

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

**COMMONWEALTH OF DOMINICA
CLAIM NO: DOMHCV2025/0023**

BETWEEN:

**DIANA ELAINE FRANCIS aka DIANE FRANCIS
as Personal Representative of Hobson Patrick Francis
aka Hobson Francis, deceased** Claimant

and

MYRTLE PEMBERTON-LAZARE Defendant

RULING

Before the Honourable Madam Justice Zainab Jawara-Alami

Appearances: Mrs Heather Felix-Evans for the Claimant
Mrs Gina Dyer-Munro holding papers for Mrs Zena Moore-Dyer
for the Defendant

2025: May 07, 08
May 12

Background

- [1] **JAWARA-ALAMI.J.** This is an application by the Claimant, Diane Francis, for an interim injunction to restrain the Defendant, Myrtle Pemberton-Lazare, whether by herself or her servants or agents, from entering upon a portion of land situated at Soufriere, in the parish of St. Mark, known as the Francis land, and from undertaking any road-cutting or clearing works thereon pending the hearing and determination of this matter.

[2] The application is supported by several affidavits detailing that the Claimant is the registered proprietor of the said land by virtue of a Certificate of Title dated 25 January 1995. The Claimant alleges that the Defendant, in or around January 2023, began clearing and cutting a road across the Claimant's land without permission, prompting this action.

[3] The Defendant has filed a notice of opposition and contends that she and her predecessors in title have used the said access road as the sole means of entry to the Wingfield Estate for over 70 years, and thus she claims a prescriptive right of way under the Prescription Act, Chapter 7:02.

The Issues and the Law

[4] The test for granting an interim injunction is well established in *American Cyanamid Co v Ethicon Ltd*¹, and adopted by the Court of Appeal of the Eastern Caribbean Supreme Court in the case of **Notre Dame Investments Limited, Angela Diala List vs Rowntry Trading Limited, Paul List, BCM International Limited**² wherein the court emphasized that; "*....while the American Cyanamid test provides structure and sequence in determining whether to grant or refuse an interim injunction, it still remains guidance. The overarching principle that must be considered is whether it is just or convenient to grant the interim injunction*"

[5] Having stated the foregoing, the Court is guided by well-established principles in the *American Cyanamid Co* which require the Court in determining whether to grant an application for an interlocutory injunction, to consider the following:

- Whether there is a serious issue to be tried;
- Whether damages would be an adequate remedy for the applicant if the injunction is not granted;
- Whether the balance of convenience lies in favour of granting or refusing the injunction;
- Existence of Alternative Remedy
- Conduct of parties and maintaining the status quo

[6] 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

¹ [1975] AC 396

² NEVHCVP2022/0009

Whether there is a serious issue to be tried;

- [7] The applicant herein must demonstrate that the claim is not frivolous or vexatious, and that there is a real question to be adjudicated. In doing so the Claimant has shown that she is 60 years old and has lived on the Francis' land since she was approximately 5. According to her and her sister, no one has ever asserted a right of way over the Francis' land, nor has the family been involved in any dispute concerning alleged rights or interests in the land. She has also produced a Certificate of Title as evidence of ownership.
- [8] The Defendant, for her part, asserts that the dispute only arose in 2023. Before then, she and her predecessors had used the access road to her property without interruption for over 40 years. The Claimant came into possession of the Francis' land in the late 1980s and subsequently sold a portion along the northeastern side of the access to one Stanie Xavier.
- [9] Based on the evidence before me, I am satisfied that there is a serious issue to be tried as to whether the Defendant is trespassing or whether she holds a valid prescriptive right to use the said access. The claim raises substantive questions of law and fact regarding the existence of an easement by prescription.

Whether damages would be an adequate remedy for the applicant if the injunction is not granted

- [10] In *American Cyanamid Co v Ethicon Ltd* the House of Lords emphasized that when considering an application for interlocutory injunctions, the Court should consider whether damages would be an adequate remedy for either party. Lord Diplock stated that "If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted..."
- [11] Claimant alleges that the Defendant has already caused physical damage to the land, including the destruction of stone walls and the felling of valuable hardwood trees. These are not minor or easily quantifiable losses. 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. **In Lawrence v Fen Tigers Ltd** [³the Supreme Court reaffirmed that in nuisance or land interference cases, courts

³ 2014] UKSC 13, [2014] AC 822

should not too readily substitute damages where the interference with land is ongoing or serious in nature.

[12] I therefore find that damages may not be an adequate remedy for the Claimant should the injunction be refused and the Defendant continues to alter or interfere with the use and enjoyment of the Francis' land, particularly given the allegations of damage to stone walls and hardwood trees.

**Whether the balance of convenience lies in favour of granting or refusing the injunction;
Conduct of parties and maintaining the status quo**

[13] The court must weigh the potential prejudice to each party, and grant or refuse the injunction in a manner that minimises the risk of irremediable harm. In circumstances where the alleged interference involves the Claimant's quiet enjoyment of land, damage to immovable property, and where monetary compensation may be inadequate, the pendulum of justice should lean in favour of preserving the status quo. Accordingly, the scale of justice should tilt in favour of the Claimant, particularly where the evidence suggests that she is at risk of suffering greater and possibly irreparable harm pending trial. The balance of convenience favours preserving the status quo until trial.

[14] The Court is mindful that the Defendant claims the access is her only means of entry to her Estate. However, a restriction pending trial does not extinguish that claim; it merely preserves the Claimant's registered interest until the Court fully adjudicates the matter.

[15] In line with the principle stated 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".

[16] Guided by the foregoing, the Defendant's claim to a prescriptive right can be addressed at trial. If successful, an easement can be declared; if not, the Claimant's registered title must be protected in the interim.

⁴ [2009] UKPC 16

[17] Accordingly, the Applicant's application is granted and;

It is hereby ORDERED that:

1. The Defendant, whether by herself or through her servants or agents, is restrained from entering the Francis land or undertaking any road-cutting, clearing, or construction works thereon pending the hearing and determination of this matter or further order of this Court.
2. 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
3. Costs of this application shall be costs in the cause.

**Justice Zainab Jawara-Alami
High Court Judge**

BY THE COURT

REGISTRAR