



[2013] JMSC Civ. 210

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV 05447

BETWEEN JOHN LEDGISTER 1ST CLAIMANT
AND SUNNYCREST ENTERPRISES LTD 2ND CLAIMANT
AND JAMAICA REDEVELOPMENT FOUNDATION INC. DEFENDANT

John Ledgister, appears in person, on his own behalf and on behalf of the 2nd Claimant
Sandra Minott-Phillips, QC instructed by Myers, Fletcher and Gordon, for the
Defendant

Heard: December 4, 2013

APPLICATION FOR INJUNCTIVE RELIEF – FAILURE TO SET OUT PROPER BASES FOR INJUNCTIVE RELIEF TO BE GRANTED

ANDERSON, K., J

[1] The claimant is unrepresented by anyone and is also not assisted by anyone, either for the purposes of this claim, or for the purposes of his application for interim injunctive relief, whereas, on the other hand, to date, in all pertinent matters concerning this claim, the defendant has been represented in varying respects and to varying degrees, by attorneys from the law firm – Myers, Fletcher and Gordon.

[2] This court herein sets out, briefly, its reasons for a ruling which it gave upon the hearing in Chambers of an amended application for injunctive relief.

[3] As a matter of background information, it is of note that the claimants' claim was begun by means of fixed date claim form which was filed on October 7, 2013. Unsurprisingly perhaps in view of the fact that the claimant has, at all material times, been acting in a legal context in terms of his claim, in circumstances wherein he apparently has no assistance whatsoever, that fixed date claim form contains 80 paragraphs and is 22 pages long!

[4] It has been very difficult for this court to ascertain from that fixed date claim form, what the legal basis or bases of the claimants' claim is. What though, has been ascertained by this court from that initiating document as regards this claim, is that his claim is largely, if not entirely, based on allegations which he has made against the defendant, of fraudulent misrepresentation and tortious interference 'with Economic/Contractual Relations and Unlawful Interference with Trade, causing economic loss by unlawful means.'

[5] The claimants have, in paragraph 63 of their particulars of claim, sought the following remedies –

- a. *An injunction*
- b. *Interim payments until ...*
- c. *Compensatory damages (expectation, exemplary and aggravated)*
- d. *Restitution and the accounting of profits*
- e. *Costs*
- f. *Criminal investigations of fraud, cheating claimants and the Government out of surplus and surplus revenues respectively*
- g. *Such other relief as the court deems fit.'*

Additionally, in paragraphs 64-72 of his fixed date claim form, the claimant has set out other reliefs which he is seeking and more specifically adumbrated pertinent details of some of the reliefs which he had stated, in paragraph 62, that the claimants are seeking.

[6] This matter came before me in this court, upon an 'amended application for an injunction.' It was an interim application, since the claim has not yet come up for trial. After having heard from the respective parties upon that application, this court denied the claimants the interim injunctive relief which they were then seeking. These are, in brief, the reasons for that ruling.

[7] In order to ascertain the specific nature of the interim injunctive reliefs being sought by the claimants, one must pay regard to that which has been specifically set out by the claimants in paragraph 65 of their fixed date claim form. That paragraph reads as follows –

'That by virtue of Order No. 46 the defendant Jamaican Redevelopment Foundation Inc. either on its own, or through its agent or servant is restrained from selling, disposing, charging, transferring or auctioning for sale the premises know as Forest Pen property in Westmoreland and St. Elizabeth and which is comprised in Certificate of Titles registered at Volume 1175 Folio 850 of the Register Book of Titles as defendant Jamaica Redevelopment Foundation Inc. have already advertised claimants' property for sale unlawfully.'

[8] It is to be noted also, that the claimants' application for injunctive relief in that regard has been brought before this court and even before the Court of Appeal, on a number of occasions (collectively). In the final analysis, at all times when this court has considered the same or very similar application, *inter partes*, not only this court, but also, the Court of Appeal, has denied same.

[9] The claimants' amended application for an injunction was filed on November 13, 2013. That amended application contains 21 paragraphs and 13 pages! It is very difficult to discern from that amended application, precisely what are the grounds for the injunctive relief being sought. What has been discerned though, is that, at the very least, in support of that amended application, the claimants are putting forwards as one of the grounds, fraud and as another, tortious interference with economic/contractual

relations and unlawful interference with trade, causing economic loss by unlawful means.

[10] What evidence, if any, did the claimants place before this court, in support of their application for injunctive relief? They relied at the hearing before me, on two affidavits, one of which was filed on October 7, 2013 and the other of which was filed on November 13, 2013. Suffice it to state for present purposes, that neither of these affidavits provided any evidentiary basis whatsoever for the injunctive relief being sought. Those affidavits, considered collectively, do allege fraud, but this court at this interim stage, could not properly make a finding of fact that the defendant has committed fraud as alleged, bearing in mind that fraud of whatever type, as has been stated over and over again in caselaw, is easy to allege, but very difficult to prove. Accordingly, if the claimants allegation of fraud is to be given any weight by this court at this stage, the evidence in support thereof, would have to be compelling. It is far from being such.

[11] Overall therefore, there are two: compelling reasons underlying this court's conclusion that it would not be in the interests of justice to grant to the claimants the interim injunctive relief which they have been seeking. Those two reasons are firstly, that it appears that the claimants' application for injunctive relief may very well be an abuse of process, since this is same matter being constantly re-litigated. The second reason is that the claimants have not put forward any evidence that would sufficiently serve to substantiate either the claimants' claim against the defendant or to justify their application for injunctive relief.

[12] This court applied the test of the 'interests of justice' in adjudicating on the claimants' application for interim injunctive relief, as that is the primary consideration. See: **National Commercial Bank v Olint** – [2009] 1 WLR 1405, which in that regard, should be read along with **American Cyanamid Co. v Ethicon Ltd.** – [1975] AC 396. In other words, this court has considered whether granting or refusing the injunctive relief being sought, would cause irremediable prejudice and if so, to what extent. See

also: **Cayne v Global Natural Resources plc.** – [1984] 1 All ER 225; and **Blackstone’s Civil Practice 2014**, at paragraph 37.28.

[13] This court has no doubt that the claimants/applicants have entirely failed to satisfy this court, much less enabled this court to properly conclude that an order in their favour, granting the interim injunctive relief which they have sought, would do anything other than cause irremediable prejudice to the defendant, who, as can be discerned from the earlier Court of Appeal judgment concerning this matter, in which the issue as to whether the said injunctive relief ought to have been granted, was the central issue, now has the right to exercise its power of sale over the relevant property. See: **John Ledgister and Sunnycrest Enterprises Ltd. and Jamaica Redevelopment Foundation Inc.** – Supreme Court Civil Appeal No. 130/2012/ Application No. 11/13.

[14] In the circumstances, this court made the following orders, on the claimant’s application for injunctive relief and other orders:

- (i) The Amended Application for injunction and other orders dated and filed November 13, 2013 is denied.
- (ii) Costs in the claim.
- (iii) The defendant’s attorneys are to file and serve this order.

[15] It is finally to be noted that the claimants did not, in Chambers before me apply for leave to appeal any of the court’s aforementioned orders. Accordingly, no consideration was given by this court, as to whether or not leave to appeal same, ought to have been granted.

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Hon. K. Anderson, J.