

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: 48/2015

[2017] SCSC 1030

VERONIQUE LAPORTE
Plaintiff

versus

1. WIX CUPIDON
2. KUMAR KERAI
Defendant (s)

Heard:

Counsel: Mr. Kieran Shah for the Plaintiff

Mr. Brian Julie for the 1st Defendant - Absent
Ms Palmentier for the 2nd Defendant

Delivered: 6th of November 2017

JUDGMENT

Nunkoo J

[1] Plaintiff is by way of plaint praying this court for an order against both defendants to carry out certain remedial works on a plot of land contiguous to her plot of land so as to prevent further degradation of the soil, which has caused damage to her residential building and defendants also to hold them liable for the damage sustained to her building and accordingly order them to carry out all the required repairs.

- [2] The facts of the matter are as follows. At a time when the first defendant was the owner and possessor of the said plot of land excavation works up to the depth of nearly 1.5 metres were carried out on the plot. This, it is contended by the Plaintiff that this has caused the land on her side to collapse and in the process the foundation of her building has been affected and various cracks on the wall and on the and floor of the buildings have occurred. This is the crux of the matter in short layman's language.
- [3] The action is directed against the first defendant as previous owner of the land and second defendant, the present owner of the land.
- [4] The plaintiff called an engineer, Mr Michel Savy, to support her version.
- [5] He filed his report written following a visit to the site and calculations that he has carried out.
- [6] He noted that an embankment of nearly 1.5 metres was dug. This was not supported by any wall towards the plot of the plaintiff. The soil is eroding and destabilizing the subsoil beneath the foundation of the plaintiff's building. He deponed to say that he has noted several cracks in the floor and wall of the building and the structure. He also explained that the cracks are in horizontal alignment and that these cracks are attributable to the movement of the subsoil resulting directly from the embankment which is unsupported by walls.
- [7] It was his conclusion that the steep incline poses a risk of total slip of the embankment face, which may undermine the foundation of the existing dwelling by sheer fact of its proximity. He was of opinion that with time the damage to the plaintiffs house will become more severe.
- [8] He has recommended remedial action to address the stabilisation of the soil by constructing a retaining wall and repairs to the existing foundations and the cracks using specialist mortar and matter
- [9] The plaintiff deponed and said that she had completed the construction of her house by 2009. It was subsequently leased and she did not usually go there. She noticed cracks

about two and a half years ago and decided to have a survey carried by a civil engineer and be advised by him about the remedial work.

[10] Her house was constructed by Vijay Constructions. The engineer from that company one Mr Gaurang testified that he noticed one crack at some point in time when he had gone to replace a lock to the house. He denied having done any excavation works.

[11] Mr Adrienne civil engineer deponed on behalf of the Defendant No. 2.

[12] It was put to him in cross examination that the assumptions that he had made were not supported by laboratory test results of the soil. He answered that he had used reasonable assumptions. He admitted that when the confinement is removed there is a lateral deformation and settlement.

[13] The following from the cross examination is relevant to show how his approach was not scientific and which therefore undermine the credibility of his evidence as to the cause of the damage caused to the house of the plaintiff.

Q: In your calculations you have assumed values for soil weight, density, internal friction, cohesive value but these assumed values were not supported by any laboratory test of the soil?

A: They were reasonable assumptions.

Q; Assumptions you made which you claim are reasonable but unsupported by any test.

A: No answer.

Q; It may well be that that your reasonable assumption was not based on the reality but it was just an assumption you made?

A; Yes for the purpose of the calculations.

[14] Defendant No. One deponed and said that he was the owner of the adjoining plot but later sold it to the Defendant no. Two. He admitted having carried out levelling work by

cutting the slopes which extended to the land of the plaintiff and other neighbouring plots as well. That was in 2013.

[15] Defendant No. Two testified having bought the land as it was, that is with the excavations, and the boundary wall in place that is.

[16] He deponed to say that there was an encroachment on his land.

[17] Surveyor Mr Leong produced his survey report on behalf of Defendant No 2. He deponed

to say that there was a minor encroachment on the Defendants land. It was just a part of the wall of about 30 cm in width that constitute the encroachment. In cross examination he admitted there is a margin of error which is acceptable and in this case it could be about 10 cm.

Second Defendant has counter claimed Rs 318,500.00

Trespass and continuing trespass	Rs 50,000.00
Loss of enjoyment and use property for the period since encroachment and continuing-	Rs 50,000.00
Damage or loss of value to the land-	Rs 150,000.00,
Moral damages for anxiety distress and inconvenience	Rs 50,000.00
Surveyors and engineer fees.	Rs 18500.00

[18] Both deny being liable for any fault whatsoever in their defence. Defendant No. 2 has in addition to his defence joined a counterclaim

[19] I find all these various heads of damages and the figures from the counter claim are exaggerated and frivolous. The defendant who deponed did not substantiate how he suffered

those damages. It must be remembered that damages are not for the asking. These must be established.

[20] As regards the Defendants No 2 claim regarding encroachment the Court is satisfied that there is a minor encroachment as per the Surveyor's report. As per the principles laid down in *Mancienne* I find no difficulty in ordering that the encroachment be demolished. In view of the likelihood of further damage to the plaintiff's house the demolition of the boundary wall can be undertaken only after the remedial works are carried to the satisfaction of the plaintiff as per sound and professional engineering norms so as not to aggravate the damage already caused to her building.

[21] The Court is satisfied that the plaintiff has proved her case on a balance of probabilities and accordingly orders both defendants to jointly carry out all the remedial works which are technically necessary using the best materials and knowhow to ensure that all damage is arrested. The remedial works must be initiated within fifteen days.

[22] The Court orders the Plaintiff to pay Rs 5000.00 as damages for the trespass complained of and the surveyors fees that is the amount of Rs 7000.00 The court further orders plaintiff to remove all the encroachments within a delay of three months.

[23] Costs is awarded to the plaintiff.

Signed, dated and delivered at Ile du Port on 6th of November 2017.

S Nunkoo
Judge of the Supreme Court