

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO E.286/98

BETWEEN	EILEEN MAUREEN WEDDERBURN	PLAINTIFF
A N D	CAPITAL ASSURANCE BUILDING SOCIETY LTD.	DEFENDANT

A N D

SUIT M71/98

RE: EILEEN MAUREEN WEDDERBURN

Mr. Gordon Robinson instructed by
Mrs. W. Marsh of Nunes Scholefield Deleon & Co.
for the Plaintiff.

Mrs. S. Minott-Phillips instructed by Myers Fletcher & Gordon
for the Defendant.

IN CHAMBERS

HEARD: 15th and 18th June 1998.

M. McINTOSH, J. (Ag.)

JUDGMENT

There are three Summons before the Court.

Two are brought in Suit E.386/98 Eileen Maureen Wedderburn v. Capital Assurance Building Society and are

- (1) Summons for Interlocutory Injunction (brought by the Plaintiff)
- (2) Summons (which was amended) to strike out Writ of Summons and all subsequent proceedings (brought by the Defendant).

The third Summons is brought by the Plaintiff Mrs. Wedderburn in suit M71/98 Re: Eileen Wedderburn and is

- (3) Ex-parte Summons for leave to apply for an Order of Certiorari.

I have carefully considered the submissions made by both the Plaintiff and the Defendant and certain facts have emerged.

On the 7th May 1988 in Suit M32/98 there was an application by the Minister of Finance pursuant to Regulation 64 of the Bank of Jamaica (Building Society) Regulations and paragraph 2 (3) of Part B of the Schedule thereto - between the Attorney General and the Minister of Finance (1st and 2nd Applicants) and Capital Assurance Building Society (the Respondent).

This application was brought before Mr. Justice Panton who on the 7th May 1998 made an order that

" The commencement or continuance of any proceedings against Capital Assurance Building Society or execution against the property of Capital Assurance Building Society be stayed for a further period of 60 days. The period of 60 days is to run from the 4th May 1998".

There is no suggestion that this order was not properly obtained.

On the 29th May 1998 Mrs. Eileen Maureen Wedderburn filed a Writ of Summons against Capital Assurance Building Society Limited asking among other things an Injunction restraining the Defendants from exercising any powers conferred by a mortgage, in particular any power of sale, in respect of certain property namely Townhouse #4 Poinciana Way, 69 Lady Musgrave Road, Kingston 10.

On the 2nd June 1998 Mr. Justice Panton granted an ex-parte Injunction restraining the Building Society (the Defendant) from so dealing with the property for a period of 14 days.

I find that the action brought by the Plaintiff Mrs. Wedderburn was ill founded ab initio and the Plaintiff conceded lack of knowledge of the order of 7/5/98 by Mr. Justice Panton.

It is a fact that Mr. Justice Panton subsequently (on 2nd June 1998) granted an ex-parte Injunction against the Defendant for a period of 14 days.

This Court is seized of these facts and is aware of the order of 7/5/98 staying commencement on continuance of proceedings against the Defendant and the fact is that such order having been properly obtained is binding.

In the absence of an application by the Plaintiff for leave to commence proceedings against the Defendant I am unable to consider the application for Interlocutory Injunction.

The Summons for Interlocutory Injunction is therefore dismissed and there is no order made as to costs.

The Summons for leave to apply for Order of Certiorari (which the Plaintiff applied to be adjourned sine die) is also dismissed with no order as to costs.

With respect to the Amended Summons to strike out Writ of Summons and all subsequent proceedings I am making an Order in terms of paragraphs 1 and 3 of this Summons which is dated 9/6/98.