

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. Cv. 2017-02452

BETWEEN

INDRA JAIKARAN

First Claimant

SHANTAL JAIKARAN

Second Claimant

AND

JMMB BANK (T&T) LIMITED

Sued as

JMMB (T&T) LIMITED

(formerly called INTERCOMMERCIAL BANK LIMITED)

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES:

Mr. Marc Campbell, attorney-at-law appearing on behalf of the Claimants

Ms. Lynette Maharaj S.C. and Mr. Vijai Deonarine, attorneys-at-law appearing on behalf of the Defendant

REASONS

1. By a Notice of Application filed on the 20th July, 2017, the Claimants Indra and Shantal Jaikaran applied for an interlocutory injunction seeking the following orders:

“1. An injunction restraining the Defendant from dispossessing and/or evicting the Claimant from the property known as No. 4k La River, West Moorings;

2. An interlocutory injunction restraining the Defendant from entering into an agreement for sale of the said property.”

2. On the 30th January 2018, I read a *viva voce* ruling into the Record and refused the application for interim relief. I have now set out below my reasons for so doing.

Evidence

3. On the 20th July, 2017, the applicant filed an affidavit, as well as a supplemental affidavit, in support of the Notice of Application for the injunction. The Defendant relied on the Affidavit of Timothy Gyan¹.

Facts

4. The Claimant is the widow of the late Mohan Jaikaran and the second Claimant is their daughter. Mohan Jaikaran died in April, 2015. The Claimants reside both in New York and in Trinidad, where they visit some 12 times per year.
5. By deed of sub-lease dated the 17th July 2001, the Claimants acquired the subject property together with the late Mohan Jaikaran.
6. Following the demise of Mohan Jaikaran, representatives of the Defendant met with the First Claimant. They told her that the late Mohan Jaikaran was indebted to the defendant, by reason of a mortgage which had been taken on the subject property. The Claimant caused payment to be remitted to the Defendant in the sum \$1,278,626.54. Payments were remitted between June, 2015 and September, 2016.
7. The Claimants alleged that in September, 2016 they saw the deed of mortgage dated the 7th May 2012, for the first time. Having seen the Deed of Mortgage, the Claimants have denied that they ever signed it and contend, in these proceedings, that their signatures was forged and seek orders setting aside the deed².
8. It is in the foregoing factual context that the Claimants sought interim prohibitory orders.

Submissions and Law

¹ Affidavit of Timothy Gyan filed on the 16th October, 2016

² Indra Jaikaran v JMMB CV2017-2452

9. Very erudite and well-written submissions were filed, both in support of the application for the injunction and in opposition to same.³
10. In *American Cyanamid v. Ethicon* [1975] 1 ALL ER 504, Lord Diplock outlined the underlying rationale for the grant of interim injunctions. At page 509B⁴, Lord Diplock set out these guidelines in respect of applications for interlocutory injunctions:

“My Lords, when an application for an interlocutory injunction to restrain a Defendant from doing acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction; but since the middle of the 19th century this has been made subject to his undertaking to pay damages to the Defendant for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the Defendant from doing what he was threatening to do. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies”⁵.

³ Written submission for the Claimant were filed on the 31st October, 2017. Written submission for the Defendant were filed on the 17th November, 2017 and Claimants submission in reply was filed on 8th December, 2017.

⁴ [1975] 1 ALL ER 504 at 509B

⁵ *American Cyanamid v. Ethicon* [1975] 1 ALL ER 504 at page 406 of the judgment

11. It was common ground that following *American Cyanamid Co. v. Ethicon Ltd*⁶ the court must have regard to three factors in determining whether to grant an application for interim injunction. These are :

1. Whether there is a serious issue to be tried;
2. Whether damages would be an adequate remedy, and
3. Whether the balance of convincing favors the Claimant.

I considered each factor in turn.

Serious issue to be tried

12. The Court considers whether there is a serious issue to be tried as a threshold requirement. Accordingly, the learned authors of the 2017 White Book wrote at paragraph 15-8:

‘...unless the material available to the court at the hearing of the Application for an interlocutory injunction fails to disclose that the Claimant has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favor of granting or refusing interlocutory relief....’

13. In these proceedings, the broad contention of the Claimants was that the Deed of Mortgage should be set aside as their signatures had been forged.

14. It is now trite that, in applications for interlocutory injunctions, the Court may not embark on a fact-finding exercise. The Court ought not, as well, to embark on the resolution of difficult questions of law. Accordingly, Lord Diplock, at page 510 D-E, said:

*“ It is not part of the courts’ function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument or mature consideration.”*⁷

15. Learned Senior Counsel for the Defendant invited the court to consider issues of law including “ratification”, “agency” and “equitable subrogation” and relied on *Associated*

⁶ Ibid

⁷ American Cyanamid v. Ethicon [1975] 1 ALL ER 504 of 510 D-E

*British Ports LTD v. Transport and General Workers Union*⁸ for the proposition that the Court could resolve issues of law, if such do not require lengthy argument and where failing to do so would result in hardship to one party.

16. I declined to embark on considering the issues of law. It was my view that the issues which were raised by the Defendant could not be resolved without deep and lengthy submissions. It was therefore my view that it would have been inappropriate to embark on hearing and deciding such issues at an interlocutory stage.
17. The Claimants raised the possibility of forgery, which if proved would result in the Deed being set aside. It was therefore my view that there was a serious issue to be tried and I proceeded to consider the two remaining factors.

Adequacy of Damages

18. I considered whether the Claimants could adequately be compensated in damages. They relied on two arguments. The first was that they use the subject property as their temporary residence, when they and their relatives visit Trinidad, on multiple occasions, in any given year. The Claimants could clearly be compensated in damages for the loss of a temporary place of abode, by considering the cost of comparable accommodation.
19. The second argument advanced by the Claimants was their sentimental attachment to what had been their home. It is open to the Court to assess damages which will compensate Claimants, in the same way that persons are compensated for grief and loss of their loved ones in fatal injuries actions. See *Mac Gregor on Damages. 16th Edition Para 1745*.
20. Accordingly, it was my view, that damages would be an adequate remedy.

Balance of Convenience

⁸ [1989] 2 ALL ER 822

21. In recent times, the courts have searched, not so much, for a balance of convenience as for a balance of justice. According to the cases of *Jetpak*⁹ and *East Coast Drilling v. Petroleum Co. of Trinidad and Tobago*¹⁰ the court is required to consider where the greater risk of injustice lay. In the words of CJ de la Bastide:

*“ The Court must pose the question: Where does the greater risk of injustice in granting or refusing the injunction ”*¹¹ .

In my view this requires the Court to project into the future imagining two possible scenarios: The first where the injunction is granted and the Defendant succeeds in having the claim dismissed. The second scenario assumes the refusal of the injunction with the Claimant succeeding ultimately. The Court considers where the greater risk of injustice would lie.

22. I have applied these questions to the facts before me. Should I grant the injunction and the claim is ultimately dismissed the Defendant would be required, at that stage, to take steps to repossess the property with the attendant loss of sale opportunities over a period of years, while this matter receives the attention of this court. Should I withhold the injunction, the Claimants will lose a property to which their attachment is sentimental. The Claimants will not lose their home, since they reside in New York. They will also recover any proceeds of sale over and above their mortgage debt and they stand to avoid the accrual interest caused by a delay in liquidating the debt.
23. In my view the balance of justice is evenly distributed and is not tilted in favor of the Claimant and I considered whether, directed as by Lord Diplock, I should direct that a status quo be preserved¹².
24. Although the balance of Justice may have been evenly distributed it was clear, that with each passing day, the interest payable by the Claimants would increase. There was no evidence before me of their being financially equipped to honour any undertaking which they may make as to damages, should they be ultimately unsuccessful. In this eventuality

⁹ *Jetpak Services Ltd v BWIA* (1998) 55 WIR 362

¹⁰ *East Coast Drilling v Petroleum Co. of* (2000) 58 WIR 351

¹¹ See de la Bastide CJ in *East Coast* (Ibid) at page 358

¹² See *American Cyanamid Co. v. Ethicon Ltd* [1975] 1 ALL ER 504 at page 511

the Defendant would be faced with an unrecoverable loss¹³. It was for this latter reason, coupled with my finding that damages were adequate to compensate the Claimants that I thought it would be unfair to preserve the status quo by granting the injunction.

Dated the 12th day of April, 2018

Mira Dean-Armorer
Judge

¹³ See paragraph 79 of the written submissions for the Defendant