

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0043/2008

BETWEEN:

SYLVANIE CONNOR
KEITHLEY HODGE
(as Administrators in the Estate of Albert Alfred Hodge, deceased)
Respondents/Claimants

And

ILEEN HODGE-RICHARDSON
(Administrator of the Estate of Albert Hodge, deceased)
Applicant/Defendant

Appearances:

Ms. Jenny Lindsay for the Applicant/Defendant
Ms. Navine Fleming for the Respondents/Claimants

2010: October 30

DECISION

[1] BLENMAN, J: This is an application by Ms. Ileen Hodge-Richardson in which she seeks to have the court restrain Ms. Sylvanie Connor and Mr. Keithley Hodge from trespassing on Parcel 201 of Registration Section West End, Block 18011B. She also seeks a number of injunctive reliefs against them, including preventing them from abusing, cursing, harassing or threatening her.

[2] The application for injunctive reliefs is opposed by both Sylvanie and Keithley.

Background

- [3] This application comes in the face of a series of long court actions between the parties. It bears nothing that Ileen, Keithley and Sylvanie Connor are all siblings. They are the children of Alfred Albert Hodge, deceased.
- [4] Apparently, Mr. Alfred Hodge died intestate, leaving thirteen children surviving him. He was a man who owned substantial land.
- [5] It appears as though Letters of Administration of his estate was granted first to Ileen and then to Sylvanie and Keithley on the 9th day of April 2003, but the Estate of Albert Hodge has not been vested.
- [6] There are allegations that Mr. Alfred Hodge's lands are situate at Registration Section West End, Block 18011B, Parcels 201-203 and Registration Section West Central, Block 28010B, Parcel 13. Ms. Ileen Hodge-Richardson disputes the correctness of this and says that Parcel 201 does not form part of Albert Hodge's estate.
- [7] Ileen made several allegations of threats, intimidation against her and trespass on her property.
- [8] It seems as though Keithley and another sibling built their homes on a portion of Block 18011B before the subdivision or transfer was completed. Mr. Albert Hodge's (deceased) property therefore remains undivided.
- [9] In her application, Ileen seeks to have the court restrain Sylvanie and keithley from entering physically and/or by vehicle or trucks or by any other means on the entire area of Registration Section West End, Block 18011B, Parcel 201. She also seeks an order to prevent them vandalizing, destroying, cutting, chopping, clipping or otherwise removing plants or trees she has planted.

- [10] The application for injunctive reliefs is strenuously opposed by Sylvanie and Keithley.

Issue

- [11] The issue that arises for the court to resolve is whether the court should grant Ileen the injunctive reliefs that she seeks.

Respondent's Submissions

- [12] Learned Counsel, Ms. Fleming referred the court to Sylvanie Connor's affidavit filed in opposition. Sylvanie contends that Parcel 201 is part of her father's Albert Hodge's Estate. In her affidavit, Sylvanie further, that herself and the other siblings have no difficulty with the applicant occupying Parcel 201 as part of their father Albert Hodge's Estate. She denies that Parcel 201 belonged to Uncle Aus. Sylvanie said that what she and her brother have continued to do is to use the footpath which runs alongside Parcel 201.
- [13] Sylvanie has not in her Affidavit denied the allegations made by Ileen about Keithley abusing her and cutting down the trees and plants on Parcel 201. However, Sylvanie stated it is because of Ileen's refusal to conclude the Administration of their father's Estate, which would give each beneficiary their just share that has caused all of the confusion which Ileen alleges.
- [14] Ms. Fleming, Learned Counsel, stated that at this stage of the proceedings when the court could not be sure which of the parties was likely to succeed at the trial, the court should determine where the balance of convenience lies. Counsel referred the court to the affidavit that was deposed to Sylvanie on her own behalf and that of Keithley.

- [15] Ms. Fleming, Learned Counsel, urged the court not to grant Ileen the injunctive relief that she seeks to restrain Keithley from using the footpath; if the court were to do so, it would cause him great inconvenience since he would not be able to access his boat. Further, Ms. Fleming asked the court not to grant the injunctive relief that she seeks to restrain Keithley from using Parcel 201 to gain access to the beach by the use of a motor vehicle.
- [16] Ms. Fleming, Learned Counsel referred the court to the photographs which are exhibits in the matter. Counsel said that where Keithley uses, is to the edge of the wall and is nowhere near to Ileen's house. Ms. Fleming stated that Ileen's house is far from the path that Keithley takes to access the beach. Even though he is accessing the beach by vehicle over Parcel 201, it would in no way disturb Ileen, nor is he trespassing on the portion of Parcel 201 on which Ileen's house is situate. Ileen's house is above the footpath.
- [17] Ms. Fleming urged the court to make an order that has the effect of maintaining the status quo by allowing Keithley to continue to use the path in order to get to his boat. Learned Counsel referred the court to *Godfrey Croft v Joseph Horsford* a decision of this court, in support of her arguments.
- [18] In concluding her submissions, Learned Counsel, Ms. Fleming indicated that Keithley was prepared to give an undertaking not to threaten, harass or abuse Ileen.

Applicant's Submissions

- [19] Learned Counsel, Ms. Lindsay told the court that Ileen maintains that Parcel 201 was given to her by her paternal Uncle Aus and formed no part of her father Albert Hodge's Estate.

- [20] The controversy surround what Ileen refers to as her garden and Sylvanie and Keithley say that it is a footpath, which they have used since they were children to go to the beach. Ileen has exhibited photographs of the property to indicate to the court the area over which Keithley drives his motor vehicle.
- [21] Ms. Lindsay said that Ileen denies that Parcel 201 is part of the Estate of Albert. She maintains that it was given to her by her deceased Uncle Aus and does not form part of Albert Estate. More importantly, Ileen says that having received Parcel 201 from her Uncle Aus, she and her husband expended substantial sums of money to construct their home on the land. She has been in possession of the land for in excess of 16 years.
- [22] Learned Counsel, Ms. Lindsay reminded the court that, in her affidavit deposed to on 7th April 2010, Ileen complains about a number of things that Keithley allegedly did from as far back as August 2009, October 2009 and November 2009. Most of them are, in effect, complaints of destruction to plants, trees, digging up walls, driving through the gardens and abusing her.
- [23] Ileen said that she planted flowers and plants in her garden and that Keithley has cut them down in order to be able to drive through her garden to access the beach.
- [24] Ileen's major complaint is that over the last two weeks, on a daily basis, Keithley has driven through her land with an entourage of friends, driving trucks and cars through her garden and lawn to get to the beach instead of using the road leading to the beach. He has recently put a small boat in the area. They appear to be going back and forth to the small boat.
- [25] Ms. Lindsay asks the court to accept that Keithley has threatened, harassed and abused Ileen. He has also intimidated her; this conduct requires the court

imposing restraint on Keithley. Learned Counsel stated that Keithley has not sought to deny the clear allegations made by Ileen in relation to his reprehensible and unwanted behaviour.

[26] Next, Ms. Lindsay argued that Keithley has trespassed on Ileen's land namely: Parcel 201; that he has destroyed the plants and trees on Parcel 201. Learned Counsel relied on the cases of *Clarabell Investments Limited v Antigua Isle Company*, Antigua Claim No. 0326/2006 Antigua and Barbuda together with that of *Michael v Hutchinson's*. Claim No. 0298/2004.

[27] Learned Counsel, Ms. Lindsay urged the court to grant Ileen the injunctive reliefs sought. Ms. Lindsay, Learned Counsel, reminded the court that it is a trespass to place or do anything on land which is in the possession of another. It is law that there is no need to prove actual damage. Ms. Lindsay said that the applicant has made out a case for trespass.

[28] Ms. Lindsay said that the allegations are not in dispute. Ms. Lindsay says that the allegations are admitted with unreasonable and unjustifiable attempts by Sylvanie to defend the blatant breaches that have been complained of.

[29] Ms. Lindsay asked the court to make an order to prevent both Sylvanie and Keithley by themselves, their servants or agents from entering Parcel 201, either by foot or by truck. They should also be restrained from vandalising, destroying, killing or cutting the trees, plants, grass and flowers on Parcel 201. Further, she says that the court should grant Ileen the injunction to restrain Keithley and Sylvanie from vandalizing, destroying, cutting, chopping, clipping or otherwise removing part of the building's retaining wall.

[30] Learned Counsel, Ms. Lindsay requested the court to restrain Keithley from passing over Parcel 201. She said that there is no right-of-way over Parcel 201 and it was only when Keithley and others cut the foot path that an access to the

beach was created. Ms. Lindsay says that the court ought to grant the injunction to Ileen who is living on the land and is in possession of the land.

- [31] Learned Counsel, Ms. Lindsay reminded the court that Ileen was of advanced age. Counsel urged the court to grant the injunctions to Ileen in order to protect her from the harassment and abuse she has endured over the years. If not, restrained Keithley and others would continue to abuse and harass her.

Court Analysis

- [32] The court has given this application its deliberate consideration and has paid particular regard to the very helpful and lucid submissions of both Learned Counsel.
- [33] By way of background, it is clear that the genesis of this controversy is the fact that the Estate of Albert Hodge deceased has not been completed. There is disagreement between the parties in relation to the distribution and the reasons for the apparent protracted delay. This, however, is not a matter of immediate concern to the court; it is only stated so as to give the application context.
- [34] From the affidavits that are filed in the matter, the court has gleaned that much of the controversy in this application has its origin in the failure to complete the Administration of the Estate of Albert Hodge. The court's view is reinforced by Sylvanie's affidavit, in which she in effect says that, all of the confusion that has occurred is a result of Ileen's failure to complete the administration of their father's estate.
- [35] The major contention seems to be a dispute in relation to the distribution or vesting of the land which forms the subject matter of the Estate of Albert Hodge. An ancillary area of contention is what is the extent of the Estate of Albert Hodge.

- [36] It is noteworthy that even though Ileen has made several serious allegations against Keithley, he did not specifically deny any of them. In fact, Keithley did not swear an affidavit in answer but was content to allow Sylvanie to do so on his behalf. He is entitled to do so.
- [37] What is striking, however, is the fact that Sylvanie, also, did not seek to controvert much of what Ileen complained about in relation to the alleged harassment, threats, abuse and intimidation. There is no specific denial of Ileen's claim that Keithley uses the path that is the subject of the dispute, to access the beach, not only with his vehicle but with other vehicles including allowing friends to drive trucks.
- [38] Many of Ileen's complaints, if not most of them, were left unanswered. This can hardly be good enough, particularly when the court is required to weigh the evidence that is presented by one party against that presented by the other, in seeking to determine whether or not to grant the reliefs claimed.
- [39] Injunctive reliefs are equitable remedies. They are within the discretion of the court. Even where the plaintiff has shown that his rights are infringed he may be refused an injunction. It is not unusual for the court to conclude that even though the plaintiff has made out a prima facie case for an injunction, the particular circumstances of the case are such that the court should not exercise its discretion against granting one.
- [40] As a general rule, if the court is inclined to grant an injunction, it may order the applicant to give an undertaking as to damages. It is not imperative, however, that in every case the court should require that an undertaking be given. In the application at bar, no undertaking as to damages was sought. The court is not of the considered view that this is an appropriate case in which to require that the applicant gives an undertaking.

- [41] It is the law that at the interim or interlocutory stage, it is no part of the court's function to seek to determine the facts. The evidence that is placed before the court has not been tested. In addition, injunctive proceedings are not meant to be mini trials.
- [42] Be that as it may, it is incumbent on the parties against whom the injunctive reliefs are sought to place before the court as much evidence as possible to assist the court in its determination of whether or not to grant the relief. The court is afraid that much of this was not done in the present application.
- [43] A private citizen cannot obtain an injunction to prevent the commission of a criminal offence unless he can prove that he personally has suffered or will suffer damage amounting to an actionable wrong as a result. See *Gouriet v Union Post Office Workers* [1978] AC435.
- [44] The locus classicus on injunctive relief is the *American Cyanamid v Ethicon Limited* [1975] AC396, a judgment of the House of Lords. The principles that are distilled from that case are as follows:
- (a) Whether there is a serious issue to be tried;
 - (b) Whether an award of damages would be an adequate remedy;
 - (c) Where does the balance of convenience lie?
 - (d) Status Quo
- [45] The court, in seeking to determine whether to grant an injunction, must address the four conditions:
- (a) Serious issue to be tried;
 - (b) Adequacy of damages;
 - (c) Balance of convenience; and
 - (d) Status Quo

[46] As stated earlier, Parcel 201 seems to be at the heart of dispute. The court does not at this stage have to determine whether it formed part of Mr. Albert Hodge's estate or whether it was given to Ileen by her Uncle Aus.

Serious issue to be tried

[47] In addressing this first issue and insofar as the merits of the case are concerned, the court is only concerned to consider whether there are serious issues to be tried. Ileen does not need to show a prima facie case. In fact, the court would be unable to make any such finding since at the injunctive stage the evidence is by way of affidavit and there is no oral evidence. Importantly, the evidence has not been tested in cross-examination.

[48] It has been accepted that the applicant for injunctive relief will fail to obtain relief if he/she cannot show that he has any real prospect of succeeding in his claim for a permanent injunction at the trial. See further, *Cayne v Global Natural Resources PLC* [1984] 1 All ER 225.

[49] In the present application there are serious issues to be tried. These include the extent of the Estate of Albert, deceased. Another important issue which will, ultimately, have to be determined at the trial is if Ileen should be removed as the Administrator of the Estate of Albert. These are very serious issues to be determined by the court. Accordingly, the first condition is satisfied.

Adequacy of damages

[50] Next, the court is required to go on to consider whether if the applicant were to succeed at the trial in establishing her right to a permanent injunction, whether she would be adequately compensated by damages.

- [51] As a general rule, if damages would be an adequate remedy and the applicant would be in a financial position to pay them, no interlocutory injunction should be granted.
- [52] If, on the other hand, damages would not adequately compensate the applicant for temporary damage and she is in a financial position to give a satisfactory undertaking as to damages, an interlocutory injunction may be granted. See *Joseph Horsford v Bird* *ibid* and *Clarabell Investments v Antigua Investments Ltd* *ibid*.
- [53] In determining this issue, it is very useful to pay regard to the dicta of *Sachs LJ in Evans Marshall & Co. Ltd v Bertola SA* [1973] 1 WLR 349 at 379.

"The standard question in relation to the grant of an interlocutory injunction – 'Are damages an adequate remedy? Might perhaps, in the light of recent authorities of recent years, be rewritten to, Is it just, in all the circumstances, that a plaintiff should be confined to his remedy in damages.'"

- [54] Applying the above guideline, in the totality of the circumstances, not the least of which are the old age of the applicant and the unchallenged evidence that indicate the conditions under which she lives, the court is of the view that damages would not be an adequate remedy.
- [55] To underscore the point, Ileen has stated, and this is not challenged, that not only does Keithley drive up and down the footpath on Parcel 201 but that he has his friends driving trucks and other vehicles there too. No amount of damages would be adequate to compensate her for this distress. The court cannot overlook the fact that Ileen is very elderly and that she has invested substantial sums of money to build her retirement home on Parcel 201. She has been living there for in excess of thirteen years together with her husband. Given her age and personal

circumstances, she ought to be able to live there peaceably, until the court is able to resolve the substantive matter.

Balance of convenience

- [56] The court needs to consider where the balance of convenience lies. At the interim or interlocutory stage, no one can say whether the applicant will obtain an injunction at the trial. If she fails at the trial, the respondents would have been prevented from doing something they wish to do. The court therefore needs to consider how great a harm will the applicant suffer if the injunction is not granted and the respondents are left to do what they want. A similar question in respect of the respondents must be considered - what will he suffer if they are inhibited until trial?
- [57] When the court examines the relative position of the litigants, it's clear that Sylvanie and Keithley will be affected, if at all, in a minimal way, – if they are restrained, Ileen is likely to suffer greater harm or loss if they are not restrained. The court must also consider whether the potential damage to the applicant can be compensated in money.
- [58] Further, it is for the court to determine whether there are special factors in the individual case. The court has carefully considered the entire matter and cannot see how Sylvanie and Keithley would suffer any irreparable damage if they are restrained from abusing, cursing, harassing Ileen, until the hearing and determination of the substantive matter. The same is also true if they were to be prevented from using the footpath on Parcel 201 or going on to that property until the conclusion of the trial in the substantive matter. In contradistinction, Ileen is likely to suffer irreparable harm if the respondents are not restrained.

Status Quo

[59] The rationale for the maintenance of the status quo is that the respondents are enjoined temporarily from doing something. The only effect of the interlocutory injunction, in the event of the respondents succeeding at trial, is to postpone the date upon which they will be able to so do.

[60] In *Series 5 Software Ltd v Clarke* [1996] C.L.C 631 Laddie J quoted from Lord Denning's judgment in *Hubbard v Vosper* [1972] 2 QB84 where he said:

"in considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At the other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules"

[61] The court can do no more than to adopt those very helpful principles and apply them to the present application. The court has no doubt that the totality of the circumstances are in support of the grant of the interlocutory reliefs prayed for by Ileen.

Conclusion

[62] In view of the totality of circumstances, the court is of the considered view that this matter requires the grant of the interlocutory injunctions.

[63] In view of the foregoing, the court hereby makes the following orders:

- (a) Ms. Sylvanie Connor and Mr. Keithley Hodge, whether by themselves, their servants or agents or whosoever are hereby restrained from vandalizing, destroying, cutting, chopping or otherwise clipping or removing part of the building or the retaining walls of the building, which Ms. Ileen Hodge-Richardson owns.
- (b) Ms. Sylvanie Connor and Mr. Keithley Hodge are further restrained whether by themselves, their servants or agents or whosoever from vandalizing, destroying, killing, cutting, chopping and otherwise removing the trees, plants, flowers and other vegetation on Parcel 201.
- (c) Ms. Sylvanie Connor and Mr. Keithley Hodge are further restrained from abusing, harassing, swearing, interfering with or disturbing Ms. Ileen Hodge-Richardson by words or conduct.
- (d) Ms. Sylvanie Connor and Mr. Keithley Hodge, whether by themselves, other servants or agents or whosoever are hereby restrained from accessing the Parcel 201, either by foot or vehicle until further order of the court or until the determination of the substantive matter, whichever is sooner.
- (e) Costs are agreed in the sum of US\$800.00.

[64] The court gratefully acknowledges the assistance of both Learned Counsel.

Louise Esther Blenman
Resident High Court Judge
Anguilla

