

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
C.L. B153/87

BETWEEN	GEORGE BECKFORD	PLAINTIFFS
AND	RUBY BECKFORD	
AND	NATIONAL COMMERCIAL BANK LIMITED	FIRST DEFENDANT
AND	MARIA THERESA CHRISTIAN	SECOND DEFENDANT

Bertram McCaulay Q.C. and Rudolph Francis for Plaintiffs.

Douglas Brandon and Joseph Shoucair for Defendants.

Heard: 30th April, 1987.

Coram Wolfe J.

The Plaintiffs are joint proprietors of two parcels of land situate at Green Valley, Mavis Bank in the parish of Saint Andrew.

By and with the consent of the Plaintiff Valley Farms Company Limited, a company registered under the Laws of Jamaica, was permitted to carry on business upon the said parcels of land.

It is worthy of note that George Beckford one of the Plaintiffs herein is a Director of the Central Valley Farms Company Limited, which shall hereinafter be referred to as the Company.

The Company on the 8th February, 1983 executed a debenture to secure the sum of One Hundred and Fifty Thousand Dollars owed to the First named Defendant. At the time of the execution of the Debenture the Company sought and obtained from the bank the facility to borrow further funds from the bank on condition that further security be provided. Up to the 11th of February 1987 the Debenture had been upstamped to secure the amount of Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000.00) with interest thereon.

The Bank on the 12th day of February 1987 made a demand in writing on the Company for the repayment of the total amount owing to the Bank which stood at Six Million Eight Hundred and Sixty Four Thousand Nine Hundred and Sixty Nine Dollars and

"12th February, 1987

Central Valley Farms Company Limited,
Mavis Bank P.O.
Saint Andrew

Dear Sirs,

I act for National Commercial Bank Jamaica Limited and am instructed that as at 10th February, 1987 Central Valley Farms Company Limited was indebted to the Bank's Cross Roads Branch in the amount of \$6,864,969.74., made up as under :-

Overdraft	\$3,803,809.98
Demand Loan	966,521.00
Development Loan	1,439,167.76
Special Loan	645,471.00
Guarantee	10,000.00
	<u>\$6,864,969.74</u>

Interest continues to accrue on the Demand, Development and Special Loans at the rate of 24% per annum and on the Overdraft at the rate of 30% per annum.

I hereby make formal demand upon the Company for the immediate payment of all sums owing to the Bank.

Yours faithfully,

JOSEPH A. SHOUCAIR

C.C. N.C.B.J. Ltd. Cross Roads Branch
C.C. Advances Department, Head Office".

The undisputed evidence is that up to the time of the hearing the Company had failed to meet the demand made by the Bank. As a consequence of this failure and pursuant to the terms of the Debenture the Bank appointed a Receiver and Manager in the person of the Second Defendant. The Registrar of Companies was duly notified of the appointment and the Company duly served with the notice of appointment on the 25th day of February 1987.

APPOINTMENT OF RECEIVER AND MANAGER

CENTRAL VALLEY FARMS COMPANY LIMITED

NATIONAL COMMERCIAL BANK JAMAICA LIMITED,
being the holder of a Debenture dated the 8th day of February, 1983 issued by the above Company, in pursuance of the powers conferred

preparation of an application for a registered Certificate of Title in respect of the said premises and to send that Certificate of Title to you when same is received by me.

I hereby give you my professional undertaking to send you the Certificate of Title when same is issued to me by the Registrar of Titles.

Yours truly,

(Sgd.) Rudolph Francis
RUDOLPH L. FRANCIS."

"June 11, 1984.

The Manager
National Commercial Bank Limited
Cross Roads
Kingston 5

Dear Sir/Madam:

Re: Lands at Mavis Bank, Saint Andrew (30.5 Acres)

I have been instructed by Mr. Leon Beckford Managing Director of Central Valley Farms Limited of Mavis Bank in the parish of Saint Andrew to apply for a Registered Certificate of Title for the above property.

The acreage is approximately (30.5) more or less with buildings thereon and has been purchased by Central Valley Farms Limited from Miss Louise Graham.

Mr. Beckford has instructed me to send the Duplicate Certificate of Title to you as soon as registration is completed and I hereby give you my professional undertaking that the Duplicate Certificate of Title will be sent to you as soon as it is issued to me by The Registrar of Titles.

Yours truly,

(Sgd.) Rudolph Francis
RUDOLPH L. FRANCIS."

As a result of the Entry upon the land occupied by the Company the Plaintiffs on the 31st day of March 1987 commenced an action by Writ of Summons against both Defendants. The Writ sounds in Trespass and detinue and claims an injunction to restrain the Defendants from entering upon the premises.

On the 3rd day of April 1987 Smith J (Ag.) granted the Plaintiffs

an interim injunction in the following terms:

"It is hereby ordered and directed that the Defendants by themselves, their servants or agents be restrained from preventing the Plaintiffs from entering upon lands known as farm lands and Great House Lands situated at Mavis Bank in the parish of Saint Andrew for the purpose of tending to livestock thereon for a period of 10 days from the date hereof. The Plaintiffs undertake to abide by any order which the court may make as to damages".

The parties appeared before me on the 30th day of April 1987 in quest of an Interlocutory Injunction.

The Application by the Defendants for Interim Injunction, which it was agreed should be treated as an application for Interlocutory Injunction is contained in a Summons dated the 28th April 1987.

McCaulay Q.C. for the Plaintiffs does not content that the Bank has improperly exercised its power under the debenture. However he contends that the debenture empowers the Bank to enter upon lands owned by the Company and upon no other lands. See paragraphs 2(1), 3, 11 of the Debenture.

The Court posited the following question for the consideration of Learned Queen's Counsel.

Question - If the owner of a parcel of land permits a Company to carry on business upon that parcel of land and if that Company issues a debenture to bank and fails to meet a demand made by the bank under the debenture, are you saying that receiver manager appointed by the bank cannot enter upon the land to secure the assests of the company and thereby prevent wasting of the assests?

Answer - If the Receiver does so he commits a trespass.

With deference to the eminent Queen's Counsel that cannot be the law. In the instant case the proprietor of the land is a signatory to the debenture in his capacity as director of the Company. He permitted the use by the Company of the land for the purpose of the Company carrying on its business. Further thereto he undertook through his attorney-at-Law

Mr. Rudolph Francis to hand over the titles for the said parcel of land to the bank by way of security for the amounts owing by the Company to the bank. Can he now be heard to say that a receiver manager appointed by the bank commits a trespass in entering upon the land. I dare say no. To preclude the Defendants from entering upon the land would be in my view contrary to common sense and to all the established principles of equity. The Defendants must be allowed to protect the assets of the Company; they can only do so by an entry upon the land. A receiver ^{having} manager/been appointed over the assets of the Company, the Company would be under no obligation to feed the pigs and to care for them. If the Plaintiff were to be excluded from entering upon the land the consequences would be disastrous. This is borne out in the affidavit of Joseph Shoucair which I accept as true and factual.

The following principles were enunciated in American Cyanamid v. Ethicon Ltd. [1957] 1 A.E.R. 504 namely that to secure the grant of an injunction the Plaintiff must show.

1. That there is a serious question to be tried as to whether he will be entitled at the trial to a permanent injunction.
2. That damages would not be an adequate remedy in the event of the Plaintiff's claim succeeding.
3. That if there is doubt as to the adequacy of damages that the balance of convenience favours the granting of the injunction.

Lord Diplock at p.510 said:

"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the introductions of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that it aided the court in doing that which was its great object, viz abstaining from expressing any opinion upon the merits of the case until the hearing (Wakefield v Duke of Buccleuch). So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real

prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason on this ground to refuse an interlocutory injunction."

Assume for purposes of argument that the Plaintiffs have overcome the first hurdle, about which I entertain grave doubts. I am satisfied that damages would be adequate remedy and I am further satisfied that the Defendants would be in a financial position to pay them.

Were I to be adjudged wrong in so holding, considering the contrary hypothesis I am also of the view that the Defendants would be adequately compensated under the Plaintiffs' undertaking as to damages. However I am not satisfied that the Plaintiff would be in a financial position to pay the damages which would be substantial.

For the reasons mentioned the relief sought by the Plaintiffs is denied.

Applying the same principles to the Defendants application I take the view that the Defendants should be allowed to protect the assests from waste. This can only be achieved by allowing the Defendants to enter upon the land without hindrance from the Plaintiffs or any other person. The Plaintiffs and such servants as are hereafter mentioned will be permitted to enter upon the land pending the determination of the outcome the action for such limited purpose as is herein stipulated.

It is therefore ordered as follows:

1. That the Plaintiffs summons be dismissed.
2. That the Plaintiffs, their sons Leon, Everton and Egbert Beckford be permitted to enter upon the lands in question along with their servants and or agents not exceeding five (5) in number to care for such animals as the Plaintiffs may have on the land. The Plaintiffs, and their sons named herein and their servants and/or agents are hereby restrained from doing any act or acts which will interfere with the Defendants in the exercise of their receivership.
3. Costs to the Defendants to be taxed if not agreed.
4. Certificate of Counsel granted.
5. Leave to appeal granted.