

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 117 OF 2005



BETWEEN:

RONNIE FREDERICK

Claimant

v

CECIL WARDROBE

Defendant

Appearances: Mr. Olin Dennie for the Claimant
Mr. Arthur Williams for the Defendant

2006: September 25 & 26
December 18

JUDGMENT

- [1] **THOM, J:** This is a claim for damages for trespass.
- [2] The Defendant and his wife are owners of a parcel of land at Penniston, Saint Vincent and the Grenadines.
- [3] The Claimant built a house on the said parcel of land.
- [4] The Claimant was given notice to remove his house from the land. The Claimant having failed to remove the house, on January 7, 2005 Senior Magistrate Mr. Carl Joseph issued a warrant of possession in relation to the said property.
- [5] On the 21st day of January 2005 the Claimant's house was demolished and removed from the said land.

- [6] The Claimant instituted these proceedings on the 9th day of March 2005 in which he alleged that the Defendant unlawfully entered the said parcel of land, demolished his house and destroyed his furniture and clothing to the value of \$22,000.00.
- [7] The Defendant in his defence pleaded that the house was removed in the execution of the Order of the Magistrate Court dated January 7, 2005.
- [8] The Claimant gave evidence on his own behalf and called three witnesses being his wife Mrs. Orvis Frederick, Bailiff Mr. David Abraham and Mr. Alson Bobb. The Defendant gave evidence on his own behalf and called two witnesses being Mr. Lenford Olliver and Mr. Samuel Moore.
- [9] The evidence led on behalf of the Claimant is that from 1977 the Claimant and his wife lived in a house at Penniston on land belonging to the Defendant and his wife. In November 2004 the Defendant gave the Claimant notice to quit and deliver up possession of the land.
- [10] On January 13, 2005 Bailiff Mr. David Abraham, went to the Claimant's home and informed him he had a warrant from the Magistrate's Court for the possession of the land. The Claimant informed the Bailiff that he had a purchaser who was interested in the house and he had asked the purchaser to remove the house and if the purchaser did not remove the house the Defendant could "do what he wants." The Claimant testified that he again spoke to Mr. Abraham on January 18, 2005 and it was agreed that the house would be removed on the 22nd day of January 2005. The Claimant also testified that the house was valued \$15,000.00 and was furnished with a three-piece mahogany living room set valued at \$2,000.00, a wooden double bed valued at \$1,000.00, a 19" colour television set valued at \$1,000.00 and there was a quantity of clothing valued at \$3,000.00. The Claimant and his wife had moved some of their belongings to the Claimant's son's house at Penniston. They were living between the son's house at Penniston and the said house.

- [11] On the morning of the 21st January 2005, the Claimant went to work. His wife left the house for Kingstown at about 9 a.m. On her return some time after 1 p.m. she saw everything burnt. Alson Bobb testified that at about 7 a.m. after the Claimant had left for work, the Defendant, two policemen and a bailiff went to the house. The Defendant assisted by about four men broke down the house. The Defendant lit a fire and threw the clothes from the barrel into the fire. The entire house and contents were burnt flat.
- [12] The evidence led on behalf of the Defendant is that the Defendant and his wife became owners of the land by Deed of Conveyance dated 19th day of December 1997 and registered as Deed No. 1754 of 1997. The Defendant gave the Claimant notice to remove the house but the Claimant refused to do so. On the 7th day of January 2005, Senior Magistrate Mr. Carl Joseph issued a warrant of possession for the land.
- [13] On January 12, 2005 the Defendant spoke to the Bailiff Mr. Abraham who advised that the house would be removed on January 20, 2005. He did not see Mr. Abraham and he knew that Mr. Abraham and the Claimant were very good friends. He contacted Bailiff Mr. Lenford Olliver. On the 21st day of January 2005 in the presence of Bailiff Mr. Olliver and two police officers, the Defendant demolished the Claimant's house and placed the parts at the side of the road. At the time the house was unfurnished. The Claimant's daughter Cassandra Frederick and a young lady removed two boxes from the house along with an old wooden bed, some witnesses stated old sofa, before the house was demolished. The Defendant had no knowledge of any agreement between the Claimant and the Bailiff Mr. David Abraham which permitted the Claimant to remain in possession until the 22nd day of January 2005.
- [14] There were inconsistencies in both the evidence led on behalf of the Claimant and the Defendant. I will outline some of the inconsistencies.
- [15] Under cross-examination the Claimant denied that he had agreed to sell the house for \$3,000.00. He explained that he would have no place to live thereby suggesting that he did not agree to sell the house. However, in his evidence-in-chief he stated that he told the

Bailiff on January 18, 2005 that he had a buyer for the house and the house would be removed by January 22, 2005.

[16] Under cross-examination the Claimant stated that the house was broken down and placed on land belonging to Viola George. However the Claimant's witness Alson Bobb who stated that he was present when the house was demolished stated that the house was burnt flat.

[17] The witness Alson Bobb stated under cross-examination that he presently lived at Penniston but he did not know where the Claimant and his wife lived. The Claimant's wife testified that Alson Bobb was presently living with them at Penniston.

[18] In evidence-in-chief the witness Alson Bobb stated that at the time the house was demolished it was furnished with a bed, living room chairs with centre table, television and a barrel was also in the house. Under cross-examination he increased the items, there were now two beds, a space saver, wares, and he could not recall all of the things.

[19] The Claimant's wife Orvis Frederick stated in evidence-in-chief that she was present at the house on January 18, 2005 when the Bailiff Mr. Abraham spoke to the Claimant about removing the house. Mr. David Abraham in his evidence-in-chief stated that he spoke to the Claimant on January 18, 2005 at Little Tokyo. Further David Abraham stated he had not gone to the house since 1978.

[20] The Defendant testified that when he did not hear from Mr. Abraham on January 19, 2005 he contacted Bailiff Mr. Lenford Olliver to get the house removed. However, Mr. Olliver testified that the Defendant went to his house to seek his assistance in getting the house removed about one and one half week he subsequently stated one week before January 21, 2005. He also testified that the Defendant approached him again on January 19, 2005 at the High Court.

[21] The Defendant and Bailiff Mr. Lenford Olliver stated that they did not go into the house on January 21, 2005. However the Defendant's witness Mr. Samuel Moore stated that they did go into the house and further the Defendant assisted in demolishing the house.

[22] Having seen and heard all of the witnesses in this case, the only witness who gave his evidence without contradiction was Mr. Samuel Moore. I found him to be a credible witness. Mr. Samuel Moore is an elderly man who assisted in demolishing the house. His witness statement was very short. It contained only four paragraphs. However as a result of aggressive cross-examination by learned Counsel for the Claimant Mr. Olin Dennie, Mr. Samuel Moore outlined in a clear manner and without any hesitation what occurred on January 21, 2005.

[23] Paragraphs 2, 3 and 4 of Mr. Moore's witness statement outlined the events on January 21, 2005 as follows:

- "2. I was present when the house was moved. I helped to break down the house. The Police and the Bailiff were also there.
3. Before we broke down the house, two girls came and removed two boxes from the house. They also removed an old bed.
4. I did not see a television in the house. There was nothing else in the house when I helped to break it down."

[24] Under cross-examination Mr. Samuel Moore stated that he was present when the house was dismantled. It was a Friday. The Claimant was not there but the Defendant was present. He said other persons were present but they all waited on the Bailiff and the Police. The house was locked. No-one went to the house until the Bailiff and Police arrived. When the Vinlec workers disconnected the electricity they went inside the house. They broke down the house from the inside. Two boxes were inside of the house and an old sofa. He also described it as a settee and stated that a person could lie on it. Two girls removed the items. The parts of the house were placed by the side of the road but they were still partly on the land. After the house was destroyed the Police Officers and the Bailiff left.

[25] Having reviewed all of the evidence, I find the following facts, being, the Defendant and his wife own the parcel of land at Penniston on which the Claimant's house was situated. The Claimant was given notice to vacate the land and he failed to do so. On the 7th day of January 2007, the Senior Magistrate Mr. Carl Joseph issued a warrant of possession in relation to the said property. Mr. David Abraham read the warrant to the Claimant on the 13th day of January 2005. When the warrant was read to the Claimant he told the Bailiff Mr. Abraham that he had a buyer for the house and the buyer would remove the house and if he did not do so the Defendant could do what he wants. The Defendant was not aware of the agreement between Mr. Abraham and the Claimant for the removal of the house on January 22, 2005. The house was removed on the 21st day of January by the Defendant and his workmen under the supervision of Bailiff Mr. Lenford Olliver and two Police Officers. At the time when the house was demolished the Claimant and his wife had removed their belongings from the house. The only items remaining in the house were two boxes and an old sofa. These items were removed by the Claimant's daughter Cassandra Fredericks and another young lady before the house was demolished and the parts placed at the side of the road.

[26] The issues to be determined are:

- (a) whether the Defendant is liable in trespass;
- (b) whether the Defendant is liable for destruction of the Claimant's property.

[27] Is the Defendant liable in trespass? In Halsbury Laws of England 4th Edition Volume 45 at paragraph 1084 trespass to land is outlined as follows:

"Unlawful Entry: Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or take possession of it or expels the person in possession or pulls down or destroys anything permanently fixed to it."

[28] The Claimant's house was destroyed in the execution of a warrant of possession issued by the Senior Magistrate. The warrant was issued on January 7, 2005 and the Bailiff Mr. Abraham read the warrant to the Claimant on January 13, 2005. The warrant authorized the ejection of any person on the property and for possession to be delivered to the

Defendant and his wife seven days from the date of the warrant. There is no evidence to suggest that the Defendant was aware of the arrangement between the Claimant and Mr. David Abraham for the Claimant to remove the house on January 22, 2005. The removal of the house was done under the supervision of the Bailiff Mr. Lenford Olliver and two Police Officers. In view of the above I find that the Defendant is not liable in trespass.

[29] Is the Defendant liable for the destruction of the Claimant's property? As stated earlier I find that the items in the house immediately prior to the house being demolished were two boxes and an old sofa. These items were removed by the Claimant's daughter Cassandra Frederick and another young lady. Further the warrant provided for ejection of any person and possession to be delivered to the Defendant. In my opinion this meant the removal not only of the house but also the contents therein. I find that the Defendant is not liable for the destruction of property belonging to the Claimant as alleged in the statement of claim.

[30] The claim is hereby dismissed. It is ordered that the Claimant shall pay the Defendant costs in the sum of \$6,600.00.


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Gertel Thom
HIGH COURT JUDGE