

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2000/0686

BETWEEN:

NETTA MARTIN

Respondent/Claimant

AND

PATRICK GREAVES

Applicant/Defendant

Appearances:

Mr. Gregory Delzin, with Mrs. Emmanuel-Steele, for the Claimant
Mr. James Bristol for the Defendant

2008: April 4

JUDGMENT

[1] **CUMBERBATCH, J.:** The Respondent by a writ of summons dated the 28th December 2000, commenced proceedings against the Applicant for the following:

- (a) a declaration that the Applicant/Respondent was not entitled to enter or cross a lot of land situate at Mt. Moritz in the parish of St. George's,
- (b) an injunction restraining the Applicant/Claimant, by himself his servants and/or agents from doing so,
- (c) damages for trespass.

[2] An injunction was granted by St. Paul, J. on the 13th January, 2003 in the following terms:

"1. That the Respondent, by himself his servants and or agents be and is hereby restrained from entering, remaining on or in any way interfering with the lands of the

Applicant measuring 10,000 sq. ft. situate at Mt. Moritz in the parish of Saint George in the State of Grenada and abutted and bounded on one side by lands of Alpha Seales on a second side by the public road and on the third and fourth sides by lands of the Estate of Edna Wimbish until the hearing and determination of the Applicant's notice to continue the injunction or until further order.

2. That the Respondent, by himself his servants, and or agents be and is hereby restrained from doing or carrying on any works and/or surveys, ploughing, excavating, erecting any house or dwelling on the land and doing any other works on the said lands until the hearing and determination of the Applicant's notice to continue the injunction or until further order."

[3] The substantive action was heard and determined by Benjamin, J. who in a reasoned judgment dated the 26th March 2005 awarded to the Respondent/Claimant damages in the sum of \$8,600.00 for trespass together with costs in the sum of \$2,500.00. The learned trial judge also found that the Respondent/Claimant was not entitled to the declaration sought and the injunctive relief claimed.

[4] On the 5th December, 2007 the applicant filed an application seeking the following orders:

"The Defendant herein, applies to the court for an order that an inquiry be made as to the damages sustained by the Defendant by reason of an injunction granted by the Court on the 19th day of December 2002, according to the undertaking of the Claimant contained in the said Order and for interest thereon pursuant to section 27 of the Supreme Court Act."

[5] The grounds for the application are that by the judgment of Benjamin, J. aforesaid the Court ruled that the respondent was not entitled to the injunctive relief claimed. In an affidavit in support of the said application the applicant deposed as follows:

"1. I am the Defendant herein and I make this affidavit in support of an application for an order that an inquiry be made as to the damages sustained by reason of an injunction granted by the Court on the 19th day of December 2002, according to the undertaking of the Claimant contained in the said Order.

2. The matters set out below are within my personal knowledge and are true except where I indicate to the contrary, in which case they are true to the best of my knowledge, information and belief.
3. The Claimant herein filed a Writ of Summons on December 28th 2000 in respect of a claim in trespass and by way of an Amended Statement of Claim sought additional relief in the form of a declaration of the Court that she was the owner in possession of a lot of land situate at Mount Moritz in the parish of Saint George in the State of Grenada. There is now produced and shown to me and marked "PG1" and exhibited hereto in a bundle true copies of the said Writ of Summons and Amended Statement of Claim.
4. On December 19th 2002, the Claimant was granted an Ex Parte Injunction having given an undertaking for damages. There is now produced and shown to me and marked "PG2" and exhibited hereto a true copy of the Order granting the said Injunction.
5. The decision of the Court, given on April 26th 2005 by His Lordship Justice Kenneth A. Benjamin, was that the Claimant was not entitled to any of the declarations sought or to injunctive relief as claimed. There is now produced and shown to me and marked "PG3" and exhibited hereto a true copy of the said judgment of the Court.
6. On June 1st 2005, the Claimant filed a Notice of Appeal in respect of the aforementioned decision of the Court. The said Appeal was designated as Civil Appeal Number 5 of 2005. There is now produced and shown to me and marked "PG4" and exhibited hereto a true copy of the said Notice of Appeal.
7. On November 20th 2006 an application to dismiss the said notice of appeal was filed on my behalf and on December 6th 2006 the said application was heard and was granted. There is now produced and shown to me and marked "PG5" and exhibited hereto a true copy of the Certificate of Result of Appeal.

8. In the premises, I ask this Honourable Court for an Order that an inquiry be made as to the damages sustained by the Defendant by reason of the said injunction granted on December 19th 2002."

- [6] The thrust of the applicant's submissions is that Benjamin, J. having refused the application for a permanent injunction, it followed that he was entitled to the relief sought herein. There is however no pleading as to any loss or damage suffered as a result of the interlocutory injunction granted by St. Paul, J. In this regard, the Applicant/Defendant asserts that at this stage, this is merely an application for directions for an assessment of damages and not an assessment of damages.
- [7] The Respondent, on the other hand, submits that the application cannot be sustained as the Respondent/Claimant was successful in her claim on the merits, she having obtained an award for aggravated damages for the destruction of her property whilst the matter was *sub judice*. It was further submitted that the interlocutory injunction of St. Paul, J. was not overturned on appeal hence it cannot be said that it was wrongly granted. The Respondent further submits that the Applicant has not deposed as to loss or damage suffered as a result of the order of St. Paul, J. and that the Applicant is guilty of excessive delay by bringing this application more than two years after the judgment of Benjamin, J. Finally, the Respondent submits that the application constitutes an abuse of process as the Applicant has not complied with the orders of Benjamin, J. and is seeking to use these proceedings to claim a set-off on the orders for damages and costs.
- [8] The requirement for an undertaking as to damages in cases of an ex parte application for an interim injunction is provided for in Part 17.4(2) of the Civil Procedure Rules 2000 (CPR 2000). Prior to the commencement of the CPR 2000 the common law provided for the undertaking to be inserted in applications for injunctive relief. The nature of the undertaking is that it is not an undertaking-with the opposing party but with the Court, nor does it convey contractual rights to the other party upon which the other party could sue.
- [9] The Court is required to exercise its discretion in the grant or refusal of such applications, having regard to the relevant circumstances of the case. It is a matter of general practice that where a claimant has obtained an interlocutory injunction restraining a defendant from

doing something until the hearing and determination of the trial and that the trial court refuses to grant a permanent injunction, as is the case in the instant matter, then *prima facie* the defendant is entitled to have an inquiry as to damages pursuant to the undertaking given to the Court as is required in Part 17.4(2) of the CPR 2000.

- [10] In the unreported decision of **Lunn Poly Ltd., TUI UK Ltd. v Liverpool & Lancashire Properties Ltd., Derwent Holdings Ltd.** (2006) EWCA 430, Neuberger, LJ. at paragraphs 42 - 44 stated the principles which the court must consider in the exercise of its discretion to grant or refuse damages where no permanent injunction is granted at trial:

"42. As a matter of principle, and, indeed, of general practice, I would certainly accept that, where a claimant has obtained an interlocutory injunction restraining the defendant from doing something until trial, and the court decides at trial that a permanent injunction should not be granted, the defendant can normally expect, virtually as of right, to have an enquiry as to the damages to which he is entitled pursuant to the cross-undertaking which the claimant will have been required to give as a condition of obtaining the interlocutory injunction. However, there plainly are exceptions to this general rule. In Hoffman-Laroche v Secretary of State [1975] AC 295 at 361D, Lord Diplock said that the court "retains a discretion not to enforce the undertaking if ... it is inequitable to do so."

43. It is clear, however, that "special circumstances" are required before an enquiry can properly be refused. That expression was adopted, and its ambit explored, in the judgment of Peter Gibson LJ in Cheltenham and Gloucester Building Society -v- Ricketts [1993] 4 All ER 276 at 286h-287g. He referred at 287e to Modern Transport Co Ltd v Duneric Steamship Co [1917] 1 KB 370, as a case where "Swinfen Eady LJ said that inequitable conduct by the defendant constituted special circumstances ... but that was a case where he held that the plaintiffs were justified in applying for an interlocutory injunction".

44. Another type of special case would be where the court is quite satisfied that no damages have been suffered, or where the court is satisfied that the damages have been suffered but should be summarily assessed by the court there and then. A further class of special case would be where the reason for the refusal of the grant of the permanent injunction at trial is based on reasoning pursuant to which the claimant would have been entitled to an injunction at the time of the interlocutory hearing, but has become disentitled to it as a result of events which occurred between the interlocutory hearing and trial. An obvious example would be where the injunction was based on a lease which was in force at the interlocutory hearing, but had for some reason (e.g. by effluxion of time) come to an end by the time of the trial."

The Court has considered and accepted the dictum of Neuberger, LJ. as to matters to be taken into account by the Court in the exercise of its discretion.

[11] The Court is also required to consider the question of delay in bringing the application before it. It is common ground that this application was made some 2 years and 9 months after the decision of Benjamin, J. aforesaid.

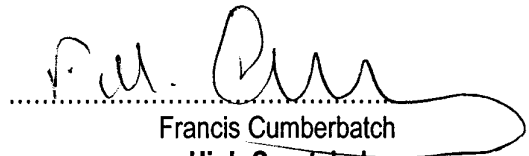
[12] In the decision of **Barratt Manchester Ltd v Bolton Metropolitan Borough Council et al.** [1998] 1 All ER 1 at page 10f, Millett, LJ. opined thus,

"The court should not hesitate to discharge the cross undertaking and dismiss the inquiry where there has been excessive and prolonged delay, even though it cannot be shown to have occasioned any prejudice to the other party."

[13] The Court finds the delay of 2 years and 9 months to be excessive in the circumstances. Moreover, no reason has been proffered by the Applicant as to why such a delay has been occasioned. The Court finds that unlike in the case of **Barratt Manchester v Bolton Borough Council**, this is not a complex or difficult case.

[14] The Court also finds that there was no evidence of loss and/or damage to the Applicant nor has any been pleaded. The Court does not accept the submissions by Counsel for the Applicant that evidence of loss or damage is not required at this stage of the proceedings.

[15] In the circumstances, the application is dismissed and costs are awarded to the Respondent in the sum of \$1500.00.


Francis Cumberbatch
High Court Judge