

SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2008/006

BETWEEN:

MARGARET SARGUSINGH
(Administratrix of the Estate of the late Waltrude Sargusingh)

Appellant

and

CAIUS SARGUSINGH
(Administrator of the Estates of the late Victor and Marie Sargusingh)

Respondent

Before:

The Hon. Mde. Ola Mae Edwards

Justice of Appeal

On Written Submissions of:

Mr. Ermin N. Moise of the Chambers of George & Co for the Appellant
Mr. Jeannot-Michel Walters for the Respondent

2009: February 20.

Civil Procedure – Interim Injunctions – no existing cause of action - whether the judge erred in exercising his discretion to discharge the interim injunction - whether interim injunction may be granted where pleadings closed and there is a dispute as to the facts

The appellant is the administratrix of the estate of her late husband, Waltrude Sargusingh. The respondent is Waltrude Sargusingh's brother and the administrator of their parents' (Victor and Marie Sargusingh's) estates. At the date of his death, Victor Sargusingh owned 3 parcels of land in Dennerly: Block 1437B Parcel 34 and Block 2037 Parcels 124 and 114. The appellant and Waltrude Sargusingh, with the consent of the heirs of his parents' estate, occupied Parcel 34 rent free approximately 17 years ago. They renovated the building on the property, opened a bar and over the years have made improvements, including the construction of a concrete extension. In February 2007, the appellant agreed with the respondent and another heir to the estate to purchase Parcel 34. On 15th May 2007, the respondent requested that the appellant vacate Block 1457 Parcel 34. On 30th May 2007, the appellant renewed a request to the respondent for a copy of the survey plan, valuation report, agreement for sale and title deeds for Parcel 34. On 14th June 2007, the respondent requested that the appellant vacate Block 2037C Parcel 124.

In September 2007, the respondent filed a fixed date claim against the appellant for recovery of Block 1457B Parcel 34. In her defence filed in November 2007, the appellant denied that the respondent had an interest in Block 1457B Parcel 34 as Victor Sargusingh was not the owner of that land. The respondent amended the fixed date claim and statement of claim to show that the property that is the subject matter of the dispute is Block 2037C Parcel 124. The appellant has never been and is not currently in occupation of that land.

On 16th January 2008, the appellant sought, and was granted on a without notice application, an interim injunction prohibiting the respondent from selling or otherwise transferring Block 2037C Parcel 124. The property had however been sold on 31st December 2007, although the Transfer of Land Instrument has not been registered to date. On 5th March 2008, the injunction was discharged on the ground that it was of no effect as it attempted to prevent the sale of a property which had been sold two weeks before; against which decision the appellants have appealed.

Held: dismissing the appeal with costs to the respondent and ordering that the matter be remitted to the High Court for a site plan to be obtained before the hearing of the fixed date claim:

1. An applicant for an interim injunction must show some property right or interest in the subject matter of the claim. It is a defence to the grant of an injunction that the injunction is useless where the subject-matter of a restrictive interim injunction was already disposed of before the court was seized of the matter.
2. An applicant for an interim injunction must show that her action is not frivolous or vexatious; or that there is a serious question to be tried; or that there is a real prospect that she would succeed in her claim for a permanent injunction at the trial.

American Cyanamid Co v Ethicon [1975] AC 396, [1975] 1 All ER 504 applied.

3. The appellant clearly did not satisfy the preliminary test established by **American Cyanamid** in the absence of a counterclaim to ground her entitlement to the injunction for Block 2047C Parcel 124 which she contends she was not occupying and did not wish to purchase. The appellant's affidavits and defence do not show that she had any right to purchase this parcel so that it cannot be said that she satisfied the court that Parcel 124 should be preserved until such question can be disposed of. The discharge of the injunction was accordingly justified.
4. Further, an injunction should not be granted where there is a serious dispute as to the facts. The pleadings and evidence show that the parties are at serious cross-purposes in identifying the property that the appellant was occupying (Parcel 34) and the property that was being sold to the third party (Parcel 124).

JUDGMENT

[1] **EDWARDS, J.A.:** This is an appeal against the interlocutory order made by the learned

judge upon the respondent's application to discharge the injunction granted to the appellant on 16th January 2008. The grounds of the respondent's application included that the appellant "had obtained an order to restrain the respondent from selling the property situate in Dennerly described as Block 2037C Parcel No. 124, which is the subject matter of claim SLUHCV 2007/0827, and the order is of no effect as it was obtained after the execution of a deed of sale executed on 31st December 2007, by the respondent and 2 purchasers who had bought the property."

[2] The order of the learned judge dated 5th March, 2008 states:

"IT IS HEREBY ORDERED: 1. Injunction discharged. 2. Costs to the Claimant. 3. Written reasons to be supplied."

The judge's written reasons for decision delivered on 26th May stated:

"[3] At the hearing it emerged that the property in question had been sold to a third party before the injunction was granted. [4] I concluded that the injunction granted was of no effect as it attempted to prevent a sale of the property which had been sold two (2) weeks before. In the circumstances, I discharged the Order and awarded costs against the unsuccessful party."

Factual Background

[3] The circumstances leading to the grant of the injunction and its discharge must be set out for a better understanding of the issues in this appeal.

[4] The appellant is the sister-in-law of the respondent. She was the lawful wife of Waltrude Sargusingh who died on 18th January 1997 and the administratrix of his estate. Waltrude was one of four lawful siblings of the respondent. The parents of Waltrude and the respondent were Marie Sargusingh and Victor Sargusingh who died on 24th October 1950 and 25th May 1989, respectively. The Letters of Administration issued to the respondent dated 28th March 2007, from the High Court Registry discloses that Victor Sargusingh, at the date of his death, owned 3 parcels of land situate in Dennerly including a property measuring 2.4 hectares with a building on it registered as Block 1437B Parcel 34. The other 2 parcels each measure 0.02 hectares and are registered as Block 2037 Parcels 124 and 114. The significance of Block 1437B Parcel 34 in this appeal will unfurl as the facts are set out.

- [5] The appellant's defence and the affidavit filed on 11th March 2008 in support of her application for stay of execution states that her husband, Waltrude, approximately 17 years ago agreed with the rest of the heirs of his parents' estate to occupy Parcel 34 and operate a bar there without paying rent. Thereafter, Waltrude renovated the building on Parcel 34 with his own funds and the appellant's personal contribution of EC\$3,000.00 and they opened a bar called "Dolphin" which was initially operated by one of their 3 children, Larry. Over the years, they constructed a concrete extension to the building and have made improvements to the property.
- [6] In February 2007, the respondent and Julius Sargusingh, one of his 3 living siblings, approached the appellant and repeatedly offered to sell Parcel 34 to the appellant for EC\$85,000.00. The appellant agreed to purchase the property and whilst in the process of obtaining a loan from the Bank of St Lucia, was in communication with the respondent's lawyer. On 15th May 2007, the respondent's attorney-at-law, by letter requested the appellant to vacate the property registered as Block 1457B Parcel 34 in 2 weeks time because the heirs had another interested buyer to purchase the property. The appellant instructed her lawyer who, on 30th May 2007, renewed previously written and oral requests to the respondent's lawyer for a copy of the survey plan, valuation report, agreement for sale and the title deed for the property Block 1457B Parcel 34 in order to process the loan.
- [7] Further, on 14th June 2007, the respondent's attorney-at-law, by letter, requested that the appellant vacate the property registered as Block 2037C Parcel 124, a separate and distinct property from that mentioned in the 30th May letter. This letter stated:
- "My clients have informed me that they have a buyer who intends to purchase immediately parcel 124 and therefore they are no longer interested in selling to your client and are demanding that she leaves by Sunday failing which an action will be filed in the Courts for her eviction by Monday."
- [8] The appellant continued to and presently still occupies Block 1437B Parcel 34. Letters of Administration for his parents' estate were granted to the respondent on 28th March 2007. On 27th September 2007, the respondent filed a fixed date claim against the appellant for recovery of possession of Block 1457B Parcel 34, damages, interest on any

damages found due and costs. The pleadings state that the respondent had informed the appellant from 2005 that the heirs would be willing to sell the property to her but she was unable to purchase the property.

- [9] In her defence dated 2nd November 2007, the appellant denied that the respondent had any interest in Block 1457B Parcel 34 and exhibited the Land Register for this Parcel. It must be noted that this is a different Block number from 1437B. The appellant alleges at paragraphs 10 and 11 that all of her attempts to purchase the premises had been frustrated by the respondent's failure to supply the appellant with the required information, and when she enquired about the premises from the Land Registry she had obtained information that Victor Sargusingh was not the owner of the land registered as Block 1457B Parcel 34.
- [10] The appellant did not counterclaim. However, she has pleaded that she has a right through her investment, her husband's investment, and as the administratrix of the estate of Waltrude Sargusingh to occupy Block 1437B Parcel 34. She is still willing and able to purchase Block 1437B Parcel 34 at the agreed price¹.
- [11] The record contains an amended Fixed Date Claim and an Amended Statement of Claim filed on 11th November 2007 with a faint handwritten insertion showing the property that is the subject of the statement of case to be now Block 2037C Parcel 124.
- [12] Despite the appellant's defence, she nevertheless filed a without notice application for an injunction prohibiting the sale of Block 2037 Parcel 124 because it was the subject matter of claim No. SLUHCV 2007/0827 in which a mediation order had been made on 29th November 2007. She deposed in her supporting affidavit that the mediation session was abandoned on 10th January 2008, when the respondent said that mediation was no longer needed since he had sold the property the week before. She deposed further, that she was informed that the respondent had only received a deposit a day after the mediation session, for the sale of the property; and she is prepared to

¹ See paragraph 6 of this judgment.

pay \$90,000.00 for the property; and the other 2 heirs of the property are in favour of selling their share of the property to her. She deposed that she was also informed by the other heirs and believed that Carmilite Sifflet was the purchaser. She alleged that the respondent was acting in bad faith and had failed to account to her and the other heirs about the administration of the estate of Victor Sargusingh. She requested that the injunction continue until the matter is fully litigated.

[13] The interim order made on 16th January 2008 was in the following terms:

"IT IS HEREBY ORDERED: - UPON the usual undertaking as to damages the application is granted. 1] Claimant is prohibited from selling or otherwise transferring Block **2037C** Parcel **124** until further order. 3] Liberty to Claimant to apply for discharge of the order on three (3) days notice to the Defendant; and 4] Copy of this order to be served on the Registrar of Lands."

[14] One of the many disturbing features of this case is the injunctive order. There was scant regard for the governing rules of the **Civil Procedure Rules 2000 (CPR 2000)**, r17.4 (2), (4) and (5) which provide:

"17.4(2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

(3)

(4) The court may grant an interim order under this rule on an application made without notice for a period of not more than 28 days (unless any of these Rules permits a longer period) if it is satisfied that –

(a) in a case of urgency no notice is possible; or

(b) that to give notice would defeat the purpose of the application.

(5) On granting an order under paragraph (4) the court must –

(a) fix a date for further consideration of the application; and

(b) fix a date (which may be later than the date under paragraph (a)) on which the injunction will terminate unless a further order is made on the further consideration of the application.

(6) ...

(7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders."

[15] The Order contravened **CPR 2000** Rule 17.4(4) and (5) where it granted an interim order on an application made without notice for an indefinite period beyond 28 days, and the court neither fixed any date for further consideration of the application nor fixed a date on

which the injunction would terminate unless a further order is made on the further consideration of the application.

[16] On 7th February 2008, the respondent applied to the court for this interim order to be discharged and for the appellant to pay costs of \$2,500.00 to the respondent. The grounds of the application included that the appellant was in occupation of the property which was the subject matter of the application and the order granted by the court on 16th January 2008, is of no effect as it was obtained after the property was sold and the deed of sale executed. Ground 9 stated that the application for the injunction was made under Part 17.4 of the **CPR 2000** which has clear mandatory rules governing such applications and orders; and the order does not comply with those rules.

[17] In support of his application, the respondent exhibited the executed deed of sale. This document is included in the record of appeal. It confirms that Mr. Benson Emile and Ms. Carmilite Sifflet have paid the sum of \$90,000.00 to the respondent as consideration for the property measuring approximately 0.02 hectares situate at High Street, Dennerly registered as Block 2037C Parcel 124 which was sold and conveyed to them on 31st December 2007, under the Transfer of Land Instrument executed on the said date.

[18] This Instrument has not been registered by the respondent's legal representative. Section 56(2) of the **Land Registration Act Cap. 5:01** states that the transfer shall be completed by registration of the transferee as proprietor of the land and by filing the instrument.²

The Notice of Appeal

[19] The Notice of Appeal gives the details of the order appealed as follows:

“That the interim injunction granted by his Lordship... be discharged for the non disclosure of the...[appellant] of the fact that a Deed of Sale was signed on 31st December, 200...[7]between the ...Respondent and one Ms. Carmilite Sifflet in the presence of another attorney.”

[20] The details of any finding of fact are stated to be that the appellant ought reasonably to have known that a deed of sale was signed on 31st December 2007, between the

² Laws of St Lucia 2005 Revision.

respondent and Ms. Carmilite Sifflet in the presence of another attorney.

- [21] The details of any finding of law are stated to be that the appellant failed in her duty to disclose all material facts when applying for an interim injunction on 16th January 2008, by not disclosing that a deed of sale had been signed on 31st December 2007, between the respondent and Ms. Carmilite Sifflet.
- [22] Neither the order of the judge nor his reasons for decision reflect the details, findings of fact or findings of law stated in the notice of appeal.³
- [23] Only one of the 9 grounds of appeal falls for consideration in my respectful view; and that is ground 7. Ground 5 alleges incorrectly that the injunction was discharged on the ground that the appellant ought reasonably to have known that a deed of sale was signed between the respondent and Ms. Sifflet on 31st December 2007, and therefore has no merit.
- [24] Grounds (1) to (4) inappropriately recite the existence and details of the injunction, and the reasons why the appellant was not able to disclose the deed of sale executed on 31st December 2007; although the learned judge's reasons for decision have not identified the nondisclosure of the deed as the reason why the injunction was discharged. Ground (6) irrelevantly addresses leave to appeal. Ground (8) raises matters of concern relating to the administration of the estate of Victor Sargusingh and the appellant's entitlements as an heir in possession of property which is part of the estate. In my view, such matters are not within the jurisdiction of this court; they fall within Part 67 of the **CPR 2000** and the jurisdiction of the High Court.
- [25] Ground 7 however contends that the learned judge failed to exercise or inadequately exercised his discretion by not considering the whole of the facts of the case, the innocence of any probable nondisclosure, and whether it was just and proper in the circumstances to uphold the injunction granted on 16th January 2008.

³ See paragraph 2 of this judgment for the terms of the judge's order and reasons for decision.

The Law on Interim Injunctions

- [26] The jurisdiction of the court to grant an injunction is a discretionary one to be exercised judicially according to established common law rules. Section 16 of the **Eastern Caribbean Supreme Court (Saint Lucia) Act** Chap. 2:01 empowers the judge to grant an injunction in all cases in which it appears to the judge to be just and convenient where the order is asked for before the trial or hearing of any cause or matter to prevent any threatened injury. To obtain an interim injunction, like any equitable remedy, the applicant must show some property, right or interest in the subject matter of the claim since such an injunction is a remedy which is usually obtained in protection or assertion of some right for which the applicant has a cause of action enforceable by final judgment.⁴
- [27] A party to a claim may at any stage of the proceedings obtain an interim injunction in justified circumstances provided the action is of such a nature that an injunction could have been claimed as part of the original relief sought. That party must establish to the satisfaction of the court that she is entitled to the right which she seeks to have protected by an injunction. It is a defence to the grant of an injunction that the injunction is useless where the subject matter of a restrictive interim injunction was already disposed of before the court was seized of the matter.⁵
- [28] The House of Lords established the preliminary test in **American Cyanamid Co. v Ethicon**⁶ that the applicant for an interim injunction must show: (i) that her action is not frivolous and vexatious; or (ii) that there is a serious question to be tried⁷; or (iii) that there is a real prospect that she would succeed in her claim for a permanent injunction at the trial.
- [29] Having reviewed the pleadings, the affidavits and the documentary evidence that were before the learned judge on 5th March 2008, they show that the parties are at serious cross-purposes in identifying the property that the appellant was occupying and the property that was being sold to Carmilite Sifflet. The pleadings show that the respondent

⁴ See Blackstone's Civil Practice 2009 at paragraph 37.15

⁵ See Atkins Court Forms 2nd Edition (1996), Vol. 22(1), p. 66, para. 8

⁶ [1975] A.C. 396; [1975] 1 All E.R. 504 H.L.

is seeking to recover from the appellant possession of 0.02 hectare of land registered as Block 2037C Parcel 124 when the appellant has never occupied that land, has never agreed to purchase that land, and apart from being one of the heirs of Victor Sargusingh's estate, has no other proprietary interest in that land. An injunction should not be granted where there is a serious dispute as to the facts.⁸ In the absence of a counterclaim and without any identifiable cause of action relating to the said land the appellant obtained the injunction that was subsequently discharged.

[30] This begs the question - on what legal basis would she be entitled to an injunction to prohibit the sale of the property Block 2037C Parcel 124. The submissions of learned counsel for the parties do not address this very obvious mix up. Instead Mr. Moise has focused on the matter of non disclosure; while Mr. Walters has referred to the procedural irregularities where the order did not comply with CPR 17.4. In the absence of specified sanctions for non-compliance with these rules such irregularities by themselves do not invalidate the order where there is no prejudice to the respondent.⁹ The learned judge has the duty to approve an injunctive order that complies with the rules. Mr. Walters also contends that the appellant's failure to comply with CPR 17.4(7) upon being served with notice of the respondent's application to discharge the order left the court with no alternative but to discharge the interim order.

[31] In the absence of the deed of sale which was not available to the appellant at the time of making the without notice application for the interim injunction, the existing confusion on the pleadings relating to the identification of the property being sold and the property occupied by the appellant must have escaped the learned judge in granting the injunction. The appellant clearly did not satisfy the preliminary test established by **American Cyanamid** in the absence of a counterclaim to ground her entitlement to the injunction for Block 2037C Parcel 124 which she contends she was not occupying and did not wish to purchase. Since her affidavits and defence do not show that she had any right to purchase this parcel, then it cannot be said that she satisfied the court that Parcel 124

⁷ [1975] A.C.396 at page 407, 408; [1975] 1 All E.R. at page 510.

⁸ Mitchell v Henry (1880) 15 Ch.D. 181

⁹ See David Carson v Richard and Elizabeth Silva BVIHC 2001/ 0130 (unreported judgment) Rawlins J (as he then was) at paragraph 23.

should be preserved until such question can be disposed of.

[32] The discharge of the interim injunction was therefore justified in my respectful view. I would dismiss the appeal with costs of \$800.00 to the respondent.

[33] The powers of the Court of Appeal on hearing an appeal include making an order in such terms as the Court thinks just to ensure the determination on the merits of the real controversy between the parties.¹⁰

[34] In my judgment, this case should be managed with a view to doing justice between the parties and furthering the overriding objective. I note that the properties in question which are part of Victor Sargusingh's estate appear not to have been surveyed. The important question in controversy on the pleadings demands that a preliminary step be taken to have a site plan obtained in respect of Block 1437B Parcel 34 by the court with an undertaking from the respondent not to register the Instrument of Transfer for Block 2037C Parcel 124 before the site plan is obtained. There is likelihood that such a plan may resolve the contention between the parties.

[35] I therefore remit the matter to the High Court for a site plan to be obtained before the hearing of this fixed date claim.

[36] The Order therefore is as follows:

- (1) The appeal is dismissed with costs of \$800.00 to the respondent.
- (2) The matter is remitted to the High Court for an order that a site plan in respect of the property identified as Block 1437B Parcel 34 be obtained before the hearing of the fixed date claim upon the undertaking of the respondent not to register the Instrument of Transfer for the property identified as Block 2037C Parcel 124 before this site plan is obtained.

Ola Mae Edwards
Justice of Appeal

¹⁰ See section 28 (2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act Chap. 2:01 (Revised Laws 2001)