

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2008/0425

BETWEEN:

ESTLYN PROPHET

Claimant

and

ROYAL ANTIGUAN BEACH RESORTS LTD.

Defendant

Appearances:

Mr. Hugh Marshall Jr. for the Claimant
Ms. Veronica Thomas for the Defendant

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2010: November 17
2011: May 16
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JUDGMENT

[1] **MICHEL, J.:** By Fixed Date Claim filed on 14th July 2008 the Claimant, Estlyn Prophet, claimed against the Defendant, Royal Antiguan Beach Resort Ltd., the following relief:

- (a) Possession of her chattel house;
- (b) Damages for the tort of conversion;
- (c) Damages for the tort of trespass to property;
- (d) Damages;
- (e) An Order for the Claimant to be allowed access to her chattel building located on the Defendant's premises for the purpose of removing it therefrom;

- (f) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143;
- (g) Costs pursuant to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;
- (h) Such further or other relief as this Honourable Court deems fit.

[2] By Statement of Claim filed on the same date, the Claimant particularized her claim against the Defendant and claimed the following relief:

- (a) General Damages;
- (b) Exemplary Damages;
- (c) Possession of her chattel dwelling;
- (d) An Order directing the Defendant to allow the Claimant to access and to remove her chattel dwelling from the Defendant's premises;
- (e) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143 on the damages awarded;
- (f) Costs.

[3] On 24th October 2008 the Defendant filed a Defence disputing the Claimant's claims, denying that it was the owner of the property on which the Claimant's chattel building is located and asserting that the Defendant company only came into existence on 8th February 2005 and could not therefore have done the acts complained of by the Claimant occurring before that date.

[4] On 12th November 2008 the Claimant filed a Reply to the Defendant's Defence joining issue with the Defendant on its Defence and reiterating that she was denied access to and possession and use of her chattel building by the Defendant's servants and/or agents and that her building was situated within the fenced perimeters of the Defendant's hotel.

[5] Case management directions were given to and time extended for the parties to comply therewith and the case came up for trial on 17th November 2010.

[6] At the trial, the Claimant gave evidence on her own behalf and called one witness, Strickland Jarvis, while the Defendant (a company) called one witness.

- [7] In her witness statement, the Claimant alleged that from 1992 to 1995 she rented a building on the Royal Antiguan Hotel property, which building she used to trade as a vendor; that in 1995 she purchased the building for \$30,000 and later did some renovations to it costing an additional \$5,000; that the building remained on the hotel property and she operated a gift shop in the building until late 2000 when the hotel closed following damage by a series of hurricanes; that subsequent to September 2004 she approached the new owners of the hotel to advise them of her intention to remove the building but was blatantly refused access to her building; that following the filing of this claim she received a letter from the Defendant's Counsel dated 23rd October 2008 authorizing her to remove her building, but refusing to offer compensation to her.
- [8] The oral testimony of the Claimant consisted mainly of denials by the Claimant of questions asked of her and statements put to her by Counsel for the Defendant, with some of the denials conflicting with each other and with the Claimant's averments in her pleadings.
- [9] In his witness statement, Strickland Jarvis repeated much of what was contained in the witness statement of the Claimant. He was not cross examined.
- [10] Ashram Ramnarine was the only witness for the Defendant. He alleged that he was the Corporate Controller of Allied Hotels & Resorts Limited, which has owned and operated the Grand Royal Antiguan Beach Resort from September 2004. He alleged that he had not been aware that the chattel building belonged to someone else and that, as far as he knew, the building formed part of the property owned and operated by the Grand Royal Antiguan Beach Resort. He further alleged that during the period of mediation – which would have been between December 2008 when a mediation referral order was made in the case and January 2010 when case management directions were given for the trial of the case – the Claimant said that she wanted back the chattel building and he agreed that she could come and remove the building, but she did not do so when it became apparent that the chattel building was impossible to remove. He also alleged that he was not aware of any arrangements made by the previous owners with the Claimant and therefore never assumed liability for such.

- [11] Under cross examination by Counsel for the Claimant, Mr. Ramnarine testified that he is quite happy to allow the Claimant to have possession of the chattel building located on his company's premises, but he does not agree that his company has been using the building or that it should pay compensation for use of the building. He conceded that there were some items located within the building, which he says were there from the time that his company purchased the property. He also testified that he does not accept that initially his company refused the Claimant access to the aforesaid building.
- [12] Under questioning by the Court, Mr. Ramnarine testified that the company named as the Defendant in this suit has the same shareholders as Allied Hotels & Resorts Limited, but that there is no connection between the Defendant and the property where the hotel is located.
- [13] In the closing submissions filed on behalf of the Claimant on 25th November 2010, it was submitted that the Claimant had made out her case of conversion against the Defendant, but no submission was made about the averment of trespass. In the aforesaid written submissions, Counsel for the Claimant also invited the Court to add Allied Hotels & Resorts Ltd. as a party to the proceedings since it emerged from the evidence of the Defendant's witness that the named Defendant had nothing to do with the property upon which the Claimant's chattel building was located and that the property was under the control of Allied Hotels & Resorts Ltd.
- [14] This Court does not find that there was any evidence that the Defendant in this case - a company which came into existence in February 2005 – did any act amounting to conversion of the Claimant's chattel building. Moreover, this Court finds that the Defendant is not and was not the owner of or otherwise in control of the property on which the Claimant's chattel building is located and is not therefore liable for any loss or damage occasioned to the Claimant or her chattel building. The Court also does not find that there is any or any proper basis on which the Court can, at the conclusion of the case and at the invitation of the Claimant, add a party to the proceedings so as to revive the Claimant's case mortally wounded by the evidence that the named Defendant could not have been the author of any loss to the Claimant. The Claimant is unable to make an application to the Court to add a new party because the time limit for her to do so (the case management conference) has elapsed and so she asks the Court to do so on its own initiative after

the conclusion of the case. Effectively, what the Claimant is asking the Court to do is to give a judgment against Allied Hotels & Properties Limited in a case brought against Royal Antiguan Beach Resort Ltd. because the evidence at the trial appeared to suggest that there is no case against the latter but there might be a case against the former; and this is against the background of the Defendant having pleaded in its Defence filed almost two years before the trial that it was incorporated in 2005 and that it was not the owner of the property on which the Claimant's chattel building is located. Besides, the Court is not in any event convinced that Allied Hotels & Resorts Limited – which acquired the hotel property in September 2004 – itself did any act constituting conversion of the Claimant's chattel building.

[15] The Corporate Controller of Allied Hotels & Resorts Limited, on whose property the Claimant's chattel building is located, having given an undertaking in Court that the Claimant is free to come onto his company's property to remove her chattel building, the Claimant is invited to do so at the earliest. Any obstructions put in her way by anyone in the removal of her chattel building can be addressed through the appropriate application to the Court.

[16] It having been ordered at the Pre-Trial Review of this matter that costs in the matter will be prescribed costs unless otherwise agreed, and no agreement otherwise having been reached, the Claimant is ordered to pay to the Defendant prescribed costs in accordance with Rule 65.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (the CPR).

[17] The Court's Order in this matter is as follows:

The Claimant's case is dismissed and the Claimant is to pay prescribed costs to the Defendant in accordance with Rule 65.5 of the CPR.



MARIO MICHEL
High Court Judge