

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2011/0603

BETWEEN:

NORRIS MITCHELL

Claimant

and

ANTHON ANTOINE

Defendant

Appearances:

Ms. Anyika Johnson for the Claimant
Mr. Francis Paul for the Defendant

2013: March 7
April 25

DECISION

- [1] **MOHAMMED, J.:** The Claimant instituted these proceedings against the Defendant, claiming certain declaratory relief, interim relief and damages for nuisance. The main claim is in nuisance caused by loud music and partying which emanated from the Defendant's premise which adjoined the Claimant's premises situated at Lance Aux Epines, St George Grenada.
- [2] On 27th September, 2012 judgment was entered against the Defendant for damages to be assessed.
- [3] In the Claimant's affidavit filed on 25th September, 2012 in support of his claim for damages the Claimant has requested damage for:
- a) Loss of rent for his two apartments

- b) Psychological damages from the noise and trauma caused to the Claimant and his wife
- c) Loss of working days and earnings.
- d) Inconvenience due to the nuisance

[4] The Claimant is asking for damages in the sum of EC\$80,000.00.

[5] It is trite law that the onus is on the Claimant to prove his pleaded loss¹. It is also settled law that evidence does not exist in a vacuum but must be based on the pleaded loss. With this backdrop I will examine each claim for loss.

Loss of rent for his two apartments

[6] The Claimant pleaded at paragraph 9 of his Statement of Claim that "As a direct consequence, two tenant of the Claimant renting two downstairs apartment of the Point Drive property both informed the Claimant that the noise was unbearable and they had to leave. The Claimant rented the apartment at a cost of EC\$2,000.00 per month to each of the tenants. Since then, he (the Claimant) was unable to service tenants for those two apartments".

[7] According to the Claimant, the nuisance started around July 2010 and it stopped in December 2011 when he obtained an injunction to stop the loud music and to stop the Defendant from using his building for commercial, recreational and entertainment purpose. He adduced evidence of two rental agreements from Dr. Rebecca Williams for the period 24th August 2008 which was extended to February 2011 and from Dr. Adria Rodriguez for the period 15th January 2009 which was extended to December 2010. For each tenancy agreement the rent was EC\$2,000.00 per month.

[8] Under cross-examination the Claimant admitted that Dr. Williams left at the end of December 2011 two months before the expiration of her tenancy and Dr.

¹ Grant v Motilal Moonan Ltd (1988) 43 WIR 372 per Bernard CJ

Rodriguez left two weeks before the lease was about to expire. In both cases he claimed they left because of the loud noise.

[9] If I am to accept the Claimant's evidence that the loud noise stopped when he obtained the injunction in December 2011 and Dr. Williams left at the end of December 2011. There was nothing preventing the Claimant from getting tenant for Dr. Williams's apartment after December 2011.

[10] However, since Dr. Rodriguez left in December 2010 and the loud noise/nuisance continued until December 2011, I accept the Claimant's evidence that this affected his ability to obtain a tenant for the period December 2010-December 2011. I therefore award loss of rent for the period for this apartment in the sum of EC\$24,000.00.

Psychological damages from the noise and trauma caused to the Claimant and his wife

[11] The Claimant pleaded at paragraph 16 of his Statement of Claim that "his family continue to be gravely distressed by the unlawful action of the Defendant." At best this could be his plea for psychological damage which refers to in paragraphs 4, 5, and 13 of his affidavit filed 25th September 2013.

[12] However, the Claimant, who is not a medical expert, failed to adduce any medical evidence to support this aspect of his claim. The Claimant even admitted in cross-examination that he did not seek medical attention as a result of his headaches, dizziness and psychological trauma.

[13] In the absence of such evidence I am not persuaded to consider this claim in making an award for damage.

Loss of working days and earnings

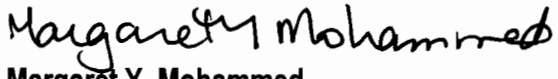
- [14] The Claimant stated at paragraph 5 of his affidavit filed on 25th September, 2012 that "this resulted in an inability to function normally at my self-employed practice, resulting in loss of working days and earnings". However this item was not pleaded in the Statement of Claim, which the Claimant also under cross-examination admitted. Therefore this is not considered in an award for damages.

Inconvenience due to the nuisance

- [15] There was no authority provided on the measure/range of damages to be awarded for the type of nuisance in the instant matter. The case of **Moreno Gomez v Spain** referred to me by counsel for the Claimant can be distinguished for the instant case since it concerns a violation of human rights as opposed to a private law action as the instant case.
- [16] In **Robert v Robert & AG** ANUHCV 2003/0400, referred to me by counsel for the Defendant, the acts of nuisance were more significant than in the case at bar and the type of nuisance was different.
- [17] Taking into account the duration of the nuisance from July 2010 to December 2011, the type of nuisance, loud noise, unwanted parking of vehicles in the Claimant's yard and undesirable persons to his property, I have assessed the Claimant's general damage in the sum of EC\$10,000.00.

Order

- [18] (a) The Claimant's damages are assessed in the sum of EC\$34,000.00.
- (b) The Defendant to pay the Claimant's cost of the assessment to be assessed if not agreed.
- (c) By consent costs agreed in the sum of \$2,500.00.


Margaret Y. Mohammed
High Court Judge