

**THE REPUBLIC OF TRINIDAD AND TOBAGO**  
**IN THE HIGH COURT OF JUSTICE**  
**CV 2017 – 03548**

**Between**  
**Oliver Aqui**

**Claimant**

**And**  
**Frankie Boodram**

**Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Ms Tara Thompson and Mr Joel Roper for the Claimant

Ms Sophia Chote SC leading Mr Yohann Pancham for the  
Defendant

Date: 7 December 2017

**Ruling**

1. The issue is whether the injunction issued by Charles J. on 6 October 2017 should be continued until the trial of this claim. The court has to consider where the balance of justice lies in all the circumstances. Both sides have filed evidence and oral submissions were made.
2. In the case of **National Commercial Bank Jamaica Ltd v. Olint Corp Ltd (Jamaica) [2009] UKPC 16 (28 April**

**2009)** Lord Hoffman set out the approach to be taken in deciding if to grant an injunction:

16... It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

17. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the *American Cyanamid* case [1975] AC 396, 408:

“It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.”

18. Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.”

3. The claimant occupies an area of land of about 40,000 square feet. This land is State land of which the Commissioner of State Lands has superintendence.
4. The claimant began paying rent to the defendant since 2002. The defendant, according to the claimant, had held out he was the owner of the land. Lease agreements were signed over time.
5. Earlier this year the Commissioner of State Lands, through her agents, upset this arrangement. They came and asked the claimant why they were on the lands. The claimant said they were renting it from the defendant. Various events took place following on this. The long and short of this was that the claimant stopped paying the defendant rent. The defendant then came onto the lands seeking to put the claimant out. It is of note that the claimant occupies the land for business purposes and sub-lets to other businesses.

6. The claimant also says the defendant brought various pieces of heavy equipment blocking entry to the property. The claimant also said the defendant used some choice words on them and threatened him. The claimant made reports to the police about this.
7. Thus there is no rent being paid. The claimants are in occupation and the defendant wants them out.
8. All of this is complicated by the fact that both the claimant and the defendant are separately seeking to engage the Commissioner of State Lands to regularise their occupation of the lands.
9. The defendant in his affidavit said that he had bought out the lease from the previous lessees. That lease, it appears, had expired, and was not renewed. He did not, however, say the Commissioner granted approval for this transaction.
10. The dispute therefore between the claimant and the defendant is who between them should be allowed to occupy the land. The other issue is if the claimant should be able to recover the rents paid to the defendant. The Defence has not as yet been filed so we do not know the precise counterclaim the defendant may seek. The Attorney General on behalf of the Commissioner of State Lands will also be an interested party to this claim.
11. Enter the Commissioner of State Lands. Ultimately the Commissioner will have to decide who between the two if either of them should continue to occupy the lands.
12. The essence of the claim by the claimant is for recovery of rent which they say has been fraudulently been collected. But the claimant is pursuing regularisation of their occupation. The defendant is also pursuing this course with the Commissioner's office. If the claimant wins out on this

they would be entitled to stay. If the defendant wins then he would be entitled to have the claimant put out or may choose to negotiate a new arrangement and may be entitled to payment of the rent which the claimant has stopped paying.

13. In terms of the effects on either party, the defendant is being kept out of rent for the property or use. The claimant is in possession.
14. The disruption to the claimant is likely to be more significant than that to the defendant. If the injunction is not continued the defendant would be entitled to call on the claimant to leave since the defendant says he owns the lease. The claimant will have to move his business as well as put out other businesses located on the property. If the claimant succeeds in getting the lease into his name he will then have to endure the disruption of moving back.
15. Further, the claimant has stated in his affidavit that he has constructed buildings and carried out significant infrastructure and construction work on the lands. These were with the knowledge and agreement of the defendant. Thus the claimant would be deprived of the use of these facilities notwithstanding that the defendant says these improvements, according to the lease, were to the account of the claimant.
16. At this time the impact on the defendant is that he is not being paid rent for a property which he says he is entitled to.
17. As a condition of granting any injunction, the claimant must ordinarily give an undertaking that if he fails in his case he must pay the defendant for such losses which arise from the grant of the injunction. This undertaking is of course enforceable. Thus, the defendant will be entitled to receive some measure of compensation for whatever reasonable losses he has sustained. The defendant in this sense is somewhat protected.

18. The status quo here in respect of the land is that the claimant is in occupation. Maintaining the status quo meets the requirements of justice here since the likely prejudice to the claimant of not granting the injunction will be much greater than the prejudice of granting the injunction to the defendant.
  
19. The next issue concerns whether injunctive relief should be granted to prevent the defendant from harassing or threatening the claimant. The defendant has denied threats or abusive or obscene language. The claimant says he did so more than once. He also made reports to the police. The details of the reports have not been placed before the court but the receipt that reports were made were. These are what they are, mere receipts. But they are consistent with one aspect of what the claimant is saying, that is, there were incidents with the defendant. The court does not have to decide as a fact whether there were threats but to consider the evidence of both sides and determine if justice requires the order be made. The claimant outlined more than one incident. He also went to the trouble of making reports to the police. There is also a letter which he sent to the defendant referring to some abusive conduct. All of these together points to justice lying in favour of granting the injunction on this matter as well.
  
20. The third matter concerns the parking or bringing of the defendant's mechanical equipment onto the compound. Photographs were exhibited to show a number of vehicles parked up. It is clear that the defendant brought these on. In his affidavit he indicated it was to paint and pressure wash the items. The claimant is saying it was to disrupt his businesses. It is clear that this would have caused significant disruption to the business of the claimant. This aspect of the injunction ought therefore to also continue.
  
21. I will continue the injunction at paragraphs 1, 2, and 3 of the order of Charles J made on 6 October 2017 until the determination of this claim subject to one modification. The defendant may enter the open areas of the premises once it is done in a peaceful manner and during normal business

hours. In order to secure the undertaking, I will further direct that the claimant deposit the sum of \$20,000.00 per month, which was the last rent payable, into a separate account to be kept to fulfil the undertaking if he is ultimately unsuccessful in his claim. The costs of the injunction will be costs in the cause.

Ronnie Boodoosingh

Judge