

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(Civil)

SAINT LUCIA

CLAIM NO. SLUHCV2016/0782

BETWEEN:

MICHAEL CHARLES

Applicant

and

1. NANCY CHARLES
2. INNOCENTIA VINCENT

Respondents

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgenc

High Court Judge

Appearances:

Mr. Horace Fraser for the Applicant

Mr. Leslie Prospere for the Respondents

Parties present

2017: February 1; 8.

Application for interim relief-Serious issue to be tried-whether damages would be an inadequate remedy-where does the balance of convenience lie

DECISION

[1] **CENAC-PHULGENCE, J:** The applicant, Mr. Michael Charles ("Mr. Charles") has applied to the Court pursuant to Part 17 of the **Civil Procedure Rules 2000** ("CPR") for interim relief. He applies for the following orders:

- (a) That the second named respondent, Ms. Innocentia Vincent, ("Ms. Vincent") be ordered and directed to vacate the applicant's property situate at York Hill, Castries forthwith.
- (b) That the first named respondent, Mrs. Nancy Charles (Mrs. Charles") whether acting by herself or any servants or agents be restrained from letting, leasing or otherwise disposing or exercising dominion over the matrimonial property situate at York Hill, Castries until further order.
- (c) That leave be granted to the applicant to file a claim within 21 days of the order of the Court.
- (d) Costs.

[2] The grounds of the application put forward are that:

- (a) by order of the court in ancillary proceedings, Mr.Charles was ordered to pay . Charles the sum of \$121,210.45 and Mrs. Charles was to only vacate the matrimonial home after the sum ordered was paid to her;
- (b) in March 2015, Mrs. Charles obtained a loan and built a house and vacated the matrimonial home in December 2015 and therefore the order made requiring her to remain in the matrimonial home is now spent;
- (c) having vacated the matrimonial home in December 2015, Mrs. Charles continues to exercise dominion over the property, i.e. the living space created for her;
- (d) Mrs. Charles put Ms. Vincent and her family into occupation of the matrimonial property despite the protestations of the applicant;
- (e) Mr. Charles believes that Mrs. Charles has leased the property to Ms. Vincent for financial gain.

Background Facts

[3] A brief summary of the background of the matter is necessary to put this matter in context. By judgment dated 10th November 2015 consequent upon ancillary relief

proceedings, Wilkinson J made certain orders with respect to the matrimonial home. The relevant orders are contained in paragraph [98] of the judgment and are in the following terms:

- “1. ...
2. ...
3. Mrs. Francis-Charles is awarded a half-share in the value of the matrimonial home and which according to the last valuation a half share would be worth \$121,210.45. Mr. Charles is to pay the sum of \$121,210.45 in a lump sum on or before 31st March 2016.
4. Mrs. Francis-Charles after payment of her half-share of the value of the matrimonial home is to vacate same within 30 days.
5. ...
6. The contents of the matrimonial home are to be shared equally on the date of Mrs. Francis-Charles departure from the matrimonial home.
7. ...”

[4] At paragraph 97 of the judgment, Wilkinson J stated as follows:

“Finally, the Court is not prepared to ask Mrs. Francis-Charles to vacate the present matrimonial home since it appears to the Court that she does not have the capacity to pay rent elsewhere as disclosed from her income and expenditure statement. **She will be ordered to depart the matrimonial home 30 days after she is paid her half share.**” (my emphasis).

[5] Mr. Charles filed an appeal on 15th December 2015 against the said judgment challenging the rationale for the award of one half share in favour of Mrs. Charles in the value of the property which is still pending.

Evidence

Mr. Charles' affidavit in support

[6] Mr. Charles avers that by agreement in proceedings before the family court, he partitioned the matrimonial home thus creating an exclusive living space for Mrs. Charles to be by herself. He says that in March 2015, Mrs. Charles obtained a loan and completed the construction of her home in November 2015 and that this fact was not disclosed to the Court. His evidence is that Mrs. Charles vacated the matrimonial home in December 2015 and denied him access to the partitioned

space by retaining the key and leaving behind two domino tables and two stools. That on 13th December 2016, he observed that Ms. Vincent pulled up with a truck and moved furniture and other items into the partitioned part of the matrimonial home. When he confronted her she responded that she was moving in in accordance with an agreement with Mrs. Charles. He says that Mrs. Charles came soon after and ensured that Ms. Vincent was fully moved in. He further avers that despite the fact that Mrs. Charles has her own home she continues to control the partitioned part of the matrimonial home and behaves as though that part of the property belongs to her and she is free to do with it what she wants. His evidence is that he believes that Mrs. Charles has leased the property to Ms. Vincent for financial gain.

Mrs. Charles' evidence in reply to the application

- [7] Mrs. Charles' evidence is that the family court approved their mutual partitioning of the matrimonial home into separate living spaces after she had obtained several Protection and Occupation Orders against Mr. Charles and she exhibited these. She averred that Mr. Charles and her have, from December 2011, exercised continuous dominion over their respective portions of the matrimonial home. Mrs. Charles said that the judgment was reserved on the ancillary relief trial on 6th November 2014 and Mr. Charles' violent and abusive behaviour deteriorated thereafter and this culminated with an incident on 15th March 2015 where Mr. Charles ripped the water connection to the upstairs portion of the home which resulted in police intervention. She averred that as a result of this incident she obtained an interim Protection Order and she had to secure the services of a social worker to compel Mr. Charles to sign the necessary documents to enable her to obtain separate water and electricity connections for the upstairs portion. Mrs. Charles' evidence is that because of the situation, she was left with no choice but to consolidate her debts and obtain a loan to construct a house on a piece of land which she owned.

[8] Mrs. Charles averred that she has never vacated the upstairs portion of the home and that she continues to retain some of her personal possessions such as a few furnishings in the home, pay the utilities consumed and retain the keys for the upstairs portion. Utility bills in her name were exhibited. She says that she continually visited the upstairs portion of the home always accompanied by her brother or some other individual to ensure that her possessions were safe and that she also caused her brother to sleep there periodically. She indicated that when she visited the upstairs portion on 8th January 2016 accompanied by a friend, she met Mr. Charles standing inside with a knife which incident was reported to the police and he was charged. Mrs. Charles gave evidence in her affidavit that this matter was referred to mediation and she agreed to drop the charges provided he stayed away from her and kept the peace for two years. She further averred that since that time she always visits the upstairs portion of the home accompanied.

[9] Mrs. Charles' evidence regarding Ms. Vincent's occupation of the upstairs portion is that she and Ms. Vincent have been close friends since 1985 and that Ms. Vincent is well-known to the applicant and that she did not anticipate any adverse reaction by Mr. Charles to Ms. Vincent's occupation of the space. Mrs. Charles' evidence is that she invited Ms. Vincent to move into the upstairs portion as she needed short term accommodation while she endeavoured to construct a house.

[10] Mrs. Charles gave evidence in her affidavit that she understood that she was to remain in occupation of the upstairs portion of the home until 30 days after Mr. Charles paid her and that to date Mr. Charles has failed to pay her and has failed to obtain a stay of the said order. She averred that Ms. Vincent is merely her licensee and that there is no lease arrangement, oral or written between them.

Ms. Vincent's evidence in reply

[11] Ms. Vincent averred that she and Mrs. Charles have been friends from 1985 since secondary school and that she has always shared a cordial relationship with Mr.

Charles even after the demise of his marriage with Mrs. Charles. Her evidence is that since October 2016, she had been putting arrangements in place to build her own home. That the landlord of her previous dwelling gave notice that he needed to renovate the property and as such she required urgent alternative short term accommodation. With Mrs. Charles moving out of the matrimonial home, she says that she got an opportunity to get free short term accommodation and so she discussed with Mrs. Charles who readily agreed for her to move into the upstairs portion of the matrimonial home. Ms. Vincent's evidence is that she moved to the home on 13th December 2016 and on her arrival she was confronted by Mr. Charles who demanded to know why she was there and she responded that Mrs. Charles had given her permission to move there. Ms. Vincent said that Mr. Charles began quarrelling with her and so she called Mrs. Charles who came and explained that the court had authorised her to remain on the property and that she was entitled to invite Ms. Vincent to stay there. She further gave evidence that on 9th January 2017, Mr. Charles met her on the road and again demanded to know what she was doing in his house. Ms. Vincent says she is responsible for paying for the utilities that she consumes at the property and to ensure that Mrs. Charles' personal possessions are secure and properly cared for.

Mr. Charles evidence in response

- [12] Mr. Charles in response to the evidence in reply of Mrs. Charles and Ms. Vincent says that his understanding of the order of Wilkinson J was that he was to pay Mrs. Charles for her contribution towards the maintenance and improvement of the matrimonial home and that it did not make her the owner of the matrimonial home. I do not think that this is disputed at all by the respondents. He further states that contrary to what Mrs. Charles says in her evidence in reply, she has completely moved out of the matrimonial home leaving two stools and two domino tables and that there was no bed there to accommodate anyone sleeping there before Ms. Vincent took up residence. He exhibits some photographs to support this

evidence; however the photographs are hardly visible and do not assist the Court any further.

Analysis and Discussion

- [13] On an application for an interim injunction, the principles for the court's consideration are well established by the often cited authority of **American Cyanamid Co. v Ethicon Ltd.**¹ The principles are: (a) there must be a serious issue to be tried; (b) where does the balance of convenience lie and (c) whether the applicant would be not be adequately compensated by damages.

Serious issue to be tried

- [14] There must be a substantive cause of action in the jurisdiction where the injunction is sought. Lord Diplock in **The Siskina**² put it this way:

"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

It is the general principle that the claimant cannot obtain an injunction unless he can show an invasion of some legal or equitable right.

- [15] Counsel for the applicant, Mr. Fraser submitted that the cause of action against the two respondents is in trespass. He argued that Mrs. Charles' possession in the property was conditional upon her receiving the lump sum and that this payment has not been made because the matter is under appeal. His contention is that in December 2015 when Mrs. Charles vacated the upstairs portion of the

¹ [1975] AC 396 at 408.

² [1979] AC 201 at 256.

matrimonial home, she had a licence which was conditional. He argued further that the court did not give Mrs. Charles a legal right but a licence and the basis of the court's order was that she did not have the financial capacity to go anywhere else. Her vacating the property was conditional upon the payment of the monies by Mr. Charles. Counsel argued that Mrs. Charles being a licensee could not delegate or transfer the licence. He referred to the definition of licence in Osborn's Law Dictionary as being "an authority to do something which would otherwise be inoperative, wrongful or illegal."

[16] Counsel, Mr. Fraser argued that when Mrs. Charles vacated the matrimonial home she no longer had an interest and could no longer display possessory control over the property. He said that whereas Mrs. Charles indicated that she goes to the house periodically, Mr. Charles' photographs show that no one lives or sleeps there. As mentioned before, the Court was unable to see what Mr. Charles alluded to as the photographs were barely visible and were taken in January 2016. Mr. Fraser went on to submit that Mrs. Charles has given up her right of occupation given by the court and so this is the end of any interest which she would have had in the property, save for the money ordered to be paid to her by the court.

[17] Mr. Fraser argued that having vacated the property and abandoned her right, she came back to the premises without authority and this is a trespass and also he says Mrs. Charles committed waste in conducting repairs to the property to accommodate Ms. Vincent. Mr. Fraser went on to submit that the property was Mr. Charles' separate property and the court on being asked for financial provision did so by reference to the contribution to the matrimonial home by Mrs. Charles.

[18] Counsel for the respondents, Mr. Prospere forcefully rejected the suggestion that there was any serious issue to be tried. He said that all paragraph 97 of the judgment of Wilkinson J sought to do was to give Mrs. Charles a possessory right

to the upstairs portion of the matrimonial home until she was paid her share in the house by Mr. Charles. Mr. Prospere submitted that nowhere in the order of Wilkinson J does it state that Mrs. Charles' right to remain in the property expires before she is paid or upon any other event occurring. Counsel urged the court to decline any suggestion to interpret the order otherwise as to do so would be to re-write the order of Wilkinson J. Counsel suggested that Mrs. Charles' evidence was clear that there was substantial interference with her rights of occupation by Mr. Charles and that there had been a pattern of violent behavior towards her which was what propelled and forced her to obtain a loan to construct a house. Counsel, Mr. Prospere, submitted that Mrs. Charles was forced out of the matrimonial home and she had reasonable and well-founded reasons for leaving the property. He argued that the evidence shows clearly that Mrs. Charles continues to maintain a presence at the matrimonial home upstairs portion and he pointed out that the judgment did not provide that she would lose her possessory rights if she maintained a presence elsewhere.

- [19] At the onset I note that there has been no stay of the judgment of Wilkinson J as relates to payment by Mr. Charles of the lump sum payment by 31st March 2016. Counsel for Mr. Charles indicated to the court that he did need a stay which is a very strange proposition given that it is trite law that an appeal does not operate as a stay. For this court to engage the submissions of Mr. Fraser that paragraph 97 of the judgment gave Mrs. Charles a licence to the upstairs portion of the house is in my opinion an attempt to re-write the order and insert words which are not there and which may not have been in the contemplation of the judge at all. It is clear that the paragraph intended to allow Mrs. Charles to retain possession of the upstairs portion of the matrimonial home until Mr. Charles paid her. It is clear that Mrs. Charles was not being given legal ownership but that the court in dealing with the property, found that Mrs. Charles had contributed to its maintenance and so awarded her a half-share of its value. That could only be an equitable interest in the upstairs portion of the home.

[20] Mr. Fraser's argument in reply that if the appeal is dismissed, Mr. Charles would have to pay Mrs. Charles and he does not get the benefit of the use and enjoyment of the property and that if the injunction is not granted, he would be denied the benefits of the use and enjoyment so long as he does not pay Mrs. Charles is quite an interesting submission for as far as I see it, Mr. Charles would have full use and enjoyment of his property once he paid Mrs. Charles. The fact that he has taken long to pay her cannot be a factor to be taken into account.

[21] It is clear from the evidence that Mr. and Mrs. Charles have had a history of domestic issues as is clear from all the proceedings before the family court. It is also clear from the evidence that Mrs. Charles vacated the matrimonial home to get away from the situation. Mr. Fraser argued that when Mrs. Charles vacated the home in December 2015, the last incident between them had occurred in March 2015. To my mind that is of no moment since Mrs. Charles indicated in evidence that she secured a loan in March 2015 to construct her house which means that by then she had made up her mind to leave. Having rejected the notion that Mrs. Charles could only have been a licensee, I am of the view that Mrs. Charles was granted permission to continue in occupation and possession of the upstairs portion until Mr. Charles paid her. It certainly could not be that Mr. Charles could take whatever time he chose to pay Mrs. Charles and that she was bound to stay in the premises.

[22] I conclude that the applicant Mr. Charles has not shown that there could be a cause of action against Mrs. Charles in trespass since she has an equitable interest in the property and was given a right to remain or that there is a serious issue to be tried. His challenge to the order of Wilkinson J is to be dealt with by the appeal court. Mr. Charles has also not shown any evidence to controvert Mrs. Charles' and Ms. Vincent's evidence that the occupation of the upstairs portion of the house by Ms. Vincent is rent free and is not the subject of any lease. All that

was asserted by Mr. Charles was a belief that the property was being rented for financial gain. That being the case and on the evidence, Ms. Vincent is occupying the property with Mrs. Charles' permission, and therefore no action in trespass can be maintained.

- [23] Once it is found that there is no serious issue to be tried and no pre-existing cause of action, there is really no need to consider the other principles but for the sake of completeness I will deal with them briefly.

Where does the balance of convenience lie and whether damages would not be an adequate remedy

- [24] Mr. Fraser argued that Mr. Charles' right to have his property is being denied by the presence of a third party who is there without his approval or authority which exposes the property to the danger of it being damaged which shows that the balance of convenience lies in Mr. Charles' favour. This is not supported by evidence. Mr. Charles did not present any evidence of damage to the property caused by the third party.
- [25] Counsel, Mr. Fraser submitted that damages would not be an adequate remedy as one could not measure the level of mental distress that Mr. Charles would suffer. There is little or no evidence of the mental distress of Mr. Charles to support this contention. Mr. Prospere argued that the applicant failed to show that damages would be an inadequate remedy if the injunction were not granted. He questioned whether there was any evidence of mental or psychological distress as the evidence of both Mrs. Charles and Ms. Vincent was that Mr. Charles did not even live at the house for the most part. This evidence from Mrs. Charles and Ms. Vincent was not refuted or countered by Mr. Charles' evidence. Counsel, Mr. Fraser only asserted that Mr. Charles was free to live where he wanted to. In relation to the balance of convenience, Mr. Prospere submitted that the balance lies in favour of the respondents as neither of them has committed any civil or

criminal wrong which even if there was it could be compensated in damages. He argued that the applicant has failed to satisfy that Mrs. Charles is no longer in occupation of the matrimonial home. He asked that the application be dismissed with costs.

- [26] The balance of convenience cannot lie with Mr. Charles as it is his own doing that has prevented him from having the full use and occupation of the property. He has not paid Mrs. Charles and therefore the order of Wilkinson J cannot be carried into effect and Mrs. Charles retains the rights given to her by the Court until he so pays. How long that would take is solely dependent on Mr. Charles.

Conclusion

- [27] I find that the applicant, Mr. Charles has not satisfied the court that he has grounds upon which an injunction should be granted and neither has he satisfied the American Cyanamid test. As such the application for an interim injunction is dismissed with costs to the respondents jointly in the sum of \$750.00.

Kimberly Cenac-Phulgence
High Court Judge