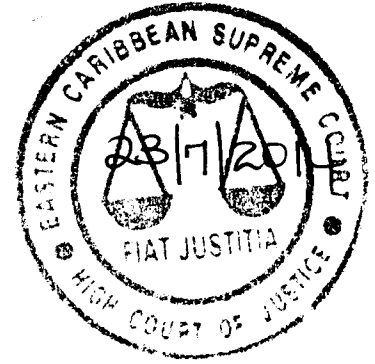


THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT AND THE GRENADINES  
CLAIM NO. 177 OF 2012



BETWEEN:

CAROL JARDINE

CLAIMANT

-AND-

JOSETTE ELLIS DAVY

1<sup>st</sup> DEFENDANT

MARLON DA SILVA

2<sup>nd</sup> DEFENDANT

Appearances: Mrs Anneke Russell holding papers for Mr Duane Daniel for the Claimants, Mr Emery Robertson for the Defendants.

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2014: July 9 & 23  
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**JUDGMENT**

[1] **Henry, J. (Ag.):** This is an application by the Claimant/Applicant<sup>1</sup> Carol Jardine for an interlocutory injunction restraining the Defendants/Respondents<sup>2</sup> from entering or trespassing on property situate at Orange Hill described in deed

<sup>1</sup> Referred to throughout as the "Claimant".

<sup>2</sup> Referred to throughout as the "Defendant(s)".

number 2779/1999, pending the outcome of the Administration/Probate of the estate of Edmund Smith, deceased.

## **Background**

[2] The substantive claim and the instant application involve a dispute over the ownership of land registered and described in deed number 2779/1999 dated 26<sup>th</sup> August 1999. The said deed is an Indenture executed by Edmund Smith deceased whereby he conveyed the subject property to himself and the Claimant as joint tenants. The Claimant is one of many children fathered by Edmund Smith. Edmund Smith passed away on April 19, 2012 as evidenced by the death certificate exhibited to the Claimant's Affidavit filed on June 20, 2012. In 2011, proceedings were initiated in the High Court<sup>3</sup> by the said Edmund Smith to sever the joint tenancy<sup>4</sup>. That action was still pending at the date of his death.

[3] The 1<sup>st</sup> Defendant asserts that she is one of Edmund Smith's daughters.<sup>5</sup> The 2<sup>nd</sup> Defendant claims to be one of Edmund Smith's sons.<sup>6</sup> The Claimant seems to dispute that Edmund Smith was the father of either defendant.<sup>7</sup> The 2<sup>nd</sup> Defendant resides at Edmund's Smith's house which is located on the subject

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<sup>3</sup> Suit Number 397 of 2011

<sup>4</sup> To vest one half of the land in the Claimant (minus any part of the dwelling house) and the other half of the land and all of the dwelling house in him absolutely.

<sup>5</sup> Paragraph 3 of 1<sup>st</sup> Defendant's Affidavit filed on March 6, 2014.

<sup>6</sup> Paragraph 1 of 2<sup>nd</sup> Defendant's Affidavit filed on 28<sup>th</sup> May, 2014.

<sup>7</sup> Paragraph 12 of Claimant's Witness Statement filed on July 12, 2013 and paragraph 2 of the Claimant's Affidavit filed on April 29, 2014.

property. The Defendants maintain that the 2<sup>nd</sup> Defendant has lived there intermittently for several years while the Claimant insists that the 2<sup>nd</sup> Defendant only started living there about two days before Edmund Smith died, while the deceased was hospitalized and without his permission. The Claimant concludes and submits that the 2<sup>nd</sup> Defendant is a trespasser on property owned solely by her<sup>8</sup> or in which she owns the majority interest. She also avers that the 2<sup>nd</sup> Defendant has removed items from the property and done damage to it and that unless he is restrained the property will suffer diminution in value to her prejudice. The 2<sup>nd</sup> Defendant denies removing any items from the property except a rug which he discarded.

- [4] The Claimant seeks an interim injunction restraining the Defendants from entering or trespassing on the property. The Claimant initiated the substantive proceedings in this matter by lodging a Fixed Date Claim Form on June 20, 2012 seeking *inter alia* recovery of possession of the subject property, an order that the 2<sup>nd</sup> Defendant vacate the property situate at Orange Hill and an injunction restraining the Defendants from entering or trespassing on the subject property. The Claimant also applied *ex parte* on the same date for an interim injunction in the same terms. By Order dated June 21, 2012, an interlocutory injunction was granted with a return date of July 12, 2012. Although the matter was considered on July 12, 2012, the only notation on the court file and in the relevant judge's

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<sup>8</sup> Including the dwelling house.

notebook is an order adjourning the matter to a date to be fixed by the learned Registrar in the New Law Term.<sup>9</sup>

[5] The instant Application for an interlocutory injunction was filed on April 4, 2014 and supported by affidavit of the Claimant filed April 29, 2014. Curiously, although throughout the proceedings up until then, the only Claimant has been Carol Jardine, both the Application and Affidavit in support contain the name “Carol Jardine (a beneficiary in the estate of Edmund Smith, deceased)” as a second Applicant. The court file contains no application or order permitting the addition of another party. This will be addressed later in the judgment.

### **Grounds of the Application**

[6] The Application contains 13 grounds on which it is founded. Grounds 1 through 5 merely recite statements which have either been accepted or agreed by the defendants or which are in dispute but do not amount to legitimate grounds for injunctive relief. Grounds 1, 3 and 6 through 13 state:

- “1. The Applicant and her father, Edmund Smith, by virtue of deed number 2779 of 1999 are legal owners of the subject property situate at Orange Hill as joint tenants.
  
3. Administration/Probate of the estate of Edmund Smith has not yet commenced.
  
6. An *ex parte* injunction was granted on the 21<sup>st</sup> of June, 2012 however it lapsed without extension.

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<sup>9</sup> Both counsel’s (Daniel and Robertson) recollection (see letter dated November 2, 2012 from the former to the latter) is that the injunction was discharged.

7. The 2<sup>nd</sup> Respondent has since done damage to the property.
8. If the Respondents are not restrained, the property, to which the Applicant is entitled to at least an undivided half share, will suffer diminution to the prejudice of the Applicant as well as to the prejudice of the beneficiaries of the estate of Edmund Smith.
9. Damages would not be an adequate remedy because the property has not yet undergone valuation and there would be no way to give a proper value to the property after the damage has already been done and more items have been removed.
10. The Applicants undertake to abide by any order the Court may make as to damages, should the Court hereafter be of the opinion that the defendants shall have suffered any damages that the Claimant ought to pay.
11. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent (sic) would be adequately protected by the Applicant's undertaking as to damages.
12. The balance of convenience lies in favour of granting the application as on the basis, inter alia, of (1) and (3) above and on the basis that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would not be significantly inconvenienced or prejudiced by being restrained since they have no legal title to the said property.
13. It is fair just and equitable in all the circumstances that the order sought be made."

## **Issues**

- [7] The primary issue which arises for determination is whether the court should grant the interlocutory injunction restraining the defendants from entering the subject property. The court must also address the sub-issue of the ostensible joinder by the Claimant of another Claimant without leave of the court.

## Claimant's Submissions

- [8] Learned Counsel for the Claimant, Mrs Anneke Russell submitted to the court that the Claimant has a greater interest in the subject property including any interest she might receive arising out of the intestacy of Mr Edmund Smith deceased. She also stated that the 2<sup>nd</sup> named defendant was not in possession of the subject property before the death of the late Edmund Smith and that the interlocutory injunction should be granted to preserve the *status quo ante* and to prevent removal of items from the property.

## Defendants' Submissions

- [9] On behalf of the Defendants, learned counsel Mr Emery Robertson submitted that the late Edmund Smith served a notice of severance which had the effect of automatically severing the joint tenancy. The issue he said is whether there is in effect a severance and if so what is the effect of the severance. The court is satisfied that the issue of severance is one which would engage the court in the substantive proceedings, but is not one which needs detain the court during these proceedings to determine whether to grant an interlocutory injunction.
- [10] Mr Robertson submitted further that the 2<sup>nd</sup> Defendant is lawfully in possession of the property having been given permission to occupy the said property by Edmund Smith deceased before he died. He also urged on the court that if the subject property did not form part of the land agreed to be given to the Claimant, she is not entitled to an injunction and it would be prejudicial for the 2<sup>nd</sup> Defendant to give up possession of the property. He also referred to the case of **American Cyanamid v. Ethicon** which he said laid out the factors to be considered by the court in deciding whether to grant an injunction.

## Law and Analysis

### Addition of the second claimant

- [11] Part 19 of the Civil Procedure Rules 2000 ("CPR") describes the circumstances under which and outlines the procedures for adding parties. Rules 19.1, 19.2 (1), (3), (5) and (6) and 19.3 (1), (2), (3) (4) and (5) provide:

*"19.1 This Part deals with the addition or substitution of parties after proceedings have commenced.*

19.2 (1) *A claimant may add a new defendant to proceedings without permission at any time before the case management conference.*

(2)...

(3) *The court may add a new party to proceedings without an application if-*

- (a) *It is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or*
- (b) *There is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.*

(5) *The court may order a new party to be substituted for an existing one if the –*

- (a) *court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or*
- (b) *existing party's interest or liability has passed to the new party.*

(6) *The court may add, remove or substitute a party at the case management conference.*

19.3 (1) *The court may add, substitute or remove a party on or without an application.*

(2) *An application for permission to add, substitute or remove a party may be made by-*

- (a) *an existing party; or*
- (b) *a person who wishes to become a party.*

(3) *An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.*

(4) *A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office.*

(5) *An order for the addition, substitution or removal of a party must*

*be served on-*

- (a) all parties to the proceedings;*
- (b) any party added or substituted; and*
- (c) any other person affected by the order.”*

[12] The foregoing rules and specifically, rule 19.2 empowers a claimant to add a new defendant to proceedings at any time before the case management conference without leave of the court. However, under the CPR, a claimant does not enjoy a similar right to add a claimant without leave of the court. Any other joinder of parties requires leave of the court as a condition precedent – Rules 19.2(3) & (5). Rule 19.3(4) stipulates that a ‘proposed claimant’s’ consent must be filed before he can be added as a claimant. In addition, any order adding a party must be served on all parties to the proceedings, the party added and on any other person affected by the order. No application was made for the addition of “Carol Jardine (a beneficiary of the estate of Edmund Smith, deceased)” as a claimant in these proceedings and no order was made by the court to this effect. In the circumstances, the unilateral alteration by the Claimant of the parties as contained in her Application and Affidavit in Support filed on April 29, 2014 is irregular and is hereby invalidated. This matter will proceed as between the initial parties without variation unless an order is made subsequently to add, substitute or remove a party.

### Interlocutory Injunction

[13] The court has a wide discretion whether to grant an interlocutory or any injunction. The principles which guide the court in the exercise of this discretion were laid out by the House of Lords in the *locus classicus* **American Cyanamid v. Ethicon**<sup>10</sup>. The guiding principles which have been established to govern the grant of an interim injunction can be summarized as follows:

- (a) There must be a serious issue to be tried between the parties.
- (b) If the interlocutory injunction is refused, can the Claimant be adequately compensated in damages at the trial if he is able to establish his right to a permanent injunction?
- (c) Can the defendant be adequately compensated in damages at the trial if the interlocutory injunction is granted?
- (d) Mindful of the benefits of preserving the *status quo*, if the merits for both sides (on the question of adequacy of damages) is uncertain or unclear,

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<sup>10</sup> [1975] A.C. 396 at 408-409 per Lord Diplock.



where does the balance of convenience lie?

- (e) If there is still doubt after considering the preceding issues, prudence suggests that the status quo be preserved.
- (f) the court should not seek to resolve conflicts of evidence as to facts averred by the parties or decide difficult questions of law. These are to be considered and resolved at the trial.
- (g) The grant of an interlocutory injunction is discretionary. There are no fixed rules governing the exercise of that discretion as the relief should be kept flexible.

[14] Lord Denning's pronouncement in the case *Hubbard v Vosper* [1972] 2 Q.B. 84 is also instructive. He stated:

*"In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."*

[15] The three questions which the court must answer in determining whether to grant the interlocutory injunction sought are:

- (a) Whether there is a serious issue to be tried?
- (b) Whether damages would adequately compensate the claimant or the defendant?
- (c) If necessary, where does the balance of convenience lie and should the *status quo* be maintained?

### **Serious Issue to be Tried**

[16] The Claimant asserts that she is entitled to all of the interest in the subject property as the sole surviving joint tenant or alternatively that she is entitled to a greater share than all of the other beneficiaries if the joint tenancy is severed. She accordingly claims that the Defendants are trespassers on her property or property in which she holds a majority interest and in which they have no interest. The Defendants for their part aver that the Claimant is at best entitled to less than one half of the subject property and that the 2<sup>nd</sup> Defendant occupies the property as a licensee of Edmund Smith deceased,<sup>11</sup> is

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<sup>11</sup> And consequently a licensee of the estate

a beneficiary of the estate and one of many persons entitled to share in the estate of the said Edmund Smith who died intestate. There appears to be very little common ground between the parties on these matters. The factual matrix discloses that there is a serious issue to be tried. Accordingly, the first of the three questions<sup>12</sup> must be resolved in the affirmative.

### **Adequacy of Damages**

[17] The Claimant seeks damages in the substantive claim in trespass and an account and inventory of the contents of the house on the subject property. There is little doubt that the Claimant can be adequately compensated in damages for any loss she may suffer if the interlocutory injunction is not granted. The Defendants both indicate that they are gainfully employed and there is accordingly no doubt that they would be in a position to satisfy any judgment in damages awarded in favour of the Claimant. It is not evident on her affidavits whether the Claimant is employed or if she would have the means to satisfy an award of damages in favour of the defendants. What is however indisputable is that damages would be an adequate remedy to the defendants if the interlocutory injunction is granted. It would seem therefore that on the issue of adequacy of damages, the facts support the refusal of the grant of interlocutory injunctive relief. The claimant's concern regarding a feared depreciation in the value of the property in the intervening period can be put to rest by having a valuation conducted before the trial. There is (urged on this court) nothing preventing this from taking place.

### **Balance of convenience and Status Quo**

[18] Having regard to the existence of the unresolved claim initiated against the Claimant by Edmund Smith deceased and all other surrounding facts, it appears that the balance of convenience favours the Defendants or in any event the estate of Edmund Smith deceased. In all of the circumstances, it appears to the court just and equitable that the *status quo* should be maintained.

### **Orders**

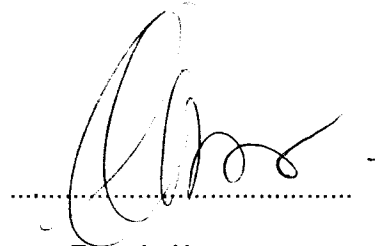
[19] Having examined the respective positions of the Claimant and the defendants in light of the guiding principles governing the grant of interlocutory injunctions, the court is satisfied that while damages would adequately compensate either party, the balance of convenience lies in favour of the Defendants and the *status quo* should be maintained.

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<sup>12</sup> In paragraph [15]

It is accordingly ordered:

- (a) the Application by the Claimant for an interlocutory injunction is dismissed; and
- (b) The Claimant shall pay costs to the Defendants in the sum of \$500.00 each.

A handwritten signature in black ink, appearing to read 'Esco L. Henry', is written over a horizontal dotted line.

**Esco L. Henry**

**HIGH COURT JUDGE (Ag.)**