

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 27 OF 2001

BETWEEN:

LA BAIA LIMITED

Claimant

-and-

EDWIN MCLAURENCE HUGHES

Defendant

Appearances:

Mr. Kenneth G. Porter and Mrs. Cora Richardson for the Claimant.
Mr. Elson Gaskin for the Defendant.

2001: July 30
2002: February 05

JUDGMENT

- [1] **HARIPRASHAD-CHARLES J:** On 18th day of April 2001, the Claimant filed a Summons "without notice" for an Injunction to restrain the Defendant, his servants or agents from conducting further construction activities of any nature whatsoever on the property known as Registration Section: West End Block 17709B Parcel 23 (hereinafter called "The Property"). On 8th day of June 2001, the Defendant caused to be filed an Entry of Appearance. On 30th day of July last year, the matter was heard "With Notice" on the basis of written submissions which were presented to the Court.

THE CLAIMANT'S PLEADED CASE

- [2] On or about 3rd day of March 1983, the Claimant Company entered into an agreement with one Edward Richardson for the purchase of "The Property" and on 28th day of May 1986, a further agreement confirming payment of the full purchase price was executed between the said parties. Edward Richardson, the son and sole beneficiary of Isaac Richardson, the registered proprietor of "The Property" at the time entered into the agreement and accepted funds with the full consent and understanding of George Emmanuel Richardson who was the personal representative of the estate of Isaac Richardson.
- [3] The Claimant took immediate steps to register "The Property" in its name but required an Aliens Landholding Licence to do so. The Claimant applied to the Government for the said Licence which was not granted. As a consequence, the Claimant was unable to register "The property" in its name. However, in an attempt to protect its interest, the Claimant and George Emmanuel Richardson agreed for the Claimant to have the benefit of a charge on "The Property" through Caldwell Corporation Limited. On 2nd day of September 1986, a registered charge was executed in favour of the said Caldwell Corporation Limited.
- [4] Approximately two months after the charge was registered, George Emmanuel Richardson passed away. The estate of Isaac Richardson was thereafter sought to be administered by the Defendant through his lawful Attorney, one Louis Hodge and "The Property" was transferred to the Defendant upon registration by transmission on or about 12th day of January 1996.
- [5] At paragraph 6 of its affidavit, the Claimant alleges that despite having knowledge of the agreement for the sale of "The Property" and the charge thereon, the Defendant still caused "The Property" to be registered in his name.
- [6] In or about the month of March 2001, the Defendant commenced construction of a dwelling house on "The Property." The Claimant seeks an interlocutory injunction to halt further construction works.

[7] It is somewhat startling that the enthusiastic Mr. Gaskin, Counsel for the Defendant has not yet filed a Defence to the action. Suffice it to say, he vigorously opposes the application for an interlocutory injunction for the following reasons:

- (1) That the Claimant seeks specific performance of contracts made as far back as 3rd day of March 1983 and 28th day of May 1986. The Defendant argues that Section 4(7) of the Limitation Act, Cap. 45 of the Revised laws of Anguilla 1961 provides that the limitation period of six years with respect to claims founded on contract do not apply to claims for specific performance except by analogy. The Claimant maintains that the Limitation Act does not apply to the Claimant's claim- the claim being in the nature of an equitable relief for specific performance.
- (2) By virtue of Sections 80 and 117 of The Registered Land Ordinance 1974, only the registered proprietor of land can convey it. The Claimant contends that Section 27 of the said Ordinance is applicable and that the Defendant holds the land subject to the unregistered rights of the Claimant and/or Caldwell Corporation.
- (3) Section 140 (1) of The Registered Land Ordinance provides that a court may order rectification of the land register if it is satisfied that such registration was obtained by fraud or mistake. Mr. Gaskin implored the Court to find that there is not an iota of evidence relating to fraud or mistake.
- (4) The Defendant asserted that the Claimant is a Company under alien control and as such, requires an Aliens Landholding Licence to hold lands in Anguilla. According to the Defendant, even after eighteen years, the Claimant has still not obtained the said Licence. The Claimant contends and provided an exhibited letter to show that the Government of Anguilla is favourably considering its application for an Aliens Landholding Licence.

THE LAW

- [8] The purpose of an interlocutory injunction is to preserve the *status quo* until the rights of the parties have been determined in an action. The principles to be applied in applications for interlocutory injunctions have been authoritatively explained by Lord Diplock in the case of **American Cyanamid Co. v Ethicon Limited [1975] 1 All E. R. 504**. At page 510, Lord Diplock had this to say:

" The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried [My emphasis]. It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are questions to be dealt with at the trial...So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought."

- [9] It seems though that the recent cases of **Series 5 Software v Clarke and Others (1996) 1 All ER 853** and **Douglas and others v Hello! Ltd (2001) 9 BHRC 543** were consistent with the approach which was followed in many, but not all, cases before **American Cyanamid**. The Court had to pay regard to the strength of the plaintiff's case. In the latter case of **Douglas v Hello! Ltd**, it was held that... the instant case was concerned with freedom of expression...It required the court to look at the merits of the case and not merely to apply the **American Cyanamid** test. Thus the Court had to look ahead to the ultimate stage and to be satisfied that the scales were likely to come down in the applicant's favour.

- [10] Therefore, in my opinion, in deciding whether to grant an interlocutory injunction, the Court should bear the following factors in mind:
- (i) The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.

- (ii) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.
- (iii) Because of the practice adopted on the hearing of applications for interlocutory relief, the court should rarely attempt to resolve complex issues of disputed fact or law.
- (iv) Major factors the court can bear in mind are:
 - (a) The extent to which damages are likely to be an adequate remedy for each party and the ability of the other to pay.
 - (b) The balance of convenience.
 - (c) The maintenance of the status quo, and
 - (d) Any clear view the court may reach as to the relative strength of the parties' cases."

[11] It is not difficult to conclude from the exhibited contemporaneous documents and the submissions of both Counsel that there are very serious questions to be tried. What is quite obvious is that whichever party wins or loses (as the case may be) the substantive action by its very nature is bound to be complex and costly.

[12] Having determined that there are serious issues to be tried, I now have to determine where the balance of convenience lies. The most compelling argument advanced by Counsel for the Claimant is that, if it is proven that the Claimant has been wronged, damages would not be a sufficient remedy in that the dwelling house would have been completed. In the words of **Lord Diplock** in the **American Cyanamid** case at **page 408**:

" If damages would be adequate remedy and the Defendant would be in a financial position to pay them, no interlocutory injunction should be granted, however strong the plaintiff's claim appears to be at this stage."

[13] In all the circumstances, I find no difficulty in concluding that the balance of convenience dictates that the *status quo* ought to be maintained until the rights of all parties have been determined.

- [14] The Order of the Court therefore is that upon the Claimant giving an undertaking as to damages; an interlocutory injunction is granted restraining the Defendant whether by himself, his servants or agents or howsoever otherwise from continuing further construction of any nature on the property located at West End Block 17709B Parcel 23 until the determination of this Suit. In keeping with the spirits of CPR 2000, I will also order that the Defence be filed no later than 4th day of March 2002. Costs will be costs in the cause.
- [15] Last but not least, I wish to commend both Counsel for their sterling presentation and immeasurable assistance to the Court. For this I am indeed very grateful.
- [16] I am aware that Mr. Porter and Mr. Gaskin are eagerly awaiting the hearing of the substantive action as it revolves around interesting legal issues. The inordinate delay in the delivery of the Judgment is therefore deeply regretted.

INDRA HARIPRASHAD-CHARLES
High Court Judge