

11/11/05

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW  
SUIT NO. 2005 HCV 2305**

<b>BETWEEN</b>	<b>DORIS LIGHTBODY</b>	<b>FIRST CLAIMANT</b>
<b>AND</b>	<b>ANTHONY LIGHTBODY</b>	<b>SECOND CLAIMANT</b>
<b>AND</b>	<b>HOWARD LIGHTBODY</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>EVERTON MCDONALD</b>	<b>SECOND DEFENDANT</b>

**Lord Anthony Gifford QC and Miss Sheila Tomlin instructed by Gifford, Thompson and Bright for the claimants**

**Miss Jacqueline Cummings instructed by Archer, Cummings and Company for the defendants**

**September 21, October 4, November 1, 3, December 21, 2005 and January 27, 2006**

**INTERIM INJUNCTION, SALE OF LAND, TRESPASS**

**SYKES J**

- 1.** This is an inter partes hearing to determine whether the injunction granted ex parte by Mangatal J on August 11, 2005, should continue until the trial. The injunction has been extended on several occasions by several judges since that date.
- 2.** The latent problems with land located at a street, known, ironically, as 6 Love Lane, Port Antonio, Portland, erupted when Everton McDonald, paid three and one half million dollars (JA\$3,500,000) for the property to Howard Lightbody. Living there for at least forty years before the purchase and in occupation at the time of the purchase was Anthony Lawson, son of the Doris Lightbody. All the Lightbody's are related. Howard is Doris' brother and therefore the uncle of Anthony Lawson.
- 3.** At the time of the payment, the registered proprietor was and still is William Lightbody who died intestate on December 1, 2003, in New York, United States of America. There is no evidence that letters of administration have been granted either in

the United States of America or Jamaica in respect of his estate. This suggests that there is no one who can legally transfer the title to Everton McDonald. This defendant Mr. McDonald sought to erase this difficulty by producing a number of signed but unregistered transfers beginning with one allegedly executed by William Lightbody to himself and six other persons by transfer dated November 4, 1998. These six transferees allegedly transferred their interest to Howard Lightbody by transfer dated July 19, 2004. Howard Lightbody by agreement dated February 23, 2005, purported to transfer the whole of his interest to Everton McDonald. At the end of these transfers the result is that William Lightbody's interest has not been totally erased. It has to be administered because of his intestacy. The genuineness of these transfers is now seriously challenged by the claimants.

4. Miss Cummings submitted that Doris Lightbody's claim is not sustainable because she has no interest in the property capable of being protected and she has never been and is not in possession of the land. She submits that even assuming the claimants are correct that the transfers are fictitious, then it would mean that Doris Lightbody does not have any legal or equitable interest capable of attracting legal protection. She relies on the case of ***Kathleen Morrison v Herma Lemond*** (1989) 26 J.L.R. 43. In that case, the claimant brought an action in trespass basing her case on the allegation that she was a beneficiary under an unprobated will. It is to be noted that there was no allegation that the will was forged. Campbell J.A. said that "[it was only] after probate has been granted of the will would her inchoate estate and/or interest in the land become certain and even then it would, until an assent is given by the executors, remain in equitable estate or interest" (see page 44G). The court concluded that the claimant did not have any existing legal or equitable interest that could support the injunction. Doris Lightbody is in no better position than the claimant in the ***Morrison*** case. Therefore as far as the first claimant is concerned this authority is fatal to her claim to injunctive relief and I so conclude. This leaves the second claimant.

5. As stated already, the second claimant is in possession and has been in possession for some time. All the authorities say that possession is sufficient to maintain an action in trespass. The suit does not depend on ownership. Indeed the person suing in trespass does not even have to derive title from the owner of the land.

6. Miss Cummings sought to say that the claim form discloses no cause of action. This is taking too narrow a view of the matter. The claimant filed not only the claim form but also the particulars of claim as well as an affidavit in support of the application for injunctive relief. It is clear as clear as can be that the second claimant is alleging that the second defendant trespassed on the land which he possesses.

7. I take into account that Everton McDonald is not the registered proprietor. He is claiming under the agreement for sale which purports to transfer to him what it cannot do in law or equity namely, the whole estate in the land. The transfer cannot do this because Howard Lightbody, based upon the transfers earlier, does not have the whole fee simple estate.

8. What this shows is that there are serious issues to be tried. The inconvenience to Anthony Lawson would be greater if the injunction were discharged than to Everton McDonald if the injunction were to remain in place. Were the injunction not granted there is the risk that Anthony Lawson and his family could be ejected from the property. Damages would not be an adequate remedy in these circumstances. There is no evidence that Mr. McDonald would suffer greater harm if the injunction were granted than Mr. Lawson if the injunction were not granted. In short, there is no evidence that the "*risk of serious and uncompensated detriment to the defendant*", exists (see Lord Walker in ***Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment of Belize and another*** [2003] 1 W.L.R. 2839).

9. Miss Cummings said that there is no proof that the claimants are able to compensate the second defendant should he prevail at the trial. This is an important consideration but the law has never said that an injunction can never be granted absent proof that the claimant is "good for the money". In appropriate cases the court may grant an injunction even if they are doubts about the claimants ability to satisfy the undertaking (see ***Allen v Jumbo Holdings*** [1980] 1 W.L.R. 1252)

10. My order is that the injunction should continue until trial. Cost to be costs in the claim.