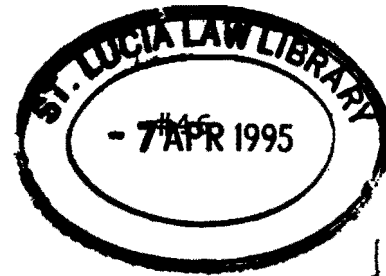


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994



Suit No. 873 of 1994

BETWEEN:

YOLANDE TRIM

Plaintiff

and

1. CLARENCE MICHEL
2. DUDLEY ALEXANDER GOULD

Defendants

APPEARANCES:

Mr. K. Monplaisir Q.C. for the Plaintiff
Mr. D. Theodore for the Defendants

1994: November 29;
December 7.

JUDGMENT

MATTHEW J. (In Chambers)

On November 14, 1994 the Plaintiff filed an ex-parte summons for interlocutory injunction to restrain the Defendants from trespassing or in any way interfering with the property of the Plaintiff occupied by Victoria Gould and her son.

The summons was supported by affidavits of Yolande Trim, Victoria Gould and Kendall Morgan.

In her affidavit Yolande Trim stated she is the Executor of the last Will and Testament of her brother, the late Dudley Alexander Gould who died at Victoria Hospital on July 21, 1994. She stated that she had applied and was waiting for a grant of Probate from the Court. She stated that the Deceased was entitled to an undivided one-half share in a property at Coubaril and was until his death occupying the downstairs apartment of the property with his wife, Victoria Gould. She stated that the wife continued to live on the ground floor apartment where to the best of her knowledge, information and belief Dudley Alexander Gould, the son, and Clarence Michel trespassed upon the premises.

In her affidavit Victoria Gould stated that she was the widow of the late Dudley Alexander Gould, the father, and was living in the matrimonial home with the Deceased and has continued to live there since his death. She stated that on Saturday November 5, 1994 she was visiting her mother-in-law and while there her mother-in-law gave her certain information. She said she returned immediately to her home and when she got there she saw the Defendants on the upstairs veranda. She said she went inside the house where she met her son, Kendall Morgan, with a stick. She said he spoke to her and pointed to the sliding door where she saw a half of the door missing. She said the Defendants came to her and they were quarreling and appeared to be annoyed when Defendant No. 2 told her in a loud voice that she had to leave the premises that day.

In his affidavit Kendall Morgan stated that Victoria Gould was his mother and he had been living on the premises with his mother and stepfather before the latter died on July 21, 1994.

He stated that on November 5, 1994 at about 9:30 a.m. Defendant No. 2 and his mother came to the apartment and said he and his mother had to leave Marie Gould's property. He said Defendant No. 2 took the key to the front door. He said Defendant No. 2, Dudley Alexander Gould, the son, went back upstairs and returned with his wife, his mother and Defendant No. 1 and used a drill to open a sliding door at the back of the house while the others stood there watching him use the drill. He said Alex, as Defendant No. 2 seems to be called, took one half of the sliding door upstairs and returned later to take out the other half but he stood in the doorway and prevented him from doing so. He stated that Clarence Michel, the first Defendant, took away from him the baseball bat which he used to prevent Alex from entering the premises.

The matter came before me on November 15, 1994 and since I considered the matter was urgent I granted an ex-parte injunction in the following terms:

"ORDER

THIS SUMMONS coming on for hearing on 15th November, 1994 AND UPON Plaintiff/Applicant and her Counsel undertaking to pay the damages in case the Court shall hereafter be of the opinion that

the Defendants shall have sustained any by reason of this Order which the Plaintiff/Applicant ought to pay.

IT IS HEREBY ORDERED:

- (1) That the Defendants be restrained and an injunction is hereby granted restraining the Defendants until further Order whether by themselves by their servants or agents or otherwise whosoever from trespassing, remaining or in anyway interfering with the premises occupied by VICTORIA GOULD at Coubaril, Castries or interfering with the property of the said VICTORIA GOULD.
- (2) That the Plaintiff/Applicant shall serve a copy of this Order on the Defendants forthwith together with a copy of the Summons for an Interlocutory Injunction and a copy of each of the Affidavits in support.
- (3) The Plaintiff/Applicant is ordered to file the Writ of Summons in respect of this matter within ten (10) days.
- (4) The Defendants shall be at liberty to apply to set aside this Order, and a return day given for this purpose is November 23, 1994.
- (5) Costs in this matter is reserved until further hearing".

On November 23, 1994, the return day, the Parties appeared before me. Mr. P. Straughn was then holding papers for Mr. Monplaisir. I was told that the Defendants had been served with the order of injunction on the previous Friday and they had filed affidavits in reply the day before which Mr. Straughn said he had not seen. The proceedings were adjourned to November 29, 1994.

Affidavits in reply were filed by Marie Gould, Dudley Alexander Gould and Clarence Michel on November 22, 1994.

In her affidavit Marie Gould stated that Defendant No. 2 is one of her sons with the Deceased. She said she got married to the Deceased in London on June 19, 1960 and in February 1990 she petitioned the Court for a divorce with the result that she obtained a decree absolute on July 5, 1993. She said that by consent she obtained an ancillary relief order dated November 12, 1993 where it was ordered among other things that the matrimonial home at Coubaril be sold and the proceeds divided equally between the Deceased and herself. She said that she was informed and verily believes that on July 20, 1994 the Deceased was married in extremis at Victoria Hospital to Victoria Morgan and he died the following day. She further deponed that she was informed and verily believes that she is entitled to an undivided one half share in the matrimonial property at Coubaril. She said she presently resides in the upstairs apartment of the dwelling house while Victoria lives in the downstairs apartment. She claims that the

second Defendant resides with her at her request and with her full consent while the First Defendant is a welcome visitor to the premises.

Dudley Alexander Gould swore to a rather lengthy affidavit in which he sought to reply to each of the affidavits in support of the application for injunction. In respect of Yolande Trim's affidavit he said that he admitted that the Deceased had been entitled to a one half share in the home and land at Coubaril while his mother was entitled to the other half. He denied that the Deceased occupied the property with Victoria Gould. He also denied that he trespassed upon the premises.

In respect of Victoria Gould's affidavit he denied that the house in which she lived was the matrimonial home. In respect of Kendall Morgan's affidavit he admitted taking the front door key of the downstairs premises at his mother's request and that he also removed the sliding door and that the door has not been replaced. He also denied paragraph 13 of Kendall Morgan's affidavit although that affidavit contains only 12 paragraphs.

In his affidavit Defendant No. 1 stated that he visited his sister-in-law, Marie Gould, at her home at Coubaril and while there an altercation ensued between the Plaintiff, (and the Plaintiff is Yolande Trim), the Second Defendant and Marie Gould as a result of which Kendall Morgan raised a baseball bat to strike his nephew,

Dudley Alexander Gould. He said he intervened, disarmed Kendall and explained to him that there was no need for violence and advised him to follow the request of Marie Gould and leave the property. I do not believe him. He was not a peacemaker on that day. I rather believe the account given by Victoria Gould that he and his nephew were quarreling and appeared to be annoyed; and I believe Kendall Morgan's version that he was present and watching and no doubt encouraging Dudley Alexander Gould to take the sliding door away. In my view he in fact took away the baseball bat which Kendall Morgan had to prevent Alex from dismounting the door so that Alex could continue to perpetrate, what is in my view, his illegal act.

I shall also comment on the attitude of Dudley Alexander Gould as gleaned from what he had to say. It is noticeable that although he has not seen his father's will he wants to reserve his right to object to the validity of the Will. He is adamant that Victoria has no right to possession of the said premises and questions the marriage so that he consistently refers to Victoria as VICTORIA MORGAN. No doubt he feels that way because according to him Victoria was his father's live-in-maid. That seems important to state in his affidavit. He does not admit the Deceased left a Will and his aunt is the Executor.

At paragraph 4(j) of his affidavit Gould finds it important to state that SSU Officer Fontenelle advised Victoria to vacate the

premises taking nothing that was not her own and to seek any rights she may have through the Courts. I do not know if he is suggesting this as the legal advice of some Privy Council Law Lord on the marital and other rights of citizens.

In my view there are a number of untruths in that affidavit. It is a blatant lie that he was in his mother's matrimonial home when against his mother's wishes, Victoria Gould entered the premises. I do not believe him when he denied that the Deceased occupied the premises with Victoria. In any case this would be a bit inconsistent with his testimony that Victoria was a live-in-maid.

He has denied trespassing on the premises. I do not know what he means by that, but I have no doubt in my mind that he went to the apartment where Victoria Gould and her son reside and took away the front door key and the back sliding door. I do not believe him that Clarence Michel persuaded Kendall Morgan to hand him the baseball bat. I prefer the version given by Kendall Morgan at paragraph 8 of his affidavit read together with paragraph 6.

I believe Kendall Morgan absolutely that the premises are now unsecured and unsafe.

I must say something about the word "**premises**". Sometimes it is used to mean the upstairs apartment or downstairs apartment. Sometimes it is used to mean the whole house and I guess that is

the use to which Dudley Alexander Gould puts it when he said he is not trespassing.

The word was used in the injunction when it referred to the **"premises occupied by Victoria Gould"**. In my judgment this can only mean the downstairs apartment used by her and no play upon words can alter that meaning. The order of the Court simply meant that the Defendants should leave the residents of the downstairs apartment alone while they could reside or visit or do anything in the world they wish with the upstairs apartment.

On November 23, 1994 in compliance with paragraph 3 of the order of injunction the Plaintiff filed a writ of summons where at paragraph 1 she said she is the Executor of the late Dudley Gould. So events have moved along since she filed her affidavit on November 14, 1994 in which she stated at paragraph 3 that she was awaiting probate of the Will. The action is in respect of trespass of the apartment occupied by Victoria Gould by Clarence Michel and Dudley Alexander Gould.

As stated above the matter came up for hearing on November 29, 1994. When learned Counsel for the Defendants began his submissions he refereed to paragraph 12 of Marie Gould's affidavit which is as follows:-

"The Second Defendant resides on the premises with me at my request and with my full consent. The First Defendant is a

welcome visitor of the premises".

Counsel had pondered upon the word "premises" at the hearing before me on November 23, 1994 and had intimated that it would be hard on his clients who have a connection to the upstairs apartment if they could not stay on or visit the premises. I then pointed out that the words of the injunction clearly referred to premises occupied by Victoria Gould.

I thought the same supposed difficulty with the term was again emerging and I invited Counsel on both sides to agree on a terminology that would not offend any side. Learned Counsel for the Plaintiff, like Mr. Deterville who was at the time a friend of the Court, saw no difficulty with the word. Counsel for the Defendants nevertheless thought the Parties could meet so that they could try to reach a position and avoid the generation of bitterness among members of the family of the Deceased. The Court gave that opportunity and adjourned for a while. After some time the Parties returned without success.

Mr. Theodore then continued his submissions. He submitted that the property was in undivided ownership and the Defendants being present with the consent of Marie Gould could not be trespassers. Counsel also submitted that the Plaintiff had not exhibited the Will to her affidavit and without the Will there is no basis for saying Victoria Gould has an interest.

Counsel also observed that there was an order of the Court which said that the particular house should be sold and the proceedings divided equally between Marie Gould and Dudley Alexander Gould, the father, so that all Victoria Gould could be entitled to was money. Counsel submitted that the Plaintiff had no locus standi.

In his reply Mr. Monplaisir referred to the affidavit of Yolande Trim and the writ of summons filed on November 23, 1994. He observed that although Counsel for the Defendants was saying that the Will ought to be filed yet he was referring to an Order of the Court mentioned in paragraph 7 of the affidavit of Marie Gould which was not filed.

Replying to an observation of Counsel for the Defendants about a man-made division to the house Counsel observed that the case dealt with two premises which were occupied by two families peacefully before the death of Dudley Alexander Gould. In that context he referred to paragraph 11 of the affidavit of Marie Gould.

Counsel submitted that there has been an interference with the residence of Victoria Gould and he was asking for the status quo to be maintained as it was before the death of Dudley Alexander Gould. Counsel said there was need to preserve a breach of the peace. He observed that besides the removal of the door there were evident threats and he referred in that context to paragraph 7 of Victoria Gould's affidavit and paragraphs 4(f) and 5(d) of the affidavit of

Dudley Alexander Gould. Counsel submitted that if the injunction were discharged the Court would be in effect saying to the Defendants that they have a right to the entire house.

This case seems to be a contest between two wives of the late Dudley Alexander Gould. Although the property is said to be undivided and Marie Gould and Dudley Gould each owned an undivided half share it seems to me that the Parties had effectively partitioned the property so that for some time each occupied a defined portion of the house. It is significant that the Parties on either side refer to the downstairs and upstairs apartment. In her affidavit at paragraph 11 Marie Gould stated:-

"I presently reside in the upstairs apartment of the dwelling house erected on the said property, while Victoria Morgan occupies the downstairs apartment".

Yolande Trim says in paragraph 2 of her affidavit that the Deceased until his death occupied the downstairs apartment in the said property with his wife, meaning Victoria Gould.

I cannot understand the logic and reasoning of Marie Gould. In her affidavit she stated that she petitioned for divorce and obtained a decree absolute on July 5, 1993 and by a consent order for ancillary relief made on November 12, 1993 it was agreed among other things that the matrimonial home be sold and the proceeds divided equally between the Deceased and herself. At paragraph 10

of her affidavit she says she is informed and she verily believes she is entitled to an undivided one-half share in the matrimonial home at Coubaril. Yet she claims, and certainly her son believes her, that she is entitled to the whole share. In Court when the lawyers were taking a short break to consider a settlement of the matter, of which I spoke earlier, I suggested that while they are talking they should get the young man to return the sliding door. Marie Gould made an outburst that she will not return the sliding door for the house is hers. When did it get to be hers? How unreasonable is that stance!

If no Will was exhibited before in the proceedings and that lapse caused difficulty it cannot now be ignored that Yolande Trim states in paragraph 1 of the statement of claim filed on November 23, 1994 that she is the Executor of the late Dudley Alexander Gould and that the Will was admitted to probate and it is presently registered in Vol. 147a No. 171332. All arguments on locus standi must now fall if they are premised on the absence of the display of a Will.

But I must say that this apparent lapse would not have caused me any difficulty.

Counsel for the Defendants rely on the order of the Court referred to in paragraph 7 of the affidavit of Marie Gould which states that the house is to be sold but the Defendants are the same people who

are adamant that the house now belongs to Marie Gould.

Yolande Trim now has the interest of Dudley Alexander Gould until she administers the Will and make any appropriate distribution. She no doubt consents to Victoria Gould remaining in the downstairs apartment for she has taken the trouble to institute proceedings to protect her.

As I said earlier there seems to have been two separate residences in a common building. This is a common feature of modern day housing in our societies. I did not know that before I went to study in England, save for the one-bedroomed tenant. Flats and apartments were not so common when I was growing up. People had their separate houses. Things have changed today. There are the big structures where numerous families live as in the C.D.C. next door.

Dudley and Marie Gould owned the house in equal shares and each of them lived presumably peacefully in their separate apartments while he was alive. I must have regard to what has transpired. Dudley Alexander Gould has admitted to removing the sliding door of the downstairs apartment and his mother says she will not return it.

I have not been asked in the entire proceedings to do anything about that so I shall hold my hands.

I am of the view that Yolande Trim and Victoria Gould have an interest to protect. I find that there is a serious question here to be tried and the Plaintiff, on the material before me, has a real prospect of succeeding in the claim for a permanent injunction at the trial. I find too that the claim is neither vexatious nor frivolous and so I shall go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought.

I do not think recoverable damages would be an adequate remedy for the Plaintiff in this case and it seems to me that the recoverable damages under the Plaintiff's undertaking would be an adequate remedy for the Defendants.

If I were to discharge the Order made on November 15, 1994 I think I would be granting a licence for murder or other serious bodily injury whether with a baseball bat or other weapon. I could not allow that to occur. I think the status quo should be preserved and so the balance of convenience lies in continuing the injunction granted in paragraph 1 of the Order made on November 15, 1994 until the action is determined or until further order.

At paragraph 5 of the said Order I said that costs in the matter of the injunction should be reserved until further hearing. I have heard the arguments of the Parties for and against the order of injunction. I think that the Defendants and Marie Gould, who is

said to be their principal, have acted most unreasonably in this matter. Accordingly, the Defendants are to bear the Plaintiff's costs occasioned by these interlocutory proceedings.

My order is therefore as follows:-

1. Upon the Plaintiff by her Counsel undertaking to pay the damages in case the Court shall hereafter be of the opinion that the Defendants shall have sustained any by reason of this order which the Plaintiff ought to pay.

IT IS HEREBY ORDERED that the Defendants be restrained and an injunction is hereby granted restraining the said Defendants whether by themselves, by their servants or agents or otherwise whosoever from trespassing, removing or in any way interfering with the downstairs apartment of the premises at Coubaril, Castries occupied by Victoria Gould or interfering with the property of the said Victoria Gould until the trial of this action or until further order.

2. The Defendants shall pay the Plaintiff's costs of these proceedings to be agreed to otherwise taxed.

A.N.J. MATTHEW
Puisne Judge