

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV20015/0026

BETWEEN

EMMANUEL GALLOWAY

First claimant

and

RICHARD SAMUEL

Defendant

APPEARANCES

Mr Garth Wilkin for the claimant.

Mr David Brandt for the defendant.

2018: NOVEMBER 9

2019: MARCH 4¹

- 1 **Morley J:** I am asked to determine who owns a piece of land on Montserrat, registered as parcel 14/10/04. The defendant Richard Samuel (Richard), thinks he purchased it in 1976 when it was then known as lot 7 of the Sweeney estate, though it became parcel 14/10/04 at the Land Registry (at a time after it was formed in about 1979), and the claimant Emmanuel Galloway

¹ Judgment delayed only owing to Assize dates, being delivered on the first day of the follow-on Assizes being the first day of sitting on return to Montserrat.

(Emmanuel)² has been the registered owner at the Land Registry since 19.10.07³, having purchased it for \$30000ec in 2003.

- 2 There was a previous judgment concerning a land dispute between Richard and the Galloway family dated 20.07.17 concerning parcels 14/10/32 and 14/10/42, which adjoin parcel 14/10/04 to which the reader is referred to make further sense of this judgment.
- 3 If Emmanuel owns 14/10/04, he wants damages for trespass by Richard, who is almost 80, and a goat farmer, with no more than an elementary education, having kept goats on the land and cut down trees.
- 4 This case involves looking far back to incomplete records as to what happened on the Sweeney estate following the death of Alfred Hampshire Allen on 10.09.65. Alfred's widow Caroline Allen inherited and died in September 1990, and John Kelsick was legal counsel to the estate. As part of his duties, he sold land for Caroline from the estate and he died in January 2012. To help with the case John's son Jean, who joined John's practice in 1986, has conducted careful research of his father's records, locked for posterity in a series of filing cabinets.
- 5 Richard says that from 1965 he had a house and with permission occupied land on the Sweeneys estate. There is a letter from Caroline to John dated 22.04.74⁴ in which she says Richard purchased a house but no land on 01.11.69. When Richard made enquiries in 1976 whether he owned land, John told him no, and that he would have to purchase any. Richard says he paid John \$10000ec for what became on the estate lots 3 and 7 (respectively for \$7000ec and \$3000ec) after the estate was surveyed by St Clair Jeffers in June-August 1976, (which was a survey Richard claims he funded for \$2500ec). In time at the Land Registry lots 3 and 7 become parcels 14/10/56 and 14/10/04, but Richard claims he was only ever given title to lot 3, and it is right to note that Richard is nowadays the registered title holder to 14/10/56. As to what happened to registering his title to lot 7, Richard says John fobbed him off, and in para 8 of his affidavit filed on 22.06.18 reports:

² For the purposes of this judgement, for ease of reading, the parties will be referred to as bracketed, with no disrespect intended by not writing out on each mention full names, offices, and titles, or the legalese as to whether a claimant or defendant.

³ Exhibit EG12.

⁴ Exhibit JK1.

Mr John Kelsick told me I would have the title deed to the land in my hand in about 3-4 weeks [in 1976]. I made several trips to Mr Kelsick's office but was given one excuse after another and was never given the deed. Mr Kelsick then fell seriously ill and I went to him and he told me he could not deal with it at that time. He subsequently died.

- 6 I do not believe this. To start, it is not in keeping with the high standard of John's work, demonstrable from the records produced. In addition, John did not die until 2012, meaning there was, between 1976 and 2012, 36 years to raise complaint more formally, which never occurred. Finally, there is a record, being a statement of account concerning John working for Caroline, dated 19.05.77⁵ showing specifically that Richard had purchased lot 3 for \$7359.75^{ec} and that 'lot 7 will be purchased by Richard Samuel at a later date'. There was then a request in a letter on 07.11.77⁶ from John to Caroline to execute the deed inter alia for Richard's title to lot 3, saying nothing of lot 7.
- 7 From all I have heard from Jean of John's reputation, not much challenged by Counsel Brandt, I am sure John did not take money, \$3000^{ec}, from Richard for lot 7 and fail to pass Richard title, particularly in the teeth of such meticulous records. Moreover, I think Richard knows he is not telling the truth, rather than merely mistaken of memory, for I observe he is sprightly of mind, perhaps hoping that John being dead might be easily blamable as he cannot answer, and it beggars belief Richard would not pursue clarity of his ownership of lot 7, later 14/10/04, until he is sued by Emmanuel, who warned him off the land in 2010⁷.
- 8 Emmanuel says he purchased lot 6 in 1977, (which became 14/10/59), also noted in John's statement of account of 19.05.77. He says the house purchased by Richard was on lot 3, which I accept. He pointed to adverts in the Montserrat Reporter on 15.08.03⁸ which recorded Richard's land as 14/10/56, his as 14/10/59, and 14/10/04 was registered as belonging to Agnes Atwell, who inherited from Caroline, and not to Richard. That Agnes owned 14/10/04 was supported by

⁵ Exhibit JK1.

⁶ Exhibit JK3.

⁷ Exhibit EG15.

⁸ Exhibit EG7.

an affidavit from John dated 10.07.03⁹, which if Richard's case was correct would be a fraud and perjury by John. Title to 14/10/04 was registered to Agnes on 11.11.03, who died in Canada in January 2007, and following purchase of the parcel in 2003 by Emmanuel for \$30000ec, his title was finally registered on 19.10.07.

- 9 I find that Emmanuel owns 14/10/04. Richard has failed markedly to meet the burden to show on balance he owns the land, and indeed I find he has probably been mischievous in blaming the late John Kelsick for a failure to transfer title.
- 10 Effort was made by Counsel Brandt to raise the specter of Richard acquiring title by adverse possession or prescription, or acquiring some measure of constructive trust over the land, as having farmed it since 1965 in the sense he had goats and perhaps at one point a cow on it. He points for example to how on 16.12.02 there was a single property tax bill for \$156.75ec in the name of Richard for 14/10/04, though no record it was paid, and no other tax bills to suggest he was regularly paying before or after. Moreover, the property tax bill had nothing to do with the Land Registry, and as such, and in the absence of other bills, I find was probably an error. I simply do not believe Richard's claim, despite the valiant efforts of his counsel, mindful of John's records, and it does cross my mind that perhaps Richard imagined making this claim on 04 in consequence of receiving the erroneous tax bill.
- 11 Instead I accept what Emmanuel has said, namely that Richard had kept his goats in Little Bay until asked to leave that area in 2010, which is from when he appeared on 14/10/04, observed by Emmanuel whose home since 1971 overlooks 04, leading to the letter to desist, sent by recorded delivery, which was then ignored, later giving rise to much unhappiness that Richard was farming his goats on 04, and also on adjoining 32 and 42 (which were both the subject of the earlier action for trespass).
- 12 In short, I find Richard has no claim to 14/10/04.
- 13 I must now turn my mind to damages for trespass since 2010.

⁹ Exhibit EG9.

- 14 Concerning damages, the reader should refer in tandem to the judgment of 20.07.17. The land at 14/10/04 is 2 acres. Applying the same approach to calculation from the earlier judgement, and mindful this calculation can never be a precise science:
- a. I assess the rental value, not at \$350ec¹⁰, but at \$40ec per acre per year, being therefore \$640ec¹¹.
 - b. I assess the damages for soil erosion and felled trees to be about 10% of the claimed figure of \$18780ec¹², being therefore about \$1878ec.
 - c. Rounding down slightly, I order the total payable is \$2500ec, which is a like figure to that awarded on 20.07.17.
- 15 I turn my mind now to the question of costs. These may not be trivial. Emmanuel had to import Counsel Wilkin from St Kitts to conduct the trial as Jean Kelsick, his original counsel, had become a witness to defend his father. This action being in the context of a long-running dispute with the Galloways over tracts of land, regrettably and as I have said, I am of the view Richard has been mischievous in claiming 14/10/04. I am mindful he appears of modest means. However, having lost his action, costs usually follow the event, and I can see no reason in this case, on this occasion, why he should not pay Emmanuel's reasonable costs and I so order, (to be considered by the Master as to whether assessed or prescribed).
- 16 This judgement should end with a tribute to the late John Kelsick. From the evidence before the court, John was a highly respected lawyer on Montserrat, well-educated, with a strong sense of ethics practicing to a standard Jean, now Bar President, has said he has worried he has never quite met. It seems to me John Kelsick was of the 'old school', solid as a rock, whose ilk is sadly vanishing.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

4 March 2019

¹⁰ See para 16 of the affidavit of Emmanuel Galloway of 31.05.18.

¹¹ Being 2x8x40.

¹² See para 8 of the affidavit Claude Browne of 31.05.18.