

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0194

BETWEEN:

[1]	VERNON HALL and JOHN HALL, in their capacities as Joint Personal Representatives of the Estate of Robert L. V. Hall, deceased	First Claimant
[2]	J. RAY HALL as Personal Representative of the Estate of Albert Victor Hall, deceased	Second Claimant
	And	
[1]	CHANTELLE WINTER	
[2]	PIGS PARADISE LTD.	Defendants

Appearances:

Ms. E. Ann Henry KC with Ms. Michelle Sterling for the Claimants
Mr. Kevon Benjamin for the Defendants

2024: June 10th, July 22nd;
2025: May 1st

JUDGMENT

[1] **WILLIAMS, J.:** The defendants have established a business where visitors are given the opportunity to swim with pigs off a picturesque beach located on the west coast of Antigua. The claimants on the other hand are the registered proprietors of a large tract of land which bounds the beach. The claimants complain firstly, that the defendants have constructed structures on their land without permission and secondly that the pigs are a nuisance. In particular, they complain about offensive odours, waste and that the pigs have destroyed vegetation including mangroves on their property.

The Parties

[2] The first named claimants Vernon and John Hall are the joint personal representatives of the Estate of the late Robert L.V. Hall. The second named claimant, J. Ray Hall is the personal representative of the late Albert Hall. Both claimants in this matter are the Registered Proprietors of the New Division Estate, registered in the land registry as Parcel No. 2 of Block 53 1287A in the Jennings Registration Section.

[3] The first named defendant is Ms. Chantelle Winter who describes herself as the owner of the second named defendant- a company named Pigs Paradise Ltd. The defendants operate the business as described at paragraph 1 of this decision.

The Claimant's Claim

[4] This claim was initiated by Claim Form filed on 30th May, 2023 seeking the following:

1. Possession of lands of the claimants situate at New Division Estate in the Parish of St. Mary in Antigua and Barbuda which parcel is recorded in the Registry of Lands as Parcel 2 of Block 53 1287A in Jennings Registration Section, (hereinafter referred to as "the lands of the claimants") which the defendants in or about August 2022 wrongfully took possession of conducting a commercial business, and to that end, who have placed certain structures on the estate to trespass thereon.
2. A declaration that the defendants are not entitled to conduct any business on the lands of the claimants and requiring the defendants and both of them whether by themselves, their employees or agents or otherwise howsoever forthwith to desist from conducting business on the lands of the claimants.
3. An injunction to restrain the defendants whether by themselves, their employees or agents or otherwise from conducting their business on the lands of the claimants and from committing any further nuisance.
4. An order requiring the defendants to remove all structures placed by them on the lands of the claimants without causing any further damage to the said lands of the claimants.
5. Damages for trespass on the lands of the claimants at New Division Estate as aforesaid on the footing of aggravated damages.
6. A declaration that the defendants have caused damage to the lands of the claimants as aforesaid, by conducting a business on the said land and causing and permitting pigs to root about on the lands of the claimants and to deposit faeces on the lands of the claimants as aforesaid which is a nuisance.

7. An injunction to restrain the Defendants by themselves, their employees or agents or otherwise howsoever from the continuance or the committal of any nuisance of a like kind in respect of the said lands.
8. Damages for trespass on the lands of the claimants at New Division Estate, on the footing of aggravated damages.
9. Interest on such sums as are found due to the claimants from the defendants.
10. An order that the defendants are to pay the costs of this action.

Statement of Claim

- [5] In their Statement of Claim the claimants have submitted that their land abuts the beachfront and has a private road running inside the boundary of the property, parallel to the shoreline which provides access to other lands owned by the Estate. They allege that to the north of their lands is Seaforth Estate on which runs public access to the beachfront.
- [6] They state that in August 2022, they became aware that the defendants had started to use a portion of the lands of the Estate to conduct their business known as 'Pigs Paradise'. The following particulars of trespass are pleaded:
- a. The defendants constructed and placed gate posts and other wooden structures (gazebos, picnic tables and benches) on the claimant's estate for use in their business.
 - b. The defendants permitted or caused to permit their employees, agents, guests and patrons to pass and repass over the lands of the estate in order to access the business place which is located on the lands of the estate.
 - c. The defendants permitted or caused to permit the pigs used in the said business to run freely on the lands of the estate and root around on the ground and deposit faeces and urine on the said lands.
- [7] At paragraphs 11 to 15 of the Statement of Claim the claimants outline their efforts to have the defendants vacate the property. These include complaints to various government agencies and letters to the first defendant from the claimant's lawyers. The claimants outline their particulars of loss and damage as follows:
- a. Damage to the vegetation, including mangroves, plants and grasses in the area occupied by the defendant, at a value to be ascertained.
 - b. Loss of use and access to the area on which the defendant has trespassed, for a value to be ascertained.

Defence

- [8] The defendants filed a Defence on 19th June 2023. In the Defence, they admit that the claimants' are the registered proprietors of the lands as alleged in the Statement of Claim. They also admit that the said parcel abuts the beachfront, however they aver that the road which traverses it is not a private road. They rely on a letter from the DCA dated 16th March 2023 which states that the road is public access to access Seaforth Beach from Valley Road.
- [9] In terms of carrying out their business, the defendants deny that their activities are taking place on the claimants' land as business is conducted on the beach. The defendants further allege that the movable structures which they have erected are not on the claimants' land. They further aver that the DCA visited the location and verified that the structures were not on the claimants' land and that the pigs did not run around freely. The defence further alleges that any damage caused to mangroves and other vegetation was due to lack of water and not by their activities.
- [10] The defendants contend that their business operation known as "Pigs Paradise Ltd" is being conducted on Seaforth Beach, a public beach and not on any portion of land owned by the claimants. It is admitted that the New Division Estate abuts the beachfront, but the defendants contend that the road is not private. It is submitted by the defendants that they engaged the DCA to carry out investigations into the issue and that by letter dated 16th March, 2023, the DCA confirmed that the unpaved road was traditionally used by the general public for well over twenty years to access Seaforth Beach from Valley Main Road.
- [11] It is admitted by the defendants that their operation involves several pigs-usually six swimming in the seas adjacent to the Estate lands with tourists. The defendants are adamant that there has been no trespass on the claimants' lands either by themselves, their employees, agents or guests. The defendants denied the claimants claim that gate posts were constructed and placed on the lands of the Estate for use in the business. Rather, the defendants submitted that DCA officials visited the location and inspected and verified that the movable structures were not on the lands belonging to the claimants. The defendants therefore state that the claimants have suffered no damage and are not entitled to the relief sought.

Procedural Background

- [12] This matter started with an application for an interim injunction which was heard on 19th July 2023. Unfortunately, no decision was made on this application and the claimants applied for an order for an early trial. This was granted by order made on 1st March 2024. Since the substantive matter has now been determined, the application for interim relief will be dismissed with no order as to costs.

Trial

- [13] Trial took place on 10th June 2024. At trial, Mr. Vernon Hall and Mr. Adrian Hall gave evidence on behalf of the claimants, whilst Ms. Chantelle Winter gave evidence on behalf of the defendants. Licensed land surveyor Mr. Ato Kentish gave evidence as an expert witness having been previously appointed as such. The parties filed written closing submissions on 3rd July 2024.

Site Visit

- [14] At trial the court determined that a visit to the site was necessary. Thus, the court and the parties including the expert witness visited the area on 22nd July 2024. During the visit, the expert witness Mr. Kentish pointed out the boundary markers between the New Division Estate and the Seaforth Estate. According to him the boundary marker was only visible due to the tide being low at the time of the visit.
- [15] Secondly, Mr. Kentish pointed out the structures erected by the claimants. These consisted of wooden picnic tables, a small wooden pen and a trellis. The expert reiterated what was contained in his report that these structures were sufficiently inland so as to be located on the claimants' land. The expert was asked by the court whether the boundary between the foreshore and the claimants' property had been established by a survey. Mr. Kentish replied that he received no instructions from the claimants to do so. Furthermore, carrying out a survey would require survey of the entire parcel which measured approximately 250 acres.

Claimant's Evidence

Vernon Hall

- [16] Mr. Vernon Hall represents the estate of his deceased father, Mr. Robert Hall. Mr. Hall's evidence-in-chief was given by his witness statement filed on 13th May 2024.

- [17] He states that he is familiar with the boundaries of the New Division estate as his late father ensured that he and his other siblings were aware of the boundaries. According to him, Seaforth Estate lies to the north of New Division Estate and that Hanson's Bay lies on the northern part of Seaforth Estate. He stated that up to about 2021, the lands lying along the seashore of these three Estates were hardly visited by anyone unconnected to his family, primarily because the lands were overgrown by bush so much so that the public road which originally provided access to Hermitage Estate which is south of New Division was completely overgrown.
- [18] Mr. Hall asserts that up to 2021, the beach side lands of New Division Estate were inaccessible save and except if one travelled on estate roads which were within the boundaries of New Division Estate. He was adamant that there was no public access to Seaforth Estate until 2021 when a portion of New Division Estate was cleared creating a roadway. Moreover, Mr. Hall was adamant that the defendants were not occupying Crown land.
- [19] Mr. Hall submitted that around February 2022, it came to his attention through his son Adrian that the defendants were occupying the New Division Estate lands without permission. However, to avoid creating an argument he decided to take the matter to the Development Control Authority (DCA). There, he says he spoke to one Mr. Juburn Daniel who informed him that the DCA would erect a notice on the property to notify the person or persons of the trespass.
- [20] After several weeks passed and no such sign had been erected, he contacted Mr. Daniel again, only to be informed that the Ministry of Tourism had given the defendants permission to operate their business on Seaforths Estate and Hansons Bay for one year.
- [21] Mr. Hall's evidence further outlined his efforts to have the defendants' business removed from the lands of the New Division Estate owned by his family. Mr. Hall submitted that he reached out both to the Ministry of Tourism and the Ministry of Health for assistance but was faced with many delays. After several attempts, he stated that he had been informed that the defendants were advised to provide toilet facilities for its patrons. However, there was no apparent concern for the overwhelming stench of the site caused by a mixture of pig's urine and excreta mixed in the sand.

- [22] A meeting was then held between the parties, officials from the Ministry of Tourism and Mr. Ato Kentish on-site on March 3rd 2023. When the meeting was convened the defendants' business was in progress. At said meeting Mr. Kentish confirmed based on his expertise that the defendants' business was being operated on the claimants' land.
- [23] Further according to Mr. Hall, Mr. St. Clair Soleyn of the Ministry of Tourism who originally issued the licence to the defendants, stated in everyone's presence during the meeting that the defendants would have to vacate the site on which they were conducting business by 15th March, 2023. Thus, Mr. Hall submitted that it was his understanding after said meeting that everyone left in agreement that the 15th of March, 2023 would be the last day that Pigs Paradise Ltd could operate on New Division lands.
- [24] On March 13th, 2023, the claimants' attorney-at-law, issued a cease-and-desist letter to the first defendant warning the defendants to be mindful of the deadline of 15th March, 2023. In anticipation of the deadline, boulders with a chain and padlock were placed across the access to the site. Around 24th March 2023 he discovered that the chain and padlock had been removed and the defendants continued trespassing on the lands of the New Division Estate.
- [25] Thus, the defendants are still conducting their operations on the claimants' lands without permission and have expanded their operations with additional furniture, pens, additional land area being occupied. This has led to continuous destruction of vegetation including the death of a Manchineel tree, (which he describes as a very hardy tree) due to the exposure of its roots by the constant vehicular traffic.

Adrian Hall

- [26] Mr. Adrian Hall gave his evidence-in-chief by witness statement filed on 13th May 2024. He is the first claimant's son and has been managing a farm for about eleven years on the Estates of Robert L.V. Hall and Albert Victor Hall which is operated on nearby Smiths Estate. He stated that from birth, he has lived at Smiths Estate and adjacent to it are the lands of New Division Estate. Moreover, he stated that because he works on the farm, he is quite familiar with the lands of both Smiths Estate and New Division Estate and that he is on hand to observe the goings on both estates and on the adjacent lands.

- [27] Before 2022, Mr. Hall stated that he was approached by the first defendant's father Mr. Wayne Winter who asked about operating the business of "Pigs Paradise". Due to the nature of that business, Mr. Hall stated that he immediately informed Mr. Winter that the claimants would not have condoned that business operating on their lands. According to him, around mid-February, 2022 he noticed that the defendants were operating their business at the New Division beach and that they had set up their operation around a big mahogany tree in the exact area where he would camp with friends. He immediately reported the matter to the first defendant.
- [28] According to Mr. Hall, Mr. Winter contacted him again in about April/June 2022 about leasing the land to construct pig pens. Once more, he made it clear to Mr. Winter that the family did not want that business operating on their property. He states that in late 2022 when he returned to the island after travelling, he made various observations regarding the defendants' business and documented them through pictures and videos on his phone. He states that he observed a significant reduction in the amount of vegetation in the area, more structures on the New Division Estate than before his travels and a disturbance of the sand which was an indication that the pigs were rooting around to get to the roots of the existing vegetation. Furthermore, he stated that when he visited the site of the defendants' business he was often harassed and threatened.
- [29] Mr. Hall further outlined that in January/February 2023 he attended a meeting with a representative from the Ministry of Health, Ms. Majorie who then informed the first defendant that a portable toilet would have to be installed for guest usage. Mr. Hall is also aware that the claimants wrote a letter to the first defendant asking that she vacate the lands, however, the first defendant was non-compliant and responded with a letter from her attorney Mr. Marvin Hall.
- [30] Furthermore, on 3rd March, 2023, he along with representatives of the Ministry of Tourism, Mr. Ato Kentish, the first defendant and the first claimant attended a meeting held on-site. At that meeting, a statement was made by a government official that the defendant was to vacate the area by March 15th, 2023. Thus, in reliance on this statement, he and the first claimant placed a chain across the private road of the Estate lands. However, on 23rd March 2023, he noticed that said chain had been removed.

- [31] According to the witness, from early 2022, the land had been illegally cleared and that caused his efforts to cultivate anything on the land futile. He stated that whenever he attempted to cultivate anything on the lands the defendants would either remove or destroy it. He noted the removal of young healthy trees, sea grapes, tamarind, young mahogany and other indigenous trees. Mr. Hall is also concerned about a breach of biosecurity which would in turn negatively impact the farm.

Expert Witness: Ato Kentish

- [32] Mr. Ato Kentish is a licensed land surveyor who prepared an expert report for these proceedings. It is his evidence that based on his knowledge and observations and photographs attached to his report which show some pink structures, indicate that these structures are located on the New Division Estate and not on Crown/Government land. Mr. Kentish's report was prepared upon instructions inquiring as to whether the Defendant's business was being carried out on Parcel 2, owned by the claimants and whether the structures are located on the said Parcel?
- [33] Both in his oral evidence and in his report Mr. Kentish states that the defendants are in fact operating within the boundaries of the claimant's lands. Mr. Kentish's evidence will be examined in more detail later in this decision.

Defendant's Evidence

Chantelle Winter

- [34] Ms. Chantelle Winter is the first defendant in this matter and describes herself as the owner of the company Pigs Paradise Ltd.-the second defendant. Her evidence-in-chief was given by witness statement filed on 7th June 2024. Ms. Winter states that she obtained the requisite license from the Ministry of Tourism in or around February 2022 to commence business operations under the name "PIGS PARADISE LTD" at Seaforth Beach, located in the Parish of Saint Mary in Antigua and Barbuda.
- [35] According to her, the business operations were established with the objective of delivering novel, engaging, and distinctive experiences, primarily oriented towards visitors and tourists to Antigua and Barbuda. The business clientele predominantly comprises tourists, both international and local, with arrangements for visits being facilitated through international

and local tour operators. She asserts that her business operations are conducted in a professional, discreet, and environmentally responsible manner, ensuring no damage or danger to the surrounding environment.

[36] The first defendant acknowledged the legal principle that all beaches and coastal waters in Antigua and Barbuda are vested in the Crown, as stipulated in section 3 of the Antigua and Barbuda Beach Control Act. Furthermore, she affirms her understanding of the entitlement to beach access as per Section 50 of the Physical Planning Act. She states that Seaforth Beach has historically been accessed by the public and tourists via a public unpaved road for a period exceeding twenty (20) years and exhibited photographs depicting public utilization of the beach.

[37] Ms. Winter states that she constructed a simple, temporary timber trellis with palm leaves and a wooden frame swing on the beach. She maintains that this structure was of a nature that did not necessitate approval. She asserts that she did not seek consent from any neighbouring landowners in the vicinity of her business site, as she was satisfied that her operations did not encroach upon any private land. Further, the Ministry of Tourism, following due procedure and verification, informed her that Seaforth Beach was a suitable location for her business due to its status as a public beach.

[38] According to Ms. Winter on or about March 15, 2023, the claimants, under the guise of retaking possession of their land, unlawfully obstructed the public road that provides access to Seaforth Beach. This obstruction involved the placement of a chain across the road, thereby impeding access to the beach for members of the public, including Ms. Winter and her customers. The DCA intervened, taking charge of the situation and supervising the removal of the chain. This action by the DCA restored public access to Seaforth Beach.

Further on November 30, 2023, officials from the Health Department conducted an inspection of the Defendants' premises. Following the inspection, the Health Department officials concluded that the beach and its surrounding areas were well-maintained by the defendants. Subsequently, on December 7, 2023, the claimants, in disregard of pending court proceedings, allegedly placed large rocks on the road, again obstructing passage. The DCA was again alerted and dispatched workers to remove the boulders, thereby restoring public access to the beach. Ms. Winter reiterates that the land occupied by her business is owned by the Crown.

Issues

- [39] The issues to be decided can be stated as follows:
1. Are the defendants' operating on the claimants' property?
 2. Do the defendants' activities constitute a nuisance?

Trespass

- [40] It is clear that the claimants have not given the defendants permission to occupy any part of their property. This is not in dispute. It is also not disputed that the defendants have erected some wooden structures including a small pig pen, a swing, a trellis and picnic tables where they conduct their activities. The parties however fundamentally disagree as to whether these structures are erected on the claimant's land or not.
- [41] As outlined in **Luis Jarvis v. American Airlines**¹ the onus is on the claimants to prove their case on a balance of probabilities. In that case Justice Blenman (as she then was) stated as follows:
- "This is a civil case and he who asserts must prove. This is known as the burden of proof. It is the law that the standard of proof is on the balance of probabilities."
- [42] Thus, the claimants must prove on a balance of probabilities that the defendants' structures are erected on their land. The expert evidence is critical in this regard. In his report Mr. Kentish emphatically states that the structures are "constructed sufficiently inland that they would not fall within any area that would be considered public/government or crown land."
- [43] The defendants claim to be in lawful occupation of the beach adjacent to Seaforth Estate. However, for the purposes of this litigation, reference will be made to the foreshore which is not always synonymous with the term "beach." The foreshore is owned by the Crown pursuant to **section 3** of the **Beach Control Act**² which provides that "*all rights over the foreshore of Antigua and Barbuda and the floor of the sea are hereby declared to be vested in the Crown.*"

¹ Claim No. ANUHCv2004/0465 decided 18th December 2008 (unreported)

² Cap. 45-Revised Laws of Antigua and Barbuda

[44] The Act does not define what the foreshore is, thus learned King's Counsel for the claimants has quite correctly turned to the common law. In **Attorney General v. Chambers**³ Lord Cranworth LC stated as follows:

"The principle which gives the shore to the Crown is that it is land not capable of ordinary cultivation or occupation, and so is in the nature of unappropriated soil. Lord Hale gives as his reason for thinking that lands only covered by the high spring tides do not belong to the Crown, that such are, for the most part, dry and maniorable; and taking this passage as the only authority at all capable of guiding us, the reasonable conclusion is that the Crown's right is limited to land which is for the most part not dry or maniorable. The learned Judges whose assistance I had in this very obscure question point out that the limit indicating such land is the line of the medium high tide between the springs and the neaps. All land below that line is more often than not covered at high water, and so may justly be said in the language of Lord Hale to be the ordinary flux of the sea. This cannot be said of any land above that line: I therefore concur with the able opinion of the judges whose valuable assistance I had, in thinking that the medium line must be treated as binding the right of the Crown"

[45] Vincent Powell-Smith's "**The Law of Boundaries and Fences**" addresses the issue as follows:

"The boundary of land adjoining the sea lies at the top of the foreshore in the absence of contrary evidence. The foreshore is that part of the shore lying between the ordinary high and low water marks occurring between the spring and neap tides." ⁴

[46] **Halsbury's Laws of England** is to similar effect and provides:

"The boundary line between the seashore and the adjoining land is, in the absence of usage or evidence to the contrary, the line of the median high tide between the ordinary spring and neap tides.

The boundary of land abutting upon the seashore may vary from time to time, and in the case of a conveyance of land described as bounded by the seashore, then, as the medium high and low water marks shift, so does the boundary of the land shift also; for there may be a movable freehold." ⁵

[47] In terms of the high-water mark **Halsbury's Laws of England** defines it as follows:

³ [1843-60] ALL ER Rep. 559

⁴ 2nd Edition (1975) at pg. 34

⁵ Halsbury's Laws of England Volume 4(2020) paragraph 324

“The landward limit of the foreshore is the high-water mark of ordinary tides, which is the line of the medium tide between the spring and the neap tides throughout the year, that is, the point on the shore which is, about four days in every week, reached and covered with the tide, although it has been held that it does not matter if from time to time certain areas dry out.”⁶ (my emphasis)

[48] In his report, with respect to the high-water mark Mr. Kentish states as follows:

“Within the Land Survey and Land Development context the High Water Line has 2 descriptions:

1. The boundary between land and water, specifically the point on the shore of the sea where the water usually reaches during high tide. It represents the highest level reached by the body of water.
2. The first line of permanent vegetation on the sea shore as you progress inland.”

[49] It can be seen that item No. 1 of Mr. Kentish’s report quoted above, is similar to the legal definition of the high-water mark at common law. The definitions at common law referred to above however, do not seem to make any reference to the first line of vegetation at item No.2 of Mr. Kentish’s report.

[50] It seems that establishing the high-water mark at common law requires observation of the tides over a period of time. In this regard the case of Attorney **General** v. **Chambers** refers to “All land below that line is more often than not covered at high water.”⁷ Halsbury’s Laws of England as previously noted makes reference to the “ordinary spring and neap tides”⁸ and also “the point on the shore which is, about four days in every week, reached and covered with the tide.”⁹

[51] Accordingly, Mr. Kentish states that “The site is one that I am familiar with as I have made several visits beginning in early 2023 with my last visit being on 21 May 2024.” However, his report does not contain any measurements to indicate exactly how far inland the high-water mark was located during these visits. This would seem to be important in this

⁶ Halsbury’s Laws of England Volume 4(2040) paragraph 239

⁷ [1843-60] ALL ER Rep. 559

⁸ Halsbury’s Laws of England Volume 4(2020) paragraph 324

⁹ Halsbury’s Laws of England Volume 4(2040) paragraph 239

particular area as during the site visit of 22nd July 2024, Mr. Kentish himself pointed out a boundary marker (between the New Division and Seaforth Estates) which he indicated was not usually visible at high tide.

[52] An expert report must state the basis upon which the expert has expressed his or her conclusions. In *Kennedy v. Cordia*¹⁰ the UK Supreme Court stated:

“48. An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or ‘bare ipse dixit’ carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371:

‘An expert’s opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert’s bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.’

[53] In this case the boundary between the foreshore and the claimants’ property has not been fixed by a survey. Accordingly, the location of the high-water mark is of importance in order to determine whether the defendants are operating on the claimants’ lands. Unfortunately, this report does not mention any distances or measurements. In the absence of this information, it is not possible to state on a balance of probabilities that the defendants’ structures are located on the claimants’ property. The claim for trespass must therefore be dismissed.

[54] However, I accept the expert’s evidence that the defendants’ activities are taking place immediately adjacent to the claimants’ property and not Seaforth Estate as the defendants

¹⁰ [2016] UKSC at paragraph 48

allege. This finding will have implications as regards the claim in nuisance. It should be noted that the cadastral map for the area contained in his report shows the defendants' activities as being located near parcels 307 and 308. It should be noted that parcels 307 and 308 are identical to parcel 2. The claimants' evidence indicates there had once been an intention to mutate parcel 2 into two separate parcels. However, this mutation was not proceeded with.

- [55] The claimants have complained about the defendants accessing the beach using roads which pass through their land. The first defendant in her witness statement refers to correspondence on this issue from the DCA to the effect that there is a public access to the beach pursuant to **section 50** of the **Physical Planning and Development Act**.¹¹ Since this is a matter which falls within the remit of the DCA as the planning authority for Antigua and Barbuda, it would not be appropriate for the court to make any findings without the considering representations from that authority.

Nuisance

- [56] Having found that the defendant's activities are taking place close to the claimants' lands, the issue of nuisance is relevant. The claimants as the registered proprietors of Parcel 2; Block 53 1287A have the standing to bring a claim in nuisance.¹²
- [59] In **Fearn and others v. Board of Trustees of the Tate Gallery**¹³ Lord Leggatt giving the majority judgment of the UK Supreme Court stated as follows:
- “In his classic article “The Boundaries of Nuisance” (1949) 65 LQR 480, 489 Professor Francis Newark described private nuisance as a “tort to land”—by which he meant that its subject matter is wrongful interference with the claimant's enjoyment of rights over land. He declared his willingness “in the spirit of the old reformers” to nail the following thesis to the doors of the Law Courts and defend it against all comers: “The term 'nuisance' is properly applied only to such actionable user of land as interferes with the enjoyment by the plaintiff of rights in land.” As generally in the law of property, the legal concept of land includes here not only the earth itself but also buildings and other

¹¹ Act No. 6 of 2003

¹² *Hunter v. Canary Wharf* [1997] AC 655

¹³ [2024] AC 1 at page 12

things which are physically attached to it and rights, for example easements, which attach in law to the land.”

[57] In **Elton Scatliffe v. Dwite Flax**¹⁴ Ellis J (as she then was) observed as follows:

“The law of private nuisance is aimed at protecting the owner or occupier of land from substantial interferences with his enjoyment thereof. In considering a claim in nuisance, a court is required to strike a balance between the right of a defendant to use his land as he wishes and the right of a claimant to be protected from interference with the enjoyment of his land.”

[58] There is no limit as to what may be termed a nuisance. As the Supreme Court in **Fearn and others v. Board of Trustees of the Tate Gallery** stated, “The categories of nuisance are not closed.”¹⁵ In this case the primary complaint concerns the odours caused by the pigs and the deposit of pig faeces on or near the claimant’s property coupled with the pigs’ tendency to destroy mangroves on the claimant’s property when they root. During trial, photographic evidence was admitted which clearly shows the pigs among mangroves near a large pond on the claimants’ property.

[59] There are decided cases from the Eastern Caribbean where the odours caused by pigs have been found to be a nuisance,¹⁶ although this is usually in the context of permanent pig pens. Pig waste is well known for having a strong and unpleasant odour which does not need to be described in further detail here. Although there were no pigs present on the site when the court visited, it is clear that the presence of pigs in the area whenever the defendants’ business is operational would lead to some odour as the pigs must relieve themselves at some point.

[60] The next issue to be decided is whether the alleged interference is substantial. One of the leading authorities on this issue is the case of **Vanderpant v Mayfair Hotel Co Ltd.** where Luxmoore J stated:

“Apart from any right which may have been acquired against him by contract, grant or prescription, every person is entitled as against his neighbour to the comfortable and

¹⁴ BVIHCV2010/0053 decided 26th October 2017 at paragraph 12

¹⁵ [2024] AC 1 at page 12

¹⁶ e.g. AXAHCV2010/0054 Historic Beacon Point v. Carl Webster, decided 3rd November 2020

healthy enjoyment of the premises occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among English people.”¹⁷

- [61] In this case I note that the claimants do not reside in the immediate vicinity of where the defendants’ activities are being carried out. Their complaint is that they and their family members have to endure the offensive smells and faeces when they camp in the area or generally visit the beach for recreation. It is tempting to take the view that the claimants’ discomfort is minimal since the activities affect a small area on a large tract of land. This misses the point; however, the claimants are entitled to enjoy all areas of their property without having to experience discomfort from any offensive odours.
- [62] Finally, I find that the defendant’s use of the beach they occupy is not a common and ordinary use of the said land. In that area, recreation, swimming and probably even entertainment events would be a common and ordinary use of the foreshore. However, bringing pigs with their potential for offensive smells cannot be considered a common and ordinary use of the foreshore in that area. In other words, the presence of the pigs is not necessary for enjoyment of the foreshore. The defendants are therefore using the area in an exceptional manner.
- [63] Therefore, taking all the foregoing into account, I am satisfied that there is a substantial interference with the claimants’ enjoyment of their property. I accept the claimants’ evidence that the defendants’ pigs defecate on or near to the claimants’ property which leads to offensive smells and is therefore a nuisance. The issue of the appropriate remedy in the circumstances will now be examined.

¹⁷ [1930] 1 Ch. 138

Remedy

[64] The usual remedies for nuisance are damages and/or an injunction. An injunction will usually not be granted where:

1. The injury caused by the nuisance is trivial or not serious, is one which is capable of being estimated in money and can be adequately compensated by a small money payment; and
2. The case is one in which it would be oppressive to the defendant to grant an injunction.¹⁸

[65] In this case I am satisfied that the foregoing does not apply. Firstly, the defendants' activities are not an occasional event but part of a going concern. Secondly, due to the offensive smells, the defendants' activities have effectively prevented the claimants from enjoying that portion of their land at all. This cannot be considered trivial. In the circumstances, I do not find that the grant of an injunction would be oppressive as the defendants have the option to seek the Crown's permission to relocate elsewhere. This relocation should not be unduly difficult as the defendants have not erected any large permanent structures and the pigs are not kept permanently on site. Accordingly, an injunction will be granted to restrain the defendants from operating their business in the area and more particularly from bringing or keeping pigs in the vicinity.

Costs

[66] The claimants are entitled to costs pursuant to CPR Rule 65.4 and Appendix B. This being a claim with no stated value, the default value of \$50,000.00 will be used as the value of the claim leading to costs of \$10,000.00. However, pursuant to CPR Rule 64.6(3) (c) this will be reduced by 25% to take into account that the claimants did not succeed on their claim for trespass.

Order

[67] The court therefore orders as follows:

1. The claimants' claim for trespass is dismissed with no order as to costs.

¹⁸ Halsbury's Laws of England Volume 78 (2018) paragraph 230

2. Judgment is entered for the claimants against the defendants in respect of their claim for nuisance and a permanent injunction is granted restraining the defendants, through their employees, agents or otherwise from operating the business known as “Pigs Paradise” or any similar enterprise on or in the vicinity of the parcel of land registered as Parcel 2, Block 53 1287A, Registration Section: Jennings and located at New Division Estate in the Parish of St. Mary’s.
3. The defendants through their employees, agents or otherwise are prohibited from bringing or keeping any pigs or on in the vicinity of the parcel of land registered as Parcel 2, Block 53 1287A, Registration Section: Jennings and located at New Division Estate in the Parish of St. Mary’s.
4. The application for an interim injunction filed herein on 30th May 2023 is dismissed with no order as to costs.
5. Prescribed costs to the claimants of \$7500.00.

[68] The court apologizes to the parties for the delayed delivery of this decision which is deeply regretted.

Rene Williams

High Court Judge



By The Court

Registrar