



[2023] JMCC COMM. 09

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. CD00487 OF 2017

BETWEEN	DENNIS LAWSON	1ST CLAIMANT
AND	LAWSON FARMS LIMITED	2ND CLAIMANT
AND	CHRISTOPHER WOOD	1ST DEFENDANT
AND	JAMECO DEVELOPMENT COMPANY LIMITED	2ND DEFENDANT
AND	ULTRA HOME CONTRACTORS LIMITED	3RD DEFENDANT
AND	MARIA GREY GRANT	4TH DEFENDANT
AND	REGISTRAR OF TITLES	5TH DEFENDANT

Mr. Kent Gammon instructed by Kent Gammon and Associates, Attorney-at-law for the Claimants.

Mr. Jevaughn St. J Leon instructed by Legis, Attorneys-at-law for the 4th Defendant

IN CHAMBERS

Heard: 10th February and 24th February, 2023

Application for Interim Injunction- Whether there is a serious issue to be tried- Whether Damages would be an adequate remedy- Whether the Claimants have a transferrable interest in property- Adverse Possession- Sections 81 and 160 of the Registration of Titles Act- Section 30 of the Limitation of Actions Act.

STEPHANE JACKSON-HAISLEY J.

INTRODUCTION

[1] The Claimants Dennis Lawson and Lawson Farms Limited by way of a Without Notice Application for Injunctive Relief seek Orders against the five Defendants as follows:

- I. An Injunction restraining the Registrar of Titles whether by themselves or their agents from extinguishing, cancelling, transferring, selling, mortgaging, pledging, assigning or dealing in any way howsoever with the property known as all that parcel of land part of Swallowfield Estate, otherwise known as Upper Swallowfield in the parish of St Andrew being the lot numbered forty-three (43) comprised in Certificate of Title registered at Volume 1418 Folio 126 of the Register Book of Titles pursuant to S. 85 and 87 of the Registration of Titles Act in application no. 24231030 until the hearing of this matter or such further Order.
- II. That leave be granted for Maria Grey Grant and the Registrar of Titles to be added to these proceedings as interested parties.
- III. That all that parcel of land part of Swallowfield Estate otherwise known as Upper Swallowfield in the parish of St Andrew being the lot numbered forty-three (43) comprised in Certificate of Title registered at Volume 1418 Folio 126 of the Register Book of Titles be cancelled and a new certificate be issued in the name of the transferee.
- IV. That the First Defendant be restrained whether by herself or by her employees, contractors, servants or agents or otherwise from entering, occupying, interfering with, damaging, removing or modifying, letting or subletting or otherwise dealing with the subject property pending the outcome of the Claim and/or until further Orders of this Honourable Court.

V. That the First Defendant deliver up the subject premises vacant and hand over the keys to the subject property to the Claimants so as to be able to take possession, occupation and control of the subject property.

VI. Costs of this application to the Claimants.

VII. Such further and other reliefs as this Honourable Court may deem necessary or appropriate.

[2] The Claimants are of the view that they are entitled to these reliefs by virtue of having acquired an equitable interest in the property. The genesis of this Application is that in this said Claim, on the 10th May 2019 they obtained a judgment against the 1st, 2nd, and 3rd Defendants, Christopher Wood, Jameco Development Company Limited and Ultra Contractors Limited respectively in the sum of \$16,000,000.00 plus interest at a rate of 12.5% from 19th February 2010 until payment. After futile attempts to obtain the fruits of the judgment, on June 13, 2022 the Claimants obtained a final charging order over the said property. Thereafter they were successful in an application for sale of the said land. The property was sold by private treaty on November 29, 2022 and they secured a Certificate of Sale of Land over the property on December 19, 2022.

[3] Thereafter, on the 6th January 2023 the named 4th Defendant herein Maria Grey Grant placed a caveat over the property claiming an interest pursuant to sections 85 to 87 of the Registration of Titles Act. On February 2, 2023 an Application to Dispense with the Production of Certificate of Title and a transfer application was filed on behalf of the Claimants with the Registrar of Titles, the named 5th Defendant.

[4] This Application was made pursuant to section 81 of the Registration of Titles Act. The Registrar of Titles then wrote to Mr. Kent Gammon Attorney-at-law for the Claimant in which she explained that an application had been lodged claiming an interest in the said land and that it has been provisionally approved and if successfully completed the current title would be cancelled and a new one issued

in the name of the applicant/adverse possessor. She concluded by saying that the issue of the two alleged competing interest in the land will have to be determined by the Court.

[5] It was subsequent to that, on February 8, 2023, that the Claimants filed a Fixed Date Claim Form in the Civil Division of this Court bearing claim number SU2023CV00385 with Maria Grey Grant and the Registrar of Titles named as the 1st and 2nd Defendants respectively.

[6] In the Fixed Date Claim Form the Claimants claimed three reliefs as follows:

- I. An injunction restraining the Registrar of Titles whether by themselves or their agents from extinguishing, cancelling, transferring, selling, mortgaging, pledging, assigning or dealing in any way howsoever with the property known as all that parcel of land part of Swallowfield Estate otherwise known as Upper Swallowfield in the parish of St Andrew being the lot numbered forty-three (43) comprised in Certificate of Title registered at Volume 1418 Folio 126 of the Register Book of Titles pursuant to S. 85 and 87 of the Registration of Titles Act in application no. 24231030 until the hearing of this matter or such further Order.
- II. That the First Defendant be restrained whether by herself or by her employees, contractors, servants or agents or otherwise from entering, occupying, interfering with, damaging, removing or modifying, letting or subletting or otherwise dealing with the subject property pending the outcome of the Claim or until further Orders of this Honourable Court.
- III. Cost of this application to the Claimants.

[7] The Ex parte Application for the Injunction came before me in the Commercial Division on February 9, 2023. I ordered that the Defendants be served and thereafter set the matter for hearing on February 10, 2023. On that date I heard

the application and Counsel for the named 4th Defendant appeared on her behalf and opposed the grant of the injunction.

- [8] Oral submissions were presented followed by written submission filed on February 14, 2023 by both sides.

THE SUBMISSIONS

- [9] In summary, on behalf of the Claimants Mr. Gammon contended that the Court should grant injunctive relief as the Claimants have a competing interest to be transferred to the disputed property by virtue of the Certificate of Sale of Land in the disputed property. He submitted that the 4th Defendant's claim for an equitable interest cannot be sustained as she had previously failed to establish title to the property in a claim before this court. It was after having failed in that claim that she sought to claim adverse possession of the disputed property.

- [10] Counsel asked me to consider that she had also failed to satisfy the test for being an adverse possessor. She would not meet the legal requirement of continuous period of possession and therefore did not dispossess the 1st Defendant of the property and so he still has the legal interest capable of being conveyed by the Certificate of Sale. As a consequence, the charging order registered on the said title secured the judgment debt and created an equitable interest, in which case the Instrument of Transfer in favour of the Claimants ought to proceed.

- [11] He contended that the Claimants have a transferrable interest in the disputed property by virtue of a Section 81 Application under the Registration of Titles Act and by virtue of the Orders made by the Court. He also submitted that at the time of the registration of the final charging order the judgment debt was legally and effectively recognized. As at the date of registration of the final order the 1st Defendant still maintained control and possession of the disputed property. The act of the 1st Defendant created an exercise of control of the disputed property and disputed any control the 4th Defendant averred in the application for adverse possession. The Orders for Sale of Land would be a registered instrument that

section 59 of the Registration of Titles Act would give priority as to the time of registration when compared to the time the putative adversor filed her claim for adverse possession.

[12] Counsel further submitted that the Claimants have met the test for the grant of an injunction as they have established that there is a serious issue to be tried and that Damages would not be an adequate remedy, the 1st Defendant having deponed that he has no money to satisfy the judgment debt. He submitted further that the balance of convenience lies in favour of the grant of the injunctive reliefs.

[13] Counsel for the 4th Defendant submitted firstly that there is no legal point to be tried in this claim as there is no substantive claim filed with the Notice of Application. He submitted further that even if the Court were minded to consider the merits of the application there is no serious issue to be tried. In any event the fact of the charging order does not give the Claimants adequate or proper standing to seek an injunction to restrain the proceedings of Ms Grant's application under section 85 of the Registration of Titles Act. Moreover, the charging order is an interest on the presumed legal estate of the 1st Defendant which has been extinguished. This was extinguished by virtue of the operation of section 30 of the Limitation Act which was settled by the decision of Privy Council in **Recreational Holdings 1 (Jamaica) Limited v Lazarus** [2016] UKPC 22.

[14] He also contended that damages is an adequate remedy as the Claimants' only interest in the land is the recovery of a judgment for money together with interest. Even on the balance of convenience he argued that the Claimants' case would fail.

ISSUES

1. Whether the Court should grant relief until the hearing of the Fixed Date Claim Form?
2. Whether the Claimants have established that there is a serious issue to be tried on the Claim?

3. Whether the Claimants have a transferrable interest in the property by virtue of a section 81 Application?
4. Whether Damages is an adequate remedy?

Whether the Court should grant relief until the hearing of the Fixed Date Claim Form?

- [15] The main issue to be determined is whether the Claimants are entitled to the grant of injunctive relief until the trial of the Fixed Date Claim Form. In determining this issue the Court is guided by the established principle pertaining to the test for the grant of an injunction set out in **American Cyanamid Co v Ethicon Limited** [1975] UKHL 1 and **National Commercial Bank v Olint Corporation** [2009] UKPC 16 which urged the Court to be satisfied of certain factors before granting injunctive relief.
- [16] I must therefore be satisfied that the claim is not frivolous nor vexatious and that there is a serious issue to be tried, that damages are not an adequate remedy and that the balance of convenience generally lies in favour of the grant of the interim injunction.
- [17] Counsel for the 4th Defendant has made a valid point regarding the manner in which the claim was filed. It was a point which I had raised with Counsel Mr. Gammon when he first appeared before me. The concern was that although the matter before me was filed in the Commercial Division, there was currently no case in the Commercial Division. It was then that Mr. Gammon drew my attention to the Fixed Date Claim Form in the matter which was filed in the Civil Division by way of filing an affidavit exhibiting the Fixed Date Claim Form.
- [18] Another administrative point which is of concern is that although the matter in the Commercial Division had only two Defendants, the current matter herein has five Defendants which now include Ms Maria Grey Grant and the Registrar of Titles. There is an application being made concurrently for them to be joined as parties. It would seem to be that this is a case of putting the cart before the wheel as they

should first be joined and thereafter the matter be heard. I proceeded nevertheless to hear full submissions in the matter.

- [19] It would therefore be an accurate state of affairs that in respect of the matter before me in the Commercial Division there is no matter to be tried and as a corollary no serious issue to be tried. That would be dispositive of the application however in the event I am wrong in that regard I will consider completely all the submissions advanced before me and provide my decisions in respect of the issues raised.

Whether there is a serious issue to be tried?

- [20] The Fixed Date Claim Form claims two reliefs which are both injunctive reliefs. Although in the Notice of Application there is a request for the Certificate of Title to be cancelled and a new Certificate of Title issued in the name of the transferee, this was not replicated in the Fixed Date Claim Form. In the Notice of Application for Court Orders there is also a request for recovery of possession requiring the 1st Defendant to deliver up the subject premises vacant and hand over the keys to the subject property to the Claimants so as to be able to take possession, occupation and control of the subject property. This remedy is also absent from the Fixed Date Claim Form.
- [21] There is no claim in the Fixed Date Claim Form for any of those reliefs. The first relief sought is to restrain the Registrar of Titles whether by themselves or their agents from extinguishing, cancelling, transferring, selling, mortgaging, pledging, assigning or dealing in any way with the property until the hearing of this matter. The second relief seeks to restrain Ms. Maria Grey Grant, whether by herself or by her employees, contractors, servants or agents or otherwise from entering, occupying, interfering with, damaging, removing or modifying, letting or subletting or otherwise dealing with the subject property pending the outcome of the Claim. So then the question is asked, “until the outcome of which claim”? What is the triable issue in the Claim to which the cases dealing with interim injunctions have referred?

[22] In determining whether or not there is a serious issue to be tried it is the substantive claim and the cause of action that must be examined. The right to obtain the injunction is not in and of itself a cause of action. Even if this Court were to consider what could be viewed as the cause of action as stated in the Notice of Application for Court Orders the Claimants would be met with certain hurdles which have to do with the nature of the Claimants' interest in the property and will be addressed under the heading below.

Whether the Claimants have a transferrable interest in the property?

[23] Mr. Gammon in his submissions advanced that the application dealing with a transferable interest from the 1st Defendant to the Claimants should be treated in the same way as if an Instrument of Transfer had been executed by the 1st Defendant to the Claimants and thus an interest in land has been created. Therefore, the charging order secured a judgment debt and created an equitable interest.

[24] In response, Counsel on behalf of the 4th Defendant argued that what the Claimants possess is an action in personam and not in rem. There is merit in this argument. It is settled law as evidenced by the decision of the Privy Council in **Recreational Holdings 1 (Jamaica) Ltd (Appellant) v Lazarus (Respondent) (Jamaica)** [2016] UKPC 22, that where a registered proprietor's title has been extinguished under section 30 of the Limitation Act, there remains no title for him to pass and none for the Applicant to receive. The adverse possessors' interest therefore would have been determined as at the date of possession. Therefore, at the time the order for sale was made the registered owner Mr. Wood's title would already have been extinguished and he would have been dispossessed of the property. There would therefore have been no transferrable interest for the Applicant to receive.

[25] The Applicant's interest is based solely on his interest in satisfying the judgment debt by way of the sale of the property registered in the name of Mr. Wood. He has

a charging order over the property. Ms. Grey Grant however, would have come into possession of the property by way of adverse possession and therefore the Applicant's position would therefore be rendered to a position akin to a *bona fide* purchaser for value which is a right to damages for breach of contract in an appropriate case. Under these circumstances, it appears to me that there is no serious issue to be tried.

[26] I should make the point here that there is no case currently before me or in this court regarding the issue of whether or not Ms. Grey Grant has acquired title by way of adverse possession. The application is currently before the Registrar of Titles so it is not for me to make any determination as to whether or not Ms. Grey Grant has met the test for the grant of title by virtue of adverse possession. Questions as to whether or not she has satisfied the statutory period of twelve years are not before this court.

[27] This brings me now to the final question of whether Damages would be an adequate remedy.

Would Damages be an adequate remedy?

[28] The point is unassailable, that if Damages will be an adequate remedy, there is no grounds for the interference with the Defendants' freedom of action by the grant of an injunction. The Claimants have obtained what could be described as a money judgment. The effect of the Order for sale is that they would sell the land to satisfy the judgment debt. Their interest is therefore one that is financial in nature. If the 1st Defendant were to pay this judgment debt, he would have no further claim to the property. His right is recognized as a right against the person and not against the land.

[29] The significance of having a Certificate of sale is that the result would be that he would be given the proceeds of sale. He has no interest in the property for any other reason but for the monetary value. It is clear to me that in those

circumstances that damages would be an adequate remedy. The Claimants have therefore failed to satisfy the test for the grant of the injunction.

[30] With respect to the application for leave to add Ms. Maria Grey Grant and the Registrar of Titles to these proceedings as interested party, there is a point which I must make. The Registrar of Titles was included here as a Defendant. This was improper. Section 160 of the Registration of Titles Act provides that:

“The Registrar shall not, nor shall the Referee or any person acting under the authority of either of them, be liable to any action, suit or proceeding, for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers of this Act”.

[31] The case of **The Registrar of Titles v Melfitz Limited and Keith Donald Reid** SCCA No. 9 of 2003, discussed section 160 and other related provisions and thereafter concluded that where the remedies sought are declarations, injunctions, cancellation of certificate and retransfer of land, there is no necessity or requirement for the Registrar to be made a party to the action. There is also no basis on which to grant leave for Ms. Maria Grey Grant to be added to these proceedings as interested parties.

[32] The orders sought on this Notice of Application for Court Orders are refused with costs to the Defendants.

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S. Jackson Haisley
Puisne Judge