

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

(CIVIL)

ST. LUCIA

Claim No. SLUHCV2009/0901

BETWEEN:

DIXON CHARLES

Claimant

And

ED MELCHOIR

Defendant

Appearances:

Ms Cynthia Hickson for the Claimant
Mr. Horace Frazer for the Defendant

2010 July 8 August 30

JUDGMENT

[1] **REDHEAD J (AG):** On 3rd November 2009 the Claimant filed a fixed date claim seeking the following reliefs against the Defendant:

1. An injunction requiring the Defendant to remove with immediate effect (sic) the items which he has placed on the Claimant's property.
2. Damages for nuisance.
3. Damages for trespass.
4. Interest pursuant to Article 1009A of the Civil Code.

- [2] The Claimant in his witness statement says that he is 80 years old. He owns the land on which his house is built. The land measures 10,437 square feet and he has been living on that parcel of land for fifty years.
- [3] The Claimant, Dixon Charles asserts in his witness statement that the Defendant Ed Melchoir, occupies the adjoining property from about 2005. Ed Melchoir has been dumping garbage on his land. He says that he has seen the defendant dump garbage on his land. He has asked the defendant to stop dumping garbage on his land and to remove the rubbish that he, the defendant, has placed there. The Defendant has placed an old fridge and some pallets on his land.
- [4] The Claimant alleges that when the Defendant cleans his drains the Defendant comes unto his land and dumps the mud and garbage which he, the Defendant, has collected from the drains. The Claimant also says in his witness statement that the Defendant comes unto his land to burn the garbage and the heat from lighting of the fire has destroyed the boundary peg. The Claimant says that he has asked the Defendant many times to clear up the mess but he has not and the washing machine, pallets, mud and other garbage remain on his property. Finally, the Claimant says in his witness statement that the sight of all the garbage on his land upsets him and prevents him from enjoying his property.
- [5] The Defendant in his witness statement says that he occupies his uncle's property which is a neighbouring property to the Claimant's land. The Claimant acquired his property by purchasing from his uncle, Willie Melchaoir and his wife. He states that he has never trespassed on the Claimant's land and he did not put any garbage on the Claimant's land. He says that the garbage is in the access road and not on the Claimant's land. The Defendant alleges in his witness statement that the deed of sale (for Claimant's) land which sets out the terms of purchase of Claimant's land, computes the Claimant's land as measuring 7,817 square feet. Given that measurement the boundary line between the Claimant's land and the access road, the garbage would be shown to be purely on the access road. The

surveyor who surveyed the Claimant's land gave him 10,437.2 square feet which shifts the boundary more into the access road taking in the garbage.

- [6] The Defendant says that the garbage which comprises of metal rods, old pallets and an old washing machine were not put there by him. He states that the metal rods and old pallets were left there by the Banana Recovery Unit during the time that they were repairing the access road. The old washing machine belongs to the Claimant and was put there by him. The Defendant says that he knows about the washing machine because he repaired the new washing machine for the Claimant and he, the defendant dumped the old one on the access road.

- [7] The Defendant alleges in his witness statement that the Government built a wall by the access road in 1993 and shortly thereafter planted the flowers in that area. Ed Melchoir sates that the claim is totally false. He was always on speaking terms with the Claimant and did work for him. The garbage was there at all times but the Claimant never complained about it. The Defendant states that the relationship between him and the Claimant deteriorated after the Claimant accused him of having a relationship with his wife and soon after that accusation the Claimant files this suit.

- [8] The question to be determined is on whose land is the garbage? As it seems to me that there is a boundary dispute so far as the alleged trespass is concerned. In so far as the alleged nuisance is concerned, it does not matter, because someone can commit a nuisance emanating from one's own premises.

- [9] I now deal first of all with this application for the injunction. This is an equitable relief. Equity aids the vigilant.

- [10] In his witness statement, the Claimant says that from about 2005 Ed Melchoir has been dumping garbage on his land.

[11] In cross examination he said that the pallets were there, (on the land) since 2005. Both pallets and metal rods were on the land the same time. The flower plants were planted since before he surveyed the land.

[12] The washing machine was on the land since 2008. The Defendant was lighting fire on the land since 2008 if he burns this week the next week he burns.

[13] Continuing in cross-examination the Claimant says:

“He [the Defendant] did not burn fire last week. Since 2008 he had not burn anything. Between 2005 and 2008 I went to the lawyer in 2008. I did not go to the lawyer before 2008.”

[14] In that regard the Claimant has supported in part the Defendant's defence. In paragraph 3 of the defence, the Defendant contends that the wooden pallet, the trees and flowers, the Claimant alleges that the Defendant caused to be put on his land, are not on the Claimant's land but rather are on the side of the access road and have been there for over six(6) years and fifteen(15) years respectively.

[15] The Defendant contends that these things, rubbish were on the Claimant's land for a long while, many years. The relationship between him and the Claimant was a good one until the Claimant accused him of having a relationship with his wife. As a consequence of this accusation the Claimant has brought this action against him to get even with him.

[16] It is beyond doubt, in my mind, that the rubbish and other things complained of by the Claimant were on the Claimant's land for a considerable length of time. The question of course why is the Claimant only now seeking redress?

[17] The Defendant argues that when the Claimant bought his land it measured 7,817 sq feet. That said land was subsequently surveyed, after which that parcel was

increased to 10,437.2 square feet. This, he claims as a result of moving the boundary mark. The Claimant's boundary was then shifted into the access road as a result of that survey.

- [18] Mr. Fraser referred to 979 of the Civil Code which provides inter alia, he who receives what is not due to him, through error of law or fact, is bound to restore it; or if it cannot be restored in kind, to give value for it. However, the Land Surveyors Act 1984 section 25(2) stipulates:

“Every plan authenticated by the Chief Surveyor under sub-section (1) shall in any court of the law or in any proceeding or a legal or quasi-legal nature be conclusive evidence of the survey information comprised therein unless and until such plan is cancelled by the Chief Surveyor by virtue of section 26.”

- [19] There is no evidence that the survey done by Mr. Hippolyte on 26th July 1990 and plan drawn in accordance with that survey was cancelled by the Chief Land Surveyor. I therefore have no alternative but to accept what is stated on that plan.

- [20] In March 2010, in a report addressed to the Registrar of the High Court Mr. Hippolyte, Land Surveyor says in part:

“On the day of my visit I recognized that there existed along the eastern side of the road that focus the western boundary of the land i.e. on the said plan a pile of garbage. This garbage was a distance of ten (10) meters from the junction of two roads and was the two point (2.5m) meters long and point seventy five (.75m) of a meter wide.

I have plotted on the attached plan the position of the pile of garbage found. This garbage is on the property of Dixon Charles.”

[21] When I look at the plan presented, it seems to me that a very small portion of the garbage is on the Claimant's land the bulk of it is on the access road.

[22] Learned Counsel for the Claimant referred to the Civil Code 2122 which mandates, in part:

***“The following action are prescribed by three years:
For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply.”***

[23] In Clerk and Lindsele on Torts at paragraph 18-02, the learned authors say in part:

“It is also a trespass to place anything on or in land in the possession of another.... While dumping rubbish on another's land is trespass...Every continuance of the trespass is a fresh trespass, in respect of which a new course of action arises from day to day as long as the trespass continues.”

[24] It is therefore pellucid that garbage which was dumped on Claimant's land in 2008 is a continuing trespass. In Snells Equity Thirtieth Edition at paragraph 48-71 it is there stated:

“(1) Private Nuisance - Injunctions are often used in case of nuisance, thus obviating a multiplicity of suits for damages, equity will only interfere, in case of nuisance when the thing complained of is a nuisance at law;... As with trespass, an action to restrain a nuisance is usually brought by the person in occupation of the property affected. However, trespass differs from nuisance in that it is a direct as opposed to a consequential injury, and is actionable without proof of damage, whereas damage must be proved in nuisance. Thus if one man throws stones, rubbish or other materials of any kind on the land of another, so

if he sends sticking water in his yard into his neighbour's celler these are acts of trespass for which he will be responsible without proof of damage." (see Clarke and Lindsell on Torts at paragraph 18-08).

[25] In my judgment, in light of the forgoing, the acts complained of by the Claimant in the case at bar is one of trespass.

[26] Mr. Fraser contends that if the court believes the evidence of the Claimant, then at best the court should award nominal damages to the Claimant for nuisance. As I said above, having looked at the plan, I am of the opinion that the rubbish is on a small portion of the Claimant's land.

[27] In light if all the surrounding circumstances the Defendant is hereby restrained by injunction whether by himself, his servants, or agents or howsoever from dumping, depositing of any garbage on that portion of land occupied by the Claimant and to remove immediately garbage which he deposited there on.

[28] Damages to the Claimant in the sum of \$5000.00.

[29] Costs to the Claimant \$1500.



Albert Redhead
HIGH COURT JUDGE(AG)