

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

Claim No: ANUHCv2020/0355

BETWEEN:

JACKLYN CEPHAS
KEVIN RICHARDS
(as next friend of Kevesha Richards)

Claimants

and

LEROY GORE

Defendant

Appearances:

George Lake of counsel for the Claimant

Lawrence Daniels of counsel for the Defendant

2022: November 21st

2023: April 27th

JUDGEMENT

- [1] **Drysdale, J:** This matter concerns a dispute over property situate in Codrington, Barbuda. The Claimant initiated these proceedings seeking inter alia damages for trespass, destruction of property and mental distress.

The Pleadings

The Claim

- [2] The Second Claimant is a minor represented by her father and next friend. The First Claimant is the minor's Aunt. The Claimants contend that the Second Claimant was allocated the property located on the Northern side of Jam well next to the property

owned by Mr. Hartford John (hereinafter the disputed property) by the Barbuda Council consequent upon the death of her mother, Elenor Cephas. The First Claimant was also designated as proxy for the Second Claimant until she attains the age of majority.

- [3] The Claimants contend that the minor's parents had in or about 2007 commenced building a house on the disputed property. To that end they had completed the foundation of the house on the disputed property. However, on 5th February 2020 whilst the construction was still in progress, a dispute over whom had been given authority to use the property arose. As a result, the Barbuda Council advised the parties that they were aware of the conflict surrounding the disputed property and that all parties should cease all operations being done on the property. Despite this, in on or about the month of July 2019 the Defendant and his servants and or agents without permission entered onto the disputed property and on at least one occasion destroyed cement works on the disputed property. The damage was assessed by a builder and amounted to the sum of \$2,318.00. The Claimants contend that in or about June 2020 the Defendant did further damage to the existing works on the property and also subsequently placed a 40-foot container on the disputed property without permission.
- [4] The Claimants contend that although these matters were repeatedly reported to the Barbuda Police no redress was received. That the Defendant, by his continuing harassment and by his conduct has subjected them to much mental abuse and is has deliberately and maliciously inflicted loss on them.

The Defence

- [5] The Defendant denies that he committed any trespass and or destruction of the disputed property. He also denied mentally abusing or harassing the Claimants as alleged or at all. The Defendant disputes that the land is owned by the Second Claimant and further that that Claimants erected a foundation on the property. He avers that between September 17th 2007 and the 30th day of November 2007 he purchased the disputed property from Mr. George Burton for the sum of \$30,000.00.

- [6] Having purchased the disputed property he cleared it and commenced the construction of his home upon the disputed property. To that end he placed a forty-foot container on the disputed property. The Defendant contends that these proceedings are an attempt by the Claimants to prevent him from completing his house.

THE EVIDENCE

- [7] The parties were each cross examined on their various witness statements. Although the Claimants also filed a witness summary for one Griff Walker that witness was not presented at trial and his evidence was struck out and not relied on for the determination of this matter. The witness statements were all almost identical to their various pleadings and for brevity only the relevant information necessary to determine this matter will be summarized hereafter.

KEVIN RICHARDS

- [8] The witness amplified his witness statement to give further and better particulars of the construction on the disputed property. He stated that had built the columns and foundations as well as some of the walls which reached window level of his intended home. He advised that however hurricane Irma had destroyed a part of those works. After the passage of the hurricane he cleaned up the damage and then rebuilt some of the columns and the gallery. He stated that the Defendant thereafter entered onto the disputed property and damaged some of the columns.
- [9] The witness disputed that the Defendant had been in occupation of the disputed property as far back as 2008 and that he had started construction in April 2019. Instead he stated that the Defendant had commenced construction in or about February 2020.

- [10] The witness when questioned about the construction of the house, agreed that he never submitted a plan to construct the house to the Development Control Authority (hereinafter DCA) although he stated that he had produced a plan to do so. The witness also agreed that when he had started construction, he had not received an allocation letter from the Barbuda Council.
- [11] The witness stated that he had invested the sum of \$100,000.00 into the house and estimated that the total cost of the house would have been in the region of \$200,000.00. He admitted that he had taken no loan to construct the house and had produced no documentation concerning his savings to demonstrate that he had the finances to build the house. He agreed also that he had not conducted any valuation of the works done on the disputed property. Further that he had not provided any evidence of the materials he had used to construct the structure on the disputed property and photographic evidence of the works was done between the years 2013 to 2019. The witness further agreed that he had not provided any document with respect to the disputed property until on or about 5th February 2020.

THE FIRST CLAIMANT

- [12] The witness reiterated that the minor was the owner of the disputed property as it was awarded to her by the Barbuda Council. The witness referred to a letter issued by the Barbuda Council as evidence of this claim.
- [13] The witness testified that the Defendant trespassed onto the disputed property in February 2020. At the material time a foundation had been constructed and walls for the home were partially built. The witness agrees however that the disputed property had never been surveyed and that there were no drawings of the property.
- [14] The witness also agreed that she was aware that the Defendant had surveyed the disputed property but was unsure of the date of this survey. Further that between the years 2008 to 2019 there was no document demonstrating that her sister and niece had owned the disputed property. The witness also agreed that she never caused a letter to be written to the Defendant between the years 2008 to 2019 about his alleged

trespass. Finally, the witness agreed that she was aware that the Defendant had constructed a house on the property but was not sure of the stage of completion.

THE DEFENDANT

- [15] The Defendant commented on certain sections of the witness statement of Kevin Richards. The Defendant now admits that he had entered onto the disputed property and explained this was because he had heard heavy equipment. He stated that he reported the matter to the police but received no assistance. Subsequently he went on to the property and observed that the columns were being boarded. Accordingly, he took a sledgehammer and damaged the columns. His actions were reported to the police and when confronted he admitted to causing the damage. However the police then indicated that they could not intervene in the matter.
- [16] The in relation to the survey plan, the Defendant stated that the document was an outline of the property with dimensions that were taken by himself, and his son based on survey points that was put on the property. The Defendant insisted that he had purchased the disputed property from George Burton a council member. When questioned on whether he had any documentation to prove this, the Defendant first indicated that document was destroyed by hurricane Irma and then subsequently changed his answer to yes and referred to cancelled checks as proof. He admitted however that those checks did not indicate that they were for the purchase of the disputed property as alleged.
- [17] The Defendant also admitted to being aware that all lands in Barbuda are held by the Crown and could not be sold by anyone including George Burton. The witness stated that while he had applied to the Barbuda Council for land he had not applied for the disputed property.
- [18] The Defendant denied the assertion that it was only after Hurricane Irma that he started construction on the disputed property. When confronted with his witness statement in particular paragraph 3 wherein this statement was made, he suggested

that although he had confirmed his witness statement to be true and correct, he did so just by scanning the document.

- [19] He denied that he commenced construction in or about August 2020 and that further the majority of the work done was done after he received the statement of claim and the application for an injunction. He suggested however that 60% of the work was done after the injunction was lifted. He admitted that at the time he commenced construction on the disputed property he did not have a house plan, nor did he get any permission from the DCA.

- [20] The Defendant admitted to knowing Everett Thomas and that the disputed property was part of his land. He also admitted that the property of Hartford John was bounded with the disputed property. The Defendant further admits to being aware of a letter which references the disputed property in relation to Everett Thomas and Hartford John's properties. He admitted to being aware that the minor's mother had died in 2012 and that a letter was issued stating that the disputed property was transferred to the Second Claimant upon the death of her mother, Eleanor Cephas.

- [21] The Defendant admitted that the Barbuda Council did not grant him the disputed property but insisted that he purchased the foundation from Mr. George Bolton. He disagreed that the foundation which was on the property was that of Mr. Kevin Richards.

- [22] The Defendant admitted to destroying the columns on the property. When questioned on the date of the picture evidencing the damage he agreed that it reflected the 10th day of August 2020. He further admitted that the pictures reflected works being the foundation and walls that were not done by him. He insisted that the entirety of that structure was sold to him for the price of \$30,000.

- [23] He admitted to being made aware of the filing of the injunction in October 2020 and the same being granted on 8th February 2021. Despite this, between December 2020 and 1st March 2021 he worked on the property and in particular put on the roof,

windows and doors to his house. He however denied that during the time the injunction was in effect he did substantial work on the property.

- [24] He stated that substantial works had already been done on the property when he purchased the disputed property. He knew that when he purchased the structure that the Claimants had done the works and admitted that when the claimants informed him that it was their land he was not surprised.

THE SUBMISSIONS

The Claimants

- [25] The Claimants argue all land in Barbuda is vested in the Crown. That pursuant to section 51 of the Barbuda Act no person shall hold or deal with any land situate in Barbuda except as it appears in the Act. Furthermore, and more importantly the Barbuda Council has the requisite authority to allot, distribute and divide all land. The Claimants contend that although a dispute arose as to the ownership of the property, that issue was convincingly resolved by the Barbuda Council which ruled in favour of the Second Claimant. Thus, the Claimants contend that they are the true persons entitled to the land.

- [26] The Claimants further contended that at all material times the defendant knew or to have known that he was ordered by the council not to enter onto the set lands or to do any works thereon. That the Defendant with this knowledge nonetheless entered onto the disputed property, destroyed works done by them and subsequently commenced construction on the works thereon. The Defendant also had no permission by the DCA to build any structure on the disputed property. Accordingly, the acts committed by the Defendant amount to acts of trespass for which they are entitled to relief.

The Defendant

- [27] The Defendant filed rather concise skeleton arguments and contended that he purchased the parcel of land in 2007 for the sum of \$30,000 and remains the owner

of the same. To that end the Defendant argues that he commenced the construction of his home which is about 90% complete. The Defendant also argues that not only is he in occupation of the land but that he has also demonstrated complete ownership of the same.

THE ISSUES

[28] The issues for consideration are as follows:

- i. Whether the Defendant committed the tort of trespass on the disputed property. If yes
- ii. What relief if any are the Claimants entitled to

ANALYSIS OF THE EVIDENCE

[29] Having examined the totality of the evidence including the countenance and demeanour of the witnesses unquestionably I prefer the evidence of the Claimants whom I found to be forthright and honest. This was not the case for the Defendant whose evidence was at best riddled with inconsistencies and what could only be a blatant disregard for the truth. The Defendant contradicted his own evidence in chief and then attempted to deny that the same was his evidence or that he had approved of it. This is especially notable as this Court went through great pains to ensure that the witness was presented with an electronic copy of his evidence on the screen and ensured that he took sufficient time to read the same and verify the truth of its contents. Notwithstanding this the Defendant denied that he had made certain statements or that he was aware of the same in his witness statement. The credibility of the Defendant being called into question, his express denials especially in light of certain admissions and later contradictions did not engender him as a witness of truth in the eyes of the Court

ANALYSIS AND THE LAW

Whether the Defendant committed the tort of trespass on the disputed property

- [30] The tort of trespass involves the 'unjustifiable interference of land which is in the immediate and exclusive possession of another.'¹ Thus for the Claimants to succeed they must establish that they are the owner or lawful occupiers of the disputed property entitled to possession.
- [31] The island of Barbuda has its own unique regime as it concerns land which differs significantly to its sister island Antigua. In Barbuda all residents hold property as tenants of the Crown. Section 3(2) of the Barbuda Land (Amendment) Act stipulates that 'persons shall neither hold nor deal with any land situate within the said island save and except as hereinafter appears by the provisions of this Act and subject to any by-law made by the Council in that behalf.' The Act also vests the power in the Barbuda Council for the 'management, administration and development of land in Barbuda,'²
- [32] To prove that they are the rightful occupiers entitled to possession, the Claimants have relied on a series of documents emanating from the Barbuda Council which is the authority for determining the nature of a person's legal interest in any property on island. The first letter referred to by the Claimants, dated 5th February 2020 speaks to it being recognized that there was a dispute between the parties concerning the ownership of the property and advising them to cease all operations being done on the property. This was subsequently followed by a letter dated 26th February 2020 from the Barbuda Council. This letter was written to Mr. Everett Thomas and informed of the Council's approval of the transfer of lands from himself to Mrs. Eleanor Cephas Richards. The letter also informed that considering the untimely passing of Mrs. Eleanor Cephas Richards that ownership has been awarded to her minor daughter Kevesha Richards. The final letter dated 11th June 2021 described the property in question as 'the land located east of the land owned by Mr. Hartford John and West of the land owned by Mr. Everett Thomas' and confirmed that the property was

¹ Tort Law by Elliot & Quinn page 326

² Barbuda Land Amendment Act section 8(1)

transferred to the late Eleanor Cephas and by virtue of her passing to her daughter Kevesha Richards.

[33] In contrast, the Defendant has not substantiated his claim to the disputed property. Notably the Defendant failed to provide any documentary evidence from Mr. George Burton whom he alleged was the legal occupier of the disputed property of his interest in the same, or from the Barbuda Council evidencing either George Burton's or his alleged interest in the disputed property. Moreover, the cheques relied on by the Defendant do not demonstrate the purchase of the disputed property.

[34] I am also mindful of the evidence of the Defendant wherein he admits that whilst he had applied to the Council for another parcel of land he had made no such application concerning disputed property and that he was aware that land could not be sold by anyone including a Council member³. Moreover the Defendant admitted that the disputed property was part of the property of Everett Thomas and that the disputed property was in fact transferred to Elenor Cephas. All these admissions I believe are fatal to the defence of the Defendant.

[35] Moreover, the Defendant does not challenge the authenticity of the letters relied on by the Claimants and or becoming aware of the same. The Defendant however contends that as at the date of the first letter he had already been in possession of the disputed property for more than 13 years. By virtue of this I understand the Defendant to be suggesting that he has a claim in prescription or adverse possession. I cautiously say suggesting as the Defendant did not seem to vehemently pursue this as a viable defence. Nonetheless it is prudent to address and dismiss this line of reasoning. Because of the way land⁴ is held in Barbuda, the Act stipulates that 'no person shall acquire the ownership of any piece or parcel of Crown land within Barbuda by prescription.'

³ George Burton from whom the Defendant allegedly purchased the property was a council member

⁴ Is also defined as an interest in land

[36] In relation to adverse possession, even in circumstances where there is no statutory authority expressly precluding such a claim the Defendant has not met the threshold for satisfying that he is entitled to legal rights in the property through this mechanism as the evidence clearly demonstrates that the Defendant has not been in possession of the disputed property an extensive period of time. I say so as despite the insistence of the Defendant that he was in occupation since 2007 and commenced construction on the structure after hurricane Irma, his evidence was wholly undermined on cross examination and the documentary evidence provided to this Court. It is of note that after initially denying causing any damage to the structure of the Claimants on the disputed property that the Defendant eventually admitted that he used a sledgehammer to destroy some of the columns. When confronted with photographic evidence of the same he admitted again that the damage was his handiwork. Of importance, is the date of those pictures being 10th August 2020 which showed the current state of affairs concerning the construction on the property. The Defendant also suggested that he had bought the foundation, columns and walls which were already on the disputed property from George Burton. Indeed, his own evidence is that he built upon these exiting works. Given the state of the construction as at 10th August 2020, it is therefore not feasible that the Defendant commenced construction in 2019 or any period earlier as suggested.

[37] Therefore, I find that the earliest that the Defendant could have attempted to occupy the disputed property and commence construction thereon was post 10th August 2020. This means that the Defendant has fallen far short of continuous occupation requirement of the property sufficient to give rise for a claim in adverse possession.

[38] Based on the preponderance of evidence before the Court the Claimants have satisfied that they are entitled to legal occupation/ownership in accordance with the regime for holding land in Barbuda of the disputed property. Furthermore, and in accordance with the Privy Council authority of **Ocean Estates Limited v Pinder**⁵ the

⁵ PC No. 30 of 1967

resultant effect is that ‘a plaintiff who can prove any documentary title to the land is entitled to recover possession.’

What relief are the Claimants entitled to?

Damages for Trespass and Mental Distress

[39] Before delving into the measure of damages for the Defendant’s trespass I wish to note that the parties have not provided the court with much assistance in resolving this issue. However, considering the nature of the trespass and the manner in which land is held in Barbuda, I accept that the usual methods of calculating damages may be problematic. Thus, I will attempt to apply a reasoned approach to quantify damages.

[40] The Claimants accuse the Defendant of unlawfully entering the disputed property, destroying certain concrete works and placing a 40-foot container on the property and constructing a house on the foundation and walls already built by them. The Defendant does not deny this. Thus, by his own admission, he has committed the tort of trespass. The tort of trespass is actionable per se that is without proof of any loss. In such cases an award of nominal damages is made. Where however there is actual damage the learned authors on Halsbury’s Laws of England⁶ advise that:

‘If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant’s land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use. ... Where the defendant cynically disregards the rights of the claimant in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded if the trespass is accompanied by aggravating circumstances

⁶ 4th Ed Volume 45(2) paragraph 526

which do not allow an award of exemplary damages, the general damages may be increased.'

[41] In this case the Claimants have claimed damages for the trespass, mental distress and an injunction to prevent the Defendant from entering, digging up, grading or otherwise interfering with the said lands or parking any vehicle trailer or structure thereon. Given the extensive nature of the trespass the Defendant having constructed a house on the property which is 90% complete the injunctive relief as prayed for would not be feasible.

[42] However, the Defendant by his actions has dispossessed the Claimants of their lawful use and occupation of the disputed property. The Defendant has also converted the property of the Claimants for his own use without any compensation. Given the Defendant's conduct in deliberately destroying the property of the Claimants, of going onto property he knew did not belong to him and constructing a house on works already started by the Claimants, of disregarding the injunction and working assiduously to complete the house in an attempt to dispossess the Claimants from the property, the Claimants interest in the property and the consequential loss of use and enjoyment of the property, I find that significant damages are warranted. The Defendant acted in an oppressive, high hand and capricious manner and despite the Claimants numerous attempts they were unable to get the Defendant to cease and desist therefrom and or obtain assistance from the local police. Indeed, so brazen were the actions of the Defendant that not only did he admit wrongdoing in damaging the Claimants property but he also in spite of an interim order being in place continued to work on the construction of his house. Clearly these acts would have caused the Claimants much mental stress and their continued attempts to obtain assistance demonstrates this. In such circumstances and in keeping with the Privy Council in the case of **Horsford v Bird**⁷ an award of aggravated damages in addition to the assessed measure of damages for trespass is warranted.

⁷ PC No 43 of 2004

[43] Hence I have had regard to all of the circumstances including the Claimants interest in the land, the works on the property constructed prior to the Defendant's unlawful conduct which I accept that prior to hurricane Irma had resulted in the sum of \$100,000 being spent thereon⁸, the appreciation of those works which is calculated using the industry rate of 2% over a period of 3 years⁹ and the dreadful and appalling conduct of the Defendant and the distress caused by the Defendant's actions which has already stated, is an aggravating feature warranting an uplift in the measure of damages and find that the Claimants are entitled to damages in the sum of \$300,000.00.

ORDER

[44] In light of the foregoing, it is hereby ordered as follows:

- i. Judgment is entered for the Claimant.
- ii. The Defendant is declared to be a trespasser and is not entitled to the lawful occupation of the property.
- iii. The Defendant shall pay the Claimants the sum of \$300,000.00 as damages for trespass within 6 months from today's date failing which the Defendant shall restore and deliver possession of the property to the Claimants.
- iv. The Claimants are awarded prescribed costs in accordance with CPR 65.11
- v. Interest.

⁸ Judicial notice is taken of the devastation caused by Hurricane Irma which destroyed over 90% of the island and the effect this would have had in the Claimants ability to prove the sums spent on the construction of the intended home on the property

⁹ The appreciated value of the interest in land is the sum of \$203,988.75

Jan Drysdale

High Court Judge

By The Court

Registrar