

Interim
INJUNCTION to restrain administrators of estate from transferring property into her own name she being sole beneficiary — claim by plaintiffs to be entitled share in property — claim for sale and apportionment — whether judge right discharging interim injunction on grounds that damages were adequate remedy in this case.

J A M A I C A

[H]e has judge right in discharging interim injunction — appeal dismissed — undertaking by administrators respondent not to transfer property to third party pending hearing of the case]
IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 13/88

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No case referred to

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

BETWEEN: VALDA HYMAN
DOROTHY LAWRENCE PLAINTIFFS/APPELLANTS
A N D : KAREN FREDERICKA JUNE
HYMAN-CLARKE (ADMINI- DEFENDANT/RESPONDENT
STRATRIX OF THE ESTATE
OF FREDERICK ROY
LINTON HYMAN, DECEASED)

Horace Edwards Q.C., and Dr. Winston McCalla
for plaintiffs/appellants

David Muirhead Q.C., and Mrs. Karen Hyman-Clarke
for defendant/respondent

June 14, 1988

ROWE P.:

This appeal arises out of an Order made by Mr. Justice Gordon on the 9th of February, 1988 wherein he dismissed an application for the continuation of the interim injunction granted by Mr. Justice Theobalds to last for twenty-one days in the instant case. The circumstances are that the plaintiffs lived in Jamaica and they had a brother, Frederick Roy Linton Hyman who lived in England.

Premises known as No. 187 Mountain View Avenue were purchased and registered in the name of Mr. Hyman. It is alleged in the Statement of Claim filed by Valda Hyman and Dorothy Lawrence, that they assisted Frederick Roy Hyman financially and otherwise to purchase the said property on the clear understanding and verbal agreement that the name of the said Frederick Roy Linton Hyman and the names of the plaintiffs would be

endorsed on the said Certificate of Title as owners and they particularised in paragraph 9 that the plaintiffs paid money towards the deposit, that they paid money for the mortgage instalments, repairs to the house, land taxes, water rates and insurance. The plaintiffs gave an approximation of the amount spent by them.

The defendant in this case is the administratrix of the estate of Frederick Roy Linton Hyman and in the defence and counter-claim it was admitted that the plaintiffs contributed to the 'expenses of the purchase' and the amounts so provided were set out. In circumstances where both sides agree that the plaintiffs contributed financially at the down-payment stage the Court is of the view that a serious question arises for trial as to whether or not the plaintiffs are entitled to a share in the property 187 Mountain View Avenue now held in the sole name of the deceased Frederick Hyman. That being the case the Court has to deal with the claim by the appellants that there should be an injunction restraining the defendant as administratrix of the estate from transferring the property into her own name, she being the sole beneficiary of the estate of Frederick Roy Linton Hyman.

The plaintiffs allege that if the property is transferred then their interest will be irreparably damaged and that damages will not be an adequate remedy. When pressed however, Mr. Edwards said that the amount actually spent by the appellants was spent by them in the capacity of owners and therefore it would be unreasonable for them to receive back only the actual sum of money spent. Part-owners he said would be entitled to receive an appropriate share of the property, the value of which would inflate in proportion to the inflated prices now being paid for properties and therefore, said he, damages would not be an adequate remedy.

We note that in the Statement of Claim the primary remedy sought by the appellants is an Order that the property be sold either by public auction or by private treaty and that the net proceeds from the sale be distributed between the plaintiffs and the defendant equally or in such portions as the Honourable Court seems just and reasonable. This claim is

without doubt a money claim. The defendant in her affidavit has said that if the plaintiffs/appellants are successful she is in a financial position to pay whatever damages are awarded. There is no affidavit countering this allegation and so far as the Court is concerned if the appellants were contesting this allegation affidavit evidence would be necessary.

The Court is of the view, that having regard to the pleadings, the learned trial judge was absolutely right in discharging the interim injunction on the ground that damages were an adequate remedy in this particular case. Therefore we find no merit in the grounds of appeal argued by Mr. Edwards.

This is a dispute which affects members of a single family and the Court enquired of the respondent whether the respondent would be prepared to give an undertaking not to transfer the property to a third party pending the hearing of the case and generously, the respondent has given such an undertaking. That undertaking is to the benefit of all the parties concerned. In the event then that the plaintiffs are fully successful and then wish to purchase the property that option will be open to them, having regard to the undertaking given herein by the respondent.

The appeal is dismissed with costs to the respondent to be agreed or taxed.