SCJB

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 780/2004

Judgment Book

BETWEEN	GREGORY CROSBY	CLAIMANT
AND	MAMMEE BAY RESORTS LTD	DEFENDANT

Miss Sandra Johnson instructed by Robinson, Phillips & Whitehorne for Claimant

Miss H. Phillips Q.C. and K. West instructed by Grant Stewart Phillips & Co. for Defendant

Heard: May 18, 19, 21 & July 20, 2004

Beswick, J.

Mammee Bay Resorts Limited, ("Mammee Bay") the defendant, is the registered proprietor of land, part of Mammee Bay, St. Ann.

Mr. Gregory Crosby, the claimant, occupies approximately five (5) acres of that land and states that he has that right because his grandfather, mother and he himself have lived there for years.

The defendant served notice on the claimant and others who were occupying the land, requiring them to quit and deliver up possession of the said premises.

Mr. Crosby remained on the land and filed suit seeking among other things, a declaration from the Court that he has acquired title to the land he occupies.

He has applied in these proceedings for an order restraining Mammee Bay, their servants and or agents from disturbing his occupation of the land until the trial of the action.

Counsel for Mr. Crosby relies on the principles governing the grant of interlocutory injunctions, as stated in **American Cyanamid Co. v Ethicon** (1975) WLR 316. Counsel invites

the Court to consider the first test to be applied which is whether there is a serious question to be tried.

Several affidavits filed attest to Mr. Crosby and his forbears having occupied and used the land for many years. Counsel argues that Mr. Crosby's own actions and those of his predecessors have established an intention to dispossess the rightful owner and that Mr. Crosby has thus acquired a title by adverse possession. The issue of ownership is therefore a serious question to be tried.

Counsel submits that the next consideration is whether payment of damages would adequately "remedy or atone for any injury" resulting from a refusal of the injunction sought.. She argues that there would be irreparable harm done if the injunction were refused, and that damages would not be an adequate remedy.

Counsel for the defendant counters that there is no serious question to be tried. She states that there is no reliable evidence to be considered as the affidavits supporting Mr. Crosby's case are filled with fundamental contradictions, including the very important assertions as to the precise time when his grandfather went into occupation of the land. The time of occupation is at the foundation of Mr. Crosby's case.

Counsel submits further that Mr. Crosby's affidavits do not show that he had been in continuous occupation of the land. Indeed, affidavits filed by the defence show a history of challenges to the ownership and occupation of the land with the defendant's predecessor(s) in title retaining ownership and occupation.

Correspondence between attorneys-at-law was exhibited to establish that it was actually documented as recently as in 1992 that the land was free of squatters and that a perimeter fence had been erected around it.

Counsel for Mammee Bay sought further support in the judgment of **Dervent Taylor (Administrator of Estate Pearline Agatha Taylor deceased) v. Bruce Realty Company of Florida** (1986) 23 JLR 290. In that case, the Court dismissed a claim by that plaintiff that he was entitled, by adverse possession, to be registered as the proprietor of the same property part of which is the subject of this claim.

Bruce Realty Company of Florida later sold the property to Mammee Bay Resorts Limited in 1986.

Counsel argued that in all the circumstances Mr. Crosby's case was so weak that there was really no genuine claim of continuous exclusive dispossession. There was no serious question to be tried.

In any event, she submitted, if the Court found that there is a serious question to be tried, payment of damages would be an adequate remedy for any wrong resulting from a refusal to grant the injunction. The defendant had sworn to its ability to pay any such damages.

In **American Cyanamid Co. v Ethicon Ltd** (supra) Lord Diplock stated that in considering whether to grant an interlocutory injunction, the Court must first be satisfied that there is a serious question to be tried.

Here, the main question to be determined is whether the claimant has acquired possessory rights over the parcel of land and has extinguished the ownership of the registered proprietor.

In **Taylor v Bruce Realty** (supra) in July 1986, Bingham J. (as he then was) in effect declared that Bruce Realty Company had exclusive possession of the disputed property as a registered proprietor.

Any claim for adverse possession must therefore commence after July 31, 1986, some eighteen (18) years ago.

By S.3 Limitation of Actions Act:

> *"No person shall... bring an action ... to recover any land ... but within twelve years next after the time at which the right to.... bring such action ...shall have first accrued..."*

A successful claim for adverse possession is still possible now since more than twelve (12) years have passed since the **Taylor** decision. There is, therefore, a serious question as to ownership/possession of the land to be tried. Such conflicts as exist on the affidavits may be resolved at the trial.

Lord Diplock in **American Cyanamid** (supra) at p. 323 said that having been satisfied that there is a serious question to be tried

> *"the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial."*

I now consider therefore, whether damages would adequately compensate the claimant for loss resulting from the wrongful refusal to grant the injunction sought. If the interlocutory injunction is refused and the defendant enters the property, Mr. Crosby would, according to his Counsel, suffer loss and be dispossessed and might even be evicted. Should Mr. Crosby succeed at the trial in establishing his right to a permanent injunction, it is my view that an award of damages for his loss would be adequate compensation for refusal of an interlocutory injunction.

The next question is whether the defendant would be in a position to pay any such damages.

I accept the evidence that the defendant would be in a financial position to pay such damages.

> "It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises." [per Lord Diplock **American Cyanamid** (supra)].

This is not the case here.

It was contended that if the injunction were refused, the practical effect would be that the action would be at an end. The claimant would have been precluded from disputing the defendant's claim at trial.

I reject that argument as the fundamental matter of declaration of ownership remains to be considered.

The application for interlocutory injunction dated 1st April 2004 is therefore refused.