

IN OPEN COURT
SAINT LUCIA
Wednesday, 12th April 2017

		<u>APPLICATIONS AND APPEALS</u>
Case Name:		Ann Boriel-St. Clair v Harold Marcellin [SLUHCVAP2017/0005]
Date:		Wednesday, 12th April 2017
Coram:		The Hon. Mde. Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Mr. Peter Foster, QC, with him, Mr. Sahleem Charles
	Respondent:	Ms. Maureen John-Xavier, with her, Mr. Bertrand Xavier
Issues:		Interlocutory appeal – Interim injunction – Prohibition of use of right of way – Trespass – Exercise of discretion of learned judge in court below – Whether judge erred in discharging interim injunction – <i>American Cyanamid Co v Ethicon Ltd</i> [1975] AC 396
Type of Oral Result/Order Delivered:		Oral Judgment or Decision
Result / Order:		1. The appeal against the decision of Smith J dated 30th January 2017 is dismissed. 2. The appellant shall bear costs agreed in the sum of \$1,000.00 to be paid within two (2) weeks.

Reason:		The appellant challenged the manner in which the learned judge exercised his discretion when he granted the respondent's application in the court below to discharge an interim injunction. The judge also ordered that the trial of the matter be brought forward so that the issues between the parties could be resolved promptly. The appellant sought to impugn the evidential basis on which the judge arrived at the decision to discharge the interim injunction. However, the Court pointed out that in determining whether to grant/discharge an interim injunction, the judge would not have been required to conduct a mini trial on the evidence adduced by the parties. Rather, he would have only been required to determine whether there was a serious issue to be tried, whether damages would have been an adequate remedy if the appellant was to succeed at trial in establishing her right to a permanent injunction and also to assess where the balance of convenience lay (see <i>American Cyanamid Co v Ethicon Ltd</i> [1975] AC 396). The learned judge found that the evidence of the respondent disclosed that there was a serious issue to be tried. Although the appellant did not appeal against that finding, counsel for the appellant sought to raise this issue on appeal. The Court indicated that it would not permit counsel to advance a ground of appeal which was not pleaded in its notice of appeal (see rule 62.4(8) of the Civil Procedure Rules 2000). The Court ultimately held that in the circumstances, there was no sufficient basis for interfering with the decision of the learned judge as it could not be said that the learned judge exceeded the generous ambit within which reasonable disagreement was possible.