

IN THE EASTERN CARIBBEAN SUPREME COURT

ON MONTSERRAT

IN THE HIGH COURT OF JUSTICE

Cases MNIHCV20015/0027&28 (also 26)

BETWEEN

ADRIAN GALLOWAY	First claimant
IVASON GALLOWAY	Second claimant
PARADISE INVESTMENTS LTD	Third claimant
and	
RICHARD SAMUEL	Defendant

APPEARANCES:

Mr Jean Kelsick, for the claimants.

Mr Hogarth Sergeant, for the defendant.

2017: July 14

July 20

JUDGMENT

- 1 **Morley J:** The Galloways seek money from Richard Samuel¹ for his having kept goats on their long unused land and for having cut down some trees.
- 2 Their fixed date claim is to seek damages for trespass.
- 3 Richard is 79, of most modest circumstance, little formal education, and is a goat farmer.
- 4 The Galloways are three, appearing individually, and through their company Paradise, being the father, Emmanuel, and sons Adrian (a civil engineer) and Ivason (an architect). They own the Tropical Mansions Hotel and nearby southerly plots 14/10/32&42 ('32' and '42'), being adjacent to each other, 32 being east of 42. Specifically, Paradise owns 32, claimed in action 27/15, and Adrian and Ivason jointly own 42, claimed in action 28/15.
- 5 The plot east of 32 is 14/10/04 ('4'). Richard thinks he has owned that plot since 1965, but the Galloways claim that too, through Emmanuel, about which there will be a separate action, namely action 26/15.
- 6 The land (42, 32, 4) is contiguous, precipitous, there are no marked boundaries, and it is all designated as agricultural. It has never been developed and remains rustic scrub. In its middle, particularly of 32, there is a 50ft cliff, and at the bottom dense foliage with many enormous iguanas.
- 7 Action to recover 32 and 42 (and also 4) was filed on 15.09.15, and Richard agreed to take down fencing and his goats away from 32 and 42 by a consent order where agreement was reached in court on 12.04.17.
- 8 There was a visit to 42, 32, 4 early in the morning on 14.07.17, followed by a hearing of evidence to calculate damages.

¹ In this judgement, the parties will be referred to by their first names for ease of reading, and no disrespect is intended by not referring to each by their full titles or legal standing as first, second, third claimant or defendant.

- 9 A snapshot of the land dispute is immediately to hand in exAG1, (replicated as exIG1), which is an aerial photo from 2010, marked helpfully, showing the location of the Tropical Mansions Hotel, the three plots, with fencing, and marks the number of trees allegedly cut down by Richard.
- 10 From exAG1 and visiting the site, it is difficult to see how Richard can get access to 4 if he does not go east from road and then through 42 and 32.

The Evidence

- 11 The Galloways assisted as follows:
- a. It is believed that Richard brought his goats onto 42, 32, 4 on about April 2010. Counsel Jean Kelsick sent a letter on 01.06.10 requiring him to leave and take his goats. The letter was not exhibited.
 - b. Adrian said he visited Richard in 2010 and Richard was 'violent', then changed it to 'loud', and then changed it to 'threatening'. He did not report Richard's supposed 'violence' to the police, though he has complained about the goats being on his land, about which it appears nothing was done (perhaps as police resources are more needed to chase criminals than goats).
 - c. 42 is 6.33 acres, of which Richard has fenced off 1 acre (at a 20ft cliff, perhaps to stop his goats falling off it), which marks at the 'Arrow stone' Richard's access with his goats from the road to the land, being 42, then 32, then 4, travelling east. 32 is 2.5 acres. 4 is 2 acres.
 - d. In their statement of claim, the Galloways claimed a rental of \$75^{ec} per month per plot (for 42 and 32); but in evidence Adrian said the average rental income for agricultural land is \$350^{ec} per year per acre, about which he had experience calculating as a civil engineer, and that Richard had been using all of 32 and one acre of 42, meaning there should be awarded a rent of 350x3.5x7, being \$8575^{ec} (as distinct from \$12600^{ec} originally sought).
 - e. The Galloways by affidavit have calculated that 13 trees on 42 and 69 trees on 32 have been cut down; though in evidence Adrian conceded that there was no mahogany (as originally claimed) and that stumps had not been counted, but rather there had been a comparison between an aerial photo of 2010 (being exAG1) and some more recent photos (examples being exAG3-6 and exIG3-15).

- f. In evidence, Ivason said he had prepared some very rough outline plans for developing the land into homes, though these were not exhibited. In theory, there could be some building on the upper slopes, where the angle is about 45 degrees, requiring a terraced road. No planning permission has ever been sought to build on the land. At 42, in IG3 and AG3, denuded ground can be seen as a result of an attempt by the Galloways to commence building a road. It was discussed at the site visit that the denuded area in 42 had no stumps, begging the question when had any trees been removed, and if by Richard, why would he remove the stumps in 42 but not 32, to which there was no clear answer.
- 12 To support the Galloways, Claude Browne gave evidence, as an agriculturist, meaning he has a degree in agriculture on crops, livestock, soils, farming economics and sociology, general agriculture, silviculture, horticulture, flowers and vegetables.
- a. He visited 42, 32, 4, and counted 30 stumps. He then estimated what trees were missing. He said: *'I took several measurements of the density and distribution of the trees. In the untouched areas. I also looked at the condition of trees growing in the area that are similar to those that were felled and I used these measurements along with observations from the photographs provided by Ivason Galloway to extrapolate the number of trees destroyed and their maturity'*. He produced a table showing numbers of trees, types, and values, being exCB1.
 - b. He assessed the number of trees felled to be 138 and estimated the value of the trees lost as being \$43000ec.
 - c. There was an additional \$5000ec as damage for soil erosion, being said to be 9000sqft, to a depth of 3ft, requiring 100cubic yards of topsoil at \$50ec per yard.
 - d. In evidence, he agreed his was not an exact science.
 - e. The value of a tree will vary as to whether it bears fruit or medicine (like mango or tamarind), whether it has strong wood for furniture (like stinking toe) or is aesthetically pleasing (perhaps like gum). Value can be affected by rarity as to whether a tree is one of hundreds in an inaccessible forest or alone in an accessible London park. While it is conceivable a tree can be bought and moved, he agreed this was not a likely scenario in the present case.

- 13 Richard Samuel gave evidence and the difference in levels of education between him and the claimants was very evident. He had filed no affidavit concerning damages. He was anxious to impress upon the court that he owned 4, and showed me faded papers of its boundary as recorded in 1976, (exRS2) and that it was designated agricultural in 2002 with a value then of \$33000ec (RS1). He explained, though lacking in educated clarity, that he thought the land he had been on was all 4, which he has been associated with since a boy, and which he believed he acquired in 1965. He had kept about 50 goats. The average goat fetches about \$100ec. He did not make much money. He lives in a small house having lost everything in the south when the volcano erupted in 1995-7. He does not butcher and would give a quarter-goat to friends. He agreed he had put up some fencing, and that he had cut down trees, in order to be able to watch for goat thieves. He denied cutting down trees after receiving proceedings in 2015.

The law relating to trespass

- 14 Trespass to land is a medieval concept, much developed by the Common Law. It consists in any unjustifiable intrusion by one person upon land in the possession of another. The slightest crossing of the boundary is sufficient².
- 15 The only intent necessary is to do the act complained of³; it is no defence that the trespass was due to a mistake of fact provided that the physical act of entry was voluntary, even where the boundary between plots is said by a defendant to be ill-defined⁴. Voluntary entry creates trespass, even though the trespasser may intend to act rightfully⁵.
- 16 As to damages, in an action for trespass the plaintiff is entitled to recover damages even when he has not suffered any actual loss, and where actual damage has been caused he is entitled to full compensation. Where the defendant has used the land, the plaintiff is entitled to receive such sum as should reasonably be paid for the land's use⁶.

² Clerk & Lindsell on Torts, 16ed, 1989 at 23-01.

³ Ibid 2-39.

⁴ Ibid 23-05.

⁵ Ibid 23-05.

⁶ Halsbury's Laws of England, 3ed, vol 11, para 441.

- 17 These principles are at work in the jurisdiction of the Eastern Caribbean Supreme Court as can be seen from the judgement in Dominica of Thomas J (Ag) in **Heitz v Bunche & Bunche 2013**, where the learned Judge says at paras 25 and 26:

'Trespass to land involves entry upon land unsupported by consent or other authorization. In this context, a claimant is entitled to nominal damages for trespass even if no loss or damage is caused. On the other hand, where damage is caused the damages recoverable may be greater. In all of this, the underlying principle being that a landowner is entitled to be placed by way of damages in the same position he would have in but for the trespass⁷.

...A trespasser who enters another's land may cause the landowner no financial loss. In such a case, damages are measured by the benefit received by the trespasser, namely by the use of the land⁸.'

- 18 There has been no application for special or exemplary damages.

Findings of fact

- 19 I find the following facts:
- a. It is probable that Richard through poor education has mistakenly always thought he had placed his goats on plot 4.
 - b. His mistake of fact is no defence: he was a trespasser on 42 and 32, conceded when he agreed to the consent order of 12.04.17.
 - c. I find he has used 1 acre of 42; and 1.5 acres of 32 for his goats (where I am not satisfied it has been proved the goats would have been in the jungle with the iguanas at the foot of the 50ft cliff). He has therefore used 2.5 acres for 7 years.
 - d. I find the ground to be precipitous and therefore of lesser rental value than the 'average' rental value of \$350 per agricultural acre per year (bearing in mind that an average expects there will be some land more valuable, and other land less valuable). I assess the

⁷ **Heitz v Bunche & Bunche 2013** (Dominica case number 297 of 2013), at para 25.

⁸ *Ibid*, para 26, quoting Lord Nicholls in **AG v Blake [2001]** 1 AC 268, 278.

rental value at the very lowest end, at around 10% of the median value, being in my discretion \$40^{ec} per acre per year, meaning Richard should pay to the Galloways \$700^{ec}⁹.

- e. Concerning felled trees on 42, it has not been proved that there were any by Richard in the relevant time frame, as there were no stumps to be seen there, in combination with the Galloways having also sought to denude the area to build the beginnings of a road (as can be seen in AG3).
- f. Concerning felled trees on 32, I am satisfied Richard did cut down about 30 trees of varying maturity and varying species, as this number of stumps was seen by Browne (notwithstanding uncertainty as to the precise boundary with 4).
- g. However, I am not satisfied that it has been proved he cut down 69 trees on 32 by performing a comparison between a 2010 aerial photo and later ground pictures, nor by Browne assessing 'density and distribution' of other trees now standing, using what Browne has agreed is an imprecise science. In particular, I am skeptical of study of the aerial photo, as it seems is misleading in that it offers no depth, so that the cliffs are invisible, and it has not been proved that areas ringed on the 2010 photo are trees instead of bush, nor denuded now, if at all, by tree felling as distinct from natural erosion.
- h. I note in passing that Browne's calculation of \$48000 includes 56 trees and soil erosion on 4 where ownership is still disputed, so that this quantification is too ill defined to settle these damages.
- i. Moreover, it has not been quantified as to what trees the 30 stumps were.
- j. And in addition, it has not been proved whether they were in maturity or young.
- k. I also observe that the land was too precipitous to allow a thorough examination of all of it on foot by the Galloways or Browne. Perhaps only the goats can move about it. I find its inaccessibility diminishes the value of the trees, so that assuming a median value means there are lower end values, then the trees are all at the very lower end. In my discretion, I assess the lower end to be about 10% of the median value.
- l. Browne found eight species of value. I find it has been proved that about 30 were cut down. If we say for ease of sums that 32 trees were felled, evenly distributed as to

⁹ Being 40x2.5x7.

species, at 10% of the median value on exCB1, then I assess the value of damages for the felled trees to be \$1260ec¹⁰.

- m. Concerning soil erosion, Browne's calculation assesses 138 trees, whereas I am concerned now for 32, which is approximately 20%, meaning the soil erosion claim reduces from \$5000ec to \$1000ec. However, with stumps still in the ground, and therefore the roots, it has not been proved that soil erosion will be at its worst, automatically requiring substantial fresh topsoil. In my discretion, I therefore propose to adjust this figure for soil erosion by almost half to \$540ec.
- n. I note in passing that as the trial began the claim for damages by the Galloways was for \$60600, which is almost twice the value in 2002 of the land in 4, (from exRS1), being then \$33000ec for 2 acres (or \$16500ec per acre). This suggests in 2002 the value of the 3.5 acres said to be damaged was \$57500ec which remains less than the value of the claim; and noting further the topsoil for 138 trees was to be spread over 9000sqft, which is only 0.2 acres, so that damage to 0.2 acres (notionally worth \$3300ec¹¹) is being claimed as \$48000. I have heard no evidence of the current value of the land, and while the damages sought may seem in the above context very high, I do not express any view on whether the Galloway claim has been wholly exaggerated.

20 Whereas the Galloways have sought \$60600ec against Richard, the total award of damages I order is \$2500ec. In the circumstances, each party is to bear their own costs. The \$2500ec should be paid within three months, in which time Richard must also take down the fencing he erected.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

20 July 2017

¹⁰ Being $4(32.5+7.5+50+40+0+60+25+100)$.

¹¹ Being $\$16500 \times 0.2$.