

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV 2005/0286

BETWEEN:

LUKE EDWIN

Claimant

Vs

CONSOLIDATED CONTRACTORS INTERNATIONAL (U.K.) LIMITED

Defendant

Appearances:

Mr. Alvin St. Clair for Claimant
Mrs. Petra Nelson for Defendant

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2008: May, 27
June 3
July 16
2009: June 4
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JUDGMENT

COTTLE J:

[1] I must begin this judgment with an apology for the delay in delivering it. After the evidence was taken in court there was a visit to the locus in quo. Subsequently the parties filed written closing submissions. Alas the file was then put away and not returned to me. The matter languished until

counsel enquired. It was only then that it was realized that there was a judgment outstanding and the file returned to me for action

[2] This is a claim for compensation for loss occasioned by flooding of a banana plantation. The Claimant is a banana farmer. He farms some 5 acres in the Richfond Valley. The Valley is a natural amphitheatre surrounded by steep hills. It is always prone to flooding in periods of heavy rainfall.

[3] In his initial statement of claim the Claimant averred:

“As part of the construction process of the said bridge the Defendant company caused a temporary bridge to be constructed to facilitate motor vehicular and pedestrian traffic which would otherwise have utilized the new bridge under construction”

“As a direct result of the construction of the temporary bridge and the poor and negligent manner in which the Defendant has proceeded with the construction of the said bridge, significant flooding occurred from May 2004 such that the farm of the Claimant was inundated with water from that time. The said flooding has virtually destroyed all banana plants thereon and made further cultivation impossible as the flooding continued unabated”

The Defendants denied liability. The Claimant thereupon amended his statement of claim. The cause of the flooding of the Claimants farm was now said to be:

“As part of the construction process of the said main road the Defendant company utilized material such as stones, soil and other construction material”

“As a direct result of the construction of the main road the material such as stones soil etc used in the construction thereof was indiscriminately dumped into the main drains referred to above. The said dumping inevitably lead to the blocking of the said drains which ultimately had the effect of flooding the farm of the Claimant such that the water logging occurred destroying the banana plants and making further cultivation impossible as the flooding continued unabated”

Again the Defendants denied liability. The Claimant then filed a further amended statement of claim, the relevant paragraphs read:

“The Defendant is a construction company duly registered under the Companies Act 1996 and engaged in the rehabilitation works of the Grande Ravine main road and the Grande Ravine main bridge both of which are within the general area of the farm of the Claimant”

“As part of the construction process of the said main road from a period covering May 2004 to September 2004 the Defendant the Defendant company utilized material such as stones, soil and other construction material. Moreover the Defendant company caused a diversion of traffic unto the property of the Claimant with the permission of the Claimant with the permission of the Claimant and caused the main drain to traverse underneath that diverted path”

“As a direct result of the construction of the main road the material such as stones soil etc used in the construction thereof was indiscriminately dumped whether by the Defendants, their servants or agents, into the main drains referred to above, including that part of the main drain which was made to traverse the diverted path. The said dumping inevitably led to the blocking of the said drains which ultimately had the effect of flooding the farm of the Claimant, during the period May 2004 to September 2004, such that water logging occurred destroying the banana plants, making further cultivation impossible as the flooding continued unabated”

[4] **The Evidence**

Two witnesses gave evidence on behalf of the Claimant. These were the Claimant himself and his expert agriculturist Mr. Best.

[5] In his witness statement the Claimant says that the Defendant deposited construction material such as stones and soil in the four foot wide main drain that allowed the flow of water from his farm and the run off water from the main road. The dumped material was permitted to accumulate to the same height as the banks of a ravine which ran alongside his farm and into which the main drain debouched. He goes on to add that this action began in May 2004 and continued throughout the months of June, July and August 2004. In his cross examination he explained that he did not visit his farm everyday. He had an uncle who supervised on his behalf and who was on the farm each day.

[6] On September 27th 2004, the second witness for the Claimant, Mr. Stephen Best, visited the farm. He carried out an assessment and prepared a report. It does not appear that he visited the farm

before this time. Despite the handicap, Mr. Best opined that the cause of the flooding of the Claimant's farm was the "indiscriminate dumping of construction material in the main drain..." leading to the conversion of the banana field into a "virtual pond".

[7] Mr. Bassel Hillal, a Civil Engineer gave evidence for the Defendants. He denied that construction material was dumped in the Claimant's drain. He explained that the road works involved a raising of the road level. No excavation was done. All the material incorporated in the road work was imported and very costly. Concrete drains boundaries were constructed and all the construction material was processed between the raised drains boundaries. It was not possible for it to be washed onto the adjoining lands or drains. Mr. Hillal emphasized it would have made no economic sense to import the expensive material and then indiscriminately dump it and not use it for the road works.

[8] The entire case then comes down to the factual contest. Did the Defendants dump material and block the Claimant's drain as alleged, or was the flooding of the Claimant's farm due to excessive rainfall and the 'natural topography of his farm?

[9] To answer this question the evidence must be carefully considered. I was also assisted by the visit to the farm.

[10] The Claimant says material was dumped blocking his drains in May, 2004. He took no steps to clear the blockage. It is accepted by both sides that the area is prone to flooding. Both sides agree that the rainfall during the period in question was exceptionally high. The Claimant wrote to

the Defendants on October 15th 2004. He complained that up to August 2004 no action was taken to clear his main drains.

[11] It appears to be highly unlikely that any commercial farmer operating in a flood prone area, would permit his farm to operate with completely blocked drains for three (3) months, from early May to August, especially during one of the wettest rainy seasons on record.

[12] it must be recalled that this is not a farm which was unsupervised. The Claimant lives nearby. The Claimant's uncle supervised daily. Even apart from any legal duty to take steps to mitigate his loss, good farming practice would necessitate keeping the drains clear.

[13] The Claimant in cross examination blames his loss not on the flooding per se but on the blocking of his drains permitting the water to remain stagnant and not run off. He did not take any steps to clear his drains which could easily have been done using available heavy equipment. The rental of such equipment according to the evidence of Mr. Hillal runs at \$100 – \$150 per hour. From my visit to the fields an hour or two would have been enough to clear any blockage. The Claimant admitted that he did not even enquire about the cost of such equipment or a pump to clear the field.

[14] I considered it far more likely that the flooding was due to the excessive rainfall. I do not believe that the Defendants would permit expensive imported road building material to languish unused in the Claimant's drains. Additionally it would require tons of material to fill the main drain. Again, with the benefit of the visit to the site the raised concrete drains boundaries which were in evidence, would have kept all construction material confined to the road bed.

[15] My conclusion on balance of probabilities is that the Defendants did not dump material into the drain of the Claimant. This explains the shifting averments of the Claimant as to the cause of his difficulties. Had the dumping of material been an effective cause of his flooding he would have pleaded this from the outset. The Claimant having failed to prove his case the claim stands dismissed.

[16] I award the Defendants prescribed costs. For the value of the claim I am content .to take the sum of \$88, 560.00 which was claimed as special damages. The prescribed costs on this amount works out to be \$21, 712.00.

BRIAN COTTLE
High Court Judge