

The Eastern Caribbean Supreme Court

In The High Court of Justice

Saint Vincent and the Grenadines

SVGHCV2015/0201

BETWEEN:

GEORGE WILLIAMS

AND

AGNES WILLIAMS

Claimants/Applicants

AND

SYD BROWNE

Defendant

2016: Jan. 18
Feb. 1

Appearances: Mr Grahame Bollers for the Claimants/Applicants, Mrs Kay Bacchus-Browne for the Defendant.

JUDGMENT

Background

[1] **Henry, J.:** The Applicants Mr George Williams and Mrs Agnes Williams reside at Edinboro on property they bought in 1977. It adjoins a parcel of land¹ (“the disputed

¹ Comprising 4589 sq. ft.

property”) which Ms Syd Browne purchased from Baldwin Jarvis in October 2015.² Within months of acquiring title to the land, Ms Browne commenced construction of a dwelling house on it. Mr and Mrs Williams allege that they have been in possession of the disputed property in excess of 38 years. They seek an interim injunction restraining Ms Browne whether by herself, agents or servants from constructing, erecting, causing construction or erection of any building or structure on the disputed land. Ms Browne contends that she is the lawful owner and opposes the grant of an interlocutory injunction.

ISSUE

[2] The issue is whether George Williams and Agnes Williams should be granted the interim injunction restraining Syd Browne from constructing, erecting or causing the erection or construction of any building or structure on the disputed land?

LAW AND ANALYSIS

Issue – Should George Williams and Agnes Williams be granted an interim injunction restraining Syd Browne from constructing, erecting or causing the erection or construction of any building or structure on the disputed land?

[3] The court is empowered by the Civil Procedure Rules 2000 (“CPR”)³ to grant an interim injunction. It exercises this authority on discretionary principles⁴ as enunciated in the *locus classicus* **American Cyanamid Co. v Ethicon Ltd.**⁵ In this regard, the court

² See Deed of Conveyance No. 3431 of 2015 between Baldwin Joseph and Syd Browne dated 20th October, 2015.

³ CPR 17.1 (1) (b) states:

“ The court may grant interim remedies including-

(a) ...

(b) an interim injunction;”

⁴ See Bean on Injunctions, 9th Ed. para. 1.20.

⁵ [1975] A.C. 396.

must consider if there is a serious issue to be tried between the parties. If there is none, an interim injunction will not be granted. However, if there is a triable issue the court must determine whether damages would be an adequate remedy and if there is doubt, weigh the respective needs of the parties and decide where the balance of convenience lies.⁶ In exercising its discretion the court must remain mindful of the overriding objective of the CPR.⁷

Serious Issue to be tried

[4] Mr and Mrs Williams filed a Fixed Date Claim Form⁸ in which they seek a declaration that they are entitled to possession of the disputed property. They claim also that Ms Browne's title has been extinguished by their adverse possession of the dispute property and they seek a permanent injunction and damages for trespass and physical damage. Their application for an *ex parte* interim injunction⁹ was heard *inter partes* and is supported by two affidavits sworn by Agnes Williams and a third by Dominique Bess. Mrs Williams deposes that she and her husband went into occupation of the disputed property soon after purchasing the adjacent lot. She attests that they have exercised acts of ownership over it for over 38 years including planting grass and plants and maintaining a lawn.

[5] Mr Bess avers that he was the person responsible for the lawn and trimming of the hedge for 21 years.¹⁰ He remarked that a few crotons were planted there but they died through old age. During that time, no one ever stopped him from maintaining the land or ever claimed it as theirs. Mrs Williams claims that their occupation and

⁶ Ibid. at pg. 406 per Lord Diplock.

⁷ CPR 1.2.

⁸ On January 8, 2016.

⁹ Filed on December 29, 2015.

¹⁰ From 1992 to 2013.

enjoyment of the disputed land has not been challenged during that period, and they have therefore acquired interest in the disputed land through adverse possession.

[6] Ms Browne mounts a forceful claim to ownership of the disputed property in her affidavit¹¹. She deposes that she saw a newspaper advertisement offering the disputed property for sale in March 2015 and conducted enquiries including visiting the site and speaking with Mrs Williams about the advertisement. She bought the land from Baldwin Jarvis some time after. Her testimony is that Mrs Williams spoke to her from her kitchen door and told her that she had to get first preference if the land is for sale and “*people can’t build house in front other people.*” Mrs Williams denies this and states that she told Ms Browne that Jarvis does not own any land around there. She also denies seeing any advertisements in the newspaper or having knowledge of the then impending sale.

[7] Mr Jarvis supplied an affidavit in which he indicates that the Williamses cut the grass on the disputed land and planted crops on it with his permission until 2013 when he had his lawyer write them asking them to desist from undertaking further activities there. He indicated that since his lawyer issued the letter to the Williamses, they have not ventured onto the property. In her second affidavit, Mrs Williams acknowledged receipt of that letter. However, she insists that their failure to respond was based on legal advice and not indicative of acquiescence in Mr Jarvis’ then alleged title. Mr Jarvis deposes that he has paid all land taxes and rates up to 2015 and visited the disputed property fairly regularly. He attests further that the property was advertised for sale over a period of two months.

[8] The court is not concerned at this stage of the proceedings with resolving “conflicts of evidence” or “difficult questions of law”¹². The parties’ competing claims to right of possession of the disputed property raise substantive issues of ownership and trespass. As articulated, those matters are neither frivolous nor insignificant and arose

¹¹ Filed on January 11, 2016.

¹² Ibid. at pg. 407 per Lord Diplock.

prior to the filing of the application. I have no difficulty therefore in finding that there is a serious issue to be tried between the parties arising from a pre-existing cause of action. I so hold.

[9] Ms Browne contends that the Williamses' failure to disclose the letter from Mr Jarvis' attorney is a material non-disclosure which operates against them and is a basis for denying the interim injunction. She submits further that Mrs Williams failed to disclose their conversation, the fact that the sale was advertised in a local newspaper and she did nothing and that Mr Jarvis has paid land taxes all along. Mrs Williams claims she was unaware of the newspaper advertisements.

[10] The law requires an applicant seeking an *ex parte* injunction to bring to the court's attention any potential defence which might be raised by the other side. The applicant also has a duty to provide full and frank disclosure of all material details surrounding the subject matter.¹³ He or she is obliged to make appropriate inquiries before filing his application and supply the court with information obtained pursuant to those inquiries. It is no excuse for him to say that he did not know facts he would have discovered if his queries were thorough. Mr and Mrs Williams cannot reasonably be heard to say that they were unaware of the sale. It was advertised locally and such publication would have placed them on constructive notice. In addition, they would have been able to ascertain if land taxes were paid up if they had asked the relevant authorities. Furthermore, their failure to disclose the letter from Mr Jarvis' lawyer is mystifying.

[11] Notwithstanding these failures, it is to be noted that not every instance of non-disclosure would adversely affect an applicant's chances of success. It must be material and intentional. Each bit of information withheld by Mr and Mrs Williams in some measure lends support to Mr Jarvis' and Ms Browne's respective claims to title of

¹³ **Brink's Mat Ltd v. Elcombe and others [1988] 3 All ER 188.** See also **Lucita Angeleve Walton (née Lucita Angeleve De La Haye) and others v Leonard George De La Haye BVIHCVAP2014/0004.**

the disputed land at the relevant times. Individually, they might be considered inconsequential or coincidental but together they are significant. I therefore consider them to be material and negatively affect the Williams' chances of securing an interim injunction.

Adequacy of damages

[12] Would either party be adequately compensated in damages? Mr and Mrs Williams contend that if the interim injunction is not granted, Ms Browne will proceed with her construction and they would be deprived of possession of the disputed land. They argue that damages would not be adequate as Ms Browne would likely have completed construction of her dwelling house. They apprehend that if this happens, the foreseeable and natural outcome would be an order denying them possession of the disputed land and granting them compensation for deprivation of its use and damages for trespass. Ms Browne in those circumstances, would retain possession and title.

[13] Mrs Williams deposes that she and her husband have savings from which they can pay any damages awarded and they also have the support of their granddaughter who is employed as an accountant with KPMG in Manhattan, USA. She avers that their property at Edinboro is unencumbered. They have filed no undertaking in damages nor have they disclosed the value of their savings or their home. The reference to their granddaughter seems to be a veiled acknowledgement that they personally do not have the ready means to satisfy an award in damages in favour of Ms Browne.

[14] Ms Browne submits that she would suffer the greater detriment as an award of damages to the applicants would be far less than one to her. She has lodged a copy of Deed of Conveyance No. 3431 of 2015 with the court. On the face of it, she paid on or about October 20, 2015, a purchase price of \$54,000.00 for the entire parcel. The Williamses do not challenge this value. In all probability, this price reflects the market value of the land. Ms Browne avers that she has secured a mortgage just under

\$200,000.00¹⁴ for which she is making monthly repayments of \$2,190.00. Part of this sum is in respect of the loan for the land.

[15] Ms Browne does not state if she is currently living in rented accommodation or property owned by her. However, it is certain that if an interlocutory injunction is granted to restrain her from further construction, she will be required to continue making loan payments to the bank, while not being able to realize the benefits for which she secured the loan. Meanwhile, construction costs are likely to increase in the intervening period. If she is ultimately declared to be owner of the disputed property, she would probably need to source additional funding to complete the dwelling house. This translates to increased overall cost inclusive of additional principal and interest. In any event, she would be unable to utilize the dwelling which she started constructing.

[16] While Ms Browne's potential losses might be quantifiable and could be the subject of an award in damages, those damages are likely to be substantially more than those recoverable by the Williamses. Moreover, the unknown variables make it impossible to state categorically that Ms Browne's prospective losses could be quantified and made the subject of a damages award. It is certain that she is likely to suffer greater damage than the Williamses.

[17] On this question, I am inclined to agree with Ms Browne. I find that Mr and Mrs Williams' potential losses can be compensated by an award of damages while Ms Browne's might not. If the Williamses were to prevail at trial of the substantive matter, they would be entitled to damages for trespass from late December 2015 to the date of judgment. In addition, they would be able to recover the land or its value, of approximately \$54,000.00. Having so found, this is a case in which it is not strictly necessary to consider where the balance of convenience lies. Nonetheless, I do so for the sake of completeness.

¹⁴ In respect of the land and construction expenses.

Balance of convenience

[18] If the interim injunction is granted Mr and Mrs Williams would continue using the disputed property as an extended lawn and garden. They would enjoy the aesthetical satisfaction of having a wide verge for gardening and other related purposes while Ms Browne would be prevented from constructing her home and suffering the attendant losses referenced earlier. If ultimately, Ms Browne was the successful party, she would be entitled to the disputed property, damages for trespass and loss of opportunity to build at a reduced cost, including the related increases in construction expenses referred to earlier.

[19] On the other hand, the Williamses would be denied access and possession of the disputed land once and for all as the court would probably not order demolition of the newly constructed building. Mr and Mrs Williams would recover damages reflective of the property's value.

[20] Having examined the respective positions of the parties, and in particular the likely inconvenience each would suffer from the grant or refusal of an interim injunction, I am satisfied that the balance of convenience swings in Ms Browne's favour. Accordingly, I hold that in all the circumstances it is neither just nor convenient to grant the interim injunction. In view of the material non-disclosure by the Williamses, my assessment that damages would be adequate and that the balance of convenience favours Ms Browne, the application for an interim injunction is refused.

ORDER

[21] It is accordingly ordered:

1. George Williams' and Agnes Williams' application for an interlocutory injunction restraining Syd Browne whether by herself, agents or servants from constructing, erecting, causing construction or erection of any building or structure on the disputed land is dismissed.

2. George Williams and Agnes Williams shall pay Syd Browne assessed costs of \$1500.00 pursuant to CPR 65.11.

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Esco L. Henry
HIGH COURT JUDGE