



THE HOUSING AND URBAN DEVELOPMENT CORPORATION
MC DONALD

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No. 966 of 1994

BETWEEN:

THE HOUSING AND URBAN DEVELOPMENT CORPORATION

Plaintiff

and

MC DONALD PIERRE

Defendant

Mr. L. Riviere for Plaintiff

Mr. M. Francois for Defendant

1995: April 5 and 12.

J U D G M E N T

MATTHEW J. (In Chambers).

On December 9, 1994 the Plaintiff filed a statement of claim asking among other things for possession of land wrongfully occupied by the Defendant.

On the same day the Plaintiff took out a summons for interlocutory injunction. The summons was supported by an affidavit of Adrian Dolcy, the General Manager of the Plaintiff Corporation.

In that affidavit Dolcy alleges that by the Patience Estate Vesting (No. 2) Order 4.29 acres of land became vested in the Plaintiff and that since 1990 the Defendant has occupied a part of that land and has failed to leave the land despite several verbal and written demands to do so.

He alleges that the Defendant has used and threatens to use physical force to prevent the Plaintiff from using the land.

He says the Plaintiff is impeded from carrying out a housing development on the said land.

On March 30, 1995 the Defendant filed an affidavit in opposition. In that affidavit he denies occupying the land since 1990 and says that since 1979 he has been growing various crops on the land. He alleges that his occupation was as part of a farm project sponsored by the Ministry of Agriculture.

He denied the threats and alleges that he is entitled to possession and occupation of the land and would prove his right of title at the trial.

In his submissions at the hearing, learned Counsel for the Defendant has asked me to be guided by the principles laid down in *AMERICAN CYANAMID v. ETHICON LTD.* 1975 AC 396 and to the guidelines laid down by Lord Diplock as to balance of convenience,

the adequacy of damages, and the maintenance of the status quo. I thank Counsel for the reference and I have also looked at the United Kingdom Supreme Court Practice, 1979, Vol. 1 where these principles are set out at paragraphs 29/1/11; 29/1/11A and 29/1/11B.

In his submissions Counsel stated that there was no strong case for either Party. I disagree. At paragraph 29/1/11B of the White Book, referred to above, the learned authors did state -

"The remedy by interlocutory injunction should be kept flexible and discretionary and in considering whether to grant an interlocutory injunction, the right course for the Judge is to look at the whole case, and have regard to the strength of the claim as well as of the defence".

It is not true that the Defendant is alleging title and the Plaintiff is also alleging title. The Plaintiff has produced a legislative enactment by which it establishes its title. The Defendant is content to await the trial to establish his title. The Patience Estate Vesting (No. 2) Order is a statutory instrument which was Gazetted on November 23, 1985. It seems to me therefore that the balance weighs in favour of the Plaintiff. For the time being the Corporation's case looks stronger and the balance of convenience lies in favour of the Plaintiff.

It is also my view that damages would not be an adequate remedy for

the Plaintiff who has a prima facie title to the land and it has not been demonstrated to me that the Defendant could meet such damages in any case.

The reference to CAYNE v. GLOBAL NATURAL RESOURCES 1984 1 AER 225 may not be quite applicable because the grant of this interlocutory injunction will not have the practical effect of putting an end to the action. Indeed the Defendant is still waiting to prove his title at the trial and if he does so he could very well obtain his land back or adequate damages upon the Plaintiff's undertaking.

I find for the Plaintiff. My Order is that -

Upon the Plaintiff's undertaking to pay the damages in case the Court shall hereafter be of opinion that the Respondent shall have sustained any by reason of this order which the Petitioner ought to pay:

1. IT IS HEREBY ORDERED that the Respondent be restrained and an injunction is granted restraining the Respondent from entering upon, remaining or trespassing upon the Plaintiff's land, the subject matter of this suit, until the trial of this action or upon further order.

2. Costs in this matter shall be reserved.

A.N.J. MATTHEW

Puisne Judge