



[2020] JMSC Civ 219

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2017 HCV 02371**

BETWEEN	KEVIN BUCHANAN (Court appointed Administrator of the estate of Ulysses Jabez Buchanan, deceased)	1ST CLAIMANT
AND	JB TRUST LIMITED	2ND CLAIMANT
AND	ELGIVA BUCHANAN	1ST DEFENDANT
AND	SONIA CLARE BUCHANAN (Executrix of the estate of Jean Hall)	2ND DEFENDANT
AND	BANFIELD BUCHANAN	3RD DEFENDANT
AND	ANTHONY BUCHANAN (Buchanan Brother Partnership)	4TH DEFENDANT

CONSOLIDATED WITH

CLAIM NO. 2017 HCV 02319

BETWEEN	BANFIELD BUCHANAN	CLAIMANT
AND	KEVIN BUCHANAN (Court appointed Administrator of the estate of Ulysses Jabez Buchanan, deceased)	1ST DEFENDANT
AND	DIVIENNETTE BUCHANAN- WILLIAMSON (Administratrix of the estate of Fredrel Buchanan)	2ND DEFENDANT

CONSOLIDATED WITH

CLAIM NO. 2016 HCV 01519

BETWEEN	ELGIVA BUCHANAN	CLAIMANT
AND	DIVIENNETTE BUCHANAN- WILLIAMSON (Administratrix of the estate of Fredrel Buchanan)	1ST DEFENDANT
AND	NAVARDO WILLIAMSON	2ND DEFENDANT

IN CHAMBERS

Pauline Brown-Rose, of counsel, for the claimants, in claim no. 2017 HCV 02371

Christina Thompson, instructed by Shelards, Attorneys at Law for the 1st and 3rd defendants, in claim no. 2017 HCV 02371

Odane Marston, instructed by Jordan and Francis, Attorneys at Law for the 2nd defendant, in claim no. 2017 HCV 02371

July 27, September 18 and November 6, 2020

Application for the status quo to remain – Application for the parties to agree on an independent person - Res Judicata - Application for injunction – Administrator’s rights and duties - Intermeddling in estate - Balance of Justice - Whether the grant of the interim injunction will have the effect of giving the claimant judgment without a trial

ANDERSON, K.J

BACKGROUND

[1] The deceased, Ulysses Jabez Buchanan and Fredel Buchanan died in 1977 and 2013, respectively, leaving two (2) properties namely: Certificates of Title at Volume 1097 Folio 235 and Volume 1118 Folio 141 located at Glasgow and Spring

Valley, respectively, as tenants in common, (hereinafter referred to as 'the subject properties').

[2] A grant of administration with will annexed was granted to 1st claimant in the estate of Ulysses Jabez Buchanan on December 12, 2016. The 2nd claimant is a company duly incorporated under the laws of Jamaica to aid in the management of the estate of Ulysses Jabez Buchanan.

[3] The claimants filed claim No. 2017 HCV 02371, on August 15, 2017, seeking several orders which, in substance, are as follows:

- a. An injunction restraining the defendants from intermeddling in the estate of the deceased;
- b. An order that the defendants return equipment to the claimants taken from the property located at Glasgow;
- c. An order that the claimants be allowed to rear cattle and continue to grow sugar cane on the subject properties;
- d. An order that the claimants be allowed to continue to harvest and sell sugar cane to Pan Caribbean Sugar Company Limited;
- e. An order that the proceeds of sale be paid to the 2nd claimant;
- f. An order that the 2nd claimant be made to account to the personal representatives of the estate of Fredel Quentin Buchanan;
- g. An order for costs and incidental costs; and
- h. Liberty to apply generally.

[4] In support of these orders being sought, the claimants have filed an affidavit in support. The 1st and 3rd defendants, (hereinafter called, 'the defendants') have also filed affidavits in opposition to the claimants' claim in 2017 HCV 02371.

The defendants' application

[5] The defendants, in claim no. 2017 HCV 02371 on January 25, 2018 filed a notice of application, (hereinafter referred to as, the said application/'the defendants' application') seeking the following orders:

- a. The original status quo relating to the use of the subject properties remain until the trial of this matter or further order of this court;
- b. The parties agree on an independent person(s) to operate and manage the farms on the subject properties on the behalf of all persons who have a right in the subject properties pending the determination of claim no. 2017 HCV 02319;
- c. Within ten (10) days, of being requested to do so the 1st claimant shall provide to the defendants' attorneys at law, with the name(s) of any independent person(s) who the 1st claimant would like to operate and manage the farm pending trial;
- d. The parties to appoint an accounting firm to maintain accurate and complete financial records of any expenditure of funds earned from the properties;
- e. Within 10 days, of being requested to do so the 1st claimant shall provide to the defendants' attorneys at law, with the name(s) of any independent accounting firm(s) who the 1st claimant would like to maintain the farms' financial records, pending trial; and

- f. This claim be consolidated with claim no. 2017 HCV 02319 and claim no. 2016 HCV 01519

[6] The grounds on which the defendants, have sought those orders, are as follows:

- a. The Buchanan Brothers, which the 3rd defendant is the sole surviving partner of, is entitled to an interest in the subject properties.
- b. The subject properties were paid for by all six (6) Buchanan Brothers, who collectively agreed that they would use the lands to farm sugar cane and cattle rearing.
- c. The subject properties were used for family farms, which, the Buchanan Brothers managed.
- d. It was agreed between the brothers that subject properties would be placed in the names of the deceased, however it was not the intention that they would take it all for themselves, but instead they would hold it on trust for all brothers.
- e. In the will of the deceased, Fredel Buchannan, the 1st defendant, is listed as a beneficiary therein and she believes that has an equitable interest in the subject properties based on her contribution to the Buchanan Brothers.
- f. Claim no. 2017 HCV 02319, and claim no. 2016 HCV 01519 and this claim, touch and concern the same subject matters/ estate and properties.

[7] The defendants have filed affidavits in support of the said application and the claimants have filed affidavit evidence in opposition to the said application.

[8] That application was heard by Pusey J (Ag.) on April 30, 2018, who granted the order for the claims to be consolidated and ordered, inter alia, that:

- a. The remaining application shall be heard at a later date.
- b. The trial of this claim shall be December 13- 16, 2021.
- c. Pre-trial review for the consolidated matters shall be held on November 12, 2020.

The claimants' interim injunctive relief application

[9] On July 31, 2018, the claimants filed a notice of application for court orders seeking the following orders, in addition to those listed at paragraph 3 above, in their fixed date claim form:

- a. An order that the defendants deliver up to the claimants the certificates of title for the subject properties; and
- b. That the defendants be made to pay up outstanding taxes owed by the joint estates.

[10] In support of the orders sought in the notice of application, the claimants have particularized, several grounds, which in substance, are as follows:

- a. The 1st claimant being the administrator and also a beneficiary in his deceased father's estate, seeks to protect the interest of other beneficiaries.
- b. The certificate of title for the subject properties, indicate that the deceased Ulysses Jabez Buchanan, is 50% owner of the legal and beneficial interest therein.
- c. The Buchanan Brothers' partnership has no legal or equitable interest in the subject properties.
- d. The estates of the deceased, do not hold the properties on trust for the defendants.

- e. The defendants are intermeddling in the estates.
- f. This injunction is crucial to preserve the commercial viability of the estates of the deceased.

[11] The claimants and the defendants have respectively, filed affidavit evidence in support of and in opposition to, the relevant application.

[12] The applications by the claimants and the defendants are now before this court for adjudication and are the ones to which, these written reasons, pertain.

The defendants' application

[13] As it relates to the defendants' proposed order that the status quo remains, until the trial of this claim, that is dependent on the outcome of the claimants' application, which was filed later in time. Even if it is so found that the status quo should remain, this court is of the conclusion that there was no need for the defendants to have sought that order. The status quo will, in fact remain, once there has not been a determination otherwise by this court. As such, the defendants did not need to file an application seeking that order.

[14] The court is cognizant that the remaining orders being sought by the defendants, in essence, seek to compel the claimants to agree on an independent person(s) and accounting firm(s) to manage the subject properties until the claim is determined. The claimants however, have opposed the defendants' application, in its entirety.

[15] Those orders, as sought, would not have any practical use to the parties at this stage, given the claimants' opposition. Further, this court is of the opinion that even if it is that the claimants were to be forced to name a firm(s) and person(s), that does not mean that the person(s)/ firm(s) so named, would agree to being so appointed.

[16] There are many contingencies which flow from those orders which have not been properly worked out, so as to properly permit this court to exercise its discretion in granting the said orders. These include: the consent of the parties, the costs to be paid and how such costs will be apportioned. This court is of the considered opinion that unless and/or until, those contingencies have been settled, it will be pointless to make the orders as sought, as any such order, even if made by this court, will remain an order in theory only and will have little to no practical effect. Consequently, the orders being sought, must be refused. The court ought not to make orders in a vacuum, or which are only theoretical, in effect.

[17] As it is the conclusion of the court that the orders sought by the defendants ought not to have been sought, the said application of theirs, is, in whole, unnecessary and the costs of same, will be awarded in favour of the claimants.

Point in Limine

[18] The defendants had filed a point in limine on July 26, 2019 in this court, seeking an order that the notice of application filed by the claimants on July 31, 2018, had already been heard and adjudicated, both before this court and the Hanover Parish Court and as such, breaches the principles of res judicata.

Res judicata

[19] Before any adjudication can be made on the claimants' application, this court will now consider the point in limine, raised by the defendants.

[20] The principle of res judicata, describes a number of different legal principles that bar parties from re-opening matters that were already determined by a competent court, save on appeal. In **Gordon Stewart v Independent Radio Company Limited and Wilmot Perkins [2012] JMCA Civ 2**, it was stated that the doctrine of res judicata is to protect courts from having to adjudicate more than once, on issues arising from the same cause of action and to protect the public interest that there should be finality in litigation and that justice be done between them.

[21] The learned authors of **Halsbury's Laws of England**, 4th edition, Vol.16, paragraph 1528 have stated as follows:

'In order for the defence of res judicata to succeed it is necessary to show not only that the cause of action was the same but also that the plaintiff has had an opportunity of recovery and but for his own fault might have recovered in the first action that which he seeks to recover in the second action... It is not enough that the matter alleged to be concluded might have been put in issue, or that the relief sought might have been claimed. It is necessary to show that it was actually put in issue or claimed.'

[22] A matter is deemed determined, when it has been heard and determined on its merits. This can be deduced from affidavit evidence, as well as the records of the relevant court.

[23] This court noted that there has been no affidavit evidence, which has been filed in support of, or against the point in limine. As such, all this court has, are the assertions made by the parties in their written submissions.

[24] This court has, for present purposes, examined the relevant minutes, as regards the hearings in this court and have found that there has been no order, in this court, granting or refusing the said injunctive relief, which is being applied for and in respect of which , these written reasons pertain.

[25] Further, the submission that the matter was already decided in the Hanover Parish Court, bears no weight before this court, as there has been no evidence led in support of that assertion. Consequently, the point in limine, as raised by the 1st and 3rd defendants, is unsuccessful.

[26] The second ground as set out in the defendants' written submission, is not for consideration at this stage and will be delved into, instead, in considering the merit of the application for the interim injunction.

Interim injunction

The issue to be determined

- [27] The issue, which arises on this application, is whether the claimants should be granted an interim injunction to restrain the defendants from intermeddling in the estate of the deceased, pending the expected conclusion of claim no. 2017 HCV 02371, in December, 2021.
- [28] The question as to the legitimacy of the respective parties' claim is not before the court for resolution at this time. The claimants are seeking an interim injunction against the defendants, which in essence would seek to restrain their exertion of ownership over the subject properties based on their belief of entitlement based on the doctrine of constructive trust. The claimants contend that were this to continue until the trial of the claim, it will result in great loss to the deceased's estate.

THE LAW AND ANALYSIS

- [29] In order to resolve the issue at bar, it is necessary to review the law as it relates to injunctive relief, as expounded upon, in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd [2009] UKPC 16**. There, at paragraph 16 of the judgment, the following was stated:

'The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.'

- [30] The Privy Council then went on to state, also at paragraph 16, what is meant by 'whether granting or withholding an injunction is more likely to produce a just result,' to mean the following:

'...that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.'

[31] The Privy Council, at paragraph 17 of the judgment, further stated that:

'In practice it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irreparable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other.'

[32] Further, the Privy Council also stated at paragraph 18 of the judgment, other matters which the court may consider, are as follows:

'the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.'

[33] In the case: **American Cyanamid v. Ethicon [1975] AC 396**, it was laid down by England's House of Lords, that, before granting an injunction, the court must be satisfied that the claim is not frivolous or vexatious and that there is a serious issue to be tried. That dictum, has repeatedly been followed by courts, in this jurisdiction.

[34] From examination of the affidavit evidence filed in this claim, there is a serious question to be tried. The claimants have filed a legitimate claim, in response to which, the defendants have filed affidavit evidence, advancing their defence.

The adequacy of damages

[35] If the claimants should be refused the interim injunction and go on at trial to prove that they are entitled to a permanent injunction, the court must examine whether an award of damages would adequately compensate them for that, which they would have lost in the interim, due to the defendants' actions. It is important to examine the practical consequences of a refusal to grant the injunction, in order to make a conclusion on the adequacy/inadequacy of damages.

[36] From the affidavit evidence, the claimants have asserted that, the defendants in claim no. 2017 HCV 02371 have and have been:

- a. Prevented/preventing the 1st claimant from carrying out his lawful duties as an administrator;
- b. Depleted/depleting the assets of the estate, by removing and disposing of farming equipment which are necessary to keep the estate viable;
- c. Blocked/blocking Pan Caribbean Sugar Company from making payments and issuing quotas to the claimants;
- d. Depleted/depleting the commercial viability of the estate; and
- e. Deprived/depriving the estate from income, which the claimants are liable to account for.

[37] Preliminarily, the defendants' contention, appears to be true, that if the interim injunction is now refused and a final one granted at trial, the claimants will be compensated by an award of damages, as their foreseeable loss, seems to be that which can be assessed, monetarily. The claimants have disagreed and contend that damages will not be an adequate remedy.

[38] Simmons J in **Howard Jacas v Bryan Jacas and another [2014] JMSC Civ 190**, at paragraph 45 noted that: the responsibilities of an executor, according to case of **Re Stewart; Smith and another v Price and others 5 ITEL R 622**, are fiduciary in nature. Consequently, where he fails to carry out those functions, or is negligent in their execution, he may be held to be personally liable.

[39] There are numerous beneficiaries under the deceased's estate, who may have an interest in the subject properties. The defendants' actions in the absence of an interim injunction, may result in the 1st claimant being unable to account to the beneficiaries for those sums, that is if, at trial it is determined that the subject

properties ought to form a part of the estate of Ulysses Jabez Buchanan. This then may result in a breach of the 1st claimant's fiduciary duty, for which he could be personally liable, in the event that the defendants are unable to give a complete account. For this reason, damages will not be an adequate remedy in circumstances, where the claimant is unable to fulfil his potential fiduciary duties.

[40] The claimants have given an undertaking as to damages, and this court is satisfied, that any sum that may be awarded to the defendants as damages, may be substantial in covering those defendants' potential losses, if it is that this court grants the interim injunction sought and at trial, finds that the said injunctive relief, ought not to have been granted.

[41] Even with that undertaking though, it cannot serve to displace the fact that, in any event, damages will not be an adequate remedy for the claimants, if the interim injunctive relief as sought by them, is refused, but later on, at trial, it is determined that same ought to have been granted, because the claimants' claim is successful.

The balance of convenience

[42] Having made the observation that damages will not be adequate compensation for the claimants, if the interim injunction is refused, then the balance of convenience falls for consideration, by this court.

[43] The defendants have asserted that the balance of convenience rests in their favour, on the basis that: they are entitled to be named a part owners of the subject properties, on the basis of constructive trust. Thus, they contend that if the interim injunction is granted, they will have to wait almost a year to use the property that they have called home for over forty (40) years. In addition, they contend that their livelihood will be affected, as they make some from farming the produce, on the farms, which are located on the subject properties and have no other source of income. Consequently, they contend that refusing the interim injunction will enure to the least risk of injustice.

[44] Learned authors, in the text - **Beans, Burns and Parry on Injunctions, 11th edition, 2012** at paragraph 3 – 24, have noted that:

*'An example of apparently even balance is where there will be sustained uncompensatable disadvantage to one or other party whichever way the interim decision goes. **However where there is only a risk of unquantifiable damage, to the claimant from the refusal of the interim relief, as against the certainty of unquantifiable damage to the defendant from the grant of it, it cannot be said that the scales are evenly balanced and an injunction should generally be refused.**' [Emphasis added]*

[45] In **Walker (John) & Sons v Rothmans International [1978] FSR 357** it was stated that: where both parties might suffer unquantifiable damage, the status quo should be maintained unless there are compelling reasons to the contrary.

[46] Opposing parties are urging the court, that the balance of justice should be declared in their favour, as they will incur uncompensatable disadvantages, such that an award of damages, will not be adequate to remedy their losses.

[47] In the opinion of this court, the balance of convenience being tilted in a party's favour is dependent on whether there would be a 'risk' as compared to a 'certainty' of unquantifiable damage. It is then important, that the court, at this juncture, carefully examines the implications of the interim injunction being granted or refused, to both parties, so as to best determine where the 'risk' and 'certainty' lie, in the circumstances.

[48] This court accepts that there is a possibility that at trial, based on the evidence led, that the court may find that the subject properties, are to be deemed a part of the estate of Ulysses Jabez Buchanan. As such, were the defendants' alleged actions to continue, the claimants' case taken at its highest, may then result in the risk of the 1st claimant being personally liable, if he is unable to account for all of the sums from the subject properties.

[49] This court also accepts the defendants' evidence at this time that they have been acquainted with the subject properties for over forty (40) years and have lived and

made their livelihood from same. Consequently, this court has accepted that if in fact, the interim injunctive relief as sought, is granted, this will certainly result in deprivation of possession from the subject properties. This would certainly result in unquantifiable damage to the defendants.

[50] At this juncture, it is clear that though the claimants' loss may be deemed unquantifiable, that is, at this juncture, only a risk, since it is, that there is no guarantee that the subject properties will be deemed property of the estate of Ulysses Jabez Buchanan. Further, even if it is so decided, there is no guarantee that the defendants will be unable to account for all of the relevant sums, which they would have depleted. This is in comparison to the certainty that if the interim injunction is granted, the defendants will certainly sustain, unquantifiable damage.

[51] The court is of the opinion that the balance of convenience therefore, rests in favour of the status quo remaining.

Where the grant of the injunction will dispose of the case

[52] **Miller v Cruikshank (1986) 44 WIR 319** heralds the well-known principle that where there is a triable issue between the parties, but no claim for damages and the grant of an interlocutory injunction would give the claimant all that they sought in the substantive claim, then the court should not grant such an injunction, in the interest of avoiding an injustice, or on the balance of convenience.

[53] In other words, if the grant of the interim injunction would result in judgment being granted to the claimants, then the court should refuse said injunction as it would operate as an end to the matter in circumstances where there has not been a trial on the facts.

[54] The defendants have contended, in their in limine objection, as the second ground thereof, that this principle applies squarely to this case. That contention is of merit as: the claimants' fixed date claim form in essence, seeks the same orders as are sought in this notice of application and the affidavit which was filed in support of

the fixed date claim form, mirrors the 1st claimant's affidavit in support of the application for an interim injunction.

[55] It is to be carefully noted for present purposes that since the relief being sought in this application are also sought in the fixed date claim form, the grant of the interim injunction will almost certainly result in a practical advantage to the claimants, in circumstances where there has been no trial. The relevant deponents to the affidavits have not been cross-examined and there are no facts proven before this court. That is an exercise, which no court ought to undertake. See: **Lascelles Chin v Audrey Ramona Chin [2001] UKPC 7**

[56] Thus, the grant of an interim injunction to the claimants will, for all practical purposes, result in the disposition of the substantive claim, in favour of the claimants. For that reason and for other reasons adumbrated above, this court is not minded to grant the orders as sought.

CONCLUSION

[57] The disputes in this case, ought properly to be resolved, at trial. In the opinion of this court, the application brought by the claimants is not one which is suitable for determination, at this time, in such a manner, as it would pre-emptively result, in the claimants being awarded reliefs by this court, which would be equivalent to those which may be awarded to them, if judgment on the claim, is granted, in their favour..

[58] Also, the defendants' application lacks sufficient legal basis and the orders, as sought, in the opinion of this court, ought not to be granted.

[59] In the opinion of this court and bearing in mind, that the claimants/applicants, bear the burden of proof as regards their application, to the standard of a balance of probabilities, the claimants' application for interim reliefs ought not to be granted. This is so, as the balance of justice, for the reasons outlined above, rests in favour of the defendants.

DISPOSITION

[60] This court therefore, now orders as follows:

- 1) The 1st and 3rd defendants' application for court orders filed on January 25, 2018, is denied.
- 2) The costs of that application are awarded to the claimants with such costs to be taxed, if not sooner agreed.
- 3) The claimants' application for court orders filed on July 31, 2018, is denied.
- 4) The costs of that application are awarded to the 1st and 3rd defendants, with such costs to be taxed, if not sooner agreed.
- 5) The 1st and 3rd defendant shall file and serve this order.

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Hon. K. Anderson, J.