



[2025] JMSC Civ 79

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

CLAIM NO. SU2025FD00153

BETWEEN	KEEVA MCGREGOR	CLAIMANT
AND	NEVILLE MCGREGOR	1ST DEFENDANT
AND	SHAMALLA MCGREGOR	2ND DEFENDANT

IN CHAMBERS VIA VIDEO CONFERENCE

Mrs. Sacia Anderson Cousin instructed by The Law Office of Sacia Anderson Cousins appeared for the Claimant

Ms. Cecile Black holding for Ms. Shantal Bailey instructed by Shantal Bailey & Associates appeared for the Defendants

Heard: 13th, 17th and 20th February; 9th April; 15th May and 12th June 2025

Injunction – Interim Relief – Is there a serious issue to be tried – Would damages be an adequate remedy – Is the claim one for monetary compensation – Where does the balance of convenience lie – Judicature (Supreme Court) Act section 49h – Civil Procedure Rule 17.1

CORAM: A. MARTIN-SWABY J (AG)

INTRODUCTION

[1] Ms. Keeva McGregor, the Claimant, is deeply aggrieved by the alleged actions of her brother Neville McGregor, the 1st Defendant. Both parties once shared a very close relationship. It is not in dispute that when he was incarcerated for some 12 years, the Claimant faithfully visited him and took care of his property in Jamaica. Her case is that whilst demonstrating such care towards her brother on these several visits, he promised her that a three-bedroom house which he acquired in

Portland would belong to her. This was, she says, his act of kindness in return for her own charity towards him. She states that acting on those promises, she expended large sums of money in maintaining and renovating the property.

[2] Today, they are at odds. Consequently, by way of a Fixed Date Claim form filed on the 16th January, 2025, the Claimant seeks a declaration regarding her percentage interest in the property and compensation for this interest. She also seeks orders restraining the Defendants from selling or transferring the property as well as from interfering with the quiet enjoyment of the property.

[3] The Claimant also filed two Notices of Application for Court Orders seeking injunctive relief pending the determination of the substantive claim. These were filed on the 16th January, 2025 and the 20th March 2025. I heard these applications and delivered my ruling on the 12th June, 2025. I now reduce my reasons to writing.

BACKGROUND

[4] It is necessary to first set out the relevant factual background before turning to the substantive issues for determination in this matter.

[5] In this matter, it is not in dispute that the 1st Defendant purchased the said property in or around the year 1997. It was purchased in the names of the Claimant, Keeva McGregor, and their sister, Claudette McGregor Osbourne. The property remained in their names until the 1st Defendant informed them that he wanted to do some business. Thereafter, the property was transferred to him approximately three (3) years prior to the filing of the claim. Subsequent to this transfer, the 1st Defendant has added the 2nd Defendant, his daughter, to the property. It is important to note that both the Claimant and Ms. Claudette McGregor Osbourne agree that the purchase of the property was financed solely by the 1st Defendant.

[6] By way of context, there are two (2) houses on the property. Only one house is the subject of this claim and for which the Claimant indicates gives her an

interest in the property. This is the house which consist of three (3) bedrooms. After the property was purchased, several family members came to live in the three-bedroom house including the Claimant's and 1st Defendant's parents as well as the Claimant, her spouse and other relatives including their sister, Claudette McGregor Osbourne.

[7] The 1st Defendant was incarcerated between the year 2000 to 2012. Whilst incarcerated, the Claimant took care of and improved the property. Whilst the 1st Defendant was incarcerated in the United States, the Claimant visited him several times.

[8] The 1st Defendant was eventually released from prison. In or around November 2023, the relationship between the Claimant and the 1st Defendant became strained after the Claimant declared that she would no longer pay the bills on the property. The 1st Defendant then required her to pay rent in the amount of Forty-Five Thousand Jamaica Dollars (JM \$45,000.00) per month. This she did for four (4) months, April – July 2024. However, the Claimant thereafter stopped paying rent as she stated that it did not make sense that she was paying rent for a property which belongs to her.

[9] It is important to note that the Claimant does not reside in Jamaica but her personal belongings remain at the premises. She is asking this Court to make orders preventing the 1st and 2nd Defendant from interfering with her quiet enjoyment of the property until the Court declares her interest in the property. Additionally, she is seeking compensation for her interest in the property.

THE APPLICATIONS

[10] Seven (7) orders were sought in the Ex Parte Notice of Application for Court orders filed on the 16th January, 2025. They are as follows:

- i) *That the Defendants are restrained from taking any step or steps by way of sale, assignments of rights, title or interest which they now purport to have in the said property registered at Volume 1593 Folio 489 of the Register Book of*

Titles and from doing any act or acts whatsoever to create any rights, title or interest to themselves or jointly and/ or severally to any other person or persons in the said property or generally acting to the prejudice of the Claimant with regard to the said property save and except as ordered by this Honourable Court until the sooner determination of the matter.

- ii) The Defendants are restrained from interfering with the Claimant's exclusive and quiet enjoyment of, and access to her 3 bedroom house situated on the said land, and are further restrained from preventing the Claimant or her servants and/ or agents from accessing the said property on her behalf whether by means of their words or actions. Further, the Defendants are restrained from threatening the Claimant or her servants and/ or agents with any acts of violence or attempting to deter them from venturing on the said property by means of any aggressive, violent, threatening behaviour, whether by words or by actions, until the sooner determination of this matter.*
- iii) The Portland police are to accompany the Claimant and/ or her servants and/ or agents while the process server delivers the order of the Court and are to assist her to obtain the keys they are currently using to access the Claimant's house. The Claimant is permitted to secure her house by changing the locks or any other necessary action.*
- iv) The Defendants are restrained from accessing the Claimant's house situated on the said land, and are to provide the Claimant's agents or alternatively the Claimant's Attorney-at-law with any keys they are currently using to access the Claimant's house. The Claimant is permitted to secure her house by changing the locks or any other necessary action.*
- v) The Defendants are restrained from interfering with the Claimant's belongings including but not limited to her security cameras, the electricity supply or her water supply. Further, the Defendants are to return to the Claimant any of her belongings which were removed from her house and are to compensate the Claimant for the loss, theft or damage of any of her belongings which were in her house. Further, the Defendants are to ensure that the Claimant's house and belongings remain free from loss, theft or damage thereafter.*
- vi) The Defendants are restrained from evicting the Claimant from the premises, from retaking possession of the said house, or from removing her belongings from the premises.*
- vii) Such further and other relief as this Honourable Court shall deem fit.*

[11] The Ex Parte application was scheduled for hearing on the 13th and 17th February, 2025. On hearing the application, on the 17th February, 2025, an order was made that the Respondents/Defendants were to be served with the court documents. The hearing was adjourned to the 20th February, 2025 to facilitate

the Defendants' attendance. On the 17th February, the court also made the following order:

An interim injunction order is made that the Defendants are restrained from interfering with the Claimant's personal items including but not limited to her security camera, electricity and water supply on the premises registered at Volume 1593 Folio 489 in the Register Book of Titles until the 20th February, 2025.

[12] On the 20th February 2025, the Respondents/Defendants attended the proceedings. Orders were made to enable them to file responses in this matter. The parties were referred to mediation and an order was made that the Applicant/Claimant and or her agents were to be allowed to access the premises. The matter was then adjourned for an Inter Partes hearing which was scheduled for the 12th June 2025.

[13] During the period of adjournment, a Notice of Application for an Injunction against dealings was filed on 20th of March, 2025. The Claimant sought the following order pending the determination of the substantive claim:

"That the Defendants are restrained from taking any step or steps by way of sale, assignments of rights, title or interest which they now purport to have in the said property registered at Volume 1593 Folio 289 of the Register Book of Titles and from doing any act or acts whatsoever to create any rights, title or interest to themselves or jointly and/ or severally to any other person or persons in the said property or generally acting to the prejudice of the Claimant with regard to the said property save and except as ordered by this Honourable Court until the sooner determination of the matter."

[14] This matter was heard on the 9th April 2025. On this date, having heard the application, the matter was adjourned to the 15th May 2025 and then the 12th June 2025 for ruling and the parties were allowed to file written submissions.

[15] It was contemplated that on the said 12th of June 2025, the Court would also conduct the Inter Partes hearing for the interim injunction (application filed 16th January 2025). However, at the commencement of proceedings on the 12th of June 2025, and prior to the decision being handed down for the application filed 20th of March 2025, Counsel for both parties indicated that the issues of law

arising in both applications substantially overlapped. With the consent of the parties, and in the interest of justice, I proceeded to consider both applications concurrently.

[16] Upon a thorough review of the affidavit evidence presented in both applications, and having given due consideration to the oral and written submissions advanced by Counsel, I delivered a joint ruling addressing both applications wherein I refused the orders sought.

[17] In this judgment, I will outline my reasons for doing so. However, before doing so, I take this opportunity to express my sincere gratitude to Counsel for their written and oral submissions which were most helpful in my deliberations.

THE CLAIMANT'S CASE

[18] The Claimant's case is that on the strength of the promises made to her by the 1st Defendant, she expended monies to renovate the property. These renovations included the changing of the roof and retiling of the house as well as changing the windows. She painted the house and installed two new metal doors for the back doors. She even sent monies to her brother in November 2023 to conduct repairs on the property. She also changed the bathroom sink and the toilet and redid the electrical and plumbing. She changed the water supply to the house on two (2) occasions which she states was very expensive. She installed a camera system on both houses and a water heater on the house she occupied. She states that she poured all her resources in to renovating this house rather than acquiring one for herself.

[19] The Claimant accepts that she did in fact commence paying rent for the premises in April 2024. She avers that these payments were only made consequent on the demands made by the 1st Defendant. However, this was short lived as she ceased all payments in July 2024 as it was illogical to pay rent for a property she owns.

THE DEFENDANTS' CASE

- [20]** The Defendants filed Affidavits in Response to the Affidavits filed in support of the injunctive reliefs sought in the Notice of Application for Court Orders. The Defendants challenge the Claimant's claim that she has an interest in the property. The 1st Defendant explains that he used his income from working on a cruise ship to purchase the subject property with no financial assistance from anyone.
- [21]** That the property was registered in the Claimant's and their sister's name on acquisition to facilitate their eligibility to obtain their United States visa. He claims that the home was made available to any family member who needed a place to stay. His parents lived there as well as several family members and their spouses and children. It was never his intention to give the home to his sister. He states that the premises in question is his only asset. He resides in one of the properties on the premises. He explains that the Claimant lives in the United States and does not pay rent for the three-bedroom property. Therefore, he is deprived of possible rental income. He is desirous of renting the property so that he may receive an income but he does not intend to sell the property as it is his only asset.
- [22]** He states that on his return from prison in the year 2012, the Claimant approached him with a view to paying rent for the premises. However, the arrangement was that she would pay the bills for both houses on the property.
- [23]** The 1st Defendant indicated that when he had asked his sisters to sign over the house to him they did so willingly. He stated that when the Claimant spoke to him and informed him that she would be getting married and would no longer be paying the bills for both houses, he indicated to her that he needed to rent the house which she previously occupied so that he would be able to pay his bills. She started paying rent and then stopped. When she stopped, he advised that she needs to vacate the premises.

- [24] He states that he made no promises or gave no assurances to the Claimant regarding the ownership of the property. He puts the Claimant to strict proof regarding monies she claims she spent on the property. In response to the Claimant's assertion that he gave her assurances and declared his promise to her in the presence of the 2nd Defendant, he denies this and so does the 2nd Defendant.
- [25] The 1st and 2nd Defendants are asking the Court to refuse the orders sought for an injunction and to make an order that the Claimant remove her belongings.

THE CLAIMANT'S SUBMISSIONS

- [26] The Claimant filed written submissions on the 13th February 2025 and further submissions on the 2nd May 2025. The Claimant urges that there is a serious issue to be tried, that damages would not be an adequate remedy and further that the balance of convenience lies in favour of the granting of the injunction.
- [27] As regards the serious issue to be tried, Counsel invited the court to consider the Court of Appeal decision of **Caren Cranston v Tamazine Samuels and Gairy Toorie** [2019] JMCA Civ 42 ("**Caren Cranston**"), particularly paragraph 60 of the judgment of Sinclair-Haynes JA where she stated as follows:

"The doctrine of proprietary estoppel was developed in equity as a species of equitable estoppel and is a remedy against the unconscionable or inequitable conduct of one party in dealing with another. The remedy is available where it is established that "one party knowingly encourages another to act, or acquiesces in the other's actions to his detriment and in infringement of the first party's rights...That party cannot later complain of the infringement of his proprietary rights, and may be forced to give up that right which he encouraged the other party to expect. It is a cause of action in equity brought by a claimant to validate his expectation that he would gain a benefit or right in the defendant's property, brought on by the conduct of the defendant in encouraging, promising or acquiescing in the Claimant's acting to his detriment based on that expectation. Estoppel then creates a new right and interest in the Claimant..."

- [28] In **Caren Cranston**, Sinclair Haynes JA also referred to the case of **Inwards v Baker** [1962] 2 QB 29. Therein, Lord Denning noted at page 448;

“It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a license coupled with an equity.”

[29] In applying the above principles, counsel has asked the Court to adopt a similar approach to consider whether a serious issue arises that:

- a) The Claimant genuinely believed that the land belonged to her brother;
- b) Based on that belief and the promises made by him, she acted to her detriment by undertaking improvements;
- c) Her actions were done with the encouragement and/ or acquiescence of the Defendant; and
- d) It would be unjust and inequitable, in all the circumstances, for the 1st Defendant now to assert his legal rights to evict her.

[30] Counsel urges that the issue of whether a promise was in fact made, or that the 1st Defendant acquiesced is a question of fact to be determined on the creditworthiness of the witnesses and therefore cannot be determined solely on the documentary evidence presented.

[31] Counsel argued that the transfer of the property by the Claimant to the 1st Defendant did not amount to a transfer of her beneficial interest. In advancing this point she invited the Court to consider the decision of **Newman Francis v Keneisha Leneisha Ann-Marie Francis** [2023] JMSC Civ 22.

[32] Counsel further argued that the Claimant's rental payments to the 1st Defendant does not necessarily amount to a relinquishing of her interest in the property. Counsel urged that another conclusion which is open to the Court is whether the agreement to pay rent is void for duress. This again Counsel urged is a triable issue.

- [33] On the issue of whether damages would be an adequate remedy should this matter be resolved in favour of the Claimant, Counsel invited the Court to find that damages would not be an adequate remedy should the Court refuse to grant the injunction and the claim is ultimately determined in favour of the Claimant. In advancing this point, Counsel relied on the Court of Appeal decision of **Kevin Sudeall & Joyce Ramdeen-Sudeall vs. Garfield Sinclair & Linsetta Sinclair** [2023] JMCA Civ 32 (“**Sudeall**”).
- [34] Counsel also urged that the balance of convenience lies in the injunctive relief being granted as the Claimant has nowhere else to put her personal items which include her furniture as this is her home in Jamaica. Counsel invited the Court to find that since the 1st Defendant indicates in his Affidavit that he has no intention of selling the property, the balance of convenience must lie in retaining the status quo.

THE DEFENDANTS’ SUBMISSIONS

- [35] Ms. Bailey urged the court to consider that there is no documentary evidence which has been presented by the Claimant which supports that any promise was made by the 1st Defendant to her. Neither is there any documentary evidence which supports the assertions that she had conducted extensive renovations to the property.
- [36] Ms. Bailey invited the Court to consider that the Claimant’s case is that although she was the legal title holder when the property was acquired, she accepted that the property belonged to the 1st Defendant. Further, that she voluntarily facilitated the transfer of the property to the 1st Defendant in the year 2021 which supports the inference that she acknowledged his interest in the property as well as her interest as a mere licensee. Counsel also asked the court to accept that the Claimant’s act of paying the bills for the property and on ceasing to do so, the act of paying rent to the 1st Defendant in the year 2023 further demonstrates and acknowledges that the property belonged to the 1st Defendant. For these reasons, the Court should find that there is no serious issue to be tried.

- [37] Counsel relied heavily on the case of **American Cyanamid v Ethicon Ltd** [1975] UKHL 1 (“**American Cyanamid**”) in seeking to establish that the ultimate question is why damages are not a sufficient remedy if the claim is ultimately resolved in the Claimant’s favour. To resolve this issue, the Court must consider whether the Claimant would suffer irreparable injury or only an injury which could be compensated in damages if the application is refused.
- [38] Counsel then referred the court to paragraph 407 of the judgment of **Wakefield v Duke of Buccleugh** (1865) 12 L.T. 628, 629 where it stated that it is only in circumstances where the material discloses a “real prospect of succeeding” in the claim for a permanent injunction at trial that the Court should go on to consider the balance of convenience. In discussing the term “real prospect of success”, counsel invited the Court to consider the case of **Swain v Hillman** [2001] 1 ALL ER 91 solely in respect of its explanation of this concept to mean a real as opposed to a fanciful prospect of success.
- [39] Counsel indicated that it is only where there is doubt as to the adequacy of the respective remedies in damages that the Court should consider the balance of convenience.
- [40] Counsel argued that the acrimonious relationship which exists between the parties makes it impractical to grant an interlocutory injunction. She explained that in such circumstances, the court will be constrained to employ the clean break approach as enunciated by Lord Briggs in his judgment in the case of **Guest and another (Appellants) v Guest (Respondent)** [2022] UKSC 27. Counsel noted that in such cases, the full enforcement of the promise which means effectively living together on the same property is impossible consequent on the toxic relationship which exists between the parties. In such cases, a monetary remedy would be imposed.
- [41] Counsel also invited the Court to find that the balance of convenience lies in refusing the injunctive relief on the basis that the 1st Defendant would be

deprived of a source of income from an asset which he owns whereas the Claimant does not reside at the premises and would only be inconvenienced through the displacement of her personal items which are on the premises. The 1st Defendant is unemployed and the Claimant has stopped paying the bills for the property. This property is his only asset from which he could earn a meaningful income.

[42] For these reasons, the Defendants seek the refusal of the orders.

ISSUES

[43] In terms of the approach to be taken in matters of this nature, I am guided by the principles as stated in **American Cyanamid**. Therefore, the issues which arise for determination are as follows:

1. Is there a serious issue to be tried?
2. Would damages be an adequate remedy?
3. Where does the balance of convenience lie?

LAW AND ANALYSIS

[44] In this matter, I bear in mind that the hearing of an interim injunction is not a trial on the merits. There has been no oral evidence taken from the Claimant or Defendants and no opportunity for cross examination. The full pre-trial process of discovery and inspection of documents has not occurred. Therefore, the case for either party has not been proved at this stage, and it is not the prerogative of the Court to determine complex legal issues which arise on the statements of case.

[45] Consequently, at this stage of the proceedings, the Court's limited role is the examination of the material before it to determine whether it discloses a serious issue to be tried, whether damages would be an appropriate remedy should this matter be resolved in favour of the Claimant or in favour of the Defendants and

lastly where the balance of convenience lies. The latter begs the question of who will suffer greater discomfort should the application be granted or refused.

- [46] I am cognizant that section 49h of the Judicature (Supreme Court) Act empowers the Court to grant injunctive relief. Further that Rule 17.1(a) Civil Procedure Rules 2002 as amended gives the Court power to grant interim reliefs which includes those sought in the present applications.

Is there a serious issue to be tried?

- [47] I have considered that the case being advanced by the Claimant is that the 1st Defendant made promises to her that the property which consist of three bedrooms would belong to her. Her claim is that acting on such promises she expended funds on the property and invested in the property rather than seeking her own and therefore acted to her detriment. She advances a case of proprietary estoppel.
- [48] As regards her claim regarding the monies expended on the property, I bear in mind paragraph 10 of the Affidavit of Shamalla McGregor filed on March 27, 2025 where she challenges that the Claimant expended significant sums of money. Nevertheless, she states that the Claimant changed some zincs on the roof, retiled the place and changed the windows, for her own benefit, to improve the aesthetics for her own comfort.
- [49] I have also considered that the case for the Defendants is that the Claimant was a licensee. It is not in dispute that the property was solely acquired by the 1st Defendant. The 1st Defendant highlights that the Claimant's name was placed on the title to assist her and their sister. He states that like other family members, the Claimant was allowed to occupy the premises. He also stated that when he returned from prison, and to date, most of the items on the property inclusive of the other premises, belongs to the Claimant. It is evident that she managed both houses and paid the bills as well for both. This is not denied. However, his case is that all this was done as a licensee. He also argues that the transfer of the title

to the property was incident free also consistent with the Claimant being a mere licensee. Further, that when the Claimant indicated she would no longer pay the bills, she started paying rent. This, the Defendants assert is consistent with her being a tenant.

[50] I have considered the case of **Caren Cranston** particularly paragraphs [60] to [73]. In applying the principles enunciated in that case to this application, I must consider whether there is sufficient material which gives rise to a serious issue to be tried regarding the following;

- a) Whether the 1st Defendant knowingly encouraged the Claimant to act, or acquiesced in the Claimant's actions to the detriment of the Claimant?
- b) Whether this created a right in the Claimant regarding the property.

[51] I find that there is a serious issue to be tried. There is unchallenged evidence that the Claimant quite separately from any other family member who was allowed to occupy the premises, paid the bills for both houses and did in fact expend monies to improve on the property. On the Defendants' own case, almost all the items in both houses were acquired by the Claimant. The Claimant also indicates that she has conducted significant repairs to the three-bedroom house. I bear in mind that at this stage of the proceedings, there is no documentary evidence to support this.

[52] However, it is noted that the 2nd Defendant does not deny that the Claimant did facilitate work on the three-bedroom house. What is in dispute is the extent of such renovations. It is a triable issue whether such raises an equity in the property and were done on the assurances of the 1st Defendant or that the latter acquiesced and should not now be allowed to deny her interest.

[53] Without making any findings on the evidence at this stage, it is clear that a triable issue arises as to whether the Claimant acted to her detriment by assuming

responsibility for all expenses related to the property, which comprises two houses, and by undertaking substantial improvements to the premises she occupied. It will be a matter for the trial to determine whether these actions were carried out in the belief that she had, or would acquire, a beneficial interest in the property.

[54] It is also a triable issue whether an individual who acknowledges that the property was placed in their name merely as a matter of convenience, and who thereafter voluntarily facilitated the transfer of the property to the person who financed its purchase, subsequently paying rent to that person, may properly be regarded as having been, first, a licensee and then a tenant, without having acquired any beneficial interest in the property. The question arises as to whether such conduct evidences an understanding that they held no proprietary interest and were only entitled to occupy the premises under licence.

[55] I consider it appropriate, by way of observation at this interlocutory stage and in light of the fact that this aspect of the evidence is undisputed, to comment briefly on the voluntary transfer of the property by the Claimant to 1st Defendant. In my view, the mere fact of such a voluntary transfer, standing alone, would not necessarily defeat any equitable interest that may be found to exist. Nonetheless, the legal significance and effect of the Claimant's voluntary act of transfer remains a live and triable issue to be determined.

Would damages be an adequate remedy?

[56] I must state that an interim injunction is an equitable remedy, and the mere existence of triable issues does not automatically warrant its grant. The Court must next consider whether damages would be an adequate remedy. If the harm alleged can be sufficiently compensated by an award of damages, then the need for equitable relief falls away. This principle reflects the well-established notion that equitable remedies, such as injunctions, are discretionary and should only be granted where legal remedies are inadequate to do justice between the parties.

- [57] In the case at bar, both the Claimant's and the Defendants' contentions are arguable. In the event that the Claimant's arguments are valid, and succeed at trial, the crucial issue is whether damages would ultimately be an adequate remedy.
- [58] Having considered the arguments advanced by the parties, I took into account the Court of Appeal decision in **Sudeall**. I found Paragraph 46 of the judgment to be instructive. It reads as follows:

*"The general principle is that where the subject matter of the dispute is real property there is a presumption that damages are not an adequate remedy because each parcel of land is said to be unique and to have a peculiar and special value. There is no evidence to refute that general principle in this case having regard to the proximity of the omitted land to Lot 1 and the commercial use to which the respondents say they have used it in the past. In the case of **Lookahead Investors Limited v Mid Island Feeds and Others (2008) Limited and Others** [2012] JMCA App 11, this court found that there are circumstances where the general rule may not apply depending on the special facts of a case. I do not find that there is any reason to depart from the general position that the omitted land and its location are unique."*

- [59] I have considered that Ms. Bailey invited the court to find that the above presumption may be rebutted based on the circumstances of the case. Her argument is that the unique circumstances of a particular case may give rise to a displacement of the presumption. Ms. Bailey invited the Court to consider the Court of Appeal decision of **Silver Sands Estate v Lorenz Redlefsen** [2022] JMCA Civ 32 ("**Silver Sands**") on this point particularly paragraph 43 where P. Williams JA states as follows:

"[43] Firstly, I am compelled to note that the first order sought in Mr Redlefsen's claim against Silver Sands was an order for "damages for breach of contract in lieu of specific performance or in addition to specific performance of the contract" (emphasis added). In the particulars of claim filed and certified by counsel on behalf of Mr Redlefsen, there was a bald assertion that "as a result of [Silver Sands', DBJ's and SPSL's] breach of contract, [Mr Redlefsen] has suffered loss and incurred costs". It is immediately pellucid that an order for an award of damages on Mr Redlefsen's claim was sufficient for him."

[60] Ms. Bailey also invited the Court to consider the following paragraph of **American Cyanamid**:

"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. 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 would 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 damage 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."

[61] In the case at bar, I am compelled to agree with Ms. Bailey that this case gives rise to circumstances where the presumption is rebutted. I have noted that the reliefs which are sought consist of a declaration of her interest in the three-bedroom premises and compensation for this interest in the property. Specifically, paragraphs c and d of the Orders sought in the Fixed Date Claim Form reads as follows;

...

"(c) A declaration regarding the Claimant's percentage interest in the said property.

(d) The Defendants are to compensate the Claimant for her interest in the said property."

[62] The fact that compensation is being sought in the substantive claim, for the realization of the said interest to which the Claimant alleges to have, creates a justification for the departure from the presumption announced in the case of **Sudeall**. How then could this Court rule that damages would not be an

appropriate remedy when the Claimant is ultimately seeking a monetary compensation?

- [63] In view of this, I find that even the Claimant has signalled that a monetary remedy is appropriate in the circumstances. Consequently, I am obliged to take a similar position to the approach of the Court of Appeal in **Silver Sands** in determining that damages would be an appropriate remedy.

Where does the balance of convenience lie?

- [64] Although **American Cyanamid** suggests that the issue of balance of convenience arises where it is unclear whether damages would be an appropriate remedy, I will nevertheless explore, briefly, the issue of the balance of convenience.
- [65] On the face of it, the 1st Defendant has indicated that he does not intend to transfer his interest in the property or to dispose of it as it is his home and only asset from which he may make a meaningful income. The evidence discloses that for years his expenses at the property were largely covered by the Claimant whilst she occupied one of the houses on the property.
- [66] Currently, the house which the Claimant occupied is locked up and the 1st Defendant is not receiving any income from it. The Claimant has stopped paying the bills for the property and rent. It is evident that the current situation will present an inconvenience for the 1st Defendant. The Claimant does not reside at the premises. However, her personal belongings remain there. Should the injunction be refused, she must find an alternative in respect of storing her personal belongings until this matter is determined. This will also inconvenience her.
- [67] Who suffers the greater inconvenience? I find that the 1st Defendant stands to suffer a greater inconvenience if this application is successful. This is so because the 1st Defendant is financially dependent on the property, resides there, and has no alternative means of support. The Claimant, while maintaining a residual

connection to the premises through the storage of personal items, does not currently reside at the property and is in a better position to mitigate any inconvenience given her financial independence.

[68] In view of this, the balance of convenience therefore lies in the refusal of applications.

CONCLUSION

[69] Consequently, the applications are hereby refused. Though there are serious issues to be tried, the Claimant's primary relief is for the recognition of her alleged interest in the property and for financial compensation in respect of that interest. Therefore, her claim is for monetary relief rather than possession or continued occupation of the premises. As such, an award of damages would sufficiently compensate the Claimant if she is successful at trial. Moreover, the balance of convenience would lie in refusing the applications, as the 1st Defendant would suffer greater hardship if the applications were granted.

ORDERS

[70] In final disposition of the matter, I make the following Orders:

- I. The orders sought in the Notice of Application for Court orders filed on the 16th January, 2025 and the 20th March 2025 are refused.
- II. The Applicant is to remove her items of property from the Defendants premises on or before the 30th September, 2025.
- III. By consent and with the agreement of the parties, the interim order made on the 17th February, 2025 and reflected as order 2(ii) of the orders made on that date, is extended to the 30th September, 2025.
- IV. Cost to the Defendants to be taxed if not agreed.
- V. Applicant's Attorney-at-Law is to prepare, file and serve this Order.

Sgd. A. Martin-Swaby
Puisne Judge (ag)