

BARBADOS

[Unreported]

Suit No: CV 63 of 2008

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

BETWEEN

ADAM GUY BISHOP - PLAINTIFF

AND

HILARY GAYE KNIGHT - DEFENDANT

**Before The Honourable Madam Justice Maureen Crane-Scott, Q.C,
Judge of the High Court**

[In Chambers]

2010: February 18

2010: March 4

Mr. Amilcar Branche, attorney-at-law, for the Plaintiff

Mr. Gittens Clyde Turney, Q.C. for the Defendant/Administratrix

REASONS FOR DECISION

- [1] **Nature of the proceedings:** This is an application by Adam Guy Bishop (hereinafter “the Plaintiff”) for an interim injunction to restrain his sister, Hilary Gaye Knight (hereinafter referred to as “the Administratrix”) (in her capacity as the duly qualified personal representative of the estate of their mother, Lorna Collins Bishop, nēe Tippett, deceased) from selling, disposing, mortgaging or charging certain lands, the property of the said estate, situated at Greenwich Plantation, Greenwich, St. James and at Trents, St. James.
- [2] The application was commenced by Summons filed on September 17, 2009 and is supported by the Plaintiff’s affidavit also filed on the same day.
- [3] The application was resisted by the Administratrix, who on January 27, 2010 along with her sister, Charlotte Lisa Southgate, who also happens to be the Plaintiff’s sister, filed a joint affidavit opposing the application.
- [4] The Summons was initially scheduled for hearing on October 1, 2009, but was adjourned and eventually heard on February 19, 2010. The decision of the Court was reserved following legal argument.
- [5] **The Legal Submissions:** Counsel for the Plaintiff, Mr. Amilcar Branche submitted that the Plaintiff had applied for an interim injunction to restrain the Administratrix from exercising her powers as personal representative of their mother’s estate to the prejudice of the Plaintiff (the sole surviving partner in a partnership business known as “Greenwich Dairy Farm” which, had been carried on under an oral partnership agreement made between the Plaintiff and the deceased). The interim injunction was sought pending the determination of certain questions which had been raised in the substantive proceedings regarding how the partnership property should be identified and administered.

- [6] Mr. Branche submitted that the Plaintiff's case against the Administratrix is based on the fact that he is the surviving partner of a business known as the "Greenwich Dairy Farm" which had been operated between his mother (now deceased) and himself under an oral partnership agreement. It is also the Plaintiff's case, that pursuant to the said agreement, his mother had agreed with him that the business would upon her death, continue for his sole benefit.
- [7] He contended that by virtue of sections 22 and 24 of the *Partnership Act, Cap. 313*, the several freehold lands and other assets of his late mother situated at Greenwich and Trents, St. James, some of which remained in the name of her late husband and which had been brought into the partnership, had, by operation of law, become partnership property and as such should be treated as between himself and the Administratrix and the other heirs of his mother's estate, as personal or moveable property and not real or heritable estate.
- [8] Mr. Branche submitted that as the surviving partner, the Plaintiff was claiming 100% of the partnership property in accordance with the oral partnership agreement between himself and his late mother. In the alternative, as the surviving equal partner, the Plaintiff was, he said, claiming a 50% interest in the partnership property and a determination by the Court that the other 50 % was held in trust for the 3 beneficiaries of his late mother's estate (including himself). In support of his submission, he cited the case of *Ashworth v. Munn (1880) Ch. 363*.
- [9] On the question whether damages would provide an adequate remedy if the Administratrix was not restrained by injunction from disposing of the partnership property pending trial of the substantive action, Mr. Branche contended that damages would ultimately not provide an adequate remedy for the Plaintiff. He submitted that unless restrained, the Administratrix would continue, as she was now doing, to sell off and

dispose of lands forming part of the partnership business known as 'Greenwich Dairy Farm'.

- [10] Mr. Branche submitted that since assuming control over the partnership property in March 2006, the Administratrix has entered into agreements for the sale to a purchaser of certain lands which, the Plaintiff claims, form part of the partnership property.
- [11] It was the Plaintiff's case, he said, that as the sole surviving partner of the business, the Plaintiff is the only person who had power to sell the partnership assets and wind-up the partnership. Furthermore, having personally worked the partnership lands for over 20 years, the Plaintiff had an interest in himself acquiring certain lands of the former partnership to which he has formed an attachment. He urged the Court to restrain the Defendant from selling or disposing of the partnership property until the hearing and determination of the substantive action.
- [12] In response, Counsel for the Defendant, Mr. Clyde Turney, Q.C. urged the Court to find that the Plaintiff would be unable to satisfy the Court that there was a serious issue to be tried having regard to section 47 of the **Property Act, Cap. 236**, which provides, *inter alia*, that: 'No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person thereunder by him lawfully authorized.'
- [13] Mr. Turney submitted that the Plaintiff's case was said to be founded on a verbal agreement allegedly made between himself and his late mother which agreement touched and concerned land and/or interests in land. However, the Plaintiff was unable to produce evidence of any memorandum or note of the agreement signed by the late Lorna Bishop within the meaning of section 47 of the **Property Act**. Furthermore, the

partnership accounts which had been exhibited to the Plaintiff's affidavit to support the existence of a partnership, had not been signed by the late Lorna Bishop, nor by anyone lawfully authorized by her and as such would not satisfy the requirements of section 47 of the Act.

- [14] He submitted that the Plaintiff could not establish the existence of an agreement within the meaning of section 47 of the *Property Act*, and accordingly, there was no serious issue to be tried. He contended that as the duly appointed personal representative of their late mother's estate, the Administratrix alone was entitled to take possession of the lands and property comprising the 'Greenwich Dairy Farm' and to dispose of the assets with a view to winding-up the estate.
- [15] In rebuttal, Counsel for the Plaintiff, Mr. Branche argued that section 47 of the *Property Act*, was inapplicable as between the partners. There was, he contended, no necessity for the former partners to comply with section 47 of the *Property Act*, since when she had made the verbal agreement with the Plaintiff, Lorna Bishop was not purporting to sell or dispose of her property but was simply 'bringing her lands into the partnership' and employing them as partnership property.
- [16] The Plaintiff, he submitted, was not denying that the legal estate in the lands was still vested in his late mother's estate. Neither was the Plaintiff claiming to be the owner of the lands which his mother had brought into the partnership. According to Mr. Branche, all that the Plaintiff was contending is that by virtue of the partnership agreement and sections 22 and 24 of the *Partnership Act*, the partnership property is to be treated as personal or moveable property and not real or heritable estate and accordingly, upon their sale he is entitled to the proceeds of sale of the partnership property, either wholly or alternatively, on a 50/50 basis after the partnership was wound-up, its assets sold and the partnership debts paid.

- [17] **Exercise of the Court's Discretion:** Having read the affidavits filed on behalf of the parties and heard the submissions of Counsel on both sides, the Court turns to a consideration of the applicable law and, in particular, the manner in which the Court's discretion whether or not to grant the injunction should be exercised.
- [18] The Court has of necessity kept in mind the Diplock guidelines for the grant of prohibitory interim injunctions first laid down in *American Cyanamid Co v. Ethicon Ltd [1975] A.C. 396*. The guidelines have been applied and reaffirmed in many cases since they were first laid down and are now routinely applied whenever applications of this type are under consideration. [See *Films Rover International Ltd v. Cannon Film Sales Ltd [1987] 1 W.L.R. 670 per Hoffman J.*; *East Coast Drilling and Workover Services Ltd v. Petroleum Co of Trinidad and Tobago Ltd (2000) 58 WIR 351 per de La Bastide C.J.* Also *Bean on Injunctions, 8th edition, paragraphs 3.28 and 3.33- 3.37.*]
- [19] **Is there a serious question to be tried?** As a first step, the Court must consider whether the Plaintiff has established that there is a serious question to be tried and further whether the Plaintiff has a real prospect of obtaining a permanent injunction at the trial.
- [20] The Court accepts that Plaintiff's claim is based on an alleged verbal partnership agreement which he says had been entered into in March, 1997 between himself and his mother (now deceased) under which certain of his mother's assets (real estate, buildings and machinery and chattels) were "brought into the partnership business" which operated under the registered business name "Greenwich Dairy Farm". Pursuant to the agreement, the Plaintiff, he says, was required to manage the dairy farm business and ensure its profitability. According to the Plaintiff, it was also a term of the verbal agreement between his mother and himself

that on her death, the business would continue to be carried on for the Plaintiff's sole benefit.

- [21] The Plaintiff contends that by virtue of section 22 of the *Partnership Act*, his deceased mother's property and any rights and interests in the property which she had 'brought into the partnership' pursuant to the agreement have, by operation of law, become "partnership property" and as such, "*shall be held, and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.*"
- [22] Relying on section 24 of the *Partnership Act*, the Plaintiff further contends that the lands and heritable interests which his mother 'brought into the partnership' and which have thereby become "partnership property", are to be treated as between himself (as the surviving partner) and the Administratrix (as the personal representative of his mother's estate) and also as between the beneficiaries of his late mother's estate, "*as personal or moveable property and not as real or heritable estate.*"
- [23] Based on the foregoing legal premise, the Plaintiff in his Originating Summons filed on January 15, 2008 seeks the following relief at the substantive trial, namely: 1) an account from the Administratrix regarding her dealings with the "Greenwich Dairy Farm", 2) other necessary accounts, inquiries, inventories and directions; 3) the winding-up of the dairy farm business "Greenwich Dairy Farm" which he alleges was operated in partnership with the deceased prior to her death; 4) a "determination" by the Court of 2 issues more particularly set out at paragraph 4 of the prayer for relief; and 5) costs.
- [24] In response, Counsel for the Administratrix argues that the Plaintiff's claim under the *Partnership Act* is liable to be defeated by reason of section 47 of the *Property Act* which requires any agreement for sale or disposition of land or any interest in land (including the alleged

partnership agreement) or some memorandum or note thereof to be in writing and signed by the deceased or by someone lawfully authorized by her.

[25] In rebuttal, Counsel for the Plaintiff contends that section 47 of the *Property Act* has no applicability as between the partners. The Plaintiff's deceased mother had not purported to sell or dispose of her land or any interest in land to him. She had merely "brought certain of her assets into the partnership business" and there was, he argues, no necessity for her to do so by a written partnership agreement or for there to be a memorandum or note thereof.

[26] The Court is satisfied that whether or not the Plaintiff succeeds at the trial will depend largely upon the evidence which the Plaintiff will need to adduce to establish how, and when the alleged partnership agreement with his mother arose and the precise terms thereof. The Plaintiff will also need to establish for purposes of s. 22 of the *Partnership Act*, what property was "brought into the partnership business" pursuant to the agreement and what his actual contribution to the business was. Of necessity, he will also need to present to the Court legal arguments supported by relevant authorities to support his case as to the proper construction of the *Partnership Act*, and to support his argument that compliance with section 47 of the *Property Act* is inapplicable in cases where land is "brought into a partnership" by one of the partners.

[27] In summary, the Court is satisfied that the key issues to be determined at the trial will be how, and at what stage, the deceased's lands were "brought into the partnership business" pursuant to the alleged agreement within the meaning of the *Partnership Act* and further, whether at the time the lands were "brought into the partnership" there was any necessity for a written agreement or memorandum or note thereof within the meaning of section 47 of the *Property Act*.

- [28] It is accepted that when a Court is considering whether there is a serious issue to be tried upon an application for an interim prohibitory injunction, it is not required “*to try to resolve conflicts of evidence on affidavit as to the 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 consideration.*” *American Cyanamid Co v. Ethicon Ltd.* However, the Court must as a first step have examined the competing claims and formed a view as to whether the Plaintiff has established that there is a serious question to be tried and further, whether the Plaintiff has a real prospect of obtaining a permanent injunction at the trial.
- [28] The Court is of the opinion that paragraph 4 of the Originating Summons is framed (somewhat curiously) in the form of a request for a “determination” of the 2 issues specified in the summons, rather than in the more usual form of a request for specific declarations. The Court also observes that nowhere in the Plaintiff’s prayer for relief has he also sought a permanent injunction in aid of the 2 matters which he is seeking to have “determined” by the Court at the substantive trial.
- [29] In the light of this omission, the Court has briefly considered whether the Plaintiff’s omission to include a claim for a permanent injunction in his Originating Summons, is fatal to the Plaintiff’s application for interim relief? Perusal of the Plaintiff’s affidavit of September 17, 2009 reveals that one of the motivating factors which led him to seek an injunction at this stage of the proceedings, has been his concern that the Administratrix has been dealing with the “partnership property” and entering into contracts for the sale of lands which form the partnership property without regard to his claim to have an interest in the same as sole surviving partner.
- [30] It is clear from the earlier affidavit of the Administratrix filed on November 13, 2008 that she is not prepared to accept or recognize the

existence of the alleged partnership between her late mother and the Plaintiff and is of the view that her late mother's estate should be wound up and administered without regard to the provisions of the *Partnership Act*. The Court is therefore satisfied that until the issues relating to the alleged partnership are resolved, the Administratrix will continue to administer the estate without regard to the Plaintiff's claims. In the view of the Court, this is ample justification for the Plaintiff's application for an interim injunction to preserve the status quo until the issues are resolved.

- [31] The Court is satisfied that the 2 questions which the Plaintiff has referred for the Court's determination in paragraph 4 of his Originating Summons are of such a nature that if they are ultimately determined in his favour at the trial, the Plaintiff will of necessity also require a permanent injunction to be issued against the Administratrix directing her to wind-up the partnership and dispose of the assets in accordance with the *Partnership Act* and separately from the general estate of the deceased. If the determination is made in the Plaintiff's favour at the trial, the necessity for a permanent injunction will be evident to the Court which makes the order, even though a claim for a permanent injunction is not included in the prayer for relief in the Originating Summons.
- [32] Having reviewed the matter, the Court is satisfied that there are serious issues to be tried at the substantive trial which cannot be resolved at this interlocutory stage, and further, that if the Plaintiff is successful at the trial, he has a real prospect of obtaining a permanent injunction, even though one has not been claimed in the Originating Summons. In the circumstances, the Court turns to consider the second issue on this application, namely, the adequacy of damages.
- [33] *Are damages an adequate remedy?* The Court has examined the question and found on the one hand that damages are likely to provide an adequate

remedy for the Administratrix, who, if later held to be successful at the trial, would be prevented, during the period of the injunction, from selling off its assets and generally administering and winding up the estate under the general laws relating to estates and succession.

- [34] Any loss which the Administratrix will incur if she is restrained by injunction from administering the estate until the action is finally disposed of, is in the Court's view, quite capable of being quantified in terms of money, and this would make damages an adequate remedy for the estate if she were to succeed at the trial.
- [35] On the other hand, as the Administratrix evidently intends to continue to wind up the deceased's estate without regard to the Plaintiff's claim that certain of the assets are partnership property, the Court is satisfied that she will continue unless restrained to sell off and dispose of the deceased's assets without regard to the Plaintiff's claims that certain of those assets are "partnership property".
- [36] The Plaintiff alleges that he would *suffer "uncompensatable and irreparable damage given the work time and effort which he has spent in the partnership having worked on the lands for in excess of 20 years."* His attorney-at-law also submitted that the Plaintiff has an interest in himself purchasing certain of the partnership assets and would wish to be permitted to do so if he is successful at the trial, and the partnership is eventually ordered to be wound-up in accordance with the ***Partnership Act***.
- [37] The Court is satisfied that this is a case which involves a dispute among three members of a family who are beneficiaries of their late mother's estate. It also concerns a dispute about the manner in which estate property is to be administered. The case will involve a determination of the question whether the estate is to be administered as the Defendant asserts under the general law relating to succession or whether as the

Plaintiff claims certain assets of the estate are “partnership property” which should be dealt with in accordance with the *Partnership Act*. In this particular case, Counsel for the Plaintiff submits that the Plaintiff has formed sentimental attachment to certain of the family property which he would like to be permitted the opportunity to acquire.

[38] In these circumstances, the Court is satisfied that if the Plaintiff were subsequently found to be successful at the trial, damages are unlikely to provide an adequate remedy for him due to the fact that unless restrained, the Administratrix is likely to continue (as she has already started to do) to dispose of the partnership assets without reference to him. He would lose the opportunity, he says, to buy-in specific partnership property in which he has an interest. Given the particular circumstances of this case, the Court accepts that the loss to the Plaintiff of such an opportunity would be irreparable and uncompensatable in terms of money and that damages may not provide an adequate remedy to the Plaintiff/Applicant.

[39] Where does the balance of convenience lie?: As there is a doubt in this case whether damages will provide an adequate remedy for the Plaintiff, the Court has necessarily proceeded to examine the third question namely, where does the balance of convenience in this matter lie?

[40] Having taken all the circumstances of this case into account, the Court is satisfied that the Administratrix is likely to suffer the lower risk of injustice. Accordingly, the Court finds that the balance of convenience lies with the Plaintiff;

[41] In the result, the Court holds that the *status quo* should be maintained until the substantive action is finally disposed of and accordingly, the interim prohibitory injunction sought by the Plaintiff should issue.

[42] Disposal: The Court, being satisfied that it is just and convenient in the particular circumstances of this case that the interim injunction sought by

the Plaintiff should be granted, hereby makes the following Orders and Directions:

- 1) The Administratrix is restrained whether by herself, her servants, workmen, agents or any of them or howsoever otherwise from disposing, mortgaging, or charging:
 - i) the lands of Greenwich Plantation, Greenwich, in the parish of St. James containing by admeasurement 24.900 acres together with the buildings thereon;
 - ii) the lands at Trents, in the parish of St. James containing by admeasurement 4 acres, and being the lot numbered 24;
 - iii) other lands at Trents, St. James being lots numbered 12, 15 and 16 containing by admeasurement 14.326 acres,
 - iv) Lot numbered 21 Trents, St. James containing by admeasurement 4.316 acres;
 - v) Lot numbered 25 Trents, St. James containing by admeasurement 5.529 acres;
 - vi) Lots numbered 42 and 43 Trents, St. James containing by admeasurement 7.686 acres;
 - vii) Lot numbered 22 Trents, St. James containing by admeasurement 4.3018 acres;
 - viii) Lots numbered 26 and 27 Trents, St. James containing by admeasurement 12.23 acres;
 - ix) Further lands of Greenwich, St. James containing by admeasurement 4 acres 0 roods and $26 \frac{9}{50}$ perches.

- 2) If the Court later finds that this Order has caused loss to the Administratrix, and decides that the Administratrix should be

compensated for that loss, the Plaintiff will comply with any order in damages that the Court may make.

- 3) The Plaintiff is directed within 14 days of the date hereof to amend his Originating Summons to include, immediately following paragraph 4 thereof, a claim for a permanent injunction restraining the Administratrix from administering or disposing of or dealing with the assets of the “Greenwich Dairy Farm” otherwise than in accordance with the *Partnership Act*; (save and except the assets of the “Greenwich Dairy Farm” comprised in the Consent Order of *Chandler J.* made on the 3rd day of February, 2010);
- 4) The Originating Summons, duly amended as provided at paragraph 3 of this Order, shall be fixed for early trial before this Court on a date which is mutually convenient to Counsel on both sides or which shall be fixed by the Court, if not agreed;
- 5) Liberty to apply.

**Maureen Crane-Scott
Judge of the High Court**