

SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

No: 29 of 1999

Between:

1. MALCOLM CAPLAN
2. IRENE CAPLAN

Intended Plaintiffs

1. MICHAEL DuBOULAY
2. MICHELLE DuBOULAY
3. DAVID DUDOULAY
4. DuBOULAY ESTATES COMPANY LTD

Intended Defendants

Appearances:

Mr. Peter Foster for the Plaintiffs

Mr. Vern Gill for the Defendants

1999: February and 26.

DECISION

Allen J.

On the 23rd January 1999 the Honourable Madame Justice d'Auvergne J. granted an ex parte injunction to the intended Plaintiffs restraining the intended Defendants or any of them whether by themselves or by their servants and or agents from –

- a. Trespassing on the parcels of land owned by the intended Plaintiffs being parcel 0031B15 and the parcels of land in the actual occupation of the intended Plaintiffs being parcels No:0031 B 28, 29 &30. or
- b. Interfering with the intended Plaintiff's peaceful occupation of their property by operating any equipment heavy duty or otherwise on or over the said lands, or
- c. Having their agents, servants, employees or otherwise come onto the said Lands, or
- d. burn bush, tyres, wood or any material or thing that may cause or be a nuisance to the occupants of the said house, or
- e. do anything which may interfere with the intended Plaintiffs, their employees, servants or agents and which may or might interfere with the peaceful and quiet enjoyment of the property.

In the matter now before this court the Plaintiff is asking that the interlocutory injunction continue until the substantive issues are altogether resolved or until further order.

The purpose of an interlocutory injunction is to preserve the *status quo* until the right of the parties have been determined in an action. The principles to be applied in applications for interlocutory injunctions have been authoritatively explained by Lord Diplock in the case of **American Cyanamid v Ethicon Ltd [1975] A.C.396**.

1. The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect.
2. The Court must not attempt to decide the claim on the affidavits; it is enough if the Plaintiffs show that there is a serious question to be tried.
3. If the Plaintiff satisfies these tests the grant or refusal of an injunction is a matter for exercise of the Courts discretion on the balance of convenience.

Having listened carefully to the well prepared arguments of Counsel for the Plaintiffs and counsel for the Defendants, it is beyond question that there are very serious issues to be tried. What is also obvious is that whichever party wins or loses (as the case may be) this action by its very nature is bound to be very expensive.

In an attempt to determine where the balance of convenience lies, the most compelling argument advanced by Counsel for the Plaintiff is that, if it is proven that the Plaintiffs have been wronged, damages would not be a sufficient remedy.

On the other hand, the Defendants' claim hinges on a lease of crown lands for 22 years, for the purpose of embarking on an extensive project against which time is running.

In all the circumstances I find no difficulty in concluding that the balance of convenience dictates that the *status quo* ought to be maintained until the rights of all parties have been determined.

The order of the Court therefore is that upon the Plaintiffs giving an undertaking as to damages the injunction granted to the Plaintiff by d'Auvergne J. will be allowed to continue until the final determination of this action.

Costs will be cost in the cause.

KENNETH ALLEN Q.C. OBE
High Court Judge (Ag.)