

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2018-04401**

SAVITRI DOONE

Claimant

AND

RAJENDRA DOONE

First Defendant

SUSAN HANNIF-ALI DOONE

Second Defendant

LAWRICK RAMSUNDAR

Interested Party

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 8 February, 2019.

Appearances:

Mr. Andre Rajhkumar instructed by Mr. Michael Matthews, Attorneys at Law for the Claimant.

Ms. Tara Bhairosingh instructed by Ms. Crystal Maria Rampersad, Attorneys at Law for the First and Second Defendants.

Mr. Chanka R.L. Persadsingh instructed by Mr. Johnathan A. Stevenson, Attorneys at Law for the Interested Party.

JUDGMENT

1. Family disputes make for very tragic human stories and difficult legal solutions. Mrs. Savitri Doone, the Claimant, says she was locked out of her home by her son, Rajendra and daughter in law, Susan. She was told that her home was sold by her daughter in law to a stranger. She received a pre-action letter from her son demanding that she leaves the property, that her home was no longer in the family. With only a few of her belongings she sought refuge at her sister's home and turned to this Court for help seeking interim injunctive relief to regain

possession of a property¹ she called her home for forty five (45) years.

2. The Doone family has changed over the years and is now mired in this controversy. Mrs. Doone lost her husband in 2008. Her son and daughter in law lived with her in the home periodically. Her son Vindra died in 2016. There are two other adult children living elsewhere, Chandra and Indira. Although Mrs. Doone did convey her home to Susan in 2001, she contends she never received any consideration as their oral arrangement was that the property would be re-conveyed to her after five (5) years. She had only agreed to convey the home to help out her son with some financial problems. Her son and his wife secured a mortgage to purchase the home from Mrs. Doone. Now in 2018 they have decided to liquidate the arrears through a sale to Mr. Lawrick Ramsundar and having sold the home migrated to the United States of America (USA). At seventy one (71) years, Mrs Doone is now alone and understandably anxious over the prospects of losing her home.
3. There is much at stake here for all the parties. Mrs. Doone faces the prospect of finding a new place to live (at her advanced age). Rajendra's and Susan's plans of using the purchase money in migrating have now been caught up in this litigation. Mr. Ramsundar has literally bought more than he bargained for. Emotions are undoubtedly high. However, what falls for determination at this stage is whether injunctive relief in the form sought by Mrs. Doone should be granted and continued until the trial of her claim.
4. While Susan held the legal title to the subject property, Mrs. Doone contends that it is held on trust for her pursuant to an oral agreement she made with Rajendra and Susan. The sale to the purchaser, Mr. Ramsundar, she alleges is subject to her equitable interest. Mr. Ramsundar² contends that he is a bona fide purchaser without notice and should be allowed to complete the sale by registering his deed of conveyance. The relative strengths of these contentions will be explored in a moment. However, recognising that the grant of an interlocutory injunction interferes with the freedom of action of another party, to justify such interference the Court must be satisfied that it is necessary to improve the chances of the

¹ LP 1452, Southern Main Road, Rousillac La Brea (the subject property)

² The Interested Party

Court being able to do justice to both parties after a determination of the competing claims at a trial. To this extent, “preserving the status quo” is an unhelpful concept when viewed through the perspective of these three parties.

5. Nothing can be frozen in time. While injunctions prevent a party from continuing a course of action, any restrictions on that party’s freedoms of action comes with its consequences. For some, it is more dire than others. The injunction being sought by Mrs. Doone puts Mr. Ramsundar’s sale on hold, he is unable to register his conveyance and she continues in occupation of the subject property until the trial. Refusing the interim remedy would mean Mr. Ramsundar regains possession of the property. Mrs. Doone must then, until the trial, look to her sister for refuge. The underpinning of the exercise of the Court’s equitable jurisdiction is balancing the relative risks of injustice to the affected parties. It is adopting a course which is likely to cause the least irremediable prejudice to one party or the other.
6. Mrs. Doone has appeared in Court wheel chair bound and has made her own passionate pleas on the Court. The Ramsundars have quietly and anxiously looked on at the proceedings. The attorneys for the parties have acted diligently in arming the Court with legal submissions for which I am grateful. Moreover, they participated in meaningful discussions for which they are to be commended. On 25th January 2019, I sent a pre-conference memorandum to the parties before the hearing on that day outlining certain short term and long term options for their consideration to assist in arriving at an amicable and humane solution for these parties. For the purpose of transparency, this pre-conference memorandum is appended to this judgment as “Appendix A”. In suitable cases I recommend such approaches by our Courts working with parties towards humane and multidimensional solutions thereby building consensus oriented results rather than dictating linear outcomes.
7. In this judgment, I explore briefly the factual context against which the question of injunctive relief arises, the applicable principles of **American Cyanamid Co. v Ethicon Ltd** [1975] A.C.396 as explained in **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** [2009] 1 WLR 1405 and set out the considerations which have ultimately weighed more in favour of the Defendants and the Interested Party. For the reasons which I will set out, the injunction will be discharged with certain conditions imposed on the purchaser in his use and occupation of

the subject property until trial. Those conditions are explained further in this judgment and which in my view are necessary to preserve a state of affairs in which this Court would be able to do justice to all the parties after a determination of the merits of their respective cases at trial.

Brief facts

8. Mrs. Doone became the owner of the subject property upon the death of her husband, Harold Doone.³ She now suffers from diabetes and mobility issues and this situation has taken a toll on her. According to Mrs. Doone, around February-March 2001, Rajendra approached her to transfer the subject property into Susan's name so that he and Susan could obtain a mortgage loan from the Royal Merchant Bank and Finance Company Limited (RBTT) to purchase agricultural land in Moruga. After re-paying the mortgage within five (5) years they would re-convey the subject property back to Mrs. Doone.
9. Pursuant to this family arrangement, she conveyed the subject property to Susan on 24th May 2001⁴. She alleges that she did not receive any valuable consideration for the conveyance. While it is true that the Deed of Conveyance and a mortgage were executed by the parties, Rajendra and Susan contend that it was pursuant to Mrs. Doone's request so as to stave off her own creditors who would have forced her to sell her home to repay her gambling debts. The purchase price of the subject property was \$110,000.00. They contend that the deposit monies were paid in cash to Mrs. Doone upon execution of the agreement for sale. His wife borrowed the sum of \$99,000.00 from Royal Merchant Bank and Finance Company Limited under the agreement that the mortgage would be repaid within fifteen (15) years.
10. Mrs. Doone was presented a cheque of \$99,000.00. She executed a Deed of Conveyance. The mortgage was transferred to Scotia Bank Limited by Deed of Transfer of Mortgage Deed⁵ wherein Rajendra became co-borrower with Susan. While Mrs. Doone acknowledges that her signature appears on the cheque as having received same, she contends she has no knowledge that she did encash the cheque. She contends that she simply signed the

³ Deed Nos. 5762 of 1964 and 8149 of 1967

⁴ Deed of Conveyance No. DE 200101179354D000

⁵ No. DE 201001946841D001

documents at the attorney's office pursuant to her alleged family arrangement.

11. Mrs. Doone continued to occupy the subject property. The parties are in dispute as to who paid utilities, rates and other household expenses. While Mrs. Doone claimed to have paid for renovation works on the subject property, Rajendra points out that it was his money which supported his mother and which she may have used to do minor repairs. They have not conveyed the subject property back to Mrs. Doone pursuant to any alleged family arrangement. Instead, Mrs. Doone was informed by Rajendra that the subject property was already sold.
12. Pre-action protocol letters were exchanged between the parties. On 4th September 2018, Rajendra changed the locks on the house on the subject property. Mrs. Doone complained she was deprived access to the house. Rajendra contends that Mrs. Doone was always aware of the sale. In any event, Mrs Doone left to live at her sister's home at Grants Road, Rousillac. However, that house is currently filled to capacity with six persons living there and Mrs. Doone is fearful that she may not be allowed to remain at her sister's home for much longer.
13. Prior to the grant of the injunction she was unable to retrieve her personal items such as her clothing and bedding.
14. Mr. Ramsundar is the innocent third party to this family dispute. To date he has not been able to obtain possession of the subject property. Mr. Ramsundar purchased the subject property for his son, Shane, who is a self-employed truck driver and who rents a property at Samaan Avenue, Grover Park, Dow Village. Mr. Ramsundar sometimes pays Shane's rent because he does earn a steady income.
15. He contends that he verified with Rajendra that Susan had purchased the subject property from Mrs. Doone. He also enquired about Mrs. Doone and was informed by Rajendra that she was not residing at the subject property again. He conducted the relevant title searches and standard enquiries expected of a purchaser. He would not have purchased the subject property if he knew there were conflicts between Mrs. Doone and the Defendants.
16. These are in brief all the rivalling contentions against which the Court must, without conducting a mini trial or determining the merits of these claims, preserve a state of affairs

in order to ultimately do justice to the parties at the trial. However, this picture was not the picture presented to the Court at the ex parte hearing when the Court reluctantly granted interim relief. Before examining the applicable principles on this application, I wish to underscore a very important aspect of procedure for injunctive relief.

Ex Parte applications are exceptional

17. Unless there is some urgency which makes it literally impractical to give notice of an application for an interim injunction, or to do so will defeat the purpose of the injunction, our Courts should generally insist on inter partes rather than ex parte applications. In this case, the application for interim relief came on for hearing ex parte and I gave instructions that the application be served before it was heard. In some cases it would be open to a Court in such a case not to entertain the ex parte application at all and dismiss it.

18. In this regard Lord Hoffman's advice in **Olint** is extremely important:

“**13** First, there appears to have been no reason why the application for an injunction should have been made ex parte, or at any rate, without some notice to the bank. Although the matter is in the end one for the discretion of the judge, audi alterem partem is a salutary and important principle. Their Lordships therefore consider that a judge should not entertain an application of which no notice has been given unless *either* giving notice would enable the defendant to take steps to defeat the purpose of the injunction (as in the case of a *Mareva* or *Anton Piller* order) *or* there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act. These two alternative conditions are reflected in rule 17.4(4) of the Supreme Court of Jamaica Civil Procedure Rules 2002. Their Lordships would expect cases in the latter category to be rare, because even in cases in which there was no time to give the period of notice required by the rules, there will usually be no reason why the applicant should not have given shorter notice or even made a telephone call. Any notice is better than none.”⁶

⁶ **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** [2009] 1 WLR 1405 paragraph 13

19. Notice of an application for an interim injunction must be given as a matter of elementary justice and exceptional circumstances are required to warrant an ex parte application. See **Moat Housing Group South Ltd v Harris** [2005] 3 WLR 691 and paragraph 2.30 of **Injunctions and Specific Performance** Robert J. Sharpe Looseleaf Edition. I wish also to advance an approach of Wilson J in **Gulf Islands Navigation Ltd. v. Seafarers International Union of North America (Canadian District) et al.**, 18 D.L.R. (2d) 216 (1959) where the first question that ought to be asked on an ex parte application is “why did you not give notice?” If the answer elicited does not reveal any urgency, the application must be refused. Indeed, in some cases, if it is later revealed that the requisite urgency was lacking, the party applying for the ex parte injunction can be penalised in costs, even on an indemnity basis. See **Injunctions and Specific Performance** Robert J. Sharpe Looseleaf Edition paragraph 2:30.
20. Some notice must always be given of an application for an injunction, save for the exceptions mention above for several reasons. First, it is consistent with the ethos of the Civil Proceedings Rules (CPR)⁷ of conducting proceedings with an “all cards on the table” approach and not trial by ambush. Indeed, ex parte injunctions can frequently be used to gain tactical advantages over another party, with the Court unwittingly being used to extort concessions from another party. Second, it is consistent with the philosophy of our pre-action protocols which underscores not only proper notification of claims but open exchange of information. In this case with such detailed exchange of pre-action correspondence, the question arises that after the Defendant’s last detailed response of 22nd October 2018, why was there no notice given to the Defendants before filing an ex parte application in November 2018? Some notice should have been given of the need to seek injunctive relief and of the application itself. Third and importantly, Rule 17.3 of the CPR requires a party that applied for interim relief without notice to state the reason why notice was not given. Apart from the two exceptions pointed out, the applicant must make out a good case for not providing notice. No reason has been advanced by Mrs. Doone at all for failing to give notice. I endorse entirely Lord Hoffman’s warning that “If the rule is not generally enforced, plaintiffs will be

⁷ The Civil Proceeding Rules 1998 (as amended) (CPR)

encouraged to make a tactical use of the legal process which should not be allowed.”⁸ Finally, in making these “tactical ploys” of ex parte applications the reality in some cases is that the urgency is created by the applicant’s own actions. It is only urgent because she wants immediate relief but the circumstances of the case did not warrant an urgent application.

21. In this case, I hesitatingly granted a limited form of relief on 28th November 2018⁹ and on hearing the parties at the interim stage obtained consent for a further order for Mrs. Doone’s

⁸ **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** [2009] 1 WLR 1405 paragraph 15

⁹ Court’s order dated 28th November 2018 which states:

“IT IS HEREBY ORDERED that:

1. The Respondents/Defendants are restrained from selling, assigning or otherwise dealing with and/or disposing of any interest in the lands situated at LP 1452, Southern Main Road, Rousillac, La Brea, being All and Singular that certain piece or parcel of land situate in the Ward of La Brea in the island of Trinidad comprising SEVEN THOUSAND TWO HUNDRED SUPERFICIAL FEET more or less (being portion of a larger parcel of land comprising 3 acres and 32 perches) and bounded on the North-East and North-West by other portion of the said lands of Ramdat Maharaj on the South East by lands of Gopie Gayah and on the South-West by the Southern Main Road 40 links wide and which said piece or parcel of land is delineated and shown coloured pink on the plan annexed and marked “A” to Deed No. 1967081490BFD001 and which said piece of land is now better described in Deed No. DE200101179354D000, together with the building thereon (hereinafter referred to as “**the subject lands**”), whether by themselves, their servants and/or agents.
2. The Respondents/Defendants are restrained, whether by themselves, their servants and/or agents from doing any act or thing so as to interfere, remove, dispose of any of the Claimant’s belongings and/or chattels in the subject premises or deny or otherwise interfere with the Applicant’s her right of ingress and egress over the subject lands or any part thereof until the 7th December 2018 or until further order.
3. That the Respondents/Defendants are to file and serve their affidavit in opposition to the Applicant’s/Claimant’s Affidavit in support of the Application without Notice on or before Tuesday the 4th December 2018.
4. That the further hearing of the Claimant’s Application without Notice is adjourned to the 7th December 2018 at 9:15am in courtroom SF04 at the Supreme Court, San Fernando.”

See also Court’s order dated 7th November 2018 varying the order of 28th November 2018:

“IT IS HEREBY ORDERED that:

1. Pursuant to Part 19.2 (3) of the Civil Proceedings Rules 1998 (as amended) Mr. Lorick Ramsundar is hereby joined as an interested party to the application filed on 26th November 2018;
2. The Court’s order dated 28th November 2018 is varied by consent to permit the Claimant to re-enter and remain in occupation of the subject premises until the next date of hearing of this matter;
3. Parties are not to harass, molest or interfere with each other;
4. The Interested Party to deliver to the Claimant keys to the subject premises by 4:00pm today the 7th December 2018;
5. Defendant and Interested Party to file and serve their affidavits in response on or before 7th January 2019;
6. Application filed 26th November 2018 is adjourned to 18th January 2019 at 2:00pm in courtroom SF03 at the Supreme Court, San Fernando.”

occupation until the matter could be resolved or until I ruled formally on the application. As it turns out, had all the material been before this Court, the injunction in the form requested by Mrs. Doone would not have been granted in the first place.

The Court's Approach-The exercise of the discretion

22. Ultimately, the Court in exercising its equitable jurisdiction in granting an injunction of the kind sought in this case is concerned with two main matters: First, the maintenance of a position that will most enable justice to be done when its final order is made and; second, an interim regulation of the acts of the parties that is in other respects the most just and convenient in all the circumstances.¹⁰

23. It is trite law that the Court must at this stage exercise its discretion in a manner which will cause the least risk of irremediable prejudice and is guided by the fundamental question of determining where the balance of justice will lie in either granting or refusing an injunction. See **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** [2009] 1 WLR 1405 and **Jetpak Services Ltd v BWIA International Airways Ltd** (1998) 55 WIR 362. Recently **Aboud J (in Niquan Energy Trinidad Limited v World GTL Trinidad Limited and others CV2013-02699)** examined **Olint** in the context of **American Cyanamid Co. v Ethicon Ltd** [1975] A.C.396 and **Jetpack** and confirmed the approach to injunctions is now a holistic one rather than a “box ticking” exercise.

24. In **Olint** Lord Hoffman stated at paragraphs 17 and 18:

“**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**

¹⁰ See **The Principles of Equitable Remedies** by ICF Spry (6th edition)

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.”

25. In **Niquan Energy Trinidad Limited v World GTL Trinidad Limited and others** CV2013-02699, Aboud J considered the principles in **Jetpak** and **Olint** and observed at paragraph 81:

“81. In applying these principles, as I understand them, to the facts of this case I must first evaluate the relative strengths of each party’s cases as disclosed on the affidavits, paying particular regard to the evidence against which here is no credible dispute, and being cautious, where there is such dispute, to void a mini-trial on untested affidavit evidence. All the authorities agree that this first step is a threshold test and a “fail” here on the relative strengths of each party’s cases will certainly be fatal. The question to be asked is whether there is a serious issue to be tried. As Lord Hoffman said in **Olint**, echoing his earlier words in **Films Rover** that were approved by Chief Justice de La Bastide in **Jetpak** (page 370), the court must feel a “high degree of assurance” that the injunction sought at the interlocutory stage will be granted at the trial. I am also guided by the way Sir Robert Megarry V.C put it in **Mother Care Ltd v Robson Books Ltd** [1979] FSR 466:

“The prospects of the plaintiff’s success are to be investigated to a limited extent, but they are not to be weighed against his prospects of failure. All that has to be seen is whether the plaintiff has prospects of success which, in substance and reality, exist. Odds against success no longer defeat the plaintiff, unless they are

so long that the plaintiff can have no expectation of success, but only a hope. If his prospects of success are so small that they lack substance and reality, then the plaintiff fails, for he can point to no question to be tried which can be called 'serious' and no prospect of success which can be called real."

26. In the recent Court of Appeal decision in **Petroleum Company on Trinidad and Tobago v Oil Workers' Trade Union** Civil Appeal No. P320 of 2018 the Court had to determine whether the Industrial Court had the power to grant injunctive relief in respect of an Industrial Relations Offence. Archie J.A considered the principles in **Olint**, the purpose of an interlocutory injunction in preserving the status quo and the importance of the balancing exercise in determining whether the granting or withholding of an injunction is more likely to produce a just result.

27. The following general considerations culled from **Cyanamid** as explained in **Olint** and **Niquan** provide a useful guide to the Court in exercising its discretion in granting an interim injunction:

- a) The essential objective is to preserve the Court's freedom to do justice at the trial;
- b) Whether there is a serious issue to be tried is determined upon an evaluation of the relative strength of the parties case;
- c) The weaknesses of a party's case must be taken into account;
- d) The prejudice the claimant may suffer if no injunction is granted or the defendant may suffer if it is. A claimant can reduce the potential injustice to the defendant by drafting the terms of the injunction as narrowly as is consistent with preserving the claimant's interests, or by offering undertakings to provide extra safeguards for the defendants¹¹;
- e) The likelihood of such prejudice actually occurring;
- f) The extent to which a party may be compensated by an award of damages or enforcement of the undertakings in damages. Lord Diplock in **American Cyanamid Co.**

¹¹ See **Blackstone's Civil Practice 2018**

- v Ethicon Ltd** said the extent to which the disadvantages to each party would be incapable of being compensated in damages is always a significant factor in assessing where the balance of convenience lies. In **Dyrlund Smith AIS V Tuberville Smith Ltd** [1998] FSR 774 the apparent inability of the defendants to meet an award of damages was regarded as the decisive factor in favour of granting an interim injunction. However, there is no general rule that if damages are an adequate remedy an injunction will not be granted;
- g) The likelihood of whether a party is able to satisfy such an award. However the indigent ought not to be penalised where there are merits to their claim or in the balance it is just to grant interim relief.
 - h) In determining this question the Court should not confine itself to damages in the sense only of special damages, but should also consider damages to reputation and loss of goodwill. In fact, all damages, special and general, are on the table;
 - i) Where does the balance of convenience lie;
 - j) The likelihood that the injunction will turn out to have been wrongly granted or withheld (i.e. the Court's view of the relative strengths of the parties' cases). This last matter may be considered if the other matters are evenly balanced or where it is possible to form such a view on facts which are clear or not in dispute.¹²
 - k) Other special relevant factors recognising that human activity is to idiosyncratic and the range of disputes and complexity of them are too unpredictable to ignore special factors which will impact in weighing the relative justice in granting or refusing relief.
 - l) None of these factors are to be considered as isolated modules. The Court adopts "a wide angle lens" to answer the organic question "where does the balance of justice lie" or "what course seems likely to cause the least irremediable prejudice to one party or the other."

28. In this case, it is important to assess the relative strength of the issues raised by the parties,

¹² See **Blackstone's Civil Practice 2018**

the relative inconvenience that may be endured by the grant of refusal of the injunction, the question of damages and a holistic approach adopted in determining the relative risks of injunctive relief if the Defendants are further restrained from completing this sale.

29. In balancing the relative risks of injustice there is some synergy with the Court’s inherent jurisdiction to grant interim relief and the overriding objective of dealing with cases justly where the principles of equality, economy and proportionality are in play. In **The Caribbean Civil Court Practice 2011** the learned authors noted¹³:

“The grant of any injunction is in the discretion of the court, and the court has a wide discretion. The court must have regard to the overriding objective. The applicant should come to court with ‘clean hands’ and act promptly. There is no rule that interlocutory relief should not be granted so as to give the plaintiff everything which he might obtain at the trial...”

30. Goldrein in **Commercial Litigation: Pre-emptive Remedies**, also observed¹⁴:

“The grant of an interim injunction does not involve the exercise of any power conferred on it by the Civil Procedure Rules or the interpretation of any of its rules. It is accordingly arguable that the courts do not have to have regard to the overriding objective when considering whether to grant an interim injunction. However, it is likely that the courts will apply the overriding objective, in so far as its criteria are material, when considering whether to grant relief and if so the form in which the order should be drafted. In particular, it is likely that the courts will have regard to the requirement of proportionality and the need to ensure that the parties are placed on an equal footing.....

.....

Prior to the introduction of the CPR, the courts had already adopted the criterion of proportionality in determining whether and if so in what form to grant relief. Thus in *Lock International v Beswick*, Hoffman J. said:

¹³ **The Caribbean Civil Court Practice 2011** Note 14.4

¹⁴ **Commercial Litigation: Pre-emptive Remedies** by **Iain S. Goldrein Q.C.** paragraph A1-006 and A1-009

“...the court must employ a graduated response. To borrow a useful concept from the jurisprudence of the European Community, there must be proportionality between the perceived threat to the plaintiff’s rights and the remedy granted.....”

31. Ultimately, the guidelines of **American Cyanamid** are to be treated as a means to an end. Mapping a pathway to ultimately deal justly with the parties. Considering the relative strengths of their case; the balance of convenience; the adequacy of damages; the proportionality of the response required for the apprehended wrong are but a framework within which the Court must assess whether an injunction is warranted. These factors on their own may not have a precise meaning but rather take their shape and colour from the circumstances of each case. They are no means water tight compartments nor are they independent hurdles. As Aboud J observed “A wide angle view of a valley does not merge the river with the trees.”¹⁵ The ultimate focus is what equity demands of the particular situation. Additionally, the Court in family based disputes must also be sensitive to the human impact which the grant or refusal of relief may occasion.

A serious issue to be tried- The relative strength of each parties’ case

32. It is plain that there are issues which require further interrogation at a trial which are:

- a) Whether there was an oral agreement for the Defendants to re-convey the subject property to Mrs. Doone;
- b) Whether the sale of the subject property to Susan was a “family arrangement” and not a bona fide purchase by her of all of Mrs. Doone’s rights and interests in the subject property;
- c) Whether Mr. Lawrick Ramsundar is a bona fide purchaser without notice.

33. The difficulty, however, in this case is that from the evidence thus far adduced, it is Mrs Doone who faces more considerable challenges in making good her claims.

34. In **Thomas Theophilus Bleasdel v Aknath Singh** CV 2007-02389 Gobin J pointed out that in

¹⁵ **Niquan Energy Trinidad Limited v World GTL Trinidad Limited and others** CV2013-02699 paragraph 80

matters of alleged voluntary conveyances the Court must look behind recitals in a Deed to determine the true intentions of the parties. However, at this stage of the proceedings and from the evidence before the Court, Mrs. Doone encounters some serious challenges in succeeding in her claim for breach of trust. The Claimant relied on the Belizean authority of **Vivienne Thompson, Doreen Kobitz v Alfred George Mervyn Hulse** Action No. 14 of 1978 to demonstrate that the conveyance between Mrs. Doone and Susan was voluntary and therefore Susan held the subject property on trust for Mrs. Doone.

35. In **Vivienne**, the Plaintiffs conveyed their property to the Defendant purported in the sum of \$12,000.00. The Plaintiffs contended that notwithstanding this consideration, the conveyance was in fact voluntary to allow the Defendant to secure a loan to repair and improve the building on the said property. It was also the Plaintiff's contention that it was orally agreed prior to the transfer that the Defendant would hold the property in trust for the Plaintiffs and re-transfer same to the Plaintiffs once the loan was repaid. The Defendant denied that he held the property on trust for the Plaintiffs and contended that he was the beneficial owner of the property. Moe J delivered judgment for the Plaintiffs and observed that the evidence was "overwhelmingly in favour of the Plaintiffs". Before the Judge were a series of letters written by the Defendant himself, one of which he mentioned that the transfer of the property to him was a temporary measure against the payment of the debt by a third party.

36. As in **Vivienne**, Mrs. Doone must rebut the presumption that Susan holds the legal and beneficial interest in the property since the subject property was transferred to Susan by way of registered Deed of Conveyance. The quality of Mrs. Doone's evidence is not strong to demonstrate that the 2001 conveyance was not a bona fide transaction and that she did not receive any monies in consideration for the subject property. The Defendants have exhibited a cheque made out to Mrs. Doone issued from Messrs. Hobson's client account¹⁶ in reply to which Mrs. Doone has deposed¹⁷ that she has not deposited the said cheque. If she has not deposited the cheque, then the beneficiary of the cheque is not the Defendants but Messrs.

¹⁶ See exhibit "R.D.1" in the affidavit in reply of Rajendra Doone filed 16th January 2019

¹⁷ See paragraph 12 of the affidavit of Savitri Doone filed 23rd January 2019

Hobsons, Attorneys at Law.

37. Further and more importantly, there is a preponderance of evidence to demonstrate that the purchaser, Mr. Ramsundar, is a bona fide purchaser for value without notice of any prior or existing equitable claim or interest in the subject property. In **Kirk Ryan and others v Kerron Alexis** CV2014-04725 Madame Justice Donaldson-Honeywell, relying on **Snell's Equity, McGhee J. Q.C, 31st Edn, paras. 4-21 to 4-45**, set out three main requirements for a purchaser to be considered a bona fide purchaser for value without notice:

“Firstly, the purchaser must have gained the legal interest in the property. Secondly, the purchaser must have given value for the property. Thirdly, the purchaser must not have had notice of any equitable interest at the time when he or she gave consideration for the conveyance.”¹⁸

38. Mr. Ramsundar deposed that he visited the subject property and verified with Rajendra that Susan had purchased the subject property from Mrs. Doone. He was informed that Mrs. Doone was not living at the subject property. On 19th July 2018 the Agreement for Sale was made between him and Susan and he paid a deposit of \$100,000.00 to Susan on 18th July 2018. He was advised by his attorneys that Susan possessed good and marketable title except for the mortgage. He was also advised that by virtue of 2001 Deed of Conveyance, Mrs. Doone conveyed the subject property to Susan. By manager's cheque issued by him on 14th November 2018 in favour of Scotia Bank Trinidad and Tobago Limited, he satisfied the outstanding balance on the mortgage of the subject property and on the same day, the Deed of Conveyance with respect to the subject property was executed in his favour.

39. The evidence seems to portray Mr. Ramsundar as a bona fide purchaser; an innocent party caught the wrangling of a family dispute. His evidence suggests that he did the relevant searches to determine that Susan possessed good and marketable title for the subject property; he paid the purchase of the subject property and upon conveyance of same, gained the legal interest in the subject property. He was not aware of any equitable interest in the subject property at the time of the conveyance. If he was aware that Susan's mother in law

¹⁸ **Kirk Ryan and others v Kerron Alexis** CV2014-04725 paragraph 35

was living in the subject property, it would be difficult to say that such knowledge alone amount to notice of an equitable interest in the form asserted by Mrs. Doone.

Adequacy of damages to both parties

40. Ultimately, based on the relative strengths of the evidence thus far, the real remedy in these proceedings may lie in an award of damages. In **American Cyanamid Co v Ethicon Ltd** [1975] A.C. 396, it was observed that if damages would be an adequate remedy for the Claimant, then there is no need for injunctive relief because the Claimant could be adequately compensated if she is successful at the trial. In the alternative, if Defendant is successful at the trial, the Court must consider if the Defendant would be adequately compensated under the Claimant's undertaking as to damages for the loss the Defendant would have sustained on the restrictions of his freedom of action:

"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.....

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.”¹⁹

41. From the Claimant’s own evidence, she lacks the means to satisfy an undertaking in damages should the injunction be granted. However, disputes such as this should not be determined purely through the lens of commerce. There are genuine hardships and inconvenience which tips the scale in favour of refusing relief.

The balance of justice

42. In a family dispute such as this where an innocent third party has invested a considerable sum of money on premises he has been unable to occupy, where does the balance of justice lie?

43. In **Olint** Lord Hoffman observed at paragraph 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

¹⁹ **American Cyanamid Co v Ethicon Ltd** [1975] A.C. 396 at 406-408

action should not have been restrained, then an injunction should ordinarily be granted.”

44. The fact remains that Mrs. Doone has not been in continuous occupation of the subject property even after the parties agreed she could return to the subject property. In her affidavit in reply to Mr. Ramsundar²⁰ she admitted since the grant of the injunction, she would stay at the subject property almost every day or every other day. She is also afraid to be on the subject property at night and would only stay there at night when someone else can stay with her. Further, the accommodation provided for Mrs. Doone by her sister is consistent with the pattern of regular breaks of her occupation of the subject property.
45. Not discounting the fact that there is great value attached to the subject property, Mrs. Doone would call “home”, the Court is mindful of the practical difficulty of Mrs. Doone’s occupation of the subject property alone in light of her physical and medical condition. Also, there is no suggestion that any of her siblings are going to reside with her at the subject property.
46. Ultimately, in my assessment at this stage, the balance of justice does not lie in favour of the grant of the injunction which Mrs. Doone seeks.
47. The sale is already completed and the Defendants have already conveyed the subject property to Mr. Ramsundar. Mrs. Doone’s claim to an oral agreement will face serious difficulties in light of the cheque payment to her. Ultimately, this is a matter to be decided at trial. However, oral agreements are notoriously difficult to prove and she takes the risk of not being able to demonstrate the merits of her claim on a balance of probabilities.
48. She is unable to provide any meaningful undertaking in damages to the Defendants and the purchaser, Mr. Ramsundar, who would be made a Defendant in these proceedings, if the injunction is wrongly obtained. The subject property itself is deteriorating and in a state of disrepair where she admittedly is unable to conduct necessary works to preserve it.
49. She is already accommodated by her sister and demonstrates that she is not able to occupy the subject property on her own based on her own irregular occupation. It would indeed be

²⁰ Filed 23rd January 2019, paragraph 9

a mockery of an injunction granted in her favour if the subject property remains vacant while she takes up shelter elsewhere.

50. Alternatively, if she is ultimately right, she would have been inconvenienced by her occupation by her sister's home in contrast to the greater financial detriment encountered by Mr. Ramsundar.

51. Further, the grant of the injunction interferes with the rights of the interested party, Mr. Ramsundar. Courts of equity "will not ordinarily and without special necessity interfere by injunction, where the injunction will have the effect of very materially injuring the rights of third persons not before the court."²¹ Also, "regard must be had not only to the dry strict rights of the plaintiff and defendant, but also to the surrounding circumstances, to the rights or interests of other persons which may be more or less involved. So it is that where the plaintiff has prima facie a right to specific relief, the court will, in accordance with these principles, weigh the disadvantage or hardship that he would suffer if relief were refused against any hardship or disadvantage that might be caused to third parties or to the public generally if relief were granted, even though these latter considerations are only rarely found to be decisive."²²

52. I have also taken into account the moral value of the subject property Mrs. Doone calls her "home" and her invested emotions to preserve it. However, these considerations are also outweighed by the practical considerations of her mobility, the deteriorating state of the subject property and the purchaser's strong case for possession.

53. Finally, the Court can impose conditions on Mr. Ramsundar's occupation which will go further to preserve a state of affairs to do justice to the parties ultimately. To this extent, Mr. Ramsundar is to file and serve an account of the repairs and/or renovations to be conducted on the subject property. Mrs. Doone's shall remove her personal belongings from the subject property on or before July 2019 or further order and until such time her belongings are to be preserved and stored on the subject property by Mr. Ramsundar pending its removal. In my

²¹ **Equitable Remedies by Dr. I.C.F Spry Eight Edition** page 473.

²² **Equitable Remedies by Dr. I.C.F Spry Eight Edition** page 402-403

view, these conditions provide useful safeguard for Mrs. Doone until this matter is finally decided. Mrs. Doone, of course, will remain at her relative's home during the course of these proceedings.

Conclusion

54. Weighing the relative risks in granting or refusing relief, I have concluded for the reasons set out, that Mrs. Doone is not entitled to injunctive relief. Mrs. Doone shall give possession of the subject property to Mr. Ramsundar and she shall remove all her personal belongings from the subject property on or before July 2019 or further order and until such time her belongings are to be preserved and stored on the subject property by Mr. Ramsundar pending its removal. He is also to file and serve an account of the repairs and/or renovations to be conducted on the subject property.

55. The injunction granted by Order dated 28th November 2018 and varied by Order dated 7th December 2018 is hereby discharged. The Court will make the following further orders:

IT IS HEREBY ORDERED that:

1. The Order dated 28th November 2018 and varied by consent by Order dated 7th December 2018 granting injunctive relief to the Claimant is hereby discharged.
2. Pursuant Rules 19.2 (3) and 19.5(1) of the Civil Proceeding Rules 1998 as amended Mr. Lawrick Ramsundar is hereby added as a Third Defendant to the claim.
3. The Claimant to vacate and deliver up possession of the property situate at LP 1452, Southern Main Road, Rousillac, La Brea to the Third Defendant.
4. The Claimant shall remove her personal belongings from the subject property on or before 1st July 2019 or further order such belongings to be preserved and stored on the subject property by the Third Defendant pending its removal.
5. The Third Defendant shall file and serve an account of the repairs and/or renovations to

be conducted on the subject property.

IT IS FURTHER ORDERED THAT:

6. The Claimant shall file and serve her Amended Claim Form and Amended Statement of Case on or before 15th March 2019.
7. The Defendants shall file and serve their Defence on or before 15th April, 2019.
8. The first Case Management Conference will be held on 10th May 2019 at 10:00am in courtroom SF03 Supreme Court, San Fernando.

Vasheist Kokaram
Judge

APPENDIX A

JUDGE'S PRE-CONFERENCE MEMO TO THE PARTIES
SAVITRI DOONE V RAJENDRA DOONE, SUSAN HANIFF-ALI DOONE AND LAWRICK
RAMSUNDAR CV2018-04401

Mrs. Savitri Doone's application for an injunction comes on for hearing today at 2:00pm. Prior to this hearing I wish to share with the parties some preliminary considerations and suggestions on a path forward to either an amicable resolution of the claim or the more efficient conduct of these proceedings. Indeed such considerations are important to further the overriding objective and consistent with the principles of our pre-action protocols.

This claim was filed 26th November 2018 arising out of a sale of the subject premises in November 2018 by deed of conveyance from Susan to Mr. Ramsundar. To date the purchaser has not been able to obtain possession of the subject premises. Mrs. Doone, the previous owner of the subject property (by 1964/1967 Deeds) is claiming, among other things, that she is entitled to ownership of the property and is anxious of being displaced from her home. The main case presented by her is that Susan held the subject premises on trust for Mrs. Doone. A critical fact to support Mrs. Doone's case is that a conveyance of the subject property to Susan in 2001 was a voluntary one, "a family transaction", for which there was no consideration.

It is plain that there are several issues that deserve further interrogation. Some of the critical ones are (a) whether there was an oral agreement for the Defendants to re-convey the property to Mrs. Doone (b) whether the sale of the premises to the Second Defendant, the Claimant's daughter in law, Susan, was a "family arrangement" and not a bona fide purchase by her of all of Mrs. Doone's rights and interests in the subject premises (c) whether Mr. Lawrick Ramsundar is a bona fide purchaser without notice.

Each of these parties are understandably anxious about this case. It is for Mr. Ramsundar a home in which he has invested a considerable sum of money for a purpose which has not yet been realized. It is for Susan a recouping of her own investment in the subject property through her purchase from her mother in law. For Mrs. Doone there is the impending loss of the place she

has called home for over forty years. It is evident that Mr. Ramsundar's purchase has been innocently caught in a quagmire between family members.

At this stage, what falls for consideration is the application for an interim injunction. However, pleadings in this matter have not yet been closed. Although a trial in this matter (if the parties work hard enough) can be achieved in this law term, the parties must give serious consideration to the benefits of a mediated/negotiated settlement rather than await a litigated outcome. The time is ripe for parties to consider seriously both short term and long term solutions.

There are serious allegations made in this case by Mrs. Doone. The Court is extremely concerned about the manner of dealings between Mrs. Doone, her son and his wife. Equally, Mrs. Doone bears the burden of proving such an allegation. No party is guaranteed success on their respective positions adopted in this case. For Mrs. Doone, there are serious hurdles to overcome in the face of the documentary evidence. For the purchaser, Mr. Ramsundar, there are factual issues concerning Mrs. Doone's physical occupation to be unraveled. For the Defendants, the manner in which they have dealt with their mother would fall for extremely close scrutiny by the Court especially conscious to protect the vulnerable from any breach of trust.

The legal outcomes at a trial are uncertain for all and can equally be devastating. They include a finding that there is no oral agreement nor trust and so Mrs. Doone has lost her home or a finding that the conveyance to Susan was indeed "a family arrangement" and Mrs. Doone never relinquished her interest in the home or intended to do so in which case she is entitled to possession, the sale to Mr. Ramsundar being set aside. For the Defendants a negative finding that the sale to Susan was other than a bona fide purchaser would impact on their plans to utilize the proceeds in their re-location to the United States of America.

In moving forward it appears, on a preliminary review of the papers, that proving that Mrs. Doone did receive money for the conveyance to Susan is a helpful marker in unraveling the respective "truths". Although, a cheque in the name of Mrs. Doone at this stage is not on its own significant without a review of both parties bank accounts, Mrs. Doone accepting that she did receive the cheque but not the sum faces considerable evidential difficulties. Further at this stage I would

need to be convinced that the purchaser is not a bona fide purchaser without notice. That being said unraveling the contractual and equitable relationship between the main parties is critical.

I make these preliminary remarks to all parties before the hearing to ensure that their real focus at this stage is on the appropriate “holding position” to ensure that either all parties’ respective interests can be accommodated or the least damage incurred or better a global resolution if at all possible.

Fundamentally, it is trite law that the Court must at this stage exercise its discretion in a manner which will cause the least risk of irremediable prejudice and is guided by a fundamental question of determining where the balance of justice will lie in either granting or refusing an injunction. See **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** [2009] 1 WLR 1405, **Jetpak Services Ltd v BWIA International Airways Ltd** (1998) 55 WIR 362.

I have been advocating that our Courts must be mindful of adopting in appropriate cases a therapeutic approach to the application of the law. In the midst of this very difficult position for all parties I therefore offer for their consideration a number of options which can be canvassed by them and their attorneys in working out a suitable arrangement either for the short or long term. I trust that the parties will accept these as gratuitous, simple and practical solutions to assist them in negotiations and by no means are to be interpreted as a legal determination by me of this application nor worse of any prediction of my own decision after fuller consideration. The options as well are in no order of priority nor merit.

Short term/Interim options

(a) **Mr. Ramsundar in possession:**

(i) That Mrs. Doone remain at her relative’s home during the course of the proceedings and that while Mr. Ramsundar can have possession of the home, no work is to be carried out or executed by him until the determination of these proceedings.

(ii) That Mrs. Doone remain at her relatives home during the course of proceedings and that while Mr. Ramsundar can have possession of the home only such work

with the consent of Mrs. Doone is to be executed, such consent not to be unreasonably withheld.

(iii) That a full account of any work executed by Mr. Ramsundar on the said property is to be filed with this Court.

(b) Mrs. Doone in possession:

- (i) Mrs. Doone remains in possession and undertakes to pay the accruing rent of Mr. Ramsundar's son until the determination of the proceedings.
- (ii) The Defendants undertake to pay the accruing rent of Mr. Ramsundar's son to be recovered from Mrs. Doone in the event the Defendants are successful in this trial.
- (iii) Mrs. Doone to pay into Court the full sum paid by Mr. Ramsundar for the property, in default she is to vacate the home.
- (iv) In addition to all of the above her claim can be amended to recover such sums from the Defendants.

(c) Shared possession:

- (i) Mrs. Doone continues to reside in a portion of the premises with Mr. Ramsundar occupying the remainder until the determination of the proceedings.
- (ii) Mr. Ramsundar occupies the premises and undertakes to preserve Mrs. Doone's belonging for which he is unable to find alternative storage.

(d) No one in possession:

- (i) The property remains vacant until the determination of the proceedings.

Long term solutions

- (a) Assistance to Mrs. Doone to relocate to a new home.
- (b) Refund to Mr. Ramsundar the full purchase price and expenses and re-conveyance to the Claimant and Defendants.

- (c) Mrs. Doone to pay to Mr. Ramsundar the full sum paid for the property and the property re-conveyed to Mrs. Doone.
- (d) Payment to Mrs. Doone of a percentage of the purchase price by the Defendants.
- (e) Mr. Ramsundar elects to invest his money elsewhere. The Deed of Conveyance is set aside and Mr. Ramsundar recovers his investment in the subject property.
- (f) Quantifying any equity.

I am unaware at this stage of the family dynamic between the parties and attorneys should be sensitive to this. Of course, you may have already been thinking of your own options and I encourage you to share them with the other parties before our hearing.

With regard to the litigation, there have already emerged core agreed facts such as:

- a) Agreements for sale/conveyances and mortgages.
- b) The issuing of a cheque to Mrs. Doone.
- c) Mrs. Doone's occupation of the subject premises over different periods of time.
- d) Mrs. Doone's physical condition/medicals.

Main issues for determination can be agreed one of which is whether the parties entered into the "family agreement" as alleged. Mr. Ramsundar must be made a party whose interest is affected by the claim. Pleadings need to be filed by all Defendants including ancillary claims. Disclosure will be critical as will witness statements. Both parties must acknowledge, however, that determining at a trial whether "oral" agreements exist carries a fair degree of unpredictability. Hence my call for the parties to maturely reflect on viable and practical solutions to this dispute.

If this memo has given you some basis in which you think an All Parties Conference would be useful feel free to let me know.

Justice Vasheist Kokaram