(1) Injunction (2) Lease
(3) Damage

Done

#047

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No. 114 of 1995

BETWEEN:

RUFUS LOUIS

Plaintiff

and

FELICITE CASTANG and others

Defendants

Mr. P. Straughn for Plaintiff
Miss F. Byron Cox for Defendants

1995: November 22;
December 6.

J U D G M E N T

MATTHEW J. (In chambers).

On February 9, 1995 the Plaintiff issued a writ indorsed with statement of claim in which he alleged that on October 22, 1994 the Defendants erected on land of his family a chattel house on and later in January 1995 destroyed trees on the said land.

On the same day he filed a summons asking for an interlocutory injunction. The summons was supported by four affidavits all sworn to on January 30, 1995.

He tendered as exhibit a land certificate for a parcel of land 1837B 108 for Heirs of George Louis C/o Rufus Louis.

One of the affidavits was that of the Plaintiff. He stated that on October 22, 1994 he saw Defendants 1 - 7 on his family land where they erected a wooden house. He also speaks of seeing damage to his own house on October 24, 1994. Huberlia Mattelly in her affidavit in support states that she is the common law wife of the Plaintiff and that she saw Defendant No. 3 breaking a door and window of Plaintiff's house while Defendant's 1 - 7 were cutting down trees near the said house. That was on October 23, 1994.

The other two deponents, Fitzroy Ambrose and Cantius Emmanuel, swore to affidavits in respect of damage to the properties.

On November 9, 1995 Obed Regis swore to an affidavit that on Monday February 27, 1995 he visited two sites and on one of them Mrs. Felicite Castang and her husband had erected a small wooden house on land owned by the Castangs. He said on the other site he saw an unfinished wooden structure.

Defendant No. 1 in an affidavit filed on the same day stated that she is registered owner of a parcel of land, Block 1837B Parcel 109, and that because the hurricane in September 1994 blew down the home of her niece she allowed her to erect a house on her land in October 1994.

The evidence on the affidavits raise a conflict as to where the new structure was erected; whether it was on parcel 108 or on parcel 109. As I observed in a similar case at the end of the day the resolution of such issue would depend on a proper survey of both parcels of land to identify the exact location of the house erected in October 1994.

At the hearing learned Counsel for the Plaintiff relied on the affidavit of the Plaintiff and his common law wife.

Learned Counsel for the Defendants relied not so much on the allegation that Defendant No. 1 caused a house to be put on her own land but on certain criticisms of the Plaintiff's application.

Counsel submitted that the evidence required to support the interlocutory summons must be filed after the issue of the writ. Counsel relied on the case SILBER v. LEWIN (1889) 33 Sol. Jo. 757 found at page 516 of Vol. 22 of the Digest.

Counsel further submitted that the undertaking at paragraph 11 of the statement of claim is inappropriate. Counsel cited the case of FENNER v. WILSON 1893 2 Ch. 656 in support of that proposition.

Counsel then submitted that the Plaintiff must have a legal right to protect and in that context referred to the case of MONTGOMERY v. MONTGOMERY 1965 Probate 46.

In reply learned Counsel for the Plaintiff was prepared to stand on what he had already state before.

It is trite law that the Court will grant an injunction only to support a legal right. See the United Kingdom Supreme Court Practice 1979 at paragraph 29/1/9. That was stated by Ormrod J. in Montgomery v. Montgomery 1965 P.46. The facts of Montgomery case are so different to that of the Applicant. In Montgomery the wife did not have any proprietary right in the flat which belonged to the local authority. Here the Plaintiff has title to family land.

It is also my view that the Plaintiff has sufficiently given an undertaking as to damages as is required by the rule. See Page 479 of the said United Kingdom Supreme Court Practice 1979 at paragraph 29/1/20.

There is no requirement that he must use the words:

> "The Plaintiff, by his Counsel, undertaking to abide by any order this Court may make as to damages in case the Court shall be of opinion that the Defendant shall have sustained any, by reason of this order, which the Plaintiff ought to pay";
>
> although it is desirable that they be inserted in the order of the Court.

Page 479 of the said Supreme Court Practice deals with the evidence

in support of the summons for interlocutory injunction and states that the affidavits should be sworn after the writ was issued. In SIBER LEWIN the question arose as to the value of an affidavit sworn before the writ in an action was issued. The Court held there was no proceeding pending when the affidavit was sworn and in such a case the practice was to treat it as a nullity.

The Plaintiff is in default here the affidavits having been filed about nine days before the issue of the writ and so the application for injunction is refused.

There shall be no order as to costs.

.....

A.N.J. MATTHEW

Puisne Judge