

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2014/CLE/gen/00037

BETWEEN

ANTHONY DEAN

Plaintiff

AND

GEORGE NATHANIEL HALL

First Defendant

AND

BRUNO B HALL

Second Defendant

AND

RAQUEL DAVIS

Third Defendant

Before Hon. Mr Justice Ian R. Winder

Appearances: Tanya Wright for the Plaintiff
Christina Galanos for the First Defendant

26, 27 February and 24 June 2019

WINDER, J

This is a claim in trespass.

1. The claim was brought by the plaintiff seeking damages for trespass against the defendants with respect to property the plaintiff says it owns. The property ("the Property") is described in the Statement of Claim as located south of Lots 52 and 53 Sea Breeze Subdivision and north of the CW Saunders Highway. The plaintiff's claim, as reflected in his Statement of Claim, prays for:
 - (a) An injunction to restrain the defendants from being or remaining on the Property;
 - (b) An order that the defendants pull down and remove the fence from the Property; and
 - (c) Damages for wrongful entry onto the Property.

2. The plaintiff's case is that he acquired an interest in the Property by virtue of a Deed of Gift dated 9 July 1960. The Property, the plaintiff says, is a portion of a larger tract of 3 acres granted by the Deed of Gift. The Deed of Gift conveyed the interest in the Property jointly to the plaintiff and his brother Jerome Dean, now deceased. The description of the property in the Deed of Gift was as follows:

ALL THAT tract of land containing three (3) acres situate south of Soldier road in the Eastern of the Island of New Providence being bounded Westwardly by land originally granted to Robert T. Henzell but now called Nassau Village and on all other side by land now or lately Crown Land which said tract of land has such position shape boundaries marks and dimensions as are shown on the Plan drawn on a Grant dated 17 day of February 1927 from the Crown to John Butler and now of record in the Registry of Records...

3. The First Defendant's (Hall) home is situated on Lot 53 Sea Breeze Subdivision and he also owned Lot 52 Sea Breeze Subdivision which had been vacant. Both lots were acquired by Hall in 1984. The second and third defendants, the son and

daughter-in-law of Hall, subsequently acquired the vacant lot from Hall and built their home.

4. The plaintiffs' case is that at the time he acquired the Property it was land locked. He says that in or about 1992 he approached Hall, who then owned Lots 52 and 53 Sea Breeze Subdivision, proposing the exchange of an access strip along the boundary of Lot 52 for property behind Hall's lots. The plaintiff's case is that in the early 1990's, he and James Dean ("Dean"), the plaintiff's nephew (and son of Jerome Dean who had been the co-owner with the plaintiff) met with Hall and his wife who were initially receptive to the idea of an exchange. The plaintiff's say that based upon the receptive nature of the Halls, the plaintiff commissioned a surveyor in 1991 to lay out a plan for how the proposal could operate. That plan, prepared by Chee-A-Tow & Co. Ltd., was brought in evidence in the proceedings. According to Dean, Hall later declined the proposal saying that his family was concerned that the new access via Lot 52 would expose his family to uninvited interruption to their peaceful occupation of their land.
5. Hall's evidence is that he declined the offer when presented and did not see the plaintiff any further.
6. The plaintiff's case is that despite the refusal of his proposal, Hall's wife, now deceased, kept a lookout with respect to the Property on his behalf. The plaintiff's case is that he, through his nephew, maintained a cordial relationship with the Halls and he would visit their property to visit Hall's wife.
7. In 2001 the Government of The Bahamas issued a Notice of its intention to compulsorily acquire property in the vicinity of the Property for the construction of the Charles W Saunders Highway. The plaintiff's case is that prior to the publication of the Notice, around 1999, he was in negotiations with the Government as it was uncertain how much of the three acre tract was required for the roadworks. Dean says that around this time (2001) Hall sought to revive the proposal but he told Hall that in light of the uncertainty surrounding the planning

for the Highway they could no longer consider the proposal. The completion of the Highway provided the three acre tract with an alternative access.

8. Hall says that in 2012, he erected a fence after he hired AB Campbell to survey the Property. The survey covered 19,942 square feet, just under half an acre. Hall says that shortly after erecting the fence, the plaintiff 's attorney Elliott Lockhart contacted him inquiring if he was aware that the plaintiff owned the Property. Hall says that he went to into possession of the Property about two years after he purchased lots 52 and 53, around 1986. Hall says that he cleared the property and planted peas, corn, okra and cassava with the help of two Haitian nationals.
9. It is worth noting that the survey plan prepared by AB Campbell reflects that it was a portion of a grant made to John Butler, as does the 1991 Chee-A-Tow Co. Ltd. plan. John Butler is identified as the crown grantee in the plaintiff's Deed of Gift from whom the plaintiff's predecessors in title is said, by the plaintiff, to have obtained the Property.
10. The claim was pursued against Hall only and not the second and third defendants.
11. At trial the plaintiff, who did not himself give evidence, called Lisa Thompson, James Dean and Jack Isaacs as witnesses in his case. Hall, Philip Allens, Catherine Allens and Lenore Weech gave evidence in Hall's case.
12. Having observed the witnesses as they gave their evidence, I have no hesitation is indicating that I prefer the evidence of the plaintiff's witnesses. I did not find Hall to be truthful. I accept that there was an indication by the Halls in 1991 that they would consider an exchange and that the Chee-A-Tow plan was commissioned as a result of this indication. I also accept Dean's evidence that in 2001 Hall sought to revive the proposal. I therefore rejected Halls evidence that he did not hear from the plaintiff since 1986.

13. Hall sought to challenge the plaintiff's title to the Property based upon the description in the Deed of Gift. He complained about the proximity to soldier road. The property in the Deed of Gift was said to be south of soldier road, not that it was bounded by Soldier road. In 1960, it is quite likely that Soldier Rd was the nearest land mark. I take judicial notice that Soldier road is a long road which curves and is quite capable of running north to south at some points but runs east to west for a considerable period. The property is indeed south of Soldier Rd. At this stage of the development of Bahamian land law there remains no such thing as a perfect title. I accept that the plaintiff had some documentary title to the property and have been acting since 1960 under colour of such title. This was reflected in their dealings with Hall and the Government of The Bahamas. I am satisfied that the Plaintiff has sufficient documentary title to the property to be considered the documentary title holder as against the Defendant who admittedly has no documentary title.

14. I accept that such activity, as was done on the property by Hall, did not amount to possession. I find that such activity as engaged in by Hall, prior to the erection of the fence in 2012, was merely incidental to his ownership of his own property. In my view, until then, there was no *animus possidendi*, no intention to possess the property as against the world. I accept the evidence of his witnesses, Sylvia Weech and Philip Allens all of whom confirm that Hall "maintained" the property, "**to stop robbers from coming into the area**" as they were all broken into several times. It is not uncommon for persons in The Bahamas to keep neighbouring property along their boundaries clear. None of the witness spoke of farming the property and I accept that there wasn't any farming done. The presence of a banana tree which Dean spoke of seeing, and says he complained of, does not amount to farming.

15. In a letter to the Director of Land and Surveys, in March 2004, Hall speaks of clearing the property for years "**to prevent robberies, break ins and any other form of illegal activity from taking place in the surrounding neighborhood.**"

This is consistent with the evidence of Hall's witnesses. No mention is made of any farming, some 15 years after he claims to have been farming the Property.

16. I am satisfied that the erection of the fence in 2012 by Hall amount to trespass and is not defeated by effluxion of time. Damages are awarded at \$10,000.

17. In all the circumstances I grant the reliefs sought by the Plaintiff and give judgement, with costs.

Dated the 19th day of December 2019



Ian R. Winder

Justice