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IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1990

1/11/1990

SUIT NO. 529 of 1990

BETWEEN

ALRIC C. HILLOCKS AGENCIES LIMITED PLAINTIFF

AND

THE ST. VINCENT GOVERNMENT EMPLOYEES
CO-OPERATIVE CREDIT UNION LIMITED 3-15 DEFENDANT

Mr. H. Matadial for Plaintiff
Mrs. M. Hughes Ferrari and Mr. R. Cummings for Defendant.

1990: October 26
November 2.

JUDGMENT

MATTHEW J. (IN CHAMBERS)

The Plaintiff filed a Statement of Claim against the Defendant on October 8, 1990 in which his principal remedy was for an order to rectify a deed of mortgage No. 1905/90 between the Plaintiff as mortgagor and the Defendant as mortgagee.

He also by summons filed on the same day asked for an interlocutory injunction to restrain the Defendant from advertising or selling the mortgaged property until the final determination of the action.

In his submissions learned Counsel for the Plaintiff stated that he had attached an affidavit by Mr. H. Williams, at one time Solicitor for the Defendant where he admitted making changes in the deed. Counsel also referred to the defence of the Defendant filed on October 25, 1990 to support the allegation that the writ was not frivolous or vexatious and to support the fact that there were serious questions to be tried.

Counsel referred to the fact that a Director of the Plaintiff had given a signed undertaking as to damages filed in this Court on October 8, 1990 and he submitted that if the grant of the injunction was denied it would mean disposing of the claim in a summary manner. Counsel also referred to the U.K. White Book 1988 at Pages 472/473 referring to the general principles to

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be taken into account in application for interlocutory injunctions as authoritatively explained by Lord Diplock in AMERICAN CYANAMID V. ETHICON LTD. 1975 A.C. 396.

Learned Counsel for the Defendant in reply contended that the grant or refusal of the injunction will put an end to the matter and therefore invited the Court to consider the matter on its merits. Counsel contended that regard should be had to the conduct of the Plaintiff who had fraudulently induced Defendant to put off a sale scheduled for June 27, 1990 by giving a bounced cheque. Counsel contended that the Plaintiff was impecunious.

Counsel further relied on the case of CAYNE V. GLOBAL NATURAL RESOURCES P.L.C. 1984 1 AER 225 C/A.

The background to this case can be gleaned from the said affidavit of Henry Williams which the ~~Defendant~~ Plaintiff tendered as exhibit. In March of this year Henry Williams was instructed by the Defendant to prepare for execution documents relative to the transfer of a mortgage from C.I.B.C. to the Defendant. The Plaintiff at the time owed the C.I.B.C. $275,000. He stated, and that has not been challenged, that he prepared two documents namely a deed of transfer between C.I.B.C. and the Defendant and a deed supplemental to it between the Plaintiff and the Defendant for execution on March 25, 1990. Henry Williams made one mistake; not to get the Plaintiff to sign the latter deed before or at the same time that the former was being executed. As he stated the deed of transfer was duly executed, but in spite of numerous requests, and that too has not been denied, the Plaintiff failed to execute the supplemental deed or to discuss with the Defendant the terms of repayment of the mortgaged debt or to pay any interest or principal on the debt. He stated that in the supplemental deed the repayment date was stated to be "31st May next" on the assumption the deed would be executed on March 25, 1990.

As a result of the Plaintiff's conduct, the property was advertised for sale on June 27, 1990. Shortly before the sale the Plaintiff's director went to the Treasurer of the Credit Union, Mr. Kenwyck Lewis, to discuss with him the question of cancelling the sale. The Plaintiff's director left Mr. Lewis and went to the Chambers of Mr. Williams and there tendered an amount of $20,000 in cash and he gave a cheque for $16,205.00 which was later dishonoured. The said director, who at all times seems to have been representing the Plaintiff, promised to return to Mr. Williams' Chambers later that day but he

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never did so.

The Plaintiff's director, Mr. A.C. Hillocks, had also left with Mr. Williams the supplemental deed duly executed. One of the changes which the Plaintiff requests is that the deed be dated "27th day of June" instead of "25th day of March". I wish to observe that no where in the document before me is a suggestion that the Plaintiff executed the deed on June 27, 1990.

It appears that after the signed deed was handed to Mr. Williams he changed the words "1st May next" and inserted "on demand". This appears to me to have been quite unnecessary since the deed was dated "25th day of March" but he did so as he explained in good faith since 1st May 1990 had already gone. The other change Mr. Williams made to the deed was to insert the words "$6,500 commencing on the 1st day of July 1990." Mr. Williams was there extending the payment date and at the same time inserting the monthly amount that should be paid. The Plaintiff is also in effect asking that the deed should be corrected so that no amount should be inserted for the monthly instalments.

I entertain no doubt whatsoever that Hillocks agreed with Kenwyck Lewis that the monthly principal repayments would be $6,500 plus interest and this is the basis on which he tendered $20,000 in cash to Mr. Williams and the dishonoured cheque for $16,305.00.

The substance of the Plaintiff's case appears to be to get a correction of the deed so that his time for repayment should be May 1, 1991. If the Plaintiff were to succeed in getting the injunction he would be placed in an even more favourable position for it is very unlikely that this case which is not yet ripe for hearing can be heard before May 1, 1991. And indeed there would be little to be derived from a trial.

Learned Counsel for the Plaintiff has contended that if at the trial it were held that Plaintiff was not entitled to rectification of the deed, the Defendant could still go ahead and recoup its money. But this could be at an irreparable loss to the Defendant who has lent $275,000 to the Plaintiff since March 1990 and has only been able to get back $20,000 to date without any interest. The Defendant would have to be kept out of its money for a lengthy period and the sale of the property might not be able to be sufficient for it to get back its money. The undertaking in damages signed by the Plaintiff's director may yet be another useless scrap of paper seeing the difficulty he encounters in repaying a monthly figure of $6,500 plus interest.

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The three principles of the Cyanamid case are set out at the top of page 473 of the Supreme Court Practice 1988. It is very doubtful that the Plaintiff has a good arguable claim to the right he seeks to protect; or a serious question to be tried. The Plaintiff cannot base the strength of his case on the Defendant's defence. I will for the time being assume that Plaintiff has a triable case.

In CAYNE V. GLOBAL NATURAL RESOURCES PLC 1984 1AER 225 it was held that - "Where the grant or refusal of an interlocutory injunction will have the practical effect of putting an end to the action, the Court should approach the case on the broad principle of what it can do in its best endeavour to avoid injustice, and to balance the risk of doing an injustice to either party. In such a case the Court should bear in mind that to grant the injunction sought by the Plaintiff would mean giving him judgment in the case against the Defendant without permitting the Defendant the right of trial. Accordingly, the established guidelines requiring the Court to look at the balance of convenience when deciding whether to grant or refuse an interlocutory injunction do not apply in such a case, since, whatever the strength of either side, the Defendant should not be precluded by the grant of an interlocutory injunction from disputing the Plaintiff's case at the trial."

If I were to decide this case on the balance of convenience I would find that it came down in favour of the Defendant but approaching the case on a broad front I find it would be unjust to allow an impecunious Plaintiff to hold such a large sum of money belonging to the Defendant without paying the reasonable monthly instalments agreed upon for an indefinite period in the future.

In N.W. LTD V. WOODS 1979 3 AER 614 at Page 626 Lord Diplock stated

"Where, however, the grant or refusal of an interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the Plaintiff would have succeeded in establishing his right to an injunction if the action

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had gone to trial is a factor to be brought into the balance by the Judge in weighing the risks that injustice may result from his deciding the application one way rather than the other."

In my judgment the degree of likelihood that this Plaintiff would succeed in establishing his right to an injunction if the action were to go to trial is very slight indeed.

At page 235 of Cayne's case Lord Justice Kerr stated: "The test for the application of Cyanamid is therefore whether the case is one where the Court can see that it is likely to go to trial at the instance of the Plaintiffs and whether the grant of an injunction is therefore appropriate or not, as a way of holding the situation in the interim". See also Lord Justice May's judgment at page 237 letters (f) - (g).

The Plaintiff in this case does not come to the Court with clean hands. As I stated earlier it was anticipated by the Defendant that Plaintiff would have executed the mortgage deed on March 25, 1990 on the same day as the Defendant accommodated him. I cannot help but observe the manner of expression of the Plaintiff in paragraph 4 of the Statement of Claim which states:

"By a deed of indenture bearing registration number 1226 of 1990, the Defendant had the said mortgage transferred from the Caribbean Banking Corporation Limited to itself."

It suggests some officious behaviour on the part of the Defendant without the consent or approval of the Plaintiff.

After the Defendant accommodated the Plaintiff the next time the Defendant hears from him was on the scheduled day of sale on June 27, 1990. In his affidavit filed on October 23, 1990 Henry Williams stated that several oral and written requests were made by the Plaintiff and its Solicitor to hold discussions to have the deed completed and executed but to no avail. He tendered in exhibit a letter dated May 21, 1990 which supports the allegation. The last paragraph of the letter states:

"I am further instructed to inform you that if you fail to comply by 31st May 1990 the Credit Union will proceed immediately thereafter and exercise the power of sale of the property."

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Still the Plaintiff took no notice of the Defendant. When he did take notice was on the morning scheduled for the sale at which time he agreed to the monthly instalments but in the process of getting the sale cancelled the Managing Director tricked Mr. Williams with a dishonoured cheque.

In the exercise of my discretion I would dismiss this summons with costs to the Defendant to be taxed if not agreed.

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A.N.J. MATTHEW
PUISNE JUDGE.