

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV2015/0030

IN THE MATTER of the Estate of Christiana Elizabeth
Skerritt, deceased, and trespass to land.

BETWEEN

JOSEPH ABRAHAM SKERRITT

(as the lawful executor of the above-named deceased) Claimant

and

KENNETH SILCOTT

Defendant

APPEARANCES

Mr Jean Kelsick for the claimant.

Mr Khari Markham for the defendant.

2017: DECEMBER 6

2018: MARCH 5¹

JUDGMENT

Concerning back-rent

- 1 **Morley J:** The claimant ('Skerritt'²) seeks back-rent from the defendant ('Silcott'). Silcott has lived his life on land in which Skerritt and others who live abroad from Montserrat have inherited an interest. Skerritt is well-educated living in the UK in attractive Bletchley, where the enigma

¹ Judgement delayed only because the High Court does not sit constantly on Montserrat. Michaelmas Assizes ended on 07.12.17, with 05.03.18 being the first day returning for Hilary Assizes, and therefore the first day the judgment could be delivered.

² For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

code was cracked during WW2; Silcott on Montserrat can hardly read and has no toilet. At first Skerit made application to have Silcott thrown off the land, as illegitimate; that settled. Now the application is for back-rent from him.

- 2 There was a trial before me on 06.12.17, at which I heard evidence from both, and from Joseph Bass for Skerit on likely rental income.
- 3 Abigail Greenaway (Abigail) was the grandmother of both Skerit and Silcott. She had, among other children, a daughter Christiana, who was the mother of Skerit, and a son Daniel, who was the father of Silcott (whose parents did not marry). Abigail died on Montserrat on 06.10.78, leaving her property at parcel 14/4/38 to her children, but made Christiana sole executor. Christiana did nothing to devise the property among the children, and instead had the property registered in her own name alone on 30.11.84, corrected on 29.02.96 as being held in trust by her. Christiana died in the UK on 13.10.03, and Skerit is her executor, obtaining probate in the UK on 23.03.04 and on Montserrat ten years later on 16.07.14.
- 4 Silcott was born on Montserrat on 25.09.62. He is a farmer, a poor man, making a lifelong minor income from selling farm produce. As a boy he lived with Abigail until about 1974, and after he went to help his father Daniel with livestock. He later returned north to the plot with Daniel during the volcanic eruptions in the south in 1997. There were then two buildings on the plot, one being Abigail's house, another being possibly a bar to the east; and Silcott built a third, with help from the Montserrat Land Development Authority in which he has lived ever since, with Daniel, who died intestate on 29.03.05, plus later a temporary structure possibly to be a shop to the west.
- 5 Skerit was born on Montserrat in 1946, but left when 16 in 1962. He has lived most of his life elsewhere. Having become Christiana's executor, he has established from research and correspondence with relatives that the only persons who wish to benefit from Abigail's land are him and his brother Richard Daley who lives in the US³. At first, to clear the land, Skerit brought an action on 07.10.15 to have Silcott declared a trespasser, as under Montserrat Law,

³ See para 8 in claimant affidavit filed 11.07.17.

if illegitimate, it is said he cannot inherit Daniel's interest in Abigail's land if Daniel died intestate prior to January 2013⁴. This action was preceded by two letters telling him to quit as illegitimate, dated 10.04.12, and 23.07.15. When the matter came on for trial, on 18.07.17, Skerit appeared on skype and agreed in the presence of the court that Silcott (and his sister Betty, also illegitimate) should in fairness inherit their father's interest in Abigail's land, and to this effect there was a consent order, which also required Silcott to account for any rental income generated by the land from 2006.

- 6 Skerit suggests that the land is capable of generating an income of about \$1500ec per month. It is also said one building, and perhaps another, was variously a shop and bar. In support of this handsome figure, evidence was given by Joseph Bass, a former permanent secretary to the Ministry of Agriculture, who thinks the supposed rental income about right in his experience. If correct, accepting that Daniel died in 2005, then it might follow that from January 2006 to January 2018, being 12 years, the land may have generated for Silcott an income of perhaps \$216000ec. Skerit argues that he and his brother are entitled to half this money.
- 7 Silcott had no idea someone might one day want money from him. He has kept no accounting books, nor even has a bank account. He first became aware of the interest of his long-departed cousin by the letter of 10.04.12, which being largely illiterate he ignored. Counsel Kelsick for Skerit makes the attractive point that the rental income possibly owing might more fairly be calculated from receipt of that letter, making 70 months to (let us say) January 2018, being therefore perhaps \$105,000ec, of which it is said half should be paid over, though with interest.
- 8 However, in my judgment there are flaws in the Skerit approach, which become clear when these two questions are asked:
 - a. What income has Skerit proved Silcott received?
 - b. What reasonable costs did Silcott incur running the properties?

⁴ See s13(3) Status of Children Act Cap 5.

- 9 At this point, it is important to recall it is for Skerit to prove what rent Silcott owes to him. The burden of proof is upon the claimant, and he must prove his case on a balance of probabilities.
- 10 Turning to the first question, there is evidence by affidavit and on oath from Silcott that there was never so high a monthly income as \$1500ec. He talks of at best of about \$1000ec monthly, the figures are indistinct, possibly more sometimes⁵. However, and categorically importantly, he says it was irregular income, and there is nothing to gainsay this. If \$1000ec per month, then the amount received since April 2012 would be \$70000ec; but it was not every month. For example, in evidence at court, Silcott explained his current three tenants are Spanish speakers, with little English, who pay irregularly, being of too little means even to own a car. Moreover, I have seen the properties, having gone on a court visit on 18.07.17, and it is clear they are not luxurious, being modest and wooden, reflected in the property tax demand notice of 21.07.16⁶ valuing the land at only \$52000ec, and the buildings at merely \$37500ec. While I accept Silcott received some money, in my judgment on balance it cannot be shown by the claimant that Silcott received much more than half the calculated sum, being irregular, so that I assess that the amount proved to be received from 2012 is \$40000ec: any more is simply a possibility and not a probability.
- 11 This means that in theory Skerit can try to ask for \$20000ec. However, the properties predictably have required some upkeep. For example, Silcott says he put a toilet in Christiana's house, which cannot be gainsaid by Bass, and there have been in September 2017 two hurricanes, Irma (light) and Maria (damaging), causing roof damage, which has required fixing. Some years ago electricity had to be put in, and water. Furthermore, by his affidavit of 14.09.17, Silcott appended as exhibit KS1 a valuation report on the plot, with the three buildings, which methodically shows he has over the years spent \$61000ec on upkeep.
- 12 Argument was raised by Counsel Kelsick that I should not take into account monies invested by Silcott as a deduction against rent owing, as there was no formal application for 'set off' in the pleadings by Counsel Markham.

⁵ See paras 7-10 in defendant affidavit filed on 14.09.17.

⁶ See page 43 of claimant affidavit and exhibits of 22.11.17.

- 13 However, I remind myself that the overriding objective of the CPR 2000, per the very first rule⁷, *'is to enable the court to deal with cases justly'*. This includes dealing with cases in ways which are *'proportionate to...the financial position of each party'*. In this context, it would be unjust to ignore the predictable upkeep costs for technical reasons, when I am alive to how impecunious and unlettered is Silcott. Moreover, his financial position, which I am required to consider if I am to be just, is quite bound to the property, which means he receives modest income and spends on repairs, so that it would be 'disproportionate' to take into account only the income.
- 14 Further, as a matter of commonsense, if Silcott is collecting rent for Skerit, they should share equally in the cost of the rental, so that what is distributed is net of cost. It would follow that if Silcott has spent \$61000ec, against an income of \$40000ec, then it might be arguable that Skerit actually owes Silcott \$10500ec.
- 15 Overall, concerning the facts, in my judgement Skerit has not shown on balance that Silcott yet owes him anything.
- 16 It follows that if on the facts nothing is yet owing, there is no need to examine the law on back-rent.
- 17 However, from now on, as of this judgment, I expect Silcott will have to account more thoroughly to Skerit and his brother Richard Daley for income and expenditure associated with the plot, and I so order that he offer them an annual account on 1 March each year, beginning 01.03.19.
- 18 I therefore dismiss the application for back-rent. It was always clear to me, given the paucity of evidence and the realities of Silcott's modest circumstance, that the claimant application was flawed, thinking there was a pot of gold where there is nought. I am of the view that bringing this case, first for illegitimacy and then for back-rent, has been ill-advised, whatever might be the strict letter of the law. There has been something distasteful in this action, as it has involved a relative from far away, long disconnected from Montserrat, out of the blue seeking to

⁷ See CPR 2000 rule 1.1.

dispossess, embarrass, and further impoverish an already poor man, with too little attention paid to what is realistic. In these circumstances, and because back-rent has been dismissed, I order that the claimant pays the defendant's reasonable costs of the preparation for and hearing on 06.12.17.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

5 March 2018