

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-03671

BETWEEN

ALLISON JOHN-DE COTEAU

Claimant

AND

LOUISE MAYNARD-PAUL

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Ms Samantha Lawson for the claimant

Mr. Felix Celestine for the defendant

REASONS FOR DECISION

1. The claimant filed an application for injunctions on September 10th 2012. She claims that she was evicted from premises at LP 59 Isaac Place Blue Basin Diego Martin, and discovered this on her return from Tobago on August 17th 2012. She claims that she lived at those premises and had her belongings there.

2. Her claim for substantive relief in her claim form includes:-

- a. a declaration that she is entitled to possession of the said chattel house and property (statutory right to a statutory tenancy under and by virtue of the State Lands (Registration (sic) of Tenure) Act No 25 of 1998, at Diego Martin,
- b. a declaration that the defendant has committed an act of trespass against her interest in purportedly taking possession from the (sic) the said chattel house and property, and
- c. injunctions to restrain the defendant from obstructing the claimant's reentry to the said premises, and ordering replacement of furniture and household effects allegedly removed.

The application for injunctive relief was dismissed in the following circumstances.

THE FIRST ACTION

3. The claimant had filed action in 2007, (the first action). In that action the relief that she claimed included "a declaration that she was the rightful owner of the said chattel house and premises". These are the same premises which are the subject of the instant action. That matter proceeded to trial before this court. Her claim against the then defendants was based on an alleged sale to her of the premises for \$65,000.00, for which a receipt was given, allegedly signed by Nathaniel Maynard.

4. Nathaniel Maynard was the original owner of the premises. He has been missing for several years. The claimant claimed to have purchased the premises from him, though she testified in the first action that she paid no actual money.

5. In any event her claim to have done so was not accepted on the basis of the evidence at trial. Her claim was dismissed as she failed to establish that she had in fact entered into any agreement for sale with Nathaniel Maynard – the owner of the premises, (who had disappeared), and, (according to the agreed report of a handwriting expert), the signature on the alleged receipt for payment was probably not that of Nathaniel Maynard.

THE INSTANT ACTION

6. In the instant action she claimed to be entitled to reside in the premises under a Certificate of Comfort dated March 13th, 2002. That certificate would have existed at the time of

the first proceedings and could have been produced, and its relevance determined, in those proceedings. In any event that Certificate of Comfort, on its face, merely protects against ejectment by the State unless an alternative site is provided. While it may create an obligation on the part of the State not to dispossess the claimant, it does not purport to create rights in the claimant against any party other than the State.

7. The claimant seeks by injunction, to be restored to possession. She states her address, on oath, to be Windward Road, Goodwood Village in the Island of Tobago. She suggests that she remained in possession of the premises after the death of her mother. Thereafter Nathaniel Maynard sold the chattel house to her for \$65,000.00.

8. At paragraph 6 of her affidavit sworn on September 3rd 2012 she refers to that alleged sale of the premises to her by Nathaniel Maynard, for which he allegedly signed a receipt. This very receipt was rejected in the first action. It has ceased to be a triable issue, as this very issue has already been tried and determined by this court in previous proceedings.

9. On her own affidavit she was in possession on the basis of the alleged sale agreement. That basis which she asserted in the previous action was rejected. The claim to be entitled under a Certificate of Comfort applies only to the issuer of that certificate – the State. She has not therefore established a basis for any occupation. That is the status quo. She seeks to be restored into possession when:-

- a. she has not established a legal basis for being in occupation – (the Certificate of Comfort itself does not purport to be such a basis against a party other than the State), and
- b. the original basis that she put forward for being there- under a sale agreement - was rejected by this court at trial after full hearing.

10. Her status therefore was as a person who, as had already been determined, was not entitled to be in the premises on the basis that she had herself put before the court – that is under a purported sale agreement.

11. The effect of the injunction she seeks is to circumvent this court's earlier finding in 2010, contrary to the doctrine of res judicata.

12. It was found in 2010 that she is not entitled to possession. The court is being asked to exercise its discretion to **restore possession** in respect of a claimant who was found in 2010 to be not entitled to possession.

13. To seek to be put into possession in 2013, when it has been already been found in 2010 that she was not entitled to possession under the basis that she put forward as entitling her to possession, is inconsistent with the court's decision in 2010.

14. She is starting her claim in this action, not tabula rasa, but with the history of a finding by a court that her claim to be entitled to possession under a sale agreement evidenced by a receipt has been rejected.

15. While it was agreed that the issue of damages for trespass was an issue that would proceed to trial, in the circumstances of this case the court declined to exercise its discretion to grant the injunctive relief sought to restore, or place, the claimant into possession.

LAW

16. The law as established by the Court of Appeal in the cases of **Jetpak Services Ltd v BWIA International Airways Ltd (1998) 55 WIR 362** and **East Coast Drilling and Workover Services Ltd v Petroleum Co of Trinidad and Tobago Ltd (2000) 58 WIR 351** was applied. That law is succinctly encapsulated by the Honourable Archie J (as he then was) in the case of **Venture Production [Trinidad] Limited v Atlantic LNG Company of Trinidad and Tobago H.C.1947/2003**. It is referred to simply for economy of expression, though the principles applied were those in Jet Pak and East Coast.

He stated- (any emphasis added)

[17] *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 Ltd 91998) 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.***

[18] *The new approach required 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?***

[19] *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.***²

WHETHER THERE IS A SERIOUS ISSUE TO BE TRIED

17. The Claimant had to establish a prima facie right to possession of the premises sufficient to justify this court's intervention to protect and restore any such possession. She failed to do so in 2010, in CV 2007- 02340 ("the 2007 action" or "the first action"). Despite the further production of a purported Certificate of Comfort, she has failed to do so in the instant action, and is bound by this court's findings in 2010, in the 2007 action, when the purported receipt and the alleged sale of the chattel house to her by Nathaniel Maynard, were rejected. Any claim to be entitled to possession based on a sale to her by Nathaniel Maynard ceased to be a triable issue, when that issue was tried and determined in the first action in 2010.

WHERE DOES THE BALANCE OF JUSTICE LIE?

18. In the decision of the Court of Appeal in **Jetpak Services Limited v B.W.I.A 55 W.I.R 362**, the Honourable de la Bastide C J, stated at page 370:

...the question (was) whether the risk of injustice would be greater if he granted the injunction or if he refused it.

19. There is a greater risk of injustice in effectively reversing and ignoring this court's earlier decision, and putting the claimant into possession of the very same property for which she had failed in the first (2007) action to establish a right to possession.

STRENGTH OF THE CASE

20. According to **Jetpak** this is a material consideration. As the Honourable de la Bastide C.J said in that case at page 369:

"... it is pellucidly clear that it is necessary to make some assessment of the appellant's chances of succeeding at the trial."

21. As Lord Denning MR said in **Fellowes & Son v. Fisher CA [1976] QB 122 at 128**:
*"That sentence points the way. These individual cases are numerous and important. They are all cases where it is urgent and imperative to come to a decision. The affidavits may be conflicting. The questions of law may be difficult and call for detailed consideration. Nevertheless, the need for immediate decision is such that the court has to make an estimate of the relative strength of each party's case. If the plaintiff makes out a prima facie case, the court may grant an injunction. **If it is a weak case, or is met by a strong defence, the court may refuse an injunction. Sometimes it means that the court virtually decides the case at that stage.** At other times it gives the parties such good guidance that the case is settled. At any rate, in 99 cases out of 100, the matter goes no further."*

22. In this matter, the inherent weakness of the Claimant's case, relying as it does upon a claim and entitlement to possession by the claimant on a basis that was previously rejected, and which is therefore the subject of res judicata, weighs against the grant of the exceptional remedy of an injunction restoring possession to the claimant.

THE STATUS QUO

23. In **Blue Waters Products Ltd v. The Co-Operative Citrus Growers Association of Trinidad and Tobago Ltd, CV2008-02663**, Mr. Justice Stollmeyer, stated that one of the principles underlying the grant of interim relief, is to preserve the status quo where that is possible and appropriate; that in deciding whether to refuse or grant the injunction a Court has to assess and compare not only the quantum of the risk of injustice, but also the extent of that risk, and come to a determination of whether the greater injustice will be caused to the Defendant by granting the injunction, or to the Claimant by refusing to grant it.

24. The status quo is that the claimant has failed to establish that she was entitled to possession, as she had earlier claimed, under a sale agreement, for which a receipt was allegedly given by N. Maynard, and upon which she relied.

25. She now seeks to rely on a Certificate of Comfort from the State, which does not, however, alter the rights of third parties, and which cannot displace any such rights if they exist.

26. The State is not the party that she alleges has dispossessed her. The purported Certificate of Comfort therefore takes her claim to possession no further.

27. A trial date can be granted within six (6) months. In the interim the claimant's case is no further advanced than in 2010, when it was expressly determined, on her own case, that she was not entitled to possession. Maintenance of that status quo does not therefore require that she be restored to possession.

THE QUANTUM OF THE RISK INVOLVED IN GRANTING OR REFUSING THE INJUNCTION

The severity of the consequences that will flow from following either course

28. Restoring the claimant to possession has not been justified. The injunction sought is not for the purpose of preventing the eviction of the claimant, but rather for the purpose of restoring her to a possession that she had failed to justify in earlier proceedings. Her claim in the 2007 action failed to establish the right to, and the basis of, the possession that she claimed. She is

entitled to have the issue of damages if any, proceed to trial. Any further impact to the claimant, who is out of possession, would involve the sourcing of alternative accommodation, and replacement of any items alleged to have been missing. These residual risks can be mitigated by an early trial.

29. The risk of granting the injunctions sought is that the claimant, in effect, would have been granted possession of the subject property, despite a finding in earlier proceedings that she was not entitled to possession.

30. The balance of justice/convenience does not lie with restoring the claimant to possession, unless or until the claimant can establish the rights that she claims, as she has failed to establish on her earlier action determined in 2010, her claims to be entitled to possession, in relation to these very premises,

WERE DAMAGES OBTAINABLE AND IF SO, WOULD THEY CONSTITUTE AN ADEQUATE REMEDY FOR ONE SIDE OR THE OTHER?

31. The Honourable de la Bastide C J. in **Jetpak Services Limited v B.W.I.A 55 W.I.R 362**, preferred the way in which the issue was formulated by Sachs LJ in **Evans Marshall & Co Ltd v Bertola SA [1973] 1 WLR 349 at page 379**, when he suggested that:

“The standard question in relation to the grant of an injunction, “are damages an adequate remedy?” might perhaps in the light of the authorities of recent years, be rewritten: “Is it just in all the circumstances that a plaintiff should be confined to his remedy in damages?”

32. In the circumstances of this case, where the claimant has already, in previous proceedings failed to establish the basis of her claim to possession of the premises, there is no injustice in confining her to a remedy in damages. The sourcing of alternative accommodation, and replacement of any items alleged to have been missing, if proved at trial, can be the subject of quantification, and payment of damages. Any further remedy restoring her to possession ignores the finding of this court after a full trial in 2010, and is not justifiable in the circumstances.

CONCLUSION

33. The evidence of the claimant herself did not approach the required threshold to justify protecting any rights that she may have in law. She did not establish any sufficiently substantial basis for the exercise of this court's discretion to grant the injunctions sought, beyond that put forward, and rejected, in the first 2007 action. In the circumstances her application for injunctive relief was dismissed.

Dated this 27th day of May 2013

Peter A. Rajkumar
Judge