

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-00065

BETWEEN

DALE CHRISTMAS

First Claimant

KAREN CHRISTMAS

Second Claimant

AND

MARVA NICHOLAS

Defendant

Before the Honourable Mr. Justice Robin N Mohammed

Date of Delivery: Wednesday 11 August 2021

Appearances:

Mr. Orrin Kerr instructed by Mr. Henry Chase for the Claimants

Mr. Russell Warner for the Defendant

**DECISION ON THE CLAIMANTS' NOTICE OF APPLICATION FOR INTERIM
INJUNCTIVE RELIEF**

I. Introduction

[1] Before the Court is the Claimants' Notice of Application supported by an affidavit of Dale Christmas both filed on 11 January 2021 against the Defendant seeking the following interim injunctive relief:

1. An interim injunction restraining the Defendant, her servants and/or agents from prohibiting the Claimants from occupying and/or accessing that certain piece or parcel of land situate at Light Pole No. 22, Kardale Drive via Belmont Valley

Road, Belmont, comprising eight thousand square feet more or less and bounded on the North by a ravine thirty feet wide, on the South by lands of C. Waterman and on the East partly by lands of Avil and Gortude Christmas and lands of Dr. Singh in the Ward of St. Ann's in the island of Trinidad.

2. An interim Protection Order to ensure that the Defendant whether by herself, her servants and/or agents or otherwise howsoever *is restrained*¹ from doing any of the following act and/or any of them, to wit:
 - i. From erecting any fence and/or barrier upon that certain piece or parcel of land measuring sixty feet by sixteen and one half feet, forming part of a larger parcel of land occupied by the Claimants for a period in excess of sixteen years;
 - ii. From passing over and/or through that certain piece or parcel of land measuring sixty feet by sixteen feet, forming part of a larger parcel of land occupied by the Claimants for a period in excess of sixteen years; and
 - iii. From intimidating, molesting, threatening the Claimants with eviction or in any way interfering, terrorising or harassing the Claimants and their servants and/or agents and/or invitees in or about the premises described herein or elsewhere or in whatever way.

[2] This Application follows the Claimants' Fixed Date Claim Form and Statement of Case filed on 9 January 2021 wherein the Claimants seek the following relief:

1. A declaration that the Claimants have been in undisturbed, exclusive and continuous occupation of the subject property inclusive of the building thereon for a period of eighteen years at premises known as Light Pole No. 22, Kardale Drive via Upper Belmont Valley Road, Belmont in the island of Trinidad.
2. A declaration that the Claimants are lawfully entitled to possession of the subject property adverse to the paper title holder Dr. Singh.
3. Injunction.
4. Costs.
5. Such further or other reliefs that the Court deem just.

¹ *These words were not included in the application but are added so that the relief sought would make sense*

[3] The Defendant, on 18 January 2021, filed an affidavit in opposition to the Claimants' Application for interim relief.

II. Factual Background

[4] It is not fitting at this stage of the proceedings to conduct a mini trial of the respective evidence on affidavit by the parties. However, for the purposes of this Application, I will recite some brief facts by way of background which are relevant to this Application.

[5] The Claimants reside together at L.P. No. 22 Kardale Drive via Upper Belmont Valley Road, Belmont with their two minor children. According to the First Claimant, he has lived at this property since birth with his parents and siblings for all of his natural life.

[6] In or about March 2002, the First Claimant began to plant and cultivate abandoned lands across the ravine to the back of L.P. No. 22 Upper Belmont Valley Road, Belmont (hereinafter "the disputed property"). According to the First Claimant, the disputed property was previously occupied by Ms. Zita Mars (deceased) who had a wooden structure on the land during the 1990s. At the time that the First Claimant began occupation of disputed property, he gained access through Mr. Reginald Mars' property situate at L.P. No. 23 Upper Belmont Valley Road, Belmont.

[7] According to the First Claimant, during the period 2002 to 2016, he constructed a shed to shelter from the weather since he spent the greater part of the day on the disputed property. In 2016, the First Claimant commenced construction of his dwelling house on that certain parcel of land comprising approximately eight thousand square feet more or less being a portion of a larger parcel formally owned by Dr. Singh (deceased). According to the First Claimant, over the last eighteen years of planting and maintaining the eight thousand square feet of land surrounding his dwelling house, he cultivated a large garden with wide variety of trees, plants, figs, herbs and seasonings.

[8] In order to facilitate independent access to his dwelling house, in February 2020, the First Claimant began to develop a roadway off Upper Belmont Valley Road in the vicinity of the southern boundary of lands owned by Avil and Gortude Christmas. On 2 March 2020, the First Claimant paid Marcus Yard Care to cut non-fruit trees in the vicinity of the intended roadway connecting his dwelling house to Upper Belmont

Valley Road. On 7 November 2020, the First Claimant rented a backhoe from Longyard General Maintenance Company to grade a roadway ten feet wide by ninety-six feet long in the vicinity of the southern boundary of lands owned by Avil and Gortude Christmas.

[9] On 16 November 2020, the Second Claimant received a Notice of Survey under the hand of Mr. Brian Moses purporting to conduct a land survey for the purpose of bringing lands under the **Real Property Act** on the instructions of the Defendant who resided at McKai Road, Upper Belmont Valley Road, Belmont and operated a mini mart parlour at L.P. No 22, Upper Belmont Valley Road, Belmont.

[10] On 29 December 2020 at around 9:30 a.m., two persons who identified themselves as surveyors entered the lands occupied by the First Claimant and began conducting surveying activities. The two surveyors cleared four spots on the land and placed markings with red paint over an area measuring sixty feet in length by sixteen feet in width, within the lands that the First Claimant occupied since in or around 2002. On 30 December 2020 at around 9:30 a.m., the First Claimant observed the Defendant in company with a lawyer, entering the parcel of land which he occupies by passing along the roadway he constructed. The Defendant and the lawyer proceeded to the area where the surveyors had placed markers the previous day.

[11] According to the First Claimant, on 5 January 2021 at around 8:00 a.m., Kurt Nicholas, the Defendant's husband, Shaquill Nicholas, the Defendant's son and Imanuel Fox, entered the lands by way of the roadway that the First Claimant had constructed. These men proceeded to the area where the surveyors had placed markers and began to chop down all growing and bearing fig trees, paw paw trees, avocado trees, among others which the First Claimant had planted.

[12] According to the Claimants, during the period July 2002 to 28 December 2020, the Defendant and/or her servants and agents have never entered the land which they occupy. The First Claimant contended that the Defendant is now attempting to use the roadway which he constructed to claim lands across the ravine on the southern side or back of the mini mart which has a concrete fence preventing crossing the ravine.

- [13] According to the Defendant, the Claimants have not occupied the disputed property or any portion thereof over the last eighteen years (2002 to present). Rather, during the entirety of that period, the Defendant and her family have been the only persons to occupy, maintain and possess the disputed property. The Defendant then set out a history of the occupation of the disputed property in support of her case.
- [14] According to the Defendant, her parents occupied the land situate at L.P. No. 22 Upper Belmont Valley Road from 1978 which included the disputed property. There was a wooden structure upon the property from which her parents operated a dry and market goods shop. This wooden structure was physically partitioned into two separate parts. Her parents operated the shop from one part and Mr. Avil Christmas (deceased) occupied the other part. However, Mr. Avil Christmas acquired an adjoining property and he no longer occupied any part of the property. Thereafter, her parents continued to occupy the entire property as their own.
- [15] In or around 1978, her parents demolished the wooden structure and built a concrete structure on the property. At the age of seventeen or eighteen years, the Defendant began operating the shop at the property on her own. When she began operating the said shop, she assumed full control of and responsibility for the property. She was also responsible for the maintenance of the entire property. During this period, the Claimants had absolutely nothing to do with the property. According to the Defendant, at no time did anyone ever approach her and indicate that they were the owners of the property. Furthermore, no one objected to her occupation and maintenance of the property and/or her operation of the said shop.
- [16] However, the Defendant stopped operating the shop at the age of twenty-three years when she had her first son, Shaquill. After his birth, she no longer operated the said shop from the property but remained in possession of the property and routinely maintained the property to ensure that there was no overgrowth and that the concrete structure did not deteriorate. The Defendant's husband, Kurt, was tasked with maintaining the property every month. This included the disputed property. In 2014, the Defendant renovated the concrete structure since she had intentions of operating a vending business from the said property.

[17] According to the Defendant, she has always occupied the disputed property behind her business premises and all persons living nearby acknowledged her to be the owner/occupier of same. The Defendant contended that it was only after her surveyor, Mr. Brian Moses, surveyed the property and clearly identified her boundaries that the Claimants took unlawful steps towards fencing a portion of the disputed property.

[18] The Defendant further contended that the Claimants have only lived at their present home, which is adjacent to the property, for approximately two years and two months. In November 2018, the Claimants moved adjacent to the property and constructed their house on the Second Claimant's father's property (Mr. Reginald Mars). Prior to that, the Claimants lived off of Mendoza Road, Belmont for a number of years and had no interaction with the property. Additionally, the First Claimant did not cultivate a garden on the disputed property at any time and/or maintained the disputed property.

[19] According to the Defendant, since in or around 1988 to present, she has been in exclusive possession of the entire property at L.P. No. 22 Upper Belmont Valley Road which includes the disputed property – that portion which is just over/across a river which runs through the said property. The Defendant contended that she has always maintained the entire property, without any interference from any person whatsoever and to that end, she never had any reason to fence the disputed property. It was further contended that every person who resides near to the property, even the Claimants, understood and acknowledged that the property is occupied and maintained by the Defendant.

III. Law on Injunction

[20] As correctly stated by Madam Justice M. Mohammed in **O'Neil Williams v The Attorney General of Trinidad and Tobago and The Chief Immigration Officer**², the granting of an interlocutory injunction is a matter of discretion and depends on the facts of the case which consist of the untested affidavit evidence presented. In determining the application, the Court addressed its mind to the principles that ought to be considered when it has to determine whether or not interim injunctive relief should be granted. The Court noted the law as outlined in **Basdeo Panday v Narad**

² CV2019-03304

Sohan, Christopher Ramlal and Reiza Mohamdally³ at paragraphs 35 to 40, 44 and 52 to 53 where this Court stated as follows:

“[35] The approach to be adopted by the Court in hearing an application for the grant or discharge of an interim injunction was given by Lord Diplock in the House of Lords decision in **American Cyanamid Co v Ethicon Ltd** [1975] A.C. 396 as follows:

*“The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, **that there is a serious question to be tried.** It is no part of the court’s 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 and mature considerations. These are matters to be dealt with at trial...So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff 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 favour of granting or refusing the interlocutory relief that is sought.”*

*As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing a permanent injunction, **he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at the common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory application should be granted, however strong the plaintiff’s claim appeared to be at that stage.**”* [Emphasis added]

³ CV2019-01314

[36] The Court must determine where the greater risk of injustice would lie, in granting or withholding the injunction and regard must be had to the relative strength of the parties' case in determining this question: **Jet Pak Services Ltd v BWIA International Airport Ltd** (1988) 55 WIR 362 and **East Coast Drilling & Workover Services Ltd v Petroleum Company of Trinidad and Tobago** (2000) 58 WIR 351.

[37] Archie J (as he then was) in **Venture Production [Trinidad] Limited v Atlantic LNG Company of Trinidad and Tobago** H.C. 1947 of 2003 stated as follows:

*“The law in Trinidad and Tobago has been established by the decisions of the Court of Appeal in **Jetpak Services Limited v. BWIA International Airways Limited** (1998) 55 WIR 362 and **East Coast Drilling v. Petroleum** (2000) 58 WIR 351. The plaintiff must first establish that there is a serious issue to be tried. It used to be thought that the inquiry then proceeded sequentially through a consideration of whether the plaintiff could be adequately compensated by an award of damages; whether the defendant would be able to pay; whether, if the plaintiff ultimately fails, the defendant would be adequately compensated under the plaintiff's undertaking; whether the plaintiff would be in a position to pay and finally an assessment of the balance of convenience. The new approach requires a simultaneous consideration of all relevant factors and a degree of interplay between various factors. The plaintiff is not necessarily denied relief by the consideration of any single factor in isolation. **The question, which must be posed, is where does the balance of justice lie? An assessment of the balance of justice requires a comparative assessment of (i) the quantum of the risk involved in granting or refusing the injunction and (ii) the severity of the consequences that will flow from following either course.**”* [Emphasis mine]

[38] In **National Commercial Bank Jamaica Ltd v Olint Corp. Ltd** (Jamaica) [2009] 1 WLR 1405, the Board of the Privy Council was of the

view that it was wrong to approach requests for interlocutory injunctions with a box-ticking approach. Lord Hoffman stated thus-

*“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.*

*In practice, however, it is often hard to tell whether either damages or the crossundertaking 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 which 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 to even 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’.*” [Emphasis mine]

[39] Consequently, it is apparent that there are three questions to ask when an application for an interlocutory injunction is made: (i) whether there is a serious issue to be tried; (ii) if the answer to that question is yes, then would damages be an adequate remedy for the party injured by the Court’s grant or

failure to grant the injunction; and (iii) if there is doubt as to whether damages would be adequate, where does the balance of convenience lie?

Serious issue to be tried

[40] In deciding whether there is a serious issue to be tried, the Court must consider the following principles derived from the learning in **American Cyanamid (supra)**:

- (i) There are no fixed rules as to when an interlocutory injunction should not be granted and/or continued;
- (ii) The evidence available to the Court at the hearing of the application for an interlocutory application is incomplete. It is given on affidavit and has not been tested by cross-examination;
- (iii) It is no part of the Court's function at this stage to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed and mature considerations. These are matters to be dealt with at the trial.

Damages as an adequate remedy

[44] At page 408 of **American Cyanamid (supra)**, guidance was given on the process the Court should adopt in determining whether damages are an adequate remedy:

"As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the

court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction." [Emphasis mine]

Balance of Convenience

[52] It has been suggested that it is unwise to attempt to list the factors that fall for consideration under this issue. However, Lord Diplock noted in **American Cyanamid (supra)** that-

"If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."

[53] Further, in a more recent exposition of the relevant principles to be applied in granting interim injunctive relief, Lord Hoffman stated in the Privy Council decision of **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd (supra)** that –

*"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 the 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...

“...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.” [Emphasis mine]”

[21] The object of the injunction requested by the Claimants is to:

- (i) prevent the Defendant and/or her servants and/or agents from occupying or accessing that certain piece or parcel of land situate at L.P. No. 22 Kardale Drive via Belmont Valley Road, Belmont;
- (ii) restrain the Defendant and/or her servants and agents from erecting any fence and/or barrier and entering upon that certain piece of parcel of land measuring sixty feet by sixteen feet forming part of a larger parcel of land occupied by the Claimants; and
- (iii) restrain the Defendant and/or her servants and agents from intimidating, molesting, threatening the Claimants with eviction or in any way interfering with, terrorising or harassing the Claimants and their servants and/or agents and/or invitees in or about the premises described herein.

[22] In that regard, the sole issue before the Court is whether the Court should grant the interim injunction sought against the Defendant. The Court, in deciding this issue, ought to consider the following questions:

- (i) ***Is there a serious issue to be tried?***
- (ii) ***If so, would damages be an adequate remedy in the event the Claimants are successful?*** and
- (iii) ***Where does the greater risk of injustice lie?***

VI. Analysis

Is there a serious issue to be tried?

[23] Counsel for the Defendant, Mr. Warner, submitted that the Claimants do not have a good prospect of succeeding at trial since they have not produced any documentary evidence whatsoever, which is capable of supporting their assertion that they have occupied the disputed property for a period of eighteen years. Furthermore, the Claimants have not produced any testimony from other persons which is capable of supporting their assertion of occupation of the disputed property for eighteen years. Counsel submitted that the Claimants have put nothing of substance before the Court to establish lengthy and continuous occupation of the disputed property.

[24] Counsel for the Claimants, Mr. Kerr, on the other hand, submitted that the Court should consider the strength of the Claimants' case while having particular regard to the weakness of the Defendant's case at this stage. It was submitted that the prospect of success of the Claimants' case on the undisputed facts as suggested by the affidavit evidence before the Court is overwhelming. It was further submitted that on a provisional assessment of the strength of the affidavit evidence of the Defendant, it can easily be described as tenuous.

[25] In determining whether there is a serious issue to be tried, the Court should not undertake an investigation in the nature of a preliminary trial of the action. At this point, the Court cannot pronounce on the veracity of any of the evidence in either parties' affidavits. The Claimants' affidavit evidence must disclose that the Claimants have a real prospect of succeeding in their Claim for a permanent injunction at the trial.

[26] From the affidavit evidence, the sole issue in dispute is the ownership of and/or entitlement to the disputed property. On this application for interim relief, the Court is not tasked with ascertaining the parties' respective ownership and/or entitlement to the disputed property. The Court is only concerned as to whether there is a serious issue to be tried in the substantive action.

[27] In considering this issue, the issue of legal ownership arises since neither the Claimants nor the Defendant has legal title to the disputed property. However, where a party shows that he has a greater possessory title to the land than the person alleged to have interfered with this right to possession, he may recover possession of the land. This is because possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession: **JA Pye (Oxford) Ltd v Graham**⁴. Further, in **Bernadine Seebaran Guy v Selwyn Baptiste**⁵, Hamel Smith JA commented at paragraph 10 of his judgment:

“It follows that the person in possession can maintain an action against the trespasser to recover possession without having to prove ‘title’, whether the property is realty or personalty. Possession is the key to recovery in such circumstances.”

[28] Accordingly, neither the Claimants nor the Defendant need show legal title to the disputed property but rather must establish a better right to possession than the other. From the affidavit evidence, both the Claimants and the Defendant are seeking possession of the disputed property and have grounded their respective claims by way of adverse possession – having undisturbed, continuous and exclusive possession for a period of eighteen years over the disputed property.

[29] In order to succeed on their claim for adverse possession, the Claimants must establish that they had been in continuous and exclusive possession of the disputed property for at least 16 years from the date that the paper title owner’s right to bring an action for its recovery first arose. Such is the law as stipulated in **Section 3 of the Real Property Limitation Act, Chap 56:03**. Further, by virtue of **Section 22 of the Real Property Limitation Act, Chap 56:03**, the Claimants’ continuous possession of the disputed property must have been for at least 16 years prior to the commencement of these proceedings on 9 January 2021.

⁴ [2002]UKHL 30

⁵ Civ. Appeal No.12 of 2001

[30] It has been well settled that a claim for adverse possession must comprise two essential elements: (i) *a sufficient degree of physical custody and control (factual possession)*; and (ii) *an intention to exercise such custody and control on one's own behalf and for one's own benefit (the intention to possess)*. This was expounded in **J.A. Pye (Oxford) Ltd v Graham**⁶. It is understood that the paper title owner is deemed to be in possession of the lands vested in him and thus, the Claimants must show that they dispossessed him and were in exclusive possession of the disputed property for the 16-year period.

[31] It is the First Claimant's case that he began to plant and cultivate the disputed property in March 2002. Therefore, the 16- year period in the case at bar would have to be counted from when the First Claimant first began to occupy the disputed property, which is, 2002. Accordingly, the Claimants would have to satisfy the Court that they not only had factual possession of the disputed property for the period of at least 16 years but that they also had the requisite intention to possess same to the exclusion of others including the paper title owner throughout that period.

[32] However, the Court is of the view that from the evidence thus far adduced, the Claimants face considerable challenges in making good their claim. The Claimants have not adduced any evidence of any acts of factual possession over the disputed property during the 16-year period, 2002 to 2018. The First Claimant sought to set out some acts of factual possession but only for the year 2020. The Court is of the opinion that the quality of the First Claimant's evidence is not strong to demonstrate that the Claimants had and/or exercised a sufficient degree of physical custody and control over the disputed property for a continuous period of 16 years. The evidence put before the Court on the Application for interim relief lacks the particulars necessary to prove a claim for adverse possession. On the other hand, the Defendant's evidence before the Court sets out the history of occupation and/or possession over the disputed property from at least 1978 to present.

[33] At this stage, the Court is of the opinion that it is not likely that if the necessary evidence in support of the Claimants' pleaded case is led at trial, the Claimants can

⁶ [2003] 1 AC 419

establish their rights to the relief sought at trial. In the above regard, the Court concludes that there is no serious issue to be tried in the substantive action since the Claimants have failed to provide at this stage of the proceedings satisfactory evidence to support a likelihood of success on their Claim. In examining the strength of the parties' evidence, the Court is of the view that the Claimants' Claim for possession of the disputed property is relatively weak when compared to the Defendant's position. The Defendant is likely to have a stronger case at trial and have a reasonable prospect of success.

Are damages an adequate remedy?

[34] Mr. Warner submitted that damages would be an adequate remedy for the Claimants in the event they are successful at trial. It was submitted that if the Claimants are successful at trial, they can be adequately compensated by an award of damages which represents the monthly rental value of the disputed property for the entire period that they have been out of occupation.

[35] Counsel further submitted that in determining whether injunctive relief should be granted, the Court would usually consider whether the Defendant can be adequately compensated under the Claimants' undertaking as to damages for any losses, which the Defendant may sustain as a result of the wrongful grant of the injunction. Mr. Warner, however, contended that the Claimants have not given an undertaking in damages. Furthermore, they have not disclosed their financial position or their ability to satisfy an award of damages against them.

[36] Mr. Kerr submitted that damages would not be an adequate remedy for the Claimants in the circumstances. This was the extent of his submissions on this issue. Furthermore, the Claimants did not give an undertaking in damages either in their application, affidavit in support or their submissions for the loss that the Defendant is likely to suffer if the application was wrongly granted.

[37] The Claimants claim to be in undisturbed possession of the disputed property since 2002 up until the present time. In the Claimants' Fixed Date Claim, they claimed trespass and possession of certain piece or parcel of land situate at Light Pole No. 22, Kardale Drive via Belmont Valley Road, Belmont, comprising eight thousand square

feet more or less and bounded on the North by a ravine thirty feet wide, on the South by lands of C. Waterman and on the East partly by lands of Avil and Gortude Christmas and lands of Dr. Singh in the Ward of St. Ann's in the island of Trinidad.

[38] **Halsbury's Laws of England, Fifth Edition (2015), Volume 97 at para 591** states:

"In a claim of trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use."

[39] Consequently, it appears that an alternative remedy of damages would be sufficient to compensate the Claimants. In that regard, at trial, when the matter is resolved, should the Claimants be successful, damages would be an adequate remedy. The measure of damages likely to be awarded for trespass to land is either the diminution in value to the Claimant or the cost of reasonable reinstatement. In this regard, the Court is of the opinion that damages would be an adequate form of compensation should the Court not grant the injunction. However, there is no general rule that if damages are an adequate remedy, an injunction should not be granted.

Where does the greater risk of injustice lie?

[40] The Court must also take into account the purpose of the interim relief sought and as Lord Diplock stated at page 406 in **American Cyanamid** (*supra*):

"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."

[41] Mr. Warner submitted that the balance of justice militates against the grant of the requested interim injunction. More specifically, there is little prejudice, if any, which will be suffered by the Claimants if the requested injunctions are not granted. Mr. Warner submitted that there is no right of access issue raised in the Application; the Claimants have unfettered access to their home and therefore, the Defendant's continued maintenance and occupation of the disputed property is not prejudicial. Furthermore, the Defendant does not intend to erect any permanent structure on the disputed property or do anything more than maintain the same until the determination of the instant proceedings. In fact, **the Defendant is willing to provide an undertaking to this effect.**

[42] Counsel contended that the Court's refusal to grant the requested injunction will not result in any permanent or material change to the nature of the disputed property. Additionally, the Claimants have not stated any intentions of developing the disputed property, therefore, the Claimants will not suffer any real prejudice if the Defendant continues to maintain that small portion of the disputed property during the course of the instant proceedings. Mr. Warner submitted that having regard to the above, the balance of justice favours the refusal of the injunction.

[43] Mr. Kerr, on the other hand, went no further than to only submit on the law to be considered under this issue which the Court has already cited above. Mr. Kerr did not state whether the greater risk of injustice lies with granting or refusing the injunction.

[44] Nevertheless, the Court is of the opinion that if the injunction is not granted, the Claimants are not likely to suffer any damage and loss since the Defendant indicated that she is willing to give an undertaking not to erect any permanent structure on the disputed property or do anything more than maintain the disputed property until the determination of the instant proceedings. This undertaking by the Defendant, is a legally binding promise and therefore, erodes the need for any injunction against the Defendant. The Defendant is willing to preserve the status quo of the disputed

property until the final determination of the matter. The Court is of the view that this is sufficient in the court of law.

[45] On the other hand, by granting the injunction, it still preserves the status quo of the disputed property until the final determination of the matter. However, if the Claimants are unsuccessful at trial, there is no evidence before the Court that the Claimants can satisfy an award of damages and bearing in mind that the Claimants have not given any undertaking in damages.

[46] Overall, on the evidence presented thus far, the Court is not satisfied that the matters raised in the Claimants' claim and application have a likelihood of success. Consequently, it would not be just or convenient to grant the interim reliefs sought against the Defendant, and more particularly so since she has given an undertaking to the Court through her counsel to preserve the status quo of the disputed property until determination of the issues at trial. Accordingly, I have formed the view that the greater risk of injustice lies with the Defendant if the injunction is granted than with the Claimants if it is not granted.

V. Disposition

[47] Having considered the Claimants' Application filed on 11 January 2021, the attendant affidavit in support and the Defendant's affidavit in response and the parties' submissions, the Order of the Court is as follows:

ORDER

- 1. The Claimants' Notice of Application for interim injunctive relief filed on 11 January 2021 be and is hereby dismissed.**
- 2. The entitlement and quantification of costs attendant on the Application for injunctive relief are hereby reserved until the determination of the trial.**

DEFENDANT'S UNDERTAKING

This Court records the Defendant's undertaking given through her counsel, Mr Russel Warner, to preserve the status quo of the disputed property pending the determination of the trial of all issues in these proceedings.

Robin N. Mohammed
Judge