

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

CLAIM NO. SKBHCV2017/0044

BETWEEN:

SEYMOUR ANTHONY WILLIAMS

Claimant

and

- 1. ANREW WILLIAMS**
- 2. GLENVILLE WILLIAMS**
- 3. CALVIN WILLIAMS**
- 4. ASHLEY TWEDE**

Defendants

Appearances:

Ms. Marsha Henderson with Ms. Brittney Jeffers for the Claimant
Mr. Hesketh Benjamin for the Defendants

2019: February 19

ORAL JUDGMENT

- [1] **VENTOSE, J.:** The Claimant is the owner of a property situated in Lodge Village in Lodge Estate in the Parish of Christ Church in Saint Christopher. The four Defendants are his nephews who have occupied the premises since in or around 1984 with the permission of the Claimant's father and their grandfather. The Claimant became owner of the land as joint tenants with his father in 1997. The

four defendants continued to occupy the property with the implicit permission of the Claimant since the death of their grandfather and the Claimant's father in 2000. The Claimant now wishes to have possession of his property but the Defendants have refused to vacate the premises. The Claimant seeks various orders from the court, including a permanent injunction restraining the Defendants from trespassing on the Claimant's property, possession of the property and damages for trespass.

- [2] The Defendants do not deny that the Claimant has legal title to the property but state in their evidence that they paid certain sums for improvements to the house situated on the land owned by the Claimant. The Defendants, when they responded to the Claimant's Fixed Date Claim, did not include in their reply a counterclaim as permitted by CPR 18. A mere statement that the Defendants used monies to improve the property does not amount to a counterclaim. Any such counterclaim must comply with CPR in respect of claims. No such counterclaim having been made, the Defendants cannot raise the issue of their contribution in defence to a claim for trespass. It is not relevant at all.
- [3] The Second Defendant and the Third Defendant did not file witness statements as ordered by the court on 26 March 2018. Counsel for the Claimant made an oral application to call the Second and Third Defendants as witnesses. CPR 29.11(1) provides that if a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits. CPR 29.11(2) also states that the court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8. Counsel submits that he does not have a good reason for not seeking relief because he was unaware that the two witness statements were not filed. That is sufficient to reject his application. For reasons, which will become clearer later, any such evidence would not have been material to the dispute between the parties.
- [4] The Claimant gave evidence that there was no objection to the Defendants residing in the property that was originally owned by his father. Their occupation

continued after he became the owner as joint tenant in 1997 and after the death of his father in 2000. In July 2016, the Defendants received notices from the Claimant that they should deliver up possession of the property. The Fourth Defendant has since left the property so the Claimant applied to discontinue the claim against the Fourth Defendant.

[5] Notices to quit were served on all Defendants on 12 July 2016. The First, Second and Third Defendants have persisted in their occupation of the property notwithstanding the Claimant's wish that they vacate the premises and the filing of this claim to which he had to resort, to have possession of his property. The Second Defendant does not deny the trespass or explain why he continues to remain in occupation of the property. In cross-examination, the Second Defendant accepted that he received notice to leave the premises from the Claimant, explained that he had nowhere to go, and importantly he does *not* wish to leave the property.

[6] The Claimant has satisfied me that he owns the property in question; the Defendants are trespassers, having failed to comply with his request to leave the property, which they all received on 12 July 2016. The Claimant is therefore entitled to the relief that he seeks. The damages for trespass that each Defendant must pay to the Claimant are assessed at \$15,000.00 for 30 months.

Disposition

[7] For the reasons explained above, I make the following orders:

- (1) The oral application to call the First and Third Defendants as witnesses is refused, and First Defendant's previous statements are hereby struck off from the record of the proceedings.
- (2) The claim is discontinued against the Fourth Defendant.
- (3) Judgment is given in favour of the Claimant for trespass against the First, Second and Third Defendants from 12 July 2016.
- (4) The First, Second, and Third Defendants are to vacate the property by 31 March 2019.

- (5) A permanent injunction is granted restraining the First, Second and Third Defendants whether by themselves, their servants and/or agents and/or any other person acting on their behalf, from trespassing on the Claimant's property at Lodge Village in Lodge Estate.
- (6) That if you, the within named Andrew Williams, Glenville Williams and Calvin Williams, do not comply with this order (at paragraphs 4 and 5) you may be held to be in contempt of court and imprisoned and/or fined.
- (7) Damages to the Claimant in the sum of \$15,000.00 for trespass to be paid by each of the First, Second and Third Defendants.
- (8) Interest at a rate of 5% on the sum payable by each of the First, Second and Third Defendants from the date of judgment until final payment.
- (9) Prescribed costs are awarded to the Claimant in accordance with Part 65.5 of the CPR 2000.

Eddy D. Ventose
High Court Judge

By the Court

Registrar