

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

No 1511 of 2014

**PILE'S TRUCKING & BOBCAT RENTALS
ROBERT PILE
-AND-
STAR BLOCK (BARBADOS) LTD**

**1ST CLAIMANT
2ND CLAIMANT

DEFENDANT**

**Before the Honorable Madam Justice Jacqueline A.R. Cornelius, Judge of the
High Court**

**2014: October 31;
November 11;**

**Mr. Chester Sue for the claimant
Mr. Hal Gollop Q.C. for the defendant**

DECISION

- [1] In modern times, the relationship between adjacent land owners in all realms of society has been the subject of litigation before the courts. This matter is no different. The claimants seek an injunction to restrain the defendant from interrupting his use and enjoyment of a right of way over a cart road on lands of Lower Estate Plantation in the parish of Saint George.
- [2] The first claimant is a company incorporated under the *Companies Act Cap 308* and carrying on business at Lot 29 Lower Estate and a portion of unnumbered land forming part of Lower Estate Plantation in the parish of Saint George. The company is involved in trucking, excavation and road construction amongst other activities requiring the use of large heavy duty

equipment. The second claimant is the Director of the claimant company and the owner of Lot 29 Lower Estate.

- [3] Adjacent to the claimant's property is the defendant company. It operates a quarry under a lease to purchase agreement.

Background- preliminary issue

- [4] This matter came before me on a certificate of urgency having been filed on 8th October 2014. Despite the nature of its commencement, no statement of claim was filed until 28th October 2014. The matter commenced with Pile's Trucking & Bobcat Rentals (Pile's Trucking) as the claimant and Star Block as the defendant. The second claimant Mr. Pile was added without notice pursuant to Part 19 of the *Supreme Court (Civil Procedure) Rules 2008 (CPR)*.
- [5] When this issue was raised at the hearing by counsel for the defendant, Mr. Gollop Q.C., Mr. Sue replied that there was no confusion, the business was located at Mr. Pile's home and further that a party could be added at anytime under Part 19 (2)(3) of the *Supreme Court (Civil Procedure) Rules 2008 (CPR)*. Mr. Sue indicated further that the court could add parties under CPR 19 (2) (1).

THE INSTANT MATTER

The Claimant's Case

- [6] The claimant submitted that they were entitled to the right of way by way of enjoyment for more than 20 years before this action as of right and without interruption, from time immemorial and the consent thereof by the then owner of the said 'cart road'.
- [7] In December 2013, some ten months before this matter was commenced, the defendant obstructed the said 'cart road' and the claimant's gate by placing boulders at the gate. The defendant erected another gate and locked it thus further blocking the claimant's gate. There was an alternative roadway which belonged to the claimants but it was narrow and given the nature of the first claimants' business, was implicitly dangerous.
- [8] The claimants submitted that they enjoyed the Right of Way since 2003 together with other persons. When land was conveyed an easement was also conveyed. The court could imply a grant of an easement in favour of a tenant where it was not conveyed. A right of way did not have to be demarcated *Wheeldon v Burrows (1879) 12 Ch. D 31* and it could arise by prescription

further a privilege could become an easement by long use (*International Tea Stores v Hobbs* [1903] 2 Ch. 165)

Defendant's Case

- [9] The defendant's evidence was given by Mr. Maxie Franklin, its Managing Director. It was to his knowledge that the first claimant was incorporated around 1997. He submitted that Mr. Pile was allowed to take a short cut over a portion the defendant's land through a closed gate to his premises. Mr. Pile was given a key to the locked gated to facilitate his passage over the land.
- [10] When Mr. Pile was given permission to pass and repass over the property in question, it was on the clear representation by Mr. Pile that he was seeking a shorter and quicker route to access his property with equipment. At no time was it indicated that he used the property before permission was granted. Prior to permission being granted, Mr. Pile or the claimant never used the route which is now claimed as a right of way during the defendant's occupation. The defendant put an end to the privilege when there was continual looting of supplies and material stored on the premises. A decision was made in order to tighten security and Mr. Pile was asked to return the key to the said locked gate. It was to his knowledge that the claimant's equipment still traveled to and from its premises and Mr. Franklin expressed amazement that Mr. Pile claimed he had not been able to move equipment to and from the compound.
- [11] In support of his argument, he produced a plot plan of the area which showed that no right of way existed. The defendants submitted further that quite apart from the standard being 20 years for prescription, one could not claim there was an easement if you were given a key. This was a mere license which could be revoked.
- [12] The defendant submitted that the claimants had not shown that the company would cease to operate if they were not able to use the right of way. This action commenced almost a year after the road had been blocked and if the claimants' case was urgent, they would have commenced proceedings since December 2013 when the road was initially blocked off.
- [13] The right of way would have had to be in use for at least 20 years and the claimant company had not been incorporated for that period of time. Who was the party claiming the right of way? There was nothing before the court

on which an injunction could be granted and the claimants had another roadway they could use.

ISSUES & DISCUSSION

- [14] In this application the claimants contend that they had a right of way which was denied them by the defendants. The defendants deny that they have a right of way and assert that they have a license which has been revoked. The issue which I must determine, therefore, is whether on the facts, an injunction should be granted. The guidelines for the of my discretion in determining whether or not to grant an injunction are stated in the leading case of *American Cyanamid Co. v Ethicon* [1975] AC 396 and quite recently in the local case of *Toojay's Limited v Westhaven Limited*, decided 16th September 2011, Barbados Court of Appeal. Toojay's clearly restated the *American Cyanamid* principles of a two stage enquiry.
- [15] At this point I think it necessary to state that this matter could have been greatly enhanced by some submissions from the claimants with respect to the *American Cyanamid* principles. It should be noted that the Court did make enquiry of counsel as to whether he wished to address the court on the *American Cyanamid* principles, but no such submissions were forthcoming.
- [16] Initially, I must determine whether there is a serious case to be tried. If that question is answered in the affirmative, then I must determine where the balance of convenience lies. The balance of convenience requires that a Court must engage in the complex task of inquiring into the balance of justice considering, *inter alia*, (1) whether the grant of the injunction would cause 'irreparable prejudice' (per Lord Hoffman in *National Commercial Bank of Jamaica v Olint Ltd* [2009] 1 WLR 1405 at 1410a); and also (2) whether the claimant could be adequately compensated in damages between the application and the trial if he succeeded. If the claimant can be so compensated in damages, then unless special circumstances existed the defendant should not be restrained by an interlocutory injunction.
- Serious Issue to be Tried?**
- [17] Under this head the court is not concerned with any detailed consideration of the law or on resolving any conflicts of evidence. The claimant (1) must have a cause of action; and (2) the claim must not be frivolous or vexatious.

- [18] The matter is really about the granting of a Right of Way by prescription or failing that by permission. The defendant's affidavits suggest and it has not been refuted that the claimant had permission to pass over the defendant's property and was given a key to enable him to do so. The key was taken away so essentially, the claimant's permission to use the 'cart road' was revoked.
- [19] Further, the undisputed evidence at this point is that the first defendant was incorporated for about 17 years some 3 years below the 20 year period that it would be required to show uninterrupted use of the 'cart road' in question. The second claimant has not averred to any evidence which could ground the application for a right of way by prescription. His affidavits show that his use of the 'cart road' was primarily for the purposes of the first claimant over the years.
- [20] Even if I accepted the Mr. Pile's evidence on affidavit that he used the right of way along with neighbours for a period of 35 years, there is no evidence of that use in the application on affidavit or otherwise from either the neighbours or the previous owners of the quarry.
- [21] The defendant suggested that the claimants have been carrying on their business as usual. The claimants suggest that they have suffered loss and damage but do not provide any evidence of the loss or damage, speculative or otherwise.
- [22] Having considered the case before the court, the evidence in this matter is not of the breadth and quality that a court would expect in order for it to exercise its discretion in the claimant's favour. Accordingly, I find that there is no serious issue to be tried. The frequency with which injunctions are granted in proper cases does not detract from the fact that injunctions are the flamethrowers in equity's armoury. Great care must be taken in drafting affidavits which can support an application. The affidavits in this case are seriously deficient.

Damages

- [23] Despite my finding that there is no serious issue to be tried, I would in any event, decline to exercise my discretion in favour of the claimant on other grounds.

[24] Firstly I consider damages to be adequate. ‘If a claimant can be compensated in damages for anything he may wrongfully suffer between the date of the application and the trial, the defendant should not be restrained save in exceptional circumstances’ *Polaroid Corporation v Eastman Kodak Co. Ltd* [1977] RPC 379 at 395 per Buckley LJ.

[25] The claimants have not deposed to any quantum of loss, thus far, and on the facts have shown their loss is actually permission to use a gate. If successful, I think it would be possible for the claimant to quantify his loss both until trial and then thereafter.

Balance of Convenience

[26] Having first considered the adequacy of damages, I must consider where the balance of convenience would lie. The claimants have provided no evidence which would allow them to obtain any prescriptive rights in this matter. Even though the second claimant deposes to it, there is no verifiable evidence on which the court could suspend the defendant’s action, to his benefit, until further resolution of the matter. The balance of convenience lies therefore in not granting this injunction.

DISPOSAL

[27] In light of my findings therein that there is no serious issue to be tried, the application for an injunction against the defendant is dismissed. Had I found otherwise, I would still be constrained to dismiss the application in light of *American Cyanamid*.

[28] Costs are awarded to the defendant certified fit for one counsel, to be assessed. The parties may arrange a date for hearing

Jacqueline A.R. Cornelius
Judge of the High Court