THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 215 OF 2004

BETWEEN:

ERSIE JOHN
ANDREA JOHN

Claimants

V

MARIAN CUPID

Respondent

Appearances:
Mr. Emery Robertson for Claimants
Mr. Grant Connell for Respondent

2005: 25th July

RULING

[1] **THOM, J**: (In Chambers) This is an application for a mandatory injunction requiring the Respondent to reduce the height of a fence which runs along the Eastern boundary of the Applicants' and Respondent's land.

[2] The application is opposed by the Respondent and both parties have sworn and filed affidavits in this matter.

[3] The grant of an interim injunction is discretionary. The principles by which a court should be guided in the exercise of its discretion is enunciated in the case of American Cyanamid v Ethican Ltd. [1975] A.C.396. These principles are as follows:

(i) the Applicant must establish that there is a serious issue to be tried;

(ii) damages will not be an adequate remedy;

(iii) the balance of convenience lie in favour of granting the injunction in that it will do more good than harm;

(iv) the applicant is and will be able to compensate the Respondent for any loss which the order may cause him in the event that it is later adjudged that the injunction should not be granted.

[4] Is there a serious issue to be tried? In determining whether there is a serious issue to be tried the court needs to be satisfied that the Applicant's cause of action has substance and reality. The Applicants in their statement of claim alleges that the Respondent has built a wall fence along the eastern boundary of their property in excess of 6 ft. in height contrary to the Physical Planning and Development Board Act No. 41 of 1990 Section 17(g). The said wall constitutes a nuisance to the quiet enjoyment of their home as it blocks the view to the road, and is in breach of the Applicant's right to light. I am satisfied that there is a serious issue to be tried.

[5] Would damages be adequate compensation? The Applicant Andrea John in her affidavit dated the 15th day of July, 2005 deposed that they are no longer able to have quiet enjoyment of their home, her health has suffered also her grandmother who resides there. They are both asthmatic and they have suffered more attacks since the construction of the wall. The Respondent in her affidavit dated July 25, 2005 does not deny or contradict these statements. If a mandatory injunction is granted the Respondent would have a 6 ft. wall instead of a higher wall. In these circumstances I have doubt as to the adequacy of the respective remedies in damages available to either party. Where as in this case there is doubt as to the adequacy of the respective remedies in damages available to either party then the court must consider the balance of convenience.

[6] On the Application by the Applicant in April 2004 for a mandatory injunction to reduce the said fence, the Respondent at the hearing gave an undertaking which was filed on April 24, 2004 to discontinue construction of the said fence until hearing of the suit. The Applicant alleges that in breach of this undertaking the Respondent increased the height of the wall from 8 ft. to 10 ft. The Applicant Andrea John in her affidavit dated 15th July 2005

outlined the grave damage that will accure to the Applicants, the hardship that the Applicants would suffer if an injunction is not granted in this matter. The Respondent has not alleged any hardship on her part.

[7] Applicants exhibited a photograph of the wall in dispute. The wall is made of concrete blocks. The blocks could be easily removed. The costs to the Respondent would not be substantial. The respondent would not suffer irreparable damage or hardship by reducing the fence to 6 ft. in height. Mr. Teahon Roberts in his affidavit dated 21st July, 2005 on behalf of the Applicant deposed that he measured the wall and it is about 10 ft. in height. The Respondent in her affidavit dated July 25, 2005 deposed that she is not on speaking terms with Mr. Teahon Roberts, but the respondent did not depose what is the height of the fence. I accept the measurement of Mr. Roberts as he deposed in his affidavit. In the circumstances of this case I am of the view that the balance of convenience is tipped in favour of the Applicants. The Applicants have filed an undertaking in damages.

[8] Having considered this matter it is ordered as follows:

1. It is ordered that a mandatory injunction is hereby granted ordering the Respondent to reduce the Eastern concrete boundary wall which runs along the boundary of the Applicants land and the Respondent's land situate at Clare Valley to no more than 6 ft. in height. All works to be completed by the 15th day of August 2005.
2. The respondent is prohibited by herself and or her agents from proceeding with any construction of the said wall after reduction of the height.
3. This order to continue until trial or further order.
4. Costs in the sum of $1,000.00 to be paid by the Respondent to the Applicants.

Gertel Thom
HIGH COURT JUDGE