IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C082 OF 1990

BETWEEN	ASTON CHIN	PLAINTIFF
A N D	THE PARISH COUNCIL FOR THE PARISH OF ST. CATHERINE	1ST DEFENDANT
A N D	AEROCON CONSTRUCTION LIMITED	2ND DEFENDANT

Mr. David Muirhead Q.C. instructed by Lopez & Lopez for plaintiff

Ms Ingrid Mangatal instructed by Dunn Cox Orrett & Ashenheim for 1st defendant

Mr. David Henry instructed by Christopher Cheddar of Nunes, Scholefield, DeLeon & Co for 2nd defendant

19th and 20th November 1992; 14th February, 1994; 23rd - 25th January, 1995; 22nd July, 1996; 30th June, 1997; 1st - 4th July, 1997; 9th - 13th March, 1998; 1st and 26th June, 1998 **and 29th April, 1999**

CLARKE, J.

There is no issue as to the defendant's liability herein for trespass to land and goods then in the possession of the plaintiff. Judgment has gone by default with damages to be assessed. And in consequence of an order having been made on the plaintiff's summons to proceed to assessment, evidence as well as argument was presented before me on the question of the heads of damages applicable and the quantum of damages assessable thereunder.

The subject matter of the trespass is a one acre parcel of land (with building and goods thereon) situate at Burke Road in the heart of Spanish Town, St. Catherine. In January 1990 the plaintiff was in possession of the said land and premises under a lease from the Jamaica Railway Corporation. The lease had an unexpired term of three years when on 15th January 1990 the defendant through their servants or agents wrongfully entered the demised premises and with the use of a bulldozer demolished part of the fencing and building thereon and heaped the walls, machinery and other articles on the premises into piles of rubble which were thereafter left on the land. The defendants proceeded to take possession of a part of the land and to enclose it. They commenced construction of a building thereon and have remained in possession of the said portion of the land.

Nevertheless, before the defendants committed their tortious acts, the first defendant (the Parish Council) communicated with the plaintiff by letter dated January 8, 1990. It in no way betrayed what was to follow. Rather, by that

letter the Parish Council sought the plaintiff's agreement, following on discussions between them, for the plaintiff to take a lease of premises at 2 Corletts Road, Spanish Town in exchange for the Burke Road premises and to have certain pieces of his equipment removed from the Burke Road to the Corletts Road premises. That letter reads as follows:

"January 8, 1990

Mr. Aston Chin
Victory Drug Store
6 Cumberland Road
Spanish Town
St. Catherine

Dear Mr. Chin:

Re: Lease of Premises at #2 Corletts Road (Race Course Lands) to Mr. Chin

I refer to a meeting held at your office on January 3, 1990, to discuss the above captioned. This serves to confirm our discussions as set out below:

1. You presently have a lease with the Jamaica Railway Corporation, for premises adjoining the Bus Terminus on Burke Road, Spanish Town.

2. This premises is needed for the New Bus Terminus Development, presently being undertaken by the Parish Council in conjunction with Aerocon Construction Limited.

3. The Parish Council is prepared to lease to you, premises at #2 Corletts Road, part of Race Course Lands, on the same terms and conditions as your present lease with the Jamaica Railway Corporation.

4. Aerocon Construction have agreed to assist with the removal of certain pieces of equipment from the present site to the Corletts Road site, at no cost to you.

5. By way of this letter we are advising Aerocon Construction Limited, of our agreement and giving them permission to occupy the site as soon as the arrangements in #4 above are agreed on.

We ask that you sign a copy of this letter, indicating your agreement to the above conditions.

Yours sincerely,

Sgd. Ferdinand L. Neita
Mayor of Spanish Town
St. Catherine"

It is common ground that before the plaintiff gave any indication of his willingness to agree to the terms and conditions set forth in that letter the defendants wrongly entered the Burke Road premises and bulldozed the building and contents thereon. An important question that arises, therefore, concerns whether the contents bulldozed consisted of certain pieces of equipment of substantial value as the plaintiff alleges or as, the defendants contends, comprised non-functional obsolete and derelict machinery to be treated as scrap metal assessable by its weight and size. It is important to bear in

mind in this connection that in any event the plaintiff has suffered direct damage by reason of the defendants wrongful inteference with his possession of the land and goods thereon. True, the plaintiff has characterised as "special damage" the goods he has alleged were damaged or destroyed on the premises and he has given particulars under paragraph 9 of his amended statement of claim. Yet, though described as "special damage", that claim is properly in point of law part of his wider claim for general damages for trespass to goods. General damage is presumed in trespass, but particular damage, if proved, goes to swell the award for general damages. So, in my view, as far as concerns this case the damage compensable for trespass to goods are no more to be treated as an award for "special damage" than are the damages compensable herein for trespass to land, but are part of, and do not go beyond, the general damages that are to be assessed, bearing in mind the particular damage proved.

This means, therefore, that although the plaintiff has particularised his claim for damages for trespass to goods, the rule as exemplified in cases such as **Robinson and Co. Ltd. and Jackson v. Lawrence** (1969) 11 J.L.R. 450 (C.A.) that special damages must be strictly pleaded and proved, does not apply to the case before me. That rule applies only where a plaintiff seeks to be compensated for some special item of his loss which is not an obvious consequence of the trespass committed by the defendant and in respect of which he ought to give warning in his pleadings in order that there be no surprise at the trial: see **Radcliffe v. Evans** [1892] 2 Q.B. 524, 528 per Bowen L.J. An obvious consequence of the trespass is that the plaintiff's building and certain items of equipment were destroyed.

Value of building destroyed

It is not in dispute that the structure at the time of the wrongful entry had no roof, Hurricane Gilbert having blown it off in 1988. The parties disagree, however, as to the value of the structure in as much as the plaintiff on the one hand and the defendants on the other hand are at variance about its size and, indeed, whether it was built in accordance with the plan approved by the Parish Council on 4th January, 1962.

Richard Lake, the managing director of the second defendant company, said that the structure on the premises was not a building but a shed approximately 15th feet by 20 feet. He said it was an unrendered block work and had neither

roof, windows, nor doors. This description was supported by Mrs. Jennifer Edwards. the Mayor of Spanish Town and Chairman of the Parish Council. Both witnesses said they were familiar with the premises, having entered on to it and observed it for many years prior to the bulldozing operation. They denied that the structure represented on the approved plans was in fact located on the property at the time it was bulldozed. Engaged in the construction industry for the past 21 years, a past President of the Master Builders Association and a past Chairman of the Joint Consultative Committee for the construction industry, Mr. Lake deposed that in 1990 the cost of building a new structure was $90.00 per square foot and that the 300 square foot structure he saw on the premises would, having regard to its then existing form, value $10,000.00 instead of $27,000.00.

Now, the land was leased to the plaintiff to errect a building thereon to be used solely to operate a "mechanic workshop" subject to the terms and conditions stated in the lease. It is also clear on the evidence that subsequent to the approval by the Parish Council of the requisite building and site plans a building was erected on the premises by the plaintiff in 1962, the same year the lease was granted. The initial term of the lease was 10 years and as a result of several renewals since then, the lease at the date of the trespass had an unexpired term of 3 years. Compliance with the terms of the lease must therefore, I think, be presumed. The plaintiff in constructing the building was, indeed, obliged to construct it in accordance with the plans approved by the Parish Council and in compliance with the by-laws for St. Catherine made under sections 2 and 3 of the Parish Councils Building Act.

Having examined and weighed the evidence on this aspect of the case I accept the plaintiff's evidence and find that the building was erected in accordance with the approved plans. I therefore find that the building was located close by the eastern boundary, that is, to the side of the bus depot and not, as Richard Lake said, in the centre of the lot some 20 to 30 feet from Burke Road. The size of the building approved by the Parish Council and, as I have found, built by the plaintiff, was some 26000 square feet. And using Richard Lake's estimate of $9.00 as the suqare foot cost of construction in 1990, the replacement cost of the building would be

$234,000.00 with the roof on. Allowing for the absence of a roof and for further deterioration that figure could be reasonably discounted by half. As Mr. Muirhead pointed out the claim of $38,000.00 on the pleadings as the value of the building as well as the evidence of the plaintiff, himself a builder, that the building would value some $100,000.00 is extremely reasonable. Accordingly I allow the claim of $38,000.00 for the value of the building destroyed.

Value of the equipment destroyed

Having constructed a mechanic workshop on the land in accordance with the lease the plaintiff carried on business there as a heavy duty equipment operator until 1988 when he handed over the heavy duty equipment to his son, Peter Chin. During his many years of active engagement he operated tractors, bulldozers and related equipment. He also, I find, used the premises to store parts for machinery and equipment for, among other things, his tractor operations. And although in 1988 just before he took ill the operations of the premises toned down to the point that work was rarely done on the premises, I also find that at the time of the trespass on 15th January, 1990 the equipment on the premises included the items of machinery and equipment listed at paragraph 8 of the amended statement of claim some of which he had bought from the British Army in 1962 at Up Park Camp. I also find that those items were destroyed as a result of the bulldozing operation conducted by the defendants. So far from absolete, derelict and non functional, as the defendants contend, I find that the several items of equipment, save for one metal lathe, were properly maintained and oiled and were in working condition although exposed to the elements.

These findings have been made after assessing the demeanour and credibility of the witnesses in the light of the evidence. And the findings are, indeed, buttressed by the clear inference arising from the correspondence between the parties that the plaintiff had equipment of not inconsiderable value on the premises at the time of the bulldozing. This is how the letter dated 8th January 1990 of the then Mayor characterised the plaintiff's goods and proposed to have them taken to a new location:

> "3. The Parish Council is prepared to lease to you premises at #2 Corletts Road ... on the same terms and conditions as your present lease with the Jamaica Railway Corporation.
>
> 4. Aerocon Construction have agreed to assist with the removal of certain pieces of equipment from the present site to the Corletts Road site, at no cost to you."
>
> (Emphasis supplied)

The letter of the plaintiff's attorneys dated 25th January, 1990 addressed to the defendants foreshadows the plaintiff's claim (which I find has not been refuted) that "certain items of equipment" bulldozed by the defendants comprised several items of heavy equipment, tools, tractor parts and mechanical parts, more particularly set forth in the statement of claim.

Now, I accept the plaintiff's evidence that after the bulldozing operation he had a watchman on the premises. I also find that when the bulldozing was taking place some of the items of equipment were either stolen or removed to an unknown destination. Other items were either bulldozed and heaped in mounds of earth or otherwise destroyed. So in light of the consequences created by the defendants and also in light of the fact that some of the equipment were purchased in the early 1960's from the Army, it is, in my view, unreasonable to expect that bills could be provided and, as Mr. Muirhead submitted, futile to seek to impose an obligation on the plaintiff to secure independent valuations of equipment that was either stolen or destroyed.

The plaintiff, as Mr. Muirhead further submitted, is competent to give reasonable values by reason of his long experience and association with, and use and maintenance of, the very machinery and equipment that were destroyed or stolen. Yet, the plaintiff did give differing figures of value which the defendants argue present inconsistencies and incongruties which they say must defeat his claim. Again, as was pointed out by the other side, what the plaintiff deposed to are different methods of valuations that have produced the different values. It is not that the plaintiff has given irreconcilable values but rather the values he has given are a function of the different methods of valuations he employed. Take for instance the list made by his son. He verified the items thereon and put in prices in relation to some, a few days after the bulldozing had taken place. Those were the prices he paid for those items. That was the first method. Indeed, Mr. Henry identified from the plaintiff's evidence a range of values which I find came about by reason of the plaintiff using different methods. These inlcuded (a) the prices at which he bought a particular item (b) the cost he ascertained from suppliers and then discounted and (c) putting forward a reasonable value based on his experience, maintenance and use of the item.

An instance of method (c) emerges from this piece of evidence by the

plaintiff in cross examination:

> "I did put a value on the lathe in 1990. Replacement of lathe like that would be about $100,000 in 1990 - working lathe. I don't think I am claiming the replacement value, claiming a reasonable value."

Having examined the evidence I conclude that based on the reasonable value method the plaintiff has provided the requisite evidence to establish his claim for damages for the destruction of the several items of goods and equipment particularised in the amended statement of claim except for item No. 14 of the particulars.

Accordingly, I allow the claim in the sum of $434,540.00 for the value of the goods particularised including the building as well as the 121 feet of chain link fence that was also destroyed. This, of course, means that the Court rejects the defendant's contention that the value of the items, such as they were, except for the unroofed building, be assessed as scrap.

General Damages for Trespass to the land

As the plaintiff was at all material times the lessee of the land he is entitled to recover the amount by virtue of which the value of the lease has been diminished by the trespass, and beyond this, any particular loss in his enjoyment of the land: see McGregor on Damages 16th ed. 1495 and 1496 where the law is correctly stated. At the date of the wrongful entry the unexpired term was some three years. The evidence shows that although further renewals of the lease would have been unlikely, the defendants or their agents nevertheless continued in wrongful occupation of approximately half acre of the land for the remainder of the term. The normal measure of damages is the market rental value of the property occupied or used for the period of wrongful occupation or use: see para 1503 op. cit. And the rental value should normally be assessed upon the unimproved value which on the evidence of the lease would be $450.00 per quarter.

However, in this case, by reason of the defendants having constructed a bus terminal and commercial enterprises on the land, there has been for the plaintiff a diminution of the value of the land. He has lost for the final three years of the lease the use of an important section of the land. The defendants, on the other hand, have had it for their own benefit. It would,

therefore, in my judgment, be unjust to ignore the use the defendants have made of the section of the land they have occupied for their own purposes.

So, on the facts I have found, damages under this head are not to be assessed merely by taking the diminution of the value of the land but by the higher value of the user to which the defendants have put it: see **Whitwham v. Westminister Brymbo Cool Co.** [1896] 2 Ch. 538, 541 per Lindley L.J.; **Jegon v. Vivian** (1871) L.R. 6 Ch. App. 742. In the light of this principle I hold that the sum of $2000.00 per month as claimed by the plaintiff will reasonably compensate him for the period of wrongful occupation of the area of land in question. That period runs for three years from the date of wrongful entry. The total therefore comes to $72,000.00.

Should the general damages be increased by an award of aggravated damages?

Ms Mangatal submitted that there was nothing in the manner of the commission of the acts of trespass that could properly be taken to insult the plaintiff or to injure his proper feelings of dignity and pride.

As Mr. Muirhead submitted the insult to the plaintiff arose not only in the context of the flagrant acts of bulldozing and the occupation, but also in the context of the commission of the acts of trespass at a time when discussions were taking place between the plaintiff and the then Mayor of Spanish Town with regard to the provision of a suitable alternative site to accommodate certain pieces of the plaintiff's equipment. No agreement had been reached and the defendants plainly took the law into their own hands, entered the plaintiff's land, bulldozed his building and equipment into piles of rubble which they then left on the land.

This plainly constituted, in my opinion, insulting and outrageous conduct which manifested an arrogance of power on the part of both defendants reminiscent of the conduct of another local authority in the case of **Davies v. Bromley Urban District Council** (1903) 67 J.P. 275 (C.A.) cited by Mr. Muirhead. There the local authority, in the context of relevant correspondence having passed between the parties, had without giving any notice to the plaintiff pulled down his boundary wall which he had lawfully erected on the boundary line of his property adjoining the highway.

> "...[T]he local authority had taken the law into their own hands and had done it in such a way as to aggravate the insult to the plaintiff".

That dictum of Collins M.R. characterising the conduct of the local authority in that case is equally applicable to the conduct of the defendants in the case before me.

It seems to me that an award of $75,000.00 for aggravated damages is appropriate and I so award.

In summary the damages assessed are as follows:

"Special Damages" trespass to goods	$ 434,540.00
General damages for trespass to land $72,000.00 plus $75,000 for aggravated damages	$ 147,000.00
Total	$ 581,540.00

There will be (a) interest on the sum of $434,540.00 at 6% per annum as from 27th March 1990 until 26th June 1998 and (b) interest on the sum of $147,000.00 at 3% per annum as from 27th March 1998 until 26th June 1998.

Costs to the plaintiff are to be agreed or taxed.

Stay of execution for 6 weeks granted to both defendants.