

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0395 / 1996

BETWEEN:

WEBSTER JORDAN

Claimant

and

DIPCON ENGINEERING SERVICES LIMITED

Defendant

Appearances:

Miss Zhinga Horne for the claimant
Mr. Samuel E. Commissiong for the defendant

2003:May 26, 27, 28.
June16

JUDGMENT

ALLEYNE J.

[1] Webster Jordan built his home at Campden Park, St. Vincent, in 1993. It was of good construction in keeping with normal practices in St. Vincent, where there are no statutory building codes, and most dwelling house construction is done by contractors without the intervention of Engineers, on the basis of experience. The house is of two storeys, with a dwelling on the upper level, and a shop on the lower level. The upper floor is a cast reinforced concrete slab. Mr. Jordan lives in the house with his family.

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- [2] There is a stone quarry at Lowmans Bay, not far distant from Webster Jordan's home. In 1994, when the quarry was being operated by a Dutch company, blasting operations caused damage to Mr. Jordan's home. His claim for compensation was settled by the Dutch company. Thereafter, Dipcon Engineering Services (Dipcon) took over the operation of the quarry and undertook a programme of blasting to shatter and loosen rock in the quarry for further processing and use in various construction projects. Some time between March and October 1996, during a period when blasting operations were being carried out by Dipcon, Mr. Jordan claims that his house suffered severe damage, which he claims was caused by the blasting operations.
- [3] On 17th June 2002, the court made a case management order that the experts of the parties meet and discuss their respective findings and prepare a statement of issues on which they agree, and on which they disagree, with their reasons for disagreeing. The experts met with Mr. Douglas Williams, a neutral Attorney-at-Law, and a report was prepared, signed by the experts and filed in the court office on 27th June 2002.
- [4] In the report the statement of the issues agreed is in the following terms:
- “1. The house of Mr. Webster Jordan has been extensively damaged.
 2. It is likely that the extensive nature of the cracks could have been caused by the blasting operations. However, both witnesses agreed that blasting operations were at one time carried out by a Dutch company ... during the period 29th November 1993 to 16th November 1994 and thereafter by (Dipcon) from on or about the latter part of 1994 up to the present time. During the operations by (the Dutch company), damage resulted to Mr. Jordan's house and (the Dutch company) accepted liability therefor and compensated Mr. Jordan.
- [5] The issues in dispute, as set out in the agreed statement, may be summarised as concerning whether, in the absence of statutory building codes, a person causing damage to a building would be liable, and to what extent, where the building was not built in accordance with “available” building codes. A further disagreement

exists, according to the report, as to the method of valuation of the damage, and whether there should be an element for depreciation after the damage had been repaired.

- [6] The issues for the court to determine are, whether the damage to the building was caused by negligence in the operations at the quarry carried out by Dipcon, or amounted to a nuisance caused by Dipcon, and if so, the measure of damages in respect of that damage.
- [7] Mr. Glenford Stewart, the expert called by Dipcon, denied that the statement of agreed issues amounted to an agreement on his part that the damage was caused during the period that the quarry was operated by Dipcon. He asserted that it was his view that what he observed could have been the damage caused by the Dutch company, which had not been repaired, although he conceded that the damage appeared to be more extensive than what he had observed when he surveyed the damage on behalf of the Dutch company following the earlier event. It was on his recommendation that the Dutch company settled the earlier claim. Mr. Stewart said in evidence that he did not know whether Mr. Jordan used the money from the settlement to repair his house. He said "I have no way of determining that." In cross examination, he denied that he meant that he had no way of determining whether repairs had been done, but only whether the money used was the proceeds of settlement. However, if no repairs were carried out, it is obvious that the money from the settlement could not have been used to carry out repairs. I interpret Mr. Stewart's spontaneous reply as implying that he had no way of determining whether or not repairs were carried out, even if the response could also have meant that he could not determine what money was used to carry out repairs, which, in any event, must have been carried out for his reply to have that meaning. Mr. Brian Huggins, the expert called by Mr. Jordan, was clearly of the view that the damage was probably caused by Dipcon's operations.
- [8] The evidence of Mr. Jordan is that over time there had been events generated by explosions at the quarry which had caused his house to vibrate and his windows to

shake and rattle. Some time in 1996, there was a powerful explosion, more forceful than any he had heard before, and in fear, he and his family ran out of the house. He subsequently inspected the house and noticed cracks in the walls and floors. A door on the ground floor could no longer close, and was dragging on the floor tiles. He went in search of Mr. Ian Singh, Area Director of Dipcon and the executive in charge of operations at the quarry. He did not find him at his office, and the following day he awaited him at the roadside and waylaid him on his way to work. He had Mr. Singh visit his home to observe the damage.

- [9] Mr. Singh in his evidence confirmed that in the first quarter of 1996 Mr. Jordan complained about damage to his house caused by blasting operations at the quarry, and brought him to his house to examine the damage. Mr. Singh confirmed that he saw “some cracks”, but he cannot recall “the extent of cracks, whether hairline or more visible”. He denied that he promised to fix the cracks, and that he admitted that the blasting operations had caused the damage, as claimed by Mr. Jordan. Mr. Singh admitted that other householders in the area also complained of damage to their houses, and that the company received a complaint from someone at the Forestry department, concerning a building in the area (the Forestry building). Mr. Singh visited that building as well. As a result of the complaints, Dipcon placed seismograms at Mr. Jordan’s house and other locations at Campden Park, and has readings from those areas.
- [10] Mr. Singh produced a quantity of seismograph records, but the court was not given the benefit of a professional analysis of the readings, and this data has been of little value in the court’s appreciation of the case.
- [11] Mr. Singh trained as a blasting operator and was certified in the United States of America. In determining safe limits relative to vibration, he uses the US Bureau of Mines (USBM) analysis chart. I think I can safely assume that the USBM chart takes account of structures built according to at least minimum standards applicable in the USA. As we have seen, no such standards apply in St. Vincent,

and construction is generally carried out on the basis of the contractor's experience. Mr. Jordan's building fits into this profile.

- [12] I am of the view that Dipcon has to take the environment in which it operates as it finds it to be, and must tailor its operations in the context of that reality. To carry out operations based on standards applicable in another environment where building regulations exist and standards of construction are designed to withstand defined forces, which regulations and standards are not applied in the situation in which Dipcon finds itself, will not provide Dipcon with protection.
- [13] The court had ordered on 17th June 2002 that the experts prepare an agreed statement of the basic science which applies to the matter. Mr. Stewart, the expert called by Dipcon, stated that he considered that it was not necessary for him and Mr. Huggins to meet again, they having met on a previous occasion. The joint statement was therefore not submitted. Instead, Mr. Huggins, the expert called by Mr. Jordan, filed a statement on the basic science, which is not contradicted by the evidence of Mr. Stewart, and I accept it as reliable.
- [14] Mr. Stewart confirmed the evidence of Mr. Huggins that, in addition to the cracks in the walls, there was a crack in the upper floor slab of the building. There is no evidence that that crack was present following the earlier event associated with the Dutch company.
- [15] Mr. Stewart's conclusion that no repairs had been done on the house following the earlier event struck me as unconvincing, and I accept the evidence of Mr. Jordan and his wife that repairs had indeed been carried out to their new house after the Dutch company settled their claim. Mr. Singh had been to the building several times, had socialised and purchased goods at the shop on the ground floor, where the principal damage had been done, and he did not say that he had observed any significant cracks in that area before the event complained of. All this, and the evidence that immediately after the blast, and on the following morning, Mr. Jordan made determined efforts to have Mr. Singh visit his house to observe the damage,

together with the evidence that other householders in the immediate vicinity complained of damage caused by the same event, satisfy me that it is likely that the damage to Mr. Jordan's house was caused by the blasting operations at the quarry operated by Dipcon. The standard of proof as defined in **MacDonald v DeSourdy Constuction Ltee.** [1972] 27 DLR (3d) 144 and by Sir Vincent Floissac, C.J. in **Northrock** *infra* has been satisfied.

- [16] As has been pointed out by counsel for the claimant, a duty of care is owed by an occupier of premises to prevent consequences that endanger his neighbours or infringe their rights; **Northrock Ltd. v Jardine** [1992] 44 WIR 160, 167. Where the occupier uses his premises for dangerous operations, or operations involving the use of dangerous substances, the duty is higher; **Halsbury's Laws of England** 4th edition volume 34 paragraph 36.
- [17] Learned counsel for the defendant Dipcon submitted that the Crown, as lessor of the quarry, must be a party to the action for the action to be properly constituted. Notwithstanding that a lessor may be liable for damages caused by the acts of his lessee in the use of the demised premises in certain circumstances as demonstrated by counsel for Dipcon, nevertheless it is the occupier who is primarily liable for any act of negligence or nuisance committed by him, and the non-joinder of the lessor is not fatal to the action. It is entirely within the claimant's discretion whether or not to add as a party a person who is jointly or vicariously liable with the principal tortfeasor, and even where the party not joined "should have been made a party", the action does not fail by reason of a failure to add him as a party; **Civil Procedure Rules 2000**, Rule 8.5. In any event the defendant could, if it wished, have joined the Crown as a defendant to the action.
- [18] There is a stark contrast between the opinions of the two experts in regard to the method of calculating compensation to which Mr. Jordan might be entitled in respect of the damage suffered, and the amount of compensation which they respectively estimate as an appropriate sum. Their evidence is the only evidence on the issue.

- [19] In Appendix C to his report dated 28th March 2002, Mr. Brian Huggins, in a comprehensive analysis, placed the value of damage at \$40,106.45. Detailed valuation of damage to each element of the building, as well as costs of preliminaries, demolition and fees, are set out in the report. Mr. Huggins states that his valuation takes into account both cost of structural repairs and damage to market value. He says that two categories of damage are suffered; actual structural damage, and damage to market value as a result of the actual damage. I understand this second category to be of the nature of damage to reputation, in the sense that a potential purchaser, knowing of the damage, would be fearful of latent defects and would not be willing to pay full value for the property. He says this category of damage is “somewhat subjective but real”. He has not distinguished between remedial and market costs. He concedes that his approach would result in improving the quality of the building. He says that the repairs would come up to “pretty much the \$40,000.00 less some number for loss of market value”. In answer to the court, he ventured a rough guess of cost of repair at \$24,000.00, and loss of market value at about \$16,000.00.
- [20] Mr. Huggins does not accept the approach, proposed by Mr. Glenford Stewart, of assessing the structural repairs in a fashion which Mr. Huggins describes as “cut and patch”. He says that this approach would result in the cracks re-appearing. His own approach would be described as “belt and braces”, involving reinforcing and patching. This would reduce the cracking, but he concedes that some degree of cracking is inevitable in rigid structures.
- [21] Mr. Stewart, for his part, has provided a rather summary assessment in his report dated 13th June 2002. He estimates repairs to masonry walls at \$5,300.00, painting and decorating at \$2,500.00, and a provisional sum for contingencies at \$750.00, to a total of \$8,500.00. Mr. Stewart makes no provision for repairs to the upper floor slab (RC deck), for timber purlins on the roof deck, or for preliminaries, demolition, or fees, all of which are provided for in Mr. Huggins’ report.

- [22] Mr. Stewart confirmed that he had observed cracking in the floor slab. He did not have access to the report which he preferred following the earlier event, and could not be certain whether or not that crack had been apparent at that time. He asserted that if it was not, that does not necessarily mean that it was caused by a new event. He says it may have been overlooked on the previous occasion, and in any event it was a hairline crack, so it was not necessarily caused by vibration, but possibly by shrinkage in the concrete.
- [23] Notwithstanding the criticisms of Mr. Huggins' testimony made by counsel for Dipcon in his written submissions, I found Mr. Huggins' assessment of the damage more comprehensive and objective than that provided by Mr. Stewart, and I prefer to rely on that assessment. I however am not satisfied that the loss in market value would be as significant as suggested by Mr. Huggins. At the same time I take into account the fact that Mr. Jordan would be seriously inconvenienced during the period that repairs are being done, and that he is entitled to damages in respect of the fear and anxiety that he suffered at the time of the events complained of, and I reflect these elements in an award of general damages.
- [24] There will be judgment on the claim for the claimant for special damages in respect of the cost of repairs in the sum of \$24,000.00, general damages in the sum of \$10,000.00 and costs of \$10,200.00.

Brian G.K. Alleyne
High Court Judge

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