

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

(CIVIL)

CASE NO. DOMHCR2010/0047

BETWEEN:

ROSALIE ESTATES LIMITED

V

ALLEYNE ROBIN

Claimant(s)

Defendant(s)

Appearances: Mrs. Singoalla Blomqvist -Williams for the Claimant

Mrs. Zena Moore Dyer for the Defendant

2014: October 26th, November 19th, 28th

2015: March 31st
July 28th
December 8th

JUDGMENT

[1] Thomas J. [Ag], On 19th February 2010 Rosalie Estates Limited, the claimant, filed a Fixed Date Claim in which Alleyne Robin is named as the defendant.

[2] The claimant's case is that in or about 1990 the defendant leased a portion of land from the claimant at Rosalie and cultivated the land in diverse agricultural crops. The said lease was

renewed on 1st April, 1997 which was signed by the defendant's daughter and payments made to one, Conrad Cyrus of the claimant.

[3] The claimants pleads further that in August 2001, the said Conrad Cyrus died and the defendant vacated the land; but trespassed on the land in or about 2006 without permission and cultivated the same.

[4] Finally, the claimant contends that in November 2007 it caused its Solicitor to write the defendant demanding that possession of the land be given up with which the defendant failed to comply.

[5] In the premises the claimant claims:

1. A declaration that the defendant is not entitled to enter and remain on the claimant's land at Rosalie.
2. An injunction to retrain the defendant whether by himself or by his agents, servants or otherwise howsoever from entering or crossing these claimant's land.
3. Damages and costs.

Defence

[6] The defendant in his defence, in response to paragraphs 1 and 2 of the Statement of Claim, contends that:

- a. Joyce Pascal and Camilla Pascal are not legally authorized directors of the claimant and that any action taken to appoint either would be in contravention of the Companies Act of Dominica and fraudulent; and
- b. No land was leased by the defendant as alleged at paragraph 2 of the Statement of Claim.

[7] As the distribution and ownership of the claimant company are concerned the defendant contends that such shares are owned by Conrad Cyrus, 60 shares and William L. Leach 30 shares.

[8] In so far as the defendant's position regarding the suspect land is concerned, the defendant pleads that he has been working at Rosalie Estates since 1966 and in possession of the said land from in or around 1968, over 12 years, and the claimant never questioned his occupation. It is further pleaded that his cultivation of the said land was during the lifetime of Conrad Cyrus and was uninterrupted.

[9] In relation to paragraphs 3,4 & 5 of the Statement of Claim the following is pleaded, seriatim, by the defendant:

- a. His daughter is not his servant or agent and as such any leased signed by his daughter cannot be attributed to him with respect to the said land;
- b. no rent or money was demanded by Conrad Cyrus or anyone on his behalf;
- c. the said land was never vacated by the defendant as alleged;
- d. no notice to quit was received from the claimant company but from the personal representatives of Conrad Cyrus with a response thereto from the defendant's Solicitor.

[10] At paragraph 14 of his defence the defendant pleads his entitlement to have and remain in possession of the said land by virtue of the fact that the claimant's action herein is statute barred under the **Real Property Limitation Act**¹ as defendant has been in undisturbed possession of the said land for well over 12 years.

[11] In the alternative, at paragraph 15 of his defence, the defendant pleads further that he is entitled to remain in possession of the said land as the claimant is estopped from claiming entitlement to the said land by reason of certain aspects of the claimant's conduct in this regard.

[12] As far as particulars of fraud are concerned the following is pleaded:

¹ Chap. 58:07, Revised Laws of Dominica, 1990

1. That the said Joyce pascal and Kendra Cyrus purported that the amount of 90 shares in the said Rosalie Estates limited was owned by Conrad Cyrus, the person through whom they claimed ownership of shares that the said Joyce Pascal caused documents to be effected stating that the same Leslie Leach owns 20 shares when the same is not true.
2. The said Joyce Pascal and Kendra Cyrus acted contrary to the **Companies Act** of the Commonwealth of Dominica in that they fraudulently conducted the affairs of the claimant company by falsely declaring themselves to be entitled an amount of 90 shares in the said Rosalie Estate Limited.

[13] By way of counterclaim the defendant repeats paragraphs 1-17 and states that the claimant is not entitled to the relief as stated in the Statement of Claim.

[14] In the counterclaim the defendant seeks the following:

1. A declaration that the defendant remains in possession and is entitled to remain in possession of the said land by virtue of the fact that the claimant is barred from bringing this action under the **Real Property Limitation Act**; Chapter 54:17 of the 1990 Revised laws of Dominica since the defendant has been in undisturbed possession of the said land for well over 12 years.
2. A declaration that the defendant is entitled to be and remain in possession of the said land as the claimant is estopped from claiming entitlement to the said land by reason of the claimant's conduct, the particulars of which are set out in paragraph 15 of the defence.
3. Damages
4. Costs
5. Further other relief

6. Interest of 5 % from the date of judgment

Reply

[15] At paragraph 1 of its Reply the claimants maintain that Joyce Pascal and Camilla Pascal are the claimant's directors registered with the Registrar of Companies and as such have the authority to represent the claimant.

[16] The pleading concerning the lease of the land by the defendant from the claimant is repeated at paragraph 2 of the Reply. Also repeated is the contention that in or about 1st April 1997 the defendant's daughter, Joan Lawrence, signed an agreement whereby the claimant agreed to lease the land, being the subject matter of the suit to the defendant's daughter.

[17] At paragraph 4 of its Reply the claimant denies that Conrad Cyrus, Managing Director of the claimant company acknowledged ownership and states that the agreement to lease the subject land to the defendant's daughter was signed by Conrad Cyrus in 1997.

[18] The matter of the shares of the claimant company is pleaded at paragraph 5 and the contention is that the shares were owned by three persons with Conrad Cyrus holding 90 acres and after his death by his heirs in accordance with the **Intestacy Act**, with controlling rights.

[19] The undisturbed possession by the defendant is further denied and with it the contention that the defendant was an employee of the company was granted permission to occupy the land. And as far as the defendant's daughter is concerned the contention is that she leased the land in 1997 and as such the defendant was not in occupation adverse to the rights of the claimant as his daughter had a lease agreement with the claimant.

[20] At paragraph 7 it is denied that the claimant's directions alleged that all its shares were owned by Conrad Cyrus.

Defence to Counterclaim

[21] In its defence to counterclaim the claimant repeats paragraphs 1-7 of the Reply and states:

- a. The claimant is the Registered Proprietor of the said land.
- b. The said land was occupied and cultivated by Joyce Pascal from 1994 to the exclusion of the defendant; the defendant's daughter entered into an agreement with the claimant to permit her to cultivate the said land; the agreement being signed on 1st April 1997, and as such the defendant has not been in undisturbed possession for over 12 years;
- c. The defendant entered upon the land in 2001 by the claimant's servants and agents continue to enter upon the land and harvest coconuts therefrom. On this account it is denied that the defendant was in undisturbed possession to the exclusion of the claimant's agents.

[22] At paragraphs 2 and 3 of the Claimant's defence to counterclaim the pleadings are that the defendant is not entitled to the relief claimed and the defendant's counterclaim be dismissed with costs.

Issues

[23] The issues for determination are:

1. Whether the defendant is entitled to succeed on the preliminary issue relating to estoppel?
2. Who is entitled to enter and remain on land situate at Rosalie Estate, being the subject of these proceedings?
3. Whether the defendant is entitled to succeed on his counterclaim?
4. Who is liable in costs?

ISSUE NO. 1

Whether the defendant is entitled to succeed the preliminary issue relating to estoppel?

[24] Learned counsel for the defendant Mrs. Zena Moore Dyer, in submissions on a preliminary point examines the pleadings and makes submissions thereon with respect to the preliminary issue of estoppel.

[25] In the submissions learned counsel identifies certain facts leading up to the preliminary issue. These, in part, are as follows:

- "2. The facts leading up to the preliminary issue that this Honourable Court is asked to consider are as follows;
 - a. The Claimant's company filed a Statement of Claim against the Defendant alleging trespass in 2006 when the defendant allegedly entered onto the land and recommenced cultivation without permission from the claimant company, their Directors or agents.
 - b. By paragraph 8 of the Statement of Claim, the Claimant Company states in November 2007, the Claimant Company caused its Solicitor to write the Defendant demanding that he deliver up possession of land. The Defendant failed to comply.
 - c. It should be noted that the Notice to Quit/ see page 25 of the Trial Bundle No. 2.
 - d. On the 7th April, 2010 the Defendant filed a Defence and Counterclaim; counterclaiming a Declaration that the Defendant is entitled to remain in possession of the said land. By virtue of the facts that the Claimant Company's claim is statute barred.
 - e. Secondly, a further declaration that the defendant is entitled to be and remain in possession of the said land as the Claimant is estopped from claiming entitlement to the said land by reason of the Claimant Company's conduct, the particulars of which are set out in paragraph 15 of the Defendant's [Defence].
 - f. The [particulars] of conduct raising estoppel being:

- g. The Claimant Company, its servants or agents never requested the Defendant to vacate the said land throughout his possession and occupation of the same.
- h. The Claimant Company's Manager Conrad Cyrus throughout his lifetime acknowledged ownership of the said land as the Defendant exercised acts of ownership over the said land and never the [Defendant] to pay any rent.

3. Since the Defendant has filed a Defence and Counterclaim raising an issue of estoppel and claiming that the claimant that the claimant is estopped from putting the Defendant out of possession. It was incumbent on the Claimant on the Claimant Company in its Reply and Defence to Counterclaim to deny estoppel. Claimant is estopped from claiming entitlement to the said land by virtue of the claimant's own conduct"

[26] For her part learned counsel, Mrs Singoalla Blomqvist-Willaims, for the claimant submits the following:

"The defendant in his defence raised the issue of estoppel by conduct however no evidence was led to support those assertions. I therefore ask the court will not consider those as the proper foundation was not given in the evidence lead by the defendant."

Reasoning

[27] As noted above and highlighted by learned counsel for the claimant, the defendant, by way of counterclaim, seeks a declaration that he is entitled to be and remain in possession of the land in issue since the claimant is estopped from claiming entitlement by reason of the claimant's conduct as set out in paragraph 15 of his defence.

[28] The particulars pleaded are these:

- a. The Claimant company its servants on agents never requested the defendant to vacate the said land throughout his possession and occupation of the said land.
- b. The Claimant company manager, Conrad Cyrus, throughout his lifetime acknowledged ownership of the said land in the defendant as the defendant exercised acts of ownership over the said land and never requested the defendant to pay rent.

- c. Joyce Pascal and Camila Pascal have acted fraudulently in purporting to be directors of Rosalie Estates and have acted contrary to the provision of the Companies Act of the Commonwealth of Dominica in respect of the claimant company.

[29] The submission on behalf of the defendant is that the claimant has failed to file a defence to a part of the claim of the defendant, namely the estopped pleaded.

[30] It will be recalled that in the claimant's Defence and Counterclaim the claimant pleaded the fact of it being the registered proprietor of the land in issue, the occupation and cultivation of the land from 1994 by Joyce Pascal to the exclusion of the defendant, the agreement between the claimant and the defendant's daughter to lease the said land with effect from 1st April 1997 which negates the contention of undisturbed possession and the harvesting of coconuts the said in 2001 when the defendant was on the land which further negates the contention of disturbed possession.

[31] Learned counsel for the defendant sites the following learning from **Caribbean Civil Court Practice 2011** Note 10.3 page 13 under the caption: Effect of failure to file a defence in respect of a part of a claim:

"It has been held in the Court of Appeal that the result of a failure to file a defence to a part of a claim was that the court office, at the request of the claimant; must enter a judgement for failure to defend and the effect was that the same as under the old rules of court by which the claim was treated as admitted if not denied. EC CPR 12.5 (c) (i) makes clear that a defence or a defence to a part of a claim; there is no need in the situation for the claimant to prove his claim: *Elwardo Lynch v Ralph Gonsalves* (St. Vincent and the Grenadines Civil Appeal no. 18 of 2005) 18 September 2006."

[32] Also cited is the above reference to **Elwardo Lynch v Ralph Gonsalves** in which Barrow JA reasoned as follows:

"[11] As I understand it, the consequence of failing to defend against an allegation is the same as it was under the old rules of court. In the old rules it was explicitly stated in RSC Order 18, rule 3 that if there is no defence to a material allegation in the statement of claim that allegation must be treated as

admitted. There an allegation was admitted RSC order 27 rule 3 entitled a plaintiff to apply for judgment on admission.

[12] In CPR 2000 the same purport is contained in rule 12.5 which states that the consequence of failure to file a defence to the claim or any part of it is that the court office, at the request of the claimant; must enter judgment for failure to defend. Rule 12.5(c)(i) makes clear that a defendant is in the same position if his defence has been struck out as if he simply not filed a defence or a defence to a part of a claim. Where there is a failure to defend the rule does not require the claimant to prove his case...”

Conclusion

[33] It is common ground that “Statement of Case” includes a counter claim and a defence to a counterclaim by virtue of Rule 2.4 of CPR 2000. As such, the issue raised by learned counsel for the defendant falls within the compass of the said Rule 2.4 and Rule 12.5 (c) (i) of CPR 2000 which is in these terms;

“12.5 The Court office at the request of the claimant enter judgment for failure to defend it.

(c) The defendant has not:-

(i) filed a defence to the claim or any part of it / or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)....”

[34] Given the submissions on both sides and the import of Rules 2.4 and 12.5 (c)(i), the issue falls to be determined with a very narrow compass, namely the alleged failure of the claimant/ defendant to file a defence to the particulars pleaded in this regard. And to submit that no facts were pleaded is not what is required. And, as noted above, the consequence of a failure to plead a defence puts the claimant in the position that he is not required to prove his case. As such the immediate issue is not one of evidence but of pleadings. As such the defendant must succeed or the preliminary point with the legal consequence of judgment in his favour by virtue of Rule 12.5 (c) (i) of CPR 2000. Further the defendant is entitled to the declaration that he entitled to remain in possession of the said land, occupied by him being land situate at Rosalie as the claimant is estopped from claiming entitlement to the said land by reason of the conduct of the claimant.

Issues No.2 and 3

[35] In view of the determination with respect to Issue No. 1, no determination arises with respect to those issues.

Issue No. 4

[36] Who is liable in costs by virtue of the decision in favour of the defendant the claimant is in costs which the court determines to be \$10,000.00.

ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. Judgment is entered for the defendant on his counterclaim in accordance with Rule 12.5 (c)(i) of CPR 2000 consequent on the claimant's failure to file a defence to the issue of estoppel pleaded by the defendant.
2. The defendant is entitled to remain in possession of the said land occupied by him being land situate at Rosalie.
3. In view of judgment being entered for the defendant on issue no.1, determination with respect to issues nos. 2 and 3 do not arise.
4. The defendant is awarded costs in the amount of \$10,000.00

.....
Errol L. Thomas

High Court Judge [Ag]