

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2013/0021

BETWEEN:

**CHRISTOPHER LORD
MARTHLIN LORD-THOMAS**

Claimants

and

TROY DANIEL

Defendant

Appearances:

Ms. Kim George for the Claimants

Mr. Anslem Clouden and Ms. Sandina Date for the Defendant

2013: June 12

2013: July 31

RULING

- [1] **MOHAMMED, J.:** Often in this jurisdiction warring family members seek the Court's intervention for a temporary truce until a declaration of victory can be made by one of the parties at the end of a trial. Emotions run high in disputes relating to the ownership, rights to possession and/or the use of land by family members. The instant matter contains all the components of a family dispute relating to land. The First and Second Claimants and the Defendant are related, being uncle, aunt and nephew respectively. The First and Second Claimants are the owners of certain parcels of land situate at St. Paul's, St. Georges', Grenada ("their property") and have sought the Court's intervention for injunctive relief to stop the Defendant, his

servants and/or agents from using a 4-feet footpath ("the path") and a 10-feet road ("the road") respectively which form part of their property.

- [2] There are two deeds of assent dated 23rd December, 1993. The parties agreed that the path and the road are set out in the plans annexed to the respective deeds of assent between Janet Harris and the First and Second Claimants. They are also exhibited at JH 1 and JH 2 to the affidavit of Janet Harris filed 25th February 2013. I have attached them as an appendix "A" ("plan A") and Appendix "B" to this ruling ("the plan B"). Plan A shows the First Claimant's property is 3,143 square feet. The path is on its Western boundary, the lands north of the First Claimant's property is described as heirs of Helen Whitstanley, the Eastern boundary is bounded by the lands of Pearlina Whiteman and the Southern boundary is the land of Agnes Lord. Plan B shows the Second Claimant's property which is 5,284 square feet. The Western boundary is the road, the Northern boundary is the First Claimant's land, the Eastern boundary is the lands of Pearlina Whiteman and the Southern boundary is the road.
- [3] The Claimants contend that there is a serious issue to be tried between the Claimants and the Defendant's right to use the path and the road, that they have a realistic prospect of succeeding in their claim, that damages are not an adequate remedy in light of the physical danger which the First Claimant and his family feel due to the constant and consistent threats from the Defendant and because of this threat he is unable to enjoy his property and as such he would suffer the greater injustice if the injunction is not granted.
- [4] On the other hand, the Defendant contends that the path and road have been used by his grandmother, Agnes Lord (who was also the mother of the Claimants), his father, Paulin Lord and his mother, Gemma Daniel continuously for over 20 years. He contends that the action is frivolous; it is the First Claimant who has been harassing him and not otherwise and that he would suffer the greater inconvenience

if the injunction is granted since he would be denied access to his home at St. Pauls.

[5] As with all family disputes, the parties who filed affidavits and who were cross-examined were all related. Apart from the First Claimant and the Defendant, the Defendant's mother, Gemma Daniel and his aunt Janet Harris who is also the First and Second Claimants' elder sister gave evidence for the Defendant.

[6] It was common ground that the questions which the Court must consider in exercising its discretion where injunctive relief is sought were set out in the **American Cyanamid**¹ case, which are:

- (a) The Court must first examine whether there is a serious issue to be tried. If there is no serious issue to be tried then the injunction should not be granted. If there is a serious issue to be tried then the court should examine (b).
- (b) Whether the Applicants/Claimants can be adequately compensated in damages by the Respondent/Defendant for any loss suffered as a result of the Respondent's/Defendant's action if the Applicants/Claimant is successful at trial. If the Applicants/Claimants can be compensated then no injunction should be granted.
- (c) If the party seeking the injunction cannot be adequately compensated with damages or if there is doubt, then the Court must examine where does the balance of convenience lie, or which party would suffer the greater injustice if the injunction is granted.

Serious issue to be tried

[7] I do not agree with Counsel for the Defendant that the instant claim is vexatious or frivolous. Indeed, I have been persuaded, based on the evidence before me, that there are several serious issues to be determined at trial such as:

¹ [1975] 1 All ER 504

- (a) Do the path and road form part of the property owned by the Claimants?
- (b) Did Agnes Lord instruct Janet Harris to survey the property and demarcate the path and road?
- (c) Does the plan annexed to the Deed accurately reflect the intention of Agnes Lord?
- (d) Did Janet Harris act properly by having the path and road demarcated in the plan annexed to the Deed?
- (e) Has the Defendant established that he either by himself or through his father and grandmother Agnes Lord had used the footpath and road for a continuous period of 20 years without any resistance?

Are damages an appropriate remedy for the First and Second Claimants?

- [8] In **Jetpak Services v BWIA International Airways**² de la Bastide CJ had this to say on the formula to be applied by the Court in granting an injunction:

"I would consider the rule that an injunction ought never to be granted if damages can provide an adequate remedy to be one which is too narrow to be applicable in every case."³

- [9] Sach LJ in **Evans Marshall & Co Ltd v Bertola SA**⁴ suggested that:

"The standard question in relation to the grant of an injunction, "are damages an adequate remedy?" might perhaps in the light of all the authorities of recent years, be rewritten: "Is it just in all the circumstances that a plaintiff should be confined to his remedy in damages?"

² (1998) 55 WIR 362

³ Supra at page 368

⁴ [1973] 1 WLR 349 at page 379

[10] The relief sought by the Claimants in the substantive action are a declaration that they are the fee simple owners of their property, that the Defendant is not entitled to enter or cross their property, injunctive relief stopping the Defendant from entering or crossing the First and Second Claimant's property, general damages for trespass, and with respect to the First Claimant, aggravated damages for trespass, statutory interest and costs.

[11] Although the Claimant has pleaded a claim for both injunctive relief and damages which on the face of it may appear to be inconsistent, each case must be decided on its own facts. In my view to adopt the position that an injunction ought never to be granted if damages can provide an adequate remedy would be too narrow given the evidence before the Court in the instant application. I agree with the First and Second Claimants that should they succeed at trial any damages that may be awarded would be an inadequate remedy due to the physical danger the First Claimant feels for himself and his family on a daily basis on property which he has a proper title to and in which he has invested significant sums⁵. I therefore find that damages would not be an adequate remedy for the Claimants, in particular the First Claimant if they succeed at trial, given the evidence in support of the instant application.

Where does the balance of convenience lie?

[12] The question which the Court must ask itself is which party will suffer the greater inconvenience; the Claimants who are the owners of their property by virtue of the Deed, or the Defendant who has admitted that he does not own the land he occupies and which he uses the path and road to access.

[13] In my view, the Claimants, in particular the First Claimant would suffer the greater inconvenience if an injunction is not granted in their favour. I do not agree with Counsel for the Defendant that the Claimants would not suffer harm if the status quo

⁵ Affidavit of Christopher Lord filed 15th January 2013 paragraphs 11-25 and supplemental affidavit of Christopher Lord filed 18th February 2013

is maintained since the First Claimant has a fence around his property and it is the Defendant who will suffer the greater inconvenience since he will not have access to his home. The First Claimant stated that if the injunction is granted the Defendant can access his home from the Good Hope Road⁶. This evidence was not challenged by the Defendant. I therefore find that there is an alternate option for the Defendant to access his home if the injunction is granted.

[14] The Defendant has stated that the First Claimant has provoked him. The First Claimant stated that he cannot enjoy the use and enjoyment of his property due to the verbal and physical threats to himself and his family. Despite the Defendant being convicted in the Magistrate's Court on 6th May 2011 where the Defendant was ordered to pay a fine of \$150.00 in default one month imprisonment for threatening language, the conduct by the Defendant to the First Claimant continued subsequently. In my view, the present relationship between the parties cannot be allowed to continue. The present status quo is poisonous and I see no useful purpose in maintaining it. The Claimants' title to the property was not disputed by the Defendant. I find that the evidence weighs in favour of changing the status quo until the trial of the action.

[15] One of the reliefs sought in the substantive claim is injunctive relief to stop the Defendant from crossing their property. The granting of this injunction would in effect give the First and Second Claimants one of the interim relief requested in the substantive claim until trial of the action. **The Caribbean Civil Practice** at page 147 on interim remedies provides some useful guidance on the approach the Court should take when the grant of an injunction would in effect dispose of the action:

"Where a grant of an injunction will in effect dispose of action: where the circumstances of the case are such that the grant or refusal of an interlocutory injunction will effectively end the action (usually because, by the time the matter comes on for trial, there will be nothing worth fighting about)

⁶Paragraph 9 of Affidavit of Christopher Lord filed 5th April 2013 in in response to affidavit of Gemma Daniel filed 25th February 2013.

the court would look beyond the mere balance of convenience and form a view of the likelihood of success of the parties at trial".

[16] The Claimants have established at this early stage that they have a realistic prospect of succeeding in their action. At the time of the hearing of the instant application the pleadings were closed with the Claimants' Reply being filed on 15th March 2013. The crux of the Defendant's defence and opposition to the instant application is he acquired a right of as a user in relation to the path and the road by himself, his grandmother, Agnes Lord and his father, Paulin Lord pursuant to the Prescription Act of Grenada⁷. **Section 2 of the Prescription Act** ⁸ provides:

"When any profit or benefit, or any way or easement, or any watercourse or the use of any water, a claim to which may be lawfully made at common law by custom, prescription or grant has been actually taken and enjoyed or derived upon, over or from any land or water of Her Majesty or of any person, by any person or owner of land claiming right thereto, without interruption for the full period of twenty years, the right thereto shall, subject to the provisos hereinafter contained, be deemed absolute and indefeasible unless it appears that it was enjoyed by some consent or agreement made or given for that purpose in writing."

[17] To establish a right of user there are certain elements which a party must establish, namely long use without force (*nec vi*) without secrecy (*nec clam*) and without permission (*nec precario*). He must prove that he is the freehold owner of the land which he occupies: **Pugh v Savage**⁹, that there was no resistance by the owner of the land to the exercise of the easement by the Defendant over the 20-year period **Smith v Bridenell-Bruce**¹⁰ and the enjoyment of the easement must be long, peaceable and open **Gardner v Hodgson's Kingston Brewery Co**¹¹.

⁷ Paragraphs 19-23 of affidavit of Troy Daniel filed 25th February 2013

⁸ Chapter 252, Volume 11 of the Laws of Grenada 2010

⁹ (1970) 2 All ER 353 at 356 g

¹⁰ (2002) 2 P & CR 51

¹¹ (1903) AC 229

[18] Although the First Claimant acknowledged that Paulin Lord (deceased) lived on the land behind him from about 1980 to the time of his death on 13th November 2012, there has been no evidence presented by the Defendant to demonstrate that he nor any of the persons through whom he claims, including Paulin Lord and his grandmother, are the legal owners of the land which he occupies. The Defendant did not plead a defence of adverse possession in his Defence and in any event a plea of adverse possession is a shield and not a sword.

[19] It was common ground by the First Claimant and the Defendant that there has been continuous and consistent conflict to the use of the path and the road¹² by the Defendant and his father. The Defendant admitted in cross-examination that he always knew that the First Claimant objected to his use of the path yet he continued to do so. He also admitted using threatening language towards the First Claimant. Indeed there has even been the use of force. The Claimant stated that he had erected a fence over the property which the Defendant and his father tore down,¹³ which was not challenged by the Defendant. I find that the evidence from both parties is the use of the path and the road is far from peaceful and that the objections by the First Claimant of the Defendant using the path and road are not recent. In any event, the validity of the path and the road is one of the issues to be determined at the trial and not at this preliminary stage.

[20] Finally, even if I am to accept the Defendant's evidence, his claim for prescription at this stage of the proceedings is weak. According to Janet Harris, Agnes Lord used the road during her lifetime when she occupied the land which the Defendant now occupies and his parents before him¹⁴. If I accept that Agnes Lord was in possession or owned all the land, she could not prescribe against herself under the

¹² Paragraph 8 of affidavit of Christopher Lord filed 5th April 2013; paragraph 11 of affidavit of Gemma Daniel filed 25th February 2013

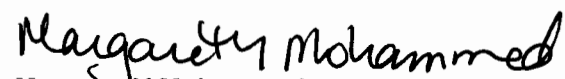
¹³ Paragraph 22 iii of affidavit of Christopher Lord filed 5th April 2013 in response to the affidavit of Troy Daniel filed 25th February 2013.

¹⁴ Affidavit of Janet Harris filed 25th February, 2013

Act¹⁵. The evidence was his grandmother Agnes Lord was disabled and bedridden and unable to use the path and the road or occupy the lot presently occupied by the Defendant since 1993. I accept this position. Even if I accept that the First Claimant cannot say that the Defendant was not born on the land since he was in Trinidad sometime prior to the death of Maurice Bishop, which was anytime before 1983, and he remained there in excess of seven years which included the time of birth of the Defendant in 1987, the Defendant who is now 29 years old could only have prescribed in his own right from age of majority some 8 years ago in 2005. Although, Gemma Daniel stated that she and Paulin lived on the land continuously for 32 years from 1980 this was challenged by the First Claimant.

Order

- [21] For the aforesaid reasons, I order that the Defendant his servants and/or agents are prohibited until further order from entering or crossing the First and Second Claimants' land situate at St Paul's in the parish of St George, Grenada. The Defendant is to pay the Claimants' costs of the application to be assessed if not agreed. The matter is to take its normal course in the Court's calendar.


Margaret Y Mohammed
High Court Judge

¹⁵ Hulbert v Dale (1909) 2 Ch 570