

COURT OF APPEAL SITTING

ANGUILLA

Tuesday 8th December 2015

JUDGMENTS

Case Name:

**[1] Leslie Emanuel (Personal Representative of
Leopold Allan Emanuel (deceased))**

[2] Lennard Emanuel

v

[1] Ace Engineering Limited

[2] Anthony Le Blanc

**[DOMHCVAP2013/0014]
(DOMINICA)**

Date:

Tuesday, 8th December 2015

Coram:

The Hon. Mde. Louise Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellants:

Mr. Lennox Lawrence

Respondent:

Mr. Coleen Felix Grant

Issues:

Civil appeal – Requirement for express reservation of right of way or easement in memorandum of transfer of sale – Section 25 of Title by Registration Act (Dominica) – Absence of express reservation – Whether reservation can be implied – Circumstances where reservation can be implied – Common intention – Easement of necessity – Unjust enrichment – Subsequent discovery of excess land – Surveyor's error in original acreage reflected in certificate of title.

**Result and
Reason:**

Held: dismissing the appeal and upholding the judgment of the learned trial judge save for the items identified in paragraph 39(1)(a) and (b) and ordering that the appellants pay the respondents costs of the appeal

in the sum of \$2500.00 which represents one-third of the costs in the court below, that:

1. The duty to expressly reserve any easement or incorporeal right in or over land is a well-recognised and established legal principle. The general rule is that if a grantor intends to reserve any such right over the tenement granted, it is his duty to reserve it expressly in the grant. However, this general rule is subject to two exceptions, in which cases the law will imply the grant or reservation of such easement in the clear absence of an expressed reservation of a right of way. This implied reservation can only come about by way of an easement of necessity and/or to give effect to the common intention of the parties to a grant of real property. Notably, the threshold to imply a reservation of an easement is a high one as the courts are not quick to imply an easement not expressly reserved.

Wheeldon v Burrows (1879) 12 Ch.D.31 applied; *Pwllbach Colliery Co. Ltd. v Woodman* [1915] AC 634 applied; Section 25 of Title by Registration Act (Dominica) applied; *Stafford v Lee* (1993) 65 P&CR 172 applied.

2. The onus of proving common intention is on the grantor to establish the facts to prove clearly that his case was an exception. Before the court can imply the reservation of an easement, it must be shown that the facts are not reasonably consistent with any explanation other than that such a reservation was intended. It does not suffice to show that the facts are simply consistent with the implication of the reservation of an easement. In this appeal, the appellants failed to discharge the onus of proof to show clearly and affirmatively that the common intention of the grantor and the grantee was to reserve a right of way over the Road. The evidence clearly shows a conflict and as such negates any intention that was common to the parties that an easement/ right of way over the Road should be reserved by implication.

Re Webb; Sandom v Webb [1951] 2 AER131

applied; *Stafford v Lee* (1993) 65 P&CR 172 applied.

3. An easement of necessity is one without which the property retained cannot be used at all and not one merely necessary to the reasonable enjoyment of that property. Such easement will be implied if the remaining land is effectively landlocked. The right of way arises out of necessity, not convenience. It would be most dangerous to hold that where a deed is silent as to any reservation of a way, because it is more convenient to use that way than another, it must exist as a way of necessity. Further, once alternative access is available, even if it is by water rather than land, no matter how inconvenient, a right of necessity cannot arise, unless that other way is merely precarious. In this appeal, the appellants have a possible alternative access to all parts of the retained land and as such are not entitled to a right of way over the Road by virtue of an implied reservation based on necessity.

Dodd v Burchell (1862) 1 H. & C. 113 applied;
Boisson v Letrean TT 1989 HC 135 applied.

4. Unjust enrichment presupposes three things, first, that the defendant has been enriched by the receipt of a benefit; secondly, that he has been so enriched at the plaintiff's expense; and thirdly that it would seem unjust to allow him to retain the benefit. In the present case, the first-named respondent is in possession of a benefit i.e. more land which it did not pay for. All three criteria have therefore been met and so to allow the first-named respondent to benefit from a difference in acreage miscalculated without compensation would result in the respondents being unjustly enriched to the detriment of the appellants. This is more so since the difference resulted from a mistake by the surveyor whose task was to calculate the size of the remainder for sale by the vendor to the purchaser. It is therefore only fair and just for the first-named respondent to disgorge that benefit by paying to the first-named appellant the value of the 0.404 acres of excess land.

STATUS HEARING

Case Name:

**Joseph Brice
v
The Attorney General**

[AXAHCVAP2014/0006]

Date:

Tuesday, 8th December 2015

Before:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Ivor Greene, Senior Crown Counsel

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment or Decision

Result / Order:

The matter is to be delisted for the parties to determine the way forward.

Reason:

The parties have not taken the necessary steps to advance the appeal beyond filing the Notice of Appeal.

Case Name:

**Joseph Brice
v
The Attorney General**

[AXAHCVAP2014/0007]

Date:

Tuesday, 8th December 2015

Before:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Ivor Greene, Senior Crown Counsel

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment or decision

Result / Order:

**The matter is to be delisted for the parties to determine
the way forward.**

Reason:

**The parties have not taken the necessary steps to
advance the appeal beyond filing the Notice of Appeal.**

APPLICATIONS AND APPEALS

Case Name:

**Jenny Lindsay
Jenny Lindsay & Associates**

v
Thomas Edward Carty

[AXAHCVAP2015/0007]

Date: Tuesday, 8th December 2015

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Jenny Lindsay

Respondent: Ms. Yanique Stewart instructed by J.A.G. Gumbs & Co

Issues: Application for adjournment – discharge of order of single judge

Type of Oral Result / Order Delivered (if applicable): N/A

Result / Order & Reason: The Application for an adjournment is granted. Each party to bear its own costs. The hearing date for the application to vary the order of the single judge is to be fixed by the Chief Registrar

Case Name:

Clive Hodge
(as Administrator for the estate of the late Rupert Hodge, deceased)

v
Elfrida Alethea Hughes

[AXAHCVAP2013/0005]

Date: Tuesday, 8th December 2015

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Jenny Lindsay

Respondent: Ms. Kristy Richardson with her Ms. Tara Carter

Issues: Discharge of order of a single judge – Application to assess the appellant's costs

Type of Oral Result / Order Delivered (if applicable): Oral Judgment or Decision

Result / Order

1. The appeal against the order of Justice Webster made on 20th October 2015 is allowed and the order is set aside.
2. The application for the assessment of costs in relation to the injunction will be referred to the Chief Registrar. Costs for today to the appellant in the sum of EC\$1,000.00.

Reason: There was an oversight by the single judge as he was not aware of an order made by the full Court as it relates to costs in the injunction proceedings.

Case Name: Richard Vento et al
v
Keithley Lake et al

[AXAHCVAP2014/0004]

Date: Tuesday, 8th December 2015

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellants/ Respondents:	Mr. Gerhard Wallbank with him Ms. Rayana Dowden instructed by Webster
Respondents/ Applicants:	Mr. D. Michael Bourne instructed by Keithley Lake & Associates

Issues: Application for leave to Appeal to Her Majesty in Council

Type of Oral Result / Order Delivered (if applicable): Directions

Result / Order & Reason:

1. The respondents/applicants to file submissions on or before 20th January 2016.
2. The appellants/respondents to file an affidavit in opposition and submissions on or before 3rd February 2016.
3. The respondents/ applicants to file a reply if necessary on or before 17th February 2016.
4. The application for leave to appeal to Her Majesty in Council will be heard on paper.

Case Name: John Harrigan
v
Viceroy Hotel Group (Anguilla) Limited

[AXAHCVAP2015/0004]

Date: Tuesday, 8th December 2015

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Merlanih Lim with her Ms. Shameica Hodge & Ms. Yanique Stewart

Respondent: Mr. D. Michael Bourne with him Ms. Dana Campbell instructed by Keithley Lake and Associates

Issues:

High Court Civil Appeal – Wrongful dismissal – Whether learned judge erred in holding that the reading of five witness statements to the appellant at the disciplinary hearing and asking the appellant what he had to say were enough to satisfy the statutory requirement of a right to a fair hearing – Whether appellant had an opportunity to defend himself in accordance with the Fair Labour Standards – Costs

**Type of Oral
Result / Order
Delivered
(if applicable):**

N/A

Result / Order:

The Appeal is adjourned to the next sitting in Anguilla during the week commencing 2nd May 2016.

Reason:

At the case management conference on 23rd November 2015, counsel for the appellant indicated that an adjournment would have been sought at the hearing. However, at the hearing, counsel indicated that they were ready to proceed with the appeal. This change of position was not communicated to the Court and in such circumstances the Court was not in a position to hear the matter.

Case Name:

**Commissioner of Police
v
Brandon Busby**

[AXAMCRAP2015/0001]

Date: Tuesday, 8th December 2015

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ivor Greene, Senior Crown Counsel

Respondent: No appearance

Issues: Magisterial criminal appeal against conviction – Possession of firearm without licence – Possession of ammunition – discharging firearm – Whether magistrate’s dismissal of complaints and refusal to make conviction unreasonable or cannot be supported having regard to the totality of the evidence

Type of Oral Result / Order Delivered (if applicable): N/A

Result/ Order: The hearing of the appeal is adjourned to the next sitting of the Court in Anguilla during the week commencing 2nd May 2016. Service to be effected.

Reason: The Respondent had not yet been served with notice of the day’s hearing.