

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 162 OF 2002



BETWEEN:

MARIA THORNE-BRAMBLE

Claimant

V

LAURISTON "YANKEE" PRIMUS

Defendant

Appearances:

Mr. S. Cadette for the Claimant

Mr. Parnell Campbell Q.C. and Mr. McCauley Peters for the Defendant

2005: November 15th & 30th
December 14th
2006: February 8th

JUDGMENT

- [1] **THOM, J:** This is a claim for damages for trespass.
- [2] The Claimant on April 24, 2002 instituted proceedings against the Defendant and sought the following reliefs:
- (a) Damages for trespass
 - (b) Damages for the destruction of the Claimant's foundation and fence
 - (c) The removal of buildings and erections from the Claimant's land
 - (d) A declaration that the land occupied by the Claimant is in the possession of the Claimant
 - (e) An injunction restraining the Defendant from entering the Claimant's land and erecting anything thereon.

- (f) General Damages.
- (g) Costs

- [3] The land in issue in this case and which is situated at Diamond in the State of Saint Vincent and the Grenadines was at all material times owned by the Crown.
- [4] At all material times the Claimant and the Defendant occupied adjoining portions of Crown land at Diamond. Neither portion of land was surveyed.
- [5] The Claimant alleged in her Statement of Claim that in 2001 the Defendant trespassed on the portion of land which she occupied and constructed a toilet and soakaway. In 2002 the Defendant erected another toilet on the land and destroyed a fence which was erected by the Claimant.
- [6] The Claimant testified on her own behalf and called two witnesses, Mr. Rudolph Richards her common-law husband and Mr. Alfred Wilson.
- [7] The Defendant testified on his own behalf and called two witnesses.
- [8] The Claimant's evidence in chief is that in the 1997 she cleared a portion of Crown land at Diamond. At that time no one else was occupying Crown land in that area. She then made application to the Ministry of Agriculture for permission to occupy the portion of land that she had cleared. She received no response from the Ministry of Agriculture. She erected a fence and commenced construction of a dwelling house on the land. About one year after, the Defendant cleared a portion of land in the same area and erected a block-making plant. He also cleared an adjoining portion where he stored his blocks and materials. The Defendant broke down her fence and trespassed on the portion of land that she occupied. He built a toilet and covered the foundation which she had constructed and all of her materials including sand and Rabacca material with material from the foundation.

- [9] Under cross-examination by Mr. Campbell Q.C. the Claimant stated that she did not receive any reply from the Ministry of Agriculture to her application. The fence was made from sticks set in a concrete based and used galvanize. The Defendant used a bulldozer to break down about 12 feet of the fence. She and Rudolph Richards were present when an employee of the Defendant drove the bulldozer and broke down the fence. The Defendant was also present. This occurred in 1998. She then changed her evidence to 1999 and then to 2001. She received no notice from the Government to cease occupation until 2003 when she received a letter from Mr. Ollivierre the Chief Surveyor.
- [10] Rudolph Richards' evidence in chief was the same as the Claimant's. Under cross-examination he stated that the fence was destroyed in late 2001. He and the Claimant were present when the fence was destroyed.
- [11] Mr. Alfred Wilson in his evidence in chief stated he was contracted by the Claimant and Rudolph Richards to deposit sand, stones, cement, steel and other materials on a portion of land at Diamond. At that time no one else was occupying land in that area. The Claimant and Rudolph Richards began to construct a house on the parcel of land. Cross-examination of this witness was declined by the Defendant.
- [12] The Defendant in his evidence in chief stated that he occupied a portion of land at Diamond which was cleared by Kathleen Bobb. He held discussions with her and the Ministry of Agriculture gave permission for him to occupy the land. He commenced his block-making operation on the said land towards the end of 1996. In 1997 the Claimant cleared a neighbouring parcel and constructed a house in 2000 or 2001. He denied that he trespassed on the land occupied by the Claimant or destroyed her fence or damaged any backwall of the Claimant. The structure erected by the Claimant was cleared from the land by officials of the Government. The oral permission to occupy the land was put into writing in the form of a letter dated April 16, 2002. He was granted a Crown Grant of the parcel of land dated September 27, 2004.

[13] Under cross-examination by Mr. Cadette the Defendant stated that when he went to the portion of land which was previously cleared by Ms. Kathleen Bobb in 1995 no other person was occupying land in the area at that time. The portion of land which the Claimant cleared and occupied was land which he had cleared. The Claimant came to the area after him. He saw the construction of the foundation and three columns and some blocks on one side. He did not prevent her from occupying the portion of land because the land belonged to Government and they were both trespassing on Government land. He did not damage the Claimant's property but the Claimant damaged his property by filling up the soakaway that he had constructed. The toilet was on the portion of land that he occupied. The toilet is at the back of his building.

[14] Kathleen Bobb in her evidence in chief stated that in 1995 while she was employed in the Roads Division of the Ministry of Communications and Works she was given permission to occupy a parcel of Crown land at Diamond. At that time many persons were occupying Crown lands at Diamond as squatters. In the same year 1995 she cleared the land and commenced construction of the foundation for a small dwelling house. Subsequently she agreed with the Defendant for him to occupy the said parcel of land. The Ministry of Agriculture and Lands subsequently gave permission to the Defendant to occupy the said land. The Claimant was not in occupation of any portion of land in the area when the Defendant occupied the land. The Claimant subsequently cleared a portion of land in 1997 and started to build a structure in 2000 or 2001. She was present when officials of the Government removed structures in the area erected by squatters including the structure erected by the Claimant.

[15] Under cross-examination by Mr. Cadette Ms. Bobb stated in 1995 she received permission from Mr. Ollivierre to occupy the land. The Claimant occupied a neighbouring portion in 1997. Neither she nor the Defendant stopped the Claimant because the land belonged to the Government.

[16] Kelvin Bobb in his evidence in chief stated he was employed by the Defendant. He worked with the Defendant at Argyle and then at Diamond. In 1997 the Claimant

commenced clearing a neighbouring piece of land and in 2000 or 2001 the Claimant commenced construction of a structure. The Government officials subsequently destroyed the structure. He was present when the structure was destroyed by officials of the Government.

[17] Under cross-examination by Mr. Cadette he stated when he went to Diamond with the Defendant the land had a small foundation and bushes. He was not surprised to learn that the place was a garbage dump.

[18] Mr. Adolphus Ollivierre the Chief Surveyor who had issued the letter dated April 16, 2002 which confirmed permission was given to the Defendant to occupy a portion of land at Diamond was called as a witness of the Court.

[19] Under examination by Mr. Cadette he stated that Mr. Williams was the Chief Surveyor in 1995. He was studying in 1995 and continued to work at the Ministry of Agriculture and Lands. The Defendant had permission to occupy land at Diamond in 1995. He made application to the Ministry of Agriculture and nothing was done to prevent him from using the land. He gave permission in 2001 for land to be transferred from Ms. Bobb to the Defendant. When the Defendant went to the area there were other houses there. When a survey of the area was done in 2003 the Claimant had not erected the structure. When the second survey was done the structure was there. The Government offered to compensate the Claimant for her materials and offered her an alternative parcel.

[20] Under examination by Mr. Campbell Q.C. he stated that prior to 2001 squatting was prevalent in Saint Vincent and the Grenadines. No action was taken against squatters. In 2001 this policy changed and notice was given for squatting to cease. In 2002 he gave permission to Ms. Bobb for the Defendant to occupy the land. He wrote the letter dated April 16, 2002 Exhibit "AO 1" in which he stated inter alia that in 1995 the Lands and Survey Department granted permission to the Defendant to occupy a parcel of land at Diamond for the purpose of concrete block construction.

[21] Learned Queen's Counsel for the Defendant submitted that in relation to the reliefs claimed:

- (i) Items (a) and (f) refer to the same issue.
- (ii) As to item (b) the Claimant's witness statement and that of her common-law husband contradict the allegation that the Defendant destroyed the Claimant's foundation. Both of the witness statements say that the Defendant "....destroyed my fence and covered the foundation....with the dirt removed from the foundation." The Claimant is left only with the allegation of destruction to her fence.
- (iii) Item (c) has not been pleaded in the Statement of Claim, and that relief is consequently not available to the Claimant.
- (iv) Item (d) is not available to the Claimant; the Court has no jurisdiction to grant such a declaration in respect to the Claimant's alleged occupation of Crown land in the absence of the Crown as a party to the proceedings.
- (v) For the same reason as advanced in paragraph 6 (4) above item (e) is not available to the Claimant.

[22] Having reviewed the pleadings and the evidence in this matter I agree with the submission of Learned Queen's Counsel for the Defendant. The reliefs which could be granted are:

- (a) Damages for trespass
- (b) Damages for the destruction of the fence.

[23] The issues for the Court to consider are:

- (i) Whether the Claimant who had no permission to occupy Crown land could maintain an action for trespass against the Defendant.
- (ii) Whether the Defendant trespassed on the portion of land occupied by Claimant.
- (iii) If the Defendant is liable what quantum of damages should be awarded to the Claimant

[24] Learned Queen's Counsel for the Defendant submitted that the Claimant having had no authority to occupy Crown land cannot maintain an action for trespass. Learned Counsel relied on Section 26 (1) (b) of the Crown Lands Act Cap. 238 and the case of McPhail v Persons Unknown [1973] 3 WLR p. 71

[25] Section 26 (1) (b) reads:

"Any person who cultivates or in any manner whatsoever uses or occupies without lawful authority any Crown land,is guilty of an offence and liable to a fine of five hundred dollars."

[26] Learned Counsel submitted:

"The rationale of the decision in McPhail was that the squatters were guilty of both a criminal offence and a civil wrong, and that in such circumstances the Court of common law never suspended an order for suspension and the Courts of equity never intervened to aid a wrongdoer.

"The squatters were themselves guilty of the offence of forcible entry contrary to the Statute of 1381 (4 Ric. 2 Stat. 1, C. 7). When they broke in, they entered "with strong hand" which the statute forbids. They were not only guilty of a criminal offence. They were guilty of a civil wrong. They were trespassers when they entered and they continued to be trespassers as long as they remained there. The owner never acquiesced in their presence there. So the trespassers never gained possession. The owner being entitled to possession was entitled forcibly to turn them out. See Browne v Dawson 1840 12 Ad. & El 624. As Sir Frederick Bullock put it in his book on Torts: "A trespasser may in any case be turned off land before he has gained possession and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner."

"Lawson L.J. at p. 79 D – F:

What equitable right or interest has a trespasser? Those who became trespassers by holding over after the expiration of a tenancy or a license may have been able to conjure up some equitable interest or right. The 17th and 18th Century practitioners showed considerable skill in the invention of legal fictions to establish jurisdiction; and even today in landlord and tenant litigations the lawyer, representing the tenant who has had notice to quit can often find a point which will ensure for his client an extension of time. But what equitable right or interest could be conjured up for a squatter, still less for one who effected a forcible entry. Most squatters go into possession by, or as a result of forcible entry. Forcible entry has been a crime since the Forcible Entry Act 1381. In 1391 justices were empowered by Statute (15 Ric. R. 0.2) to arrest those who made forcible entries and put them in goal. The Forcible Entry Act 1429 made provision for justices to reinstate those who had been kept out of their land by force. These powers were extended by the

Forcible Entry Act 1623. All these statutes are still in force, see Reg. v Mountford [1972] 1 Q.B. 28. Lord Lyndhurst LC refused to find any equitable interest in one who had effected a forcible entry. "This court," he said, "Will not interfere to support a possession so required." "

Learned Counsel further submitted:

"Since the trespassers in McPhail were deemed never to have gained possession, then the Claimant as a trespasser herself must be deemed never to have gained possession of the Crown land under her unauthorized occupation. Actionable trespass to land is generally defined as an act which interferes with lawful possession of that land. Since the Claimant must by virtue of her statutorily criminalized conduct be deemed not to have been in possession, then in the circumstances of this case she ought to be deemed incapable of maintaining this claim in trespass against the Defendant."

[27] Trespass to land is defined in Halsbury Laws of England 4th Ed. Paragraph 505 as:

"Every unlawful entry by one person on land in the possession of another is a trespass for which a claim may be brought even though no actual damage is done."

[28] Having carefully reviewed the submissions of Learned Queen's Counsel the gravamen of Counsel's argument is that a Claimant who is a trespasser and whose conduct could result in criminal prosecution cannot maintain an action in trespass.

[29] I do not agree with this submission. The case of McPhail is distinguishable from the present case. In McPhail's case the action was between the squatters and the owner of the property. McPhail's case did not address the issue of whether a squatter could maintain an action in trespass. The Appellants were squatters who were seeking an extension of a possession order granted in favour of the owner of the property. The Court found the Appellants had entered and remained in the house as trespassers and the Court had no discretion to suspend the orders for possession. As mere trespassers and with no acquiescence from the owner, they were never in possession of the house.

Lawson LJ at p. 79 said:

"It follows in my judgment that squatters were never able to enlist the aid of the Court of Chancery to resist a Writ of Possession and they cannot now."

- [30] Halsbury Laws 4th edition paragraph 1395 explains what possession is sufficient to maintain an action for trespass as follows:

"Any form of possession so long as it is clear and exclusive and exercised with the intention to possess is sufficient to support an action of trespass against a wrongdoer. It is not necessary in order to maintain trespass that the plaintiff's possession should be lawful..."

In J.A. Pye (Oxford) Ltd v Graham [2002] 3 AER p. 865 at p. 873e Lord Browne-Wilkinson quoting Slade J in Powell's case stated:

"Possession of land however is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession."

- [31] The evidence is that the Claimant was in occupation of the portion of land from 1997. She cleared the land, constructed a foundation for a dwelling house, erected three columns and laid a few blocks. She built a fence on the eastern side of the land which bordered the land occupied by the Defendant. There is no evidence that prior to the filing of this claim in 2002 that the owner of the land took any steps to evict the Claimant from the land. The Claimant testified that the first letter she received from the Government requesting her to leave the land was a letter from the Chief Surveyor in 2003. I believe the testimony of the Claimant. I find that at all material times the Claimant was in exclusive possession of the portion of land.

- [32] In order for the Claimant to establish her claim for trespass against the Defendant the Claimant must prove:

- (i) That she was in exclusive possession of the portion of land
- (ii) The Defendant trespassed on the portion of land that she occupied.

- [33] Learned Queen's Counsel for the Defendant submitted that no evidence was led by the Claimant to establish the precise extent or boundaries of the land on which she has

alleged that the Defendant has trespassed. The Defendant showed that he was given permission to occupy a portion of land including part of the garbage dump

[34] It is not in dispute that at all material times the lands at Diamond were not surveyed.

[35] The Claimant in her witness statement stated at paragraph 2:

"I located a parcel of land near to a garbage dump and began clearing it. All other persons in the area including the Defendant came after me. My common-law husband and I visited the area. I found out that it seemed impossible to clear the pile of garbage that were in the area if I desired to take the first part of the land. I decided to take the parcel adjacent which was in the best location. No other persons were around."

At paragraph 4:

"...this parcel extends from one road to the next in a northern and southern direction. We erected a fence on the eastern side of the parcel of land to keep out the overflowing garbage..."

At paragraph 5:

"He used back hoe and other heavy equipment to clear the area from the pile of garbage. This parcel took up the whole of the eastern side which is shaped like a triangle. In this area the Defendant erected a block-building plant where he began building blocks for sale."

[36] Rudolph Richards' evidence on this issue was the same as the Claimant's.

[37] Mr. Alfred Wilson in his witness statement stated at paragraph 1:

"... I know the area in Diamond where the Claimant occupied..... The area was covered in wilderness. There was a main block with only trees and garbage. Garbage consisting of old vehicles and vehicular parts together with old masonry and personal effects such as mattresses and clothing was in the dump...The western side of the block was covered in forest. There were all kinds of large trees in the area and the shrubs together with the trees made the area unlivable."

At paragraph 4:

"I didn't see anyone on the garbage dump. It would have required heavy equipment to clear the area. No other persons were on the western side. This side was covered with large trees and shrub. The Claimant and her husband

began to build a house in the spot that was cleared. They were the very first persons to occupy that block."

The Defendant declined to cross-examine this witness.

[38] The Defendant in his witness statement stated at paragraph 6:

"In about 1997 the Claimant commenced preparing one of the unsurveyed neighbouring parcels of land for occupation on which she subsequently erected a house in about 2000 – 2001."

[39] Under cross-examination he stated:

"I know Maria Bramble. The land they took up was mine because I took it up first. While I was there they came and started to clean up. I saw them put up a foundation.... They put up three columns and some blocks on one side – nothing else..... I could have stopped them. I did not stop them because it was Government land. All of us were trespassing on Government land."

[40] Ms. Kathleen Bobb gave similar evidence in support of the Defendant.

[41] The evidence of the Claimant and her witnesses is very clear. The area of land that she occupied was bounded on the north by a road, on the south by a road on the east by a fence which she erected and on the west by a forested area. The portion of land occupied by the Defendant was on the eastern side of the land occupied by the Claimant.

[42] I believe the evidence of the Claimant and her witnesses. The evidence was not contradicted. I find as a fact that although the portion of land occupied by the Claimant was not surveyed the portion of land was clearly demarcated by the two roads, the forested area and the fence.

[43] Did the Defendant trespass on the portion of land occupied by the Claimant? The evidence of the Claimant is that she and Rudolph Richards were present when the Defendant damaged the fence she had constructed. The Defendant constructed two

toilets on the portion of land that she occupied. The Claimant in her witness statement stated at paragraph 5:

"The Defendant used a bulldozer and broke down my fence, trespassed on the portion of land which I occupied and began digging toilet holes and erected a toilet. He destroyed my fence and covered the foundation and all of my materials including sand and Rabacca material with the dirt removed from the foundation."

At paragraph 6:

"A toilet was seeping through the earth and around my foundation... A second toilet was erected by the Defendant almost on my foundation. My common-law husband and I covered the hole with dirt and garbage and the Defendant threatened me."

[44] Rudolph Richards gave similar evidence in support of the Claimant.

[45] The Defendant in his witness statement stated at paragraph 6:

"In or about 1997 the Claimant commenced preparing one of the unsurveyed neighbouring parcels of land for occupation on which she subsequently erected a house."

Under cross-examination he stated he had cleared the area first and the land where the Claimant occupied was his.

[46] The Defendant made no mention in his witness statement that the neighbouring parcel which the Claimant prepared was part of the land he had cleared. I do not believe the testimony of the Defendant. I believe the evidence of Mr. Alfred Wilson who stated:

"They were the very first persons to occupy that block The area was covered with garbage and needed heavy equipment to clear the area."

I find that the Claimant has proved on a balance of probabilities that the Defendant trespassed on the portion of land that she occupied and damaged a galvanize fence which she had erected. I also find that he constructed two toilets on the portion of the land that was occupied by the Claimant.

[47] I will now consider what damages should be awarded to the Claimant.

- [48] Learned Queen's Counsel for the Defendant submitted that if the Court found the Defendant to be liable in trespass then the damages should be nominal damages. No evidence was led as to the quantum of the alleged loss. The Claimant did not prove the alleged special damages. Counsel referred the Court to McGregor on Damages 17th Edition pp. 1129-1137.
- [49] It is settled law that if special damages are not pleaded they cannot be recovered. Special damage must be pleaded particularized and proved strictly Grant v Motilal (1988) 43 WIR p. 372.
- [50] The Claimant has pleaded and she has proved that about 12 feet of a fence which she constructed of used galvanize and sticks set in a concrete base was damaged by the Defendant. The quantum of the loss was neither pleaded nor proved. I will therefore award a nominal sum of \$150.00.
- [51] In relation to general damages the Claimant did not lead evidence of any loss she suffered as a result of the trespass by the Defendant.
- [52] The quantum of damages to be awarded in such cases is stated in Halsbury Law 4th Edition Volume 12 paragraph 1170 as follows:
- "A plaintiff is entitled to nominal damages for trespass even if no damage or loss is caused: if damage or loss is caused, he is entitled to recover in respect of his loss according to general principles ... Where the defendant has by trespass made use of the plaintiff's land the plaintiff is entitled to receive by way of damages such sum as should reasonably be paid for the use. It is immaterial that the plaintiff was not in fact thereby impeded or prevented from himself using his own land either because he did not wish to do so or for any other reason."
- [53] I will award a sum of \$1,000.00 as damages for trespass.

[54] Judgment for the Claimant in the sum of \$1,150.00 and prescribed costs pursuant to Part 65.5(2)(a) of the Civil Procedure Rules 2000 being \$383.33.



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Gertel Thom
HIGH COURT JUDGE