REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2017-04085**

BETWEEN

REIA RAMDEEN-MANGAL
KENNETH RAMDEEN

Claimants

AND

SABITA JAGDEO
ROGER TRABOULAY

Defendants

BEFORE THE HONOURABLE MR. JUSTICE K. RAMCHARAN

Appearances:

For the Claimants: Mr. Vasheist Maharaj *instructed by* Ms. Lizanna Hosein

For the Defendants: Mr. St. Clair O'Neal *instructed by* Ms. Akilah Paul

REASONS FOR DECISION

1. This is an application to continue an injunction granted by the court on the 13th November 2017 whereby the Defendants were restrained from preventing the claimants from entering the subject parcel of land and/or removing the claimants from the subject parcel of land. There is also before the court an application for

the discharge of the said injunction on the basis of a lack of jurisdiction and/or material non-disclosure by the Claimants in their application for the injunction.

Facts

2. The Claimants contend that they and/or their predecessors in title have been in possession of two parcels of land, of which the disputed parcel forms part since on or around 1991. With respect to the first, it is alleged that the Second Claimant became the tenant of a chattel house belonging to one Latter Ramnarine in January 1991, who then sold the chattel house to the Second Claimant in March of 1991. With respect to the second parcel of land, the Claimants contend that from 1991 it was occupied by one Ramkaran Jagdeo, who transferred his interest to one Kamla Jagdeo, who transferred her interest to the Second Claimant.

3. The Claimants contend that the First Claimant has been operating a business on the second parcel of land since 2008.

4. By Deed of Lease dated the 6th November 2013 and made between the Housing Development Corporation and the First Defendant and registered as DE20140011307217001, the First Defendant became the owner of a leasehold interest in a parcel of land described in the said Deed as lot No. 337. It is not in dispute between the parties that this parcel of land forms part of the parcel of land

which the Claimants are claiming. From the evidence before the court, though not expressly stated, it appears that the actions about which the Claimants complain relate to actions on the parcel of land which is described in the said Deed.

5. On the 1st February 2014, the First Defendant entered onto the land upon which the First Claimant was operating her business and demolished several buildings which the first Claimant was utilising for her business. As a result of this, the Claimants commenced an action against the First Defendant, the bailiff used to conduct the ejectment, and subsequent to this, the Housing Development Corporation. An application was made for an injunction, and on the 21st May 2014 a consent order was entered into by the Claimants and the First Defendant to allow the Claimant to enter the disputed parcel of land, construct a tent and resume her business.

6. The first claim was heard before Rampersad, J who delivered judgement on the 1st February 2017. The judge rejected the Claimants' claim, holding that the Claimants had failed to establish that they or their predecessors in title had been in possession of the disputed parcels of land for more than the 30 years required to succeed in a claim of adverse possession against the state. He therefore concluded that the HDC had the authority to grant the Deed to the First Defendant. The injunction therefore was discharged.

7. The learned trial judge recognised that the Claimants did have the benefit of a Certificate of Comfort with respect to part of the parcel of land being claimed, but it does not appear from the evidence that the First Defendant's actions in this action relate to that portion of land.

8. The learned trial judge also held that the actions of the First and Second Defendant in engaging in "self-help" to eject the Claimants was unlawful and awarded the Claimants damages in the sum of $25,000.00.

9. The Claimants filed an appeal of the judge's decision on the 2nd day of February 2017, but did not make an application for a stay of execution, nor did they apply for a further injunction pending appeal.

10. On various dates between the 3rd and 7th November 2017, the Second Defendant, on the instructions of the First Defendant entered the disputed parcel of land and demolished the tents erected by the First Claimant pursuant to the terms of the injunction, and started constructing a dividing wall. During one of the visits by the Second Defendant, the Second Claimant signed a document indicating that they would remove the remaining pipes and water lines. No application for a writ of possession was made by the First Defendant in the first action.

Jurisdiction

11. Relying on the Court of Appeal decision in ***McKnight v McKnight***[1], the First Defendant alleged that since the first action has been appealed, this Court has no jurisdiction to determine this matter. It is to be noted however, that the actions complained of by the Claimant are in relation to the actions of the Defendants subsequent to the decision of the learned trial judge. It therefore could not be the subject of an appeal. It is a fresh action. Therefore, this court does have jurisdiction to entertain the claim.

Material Non-disclosure

12. The First Defendant takes issue with the fact that the Claimants failed to disclose (a) the fact that the Claimants had appealed the decision of the learned trial judge in the first action, and (b) that the Second Claimant signed the document on the 4th November 2017.

13. The court does agree that these matters are issues of non-disclosure but does not hold the view that they rise to the level of material non-disclosure. While to complete the history of the first action, the fact of the appeal ought to have been

[1] 44 WIR 349

mentioned, I am not of the view that it would have impacted the consideration of whether the injunction ought to have been granted or not.

14. With respect to the document signed by the Second Claimant, it does not, in my view, amount to an admission that the Claimants have no interest in the land, and that in the circumstances of what was transpiring, it is not unusual that an occupier would sign such a document to stop a bailiff from taking action. In those circumstance, little if any weight would have been placed on the document had it been disclosed. In the circumstances, the application to discharge the injunction on the basis of non-disclosure fails.

Continuation of the Injunction

15. The principles for the grant or continuation of an injunction are well established and are outlined in the case of ***American Cyanimid Co. v Ethicon Ltd***[2]***, and Jetpak Services Ltd v BWIA International Airways Ltd***[3]**.** Those cases lay out a 2-staged test, firstly whether there is a serious issue to be tried[4], and secondly whether the risk of injustice would be greater if he granted the injunction or if he refused it.[5]

[2] [1975] 2 W.L.R. 316
[3] C.A. Civ 212 of 1997
[4] ***American Cyanamid*** at p. 497
[5] ***Jetpak*** at pp. 12 – 13

16. The main contention of the Claimants is that whilst the court in the first claim ruled that the Claimants had not established that they were in possession for 30 years to defeat the title of the State, there had been no pronouncement as to whether the Claimants had been in possession for the requisite period of 16 years to extinguish the interest of the First Defendant.

17. I am of the view that this in normal circumstances would have been a triable issue. The question that needs to be issued is at what point in time does time start to run against the First Defendant. In normal circumstances, if a paper title owner transfers to another after the 16 years has expired the transfer does not revive the title in favour of the transferee. However, what is the position where the transferor is the State against whom the limitation is 30 years, and the transfer is made where there is a person in possession for more than 16 years, but less than 30 years, does the transfer of the land after the 16 year period extinguish the transferee upon transfer? I have not seen any authority that deals specifically with this issue.

18. However, for 2 reasons which I shall amplify momentarily, I am of the view that there is no serious issue to be tried.

Issue Estoppel

19. From as early as 1843, the courts have held that a party is required to raise before a court all the relevant issues that it could. This was established in ***Henderson v***

Henderson[6] where the Court stated: **"…where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have from negligence, inadvertence, or even accident, omitted as part of their case"**[7]. To date, ***Henderson*** is considered to be the *locus classicus* with respect to issue estoppel.

20. In the first action, the Claimants were claiming that they were entitled to possession of the same disputed portion of land, it was the First Defendant's actions which was the catalyst for filing the claim, and not the grant of the lease from the HDC to the First Defendant. In those circumstances, it was surely incumbent on the Claimants in the original action to have raised the issue that even if it could not prove the 30 year possession to unseat the HDC's title, it could have defeated any title that the First Defendant obtained by the Deed. In the

[6] (1843) 3 Hare 100
[7] Ibid at 115

circumstances, the Claimants are now estopped from raising this issue in subsequent proceedings against the First Defendant.

21. The second reason why I have held that there is no serious issue to be tried is that a perusal of the Amended Statement of Claim filed in the first action and the Statement of Claim and affidavit in support of the injunction filed in the instant claim reveal that the Claimants will be relying on the same evidence in the 2 matters. In the first action, the learned trial judge soundly rejected the evidence presented on behalf of the Claimants[8]. In light of the fact that a civil court has ruled on the facts alleged by the Claimants, it would be entirely improper for this court to put itself in a position to revisit the evidence presented, and thereby find different facts. That would offend the principle of the finality of litigation. It is in effect a challenge to the learned trial judge's assessment of the fact which is the remit of the Court of Appeal. If it is that the Claimants are successful in overturning the learned trial judge's assessment of the evidence, then the issues which they seek to ventilate here can be ventilated there.

22. For completeness sake, it is to be noted that in my view, the issue of whether the Defendants could rightfully have dispossessed the Claimants from the subject parcel of land without a court order, or writ of possession is a serious issue to be

[8] Paragraphs 12 – 20 and 25 of the judgement dated 1st February 2017

tried, but of course, that remedy, without an accompanying claim for possession, only gives rise for a claim in damages and not the right to be put into possession, therefore, it would fail the second test in the ***American Cyanamid*** case of whether or not damages would be an adequate remedy.

23. In the circumstances, the application to continue the injunction must be dismissed and the injunction granted on the 13th day of November 2017 is hereby discharged.

Dated the 10th January 2018

Kevin Ramcharan
Judge