

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2023/0145

BETWEEN:

BLACK WATER H & E SERVICES LTD

Claimant

And

EMERALD COVE CONSORTIUM LTD

Defendant

Appearances:

Mrs. Chantal Marshall for the Claimant

The Defendant represented by its Director Mr. Stefano Cebrelli

2023: May 10th, 22nd
August 1st

JUDGMENT

- [1] **WILLIAMS, J.:** The Claimant is a construction company. The Defendant is a management company responsible for the management of a residential development located on Antigua's east coast known as Emerald Cove Development "hereinafter referred to as "the Compound."
- [2] The Claimant alleges that it has entered into construction contracts with the owners of properties located within the Compound. However, the Claimant further alleges that the Defendant is unlawfully preventing its servants and agents from accessing the said properties.
- [3] Thus, the Claimant by Notice of Application for an Interim Injunction filed on 24th April 2023 seeks the following relief:
1. *An interim order to refrain the Defendants, its servants, agents or otherwise from refusing the Claimant, inclusive of its agents and servants from entering the Emerald Cove residential development compound more particularly described and recorded in the land registry as Registration Section: Saint Phillip North, Block: 25 3288A, whilst carrying out their contractual obligations to homeowners within the said compound.*
 2. *The Cost of the Application be borne by the Respondent/Defendant.*

3. *Such further and/or other relief as this Honourable Court deems just.*

Evidence

[4] The evidence in support of the application is contained in affidavits filed on 24th April 2023 and 19th May 2023 sworn to by Antonio Megna, a director of the Claimant.

Evidence of Antonio Megna

[5] Mr. Megna's evidence can be summarized as follows:

1. The Claimant is a company which is in the business of completing construction, electrical, plumbing and maintenance work on commercial and private entities. Mr. Megna is a director of the Company.
2. The Defendant is a company which manages a residential development known as Emerald Cove and the owner of land registered as **Registration Section: Saint Phillip North, Block: 25 3288A.**
3. The Claimant has been engaged by property owners within the Emerald Cove Development to carry out works on their properties and also to provide estimates for carrying out future construction works.
4. The Claimant was engaged to carry out construction work by the owners of two parcels of land located within the Compound. The parcels are described as Registration Section: Saint Phillip North, Block: 25 3288A, Parcels 47 and 215. Mr. Megna exhibits the permission letters from the property owners to his affidavit. These letters will be examined in more detail later in this decision.
5. However, commencing on or about 20th March 2023 Mr. Megna alleges that he was denied entry to the Compound by the Defendant. Mr. Megna further alleges there was no explanation forthcoming from the Defendant to explain this denial of entry. This was despite the fact that he had been entering the Compound without incident to carry out the contracted works since February 2023.
6. On 28th March 2023 Mr. Megna's attorney-at-law wrote Flat Point Development Ltd. a company which he describes as a "known affiliate of the Defendant" advising that they were unlawfully interfering with the Claimant's ability to fulfill its obligations to the homeowners within the Compound. The Company Secretary of Flat Point responded by letter dated 30th March 2023 advising that she was not the appropriate person to address the Claimant's complaints.
7. By letter dated 4th April 2023 the Defendant stated that it would grant the Claimant permission to enter the Compound if it received correspondence directly from the respective property owners which authorized the Claimant to carry out works on their properties. The Claimant was also required to provide details of the personnel, vehicles and equipment

which would be entering the Compound. According to Mr. Megna this information was provided by letter dated 6th April 2023.

8. The Defendant responded by letter dated 11th April 2023 advising that Mr. Megna would never be granted permission to enter the Compound. This was due to “security reasons.” Mr. Megna alleges that he has no idea as to what these security reasons are since he has worked in the Compound since 2006 without incident.
9. On 12th April 2023 the Claimant’s attorneys-at-law wrote the Defendant seeking clarification as to the alleged security reasons which precluded Mr. Megna from entering the Compound. The Defendant responded on 12th April 2023 indicating that their Directors were unavailable and that they would revert in the upcoming week. No response had been received up to the date of the filing of the affidavit.
10. Further on 14th April 2023 the Claimant received correspondence from owners of Parcel 215 which indicated that they had received correspondence from the Defendant which indicated that Mr. Megna would never be allowed on the compound for security reasons. The Claimant was therefore advised to stop all works on that parcel until these issues were resolved.
11. Mr. Megna alleges that the interference with the Claimant Company by the denial of access to the properties has the potential to put the company out of business. Thus, damages would not be an adequate remedy. Mr. Megna surmises that the interference is due to a lawsuit which his father has against the Defendant.

Affidavit of Perogeorgio Rivolta

[6] An affidavit in opposition was filed on behalf of the Defendant by Mr. Perogeorgio Rivolta on 15th May 2023. Mr. Rivolta’s evidence may be summarized as follows:

1. Mr. Rivolta describes himself as the Managing Director of Siti Slr a company which provides consulting services for the Defendant.
2. He indicates that he knows Mr. Megna who was employed by the Defendant from 2006 to 2012 when his employment was terminated.
3. He recounts that in 2012 during a meeting with one of the Defendant’s Directors Mr. Claudio Mereschi, Mr. Megna placed a gun on a table between himself and Mr. Mereschi. He recounts another alleged incident in 2014 where Mr. Megna threatened to burn down a building on the compound and that the building did subsequently burn down.
4. He indicates that it is for this reason and other aggressive behaviour on Mr. Megna’s part that the decision was taken to deny Mr. Megna access to the compound.

5. Mr. Rivolta also denies that Mr. Megna has contracts with homeowners within the Compound. Further if he has such contracts, he entered them with full knowledge that he would be denied access to the Compound.
6. Mr. Rivolta also challenges the authenticity of the permission letter from Lakemore Trading Limited one of the property owners. This was as that company had not responded to correspondence for several years and has not paid management fees due to the Defendant.

Reply Affidavit of Antonio Megna

- [7] Mr. Megna swore to a reply affidavit filed on 19th May 2023. In summary Mr. Megna disputes most of the content of Mr. Rivolta's affidavit. In short, he disputes the allegations of threatening behaviour. He exhibits a letter dated 31st May 2012 which indicates that he had left the Defendant's employment on good terms. He also exhibits a letter from Ms. Rika Bird representing the estate of the late Lester Bird the owner of one of the villas within the Compound. The said letter granted Mr. Megna permission to enter the Compound to carry out works on the Villa. Mr. Megna states that during the year 2022 he entered the compound to undertake the works without incident. Finally, Mr. Megna points out that if his behaviour had been threatening or disruptive as alleged, the Police would have been involved. There is no allegation of a Police Report being made in Mr. Rivolta's affidavit.

Brief Analysis of the Evidence

- [8] It is obvious at this point that there are significant disputes of fact. Before proceeding I must remind myself that it is not the court's duty to resolve these disputes at this juncture. However, certain observations must be made in order to assess the available evidence both in support and in opposition to the application for interim relief.
- [9] The Claimant has supported the fact of being denied access to the compound with various documentary evidence including correspondence from the Defendant. The fact that the Claimant has been denied access to the Compound is not disputed. The correspondence between the Claimant and Defendant proves this.
- [10] However, the Defendant seeks to justify this denial of access for security reasons. The Defendant alleges that this is due to disruptive and threatening behaviour on the part of Mr. Megna. Mr. Rivolta's Affidavit seeks to outline instances of disruptive and threatening behaviour on Mr. Megna's part. At paragraph 4 of his affidavit Mr. Rivolta recounts an incident where Mr. Megna allegedly threatened one of the Defendant's directors with a gun. However, the affidavit does not state clearly whether Mr. Rivolta witnessed this incident himself or was otherwise informed. I therefore put little weight on this evidence.
- [11] At paragraph 7 of his affidavit Mr. Rivolta outlines that Mr. Megna allegedly threatened to burn down the Defendant's office building. He then recounts that shortly thereafter the building did burn down. Again Mr. Rivolta does not indicate whether he heard this threat himself. Nor does he indicate whether Mr. Megna was reported to the authorities or investigated as a suspect in connection with this incident. Accordingly, pursuant to CPR Rule 30.3(3) I find that paragraph 7 of the Affidavit as scandalous and irrelevant and will pay no regard to it. I will similarly totally disregard the allegation contained at paragraph 5 of the said affidavit which alleges that Mr. Megna stole a Bobcat (a piece of heavy equipment).

[12] Finally, Mr. Rivolta recounts that he has observed disruptive behaviour on Mr. Megna's part on several occasions. However, his affidavit does not outline what this behaviour was or when it took place. Thus, very little weight can be placed on this aspect of the evidence. On the other hand, Mr. Megna states that he has accessed the property on several occasions since his employment with the Defendant was terminated and a letter dated 31st May 2012 post termination seems to support the fact that he left the employment on good terms. There is also no evidence that the Defendant denied Mr. Megna access to the Compound before March 2023.

[13] Thus overall, at this stage of the proceedings I am more inclined to believe that the Defendant has not substantiated that any risk to security would result if Mr. Megna is allowed to access the property.

Hearing

[14] This matter first came up for hearing on 10th May 2023 and directions were given for the filing of Affidavits and written submissions. The Claimant was represented by counsel whilst the Defendant was represented by one of its Directors Mr. Stefano Cebrelli. At that hearing Mr. Cebrelli indicated that the Defendant would be seeking to be represented by counsel. Directions for the filing of affidavits and submissions were given and the matter was adjourned to 22nd May 2023 for hearing of the application.

[15] On 22nd May 2023 the Court observed that the Claimant had complied with all aspects of the directions. However, the Defendant had only filed an affidavit and no written submissions. At the hearing Mr. Cebrelli indicated that the Defendant would not be retaining legal counsel.

[16] The Defendant's attention was then drawn to CPR Rule 22.3(2) which provides as follows:

"A body corporate must be represented by a legal practitioner at any hearing in open court unless the court permits it to be represented by a duly authorised director or other officer."

[17] Ultimately the court decided that the application of CPR Rule 22.3(2) would be considered at the Case Management of this matter in accordance with CPR Rule 22.3(3).

[18] At the hearing Mr. Cebrelli was allowed to make oral submissions. He did not focus on the alleged security risks of Mr. Megna accessing the Compound. He instead focussed on the fact that none of the permission letters referred to the Claimant but rather to Mr. Megna.

Discussion/Analysis

[19] The starting point is the authority of **American Cyanamid v. Ethicon**¹ as further supplemented by **National Commercial Bank v. Olint**.² In that case the Privy Council stated as follows:

"The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the

¹ [1975] AC 396

² [2009] UKPC 16

court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in American Cyanamid Co v Ethicon Ltd [1975] AC 396 that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. 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. This is an assessment in which, as Lord Diplock said in the American Cyanamid case [1975] AC 396, 408:

"It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them."

[20] The Claimant has submitted that the relevant considerations are as follows:

1. *Is there a serious issue to be tried?*
2. *Could damages that this Honourable Court may award the Applicant on the determination of the claim in its favour adequately compensate it for the harm it would suffer as a consequence of the Respondents' actions; and if not?*
3. *Where does the balance of convenience lie as between the parties in the grant of Interim Injunctive Relief?*

[21] The Court accepts the foregoing as an accurate summary of the applicable test. It should however be noted that an injunction is an equitable remedy, and its grant or refusal is discretionary.

Serious Issue to be tried

[22] In **American Cyanamid v. Ethicon**³ the principle of a serious issue to be tried was stated as follows:

"There was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be granted unless the plaintiff

³ Supra n1

succeeded in establishing a prima facie case or a probability that he would be successful at the trial of the action. All that was necessary was that the court should be satisfied that the claim was not frivolous or vexatious, i.e. that there was a serious question to be tried”.

[23] In order to address this issue, it is necessary to examine the Claimant’s cause of action. In the written submissions filed on 22nd May 2022 the Claimant outlined the cause of action as the tort of Causing Loss by Unlawful Means/Unlawful Interference with Economic Interests. The Claimant’s economic interests in this case would be the contracts with the property owners in the Compound.

[24] The Claimant relies on the following to outline the essential elements of the tort:

“Causing loss by unlawful means requires i) an act intended to cause loss to the victim; ii) by interfering with the freedom of a third party to act in particular way; iii) which is unlawful as against that third party; and iv) which would have been actionable by the third party if it had suffered loss: OBG Limited v Allan [2008] 1 AC1 (HL), [45]-[51]. As Lord Hoffmann observed at 49” **[Causing Loss by Unlawful Means, 9th August 2022, Thomson Reuters.]**

[25] At this stage of the proceedings the only issue for consideration is the Claimant’s alleged right to access the Compound. Thus, it is necessary for the Court to examine the evidence filed in support of the application. In this case the Claimant alleges that the Defendant is unlawfully preventing it through its servants and agents from entering the Compound. The Claimant alleges that it has received written permission from the homeowners to do so. These permission letters will now be examined more closely.

[26] Mr. Megna on behalf of the Claimant has exhibited two letters evidencing the grant of permission to enter the Compound to access the relevant properties. These letters are from Roberto Paschetto Director of Informant Computer and Satellite Communications Limited apparently on behalf of property owner⁴ Silvio Berlusconi and another from Lakemoore Trading Limited another property owner.

[27] The letters are in similar terms. In the interests of brevity, only the letter from Lakemoore will be reproduced in its entirety as follows:

15/3/2023

Flat Point Development
Emerald Development
Wilikies
St. Phillips
Antigua

⁴ The original letter is in Italian and an English translation is provided

Dear Sir,

We wish to confirm that Lakemore Trading Limited is the sole owner of Parcel 47 Block 25 3288 St. Phillips North in Antigua

We wish to confirm that Mr. Antonio Megna has our full authorization to visit our property at any time to survey same and carry out any work as requested by Lakemore Trading Limited.

We would appreciate your cooperation in this matter.

Yours faithfully,

(Signed)
Lakemore Trading Company

[28] What is immediately obvious is that the letter grants permission to Antonio Megna to enter the compound. There is no mention of Blackwater H & E Ltd- the Claimant. The letter from Informant Computer and Satellite Communications Limited is in similar terms and mentions only Mr. Antonio Megna.

[29] This raises the issue of whether the Claimant -a limited liability company can rely on these letters which grant Mr. Megna the right to enter the compound? The answer is “no” based on the general principles of company law.

[30] It is well established that upon incorporation a company adopts its own legal personality. **Section 17(1)** of the **Companies Act**⁵ provides for this in express terms as follows:

“17. (1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of an individual.”

[31] This principle derives from the decision of **Salomon v Salomon & Co Ltd**⁶ where the court for the first time established the separate legal personality of a company as an implication of incorporation under the existing 1862 English Companies Act. Lord Macnaughten stated the law as follows:

“The company is at law a different person altogether from the subscribers...and though it may be that after the incorporation the business is precisely the same as it was before, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”

⁵ Act No. 18 of 1995

⁶ [1897] AC 22 Eng HL

[32] This statement of law is now known as the *Salomon* principle and today it is generally regarded as too firmly established to be questioned. This was articulated by Slade LJ, in the Court of Appeal case of **Adams v Cape Industries plc**⁷ where he stated that “... *save in cases which turn on the wording of particular statutes or contracts the court is not free to disregard the principle of **Salomon v Salomon & Co Ltd** [1897] AC 22 merely because it considers that justice so requires.*”

[33] In **Macaura v Northern Assurance Co Ltd**⁸, the House of Lords held that the sole owner and controller of a company did not even have an insurable interest in property of the company, although economically he was liable to suffer by its destruction. Lord Buckmaster, at pp 626-627 said: “*no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.*”

[34] The converse is obviously true. The Claimant cannot rely on permission granted to Mr. Megna to access the Compound. This is despite the fact that Mr. Megna might be the principal Director and Shareholder of the Claimant. Mr. Megna is not the Claimant. The principle of separate corporate personality requires that the court treat permission given to Mr. Megna as distinct to permission granted to the Claimant. There is nothing to indicate that Mr. Megna was granted access as an employee or agent of the Claimant. In the circumstances there is no evidential basis upon which to grant an interim injunction. Accordingly, in the exercise of my discretion I refuse to grant the interim injunction as sought by the Claimant.

[35] It must be emphasized that this decision is concerned solely with the evidence provided in support of the application for an interim injunction. The case is still at an early stage and disclosure and the exchange of witness statements have not yet taken place. The Court is therefore not drawing any conclusions as to the overall strength or weakness of the Claimant's case.

Balance of Convenience

[36] For the sake of completeness, the Court will examine the issues of balance of convenience and adequacy of damages. In this case this would involve balancing the Claimant's interests in fulfilling its contracts with the property owners against the Defendant's security concerns. As previously stated, I have given little weight to the Defendant's concerns with respect to Mr. Megna entering the Compound. This is due to the paucity of the evidence provided to substantiate these concerns. The Defendant has not pointed to any other loss or damage it could suffer if the Claimant is permitted to access the property.

[37] I have also considered whether there are any special factors to be taken into consideration. At paragraph 28 of his affidavit filed on 24th April 2023 Mr. Megna states as follows:

⁷ [1990] Ch 433

⁸ [1925] AC 619, 94 LJPC 154, 31 Com Cas 10

"I am a director of the company and the main man on the ground who facilitates the construction and building work. If I am not permitted to work, then the Applicant/Claimant cannot complete its responsibilities.

[38] However, the available evidence seems to indicate that permission has been given by the landowners to Mr. Megna in his own right. As previously indicated, Mr. Megna is not the Claimant. In fact, he has sworn to his affidavits as Director of the Claimant and not in his personal capacity. Therefore, his assertion at paragraph 28 of his affidavit does not assist this application.

[39] Accordingly, had the Claimant demonstrated that it (as opposed to Mr. Megna) had been unlawfully denied access to the properties, the balance would tip heavily in favour of granting an interim injunction to the Claimant.

Adequacy of Damages

[40] The Claimant alleges in its affidavits that its business had been negatively affected by the Covid-19 Pandemic. In fact, according to Mr. Megna the company only resumed business in November 2021. Mr. Megna also states *"At present the contracts with the property owners are the only contracts for work that the Company has. Without them the Company will not be able to meet its financial obligations."*⁹

[41] With respect to the Defendant's alleged interference with the Claimant's business Mr. Megna states *"The serious baseless allegations made by the Respondent will injure the Company's business reputation and likely kill any ability for the resuscitation of the Company. The money generated by the Company is my sole source of income, and the Respondent is in effect destroying my ability to feed myself and family to earn a living."*¹⁰ Accordingly, the Claimant submits that damages would not be an adequate remedy if interim relief were to be refused.

[42] If the Claimant's substantive claim is successful at trial the Defendant will be liable for all loss flowing from its unlawful interference with the Claimant's economic interests. Mr. Megna has not stated in his affidavit that this loss is not quantifiable or that the Defendant will be unable to satisfy any award of damages. This is unlike the case of **J.T. Stratford & Son Ltd. v. Lindley & Anor. v. Lindley**¹¹ relied on by the Claimant.

[43] In **American Cyanamid v. Ethicon**¹² Lord Diplock explained as follows:

"...the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be an adequate remedy, and the defendant would be in a financial position to

⁹ Affidavit filed on 19th May 2023 at paragraph 19

¹⁰ Affidavit filed on 19th May 2023 at paragraph 20

¹¹ [1965] A.C. 269

¹² Supra n1

pay them, no interlocutory injunction should be granted, however strong the plaintiff's claim appeared to be at that stage."

[44] In the circumstances the Claimant has not established that any damages awarded by the Court would not be adequate to compensate it for loss suffered as a result of the Defendant's continued actions.

Costs

[45] In accordance with CPR Rule 64.6(1) the Claimant as the unsuccessful party is liable to pay the Defendant's costs. However, the Court observes that the Defendant has not incurred the expense of retaining counsel. The Defendant has also filed one document namely-an affidavit in response which contains scandalous and irrelevant assertions. Accordingly, pursuant to CPR Rule 64.6(3) no order as to costs will be made.

[46] By reason of the foregoing, it is ordered as follows:

1. The application for an interim injunction filed herein on 24th April 2023 is hereby dismissed.
2. The claim is referred to a Master for Case Management.
3. At Case Management the Master is to consider CPR Rule 22.3(2) in order to determine whether the Defendant should be required to be represented by legal counsel.
4. No order as to costs.

[47] The Court takes this opportunity to apologise for the delay in delivering this decision. This was due to the court being engaged in the hearing of several urgent matters during the month of June.

Rene Williams
High Court Judge

By the Court

Registrar