

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2007/0410

Between:

MICHAEL VILLIERS

Claimant

and

VICTORIA INITA WILLOCK

aka CHRISTOPHENE WILLOCK

1st Defendant/Ancillary Claimant

EDSON BROWNE

2nd Defendant/Ancillary Defendant

Before:

Master Fidela Corbin Lincoln

Appearances:

Dr. David Dorsett for the Claimant

Mr. Dane Hamilton Jr. for the Defendant

2017: June 13

July 20

JUDGMENT

[1] **CORBIN LINCOLN M** : The matter before the court is an assessment of damages for negligence and nuisance caused when a loose stone hit the fence of the house owned by Mr. Villiers during the course of certain works being carried out on the land adjoining Mr. Villiers' property.

Background

[2] The detailed facts of the claim are fully set out in the decision of the learned trial judge. A brief summary is contained below.

[3] Mr. Villiers is the owner of property at Valley Church, St, Mary's. Ms. Victoria Willock, the 1st defendantUancillary claimant, was at all material times the registered owner of the land adjoining Mr. Villiers' property {"the adjoining land"). At the material time Mr. Edson Brown, the 2nd defendantUancillary defendant had entered into a contract with Ms. Willock to purchase a portion of the adjoining land. Mr. Villiers brought a claim seeking damages for negligence and nuisance caused as a result of certain works carried out on the adjoining land. Ms. Willock sought an indemnity from Mr. Brown for all claims made by Mr. Villiers.

[4] The learned trial judge found that:

(1) There was negligence in the clearing of the adjoining land in that it allowed a stone to enter Mr. Villiers' property and cause a crack to the retaining wall on Mr. Villiers' property. Since no evidence was led as to the cost of repairing the damage to the retaining wall general damages must be assessed.

(2) The stone rolling onto Mr. Villiers' property and damaging the retaining wall constituted a nuisance. Since there was no evidence of continuing earthworks on the defendant's land and no details were given of those things which Mr. Villiers could no longer enjoy on his land as a result of the nuisance damages would have to be assessed.

(3) Ms. Willock is entitled to be indemnified by Mr. Brown for any and all damages in respect of the claims for negligence and nuisance.

ASSESSMENT OF DAMAGES

Negligence

[5] Mr. Villiers was the only witness called. The evidence of Mr. Villiers is that as a result of the earthworks the fence of his property was damaged. The damage was extensive. He had to retain the services of SBA Consultants to provide an estimate of the cost to restore his property and *"from further damage following the earthworks done."* The cost estimate given by SBA Consultants was \$145,000.00. The work was done by Mr. Hayden Wilshire and the actual cost was \$234,810.00.

[6] Two invoices dated 1st March 2006 and 6th June 2006 for \$199,450.00 and \$35,360.00 respectively were tendered into evidence

[7] Under cross examination Mr. Villiers stated:

" I do not have any construction documents in the bundle for the fence and the retaining wall to which the invoices relate.

I did not enter into a written contract with Mr. Wilshire which detailed the scope of work he was to perform. It was all done verbally.

The new retaining wall is approximately 300 yards in different heights.

The old retaining wall was not as long as that. It was about 50 yards shorter.

Yes, I have justified the costs I am seeking. There are 2 invoices totaling the costs.

There is no documentation to show that the wall built bore any relation to the damage caused by land slippage and slides in August 2005. ¹¹

[8] Mr. Villiers was shown a photograph and admitted that the photograph appeared to show the damage caused to his retaining wall by the stone that fell. He admitted that ***"the cost of \$234,810 does exceed any reasonable cost to repair the damage caused by the bo/uder but does not exceed the damage caused by the landslide. ¹¹***

[9] Mr. Villiers alleged during the course of the trial that damage was caused to his property as a result of erosion caused by the clearing of the adjoining land. He asserted that the damage flowed directly from the negligent earthworks that were done and relied on a report by SBA Consultants Ltd. The learned trial judge found the report to be of little persuasive value. The learned trial judge stated:

"Further the report recommended that 220 feet of the wire fencing be replaced with appropriately designed reinforced concrete retaining wall. Mr. Villiers says this work which was performed by Mr. Wilshire was necessary to restore and repair the damage done by the negligently performed earthworks. The court is not convinced."

[10] Mr. Steve Brown of SBA Consultants did not attend the assessment of damages hearing. The learned trial judge found that the damage caused as a result of the defendant's negligence is that a stone rolled down the hillside and struck a small retaining wall on the claimant's property. The stone caused a crack to the retaining wall. It is this damage for which the defendant is liable and for which damages must be assessed. The learned trial judge found that Mr. Villiers failed to prove that the further damage pleaded was sustained as a result of the negligence of the defendant.

[11] The invoices provided by the claimant do not provide the cost for repairing the damage caused by Mr. Brown and, as admitted by Mr. Villiers, they exceed any reasonable cost for repairing the damage caused by the stone/boulder. There is therefore no evidence before the court with respect to the cost of repairing the damage caused by the stone.

[12] In **Greer v Alston's Engineering Sales and Services Ltd**,¹ Sir Andrew Leggatt, who delivered the opinion of the Court, quoted with approval from **McGregor on Damages**, 13th Edition, paragraph 295:

"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss, but of absence of evidence of the amount of loss."

[13] Sir Leggatt stated further:²

"Although the loss under this head was unquantified, it is the duty of the court to recognise it by an award that is not out of scale."

¹ [2003] UKPC 46

² *ibid* paragraph 9

[14] Mr. Brown led no evidence even though he was given an opportunity to do so and thus provided no evidence in relation to the reasonable cost of repairing the damage caused by the stone.

[15] In *The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton et al*³

Barrow J.A stated:

"Because it was the duty of the claimant to produce evidence of value it seems on principle just that the doubts which must attend the effort at arriving at a nominal figure must be resolved against the Buttons, who failed in their duty to prove, and in favour of the Government, which should not suffer any disadvantage by the other party's failure."

[16] In the absence of Mr. Villiers producing any evidence of the actual or estimated cost of repairing the damage caused by the defendant's negligence I would award nominal damages of \$15,000.00.

NUISANCE

[17] The learned trial judge found that the stone rolling unto Mr. Villiers' property and causing damage to his retaining wall is sufficient to constitute a nuisance. This finding means that it has been determined that there was interference with Mr. Villiers' use or enjoyment of land or of some right connected with it.

[18] Learned counsel for the claimant did not make any submissions with respect to the issue of damages for nuisance. The court has already awarded damages for the cost of repairing the damaged wall. Mr. Villiers had led no evidence of what if anything he could no longer enjoy on his land as a result of the nuisance. The damage occurred in or around August 2005. There is no evidence of when the repairs were effected but I note that the invoices are dated March and June 2006.

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[19] In recognition of the fact that there was some interference with Mr. Villiers' use and enjoyment of his land albeit that there is no evidence of the extend to which this was affected I make a nominal award of \$500.00.

Summary

[20] Mr. Villiers is awarded the sum of \$15,000.00 as damages for negligence and \$500.00 for nuisance.

Interest

[21] Interest is awarded on the total sum of 15,500.00 at a rate of 2 ½% from the date of service of the claim to 11th April 2014 (the date of judgment on liability) and thereafter at the statutory rate.

Costs

[22] The defendant shall pay the claimant prescribed costs.

Fidela Corbin Lincoln

Master