



[2016] JMSC Civ. 68

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015HCV04819

BETWEEN	ERICA FRANCIS-GRIFFITHS	APPLICANT/ 1ST CLAIMANT
AND	ERICA FRANCIS-GRIFFITHS (Administratrix Ad Colligenda Bona for and on behalf Of the estate of Colin McDonald Griffiths, deceased)	APPLICANT/ 2ND CLAIMANT
AND	PATRICIA GRIFFITHS	RESPONDENT /DEFENDANT

Ms. Saverna Chambers instructed by Mr. George Soutar QC for the Applicants

Mr. Harold Wilson instructed by Errol Gentles & Associates for the Respondent

Heard: 12th January 2016 and 28th April 2016

Application for Injunction - Criteria for grant - Judicature (Supreme Court) Act section 49(c) - Civil Procedure Rule 17 - Interim remedies-Property in the process of being purchased-Balance of Convenience - Factors to be taken into account.

IN CHAMBERS

BERTRAM-LINTON J (AG.)

[1] The Claimants have applied to the court for various declarations and orders in their substantive claim which was filed on October 14, 2015. The matter involves the determination as to the legal and beneficial ownership of property which is owned or potentially entitled to the deceased Colin Griffiths and the defendant/respondent herein. The Claimant/Applicant shared a common law

relationship with the deceased for some 20 years and they were eventually married some months before he died intestate. The defendant is his sister.

[2] The claimant (the widow/administratrix) says that since the death of her husband his sister has wrongfully appropriated various personal items including furniture and tools in a forty foot container that rightfully belongs to the estate and by extension the beneficiaries of that estate and in particular has sought to take control of real property to which she made no contribution either financially or otherwise while having wrongfully made herself a part of the transaction. The claim it is said seeks to protect the interest of the true beneficiaries who are the widow, children and grandchildren of the deceased, including two minor children.

[3] The present application seeks injunctive orders pending the trial of the matter and asks for the following:

1. A mandatory Injunction directing the Respondent to produce and deliver up to the Applicant all legal documents relating to the purchase of land at lot 161 and 162 Summit Point, May Pen in the Parish of Clarendon and Karachi Ave, Kingston 6 in the parish of ST. Andrew along with all other documents, Title and receipts belonging to Colin MacDonald Griffiths which were removed from his personal safe.
2. An Order restraining the Respondent from doing whether by herself or by her servants and /or agents or otherwise the following:
 - a) Proceeding with the purchase transactions and registration on transfer for the issue of Certificates of title for the following properties;
 - i) Lots 161 and 162 Summit Point, May Pen in the Parish of Clarendon
 - ii) Karachi Ave, Kingston 6 in the Parish of St. Andrew
3. An Order that the Respondent do forthwith relinquish possession and control of premises at Lots 161 and 162 Summit Point, May Pen in the

Parish of Clarendon and return the 40ft. container, all items of furniture, furnishings, tools and equipment belonging to the applicant and Colin McDonald Griffiths

4. An order that the Respondent and/or her servants and agents refrain from wrongfully and unlawfully entering, remaining and trespassing upon the aforementioned properties.
 5. The Applicants undertake to abide by an order as to damages caused by the granting or extension of the Orders herein.
- [4] The orders being sought are both in the nature of mandatory and prohibitive injunctions and the application is supported by the two affidavits of the claimants and the affidavit of Laughton Hartley. The respondent has filed an affidavit in response which opposes the grant of the injunction and among other things claims a beneficial right to the Property at Twin Palms Estate.

[5] **FROM THE OUTSET OF THE SUBMISSIONS IT WAS ESTABLISHED BY THE RESPONDENT'S ATTORNEY THAT THE APPLICATION IN RESPECT OF THE KARACHI PROPERTY IS NOT BEING OPPOSED AS THE RESPONDENT IS NOT CLAIMING TO HAVE ANY INTEREST IN THAT PROPERTY.**

The respondent's oral submissions were confined to the Twin palms property.

THE LAW

- [6] Before delving into the particular circumstances and issues of this matter I wish to outline and summarize my understanding of the guiding principles for the granting of injunctions whether mandatory or prohibitive.
- [7] The accepted guiding principles held up time and again, by our courts in Jamaica as those to be considered for the granting of interlocutory or interim injunctions ,

are the ones contained in the House of Lords decision in **American Cyanamid v Ethicon [1975] 1 AC 396-410**. These include;

- A. **Whether there is a serious issue to be tried.** If this is answered in the affirmative then the court is to consider whether the balance of convenience lies in favour of granting or refusing the injunction.
- B. **The Balance of Convenience-** Includes whether damages would suffice as an adequate remedy. That is, where there is a serious issue to be tried the next step would be a consideration as to whether the applicant would be adequately compensated by damages at the trial for any loss that would have been suffered if the defendant continues to do what was sought to be stopped or changed. If damages are found to be an adequate remedy and the defendant able to pay then no injunction will be granted. If damages would not suffice then the court must consider whether the defendant would get adequate compensation based on an undertaking as to damages from the applicant for any loss sustained by being so affected from the time of the injunction up to the time of trial. (per lord Diplock at page 406).
- C. If there is doubt as to whether damages are adequate for either side then the general question about the balance of convenience arises
- D. If there are other factors that place the issues at an even balance then it is wise to maintain the status quo.

[8] As said before, the application encompasses requests for both mandatory as well as prohibitive orders. It is my understanding that the principles to be applied are the same but there is some divergence as to the guidelines for each. I agree with the characterization of the learning as comprehensively enunciated by Mangatal, J in the case of **Cable and Wireless v Digicel (Jamaica) Limited 2009HCV 05568**, where it was said that;

(a) "Whether an interlocutory injunction is prohibitory or mandatory, the same fundamental principle is that the court should take whatever course appears to carry the lower risk of injustice if it should turn out that the court turns out(sic) to be wrong ...or which seems likely to cause the least irremediable prejudice to one party or to the other.

(b) Whether an interlocutory injunction is prohibitive or mandatory, the claimant must demonstrate that there is a serious issue to be tried before any injunction will be granted...

(c) There is no usefulness to be derived from arguments based on semantics as to whether an injunction is prohibitive or mandatory. What is required in each case is to examine the particular facts of the case and the consequences of granting or withholding of the injunction is likely to be"

[9] It is acknowledged by the court that regard must also be had to the learning from **Shepherd Holmes Limited v Sandham [1970] 3 ALL E R 402** which is instructive where mandatory interlocutory injunctions are concerned and asserts that the court should feel a 'high degree of assurance' that the course undertaken will be vindicated when the issues come to be decided at trial.

It must be noted as well that there is no need for us, in this application, to resolve any disputes of fact and there will be no attempt to do so.

SERIOUS ISSUE TO BE TRIED

[10] Ms. Chambers for the applicants say, in summary that based on the unquantifiable potential of damage and depletion to the value of the beneficial interest the injunction has become necessary. The claim raises serious issues about the entitlement of the parties and specifically affects the welfare of the minors for whom provision for maintenance and education must be made.

[11] In response Mr. Wilson for the defendant agrees that some serious issues of the substantive claim are pending for decision, that of the interest and beneficial ownership of Twin Palms since it is the defendant who on the face of the Agreement for Sale holds the property in a joint tenancy with the deceased. . He opposes the granting of the injunction since he says it would have the effect of deciding on some of the issues that are in dispute. One of the main areas of dispute is that the defendant's claim attaches to the land and a vested interest of ownership while the claimants' interest would seem to be from the proceeds of the sale for distribution among beneficiaries of what is seen as due to the deceased's estate. He sees depriving the sister of possession and occupation of

the property as carrying with it irreparable harm since she is on the face of the documents the legal and beneficial owner of Twin Palms.

He cites the dicta in NATIONAL COMMERCIAL BANK V OLINT CORP LIMITED [2009] 1W.L.R 1405 P.C where the court says, at para 19,

“What is required in each case is to examine what on the particular facts of the case the consequences of granting or with holding of the injunction is likely to be. If it appears that the injunction is likely to cause irreparable prejudice to the defendant, a court may be reluctant to grant it ...”

[12] I am guided by the learned authors DAVID BEAN Q .C AND ISABEL PERRY, **INJUNCTIONS**, EIGHTH EDITION AT page 28, where it is said that, in the case where a defendant has not raised an arguable defence there is no serious question to be tried, and an interim injunction should generally be granted without considering the adequacy of damages or the balance of convenience. On the other hand a claimant who does not even show a serious question to be tried should fail.

[13] I am in agreement with the parties that the issues as enunciated are indeed serious ones which must be tried, the divergence of the accounts as to acquisition and contribution of the parties to the properties both real and personal before the court confirms this.

BALANCE OF CONVENIENCE

[14] Having so decided, I will now go on to consider the balance of convenience to take into account whether damages are an adequate remedy for the parties. What I am taking into account here, is that if Mrs. Francis- Griffiths in both her capacities were to succeed eventually at trial in getting the remedies sought would she be adequately compensated by an award of damages for any loss she would have sustained as a result of Patricia Griffiths' continued possession and completion of the sale in respect of the property in question. If damages are adequate and the defendant is able to pay, then I will not grant the injunction.

- [15] If on the other hand, damages will not adequately compensate the claimant, and she is in a position to give an undertaking as to damages and the damages pursuant to the undertaking is adequate to compensate the defendant if she succeeds at trial then I will grant the injunction at least in respect to the transfer of the property. If the widow/administratrix is not in a position to honour an undertaking in damages and appreciable damage to the sister is likely, I will refuse the injunction.
- [16] The first thing that comes to mind here is that I have no evidence of the means of either parties except in so far as it is known that there are other properties that make up the estate of the deceased ,and so I am not able to assess in any detail their ability to pay damages. Secondly it has been submitted by both sides, and a position I am drawn to in the arguments, that the harm on either side appears to be unquantifiable and so no award of damages will suffice. I agree with the submission of the defendant's attorney that depriving her of physical possession, control and even the enjoyment of the aesthetics of, on the face of it, what is potentially hers, for an indeterminate period while trial is pending, is undesirable and so potentially painful and a position that may not be one that should be undertaken.
- [17] The interests of the minors Ms. Chambers says are not even yet developed and so damages would not be an adequate remedy either for the applicants.

On this point I take counsel from the dicta of Forte, J in **MAVIS RODNEY V JANE RODNEY-SEALE [1994] 31 JLR, 674 CA**

"In this regard a passage cited by Mr. Miller for the respondents, from the text "Registration of Title to land throughout the Empire" by James Edward Hogg, M.A Oxon dealing with the Torrens system throughout the Commonwealth including Jamaica is of significant relevance. It reads: "The necessity for protecting unregistered interests by means of injunctions and the close resemblance that the caveat bears to an injunction, justify the general principle of giving an extended meaning to the 'interest' which will support a caveat. It must of course be borne in mind that (as already pointed out at pg 173)"interest includes a claim to an interest; the whole system of caveats is founded on the principle that

they exist for the protection of alleged as well as proved interests and interests that have not yet become actual interests in the land”

This passage would seem to be equally applicable to both sides in this matter

[18] In my judgment then, there is substantial doubt as to the adequacy of the respective remedies in damages available to both parties. In the case of the applicant, this property would form a substantial part of the value of the estate and have the potential for being a part of any benefit to be used or distributed for both the adult and minor beneficiaries.

[19] At this stage I am constrained to acknowledge that whichever way the decision for or against the injunction goes it will involve “uncompensatable disadvantage”. I have adopted the approach that the balance I am striving for is one where there is less likelihood of doing an injustice. In this vein I must go on to examine where the general balance of convenience lies.

“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” (per Lord Diplock pg.408E American Cyanamid)

[20] The balance I seek to achieve here is one where there is less risk of doing an injustice. That is, the court must balance the cost and inconvenience of the grant of the injunction to the defendant (if the defendant is successful at the ultimate determination of the proceeding) with the inconvenience of a denial of the grant of an injunction to the applicant (should the applicant prove to be successful). The issue the court faces deciding whether to grant an interlocutory injunction was stated by Hoffman J in **Films Rover International Ltd v Cannon Film Sales Ltd**:

The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the “wrong” decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry

the lower risk of injustice if it should turn out to have been “wrong” in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle”

[21] As stated before in my assessments there are several facts that are disputed. The Applicant claims that the Respondent is not entitled to a legal or beneficial interest in the subject property and questions her contribution toward the acquisition and maintenance of the property. Mr. Hartley’s affidavit is particularly telling as well. While the Respondent says, that based on the documents and the surrounding evidence, she was integrally involved in the acquisition, maintenance and design of the property, she goes so far as to show that during that period other properties were purchased or in the process of being purchased which specifically included the applicant .There was no mention of the applicant(s) in relation to Twin Palms up to two months prior to the death of Colin Griffiths when they visited Jamaica and they were all together.

I must once again say that I do not intend to conduct a mini trial but it would appear that the additional surrounding factors to be taken into account are evenly balanced.

“Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.” **(American Cyanamid 408G.)**

I am convinced therefore that in these circumstances there should be a preservation of the status quo where Twin Palms is concerned until the issues have been decided at trial.

[22] In my judgment, the defendant is already in possession of Twin Palms, admittedly there is some dispute as to the circumstances and the period of possession. To interrupt her in this conduct would cause much greater inconvenience to her since she would have to start again in the event of her succeeding at the trial of the matter. Removing her at this point without anybody else’s interest having been established seems to have more potential for irreparable damage to the respondent than to the applicant. In addition the

claimant and the estate which is being represented is not without property interests , in the meantime to carry out activities or to gain income for the purpose of the beneficiaries if that is what is required.

Taking all this into account then I am of the view that the application for the Injunction in respect to possession and control of Twin Palms must be refused.

As said before the respondent has not resisted any of the orders sought in relation to the property at Karachi and I make the following orders to reflect the submissions and my conclusions.

Taking all this into account then I am of the view that the application for the Injunction in respect to possession and control of Twin Palms must be refused.

As said before the respondent has not resisted any of the orders sought in relation to the property at Karachi and I make the following orders to reflect the submissions and my conclusions.

1. An Injunction is granted directing the Respondent to produce and deliver to the applicant all legal documents relating to the purchase of the property at Karachi Avenue, Kingston 6 to include Titles, and receipts belonging to Colin McDonald Griffiths which are in her possession, as well as all related documents.
2. An order restraining the Respondent from proceeding with the registration on transfer for the issue of Certificate of Title for Lots 161 and 162 Summit Point known as Twin Palms in May Pen Clarendon until the determination of the beneficial interest at trial.
3. The Applicant is hereby bound by an undertaking as to any damages caused by the delay in the registration of the transfer as ordered above.
4. Costs for this application are awarded to the Respondent to be agreed or taxed.
5. Formal order is to be filed and served by the applicant herein
6. Liberty to apply