

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

CLAIM NO: ANUHCV 2008/0189

BETWEEN:

**DRB COMPANY LIMITED
GILBERT GOMES**

Claimants

and

CARLTON LEWIS

Defendant

Appearances:

Mr. Hugh Marshall Jr. for the Claimants
Mr. Kendrickson Kentish for the Defendant

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2010: October 12
2011: February 9
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JUDGMENT

[1] **MICHEL, J.:** By Claim Form with Statement of Claim filed on 18th April 2008 the Claimants, DRB Company Limited and Gilbert Gomes, claimed against the Defendant, Carlton Lewis, the following relief:

1. A declaration that the Defendant is not allowed to enter or use the First Claimant's property;
2. An injunction restraining the Defendant, whether by himself, his servants or agents or otherwise, from entering on the premises owned by the First Claimant, to stop removing stones from the breakwater mark on the west side of the said premises, and

to stop interfering verbally and physically with the Claimants, their servants and/or agents;

3. Special damages in the amount of \$32,000.00 for repairs to the breakwater mark damaged by the Defendant and \$717.05 for medical treatment and medication incurred by the Second Claimant for treatment of his eye;
4. Exemplary and aggravated damages for multiple trespass, assault and battery and the use of verbally abusive and threatening language;
5. Damages;
6. Interest under paragraph 11 from 3rd July 2007 until payment or judgment herein at such rate as the Court thinks just;
7. Costs.

[2] The Defendant filed a Defence on 13th June 2008 denying all of the Claimants' allegations and claims against him and filed an Amended Defence on 20th October 2008 more fully responding to the Claimants' allegations and claims.

[3] The Claimants filed a Reply to the Amended Defence on 4th February 2009.

[4] Following delayed compliance with case management directions, the case came up for trial on 5th October 2010, but was adjourned - at the request of Counsel for the Defendant and with no objection by Counsel for the Claimants - to 12th October 2010, at which date the trial did take place.

[5] At the trial, Gilbert Gomes – the Second Claimant and a Director of the First Claimant – gave evidence for the Claimants, as did his common law wife, Violet Francis, and Acting Inspector of Police Ezzard Weston of the Royal Antigua and Barbuda Police Force. The Defendant, Carton Lewis, was the only witness for the defence.

[6] In his Witness Statement which he relied on as his evidence in chief, Mr. Gomes stated that he engaged the services of the Defendant to do a job involving the placement of boulders to protect parts of the property known as "Lobster Pot." He stated that in or about

June 2007, prior to commencement of the work, the Defendant gave him an estimate of \$4,800 and an estimated time of two days to complete the work. He stated that he paid the Defendant a total of \$4,400 and refused to pay the balance of \$400 because the job was never completed and he (Mr. Gomes) had to engage a backhoe to complete the job. He stated that some time after that the Defendant gave him a bill for \$11,000, which the Defendant told him included the cost of repairs to an excavator which was damaged while working on the Claimants' property, and that he told the Defendant that he would not pay, whereupon the Defendant threatened him with physical violence. He stated that the following day (while at home) he heard heavy equipment on his property and when he went outside he met seven or eight men on his property, some of whom had pickaxes and some had cutlasses, and there were two excavators pulling away stones from the sea wall that had just been constructed. He stated that his fence had been broken and his gate had been dismantled and that the Defendant was standing inside the Claimants' property in the company of two other men. He stated that he (Gilbert Gomes) went and stood on a stone and demanded that the men stopped pulling away stones from the sea wall, but the Defendant instructed the operator of one of the excavators to keep working. He stated that they (referring to the Defendant's workers) moved the stone on which he (Gilbert Gomes) was standing, which threw him to the ground and, while two of the Defendant's workers held his hands, the Defendant began to thump him in his face and he felt a blow in his left eye. He stated that his family came to his assistance and they called the police and that a Police Officer, Mr. Weston, came. He stated that he had pain and swelling to his face and his eye for about one month and had to consult with Dr. Ian Walwyn for treatment. He stated that he paid over \$300 to Dr. Walwyn, over \$320 to Dr. Bird and spent over \$100 on medication. He stated too that the assault upon him by the Defendant in the presence of his family was embarrassing and humiliating.

- [7] Under cross examination, defence counsel sought to portray Mr. Gomes as an aggressive and confrontational person who was known to have conflicts with his neighbours and others and who was quite capable of handling himself in a physical confrontation. He also put to Mr. Gomes that the injuries sustained by him in the confrontation with the Defendant were the products of his own aggression.

- [8] The next witness was Violet Francis. In her Witness Statement she stated that on or about 3rd July 2007 at about 7.30 am, while she was with Mr. Gilbert Gomes (with whom she lives) going from a room to the restaurant on the property, she heard heavy duty equipment. She stated that on reaching to the front of the restaurant they saw two excavators removing stones. She stated that Mr. Gomes ran to the front and asked the men to stop, but they did not. She stated that there were two operators and five other men and that the Defendant was also present. She stated that some of the men had cutlasses and some had sticks. She stated that while Mr. Gomes was standing on a stone, one of the excavators moved the stone and Mr. Gomes fell on his back in the water. She stated that two men held Mr. Gomes' hands and the Defendant started thumping him in his face. She stated that this went on for a few minutes and she started to scream. She stated that, with the use of her cell phone, she called the police and also called her daughter, and that her daughter came after 20 minutes. She stated that Mr. Gomes' eye was black and blue and partly closed for about a month, that he had treatment from both Dr. Bird and Dr. Walwyn and that he complained of pain almost every day.
- [9] The evidence of Ms. Francis was tested under cross examination and appeared to be unshaken.
- [10] The next and final witness for the Claimants was Ezzard Weston. In his Witness Statement he stated that he is an Acting Inspector of Police and that in the month of June 2007 he responded to a report of a fight at Runaway Bay at the premises of Mr. Gilbert Gomes. He stated that upon his arrival there, accompanied by other personnel, he met Mr. Gomes and the Defendant in a heated exchange on Mr. Gomes' property. He stated that there was a heavy duty machine there as well and that the operator was on it and some men - including the Defendant and Mr. Gomes - were standing around it. He stated that he requested and obtained an explanation from both Mr. Gomes and the Defendant and that, realizing that the issue at hand concerned an "argued" non payment of contracted funds, he advised both gentlemen to seek legal advice on the matter and warned them not to create a further breach of the Queen's peace. He stated also that Mr.

Gomes reported to him that he was thumped in the eye by the Defendant, while the Defendant reported that he was struck by Mr. Gomes and was owed by Mr. Gomes.

- [11] At the close of the Claimants' case, Counsel for the Claimants referred the Court to Rule 28.18 of the Civil Procedure Rules 2000 and noted that, since there was no notice served by the Defendant for the Claimants to prove any documents, the Defendant is deemed by virtue of Rule 28.18 to admit the authenticity of all documents disclosed by the Claimants.
- [12] The Claimants' case having been closed, the Defendant then gave evidence on his own behalf. In his Witness Statement the Defendant stated that he was hired by the Claimants to construct a breakwater on their property to prevent beach erosion. He stated that this included placing large boulders on lands adjacent to the Claimants' property on the Claimants' instructions. He stated that he had a difference of opinion with the Claimants as to the works and they refused to pay him for the said works, as a result of which he removed the boulders that he had placed on the said land. He stated that at no time were the materials (presumably the boulders) on the Claimants' property. He stated that when Mr. Gomes realized that he (the Defendant) was removing his materials, Mr. Gomes came to his workers and demanded that they stop doing so, whereupon he (the Defendant) was contacted and came to the scene and told the workers to proceed. He stated that at no time did he punch, hit or in any other way assault Mr. Gomes and that in fact, in a statement to the police, Mr. Gomes said that he had fallen down and hit his face. He stated that at no time did he trespass on the Claimants' property. He stated that at all material times on 28th November 2007 he drove his vehicle through the gate with the permission of Ms. Sybil, who is a property owner with access through the gate. He stated that the lands on which he entered were lands adjacent to the Claimants' property and that he was there at the owner's request. He stated that he never threatened the Claimants or their servants or agents, nor did he or his workers trespass on any lands owned by the Claimants. He stated that if the Claimants have been humiliated or have suffered any anguish or mental distress that it was not as a result of any actions taken by him or his servants or agents.

[13] In commenting on the evidence of Mr. Gilbert Gomes, the Defendant testified that he did not give the Claimants an estimate for the cost of the work or of the time it would take to complete it. He testified that, because of the size of the boulders which he and his workers were packing into the sea for the Claimants and because the excavator had to be running over these boulders, the track came off from the excavator. He stated that when this happened, because he wanted to finish the job and because he did not want to prolong their stay in the salt water which damaged the machine, he sent for another excavator which he had working in an area close to the Claimants' property. He denied that they attempted to start the damaged excavator the following day, because they would first have to repair the track before they could attempt to move the excavator from where it was. He also denied that when the damaged excavator was fixed it was moved from the Claimants' job site. He testified that they were still then on the Claimants' job site. He testified that there were in fact two excavators working there. He testified that they are not in the habit of charging the client when an excavator breaks down and that this is not the client's problem. He denied that he threatened Mr. Gomes or that he broke down the Claimants' fence or dismantled the gate. He denied that the shovel of the excavator was used to move the stone that Mr. Gomes was standing on when he fell and he testified that the stone was very unstable and Mr. Gomes was in a rage. He also denied that someone held Mr. Gomes and he (the Defendant) began to thump him in his face.

[14] Under cross examination, the Defendant contradicted several of the allegations of the witnesses for the Claimants, but he also made certain significant factual concessions. These included an admission that he did come onto or in the vicinity of the Claimants' property on 3rd July 2007 and removed boulders from the breakwater which he had previously constructed for the Claimants. He conceded too that the boulders belonged to the Claimants and that the work he had done in constructing the breakwater (and was undoing on 3rd July 2007) belonged to the Claimants and that he did not have the Claimants' permission to remove the boulders. He conceded too that when his workers were undoing the work (on his instructions) by removing the boulders on 3rd July, Mr. Gomes came in front of him and appeared to be trying to prevent the excavator from removing the boulders. He conceded that on the said 3rd July, Mr. Gomes fell while he

(Mr. Gomes) was attempting to protect his boulders, that the boulders were made unstable by his (the Defendant's) excavators and that Mr. Gomes fell because the boulders were unstable. He also conceded that in November 2007 he did come onto the property fenced in by the Claimants, but contended that he did not come onto the Claimants' property but onto the access of one Ms. Sybil who has a unit within the property.

- [15] Having seen and heard the four witnesses who gave evidence at the trial of this matter, the Court prefers the version of the events which occurred in this case presented by the witnesses for the Claimants, as opposed to the version presented by the Defendant. The Court notes that Mr. Gomes – who is the Second Claimant and the apparent alter ego of the First Claimant – gave evidence, as did two of the three other persons whom he indicated were present at some time during the alleged trespasses and assaults of the Defendant (other than the Defendant himself and the Defendant's employees). The one other person whom Mr. Gomes mentioned as being present at some time but who did not give evidence for the Claimants at the trial is Mr. Gomes's daughter (Pauline Gomes) but the Court notes that the evidence of her mother (Violet Francis) was that when she called her daughter at the time that the altercation was taking place between Mr. Gomes and the Defendant on 3rd July, her daughter arrived about twenty minutes after, and so she would not have witnessed the actual altercation. It is also the case that there is evidence from Ms. Gomes before the Court in the form of an affidavit dated and filed on 20th March 2008 speaking to the events which took place on the property in November 2007. It is of note, however, that the Defendant gave evidence on his own behalf, but - although he was accompanied on 3rd July 2007 by seven or eight of his employees - not a single one of his employees came to Court and/or put in a Witness Statement in support of his highly-disputed version of the events of that day. The Defendant was also accompanied to the property in November 2007 by workers of his, but again, none of them came forward to corroborate his story. The defence put in witness summaries for Mr. Ezzard Weston (who was the lead police officer who came to the property on the day of the altercation between Mr. Gomes and the Defendant on 3rd July 2007) and for Ms. Elizabeth Sibel (whom the Defendant alleged gave him permission to enter the property after 3rd July 2007) but Mr. Weston was a witness for the Claimants and materially contradicted what was stated in the

witness summary filed by the defence, while Ms. Sibel was a no show, with no explanation offered.

[16] The Court accepts that, consequent on a dispute between Mr. Gomes and the Defendant about payment for the work done by the Defendant on the Claimants' property, the Defendant did on 3rd July 2007 enter on the Claimants' property with his equipment and with seven or eight of his employees, but without the permission of the Claimants, and proceeded (through his employees) to remove boulders from the breakwater which he had previously constructed for the Claimants. The Court accepts too that in the process the Defendant trespassed on the property of the Claimants. The Court also accepts that the Defendant assaulted and battered Mr. Gomes on the said 3rd July by first causing the boulders on which he stood to be shifted so that he could fall and then punching him to his face and eye and thereby causing physical injury to him. (It is noted en passant that Mr. Gomes could hardly have sustained the black eye that he got in the manner suggested by the Defendant and it is more probable that he sustained it by being punched in the eye.) The Court accepts too that the Defendant did return to the Claimants' property on more than one occasion after the altercation in July 2007 and again trespassed thereon and that he is likely - unless restrained by this Court - to repeat his trespass on the property of the Claimants.

[17] Consequent on these findings, and on the Defendant's own admission that unless ordered by the Court he would consider himself free to return to the property, an injunction is hereby issued restraining the Defendant, whether by himself, his servants or agents or otherwise howsoever, from entering on the property of the First Claimant or from removing boulders from the breakwater constructed for the Claimants or otherwise interfering with the Claimants' property.

[18] As to damages, the Claimants claimed special damages of \$32,000 for repairs to the breakwater mark damaged by the Defendant and \$717.05 for medical treatment and medication "incurred" by the Second Claimant for treatment to his eye. Special damages must, however, be specifically pleaded and proved before they can be awarded by the

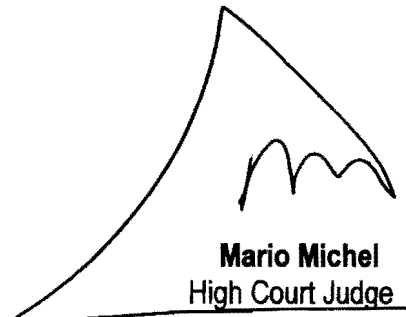
Court. The special damages claimed by the Claimants in this case were neither specifically pleaded nor proved by the Claimants. They were not mentioned in the body of the Statement of Claim, but only in the claim, and got only limited mention in the Witness Statements filed on behalf of the Claimants. In fact, there was no mention in the Witness Statements of the claim for repairs to the breakwater mark and the mention of the claim for medical treatment and medication was limited to an allegation in the Witness Statement of Mr. Gomes that he had pain and swelling in his eye and face for about one month, that he had to consult with Dr. Walwyn for treatment and that he spent over \$300 with Dr. Walwyn, over \$320 with Dr. Bird and over \$100 on medication. In the documents disclosed by the Claimants in this case there are four receipts from Dr. Walwyn - one for \$150, dated before 3rd July 2007, one for \$100 dated 3rd July 2007, one for \$20 dated after 3rd July 2007 and an undated one for \$100. Then there is a prescription by Dr. Walwyn dated 3rd July 2007 and a receipt from a pharmacy dated 3rd July for \$77.05 for medication. There is also a Statement of Services from Dr. Julia Bird dated 5th August 2007 for professional services to Gilbert Gomes during July and August 2007, totalling \$320. But, although these documents are there as part of the Claimants' case, there was no attempt by the Claimants to specifically plead and prove the special damages claimed, either by their pleadings and/or by leading evidence on actual expenditure incurred, when and for what purpose, and to connect this evidence with the torts committed by the Defendant against the Claimants. In short, the Claimants have not specifically pleaded and proved special damages in this case and the Court will not therefore award any.

[19] The Court must now assess the general damages to be awarded to the Claimants for the trespass to their property by the Defendant and for the assault and battery upon the Second Claimant by the Defendant and must determine if the circumstances of this case justify an award of exemplary and aggravated damages to the Claimants.

[20] In terms of general damages for trespass to the Claimants' property by the Defendant, the Court is minded to award the sum of \$5,000 by way of general damages for trespass to the land and to the boulders of the Claimants and to make an award of a further \$20,000 for exemplary and aggravated damages on the basis that the Defendant was actuated by

malice and spite in trespassing onto the Claimants' property in the manner that he did (with his equipment and his workers) because he was unhappy with the Claimants' decision not to pay the charges demanded by him and so he decided to flex his muscles (by the use of both heavy equipment and heavy re-enforcement) to terrorise the Claimants into doing his bidding, instead of suing the Claimants for breach of contract as a normal and reasonable businessman would do if aggrieved by the refusal of another person with whom he has done business to meet his obligations under the contract. The Court is also minded to award the Second Claimant general damages of \$5,000 for pain, suffering and loss of amenities resulting from the assault and battery of him by the Defendant, causing swelling of his face and eye and injury to his left eye in particular (which is detailed in the medical report of Dr. Walwyn) and to make an award of a further \$20,000 for exemplary and aggravated damages to the Second Claimant, given the audacity and ferocity of the Defendant in coming onto the Claimants' property and savaging the Second Claimant as he did in the presence of his common law wife and several other persons. In the case of both the trespass and the assault, the conduct of the Defendant is considered by the Court to have been sufficiently outrageous to justify the award of exemplary and aggravated damages.

- [21] The Defendant is also ordered to pay the Claimants prescribed costs of \$14,000.
- [22] The Defendant shall pay interest at the rate of 5% per annum on the total amount of the judgment (damages of \$50,000 and costs of \$14,000) from the date of this judgment to the date of payment.



Mario Michel
High Court Judge