimant.

Ms Marcelle Watts for the defendants.

2019: OCTOBER 3

RULING

On a strike out application in a neighbours' dispute over a right of way

- 1 **Morley J:** The defendants Ann and Justin Thomas have applied to strike out the claim of Catherine Tuitt where in dispute is their use of a supposed right of way to their home, claimed by Tuitt to be on land owned by her sister Mary Skelton over which she insists there is no such right. The Thomases argue the pleadings are defective, disclosing no cause of action against Justin, and as regards Ann¹ there is too little evidence offered against her for a reasonable ground for a claim, while in addition she is not the correct defendant, who ought instead to be the Chief Surveyor.

¹ The parties will be referred to by their names, mostly surnames, for ease of reading, and no disrespect is intended by not writing out the legalese of whether claimants or defendants.

- 2 The central problem is the Land Registry records there is the right of way, and it is not on Skelton's land. The Thomases have relied on it. The government approved, it seems explicitly and at least implicitly, making a short gravel road. The Thomases and others use the access road daily to their nearby homes. Of the others, only Ann Thomas is the subject of the ire of Tuitt, no one else is accused of wrongful passing on the land.
- 3 The Thomases bought plot 14/9/83 in 2006 and built a home in 2013. Access to the construction was over the disputed gravel road, being about 150m immediately south of adjoining plot 14/9/9 belonging to Skelton (now living in the BVI), marked from at least 28.03.00 as a right of way on plans at the Land Registry. Paving was laid in about 2014, of which Communication and Works Minister Paul Lewis was aware. From no later than 2015, Tuitt raised complaint the correct boundary to 14/9/9 was the southern edge of the road, meaning the road was on Skelton's land, so that the Land Registry records were wrong. Thereafter there were various meetings and confrontations, including on site on 26.03.16 when police Sgt Laborde and Insp Semper were present in support of the Thomases, and at one point Tuitt was arrested for interfering with the apparently lawful boundary on 25.04.16, being then kept in custody for two days.
- 4 As I begin analysis, the paperwork discloses no case against Justin Thomas, anywhere, he is not mentioned in any actionable sense by Tuitt; for that reason the claim against him will be struck out under **rule 26.3.1.b. Civil Procedure Rules 2000** (CPR) as not disclosing any reasonable ground for bringing the claim against specifically him.
- 5 This may beg the question how could so fundamental a flaw in the pleadings and case papers arise. The answer appears to lie in how Tuitt has been the architect of the case, being a forceful personality and a former police officer, who has filed the claim in person to begin, and thereafter, though not a lawyer, yet retaining Counsel Francis, she has been the driving force in the action, visibly in court directing the proceedings, often making long addresses to the court from alongside her counsel. Quite simply, she has not done this right.
- 6 It is fair to say there may well be an action (though perhaps weak) against the Land Registry and in particular against the Chief Surveyor, who is currently Ms Keisha Holder Lopez, over

whether the boundary of Skelton's land has been wrongly recorded, (specifically that boundary markers IP 120 and IP 122 should be a road-width further south, thereby subsuming the access road).

7 However, concerning Ann Thomas, the materials show she has merely relied on the Land Registry record that there is a right of way and the road is not part of Skelton's land.

8 In the somewhat convoluted history of these proceedings, which was begun by Tuitt in person against the Thomases for damages of \$65000ec on 23.04.18, the Chief Surveyor was later joined to the proceedings on 19.11.18. But then on 19.09.19 Counsel Francis agreed with an application by the Chambers of the Attorney General (AG) to excise the Chief Surveyor as the second defendant in the context of there being an application by the AG to strike out the claim for defect in the pleadings. However, it has long been clear to the court and the Thomases since before November 2018 the action should primarily lie against the Chief Surveyor, not them, so that it came as a surprise to the court and Counsel Watts that Counsel Francis agreed to the excise, tactically without demur from Counsel Watts, and further when he said to the court the intended action from the point of view of the claimant's case was 'never against' that office. Quite simply, this was a mistake.

9 In short, it is plain the wrong party is being sued by the forceful Tuitt, most unhappily it very much seems out of neighbourly bad-mindedness, such that the proceedings appear to have become obviously vexatious.

10 Moreover, a curious feature of the case, and of direct relevance, is that Tuitt was convicted by the Magistrate on 22.12.17 of the offence on 22.04.16 of moving boundary marker IP 120, contrary to **s20 Registered Land Act** cap 8.01, which was said to be interfered with by Tuitt to reset where the boundary lies of Skelton's land.

11 For completeness, the history of proceedings is as follows:

a. 15.06.18 – There was a first hearing and a visit to the site. Tuitt was unrepresented. It was clear she needed a survey to show the road belonged to Skelton, as the court could not

rely simply on her say so. In tandem, Counsel Watts to strike out raised Tuitt lacked locus as the power of attorney to act for Skelton had not been obtained before the action began, though the court then allowed its late filing and the action to be perfected.

- b. 27.06.18 – Counsel Francis was appointed and there was confused discussion on the precise issue, with Tuitt disputing the boundary based on a 1989 survey.
- c. 13.07.18 – It was agreed by Counsel Francis that Tuitt had no case without a survey to challenge the Land Registry.
- d. 17.09.18 – There still being no claimant survey, the case was to be struck out if there was no report by 19.11.18.
- e. 19.11.18 – There was an analysis offered by Tuitt of the history of the boundary by Surveyor Sean Peters, formally filed on 22.11.18. This led to the decision to add the Chief Surveyor as a second defendant.
- f. 23.11.18 – There was discussion to pinpoint precisely the issue between the surveyors, with a requirement that Chief Surveyor Lopez file a report by 08.03.19.
- g. 08.03.19 – Chief Surveyor Lopez reported the boundary as correct, and strike out by the AG for defect in the pleadings was scheduled for 29.03.19.
- h. 29.03.19 – Amendment of the pleadings was allowed to occur to avoid strike out, noting there still had not been a fresh claimant filing to include the Chief Surveyor.
- i. 05.04.19 – The first amended pleadings, now including the Chief Surveyor, were objected to by the AG as defective, so that a second amended pleadings were permitted to be filed by 18.04.19, with further directions for a trial fixed for 19.09.19.

- j. 19.09.19 – The second amended case statement was not filed until 03.05.19, and then no trial directions were followed, as on 03.06.19 the AG filed again to strike out the claim as defective, supported by Counsel Watts. On the day, Counsel Francis surprisingly agreed to excise the Chief Surveyor, whereupon Counsel Watts moved to strike out the remainder, to be heard on 26.09.19.
- k. 26.09.19 – Counsel Watts filed submissions to strike out on 25.09.19, nought was filed by Counsel Francis, the argument was then heard orally during 1.5hrs, leading to adjournment of the decision to today, 08.10.19.
- 12 It follows there have been three earlier attempts to strike out – on 15.06.18 for lack of locus, scheduled for 19.11.18 for want of a survey report, and on 29.03.19 for defective pleading. The argument on 19 and 26.09.19 is the fourth argument, and on a third filing, being formally titled in May ‘the second amended fixed date claim form’. Quite simply, the case is a mess.
- 13 Looking closely at the May 2019 claim form, it seeks against the Thomases and the Chief Surveyor what is quoted below (sic) and pleads no more than the following:

‘CLAIM FORM

The Claimant CATHERINE M. TUITT the lawful attorney for Mary Skelton of Olveston Montserrat claims against the Defendants Ann Thomas and Justin Thomas of Davy Hill Montserrat and the Chief Surveyor Government of Montserrat.

1. ‘A declaration that the portion of the property now being issued as a roadway between Parcel 14/09/009 and 14/9/9 and not an existing right of way.
2. Damage for the unlawful use of the Claimant’s property.
3. Damage for the destruction of the Claimant’s property and as a consequence the cost to return it to its original state.
4. Damages for the unlawful destruction of the Claimant’s fencing posts and wire.
5. Costs

6. Interest.

Dated 2nd of May 2019

[Signed] Ralph Francis, Attorney at Law'

- 14 Affidavits in support were filed on 03.05.19 by Tuitt, Skelton's brother James Weekes, and by Ivason Galloway reporting it will cost \$11040ec to erect fencing and undo the access road. Concerning Tuitt and Weekes, neither mentioned Justin Thomas. Concerning Ann Thomas, Weekes mentioned when present with Skelton in March 2016 confronting Ann Thomas she offered \$15000ec to settle the dispute (which is not an admission Skelton owns the road); and in Tuitt's poorly drafted affidavit, unedited by Counsel Francis, written by Tuitt, where paragraph 2 is fully 4 unindented pages long and paragraph 3 fully 2.5 unindented pages long, there is a somewhat garbled account of the dispute history, including a needless and mildly disturbing reference to reading **Psalm 37**² while walking over the land to find IP 120, confrontation with police over fencing Tuitt was erecting, and she barely mentions Ann, other than in the context of a dispute with many.
- 15 Then on 27.09.19, having adjourned to consider the strike out application on 26.09.19, too late Tuitt filed further material, alone, not through counsel, largely recounting her interaction with

²Psalm 37 King James Version

Fret not thyself because of evildoers, neither be thou envious against the workers of iniquity. For they shall soon be cut down like the grass, and wither as the green herb. Trust in the Lord, and do good; so shalt thou dwell in the land, and verily thou shalt be fed. Delight thyself also in the Lord: and he shall give thee the desires of thine heart. Commit thy way unto the Lord; trust also in him; and he shall bring it to pass. And he shall bring forth thy righteousness as the light, and thy judgment as the noonday. Rest in the Lord, and wait patiently for him: fret not thyself because of him who prospereth in his way, because of the man who bringeth wicked devices to pass. Cease from anger, and forsake wrath: fret not thyself in any wise to do evil. For evildoers shall be cut off: but those that wait upon the Lord, they shall inherit the earth. For yet a little while, and the wicked shall not be: yea, thou shalt diligently consider his place, and it shall not be. But the meek shall inherit the earth; and shall delight themselves in the abundance of peace. The wicked plotteth against the just, and gnasheth upon him with his teeth. The Lord shall laugh at him: for he seeth that his day is coming. The wicked have drawn out the sword, and have bent their bow, to cast down the poor and needy, and to slay such as be of upright conversation. Their sword shall enter into their own heart, and their bows shall be broken. A little that a righteous man hath is better than the riches of many wicked. For the arms of the wicked shall be broken: but the Lord upholdeth the righteous. The Lord knoweth the days of the upright: and their inheritance shall be forever. They shall not be ashamed in the evil time: and in the days of famine they shall be satisfied. But the wicked shall perish, and the enemies of the Lord shall be as the fat of lambs: they shall consume; into smoke shall they consume away. The wicked borroweth, and payeth not again: but the righteous sheweth mercy, and giveth. For such as be blessed of him shall inherit the earth; and they that be cursed of him shall be cut off. The steps of a good man are ordered by the Lord: and he delighteth in his way. Though he fall, he shall not be utterly cast down: for the Lord upholdeth him with his hand. I have been young, and now am old; yet have I not seen the righteous forsaken, nor his seed begging bread. He is ever merciful, and lendeth; and his seed is blessed. Depart from evil, and do good; and dwell for evermore. For the Lord loveth judgment, and forsaketh not his saints; they are preserved for ever: but the seed of the wicked shall be cut off. The righteous shall inherit the land, and dwell therein forever. The mouth of the righteous speaketh wisdom, and his tongue talketh of judgment. The law of his God is in his heart; none of his steps shall slide. The wicked watcheth the righteous, and seeketh to slay him. The Lord will not leave him in his hand, nor condemn him when he is judged. Wait on the Lord, and keep his way, and he shall exalt thee to inherit the land: when the wicked are cut off, thou shalt see it. I have seen the wicked in great power, and spreading himself like a green bay tree. Yet he passed away, and, lo, he was not: yea, I sought him, but he could not be found. Mark the perfect man, and behold the upright: for the end of that man is peace. But the transgressors shall be destroyed together: the end of the wicked shall be cut off. But the salvation of the righteous is of the Lord: he is their strength in the time of trouble. And the Lord shall help them, and deliver them: he shall deliver them from the wicked, and save them, because they trust in him.

the police, but also offering invoices signed by Justin Thomas for materials in April 2016 for cementing the road in an attempt to cure the absence of evidence concerning him, plus the police statement of Ann Thomas dated 12.04.16 in which Ann describes laying down concrete in 2015 to a value of \$695ec in an attempt by Tuitt to make her responsible for damage to what is asserted to be Skelton's land. However none of this late material, even if considered, deals with the central problem, namely that the Land Registry records the access road as a right of way and is not on Skelton's land, nor is there the re-filing of the report of Sean Peters, which in any event discloses an action against the Chief Registrar.

16 Referring back to the May 2019 claim form above: plainly ground 1 is a nonsense; the evidence filed suggests 4 was damage by others; 2 is moot as the Thomases relied on the Land Registry so that any damages would lie against the Chief Surveyor; and 3 follows 2.

17 In the **CPR rule 26.3.1** confers a discretion on the Court to strike out statements of case in the following circumstances:

...b) the statement of case...does not disclose any reasonable ground for bringing...a claim;

c) the statement of case...is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings...

18 In **Tawney Assets Ltd v East Pine Management Ltd et al 2012**, HCVAP 2012/007, Mitchell JA provided guidance on the approach to be taken by the court in applications to strike out a Claim Form and Statement of Claim:

The striking out of a party's statement of case, or most of it, is a drastic step which is only to be taken in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding

at trial. The proper approach to be taken in striking out a statement of case as disclosing no facts upon which the court can proceed has been described by Pereira CJ [Ag], in her judgment in the interlocutory appeal in **Ian Peters v Robert George Spencer**³ where she found that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence.

- 19 Recognising as I do that striking out is an exceptional course, yet relying on **Tawney** supra, though there is a *'serious live issue of fact'* it is with the Chief Surveyor, at third attempt to file the case the proceedings have become *'incurably bad'*, and given the Land Registry records the right of way and it not being on Skelton's land the statement of case discloses *'no reasonable ground for bringing the claim'* against Ann and Justin Thomas alone, nor any *'real prospect of succeeding at trial'* against them as pleaded in the May 2019 claim form.
- 20 Moreover, by not pursuing this action against the Chief Surveyor, instead only the Thomases, only them, I find it is an abuse of process in that, in the absence of more considered pleadings, it amounts to harassing them and is likely to obstruct the just disposal of the case.
- 21 For all these reasons, I will strike out the claim under both **CPR rule 26.3.1.b** and **1.c**.
- 22 Turning to costs, the Thomases have been put to considerable expense, where despite the court giving the claimant three opportunities for the case to be cured it remains unsatisfactory, and so I will award costs in the following the sum as sought, not challenged by Counsel Francis, namely \$35000ec.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

3 October 2019

³ High Court Civil Appeal No.16 of 2009, on Antigua & Barbuda.