

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2015/0485

BETWEEN:

ST. LUCIA ESTATES LIMITED (IN LIQUIDATION)

Claimant

and

[1] WILMA GEORGE
[2] NARCIS MITCHEL
[3] NIGEL JAMES aka "RAS"
[4] GINA HENRY
[5] RICHARD CLERY
[6] KRISHMA GONZAGUE
[7] HEVAN HENRY
[8] JANE FEDEE
[9] ROGER WILLIAM
[10] VINCENT FRANCIS aka "the General"

Defendants

Appearances:

Ms. Diana Thomas and Ms. Cleopatra McDonald for the Claimant
Mr. Mark Maragh for the Defendants

2017 : January 25;
2017 : March 14.

DECISION

[1] **SMITH J:** At the conclusion of the trial of this claim for damages for trespass on 31st May 2016, Wilkinson J granted judgment in favour of the Claimant against all of the Defendants, except the Third Defendant. The matter then came on for assessment of damages on 11th January 2017 when I granted the Claimant permission to withdraw its application for assessment of damages against all of the Defendants except the Tenth Defendant, Mr.

Vincent Francis. I directed both parties to file any evidence on the issue of damages as well as written submissions.

[2] At a later hearing, the Claimant adduced evidence in support of its application for damages. Mr. Francis did not seek to adduce any evidence whatsoever.

[3] Having been found at trial to have wrongfully exercised the rights of the landowner in receiving rental income from the First to Ninth Defendants (except the Third Defendant), Mr. Francis is liable to pay the Claimant such sums as are found by the Court to have been paid to him as rental income. The Court must therefore examine all the evidence put forward in order to make an assessment of the damages that ought to be awarded to the Claimant.

[4] The oral and documentary evidence led and produced before the Court is that the Seventh Defendant paid Mr. Francis a total of \$4,100.00 in the year 2012. The receipts in evidence indicate that \$4,000.00 was “for road construction and property rental” and \$100.00 was “for contributions towards land”. Based on cash receipts and other hand-written receipts in evidence, it appears that the Eight Defendant paid Mr. Francis the sum of \$800.00. The totality of the evidence placed before the Court is that Mr. Francis received income totaling \$4,900.00. He is therefore liable to pay this sum to the Claimant.

[5] The Claimant points out that Mr. Francis has chosen not to make disclosure to the Court or to put forward any evidence of sums he received as rental income from any of the Defendants. Citing **Wiszniewski v Central Manchester Health Authority [1998] PIQR P324** of the UK Court of Appeal, the Claimant submitted that, based on his failure to adduce any evidence in reply on this issue after having been given the opportunity to do so, the Court is entitled to draw adverse inferences against him.

[6] The inference which the Claimant wishes the Court to draw is that Mr. Francis mostly likely collected \$4,100.00 from the remaining seven Defendants. This sum is arrived at based on the fact that \$4,100.00 was paid by the Seventh Defendant to Mr. Francis.

[7] I accept that this is an appropriate case for the Court to draw certain reasonable inferences against Mr. Francis. He has been given the opportunity to put forward whatever evidence he wished in support of the reduction of any damages that may be awarded against him, and has chosen to remain silent.

[8] However, I do not think that the available evidence supports the inference that the sum of \$4,100.00 was likely collected from each of the remaining seven Defendants. An examination of the receipts show that \$4000.00 was paid by the Seventh Defendant to Mr. Francis for "road construction" or "road contribution". Whatever that means, it does not appear to represent rental income. I find that the three receipts from the Eighth Defendant, Jane Fedee (two for \$300.00, respectively, and the other for \$200.00), amounting to \$800.00 is the likely sum that Mr. Francis collected from the other seven defendants as rental income.

[9] I therefore make the following orders:

- (1) That the Tenth Defendant is to pay to the Claimant the sum of \$9,700.00 as damages assessed for using the Claimant's land for his own financial benefit with interest at the rate of 6% per annum for the period 21st March 2014 to the date of payment.
- (2) The Claimant is awarded the sum of \$1,000.00 as nominal damages for the Tenth Defendant's repeated acts of trespass.
- (3) Prescribed costs are awarded in the sum of \$7,500.00

**JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE**