[2022] JMSC Civ 26

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV03577

IN THE MATTER OF ALL THAT parcel of land know as CHERRY GARDENS situate in the parish of SAINT ANDREW containing by survey Eight Hundred and Twenty-Two Acres Two Rood and Thirty Perches of the shapes and dimensions and butting as appears by plan thereof and being the land comprised in Certificate of Title registered at Volume 1425 Folio 349 of the Register Book of Titles.

BETWEEN	**CHERRY HILL DEVELOPMENTS LIMITED t/a CHD JAMAICA**	**CLAIMANT/APPLICANT**
AND	**RESIDENCES OF CHERRY HILL (RCH) COMPANY LIMITED**	**DEFENDANT/RESPONDENT**

IN CHAMBERS

Mr. Emile G. Leiba and Ms. Paulette R. E. Neil instructed by Dunn Cox appearing for the Claimant/ Applicant

Mr. Hugh Small, Q.C. and Chadwyck Goldsmith instructed by Alton Morgan and Company appearing for the Defendant/Respondent

Heard: 9th of December 2021 & 27th of January 2022

Application for Interim Injunction – Factors to be considered in granting Interim Injunction—Serious issues to be tried-Whether damages are an adequate remedy – American Cyanamid test

LAWRENCE-GRAINGER, J (AG.)

[1] This is an application by the Claimant, Cherry Hill Development Limited (CHD), against the Defendant, who is the Residences of Cherry Hill (RCH) Company Limited for injunctive relief. In a Notice of Application filed on the 9th of August 2021 the Claimant asked the court for the following orders to be granted;

1. An injunction restraining the Defendant and its servants or agents from committing further acts of trespass on ALL THAT parcel of land know as CHERRY GARDENS situate in the parish of SAINT ANDREW containing by survey Eight Hundred and Twenty-Two Acres Two Rood and Thirty Perches of the shapes and dimensions and butting as appears by plan thereof and being the land comprised in Certificate of Title registered at Volume 1425 Folio 349 of the Register Book of Titles, belonging to the Claimant;
2. An injunction restraining the Defendant and its servants or agents from removing or damaging any barriers, gates, walls, fences or other items belonging to the Claimant from ALL THAT parcel of land know as CHERRY GARDENS situate in the parish of SAINT ANDREW containing by survey Eight Hundred and Twenty Two Acres Two Rood and Thirty Perches of the shapes and dimensions and butting as appears by plan thereof and being the land comprised in Certificate of Title registered at Volume 1425 Folio 349 of the Register Book of Titles;

3. That the Court abridge the time for filing and serving the Notice of Application for Court Orders prescribed by Rule 11.11(1)(b) of the Civil Procedure Rules 2002

Claimant's Case

Melanie Subratie

[2] She gave evidence that she is a Director of the Claimant Company. Her evidence was that, forming part of the Claimant's premises is a strip of land which connects to the end of a parochial paved roadway on one end and the other end partially borders the adjoining premises. She testified that the strip of land is not the sole means of access to the adjoining premises but is the preferred means of access by the Defendant. She deponed that by letter dated April 28 2020 from the Defendant and letter dated May 22 2020 from the Defendant to the Claimant's Attorney at law, the Claimant was advised that the Defendant was desirous of purchasing the strip of land from the Claimant.

[3] Ms. Subratie said further that negotiations were entered into but there was no agreement. She testifies that permission was not given to the Defendant to use the strip of land to access the adjoining premises but notwithstanding this, their servants or agents continued to trespass on the premises.

[4] In or around May 2021, the Claimant erected a chain link fence preventing the Defendant and its servants or agents from accessing the premises. However, within days of the erection of the fence it was removed and discarded without the Claimants permission and the Defendant's servants or agents continued to trespass on the Claimants premises.

[5] Additionally, in or around June 2021, the Claimant erected four cement filled columns across the strip of land affixed in the earth to bar the Defendant's use of the Claimant's premises to access the adjoining premises.

[6] However, in or around July 2021, the cement filled columns were removed by the agents or servants of the Defendant and they subsequently continued to trespass on the Claimant's premises by using the strip of land.

[7] She concluded that the Claimant plans to develop their premises and the Defendant's unauthorized use of the strip of land is negatively impacting the Claimant's plans.

Llewelyn Allen

[8] He is a Commissioned Land Surveyor with thirty-five years' experience in the field. He states that he wishes to respond to the Affidavit evidence of Mr. Isa Angulu, also a Commissioned Land Surveyor.

[9] His evidence was that Certificate of Title registered at Volume 1287 Folio 736 does not represent a plan of the roadways as stated by Mr. Angulu but instead represents the Deposited Plan for the entire subdivision.

[10] He gave evidence that the Surveyors Report merely shows the Reserved Road ending at the point claimed by the Claimant. There is no statement in the Surveyors Report indicating that the terminal point of the Reserved Road is incorrect. He states that a claim is being made that the subdivision Plan submitted to the KSAC supports Mr. Angulu's claim that the road extends further beyond the entrance of Lot 26 but that that Subdivision Plan had not been provided. Instead, the Deposited plan which goes counter to the claim is submitted.

[11] Mr. Allen stated that Mr. Angulu claims that the draftsmen, in preparing that Pre checked Plan, inadvertently omitted the strip of land from the end of the road, which was intended to form access to Lot 26. However, no document has been presented by Mr. Angulu indicating the section of the road omitted.

[12] He deponed that Mr. Angulu claims that on March 27, 2019 he found "the original road survey iron peg marks". However, he stated that this is misleading because the only iron pegs beyond the end of the Reserved Road would have been the

common boundary pegs between Lot 26 and land registered at Volume 1425 Folio 349 in the name of the Claimant. He also stated that a boundary cannot be re-established, as claimed by Mr. Angulu,

[13] He gave evidence that a careful inspection of the Pre checked Plan will show that all boundary marks along the southern side of the strip of land surveyed are marked IP(old) which should be interpreted as ‘old iron peg’. This indicates that these marks were already in place at the time of the survey, to the northern side. However, the only old mark shown, is at the end of the Reserved Road. He testified that all other marks were put in place on the day of the survey.

[14] His evidence was that even if the Subdivision Deposited Plan No. 9420 was amended, this should not have been done without the written consent of the Claimant.

Defendant’s Case

Uriel Almondo Senior

[15] Mr. Senior is a Road and Subdivision Contractor and says that in 1993 he was employed by Matlaw-Kerr Development Limited (MKL) to complete works on their Cherry Hill Subdivision. He testifies that he would supervise the site preparation and construction of the road pathways, alignment, grading, laying of pipelines, drains, culverts, curbs, sidewalks, retaining wall, stone and concrete revetments and final asphalt paving of the subdivision.

[16] His evidence was that he was responsible for cutting all the lot entrances on Reserved Road 1 and that this was from the foot of Cherry Hill to the top. He stated that the Developers had to satisfy the Kingston and Saint Andrew Corporation (KSAC) that all the lots had access to the roadways as it was a term of the subdivision approval and it guided the measurements, design and technical scope of his work.

[17] He gave evidence that in late 1995, he completed laying and paving the roadways to provide access to all the lots. This included the roadway up to the level section of Reserve Road 1 for access to Lot 26 now registered at Volume 1284 Folio 160 and the roadway along Upper Carmel Close giving access to land now registered at Volume 1425 Folio 349.

[18] He stated that he was present when Mr. Isa Angulu surveyed the road paths in 1994 and to the best of his information the road was completed in 1995 for access to Lot 26 and was the Lot's only entrance. After the roadwork was completed he was present when the Inspector from KSAC inspected the subdivision and confirmed access to every Lot.

[19] He testified that Deposited Plan No. 9420 and Plan Annexed to the Title registered at Volume 1287 Folio 736, fails to show the completed roadway giving access to Lot 26.

Isa Angulu

[20] He gave evidence that he is a Commissioned Land Surveyor with over thirty years' experience in the field.

[21] He testified that in 1989 he was engaged by Mr. Ian Kerr of MKL to do surveys for the subdivision development of several hundred acres of land located in Upper Cherry Gardens, known as Cherry Hill. He says that in addition to surveys for the original land, he also did the Topographical Surveys and prepared a Subdivision Plan for the southern and eastern section of the land. The land was comprised of approximately 40 Lots inclusive of three roadways. The Cherry Hill Plan was submitted sometime in 1989 to the Town and Country Planning Authority and was approved in 1990.

[22] After Subdivision Approval was granted, he laid out the road path which gave access to all the subdivision lots. All three roads were constructed simultaneously. He testified that in all, he spent about three years on the site setting the road

alignment, the gradients, marking the lot boundaries, lot access points and locations for utility poles. His evidence is that Lot 26 at the top of the hill, had its road access shown on the Subdivision Blueprint.

[23] He testified that in or around March to April 1994, he prepared a pre checked plan before the final sections of the roadways were complete. He explained that this was because it was the responsibility of the KSAC to check and verify that the roadways were completed giving access to each lot of the subdivision and to confirm it with the Registrar of Titles.

[24] His evidence was that a separate Title registered at Volume 1287 Folio 736 was issued for the three roadways with the pre checked plan that he prepared. In 2019 Mr. Kerr asked him to layout the subdivision plan for Lot 26. He visited the Lot.

[25] On the 27th of July 2020, he prepared an Identification Report for Lot 26 to confirm the boundaries and he identified that though the roadway was built in the 1990's and gave access to Lot 26, the asphalted roadway with the curb wall did not correspond with the Plan of the reserved roads he had prepared in 1994.

[26] He then reviewed the Deposited Plan No. 9420 and came to the conclusion that it was not accurate and this was because the reserved road goes beyond the entrance to Lot 26. He states that the original Subdivision Plan prepared by him and submitted to KSAC indicated that Lot 26 would have access along the end of the paved roadway.

[27] His evidence was that when the draftsmen were preparing the pre checked plan they inadvertently completed the plan without including disputed the strip of land at the end of the road which was intended to form access to Lot 26.

[28] He reported his findings to Mr. Kerr who instructed him to re-survey the land. He states that his resurvey of the land was guided by sections 22 to 25 of the Land Surveyors Regulations. Lot 26 was bushed and he found the original iron pegs measured and marked and boundaries were reestablished to show the actual

roadway. However, the asphalted road with curb walls was long standing and as a result they had been accepted as boundaries for the adjoining land in accordance with section 25 of the Land Surveyors Regulations.

[29] He testified that his survey showed the existing paved roadway separated the boundaries of Property registered at Volume 1425 Folio 349 which is property owned by CHD from Lot 26 registered at Volume 1284 Folio 160. He produced a new Prechecked Plan PE 427179 which shows the roadway which had been omitted on the Reserved Road Title. His evidence is that he lodged the Pre checked Plan at the survey department on July 17th 2020.

[30] He gave evidence that he prepared the proposed subdivision plan for approval in or about June of 2020 showing Cherry Hill public roadway going all the way up to Lot 26 at the top of the hill. It was approved in or about March 2021 and the approval acknowledges the existence of a roadway giving access to Lot 26.

Ian Kerr

[31] He gave evidence that he is a Real Estate Developer with over fifty years of experience and one of two Directors of the Defendant/Respondent Company, Residences of Cherry Hill Company Limited (RCH).

[32] His knowledge of the use and construction of the roadway arises from being a Director of MKL, the Developer, and subsequently owning Lot 26 registered at Volume 1284 Folio 160 since May 1993.

[33] Cherry Hill Developments Limited (CHD) is the registered proprietor of the adjoining land located at Volume 1425 Folio 349 purchased in December 2009. He testifies that both properties were formerly owned by Matlaw-Kerr. However, the purchase in 2009 was effected by Jamaican Redevelopment Foundation Inc. (JRFI) exercising power of sale.

[34] His evidence was that MKL acquired Volume 240 Folio 26 on February 27 1989 and they obtained subdivision approval in 1991. He testifies that the subdivision

work ended in 1995 when Mr. Senior completed the road construction for access to all the lots forming part of the subdivision. He stated that Mr. Isa Angulu was engaged to prepare the Plans and diagrams for the subdivision.

[35] He gave evidence that on the March 27, 2019, Mr. Angulu prepared a Survey Diagram that bears PE No. 427179 which shows the roadway that gives access to Lot 26 and separates the CHD property from Lot 26. He gives further evidence that in 1995, and for several years after, event promoters sought and received his consent to use Lot 26 to host numerous public functions and parties, and patrons and staff attending would have gained access via the disputed strip of asphalted roadway. He too has enjoyed the use of the strip for over 25 years.

[36] He testified that when CHD purchased the adjoining property, the asphalted roadway and curb wall that provides access to Lot 26 was clearly visible and remains the only useable access point. He testifies that RCH engaged the services of Mr. Angulu in 2019 and found out that what existed on the ground did not correspond with the Plan of the Reserved Road that he prepared in 1994, with the strip of land at the end of the road which gave access to Lot 26. He therefore instructed Mr. Angulu to re-survey the land to capture the current layout that had existed for 25 years.

[37] His evidence was that in February 2020 RCH began earthworks in anticipation for the statutory approvals and a safety gate was erected on the disputed strip of asphalted road. Afterwards, CHD representatives, Mike and Melanie Subratie, reached out to discuss the issue of the gate being located on the asphalted strip. He testified that RCH had discussions about acquiring an easement and were countered with a query about the purchase the whole property which consists of 173 acres of land.

[38] On November 4, 2020 CHD sent documents through its Attorneys for RCH to purchase the land. In March and June 2021 RCH was granted Building Approval, Subdivision Approval and Real Estate Board Approval for the development. He

gave evidence, however, that the development is time sensitive. Therefore, on May 18 2021, when he drove up to the Cherry Hill Road and observed a wire fence erected across the asphalted roadway, he came back the next day and removed it to get to the equipment.

[39] He testified that his Attorneys corresponded with CHD explaining the financial loss that RCH would experience and that that is the only point of access. CHD responded to the letter by driving steel pylons into and across the strip of asphalted road and filled the steel pylons with mixed concrete and the road beyond this was dug up by a backhoe rendering it impassable.

[40] His evidence was that further attempts were made at an amicable settlement but to no avail. He continues that on July 20, 2021 RCH had the steel pylons removed and paid workmen to restore the road. The holes were filled. He explains that this was necessary to gain access to the Lot. On August 25, 2021 his attorney submitted an application to the Registrar of Titles to correct the Deposited Plan No. 9420.

[41] His evidence was that CHD will suffer little to no harm if the Court refuses this application for an injunction. However, it is to be noted that RCH is not claiming exclusive rights to the strip but requires same for the sole purpose of accessing the development without which the property is landlocked.

Submissions

[42] I have received and considered written submissions from the respective Counsel in the matter as well as their oral submissions. However, for the sake of brevity I have decided not to recite their submissions but simply to address the relevant issues raised in my analysis and conclusion.

THE LAW

[43] The decision as to whether to grant an interim injunction is informed by the oft cited **American Cyanamid v Ethicon [1975] 1 All ER 504,** endorsed in several

decisions from our courts to include **The National Commercial Bank Jamaica Ltd v Olint Corp. Limited, Privy Council Appeal No. 61of 2008 and delivered on the 28th April 2009.** The principles are as follows:

1. The Court must first consider whether there is a serious question to be tried. This means that the claim must not be frivolous or vexatious. This is different from the requirement to establish a prima facie case. The Claimant should have a real prospect of succeeding in her claim for a permanent injunction at trial. If there is no serious question to be tried, then the injunction should be refused.

2. If there is a serious question to be tried the next question is whether damages would be an adequate remedy for the Claimant whatever losses she may suffer pending the trial of the substantive matter. Also, one must consider whether the defendant is in a position to pay them. If damages are an adequate remedy, then an injunction should not be granted as then there is no basis for interfering with the Defendant's freedom of action by granting an injunction.

3. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. The court must be satisfied that the comparative mischief, hardship or the inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

4. Hence, it is the duty of the court to consider the convenience of the plaintiff as against the convenience of the defendant. If the court thinks that by refusing the injunctions, greater or more inconvenience will be caused to the plaintiff, it will grant the interim injunction. Moreover, if

the court finds that greater inconvenience will be caused to the defendant, it will refuse the relief.

Were there serious issues to be tried?

[44] The Defendant's property is registered at Lot 26 and the Claimant is the registered proprietor of the adjoining property which includes the disputed piece of land. Both properties were originally part of a larger piece of land but were subsequently subdivided.

[45] The Defendant contends they have been using the strip of land to gain access to Lot 26 for over 25 years. They also allege that it is their sole means of accessing their property and that it was constructed specifically for them to be able to access Lot 26.

[46] Through its witness Mr. Angulu, who was responsible for the preparation of the Cherry Hill subdivision plans, the Defendant alleges that the Plans incorrectly included the strip of land as part of the Claimant's property and that it was a surveying error.

[47] The Defendant contends that the error has been cured in law using the principles of easement of necessity and user, by section 2 of the Prescription Act and by section 45 of the Limitation of Actions Act.

[48] The Respondent also relies on section 70 of Registration of Titles Act and highlights that the Claimant's title is subject to the Statute of Limitations and to any easement acquired by enjoyment or user notwithstanding that these may not be noted on the title.

[49] The court recognises that the substantive claim has still not been tried and so it should avoid taking an interim view on the outcome of the case. For that reason, no comprehensive analysis of issues that are material to the determination of the Fixed Date Claim was done.

[50] The main question is whether the Defendant can successfully claim that the Claimant's title is subject to the operation of the Statute of Limitation and /or an Easement.

[51] Before the Court examines whether this presents a serious issue to be tried, the Court bears in in mind the warning in **American Cyanamid** adopted in several of our local decisions such as **Aspinal Nunes v Jamaica Redevelopment Foundation Inc.** [2019] JMCA Civ. 20, where the court is not at this stage to try and resolve conflicts of evidence on affidavit but to leave these for trial.

[52] However, in order to determine whether there are serious issues to be tried the Court reviewed the factors which would need to be established in order for a court to conclude that an easement had been created.

[53] **In Carlton Coakley & Michelle Coakley v Earl Jackson [2020] JMCA 28,** Simmons JA (Ag), as she then was, outlined the guiding principles in order to mount a successful claim of easement by way of prescription. She stated that an applicant would have had to prove that they enjoyed the use of a roadway, unmolested, for a period of 20 years.

[54] Section 2 of the Prescription Act was also examined. It states:

> *"When any profit or benefit, or any way or easement, or any watercourse, or the use of any water, a claim to which may be lawfully made at the common law, by custom, prescription or grant, shall have been actually enjoyed or derived upon, over or from any land or water of Her Majesty the Queen, or of any person, or of anybody corporate, by any person claiming right thereto, without interruption for the full period of twenty years, the right thereto shall, subject to the provisos hereinafter contained be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."*

[55] The learned Judge of Appeal concluded, having reviewed Section 2, that the consent or agreement of the owner of the land would negative the acquisition of any prescriptive right. That further, acquiescence involves knowledge of the act done, the power to stop the act or take legal action in respect of it and the failure

to exercise that power. Where permission is given there can be no acquiescence. Similarly, where the owner does not know that the act is being done there can be no creation of a prescriptive right.

[56] Additionally, she opined that an easement by way of necessity arises where land which is surrounded by other land is subdivided by the owner and sold or given to another, cannot be accessed or used without that right of way. In other words, it is land locked.

[57] In light of the foregoing, in the case at bar, the sub issues which are to be determined at trial would be:

i. Whether the disputed strip was being used for over 20 years because there was no admission by the Claimant
ii. If so, whether the Claimant had acquiesced to that use; and
iii. Whether Lot 26 is in fact land locked

[58] Additionally, there are several conflicts on the Affidavits, relevant to the determination of the substantive claim, that would have to be aired at trial. These conflicts are mostly evidenced in the battle of the commissioned land surveyors: As a reminder,

I. Llewelyn Allen on behalf of the Claimant says that the Certificate of Title registered at Volume 1287 Folio 736 does not represent a plan of the roadways as stated by Mr. Angulu but instead represents the Deposited Plan for the entire subdivision.

II. He states that a claim is being made that the Subdivision Plan submitted to the KSAC supports Mr. Angulu's claim that the road extends further beyond the entrance of Lot 26 but that that Subdivision Plan had not been provided. Instead, the Deposited plan which goes counter to the claim was submitted.

III. Mr. Allen states that Mr. Angulu claims that the draftsmen, in preparing that Pre checked Plan, inadvertently omitted the strip of land from the end of the road, which was intended to form access to Lot 26. However, no document has been presented by Mr. Angulu indicating the section of the road omitted.

IV. Mr Allen stated that Mr. Angulu claims that on March 27, 2019 he found "the original road survey iron peg marks". However, he states that this is misleading because the only iron pegs beyond the end of the Reserved Road would have been the common boundary pegs between Lot 26 and land registered at Volume 1425 Folio 349 in the name of the Claimant.

V. He also stated that a boundary cannot be re-established, as claimed by Mr. Angulu,

[59] Mr. Allen 's opinion is that the Subdivision Deposited Plan No. 9420 which was amended should not have been done without the written consent of the Claimant. The Court finds that the issues raised are not frivolous nor vexatious and are real questions to be answered at trial.

Are damages an adequate remedy

[60] In the case of **Tewani Ltd v Kes Development Co. Ltd & ARC Systems Ltd.** (unreported) Supreme Court, Jamaica, Claim No. - 16 - 2008 HCV 02729, judgement delivered on 9 July 2008, Brooks J (as he then was) states as follows:

> *"The significance of the subject matter being real property, raises a presumption that damages are not an adequate remedy, and no enquiry is ever made in that regard. The reason behind that principle is that each parcel of land is said to be "unique" and a have 'a peculiar and special value'."*

[61] In **Tewani** Brooks J had considered Lord Chancellor Hardwicke's statement in **Buxton v Lister & Cooper** (1794) 3 Atkyns Reports 383 said at page 384:

> *"As to cases of contracts for the purchase of lands or things that relate to realties those are of a permanent nature and if a person agrees to pp it is on a particular liking to the land and it is quite a different thing from matters in the way of a trade "*

[62] Brooks went on to say that the principle seems to apply even if the land has been bought as part of a commercial venture. He quoted with approval **Verrall v Great Yarmouth Borough Council** [1981] 1QB 202 at page 220 B-C where the following statement is attributed to LJ Roskill:

> *"It seems to me that since the fusion of law and equity it is the duty of the court to protect where it is appropriate to do so any interest whether it be an estate in land or a licence by injunction or specific performance as the case may be"*

[63] The Court accepts that the subject matter being real property, though it is of a commercial nature, this raises a presumption that damages are not an adequate remedy, and this even at this stage has not been rebutted.

[64] Additionally, the applicant also has plans to develop its property and the Court accepts the Claimant's Counsel's submissions that the Defendant's continued use of the strip will impact their plans for development, and that the inconvenience to the claimant impacts its reputation and its income earning potential in a manner that its unquantifiable.

[65] If the court is wrong on that, the third condition for granting an interim injunction is the balance of convenience which must be in favour of the applicant.

Balance of Convenience

[66] It is the duty of the court to consider the convenience of the Claimant as against the convenience of the Defendant. If the court thinks that by refusing the injunction, greater or more inconvenience will be caused to the Claimant, it will grant the interim injunction. Moreover, if the court finds that greater inconvenience will be caused to the Defendant, it will refuse the relief.

[67] The Court also accepts as stated in the **Olint** case that the Court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.

[68] As it stands now, the Claimant must be recognised as the title holder and with that is attached indefeasibility of his title.

[69] The Defendant is relying on an alleged error made by a land surveyor where he said that the strip was left out of the plan. The ownership is currently however clear. The disputed strip belongs to the Claimant. The Defendant is also not claiming ownership but that the Claimant's title, if they are successful, will be subject to their Easement and/or the Statute of Limitations.

[70] The Applicant says if its application is not granted and the Defendant is permitted to complete its development on the premise that it has a right of access to the lot via the disputed roadway and then a court finally determines that no such rights exist, it would significantly prejudice 3rd party purchasers in the defendant's proposed development. The Court finds favour with this submission and finds that the balance of convenience weighs in favour of granting the injunction.

Abridgement of Time

[71] The Order sought at Paragraph 3 of the Application was not argued.

Rule 11.11 (1) (b) of the CPR provides

> *"The general rule is that a notice of an application must be served-*
>
> *(a)…*
>
> *and (b) at least 7 days before the court is to deal with the application.*

[72] The first date for hearing of the application was the 6th October 2021. There is an Acknowledgment of Service indicating that the Application was served on October 5, 2021, the day before the initial date set. However, it was adjourned on that date to the 9th December 2021, more than 2 months after. That was the date that it was

heard. There was no apparent prejudice to the Defendant that was occasioned due to the late service. The Defendant took no issues with service and took part fully in the hearing. The Court did not see any basis on which to refuse this application.

[73] Finally, the Claimant gave the usual undertaking as to damages at Paragraph 19 of the Affidavit of Melanie Subratie filed on the 9th August 2021.

The Court made the following Order:

i. An injunction is granted restraining the Defendant and its servants or agents from committing further acts of trespass on ALL THAT parcel of land know as CHERRY GARDENS situate in the parish of SAINT ANDREW containing by survey Eight Hundred and Twenty Two Acres Two Rood and Thirty Perches of the shapes and dimensions and butting as appears by plan thereof and being the land comprised in Certificate of Title registered at Volume 1425 Folio 349 of the Register Book of Titles, belonging to the Claimant;

ii. An injunction is granted restraining the Defendant and its servants or agents from removing or damaging any barriers, gates, walls, fences or other items belonging to the Claimant from ALL THAT parcel of land know as CHERRY GARDENS situate in the parish of SAINT ANDREW containing by survey Eight Hundred and Twenty Two Acres Two Rood and Thirty Perches of the shapes and dimensions and butting as appears by plan thereof and being the land comprised in Certificate of Title registered at Volume 1425 Folio 349 of the Register Book of Titles;

iii. That the Court abridges the time for filing and serving the Notice of Application for Court Orders prescribed by Rule 11.11(1)(b) of the Civil Procedure Rules 2002;

iv. Cost to the Applicant to be agreed or taxed;

v. The Applicant’s Attorney at Law to prepare file and serve Order herein.