[2019]JMSC Civ 108

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 01118

IN THE MATTER of an Application to be registered as proprietor of land already brought under the Registration of Titles Act and being in possession in all that parcel of land part of WINDSOR CASTLE in the parish of Portland, containing by survey 4105 square metres of the shape and dimensions and butting as appears by Certificate of Title thereof bearing DP Number 1134 surveyed by, Duel Thames on June 20, 2012 being the Lot numbered 176 on the subdivision plan and being the land comprised in Certificate of Title registered at Volume 1005 Folio 455 and bearing Valuation number 09302005033-9 (hereinafter called "the said land").

AND

IN THE MATTER of an Application by RENFORD CATO to the Registrar of Titles to be registered as the legal owner by virtue of Adverse Possession.

AND

IN THE MATTER of Sections 43 and 44 of the Registration of Titles Act.

BETWEEN	**ALVAN POWELL**	**CLAIMANT**
AND	**RENFORD CATO**	**DEFENDANT**

IN CHAMBERS

Mrs. Barbara Barnaby and Ms. Tavia Dunn for the Claimant

Mrs. Angella Cousins-Robinson instructed by H. S. Dale & Company for the Defendant

Heard:18th November, 2013, 18th March, 2014, 4th June, 2014, 20th November, 2014, 16th December, 2014, 16th June, 2015, 23rd July, 2015, 20th October, 2015, 13th April, 2015, 25th May, 2016 & 30th May, 2019.

Real Property–Lot 176 registered at Volume 1005 Folio 455 of the Register Book of Titles in dispute - Fixed Date Claim Form filed seeking Declaration, Orders and Interlocutory Injunction- Orders and Declaration abandoned leaving Interlocutory Injunction - Can the Court make the Interlocutory Injunction final.

Cor: Rattray, J.

THE BACKGROUND

[1] The instant claim is about an all too familiar dispute in Jamaica, surrounding the ownership of land, the importance of which cannot be overstated. The contention between the Claimant, Alvan Powell, and the Defendant, Renford Cato, centered around the ownership of Lot 176, located at Windsor Castle in the parish of Portland and registered at Volume 1005 Folio 455 of the Register Book of Titles, in respect of which both men are claiming ownership.

[2] Alvan Powell is the registered proprietor of the adjoining property, Lot 175. It is his contention that he has known Lot 176 for many years, and that the property remained abandoned and unattended to and eventually became a nuisance to his property. Consequently, in or around the year 2000, Mr. Powell stated that he sought to ascertain the identity of the owners of Lot 176, as it was his intention to

purchase the said property. He pointed out that he was informed that the registered proprietors of Lot 176 were Rupert and Eulalee McAnuff, who held the property as joint tenants and who were both deceased.

[3] The Claimant contended that he made contact with the deceased proprietors' son, Courtney McAnuff, whom he believed was the legal beneficiary of his parents' Estate. Mr. Powell further contended that he entered into a sale agreement with Courtney McAnuff to purchase Lot 176, and that he paid the total purchase price to him. He argued that the acquisition of the property was completed in or about 2005. He further argued that he has been continuously maintaining Lot 176 for the past twelve (12) years, with open and continuous occupation and exercising all acts consistent with being the owner. It is by virtue of the sale by Courtney McAnuff to Alvan Powell that Mr. Powell initially claimed ownership of Lot 176.

[4] The Defendant on the other hand refuted the Claimant's right to ownership of Lot 176 and asserted that he is the rightful owner of the property, by virtue of adverse possession. It is his contention that he has known the property for well over forty-three (43) years, when it was in the possession of his uncle, Joel Cato, who prior to his death gave him permission to be on the land.

[5] Furthermore, it is the Defendant's contention that he has been in sole, undisturbed and continuous possession of Lot 176 for well over twelve (12) years and has been paying the property taxes and using the property as his farmland. Consequently, he has made an application to the Registrar of Titles to be registered as the owner of the property and for a Certificate of Title to be issued in his name.

[6] Subsequently, the Claimant commenced these proceedings seeking a declaration that he is the fee simple owner of Lot 176, and also for an Order to restrain the Registrar of Titles from issuing a Certificate of Title to the Defendant.

THE CLAIM

[7] These proceedings were commenced with the filing of an Ex-Parte Notice of Application for Court Orders filed on the 25th February, 2013, in which the Claimant sought the following reliefs from the Court: -

1. An Order restraining the Registrar of Titles from proceeding to register and effect any transfer and/or any interest in respect of property registered at Volume 1005 Folio 455 to the Defendant and/or any third party other than the Claimant, until after determination of the matter herein;

2. An Order that the Registrar of Titles provide the Claimant's Attorney-at-Law with a copy of the Defendant's application, pursuant to document dated January 15, 2013 sent by registered post to the Claimant;

3. An Order that the Defendant's application pursuant to document dated January 15, 2013 from the Registrar of Titles be discontinued forthwith and/or put on hold pending the outcome of this application;

4. A Declaration that the Claimant is the fee simple owner of the property at Lot 176 Windsor Castle in the parish of Portland registered at Volume 1005 Folio 455;

5. An Order that the Registrar of Titles allow the Applicant to make an application for the Certificate of Title to be registered in the Applicant's name and/or his nominee(s);

6. An Order that the property at Lot 176 Windsor Castle in the parish of Portland registered at Volume 1005 Folio 455 be transferred into the name of the Claimant and/or his nominee(s);

7. Such further or other relief as this Honourable Court deems fit;

8. Costs and Attorney's Costs;

9. That pursuant to the Rules, the Court grants this Order even though a Claim has not been filed, on the Applicant's undertaking to file one on or before five (5) days of the date of the hearing of this application;

10. That the Court fixes a date for further consideration of this application pursuant to Rule 17.4(5) of the **Civil Procedure Rules (CPR)**.

[8] On the 26th February, 2013, D. McIntosh J. heard the Claimant's Ex-Parte Notice of Application for Court Orders and granted Orders 1-3 (supra) of the said Application until the determination of the matter. Thereafter, on the 4th March, 2013, the Claimant filed his Fixed Date Claim Form seeking the following reliefs, being the same as those sought in his Ex-Parte Notice of Application for Court Orders, with the exception of the Orders sought at numbers 9 and 10 above: -

1. An Order restraining the Registrar of Titles from proceeding to register and effect any transfer and/or any interest in respect of property registered at Volume 1005 Folio 455 to the Defendant and/or any third party other than the Claimant, until after the trial or determination of the matter herein;

2. An Order that the Registrar of Titles provide the Claimant's Attorney-at-Law with a copy of the Defendant's application, pursuant to document dated January 15, 2013 sent by registered post to the Claimant;

3. An Order that the Defendant's application pursuant to document dated January 15, 2013 from the Registrar of Titles be discontinued forthwith and/or put on hold pending the outcome of this application;

4. A Declaration that the Claimant is the fee simple owner of the property at Lot 176 Windsor Castle in the parish of Portland registered at Volume 1005 Folio 455;

5. An Order that the Registrar of Titles allow the Applicant to make an application for the Certificate of Title to be registered in the Applicant's name and/or his nominee(s);

6. An Order that the property at Lot 176 Windsor Castle in the parish of Portland registered at Volume 1005 Folio 455 be transferred into the name of the Claimant and/or his nominee(s);

7. Such further or other relief as this Honourable Court deems fit;

8. Costs and Attorney's Costs.

[9] When the matter came up for trial in Chambers, Counsel for the Claimant in her oral submissions, as well as in her written submissions filed on the 16th October, 2015, decided to abandon Orders 4-6 of the Fixed Date Claim Form, as she conceded that in light of the case of **George Mobray v Andrew Joel Williams** [2012] JMCA Civ. 26, her client could not pursue the reliefs sought. In that case it was highlighted that in an unadministered estate, a beneficiary acquires no legal or equitable interest therein, but is entitled to a chose in action. Harris JA, in delivering the judgment of the Court, eloquently expressed the principle of law as follows: -

> *"[23] On the death of an intestate, his estate devolves on and vests in his personal representative upon a grant of letters of administration and remains so vested until the completion of the administration process…There are a number of English authorities, dealing with testate and intestate succession, which show that although a beneficiary is entitled to share in the residuary estate, he/she has no legal or equitable interest therein"*

[10] The learned Judge of Appeal went on to posit that: -

> *"[28] At the date of the purported sale of the land by Emmanuel, Rachael's estate remained unadministered. Accordingly, until a grant of administration is obtained, the legal estate remains vested in her estate. After a grant of administration is obtained, the assets of her estate vests in the administrator. Emmanuel, although a beneficiary of her estate would not have been entitled to any legal or equitable right therein. He could not have had the right to sell any of the assets of the estate or pass title at the time he is said to have sold the land. He would only have been entitled to a chose in action in the unadministered estate. Such chose in action is a transmissible interest enabling him to receive the benefits which*

may accrue to him from the estate. The appellant, as the administrator of Emmanuel's estate, would not have been under any obligation or duty to honour any sale carried out by Emmanuel."

[11] On the uncontroverted evidence before this Court, the registered proprietors of Lot 176 were Rupert and Eulalee McAnuff, who held the property as joint tenants. Rupert McAnuff predeceased his wife, Eulalee McAnuff on the 4th March, 1986. Based on the principle of jus accrescendi (the right of survivorship), the entire interest in Lot 176 would pass to his widow Eulalee McAnuff. However, she subsequently died on the 13th October, 2000, before any purported sale of the said property to the Claimant.

[12] At the time of the trial, there was no evidence before this Court to indicate that Eulalee McAnuff's Estate had been administered, nor whether the process had begun and further whether Courtney McAnuff was solely beneficially entitled to the property under his mother's Estate. I am satisfied on the evidence before this Court, that when the Claimant Alvan Powell purported to buy Lot 176 from the purported beneficiary Courtney McAnuff, he, Mr. McAnuff had no legal nor beneficial interest in the property to pass to Mr. Powell. The Estate of Eulalee McAnuff was unadministered at the time of the purported sale and as a consequence, Courtney McAnuff was in no position to pass a good title to the Claimant.

[13] In light of this, bearing in mind that Counsel on behalf of the Claimant had abandoned Orders 4-6 of the Fixed Date Claim Form, and D. McIntosh J. had already granted Orders 1-3, then the inevitable consequence is that the Claimant has no further claim with which to proceed, having abandoned his substantive cause of action. The only reliefs then remaining on the Fixed Date Claim Form, are the injunctive reliefs claimed in Orders 1 and 3, which are still in effect, as they were to remain in force until the determination of the claim.

[14] It is therefore Orders 1 and 3 of the Fixed Date Claim Form, pertaining to the interlocutory injunctions sought, that the Claimant has urged this Court to make final.

ISSUE

[15] The crucial question for determination at this stage of the proceedings, is whether the Court, in exercising its discretion, can grant a final injunction in circumstances where the Claimant has abandoned his substantive claim or cause of action?

THE CLAIMANT'S SUBMISSIONS

[16] Counsel for the Claimant indicated to the Court that the Defendant asserts title to Lot 176 by virtue of adverse possession and has made an application pursuant to **The Registration of Titles, Cadastral Mapping and Tenure Clarification (Special Provisions) Act** (referred to herein as "the Act"), to be registered as the proprietor of the said land. Section 10 (1) of the Act provides that: -

> *"A beneficiary may make an application if that beneficiary-*
>
> *(a) has purchased or received the land by way of gift, or is claiming through any person who has purchased or received the land by way of gift;*
>
> *(b) is in sole, open, quiet, undisputed continuous and undisturbed possession of the land, whether by himself, his servants, agent or tenants, for any period which, when added to any other period or periods of possession as aforesaid by his predecessors who hold the title in fee simple, amounts to at least twelve years or, where the property is owned by the Crown, sixty years; and*
>
> *(c) is in possession of the land on the date of the application."*

[17] She submitted that the criteria stipulated by section 10 (1) of the Act was cumulative and that an application pursuant to the Act must strictly comply with the said requirements. Counsel insisted that the Defendant does not satisfy section 10 (1) (a) of the Act, because his uncle, Joel Cato, was a mere contractual licencee and could not make a gift of the property to him. She argued that in the absence of a clear intention to the contrary, the Defendant was a mere contractual licencee and on the death of his uncle, he remained at the will of the personal representatives of his uncle's Estate.

[18] Counsel further submitted that section 10 (1) (b) and (c) of the Act was a codification of the common law principles of adverse possession. She contended that in order to establish adverse possession, the Defendant has to show both factual possession and the intent to possess the land for a period of at least twelve (12) years. She cited the case of **Powell v McFarlane** (1977) 38 P & CR 452 ChD, where Slade J at pages 470-471, outlined the basic principles relating to the concept of possession as follows: -

> *"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*
>
> *(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").*
>
> *(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. . . Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.*
>
> *(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in Littledale v. Liverpool College [1900] 1 Ch 19, 23, CA . . . as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one,*

> *because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."*

[19] Counsel also cited the case of **JA Pye (Oxford) Limited v Graham** [2003] 1 A.C. 419, where Lord Hope of Craighead opined at page 445 that: -

> *"The general rule, which English law has derived from the Roman law, is that only one person can be in possession at any one time. Exclusivity is of the essence of possession. The same rule applies in cases where two or more persons are entitled to the enjoyment of property simultaneously. As between themselves they have separate rights, but as against everyone else they are in the position of a single owner. Once possession has begun, as in the case of the owner of land with a paper title who has entered into occupation of it, his possession is presumed to continue. But it can be transferred from one person to another, and it can also be lost when it is given up or discontinued. When that happens, possession can be acquired by someone else. The acquisition of possession requires both an intention to take or occupy the land ('animus') and some act of the body ('corpus') which gives effect to that intention. Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action. Both aspects must be examined, and each is bound up with the other."*

[20] Counsel for the Claimant insisted that the principle of adverse possession required the Defendant to be in actual physical possession of the land in dispute. This possession she argued must be exclusive and cannot be shared and must be without interruption for a certain period of time. She contended that the Defendant had not exercised any rights of ownership and/or of being in undisturbed, quiet, open and continuous possession of Lot 176. The Defendant she insisted, has never been in possession of the property and has not conducted any acts of ownership.

[21] Counsel contended that it was her client who has been in continuous occupation of Lot 176 since in or around 2000. Furthermore, she argued that it was her client who has been continuously maintaining the property for the past twelve (12) years, with open and continuous occupation, and exercising all acts consistent years, with open and continuous occupation, and exercising all acts consistent with being the owner, such as the fencing, cleaning, building a driveway and the constructing of a house. Counsel also insisted that the exclusivity of her client's possession of the property was shown by the erection of a gate and fence, thereby barring the Defendant from entering the property.

[22] Moreover, she submitted that the acts of possession being relied on by the Defendant, occurred before 2000 and not at the time his application was made to the Registrar of Titles. Furthermore, if which is not accepted, the Defendant was in possession of the said property prior to 2000, such possession was discontinued by her client entering into possession of the property. In addition, she submitted that the Defendant, in his application to the Registrar of Titles did not disclose that it was her client, who was in physical possession of the property, and not the Defendant.

[23] Counsel insisted that the Defendant's evidence of adverse possession does not meet the criteria stipulated by the Act. Furthermore, there was no evidence provided by him to prove that he was in actual possession of the property at the time of making his application, as required by the legislation and by case law. She argued that the Defendant's application hinges on his proof of sole, open, quiet, undisputed, continuous and undisturbed possession of Lot 176 over an extended period, and further being in possession at the time of the application to the Registrar of Titles. Counsel maintained that the Defendant had not taken any steps or exercised any control over Lot 176 for at least ten (10) years, being the period from 2000 or 2002-2012, and even to the present day.

[24] Further, she raised the issue that, even if the Defendant was to assert that he had acquired title to the land since 1991, the fact that he was not currently in possession and had taken no prior step to initiate a claim as regards ownership of the property, weakens his position in the context of his claim and certainly in the context of his application. Counsel submitted that a failure on the part of the

Defendant to prove possession at the time of his application to the Registrar of Titles was detrimental to his application, and it must fail.

[25] In concluding, Counsel for the Claimant urged the Court to grant the Orders as sought so as to bar the Defendant from making his application under the Act to be registered as the owner of the property and for the Registrar of Titles to issue a Certificate of Title in that regard.

THE DEFENDANT'S SUBMISSIONS

[26] Counsel for the Defendant argued that the Claimant cannot claim adverse possession to Lot 176, as his entry on the property was as a purchaser. She maintained that the Claimant acknowledged himself as the purchaser of the property and entered same with that intention. Further, she insisted that he has never described himself as a squatter, and the receipts and correspondence showed a clear acknowledgement on his part that Courtney McAnuff had a better title to the property than he had.

[27] In addition, she argued that it was undisputed that the land was not owned by Joel Cato, and any permission he gave could not be seen as the consent of the owner. Therefore, she submitted that the permission given does not render nugatory her client's claim for adverse possession. Her client she maintained has been in sole, undisturbed, undisputed, quiet and open possession of Lot 176 prior to and subsequent to 1979.

[28] Counsel in her conclusion urged the Court to reject the Claimant's claim as set out in his Fixed Date Claim Form, because his claim to the property by adverse possession must fail, as his entry onto the land was not as a squatter but as a purchaser. Counsel insisted that the Claimant was on the property by agreement with a person holding himself out as the owner. Further, she contended that the right of the paper owner to the title of the land was extinguished well before 2000 or 2001. She argued in fact, that the right was extinguished early in the mid

1990's. Consequently, she maintained that the claim is statute barred pursuant to section 3 of the **Limitation of Actions Act**, which 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."*

ANALYSIS AND DISCUSSION

[29] It is necessary before outlining the legal principles to guide this Court and before embarking on a further examination of the matter, to recapitulate the injunctive reliefs, as outlined in Orders 1 and 3 of the Fixed Date Claim Form, that the Claimant seeks to make final: -

i) An Order restraining the Registrar of Titles from proceeding to register and effect any transfer and/or any interest in respect of property registered at Volume 1005 Folio 455 to the Defendant and/or any third party other than the Claimant, until after the trial or determination of the matter herein.

iii) An Order that the Defendant's application pursuant to document dated January 15, 2013 from the Registrar of Titles be discontinued forthwith and/or put on hold pending the outcome of this application.

[30] In Jamaica, the power of the Supreme Court to grant an injunction is enshrined in **The Judicature (Supreme Court) Act**, at section 49 (h) which reads: -

> *"…an injunction may be granted…by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just..."*

Rule 17. 4 of the **CPR** also provides procedural guidance to the Court on applications for injunctive relief.

[31] The learned author of the text, **Injunctions**, 9^{th} edn, David Bean Q.C. at page 4 stated that in order to obtain an injunction, there is one overriding requirement that must exist: -

> *"...the Applicant must have a cause of action in law entitling him to substantive relief. An injunction is not a cause of action (like a tort or a breach of contract) but a remedy (like damages) ..."*

[32] It is well settled law that an injunction is not a cause of action, but is ancillary to a cause of action. Lord Diplock at his articulate best explained this principle, when he opined in the case of **Siskina (Owners of Cargo) and Others v Distos Compania Naviera S.A** [1979] A.C. 210, at page 256, that: -

> *"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."*

[33] That principle enunciated by Lord Diplock in **Siskina** (supra), was further developed by Lord Mustill in the case of **Channel Tunnel Group Limited v Balfour Beatty Construction Limited** [1993] A.C. 334, where he posited at page 360 that: -

> *"Although the words of section 37 (1) and its forebears are very wide it is firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their implication is subject to severe constraints..."*

[34] At page 362 he continued: -

> *"...the doctrine of the* Siskina, *put at its highest, is that the right to an interlocutory injunction cannot exist in isolation, but is always incidental to and dependant on the enforcement of a substantive right, which usually although not invariably takes the shape of a cause of action."*

[35] The case of **Kathleen Morrison and Ors v Herma Lemond** (1989) 26 JLR 43, offers helpful guidance to the Court. In that particular case, the claim by the Respondent was primarily for a declaration that she was the fee simple owner, and the person entitled to take possession of land situated in Moneague in the parish of St. Ann. She also sought an injunction, and damages for trespass, claiming that the Appellants had encroached on her land. The injunction was granted by the learned Master, and the Appellants consequently appealed the decision. The Respondent in her evidence deponed that she was beneficially entitled to the land under the Will of Eric Hemming, who died on or about the 30th January, 1984, and that she had assumed possession from and since that date. Further, a photocopy of an unprobated Will purportedly executed by Eric Hemming, on the 23rd April, 1983, was exhibited to the Respondent's Affidavit. The Appellants she conceded, were the owners and or occupiers of the adjoining land. A perusal of the Will indicated a devise to the Respondent of the remainder of the testator's land after the expiry of a life interest given to the testator's wife, who, the Respondent deponed, died on the 24th September, 1984. The 1st Appellant on behalf of all the Appellants, asserted an equitable fee simple ownership to the area of land they possessed. She claimed through a Memorandum of Sale dated the 3rd June, 1980, executed by Eric Hemming to her husband, which her husband subsequently assigned to her. She exhibited both documents to her Affidavits.

[36] Campbell JA, in allowing the Appeal and delivering the judgement of the Court expressed at page 44 that: -

> *"...On the assumption that the will is valid, the Respondent would at best be an inchoate equitable owner with the executors named in the Will of Eric Hemming being the legal owners. Only after probate has been granted of the will would her inchoate estate and/or interest in the land become certain and even then it would, until an assent is given by the executors, remain an equitable estate or interest...In such circumstances no interlocutory injunction could properly be ordered against the 1st Appellant because there was no existing estate or interest, legal or equitable, vested in the Respondent in support and protection of which the interlocutory order was being issued..."*

[37] The Court was of the view that although the Respondent had been in possession of the property from 1984, she did not have an existing equitable or legal interest in the property that required protection by the Court. On the facts of the instant case, the Claimant is insisting that he has been in possession of Lot 176 for well over twelve (12) years and asserts that he is the fee simple owner of the property. He has therefore sought a declaration to that effect from this Court. However, the Claimant has since abandoned his claim to an interest in the property, whether legal or equitable. This in my view, would indicate that he is in the same position as the Respondent in the above mentioned case of **Kathleen Morrison and Ors v Herma Lemond**.

[38] Reference is also made to the case of **Wild Harbour Jamaica Limited v MBJ Airports Limited**,(unreported), Supreme Court, Jamaica, Claim No. 2009 HCV 02553, a judgment delivered on the 2nd June, 2009. In that case, the Claimant and the Defendant entered into a Retail Module Licence Agreement for a period of one year, commencing on the 15th March, 2006, and ending on the 14th March, 2007, under which the Claimant was permitted to operate a kiosk at the Sangster International Airport. The Claimant contended that on the expiration of its first licence, a new licence was entered into for a two-year period commencing the 18th June, 2007 to 17th May, 2009, but it was accepted by both parties that that licence was never executed. By letter dated 15th April, 2009, the Defendant wrote to the Claimant giving notice of cancellation of the licence with effect on the 17th May, 2009, the date on which the second licence had it been executed, would have expired. The Claimant contended that the notice was in breach of Article 28 of the second licence, which provided for cancellation or termination at any time by 90 days in writing. As a consequence, the Claimant commenced proceedings against the Defendant, by way of Claim Form seeking four orders for injunctive relief, and damages for loss of business. The main argument put forward by the Defendant was that no cause of action had been shown on the face of the Claimant's pleadings, and that on a consideration of the applicable principles with respect to the grant of an injunction, no such order could be made.

[39] The Court in dismissing the application for injunctive relief had this to say: -

> *"[13] It is trite law that the Court will only grant an injunction to support a legal or equitable right. The question then has to be asked, what is the legal or equitable right for which this Claimant seeks protection?...*

[40] In the above cited case of **Wild Harbour Jamaica Limited v MBJ Airports Limited**, no cause of action was pleaded by the Claimant and so the injunctive relief sought, could not be granted by the Court. However, in the instant case, the Claimant initially pleaded a cause of action, but abandoned same, leaving only the claim for injunctive reliefs. I am satisfied that this Court could not make the injunctions final, without there being a cause of action to ground the injunction. The Claimant has no legal or equitable interest in Lot 176 that would require protection, by making the interim injunctions final.

[41] It must be noted that Counsel for the Claimant cited no Authorities to persuade this Court, that it had the authority to make the injunctions final based on the particular circumstances of the present case. The Authorities cited by the parties refer to adverse possession, which offered little assistance to the Court in relation to the issue at hand. It would appear that Counsel for the Claimant seemed to be saying that by virtue of the Claimant being in possession of Lot 176, the Registrar of Titles ought to be restrained from effecting a transfer of the land to the Defendant, as he is not in possession of the property, which is a basic requirement of adverse possession. That may be true, but the Claimant has not established a legal or equitable interest to the property and has clearly abandoned his claim before this Court. I can therefore see no compelling basis on which this Court could or should restrain the Registrar.

[42] It is the function of the Registrar of Titles, among other things, to consider applications for adverse possession and to decide how to treat with them. The Defendant's application is therefore a matter for the Registrar of Titles to consider and determine within her discretion. This Court will not, without more, interfere with her functions. Further, if the Claimant is determined to prevent the Defendant's application from proceeding, he too can make his objections known to the Registrar of Titles, who ought properly to consider same and carry out her investigations in that regard.

[43] It must also be emphasized that the Claimant's Fixed Date Claim Form is in breach of Rule 8.8 of the **CPR**, which provides that: -

> *"Where the claimant uses form 2, the claim form must state -*
>
> *(a)* ***the question which the claimant wants the court to decide****; or*
>
> *(b) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;*
>
> *(c) where the claim is being made under an enactment, what that enactment is..."*

[Emphasis supplied]

[44] In the case of **Capital & Credit Merchant Bank Limited v The Real Estate Board** [Consolidated Appeals] [2013] JMCA Civ. 29, Morrison JA (as he then was) said: -

> *"[138] The formal requirements of the rules are that a fixed date claim form must state, among other things, the question which the claimant wants the court to decide; or the remedy which the claimant is seeking and the legal basis for the claim to that remedy; and, where the claim is being made under an enactment, what that enactment is (rule 8.8(a), (b) and (c)). Under the rubric, "Claimant's duty to set out case", rule 8.9(1) requires the claimant to include in the claim form or in the particulars of claim a statement of all the facts on which he relies and rule 8.9(2) stipulates that "[s]uch statement must be as short as practicable"."*

[45] The Claimant has abandoned the question that he required this Court to decide, that is, whether he is the fee simple owner of Lot 176. Moreover, he did not seek to amend his pleadings to put forward another cause of action or another question for the Court to determine. It cannot be too often stated that the Supreme Court is a Court of pleadings and that the parties are bound by their pleadings. Furthermore, on a proper construction of Orders 1 and 3 of the Fixed Date Claim Form, the wording of said Orders does not indicate that the Claimant requested final injunctions. In my view, Orders 1 and 3 requested interim injunctions, which were granted, and no further applications were raised on the pleadings, with respect to final injunctions.

[46] In **Lloyd Campbell v The Clarendon Parish Council** (1982) 19 JLR 13, Patterson J outlined the functions of pleadings at page 25 where he posited the following: -

> *"I agree that the function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. But a party is bound by his pleadings and his case is confined to the issues raised on the pleadings unless and until they are amended."*

[47] The continued importance of pleadings was considered by Lord Woolf MR in the case of **McPhilemy v Times Newspapers Ltd** [1999] 3 ALL ER 775, who at page 793 eloquently explained that: -

> *"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader..."*

[48] It must also be mentioned that the Fixed Date Claim Form contained the usual catch phrase '*such further or other relief as this Honourable Court deems fit.*' In my view, this Court cannot and ought not to be expected to act in a vacuum. Where the Claimant has not sought from this Court any other particular relief, it should not be expected that the Court ought to take on the task of determining what relief would be just or appropriate in the circumstances of the case, in the absence of any such claim.

[49] It bears mentioning that the Defendant has not made a claim before this Court claiming ownership to Lot 176. He has not filed a counterclaim and or an application seeking a declaration that he is the owner of Lot 176. The position taken by the Defendant is to oppose the Claimant's claim by asserting that he is the true owner of Lot 176, by virtue of adverse possession. In such

circumstances, this Court could not on the evidence before it, make an Order that the Defendant is entitled to Lot 176.

[50] In the premises the Court hereby makes the following Orders: -

a) The interlocutory injunctions granted herein are discharged;

b) The relief sought under the Fixed Date Claim Form is refused;

c) Costs are awarded to the Defendant, such costs to be taxed if not agreed.