

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2015/0555

BETWEEN:

AUDREY BLAKE

Claimant

and

DONALD SIMPSON

Defendant

Appearances:

Ms Sherrie-Ann S. Bradshaw for the Claimant

Mr. Wendel Alexander for the Defendant

2023: April 4th

2024: April 26th

JUDGMENT

Background Facts

[1] **GEORGE, J. [AG.]:** By way of Fixed Date Claim Form filed on the 5th day of December, 2016 the Claimant claimed the following:

- (i) A declaration that the boundary between the Claimant's land more particularly described as Registration Section: North Central; Block No.: 12-2092D; Parcel 269 and the Defendant's land more particularly described as Registration Section: North Central; Block No.: 12 2092D; Parcel 280 lies along the boundary marks marked in Boundary survey of Mr. Sean Peters dated December 13, 2013.
- (ii) A declaration that the Defendant has encroached on the Claimant's parcel of land by a concrete retaining wall and a small concrete foundation.

- (iii) An Order that the Defendant do demolish the wall and the foundation and thereafter restore the fence in its previous location at his own expense.
- (iv) An order that the Defendant has trespassed by just about 323 square feet of the Claimant's land and continue to trespass on the Claimant's parcel of land.
- (v) Damages for trespass against the Defendant.
- (vi) An order that the Defendant do pay the sum of \$1000.00, being the cost of the surveyor's report.
- (vii) An injunction that the Defendant, his servants and/or agents do not trespass on the Claimant's parcel of land more particularly described at the Land Registry as Registration Section: North Central; Block No.: 12-2092D; Parcel: 269.
- (viii) Interest pursuant to the Eastern Caribbean Supreme Court Act, Cap 143 at a rate of interest of 5% per annum from the date of filing to the date of judgment.
- (ix) Such further or other relief as this Honourable Court deems just; and
- (x) Costs.

[2] By way of Defence filed on the 18th of June, 2018 the Defendant denied encroaching on the Claimant's parcel of land and asserted that the boundaries of Parcels 279 and 280 owned by the Defendant have not been fixed and as such the Court is not entitled to entertain any action or other proceedings unless the boundaries have been determined as provided in section 17 of the Registered Land Act Cap 374 of the Revised Laws of Antigua and Barbuda, Revised edition 1992.

Preliminary Issues

[3] When the trial came on for hearing on the 4th of April, 2023 Counsel for the Defendant, Mr. Alexander, intimated to the Court that he read the pleadings and the history of the case and that he does not have any basis to continue with the trial. He indicated that he tried to reason with the Defendant, but he does not seem to be able to get through to him. No application was filed by Counsel to be removed from

the record. The Court informed Counsel for the Defendant and the Defendant that it was not minded to adjourn the matter as it was a long outstanding matter and the matter was set down for trial. The Court nonetheless stood down the matter for Counsel for the Defendant and the Defendant to have a discussion amongst themselves.

[4] On resumption of the proceedings, Counsel for the Defendant intimated to the Court that he spoke to the Defendant, and they are having irreconcilable differences. Counsel asked that the Defendant be given an opportunity to engage other Counsel of his own choosing and asked to be removed from the record.

[5] The Court then heard from Counsel for the Claimant, Ms. Bradshaw, who intimated that she was ready to proceed with the trial and that the Claimant lived in St. Thomas, USVI and had to travel to Antigua for the trial. Ms Bradshaw also stated that Counsel for the Defendant, had ample time to make an application to be removed from the record, and that many of the delays had been caused by the inaction of the Defendant. Ms. Bradshaw pointed out to the Court that the record will reflect that no witness statement had been filed by the Defendant. Ms. Bradshaw also stated that no questions had been asked of the Court's expert and it would be unfairly prejudicial to her client if this trial were to be adjourned further.

[6] The Court reiterated its reluctance to adjourn the matter to the Defendant, at which point Counsel for the Defendant and the Defendant agreed to proceed with the trial.

Evidence

[7] Two witnesses gave evidence at trial. The Claimant gave evidence and the Court also heard from Mr. Leslie King, Licensed Land Surveyor and Court-appointed expert.

[8] The Claimant relied on her witness summary dated the 14th day of December, 2018 filed on the said date, which is to be found at pages 40-43 of the Core Trial Bundle.

- [9] The Claimant stated that since the filing of her witness summary she noted that the Defendant placed iron railings on her property. She also stated that the Defendant took down her fence, cut down a tamarind tree and was consistently working on her property. She stated that she was unable to get any peace on her land and she wants the Defendant to keep off her property.
- [10] Under cross-examination by Counsel for the Defendant, the Claimant admitted she lived overseas, and she came to Antigua twice or three times a year. She intimated that she saw the Defendant on her property every time she came to Antigua.
- [11] The next witness called was Mr. Leslie King, Licensed Land Surveyor. He referred to his report dated December 12, 2013. He indicated that he did a field visit. He took measurements of all the parcels on the Block relating to all the lands surrounding the parcels in question.
- [12] Mr. King confirmed that these parcels were also identified by fence lines. He took measurements from the field and went back to his office where he drew the plans from the measurements and was able to produce the plan exhibited to his report. He confirmed that the plan shows the Block 12- 2092D registration section of North Central in Piggotts. He confirmed that the map shows Parcels 268 and 269 owned by the Claimant measuring 0.05 and 0.12 acres respectively; Parcel 279 owned by the Defendant measuring 0.07 acres and Parcel 280 also belonging to the Defendant measuring 0.04 acres. Mr. King also referred to the parcel on the East, that is, Parcel 271 measuring 0.15 acres and 272 measuring 0.05 acres.
- [13] Mr. King stated that the plan was done for a comparison of the registers as shown on the registers at the Land Registry. He noted that the areas which he found were favourable with the land registers. He pointed out that the only parcel which was at variance was Parcel 280, where the land registers show 0.05 acres and he found 0.04 acres on the ground. Mr. King also confirmed that on the map there is also a

building outline which goes over Parcel 269 indicating an encroachment on the said parcel and goes far beyond the boundary of Parcel 280. He confirmed that the area of encroachment of the building measures 0.03 acres (approximately 1307 square feet) on Parcel 269.

[14] Under cross-examination by Counsel for the Defendant, Mr. King admitted that when he surveyed Parcel 280, he measured it to be 0.04 acres, less by 0.01 acres. He also admitted that he apportioned a larger portion of land to the Claimant from 0.10 to 0.12 acres. He intimated that he used the fence lines as the fixed lines as they were in accordance with those fixed lines at the Land Registry and he could not place any marks due to the presence of the building and the fact that he could not get into the building.

[15] He stated that he used the fence lines with the cadastral map at Lands and Survey and they compared favourably. Mr. King confirmed that this is the normal acceptable method employed when there are no prior existing lines. He further confirmed that the only existing plan was for Parcel 279 and that there were no other plans for any other parcels in the area. Mr. King stated that as there are no survey plans lodged, the amount of encroachment cannot be ascertained to a high degree of accuracy. However, there is certainly some encroachment. Nonetheless, he indicated that points can be established, which would enable a plan to be lodged and the level of encroachment could be determined.

[16] The Claimant closed its case at this point.

[17] The Defendant did not file any evidence in the matter.

[18] After the close of the Claimant's case, Counsel for the Defendant accepted that the Defendant could not present any evidence as he had filed no witness statements or witness summaries in the matter and requested two weeks to file written submissions.

[19] The Court made an order that written submissions with supporting authorities were to be filed and served by the parties by the 18th of April, 2023, and reserved judgment. This Court did not receive any submissions filed by the Defendant. However, on 12th February, 2024, the Court received the submission filed by the Claimant on the 2nd May, 2023.

Submissions of the Parties

[20] The issue to be determined is whether the Defendant has encroached on the Claimant's land, without her consent, agreement or permission.

[21] It is not in dispute that the Claimant is the owner of the parcel of land in the Registration Section: North Central; Block No.: 12-2092D; Parcel 269.

[22] It is also not in dispute that the Defendant is the registered proprietor of a parcel of land more particularly described as Registration Section: North Central; Block No.: 12-2092D; Parcel 280.

[23] The Claimant asserts that the Defendant encroached on her parcel of land being Registration Section: North Central; Block No.: 12-2092D; Parcel: 269 and is entitled to the relief sought.

[24] The Claimant further contends that in or about 2013, the Defendant trespassed on her land and removed a fence from her property and without her knowledge, consent or authority the Defendant knocked down a tree that was planted on her property which was approximately 100 years old, which said tree she claimed provided shade for her, her family and friends. The Claimant asserted that up to the date of trial the Defendant continued to encroach on her parcel of land and had failed and/or refused to rectify the encroachment. The Claimant was steadfast in her position in her testimony.

[25] The Defendant in his Defence asserted that he is not encroaching on the Claimant's parcel of land. The Defendant further asserted that section 17 of the Registered

Land Act Cap 374 of the Revised Laws of Antigua and Barbuda, Revised edition 1992 applies.

Trespass

- [26] Mr. Leslie King, the Court appointed expert's evidence is crucial in this case. His evidence determined that the boundary between Parcels 269 and 280 shows that a building erected by the Defendant encroached on the Claimant's Parcel 269 by approximately 0.03 acres (approximately 1307 square feet). There is no evidence to the contrary. The evidence of Mr. King and the drawing at Sheet No.12 -2092D (North Central) clearly showed the building line and the area of encroachment of the Defendant. This evidence is accepted by this Court.
- [27] Consequently, the Court can come to no other conclusion but to agree with Counsel for the Claimant, Ms. Bradshaw, that the Defendant has trespassed on the Claimant's property and in that regard, the Claimant is entitled to recover damages for trespass.
- [28] Counsel for the Claimant relied on a number of cases to support her argument, some of which are considered below:
- [29] Firstly, Counsel referred the Court to the case of ***Clarabell Investment Ltd v Antigua Isle Company Ltd***¹ in which case the Claimants alleged that the Defendant erected a garage and fence on their property. The Claimants claimed damages for trespass to land, an injunction to restrain the Defendants from trespassing on the Claimant's land and an order that the Defendants demolished a building erected on the Claimant's land. The Court awarded damages for trespass along with an order for demolition of the building erected on the Claimant's land and an injunction to prevent the Defendant from carrying out any further breaches.
- [30] In ***Jn. Baptiste v Richard and Another***², Barrow, J (Ag. as he then was) in a claim

¹ ANUHCv2006/0323 (Blenman J, as she then was)

² ***Corneil Jn. Baptiste v Gonzague Richard et al*** Saint Lucia Civil Suit No. 1042 of 1998; mentioned at paragraph [31] of ***Clarabell Investment Ltd v Antigua Isle Company Ltd*** ANUHCv2006/0323 (supra)

for an injunction restraining the Defendants for entering and occupying property, awarded an injunction as claimed and damages in the sum of \$500.00 together with cost of \$5000.00.

[31] In **Joyce Ryan v Gloria Gonsalves and Another**³, the Claimant claimed damages for trespass to land, an injunction to restrain the Defendants from trespassing on the Claimant's land and an order that the Defendants demolish a building erected on the Claimant's land. The Court ordered the Defendant to pay special damages in the sum of \$200.00 for the loss of three coconut trees, eighteen pea trees and banana trees and general damages in the sum of \$5000.00.⁴

[32] In **Barbour v Compton**⁵, Mitchell J. awarded general damages in the sum \$5000.00 in similar circumstances.

[33] Learned Counsel, Ms. Bradshaw also referred to the case of **Esther Wilkinson-Harris v Lawson Archibald**⁶, which she considered to be instructive. In that case, the Claimant sued for damages for trespass, sought certain declarations of ownership, and injunctions to preclude the Defendant from entering the land and mandating him to demolish structures built thereon, possession and costs. When the matter came up for trial, the Defendant admitted that the subject land belonged to the Claimant, and he had already removed some of the structures he had placed on it. The trial was aborted and a consent order was entered, whereby judgment was entered for the Claimant and assessment reserved. The Claimant sought \$35,000.00 for damages for trespass and an additional sum as mesne profits.

[34] The Court in that case relied on learning from **Halsbury's Laws of England**⁷ and confirmed that trespass was actionable *per se*, *that is*, without proof of actual

³St. Vincent and the Grenadines Civil Suit No. 464 of 1993; mentioned at paragraph [17] of **Clarabell Investment Ltd v Antigua Isle Company Ltd** ANUHCV2006/0323 (supra)

⁴ It should be noted that this decision was successfully appealed by the Defendant. See **Gloria Gonsalves et al v Joyce Ryan** St. Vincent and the Grenadines High Court Civil Appeal No. 6 of 2002, delivered 1st March, 2004.

⁵ St. Vincent and the Grenadines Civil Suit No. 606/1997; referred to at paragraph [31] of **Clarabell Investment Ltd v Antigua Isle Company Ltd** ANUHCV2006/0323 (supra)

⁶ SKBHCV2017/0188

⁷ 4th edn., Vol. 45 at paragraph 1403.

damage. Ultimately, \$8,000.00 was awarded as damages for trespass, special damages in the sum of \$350.00 and, being of the view that an additional award was warranted in the form of mesne profits, the sum of \$4,910.63.

- [35] As stated above, no submissions were filed on behalf of the Defendant for the Court's consideration.

Findings and Analysis

- [36] In his defence, the Defendant pleaded that the Court does not have the jurisdiction to entertain this claim, as the boundaries of his parcels of land (Parcels 279 and 280) have not been fixed pursuant to that legislative provision.
- [37] Counsel for the Claimant, in her written submissions, refuted the notion that this is a boundary dispute, but one of clear encroachment. As such, the Claimant is of the view that the Court is empowered to determine the instant claim.
- [38] Section 17 of the Registered Land Act⁸ provides:

General boundaries.

- 17. (1) Except where, under section 18, it is noted in the register that the boundaries of a parcel have been fixed, the Registry Map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.*
- (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.*
- (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the Registry Map and in the register and shall file such plan or description as may be necessary to record his decision.*

⁸ Cap 374 of the Laws of Antigua and Barbuda

(4) No Court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

(5) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the Court or the Registrar may, in proceedings concerning the parcel, receive such evidence as to its boundaries and situation as it or he thinks fit.

[39] Section 18 of the said Act outlines how boundaries are fixed:

Fixed boundaries

18. (1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.

[40] It appears from the aforementioned provisions that the Registrar of Lands may indicate the precise position of the boundaries of a parcel of land, after causing the boundaries to be ascertained. Otherwise, boundaries are accepted to be approximations. If a dispute arises as to the boundaries of a parcel of land, then that dispute ought to be ordinarily determined by the Registrar and not the Court, unless the boundaries have been determined as provided in this section.

[41] It therefore remains to be considered whether this is a dispute as to the boundaries of the parcels of land owned by the parties.

- [42] The Court is of the view that the claim is not a boundary dispute as contemplated by section 17. In fact, neither the pleadings nor the evidence discloses a dispute as to the boundaries of the land belonging to the parties but address the Claimant's concern that the Defendant has gone beyond his boundaries to encroach on her property.
- [43] In any event, Mr. King, the Court appointed expert, noted in his report and his *viva voce* evidence that as it relates to Parcel 269 belonging to the Claimant and the adjoining Parcel 280 belonging to the Defendant, the boundaries found on the ground are defined by fence lines, fence posts and boundary irons. These, he indicated, for the most part fit the findings as recorded on the Data Sheets of the Cadastral Map. There is therefore the suggestion that at least in part, as it relates to the two parcels of land, the boundaries have more or less been fixed.
- [44] Based on the evidence, this Court finds that the Defendant has trespassed on Parcel 269 to the extent of 1307 square feet as stated in the Court ordered expert report provided by Mr. Leslie King. The encroachment onto the Claimant's property is unlawful, as this was done without the Claimant's consent or permission, and continued despite her protestations, which resulted in these proceedings.
- [45] It is trite that trespass on a person's land gives rise to a continuing action for as long as the trespass lasts. In the case at bar, the evidence of the Claimant, which remains undisputed, is that the trespass continued even to the date of trial.
- [46] The Court agrees with Counsel for the Claimant, Ms. Bradshaw, that there is no evidence of the rental value of the land that is encroached upon. Counsel for the Claimant argued that an award for damages should reflect the fact that the Claimant was kept out of part of the parcel of land as a result of the trespass and posits that \$10,000.00 is appropriate to award the Claimant as damages for trespass. Counsel also posits that \$7,000.00 is a reasonable sum for the loss of use of the Parcel.

Remedies

- [47] A claimant is entitled to recover damages for trespass even though he sustained no actual loss. As Blenman J. (as she then was) puts it in **Clarabell**⁹, at paragraph [45] of the judgment:

“Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another. The slightest crossing of the boundary is sufficient. It is a trespass to place anything on or in land in the possession of another.”

- [48] For the avoidance of doubt, I find that not only has there been trespass in this case, but that as a result of the said trespass, there is also evidence of injury to the Claimant in the form of the Defendant’s removal of the fence and construction of the retaining wall and concrete foundation.
- [49] Having determined that there is a trespass by the Defendant prevailing in this case, I now turn to the measure of damages.

Damages

- [50] In determining the measure of damages to award the Claimant, the Court must first consider the loss suffered by the Claimant.
- [51] There is evidence to suggest that the Defendant built a wall and a foundation and persisted in continuing to occupy the Claimant’s property in blatant disregard to the Claimant’s rights.
- [52] Taking into account the facts and circumstances of this case, I am of the view that this is an appropriate case in which the Court should grant the Claimant damages

⁹ **Clarabell Investment Ltd v Antigua Isle Company Ltd** ANUHCv2006/0323 (supra) at [45].

for trespass, as well as an additional sum for consequential loss of use and/or occupation (mesne profits).

Special damages

- [53] Special damages must be pleaded and proven. The Claimant pleaded in support of her claim¹⁰ for special damages that she had to engage the services of a licensed land surveyor, Mr. Peters, to ascertain the extent of the Defendant's encroachment. For this, she claimed that she spent \$1,000.00. However, the Claimant did not provide proof of the cost of the survey report. As such, the Court is constrained and can make no award for special damages.

General damages

- [54] The damages that the Court awards to the Claimant for trespass should reflect the act of trespass, as well as the fact that the Claimant was kept out of the parcel of land as a result of the trespass. In other words, the purpose of an award of general damages for trespass is to put the Claimant – as far as money can do it – in the position she would have been in, had the wrong not been suffered. As such, the general damages awarded must include an element for the use of that piece of Parcel 269 from 2013, which is the date the Claimant stated that she returned to Antigua and noticed that the Defendant had trespassed, to the date of trial.
- [55] It is to be noted that in **Clarabell**¹¹, the Claimant was kept out of the parcel for some eight years. In the case at bar, the Court is unsure precisely when the Defendant encroached on the Claimant's land. However, based on the Claimant's testimony (which remains undisputed) she would have been kept out from or about the year 2013 until at least the date of trial, approximately ten years.

¹⁰ See paragraph 7 of Statement of Claim filed on 15th December, 2016, page 19 of the Trial Bundle

¹¹ **Clarabell Investment Ltd v Antigua Isle Company Ltd** ANUHCV2006/0323 (supra)

- [56] Additionally, based on the expert's report and testimony, the acreage of the Defendant's encroachment is approximately 1307 Square feet or 0.03 acres. This is approximately one-third of the total acreage of Parcel 269, being 0.10 acres or 4,356 square feet. It therefore means that the Claimant has been kept out of a significant portion of her property, and for a significant amount of time. Further, the Defendant has maintained his encroachment to the date of trial, determined to refute the claim despite the availability of the expert's findings.
- [57] Taking into account all the circumstances of this case, the Court is of the considered view that the sum of \$10,000.00 is appropriate to award as damages for trespass, as well as the sum of \$4,000.00 for the Defendant's use/occupation of the encroached portion of Parcel 269, to the Claimant's exclusion.

Injunctive Relief

- [58] In respect of the permanent injunctions sought, this Court is guided by the learning in ***Cambie Surgeries Corporation v British Columbia (Medical Services Commission)***¹², where Groberman J. outlined the criteria for granting this relief. In sum, the Court must examine whether, in light of the evidence, the Claimant has established a legal right to the relief sought, and whether a permanent injunction is an appropriate remedy.
- [59] The Court is satisfied that the Defendant is aware that the fence and the foundation are located on the Claimant's property, and that the same were constructed without the Claimant's consent or permission. The Court is also satisfied that the Defendant removed the Claimant's fence and cut down the tree, again without the Claimant's consent or permission. The Defendant could have sought to remedy his breaches upon receipt of the expert of Mr. King. Yet, he persisted on denying that he encroached on the Claimant's property and has continued to encroach on the Claimant's property to the date of trial.

¹² 2010 BCC 396 at [28], per Groberman, J.

[60] Therefore, the Court is of the view that the Defendant is intentionally refusing to remove the fence and foundation and that unless the Court compels him to do so, the fence and foundation would remain an encroachment on the Claimant's property. I find that the Claimant has established a legal right to the relief sought.

[61] Consequently, the court is of the view that this is an appropriate case in which the Court should order that the Defendant remove the encroachments on Parcel 269, and to prohibit him from engaging in any further acts of trespass. I am satisfied that unless the Court grants the injunctive relief prayed the Defendant would take no steps to remedy his unlawful acts.

Conclusion

[62] In light of the foregoing, judgment is entered in favour of the Claimant.

[63] Accordingly, the Court orders and declares as follows:

- (a) The Court declares that the Defendant has encroached on the Claimant's parcel of land known as Registration Section: North Central; Block No.: 12-2092D 269 by a concrete retaining wall and a concrete foundation. This said encroachment amounts to trespass.
- (b) The Defendant shall demolish the said concrete retaining wall and concrete foundation constructed on the Claimant's said property, and thereafter restore the Claimant's fence in its previous location at his own cost, within eight (8) weeks of this order.
- (c) The Defendant, whether by himself, his servants or agents or whomsoever is directed by him, is hereby restrained forthwith from trespassing on the Claimant's parcel of land known as Registration Section: North Central; Block No.: 12-2092D 269, whether by any unlawful entry, construction or otherwise.

- (d) The Defendant shall pay the Claimant general damages for trespass in the sum of \$10,000.00 and an additional sum of \$4,000.00 for use and/or occupation of the encroachment between 2013 and the date of trial, together with interest at the rate of 5% per annum from the date of judgment to the date of payment in full.
- (e) No award is made for special damages.
- (f) Costs are prescribed pursuant to CPR Part 65 unless otherwise agreed.

[64] The Court apologises for the delay in the delivery of this judgment and is grateful to Counsel for their assistance in this matter.

Andie George

High Court Judge (Ag.)



By the Court

Registrar