

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM No. DOMHCV2024/0216

IN THE MATTER OF THE CIVIL PROCEDURE RULES (REVISED EDITION) 2023 PART 17 RULE 4

BETWEEN:

ROBERTA BRUNEY

And

SHIRLEY VIRGINIA ANORA SAMUEL
(Represented by Roberta Bruney) And
ROBERTA SHERMA BRUNEY

Applicants

- and -

SAMANTHA SCOTLAND

Respondent

APPEARANCES:

Mrs Kathy Buffong-Royer, Counsel for the Applicants
Mr Bernard Pacquette, Counsel for the Respondent

2024: November 8

RULING

Application for Interim Injunction

FACTS

[1] **JAWARA-ALAMI, J.:** This is an application wherein the Applicants are seeking the following reliefs:

- i. The time be abridged for the hearing of this application.
- ii. A prohibitory injunction restraining the Defendant, her servants and/or agents from constructing a wall on the road forming the southwest boundary of the property of the Applicant Roberta Bruney registered in the Land Titles Register Book S20 Folio 35.
- iii. A mandatory injunction mandating the Defendant to grant the Applicants proper road access to their property registered in the Land Titles Register Book Y21 Folio 57.
- iv. A mandatory injunction mandating the Defendant, her servants, and/or agents to tear down and remove the wall which she has and or has caused to be erected/constructed on the road forming the southwest boundary of the property of the Applicant Roberta Bruney registered in the Land Titles Register Book S20 Folio 35.
- v. Costs.

vi. Any other further relief that this Honourable Court deems necessary.”

THE LAW

[2] It is trite that in the consideration of an application for injunction, the case of **American Cyanamide Co Ltd vs Ethion**¹ is authoritative to the court and as reiterated by the Eastern Caribbean Supreme Court of Appeal that: *“while the American Cyanamide test provides structure and sequence in determining whether to grant or refuse an interim injunction, it still remains guidance”*.

[3] Having said the foregoing, the principles that must guide the Court in deciding whether or not to grant an application for injunction is as stated in the case of **American Cyanamide** and provides as follows:

- 1) Legal Right;
- 2) Substantial issue to be tried;
- 3) Balance of convenience;
- 4) Irreparable Damage or Injury;
- 5) Existence of Alternative Remedy;
- 6) the conduct of the parties and it must be right to put matters in status quo.

[4] It is also the law that the conditions set out above must all be met and so meeting one or two of the conditions will not be sufficient for the purpose of the Court exercising its discretion to grant an injunction.

Legal Right and Substantial issue to be tried

[5] At this stage, the Applicants are not required to conclusively prove the claim but rather to show a good prima facie case. On this issue, the case of **American Cyanamid** had this to say:

“It is not part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at trial... So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought²”.

¹ (1975) 1 ALL ER 304

² [1975] 1 ALL ER 504 at page 510 per Lord Diplock

[6] Thus, at this stage of the proceedings, the Court is not called upon to determine finally as between the parties the legal right, the violation of which is the subject-matter of the claim. The Applicants should therefore show a strong prima facie case, at least in support of the right they assert, but the mere fact that there is a doubt as to the existence of such a right is not sufficient to prevent the Court from granting an interlocutory injunction. The Applicants do not have to show that they are entitled to the reliefs, all they have to show is that they have a fair question to raise and an existing right.

[7] The Applicants in the affidavit in support of the application as well as exhibits have demonstrated that they own the property affected by the wall and the Respondent has also demonstrated a legal title to the land submitting that she has a right to build the wall on her property in the Affidavit in Opposition filed. It is therefore clear that there are serious substantial issues to be tried because an interlocutory injunction can only be issued to restrain a threatened wrong to a right, and not to restrain the lawful enjoyment of a legal right.

Irreparable Damage or Injury

[8] This is a dispute in which the final analysis would come down to the Courts giving a determination on whether in fact there is a road and a right of way which will in any event affect the property of one of the parties. In property law, it is a recognized principle that while damages can be an adequate remedy in other contracts, the general rule is that damages are not an adequate remedy in land. According to the learned author in **Spry on Equitable Remedies**³

“whether remedies at law are adequate is determined upon principles, whether realty or personality such as chattel, is involved. But, land is property which has a fixed location and special value, and ordinarily damages are not regarded as an adequate substitute for the right either to acquire or to dispose of an interest in it” [emphasis supplied]

The balance of convenience

[9] In determining the balance of convenience in the consideration of an application for interlocutory injunction, the trial court is expected to pose the question of who will suffer more inconvenience if this application is not granted? It is a requirement therefore that the pendulum of the scale of justice should tilt on the side of the Claimant.

³ The Principles of Equitable Remedies, I.C.F. Spry, 2nd edn, pages 58-59

- [10] Having considered the various affidavits and exhibits filed, it is clear that the Applicants clearly will suffer if this application is not granted. They have averred in the affidavit that access to their property is a challenge, trucks have refused to go to her property, and wheelbarrows are being used to transport building materials from the road to her property where construction works are currently ongoing.

Conduct of parties and maintaining the status quo

- [11] It is trite that “an interlocutory injunction which is granted in the litigation process, is basically aimed at maintaining the status quo pending the determination of the application submitted for adjudication by the court. Having said this, the question becomes; what *status quo* ought to be maintained?

- [12] In my view, the *status quo* herein is the existing state of things existing before a particular point in time. The point in time that ought to be taken into account in the instant matter should be as at the time of filing the application. It is presumed that it is when the acts complained of by the Applicants either occurred or they became aware of them. Therefore, from the affidavits filed and relied upon by the parties, it is manifestly clear that the Respondent at the time the application was filed, had a partial wall built and a trench dug for the continuation of the wall. That is the *status quo* that ought to be maintained until the final determination of the substantive suit.

- [13] In **National Commercial Bank Jamaica Ltd vs. Olint Corporation Ltd**⁴ the Privy Council held that:

"In deciding at the interlocutory state whether granting or withholding an injunction is more likely to produce a just result the basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. Maintaining the status quo therefore would produce the effect envisaged in the foregoing authority".

- [14] For the reasons that I have set out above, I conclude that the Applicants have made out an overwhelming case that the injunction should be granted. There is a serious issue to be tried, it is plain to me that damages would not be an adequate remedy for the Applicants if I did not grant the injunction. The Applicants will be ordered to give an undertaking as to damages, and, I have no doubt that the balance of convenience favours granting the injunction.

⁴ [2009] UKPC 16

[15] For all those reasons, therefore, I hereby order as follows;

1. An interim injunction is granted restraining the Respondent by herself, her servant/ agents, workmen, collaborators and anyone acting on her behalf and at her behest from further developing the wall on the road forming the southwest boundary of the property of the Applicants Roberta Bruney registered in the Land Titles Register Book S20 folio 35, until the final determination of this suit;
2. That in maintaining the status quo, the Respondent shall give unfettered access to the Applicants to their property;
3. The Applicants shall give an undertaking as to damages as a condition to the granting of this interlocutory injunction for any loss that the Respondent may suffer if at the trial it is established that the injunction was wrongly granted;
4. The Applicants shall issue and serve a fixed date claim form 14 days from today; and
5. The matter is adjourned for a case management conference on 18th February 2025.

Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR