

ANTIGUA AND BARBUDA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2006/0419

BETWEEN:

COLIN ISAAC

Claimant

AND

THE REGISTRAR OF THE HIGH COURT OF JUSTICE
THE ATTORNEY GENERAL OF ANTIGUA & BARBUDA

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. George Lake for the Claimant

Ms Bridget Nelson for the Defendant

2012: May 30th
June 5th

ASSESSMENT OF DAMAGES

- [1] **MATHURIN, M:** This assessment is pursuant to a judgment wherein which the Registrar (1st Defendant) admitted liability for causing damage to the claimants goods pursuant to the eviction of Mr Isaac (the Claimant) from his residence. The Registrar's liability arose for failure to consider an application with a certificate of urgency to set aside a writ of possession of the Claimant's property pursuant to an Order of the Court previously made on June 29th 2006 ordering him to vacate the premises by the 4th August 2006. The application to set aside the Order of the Court was filed on the 14th July 2006 and on 2nd August 2006, Mr. Isaac additionally filed an affidavit of urgency to have the application heard. On the 14th August 2006, Mr. Isaac returned to his home at midday to find most of his belongings outside. He was presented with a Writ of Possession. The application to set aside the Order of 29th June 2006 was never set down by the Registrar for consideration by

the Court. On the 16th August 2006, pursuant to a stay of execution in respect of the Writ of Possession, Mr. Isaac re-entered his home.

- [2] It is of note that the Claim against the Attorney General was dismissed in its entirety. Mr. Isaac had claimed a legitimate expectation based on assurances by various Ministers that his property would not be sold while his claim for repairs was outstanding despite the fact that he was in substantial arrears. Harris J. in his judgment dismissing the substantive claim dated the 31st May 2010, lamented that Mr. Isaac could not reasonably have expected in any event to continue to ignore the charge in the face of the inordinate passage of time, the continued default in the payment of the mortgage, the notice to pay off, the erections of auction signs and the two publications of the auction sale of the subject property.

Special Damages

- [3] In submissions dated the 30th April 2012, the Parties agreed on special damages in the sum of \$23,000.00.

General Damages

- [4] Mr. Isaac is seeking general damages in the sum of \$85,000.00 for his loss as a result of the actions of the Registrar. He claims that based on the circumstances surrounding his wrongful eviction, trespass by the 1st Defendants' servants or agents, damage to his personal belongings and irreplaceable memorabilia and to his reputation, he is entitled to a substantial award. Mr. Isaac also seeks aggravated damages from the Registrar.
- [5] Counsel places reliance on the case of Interoven Stove Co Ltd v FWH Hibbard and FF Painter et al (1936) 1 AER 263 which establishes that in an action for illegal distress, substantial damages can be awarded without proof of any actual damage. The case did nothing however to assist the court in establishing the extent of the liability of the Registrar under the heads of loss that he has claimed and in any event, without any details of the agreed special damages provided to the court, it must be assumed that the award is for the market value of the goods damaged. Counsel has provided no basis for an award of \$85,000.00 as general damages in these circumstances.
- [6] The actions of the Registrar were pursuant to a lawfully obtained Writ of Execution and as such, the application to stay the execution of that writ not having been considered, the eviction cannot be said to have done unlawfully. That having been said, the Registrar was however, at fault when the application to set aside the Order of the Court to vacate the premises was not put before a judge for hearing.
- [7] The issue for determination is therefore, what damages are due to Mr. Isaac as a result? It is clear to me, and it is a matter settled by agreement that Mr. Isaac should be compensated for the

damage to his goods that were put outside in weather which caused them to be damaged. To that end, he has been compensated in the sum of \$23,000.00. In considering the affidavit of Mr. Isaac dated 22nd February 2012 wherein he provided a breakdown of his losses, he included the cost of two hotel rooms for his family for three nights when he was evicted. It seems to me that the award of \$23,000.00 which was for damage to property as well as the cost of alternative accommodation during the eviction is the proper measure of damages for trespass to goods and property.

- [8] I have taken into consideration the authorities provided by Counsel to assist the Court in its determination.

Interoven Stove Co Ltd v FWH Hibbard and FF Painter et al (1936) 1 AER 263

John Cadette v Raphael Ephraim SLUHCV2001/0538

Joyce V Sengupta ANUHCV2006/0419

Roma Charles v Rufus Thompson ANUHCV2004/0509

Clarabell Investments Limited et al v Antigua Isle Company Limited et al ANUHCV2006/0326

Catherine St Bernard v Olive Mc Ewen GDAHCV2008/0515

Mazeline Gabriel v Reynold Williams SVGHCV2004/0135

- [9] It is understood that Mr. Isaac would have endured some anxiety, embarrassment and distress in the manner the situation panned out especially having done all that was legitimately possible to arrest the execution of the Writ of Possession. Although Mr. Isaac has claimed damages for loss of reputation, he has given no evidence in support of this claim. The carelessness with which his application as well as the certificate of urgency to ensure the hearing of the application was handled by the Registrar need not be elaborated. The outcome of the application may very well have altered the path of the execution. In the circumstances I find an appropriate award of general damages for the Claimants loss would be \$10,000.00 which is also in accordance with the authorities within the jurisdiction.

- [10] Counsel for Mr. Isaac withdrew his claim for exemplary damages, agreeing that the facts in this matter do not meet the necessary threshold. Exemplary damages are awarded whenever the defendant's conduct is sufficiently outrageous to merit damages whose purpose extends beyond the usual compensatory function to punitive functions. The availability of exemplary damages for tort have been limited to three categories by Lord Devlin in **Rookes v. Barnard [1964] AC 1129**. Those categories were: (a) where government officials act in an oppressive manner; (b) where a defendant's conduct is calculated to make a profit from his wrong; (profit not being limited to monetary reward) and (c) where a statute expressly so provides.

- [11] Counsel also claims an award for aggravated damages. In actions in tort where the damages are at large (which would include an action for trespass to land), the court may take into account the defendant's motives, conduct and manner of committing the tort, and, where these have aggravated the plaintiff's damage by injuring his proper feelings of dignity and pride, aggravated damages may be awarded. The defendant may have acted with malevolence or spite or behaved

in a high-handed, malicious, insulting or aggressive manner. In my judgment, in this case there is no evidence upon which I can make a finding that Mr. Isaac is entitled to an award for aggravated damages. I therefore make no award under this head.

[12] In summary, the award is as follows;

- (a) The Claimant is to be paid the sum of \$23,000.00 as special damages agreed.
- (b) The Claimant is awarded the sum of \$10,000.00 general damages.
- (c) Interest is awarded on the special damages at the rate of 3% from the date of judgment on 13th July 2007 until payment
- (d) Interest is to be paid at the statutory rate on the total award of \$33,000.00 from the 5th June 2012 until payment
- (e) Prescribed costs on the total award in the sum of \$2,970.00.

**CHERYL MATHURIN
MASTER**