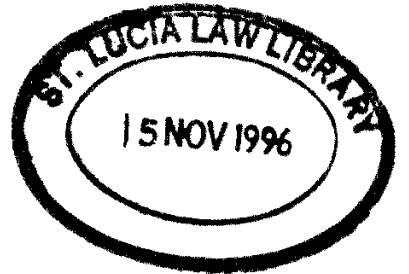


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 807 of 1995

BETWEEN:

CORELLA JOSEPHINE FRANCIS

Plaintiff

and

RICHARD FRANCIS

Defendant

Mrs. S. Lewis for Plaintiff
Mr. R. Frederick for Defendant

1996: April 24;
May 8.

J U D G M E N T

MATTHEW J. (In Chambers).

The Plaintiff is the widow of the Defendant's brother, Joseph Francis. The Deceased died on February 24, 1989 leaving a Will which was probated on September 1, 1989. The Will is quite simple and was made before John G. M. Compton, Notary Royal, on January 29, 1981. It contains four short paragraphs. Paragraph 3 names the Plaintiff as the sole Executrix and paragraph 4 gives to her all the Deceased's property whether movable or immovable.

On November 14, 1995 the Plaintiff filed a writ of summons indorsed with statement of claim in which she alleged that in or about November 1994 and at subsequent times the Defendant wrongfully entered upon property which belonged to herself and her husband and carried away lots of the produce. She also alleged that the Defendant has threatened to harm her if she should set foot on the said land.

On the same day she filed a summons supported by two affidavits asking for injunctive relief against the Defendant.

FRANKLIN J. JOSEPHINE F. < F. H. C. H. E. R. D. T. R. A. M. C. H. S.

The Defendant was served with the writ of summons, the summons for interlocutory relief and the affidavits on December 5, 1995. He entered appearance on December 18, 1995 but did not file any answer to the affidavits nor a defence to the writ of summons.

In making her submissions in respect of the grant of the interlocutory injunction learned Counsel read through the affidavits of the Plaintiff and that of Anthony George who deposed that in 1994 he observed the Defendant trespassing on the land in question and picking and carrying away oranges, grapefruits and coconuts.

In his reply learned Counsel for the Defendant submitted that he will not condone violence and therefore would not oppose the injunction against the Defendant restraining him from threatening the Plaintiff. This in my view is an admission that the Defendant threatened the Plaintiff.

I had a good look at the Defendant while learned Counsel for the Plaintiff was making her submissions and his demeanour clearly depicted that of a man who was very capable of carrying out any threats he had made.

Learned Counsel for the Defendant submitted that it was clear from paragraph 8 of the Plaintiff's affidavit that she is in position to quantify whatever losses that she had suffered and so the injunction should not be granted for an injunction is not usually granted where damages are an adequate remedy.

What Counsel fails to realise is that because damages may be quantifiable does not mean they are adequate. The words of the 1979 White Book are as follows:

"The governing principle is that if the recoverable damages would be an adequate remedy, no interlocutory injunction should normally be granted however strong the Plaintiff's

claim appears to be at the interlocutory stage. Equally if the recoverable damages under the Plaintiff's undertaking as to damages would be an adequate remedy for the Defendant, and the Plaintiff is in a financial position to pay them, then there is no reason to refuse the Plaintiff an interlocutory injunction."

It seems to me that the term "recoverable damages" imply an ability to pay and damages can only be an adequate remedy if the Defendant has the ability to pay them. I am not persuaded that the Defendant in this case has shown any ability to meet the \$25,420.00 damages claimed in the statement of claim.

Counsel for the Defendant has intimated his bona fide intention to challenge the will of Joseph Francis. As I stated earlier that Will was probated as long ago as September 1, 1989 but the Defendant is quite free to challenge at this late or early stage. In the meantime there is a valid probate naming the Plaintiff as the sole Executrix of her deceased husband's estate.

As regards the grant of an interlocutory injunction I have regard to the classic case of AMERICAN CYANAMID v. ETHICON LTD. 1975 A.C. 396 and to the analysis of the principles found at pages 471 and 472 of the United Kingdom Supreme Court Practice 1979.

I am satisfied that there is a serious question to be tried and that the application is not frivolous or vexatious and therefore I go on to consider whether the balance of convenience lies in favour of granting or refusing the relief sought.

In suit 187 of 1995 between BARBARA KIDDELL and WINDJAMMER CO. LTD. delivered on May 31, 1995 I also considered the case of American Cyanamid and asked the question whether the Applicant had established that she had an arguable claim to the right to put up an electric post on the land in question. I referred to:

SMITH v. INNER LONDON EDUCATION AUTHORITY 1978 1 AER 411 and
SISKINA v. DISTOS COMPANIA NAVIERA SA. 1979 A.C. 240 and found
that the Applicant had not established the right and consequently
I refused the application for an injunction.

In my judgment the Plaintiff here has established that she has a
good arguable claim to the right she seeks to protect.

It is also my view that damages would not be adequate to compensate
the Plaintiff for her losses. I think the Plaintiff's established
business is being disrupted and that such disruption is a matter
which would be extremely difficult to quantify in damages as was
stated in the case MERCHANT ADVENTURERS LTD. v. M. GREW & CO.
LTD. 1972 1 Ch. 242 at page 256.

My order is that

1. Upon the Plaintiff 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.

IT IS ORDERED that the Defendant be restrained and an order of
injunction is granted restraining the Defendant whether by
himself or by his servants, or agents or otherwise from
trespassing on the Plaintiff's land and from doing the
following acts or any of them namely:

- (a) picking, taking away and selling the fruits from the
trees planted on the Plaintiff's land; and
- (b) threatening or otherwise interfering with the Plaintiff
or her use, enjoyment and occupation of the said land.

2. The Defendant shall pay to Plaintiff's costs in the sum of \$300.00.

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A.N.J. MATTHEW
Puisne Judge