

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

GRENADA

CLAIM NO: GDAHCV 2021/0077

BETWEEN

FORT JEUDY ASSOCIATES INC

Claimant

and

REBECCA THOMPSON

Defendant

Before:

The Hon. Mde Justice Agnes Actie

VIA ZOOM

APPEARANCES:

Ms. Maurissa Johnson for the applicant/claimant

Mr. James Bristol Q.C. with Ms. Melissa Modeste- Singh for the respondent/defendant

PRESENT:

Mr. Andre Minors with Dr Ben Unger for the claimant

Defendant present

2021: March 8

ORAL RULING

1. **ACTIE, J:** The application filed by the claimant seeks an injunction restraining the defendant or agents from carrying out or continuing any construction works on Lot 19 of the claimant's development without first obtaining the claimant's approval; an order compelling the defendant to observe and perform the covenants and conditions affecting the development scheme; further or alternatively an order compelling the respondent to remove all structures erected from 1st February 2021 without the developer's permission.

2. The grounds of the application as stated in the notice are that the defendant commenced construction of free standing and boundary walls on Lot 19 in breach of the covenants of the development scheme. The affidavit of Andrew Minors filed February 19, 2021 states that defendant applied and was granted permission to erect temporary fencing. He states that the defendant has erected unapproved fencing which cannot be easily removed and does not appear to be of a temporary nature. The applicant is concerned that the fence being of a permanent nature would be in breach of the relevant restrictive covenant.
3. Mr. Bristol QC for the defendant opposed the application on the ground that the alleged unapproved fencing has been substantially completed. Mr. Bristol further contends that the said restrictive covenant has been relaxed and is no longer enforceable and cites the cases of **Roper V. Williams**; **Peek V. Matthews**; **Sobey V. Sainsbury**. The defendant provided photographs of other fenced properties forming part of the development scheme to buttress her assertion.
4. Ms Johnson for the defendant in response states that most of the properties exhibited by the defendant do not form part of the development. Ms Johnson admits that there has been a relaxation of some of the restrictive covenants and relies on the decision of **German v. Chapman**.
5. The well-known governing principles in considering an application for an interim injunction are provided in **American Cyanamid Co. v Ethicon Ltd**¹ namely:
 1. The applicant must show that there is a serious issue to be tried. The applicant must show that he has a real prospect of succeeding in its claim for a permanent injunction at the final trial.
 2. What would be the balance of convenience of each party should the order be granted.
 3. Whether an award of damages would be an adequate remedy.
6. The main issue to be determined is whether there has been a relaxation of the restrictive covenant by the claimant. The court in **Roper V. Williams** held that a landlord who relaxes in favour of some of his tenants a covenant entered for the benefit of all is not entitled to an injunction to restrain the other tenants from infringing that covenant. In **Peek V. Matthews**² it was held that where a vendor, having taken from each of several purchasers of plots of building land, formerly the same estate, a covenant to build only in a specified manner, has permitted, without interference, material breaches of the covenant to be committed by some of the purchasers, he cannot obtain an injunction to compel another purchaser to observe the same covenant; and there is no difference in the case where the covenant is not only a covenant by each purchaser with the vendor, but also a covenant by each purchaser with all the others; nor in the case where the breaches have been committed before the Defendant became a purchaser, and executed the deed of covenant.
7. The court in **Sobey V. Sainsbury**³ referred to the cases of **Peek v. Matthews**, **German v. Chapman** and **Knight v. Simmonds** on the principles enunciated in those cases in respect to the acts and omissions of the plaintiff and his predecessors in title, and particularly the non-

¹ [1975] 1 All ER 504

² (1867) L.R. 3 Eq. 515

³ . [1913] 2 Ch. 513

enforcement of the covenant are amply sufficient to prevent the Court granting the equitable relief by way of specific performance of the covenant, or, in other words, by way of injunction.

8. The court in considering an application for interim injunction must always keep in mind that the granting of an injunction may carry a greater risk of injustice if it turns out to have been wrong in restraining the defendant. The court must be assured that the applicant will be able to establish his right at a trial. Lord Diplock in **American Cyanamid Co. v Ethicon Ltd** stated, "It is no part of the court's function at this stage to try to resolve conflicts of evidence on affidavit on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."
9. The court is of the view that there are issues of facts which requires further evidence to determine whether there has been a relaxation of the restrictive covenant. The court also notes the applicant is seeking interim reliefs that are similar to some of the reliefs claimed in the substantive claim which if granted may be decisive of the whole case. Applying the authorities to the facts of this case, the court is of the view that the balance of inconvenience in granting the injunction lies with the defendant if it is proven at trial that there has been a relaxation of the said restrictive covenant. There are significant issues of facts and law to be best left for determination at trial.

ORDER

10. For the forgoing reasons, it is ordered that:

- (1) The application for interim injunction is refused with costs to the defendant in the sum of \$1700.00 to be paid before the first case management conference.

**AGNES ACTIE
HIGH COURT JUDGE**

BY THE COURT

REGISTRAR