

MONTserrat

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



CLAIM NO MNIHCV2013/0011

BETWEEN:

ALFRED "MURPHY" EDWARDS

Claimant

AND

MONTserrat DEVELOPMENT CORPORATION

Defendant

AND

AUGUSTINE DOICY
(No longer a party)

Appearances

Mr David Brandt for the Claimant

Mr Kenneth Allen QC with him Ms Chivonne Gerald for the Defendant

.....
2013: December 16;
2014: January 9; May 30
.....

JUDGMENT ON ASSESSMENT OF DAMAGES

Introductory and Background

- [1] **LANNS, MASTER:** This is an assessment of damages in a claim for damages for destruction of vegetable crops.
- [2] The issue of liability was determined on 30th September 2013 when judgment was entered against the First named Defendant, Montserrat Development Corporation (MDC) for damages to be assessed.
- [3] The Statement of Claim avers that since 1974, the Claimant was in possession of Crown Lands situate at Davy Hill, described as Block 14/2 Parcel 37.

- [4] In or about the month of September 2012, MDC, through its servant, agent or otherwise Augustine Dolcy wrongfully entered the Claimant's land with heavy equipment and destroyed growing crops, whereby the Claimant has suffered loss and damage.
- [5] In his "Particulars of special Damages" the Claimant claims the sum of \$77,107.00 being the value of his growing crops, plus other items to which I shall revert below. He has also claimed damages, further or other relief and costs.
- [6] Appended to his Claim Form is a document captioned "List of Plants Destroyed by Heavy Equipment belonging to Alfred Edwards at Carrs Bay". This document has four columns: Name of Plant, Amount Destroyed, Price per Plant and Total. The name of the plants allegedly destroyed are listed as: thyme, mangoes, almond, cassava, blackberry, honeysuckle, potato vines, pigeon and Jimmy Co peas, chive, lemon grass, limes, orange, jack fruit, pomegranate, noni, French thyme, custard apple, prickly pear, sugar apple, coconut trees, cashew trees, papaw; and pineapple.
- [7] Under the List of Plants is a subheading titled "Other items destroyed" Here, the following items are listed: stone wall, wire fence, galvanized fence, steel post and tramil fishing net. The value of the plants, together with the value of the stone wall, wire fence, steel post and tramil fishing net are said to amount to a total value of \$77, 107.00.
- [8] The parties filed affidavit evidence, submissions and authorities in relation to the assessment. Three of the Affiants were subject to cross examination and reexamination, namely, Mr Edwards, Norman Ryan and Charlesworth Phillip. **In my opinion, nothing turns or arises on the cross examination or reexamination of the Affiants.**

Issue

- [9] The main issue to be determined is what quantum of special and general damages is the Claimant entitled to recover?

Special damages

[10] It is the law that special damages must be strictly pleaded and strictly proved, (**Ilkiv v Samuel**, 2 All ER 879).

[11] The Claimant has pleaded, \$77, 107.00 as special damages. Of this amount the sum of \$73,997.00 is claimed as special damages for destroyed crops. The Claimant has listed the name of each plant destroyed, and has placed beside it the amount destroyed, the price per plant and the total value of each plant.

[12] In his affidavit in support, the Claimant repeats the act of destruction of his crops, and other items, and he speaks to the retention of the services of Mr Claude Browne to value his crops. Paragraphs 6, 8 and 9 are the crucial paragraphs:

“6 Without my prior knowledge, and consent, the Defendant, through its servants, agents or otherwise entered my land with heavy equipment removed the top soil and destroyed my growing crops and 25 ft of stone wall, 40 ft wire fencing, galvanize fence, steel post and Trammel fishing Net. “

“8 I ... engaged the services of Mr Claude Browne, an officer employed by the Government of Montserrat of the Agriculture department to value the crops which have been destroyed. He had visited my farm on several occasions before and after the trespass. ...”

“9 The said Claude Browne is presently and in the past used by Government of Montserrat to value damage done to growing crops on copious occasions. He has assessed the value of the damage to the cops to be \$39,847.00.

[13] It is apparent, from a reading of paragraph 9 of the Affidavit of the Claimant that he has abandoned his claim for \$73,997.00 for crops destroyed, and is content to accept Mr Browne's valuation of \$39,847.00

- [14] At best, the Claimant's claim for \$73,997.00 as the value of the vegetable crops destroyed by MDC can only be an estimate. There is no evidence or strict proof of the actual value of the destroyed crops. Nonetheless, I feel able, on the material before me, and on the authority of **Grant v Motilal Moonan Limited**, Trinidad and Tobago Civil Appeal No 43 of 1998, to arrive at a reasonable and acceptable figure as the value of the crops destroyed. **Grant v Motilal** was a decision of the Court of Appeal of Trinidad and Tobago. In that case, damages were assessed in relation to furniture and other household items which had been damaged or destroyed. The Plaintiff had made a list of the items that were damaged or lost and had written what was described as a "price" in relation to each of them. The Court of Appeal held that that evidence, even without the support of evidence from a qualified valuer, was sufficient for an award to be made.
- [15] Indeed in **Grant v Motilal**, the Court of Appeal held that the Master should have accepted the Appellant's claim in full even though the Appellant did not have receipts for certain items that were destroyed as a result of the accident.
- [16] In my judgment, what has emerged from **Grant v Motilal** is that in a case of this nature, evidence from a qualified valuer is not necessary at all. That being said, I must state that there are obvious gaps in the evidence of the Claimant, and as I have said, I regard the sum claimed as being an estimate. I have already said too, that the Claimant seems content to accept the value of the crops suggested by Mr Browne. However, the Court is of the view that that figure too is an intelligent estimate, but can be used as the starting point for an award. It needs be said too, that I do not for one moment discount the deposition of Justin Cassell at paragraph 9 of his Affidavit where he stated quite correctly and candidly that " ... my assessment is ... based on the simple premise that every tree or plant has some value."
- [17] In all the forgoing premises, the court assesses the damage for crops destroyed in the sum of \$40,000.00.

Other items of special damages

[18] As stated before, the Claimant has included in his particulars of special damages, claims for stone wall, wire fence, galvanize fence, steel post and trammel fishing net, without strictly pleading them. The total value of these items amounts to \$3,110.00.

[19] At paragraph 9 of his Affidavit, the Claimant states in part that in addition to the value, [of the crops] destroyed he claims:-

\$1250.00 for damage to the stone wall, 125ft at \$10.00 per ft = \$1250.00

\$500.00 for damage done to the (40 ft) of wire at \$2.50 per ft = \$ 500.00

Steel Post (9) ft at \$40.00 per ft = \$ 350.00

Trammel Fishing Net = \$ 500.00

Total = **\$2600.00**

[20] I note that the claim of \$500.00 for "wire fence" is excluded from paragraph 9 of the Claimant's Affidavit, although it is included in the List of "other items destroyed" appended to the Claim Form. In any event, this is of no moment, in my opinion.

[21] MDC has challenged these "other items destroyed" as not having been strictly pleaded or proved. I am in total agreement with MDC. The obvious and proper approach for the Claimant to have taken was to plead the facts pertaining to these items on which he relies; or amend the Claim Form and Statement of Claim to include a claim in respect of the said items. That was not done and thus, the claims in respect of those items must be and are hereby disallowed.

General Damages

- [22] In his pleadings and in his affidavit the Claimant has claimed general damages. He deposes that MDC by using heavy equipment has destroyed top soil on the land and removed it without his consent. He therefore claims general and exemplary damages.
- [23] Mr Browne has in his affidavit sought to give a valuation of \$12,250 for the loss of top soil, which he states would be needed to bring back the area excavated to the position it was before excavation.
- [24] MDC has not expressly challenged the claim for general damages. However, it seems to be resisting any claim for future crops. I am uncertain as to whether the phrase "claim for future crops" includes the claim for costs to bring back the land to its previous state and have it readied for replanting of vegetable crops. I think so.
- [25] MDC has submitted that the Claimant cannot claim for "future crops" and that he is confined to his pleadings as to what was destroyed by MDC on 27th November 2012.
- [26] My short answer to that submission is that general damages do not have to be pleaded for them to be recoverable. (**Claudette Francis v Cecilia Martin**, BVI Civil Appeal No 2009/007, paragraph [17], delivered September 2010). However, in a case of this nature, evidence would have had to be led at the hearing of the assessment as to the prospective cost of the top soil and other related costs. Mr Browne, in his affidavit sets out in detail what it would entail to get the land back in the position it was prior to excavation. He then went on to give an estimate of costs. He was not cross examined on any aspect of his Affidavit. In any event, even if it can be said that the Claimant has led no evidence of future loss, this does not mean that the Claimant is not entitled to be compensated for it. I find that the claim for general damages was pleaded and that it includes the claim for future loss associated with replacement of top soil, and that even if no evidence was led, it is the duty of the court to recognize the claim by an amount that is not out of scale. (See

**Greer v Alston's Engineering Sales and Service Ltd, [2003] UKPC 46; See also
Claudette Francis v Cecilia Martin, supra**

[27] I will therefore award the Claimant the sum of \$10,000.00 for general damages for future loss associated with replacement of top soil and for inconvenience.

Exemplary damage

[28] The Claimant did not make a claim for exemplary damages. He made a claim for the first time in his affidavit sworn and filed on 29th October 2013.

[29] CPR 8.6 (3) provides that a claimant who seeks exemplary damages must say so expressly in the claim form. The Claimant has run afoul of this rule and thus, he is not entitled to exemplary damages. In any event, the Court is not of the view that this is a case that warrants a claim or award for exemplary damages.

Conclusion

[30] For all the above reasons, I give judgment for the Claimant as follows:

1. Special damages for destruction of crops in the sum of \$40,000
2. General damages in the sun of \$10,000.
3. Post judgment interest at the statutory rate of five per cent per annum from the date of delivery of this judgment to the date of final payment
4. Prescribed costs.

[31] I am grateful to Counsel for their very helpful submissions and authorities.


PEARETTA E LANNS
MASTER