

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2011/0581

BETWEEN:

TRISHELL WETHERILL

Claimant

AND

JOSEPH PINDER

Defendant

AND

LIVINGSTON ROBERTS

Applicant

Appearances:

Ms. Mandi Thomas for the Claimant
The Defendant in person
Mr. Michael Archibald for the Applicant

2023: Sept 5th,
7th

RULING

[1] **WILLIAMS, J.:** On 5th September 2023 I refused an application for an interim injunction to restrain the sale by Public Auction of a parcel of land registered as Parcel 549; Block 613 1989B (Registration Section Potters and Belmont). These are my brief reasons for doing so.

[2] I shall refer to Parcel 549; Block 613 1989B as “The Parcel” for ease of reference. A public auction of the Parcel (along with several other plots of land) was slated for 6th September 2023. Accordingly, this application to restrain the sale was filed on 5th September 2023.

Background

[3] The Parcel is owned by the Defendant, Mr. Joseph Pinder. The Claimant Ms. Trishel Wetherill obtained a money judgment against the Defendant for a substantial sum.

- [4] Pursuant to this judgment the Claimant applied for an Order for the sale of various parcels of land including the Parcel on 17th February 2023. This Application was determined by a Consent Order entered into between the Claimant and Defendant dated 15th June 2023. The order provided for the sale of the Parcel along with several other parcels of land.
- [5] The Applicant Mr. Livingston Roberts for his part indicates that he entered into an agreement with the Defendant to purchase the Parcel. In his affidavit in support of the application he exhibits an agreement for sale with the Defendant dated 28th November 2017 to purchase the Parcel for \$250,000.00. He also exhibits various receipts which indicate that he has paid the Defendant the sum of \$225,000.00 between 2017 and 2021.
- [6] The Applicant in his affidavit indicates that he was unaware of the order for the sale of the Parcel and only became aware of the intended auction on 26th August 2023. That is when he saw a sign advertising the auction on the property.
- [7] It appears that the Applicant brought this state of affairs to the attention of the Defendant who in turn attempted to have the Claimant remove the parcel from the list of parcels to be sold pursuant to the Consent Order. However, no such agreement was forthcoming. Accordingly, the instant application was filed.

Applicant's Submissions

- [8] Counsel for the Applicant indicated that the Applicant intended to apply to the Court to vary the Consent Order of 15th June 2023. This would be on the basis that he had never been served with the Application or the order. Therefore, his interest in the land would be affected without him being given an opportunity to be heard. Counsel also submitted that the Parcel was being purchased for a specific purpose. Thus, an alternative piece of land or damages would not be adequate compensation.
- [9] However, it pointed out to counsel that there was no evidence in the Applicant's affidavit of the land being required for a special purpose or what that purpose was. Further it was noted that there was no undertaking in damages given by the Applicant. Counsel responded that the undertaking could be given if the injunction were to be granted.

Claimant's Submissions

[10] Counsel for the Claimant objected to the grant of an interim injunction. Counsel pointed out that according to the Consent Order the parcel in question was the most valuable of the various parcels of land to be sold. Further, the sale was being conducted pursuant to a valid order of the court which had not been varied or discharged. Finally, the Claimant would be prejudiced by the grant of an interim injunction as her right to reap the fruits of her judgment would be affected.

Defendant's Submissions

[11] The Defendant appeared in person. He indicated that he had no objection to the grant of an injunction as he wished to conclude the contract with the Applicant. Consequently, he had directed that the balance owing for the Parcel should be paid to counsel for the Claimant. He also indicated that he owned other parcels of land some of which he was in the process of developing which could replace the Parcel in the Consent Order.

[12] The Defendant did not give any reason why the Parcel was included in the Consent Order despite the prior agreement for sale with the Applicant.

Discussion

[13] As with any application for interim relief the starting point is the well-known case of **American Cyanamid v. Ethicon**.¹ The factors to be taken into consideration are as follows:

1. A serious issue to be tried;
2. The Balance of Convenience;
3. Adequacy of Damages.

Serious Issue to be Tried

[14] A serious issue to be tried means that the Applicant must have a cause of action which is not frivolous or vexatious. The authorities emphasize that the right to obtain an interlocutory injunction is merely ancillary to and incidental to a pre-existing cause of action.²

¹ [1975] AC 396

² The Siskina [1979] AC 210, 255 per Lord Diplock

[15] In this case the Applicant states that he intends to apply to the Court to vary the Consent Order of 15th June 2023. This is as the said order was made without taking his interest in the land into account. However, it must be pointed out that the order was made by consent and signed by the Defendant. Thus, the inescapable conclusion is that the Defendant although being aware of his prior agreement with the Applicant chose to have the Parcel sold to settle the judgment debt entered against him.

[16] Thus, any cause of action would have to be against the Defendant for breach of contract. This would necessarily be a separate action against the Defendant and not an application in these proceedings which are already at the enforcement stage. Accordingly, for the purpose of these proceedings there is no serious issue to be tried.

Balance of Convenience

[17] This is sufficient to dispose of the application. However, for the sake of completeness I will examine the issues of the Balance of Convenience and Adequacy of Damages. The Applicant has given no undertaking in damages. In **National Commercial Bank v. Olint**³ the Privy Council stated as follows:

“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.”

[18] The usual practice in the grant of interim injunctions is to require an undertaking in damages to compensate the Respondent if it later turns out that an injunction should not have been granted. The Claimant would have already incurred expenses in getting the proceedings to a stage where she is very close to enforcing the judgment in her favour. Further delay and expense would be caused by the grant of an injunction. Therefore, an injunction should not be granted in the absence of this undertaking in damages.

³ [2009] UKPC 16 at paragraph 16

[19] The court file indicates that this Claim commenced in 2011 over twelve (12) years ago. On 4th November 2022 the Learned Master Charon Hippolyte assessed damages \$2,4447,083.56 with interest at 5% per annum. Very little of this sum has been paid to date. Therefore, the balance of convenience dictates that there should be no further hinderance to the Claimant enforcing her judgement.

Adequacy of Damages

[20] The Applicant has given no evidence why damages or an alternative parcel of land would not be sufficient compensation. As previously noted, the Applicant's cause of action lies against the Defendant. If the Defendant is found to be in breach of contract for sale of the Parcel, damages are capable of being assessed in accordance with well-established principles.⁴

Order

[21] Accordingly for the foregoing reasons and in the exercise of my discretion I refused to grant the interim injunction as prayed. This is despite being sympathetic to the plight of the Applicant who may genuinely have had no notice of the order for sale. Therefore, the order of the Court is as follows:

1. The application for an injunction to restrain the sale of Parcel 549, 613 1989B Registration Section Potters and Belmont is refused.
2. No order as to costs

Rene Williams
High Court Judge

By The Court

Deputy Registrar

⁴ Bain v. Fothergill (1874) LR 7 HL 158