BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL - CIVIL DIVISION

No.6 of 2002

BETWEEN:

DONNA PAYNE ***Appellant/Plaintiff***

AND

RICHARD TROTMAN) ***Respondents/Defendants***

)

IAN TROTMAN)

Before the Hon. Sir David Simmons, K.A., B.C.H., Chief Justice, the Hon. Errol Chase, Justice of Appeal and the Hon. Colin Williams, Justice of Appeal.

2006: 27 September

Mr. Theodore Walcott and Ms. Karen Thornhill for the Appellant

Mr. Tyrone Estwick and Ms. Kim Marshall for the Respondents

DECISION

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C.A. WILLIAMS JA: These proceedings started with an application for an injunction made *ex parte* by Donna

Payne (as intended plaintiff) on her affidavit filed on the 10th January 2002. The injunction was granted on the 17th January 2002, subject to undertakings as to service of the affidavit and the order, the issue and service of the Writ of Summons, and the usual undertaking as to damages. The order restrained the intended defendants Richard Trotman and Ian Trotman whether by themselves, their servants, agents (workmen) or otherwise howsoever from excluding the plaintiff from the dwelling house at Thorpes Cottage in the parish of Saint Michael, which is presently occupied by the second defendant and which was jointly occupied by the plaintiff prior to the 3rd day of January 2002.

The intended defendants were given liberty to apply, on notice, to discharge or vary the injunction.

[2] The material portions of the affidavit that grounded the *ex parte* application are as follows:-

> "1. The first intended defendant is the father of Ian Trotman. The second intended defendant is the father of my daughter, Simone Trotman born on the 14th August 1986. Ian Trotman and I have lived in a house at Thorpes Cottage, St. George from about August, 1999. We have had a relationship from the time I was at school and for the last 11 years we have been in a union other than a marriage. When I lived with my mother, he spent most of his time with me and I prepared most of his meals and washed his clothes. At the same time took care of our daughter. The house in which we live is a wall structure which has two floors. It is built on land owned by Francea Plantation. The land is let to the first intended defendant Richard Trotman who gave permission for the house to be constructed there. The first intended defendant lives next door to this house in a separate house.
>
> 2. .....
>
> 3. On the 1st January, 2002 the first intended defendant Richard Trotman handed me a letter dated 31st December, 2001 from his attorney-at-law. This letter is now produced and shown to me marked Exhibit E. I instructed my attorney-at-law, Mr Theodore Walcott to respond to this letter. A copy of the letter is now produced and shown to me marked Exhibit F.
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> 4. Sometime on the 3rd January, 2002 I returned home and could not gain entry to the house. It subsequently came to my knowledge that the first intended defendant Richard Trotman had barricaded the entrance to the house with galvanized sheets, which he placed over the door. In the house are my personal belongings, some of my jewelry and furniture purchased by me.
>
> 5. The statement made in paragraph 5 of the affidavit of Richard Trotman filed on the 28th November, 2001 is untrue. Neither Richard Trotman nor his wife resides in the two storey wall structure. As stated earlier he and his wife live next door.
>
> 6. In response to paragraph 6 and 7 of the affidavit of Richard Trotman, to my knowledge Richard Trotman never contributed to the construction of the house and he is not a joint owner. Mr. Richard Trotman has known me for many years.
>
> 7. I am presently on vacation. My clothes and other possessions are in the house and I cannot

gain admission. As stated in my affidavit in the earlier action I have made a contribution to the construction of the house.

8. On the 17th December, 2001 an application was filed on my behalf for an order restraining the second intended defendant Ian Trotman from assaulting, molesting or otherwise interfering with me. This was supported by an affidavit of the same date. These documents are now produced and shown to me marked Exhibits G-H. We appeared at Court on the 20th December,

2001 before his Lordship Mr. Justice LeRoy Inniss QC. We were both warned not to interfere with each other. It was after this warning that the action complained of was taken by the first intended defendant Richard Trotman.

9. ...."

[3] The documents specified in the order of the 17th January 2002 were duly served, but the plaintiff complained that she was still being kept out of the dwellinghouse. As a result, her attorney-at-law initiated steps to have the defendants committed to prison for contempt of Court, at the same time giving notice of intention to rely upon the plaintiff's affidavits filed on the 10th and 28th January 2002. The relevant parts of the former affidavit have already been quoted at paragraph [2] above. The latter affidavit reads in part as follows:

"1. ....

2. On Saturday 19th January, 2002 at about 2:30pm I returned to the dwelling-house. I saw the defendant Mr. Ian Trotman seated in a chair in the front patio. As I entered the patio Mr. Ian Trotman placed his legs across my path to prevent me from entering. I walked to the other side of the chair and went past him going towards the bedroom on the ground floor which I normally occupy.

3. As I approached some steps leading to the bedroom, I saw the defendant Mr. Richard Trotman who stretched out both arms blocking my entrance. He said to me that I could not come in there. I asked him why he don't move and if he did not get the papers. He replied that no Lawyer or no Judge can give me permission to come nowhere that he is paying for.

4. I then left the dwelling-house and telephoned Boarded Hall Police Station for assistance. In about 20 minutes three police constables No. 1297 Alleyne, No. 1371 Brathwaite and No. 16 Griffith came to the scene and I explained the situation to them. I did not have a copy of the Order with me.

The police constables asked the defendants for their copy. They said that their lawyer has their papers. The police asked me to get a copy of the Court Order and bring it to Boarded Hall police station.

5. On the 24th January, 2002 I took a copy of the Order to Boarded Hall police station. The police took me back to the dwelling-house and called Mr. Richard Trotman who was in his house next door and told him about the Order of the Court. Mr. Richard Trotman said that right now he did not have the key to the dwelling-house so I would have to wait until Mr. Ian Trotman came home to get the key from him. Mr. Richard Trotman told the police that I should have called first and let somebody know that I was coming. He said that I just cannot come when I feel like. The police then informed me that there was nothing else that they could do.

6. I commenced work again on Sunday 27th, January, 2002 and in order to be able to go to work in uniform I got my daughter to get her grand-mother to allow her to go into the dwelling-house to get uniforms for me.

7....."

[4] When the motion for committal was ready for hearing on the 15th February 2002, the defendants had not taken any steps to discharge or vary the injunction. It was then adjourned for the defendants to file the appropriate application. In the absence of such an application or of clear evidence that they had purged their contempt, the defendants would not normally be heard: ***Hadkinson v Hadkinson [1953] 2 All E R 576.***

[5] The defendants then took out a most inappropriate summons. It asked that the order granting the injunction be set aside on the grounds that it discloses no reasonable cause of action; that it is frivolous and/or vexatious; and that it is otherwise an abuse of the process of the Court. Such an application is relevant only to pleadings and writ endorsements that are being attacked under Order 18 Rule 19.

All that was required in the present case was a simple summons to discharge or modify the order supported by an affidafit setting out facts and matters to show why the injunction ought to be lifted or modified; on grounds, for example, that the plaintiff had not made full disclosure when she applied for the injunction, or that there had been a material change in circumstances.

[6] The defendants joint affidavit in support is very thin indeed. It reads as follows:-

"1. That we have read the Affidavit of the Plaintiff dated January 10, 2002 and a copy of the Order made on January 17, 2002 and we understand the contents thereof.

2. We first state that even though the plaintiff gave her address as Thorpes Cottage, Saint George in the Affidavit, the Order states that she was not in occupation of the said premises since the 3rd day of January 2002, the Plaintiff left the Thorpes Cottage residence on the 31st December 2001 and the First Defendant went to her mother's residence at Harry Cot Road, Parish Land, Saint George on the 1st January 2002 and delivered a letter from Ms. Alicia Archer, Attorney-at-law, which is in evidence. The Plaintiff was next seen at the premises on the 19th January 2002.

3. We deny that there was ever a barricade of any sort at the entrance or elsewhere on the

Thorpes Cottage residence. The Plaintiff left the said residence on and of her own accord and was at no time excluded from the said residence. We are advised and verily believe that there is no basis for the Order (no cause of action) since the Plaintiff never sought to resume residence at the premises.

4. That we have filed Affidavits in response to an action No. 621 of 2001 under the Family Law Act, which action is still alive. The Plaintiff subsequently commenced the present action dealing, inter alia, with aspects of the same subject matter. We are advised and verily believe that this is an abuse of process and is frivolous and vexatious."

[7] Paragraphs 2 and 3 do not answer in any significant way the very specific allegations made in the two affidavits of the plaintiff dated the 10th and 28th January 2002, and no further affidavit was filed by the defendants in answer to the plaintiff's detailed affidavit filed on the 20th February 2002, notably the allegations of the visits by the police. We have no difficulty in accepting the affidavit evidence of the plaintiff that she was shut out of the house and was prevented from re-entering.

[8] This brings us to a consideration of the circumstances that prevailed before the plaintiff was shut out of the premises. In a letter dated 31st December 2001, written on behalf of the first defendant, attorney-at-law Ms Alicia Archer informed the plaintiff that she (the plaintiff) was residing at the premises on sufferance and called upon her to vacate the premises by the Thursday following, i.e., 3 days later. This admission that the plaintiff resided there confirmed the truth of the plaintiff's references (at least 3) to her bedroom and her request to her daughter to fetch her (i.e., the mother's) uniform from the premises for her to wear to work after her holiday.

It is abundantly clear that the plaintiff was not a casual visitor to the premises but rather that there was some permanence to her sojourn up to the 2nd January 2002. We also have no difficulty in concluding that she was living there with the permission of both defendants. In the circumstances, we are of opinion that the plaintiff enjoyed at the very least a licence to live in the premises and therefore that she was entitled to reasonable notice to determine the licence. The fact that the plaintiff claimed an equity in the house merely strengthened her position. It follows that the defendants were wrong to exclude the plaintiff from the premises without reasonable notice.

[9] The primary purpose of an interlocutory injunction is to preserve the *status quo*. The record does not disclose any facts or material change in circumstances that would justify the lifting or variation of the injunction in the present case. In giving the reasons for his decision on this aspect of the matter, the trial Judge said:-

"As I see it, the relationship between the parties, whatever it was, has broken down, and it seems almost inconceivable that they would be expected to share this house. I therefore discharge the ex parte injunction."

[10] In our judgment, this approach ignores certain important factors, viz., the fact that the plaintiff had her own bedroom, the size of the dwellinghouse that was being shared by the plaintiff and the second defendant (as is shown by the photographs in evidence), the unlawful breach of the rights of the plaintiff as a licensee, and the over-riding principle that, except for good reason, the *status quo* should be preserved pending the final adjudication of the parties' respective rights. In our view, there was no compelling reason to discharge the injunction.

[11] The only other aspect of this appeal which we think deserves special mention is the first Ground of Appeal:-

> "The learned trial Judge failed to rule on a submission on behalf of the Appellant/Plaintiff that he should not hear the application of the Respondents/Defendants for the discharge of the injunction unless and until the Respondents/Defendants purged their contempt for failing to comply with the interlocutory injunction."

[12] The well-established principle is that a person who is in contempt of Court by refusing to comply with an Order is precluded from making any application in the same cause. However, it is also well established that this disability does not apply where a contemnor is applying to set aside the Order. It follows that, although ***Payne J*** did not make any ruling on the point nevertheless he acted properly in entertaining the application to lift the injunction.

[13] In the result, the appeal is allowed, the injunction is restored, and the Respondents must pay the appellant her costs of the Appeal.

Chief Justice

Justice of Appeal

Justice of Appeal