



[2023] JMSC Civ. 143

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. SU2021CV05172**

**BETWEEN ANGELLA WEBSTER CLAIMANT**

**A N D FRANCENE SYLVIA SMITH DEFENDANT**  
**(Executrix Estate Sylvia Mae Tennyson)**

**IN CHAMBERS (VIA VIDEOCONFERENCE – ZOOM PLATFORM)**

**Ms. Sacia Anderson Attorney-at-Law for the Claimant**

**Ms. Sasha Lee Hutchinson Attorney-at-Law instructed by H.S. Dale & Co. for the Defendant**

**HEARD: July 14 and 21, 2023**

**Application for Injunction – Application for Declaration of Interest in Property – Whether or not Interim Injunction should be granted – Whether There is a Serious Issue to be Tried – Whether or not the Title of the deceased was extinguished via adverse possession – Sections 4, 9 and 30 of the Limitation of Actions Act.**

**STAPLE J (Ag)**

## BACKGROUND

- [1] The Claimant is seeking to protect an interest she asserts she has acquired in a parcel of land situated at 22 West Baptist Avenue, Port Antonio in Portland registered at Volume 1197 Folio 728 of the Register Book of Titles. The Defendant is the Executrix of the probated Last Will and Testament of the deceased Sylvia Mae Tennyson who was the titular owner of the said property. The Defendant has now been endorsed as the titular owner through the process of transmission.
- [2] The Claimant was the tenant of the deceased. There is a factual dispute as to whether or not she ceased being a tenant and became a licensee or whether or not she remained a tenant or became a tenant at will of the deceased prior to the death of the deceased.
- [3] In any event, the Claimant is asserting that the deceased had lost her title to the property by virtue of the **Limitation of Actions Act (LAA)** and therefore the property does not form part of the estate of the deceased as a matter of law.
- [4] The Defendant disputes the contention that the deceased had lost her title to the property under the LAA and contends that the Claimant is still a tenant in possession and now a tenant of the estate.
- [5] The Claimant now brings this application for an injunction to prevent the Defendant, as Executor, from bringing any action for ejectment against her (the Claimant). The Claimant is right to fear as an action for ejectment was instituted against her by the Defendant in the Parish Court. The action was discontinued on institution of this claim, but the fear remains a live one unless the Defendant is restrained. The Claimant is also fearful of the Defendant making any dealing or transaction with the property to defeat her asserted interest.
- [6] The Defendant's contention is that there is no need for an injunction as the threat of the action of ejectment has completely dissipated by virtue of the action in the Parish Court being discontinued. In addition, she argues that the injunction, if

granted, would do harm to the Defendant's emotional state by making it appear as though the Defendant has lost.

- [7] Before I go fully into the substance of the documents presented, I must point out that there is no affidavit in response from the Defendant. The document filed by the Defendant on the 22<sup>nd</sup> November 2022 is not an affidavit as it does not, on its face, purport to be given on oath. In the recital on page one, the critical words, "being duly sworn" are missing. In the circumstances, it is not an affidavit. However, in the event I am wrong on that point, I still gave consideration to the substance of the document.

### **THE UNDISPUTED FACTS**

- [8] The agreed facts are essentially that at some point in February 1986 the Claimant was put into possession of the property by the deceased as a tenant of the deceased. The deceased was, at the time, the owner of the property. The deceased was not resident in Jamaica.
- [9] This was a lease and there was no written lease agreement. The lease was paid monthly. At some point, the Claimant ceased paying rent to the deceased. Why she stopped paying rent is contentious. It is contentious as the Claimant has now asserted that she stopped paying rent because the deceased had told her to stop paying rent in 1989. This is a hearsay statement and is not, I find, admissible and I will not rely on same. I say it is hearsay as the Claimant is relying on the statement as proof of truth of the facts therein.
- [10] The deceased died on the 13<sup>th</sup> April 2004 having stopped receiving rent from the Claimant and having not taken any action against her for the recovery of rent or the property prior to her death.
- [11] The Claimant asserts that she performed certain actions on the property such as planting various crops, doing repairs to the dwelling home on the property and

doing repairs on a portion of the land that was swampy to make it useable. These actions were not disputed by the Defendant.

- [12] It was not until 2016 that the Defendant, or anyone, took any definitive action to eject the Claimant from the property. Indeed, no court action was initiated against the Claimant until February 1, 2021 in the Portland Parish Court. This action has now been discontinued in light of this claim.

### **DISPUTED FACTS**

- [13] There is heavy factual dispute between the parties as to the nature of the Claimant's occupation of the property. The Defendant contends that the Claimant is still a tenant of the estate. The Claimant is asserting that her tenancy ended in 1989 when the deceased told her she could remain on the property if she fixed up the place (the property had suffered damage from Hurricane Gilbert the year before). As I said earlier, this statement is hearsay and inadmissible. But what is clear is that there is no evidence from either side that the Claimant paid rent to the deceased or the estate of the deceased after 1989.
- [14] Counsel for the Claimant asserts that the Claimant was, by that act, a licensee. But this is a matter for the ultimate tribunal of fact to determine and for these purposes, it is not necessary to determine this issue.
- [15] What the Defendant asserted is that there was an arrangement with a Miss Roper for her to be the agent of the deceased when she went overseas, for the Claimant to pay the rent to Ms. Roper. But there is no evidence that Ms. Roper collected the said rent at all. Ms. Roper is now dead.
- [16] Discussions alleged by the Defendant to have taken place between herself and the Claimant in 2006 were disputed by the Claimant.

## THE GENERAL LAW ON INJUNCTIONS

[17] As this is an application for an interim injunction, the Court had regard to the well-established guidelines from the celebrated cases of ***American Cyanamid Co v Ethicon Limited***<sup>1</sup> and the judgment of Lord Diplock. This was further affirmed in the local Privy Council decision of ***NCB Limited v Olint Corporation***<sup>2</sup> (hereinafter *Olint*). These considerations are:

- (i) Is the Claimant's case frivolous or vexatious? Meaning, is there a serious issue to be tried?
- (ii) If the answer to the above is no, then the injunction ought not to be granted. If the answer is yes, then I must next consider whether or not damages would be an adequate remedy.
- (iii) If there is no clear answer to the question of whether or not damages would be an adequate remedy to compensate either the Plaintiff or the Defendant, then I will go on to examine the balance of convenience generally;
- (iv) If, after considering the balance of convenience generally, the Court is still unable to come to a definitive conclusion, and there are no special factors, it is advisable to have the status quo remain.

[18] In the case of ***Tapper v Watkis-Porter***<sup>3</sup> Phillips JA stated that, "An analysis of the balance of convenience entails an examination of the actual or perceived risk of injustice to each party by the grant or refusal of the injunction"

[19] Earlier in the said judgment at paragraph 36, she adumbrated and distilled the principles on the concept of the balance of convenience from the ***American Cyanamid and the Olint*** cases. I can do no better than to quote from the eminent jurist:

*In considering where the balance of convenience lies, the court must have regard to the following:*

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<sup>1</sup> [1975] 1 All ER 504

<sup>2</sup> Privy Council Appeal No. 61/2008, April 28, 2009.

<sup>3</sup> [2016] JMCA Civ 11 at para 37

- (i) *Whether damages would be an adequate remedy for either party. If damages would be an adequate remedy for the appellant and the defendant can fulfil an undertaking as to damages, then an interim injunction should not be granted. However, if damages would be an adequate remedy for the respondent and the appellant could satisfy an undertaking as to damages, then an interim injunction should be granted.*
- (ii) *If damages would not be an adequate remedy for either party, then the court should go on to examine a number of other factors to include the risk of prejudice to each party that would be occasioned by the grant or refusal of the injunction; the likelihood of such prejudice occurring; and the relative strength of each party's case.*

**[20]** At the end of the day though, the Court should try to take the course that will result in the least irremediable prejudice to either party<sup>4</sup>.

## **ISSUES**

**[21]** In keeping with the principles as set out in the cases above, the Court considers the following to be the issues involved in deciding whether or not to grant the relief sought:

- (i) *Is the Claimants' case frivolous or vexatious? Meaning, is there a serious issue to be tried?*
- (ii) *If the answer to the above is no, then the injunction ought not to be granted. If the answer is yes, then I must next consider the balance of convenience generally;*
- (iii) *If, after considering the balance of convenience generally, the Court is still unable to come to a definitive conclusion, and there are no special factors, it is advisable to have the status quo remain?*

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<sup>4</sup> Id

## ISSUE 1 – IS THE CLAIMANT’S CLAIM FRIVOLOUS OR VEXATIOUS?

[22] At this stage I will say that there is a serious issue to be tried.

[23] There is more than sufficient evidence on the part of the Claimant that she may have dispossessed the deceased before she died or at worst, the property no longer forms part of the estate of the deceased as more than 12 years would have passed since the time for the taking of action for ejectment of the Claimant arose before any action for ejectment took place in 2021.

[24] We turn to the LAA, in particular, ss. 3, 4(a) and (b) and 9. Section 3 states as follows:

*“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.”*

[25] Sections 4(a) and (b) state as follows:

*4. The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say-*

*(a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or **was** so received;*

*(b) when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such **possession** or receipt in respect of the **same** estate or interest until the time of his death, and shall have been the last person entitled to such estate or*

*interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death.*

- [26] Therefore, based on section 4(a), time starts to run for the titular owner from the date they were dispossessed, they discontinued possession **or the last time such rent or profit was received by them** from the person from whom such rent or profit was due (emphasis mine). In the case of 4(b), time starts to run from the date of **death** of the titular owner who was entitled to the rent or profits (assuming such rent or profits were being paid over to the titular owner). In other words, if for 12 years you have stopped collecting rent as a landlord, you have given up your entitlement to the property.

Section 9 says as follows:

*“When any person shall be in the possession or in the receipt of the profits of any land, or in the receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry, or bring an action for the recovery of such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy at which time such tenancy shall be deemed to have determined...”*

- [27] This section shows that in the case of a tenant at will, time starts to run from the end of the tenancy at will or one year after the start of the tenancy at will when it is deemed that the tenancy at will comes to an end.

- [28] Section 30 of the LAA provides that once the 12 year time period has run, the title and right of the titular owner to bring an action for ejectment ends. Section 30 says as follows:

At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.



[29] The evidence presented suggests that the Claimant was either a tenant, a tenant at will or a licensee of the deceased at the time of the death of the deceased on the 13<sup>th</sup> April 2004. Time would start to run for the deceased/her executrix to bring an action for ejection against the Claimant from the following dates depending on what status the Claimant had:

- (i) Assuming she was a tenant; in 1990 when the Claimant stopped paying rent; or
- (ii) Assuming she was a tenant at will; in 1990 when the Claimant stopped paying rent; or
- (iii) On the 13<sup>th</sup> April 2004 when the license would have terminated as a result of the death of the deceased<sup>5</sup>.

[30] The uncontradicted evidence is that neither the deceased nor the executrix took any action to eject the Claimant or renew the lease or collect rental or anything of that nature before 2021 when the claim in the Portland Parish Court was filed.

[31] ***Ramnarace v Lutchman***<sup>6</sup> makes it clear that the service of a notice to quit, without more, is not sufficient to stop time running for the purposes of the LAA.

[32] Thus the evidence, which I find and accept, tends strongly to suggest that from 1989 up to the time of filing of the action in the Portland Parish Court, the Claimant would have been in possession of the subject property without the payment of rent. This suggests that the time for the deceased to take action against the Claimant would have expired in 2002 (from 1990-2002).

[33] If she was a licensee, the time for the deceased or the estate to have taken action against her would likely have expired from at latest 2016 which would have been 12 years from April 13, 2004 when the deceased owner died. The first notice to quit was not even served until June of 2016. Even if this notice to quit would have

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<sup>5</sup> *Meeruppe Sumantissa Terunnarve v Warakapitiye* [1968] AC 1086 per Lord Devlin at pp. 1095-96.

<sup>6</sup> (2001) 59 WIR 511

been sufficient to arrest time in the best case scenario for the Defendant, it would have been too late as the 12 years would have expired from April 14, 2016.

**[34]** In that regard, there is quite evidently, a serious issue to be tried and so the Claimant passes the first test.

**Would damages be an adequate remedy for the Claimant?**

**[35]** I do not find that damages would be an adequate remedy for the Claimant. The Claimant has been in occupation of the land for over 30 years. She has sunk quite a lot of time, money and sweat equity into the property. There is no evidence that she has any other place to live at this time. Damages, I find, is not going to be a sufficient remedy to compensate the Claimant for the loss of her home.

**[36]** On the other hand, the evidence presented does not disclose whether or not damages would be an adequate remedy for the estate. Unfortunately, the Will of the deceased was not exhibited and so it is difficult for me to state for any certainty if there are any beneficiaries who are being kept out of the property or any special purpose for the property in the Will that the Executor is to perform or if the property is the only asset of the estate of the deceased which would make it of special value.

**[37]** In any event, by operation of s. 30 of the LAA, it is quite arguable that this property no longer forms part of the estate of the deceased as from the moment the 12 year time limit expired, the title of the deceased and any person claiming through the deceased, including the Defendant, expired.

**[38]** I am also quite satisfied that in this case, the balance of convenience rests with the Claimant. The evidence suggests, strongly, that the Claimant is in need of greater protection by the injunction and more harm would result to the Claimant in not granting the injunction than would result to the Defendant if it were not refused.

## **CONCLUSION**

**[39]** In the circumstances, I am satisfied that the Claimant is entitled to the injunction applied for and I will grant it as prayed.

## **DISPOSITION**

- 1 The Respondent/Defendant, whether by herself, her agents or servants are restrained from taking any step or steps by way of sale, assignments of rights, title or interest which she now purports to have in the property registered at Volume 1560 Folio 130 (formerly registered at Volume 1197 Folio 728) of the Register Book of Titles and from doing any act or acts whatsoever to create any rights, title or interest to herself, 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 until the determination of this matter.**
- 2 The Applicant/Claimant gives her undertaking as to damages.**
- 3 Costs to the Applicant/Claimant to be taxed if not agreed.**
- 4 Claimant/Applicant's Attorney-at-Law to prepare, file and serve this Order on or before July 28 2023 by 4:00 pm.**

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**Dale Staple**  
**Puisne Judge (Ag)**