

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.33 OF 2003

BETWEEN:

CENDRA CHARLES

Appellant

and

[1] JUSTIN SURAGE
[2] PAULA JOAN SURAGE
[3] DOREEN SURAGE

Respondents

Before:

The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Hugh Rawlins

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal

Appearances:

Mrs. Petra Nelson with Mrs. Esther Greene Ernest for the Appellant
Mr. Dexter Theodore for the Respondents

2005: October 24;
October 27.

JUDGMENT

[1] **GORDON, [J.A.]**: By Fixed Date Claim Form with Statement of Claim attached, the Respondents sought from the Court against the Appellant:

- i. An injunction restraining her by herself, her servants and agents from trespassing on the Respondents' parcel of land situate at Belle Vue in the Quarter of Vieux Fort and shown as Block and Parcel No. 1224 B 6.
- ii. An order that she demolish that part of a concrete building which is erected on the Respondents' said parcel of land.
- iii. Possession of the said parcel of land.
- iv. Damages for trespass.

v. General damages.

- [2] On 17th July 2003 the Respondents obtained an interlocutory order of the court enjoining the Appellant by herself, her servants or agents from trespassing on the lands of the Respondents. That order further ordered that the matter come back to court on the 18th September 2003 and that if the aforementioned order had been served on the defendant (the appellant herein) by the 25th July 2003 and no defence or witness statement was filed by the defendant by the 18th September 2003 the court would deal with the substantive claim on that date.
- [3] The above order was personally served on the Appellant on 24th July 2003. The matter returned to Court on 18th September 2003 by which time neither defence nor witness statement(s) had been filed by the Appellant. The learned trial Judge delivered her decision in favour of the Respondents on 19th September 2003 orally after a hearing comprising substantially argument of counsel and, importantly, no sworn testimony. The trial Judge reduced her reasons to writing on 26th September 2003. Her decision was to confirm and make final the interlocutory injunction and to grant a mandatory injunction that the Appellant demolish that part of the concrete building which she erected on the Claimants' lands within six (6) months.
- [4] The Appellant is dissatisfied with the decision of the learned trial Judge and has appealed to this Court. Counsel for the Appellant conceded that the Appellant was trespassing on the lands of the Respondents and that the Appellant was in the process of building a building which was partially on the lands of the Respondents.
- [5] The sole issue canvassed in this Appeal was whether the learned trial Judge had properly exercised her discretion in granting the mandatory injunction or whether she improperly determined that she had no discretion as a result of the July Order referred to above.

[6] It has been said that the power of granting mandatory injunctions must be exercised with the greatest possible care and that the granting of a mandatory injunction is always at the discretion of the court and cannot be 'as of course'. In **Redland Bricks Ltd v Morris** [1970] A.C. 652 Lord Upjohn stated at pages 665 to 666 certain general principles for the guidance of courts in the exercise of its discretion:

- i. A mandatory injunction can only be granted where the plaintiff shows a very strong probability on the facts that grave damage will accrue to him in the future if the intervention of the court is denied;
- ii. The damage which will follow a refusal of an injunction must be such that damages awarded in respect of it would not be sufficient remedy;
- iii. Unlike the case where a negative injunction is sought to restrain the defendant from continuing or repeating a wrongful act, the cost to the defendant of compliance with a mandatory injunction must be taken into account;
 - a. where the defendant has acted without regard to his neighbour's rights, or has tried to steal a march on him or has tried to evade the jurisdiction of the court, or has acted wantonly and quite unreasonably in relation to his neighbour he may be ordered to repair his wanton and unreasonable acts by doing positive work to restore the status quo even if the expense to him is out of all proportion to the advantage thereby accruing to the plaintiff;
 - b. but where the defendant has acted reasonably, although in the event wrongly, the cost of remedying by positive action his earlier activities is most important for two reasons. First, because no legal wrong has yet occurred (for which the claimant has not been recompensed at law and in equity) and, in spite of gloomy expert opinion, may never occur or possibly only on a much smaller scale than anticipated. Secondly, because if ultimately heavy damage does occur the plaintiff is in no way prejudiced for he has his action at law and all his consequential remedies in equity.
- iv. If, in the exercise of its discretion, the court decides that the case is a proper one for the issue of a mandatory injunction, then the court must be careful to see that the defendant knows exactly in fact what he has to do, not just as a matter of law but as a matter of fact, so that in carrying out an order he can give his contractors the proper instructions.

[7] In the event, the learned trial Judge gave judgment for the Respondents and based her decision solely on the July Order and the fact that no defence or witness statement had been filed by the Appellant. The principles outlined by Lord Upjohn in **Redland Bricks Ltd v Morris** were not considered by the learned trial

Judge. There was, therefore, a failure on the part of the court to properly exercise its discretion in ordering a mandatory injunction against the Appellant.

[8] A mandatory injunction may not have been the sole or the best remedy available to the Respondents in the circumstances of this case. In so saying there is no intention on my part to prejudge the issue and so constrain the exercise by a trial Judge of the court's discretion. After examining all the evidence the learned trial Judge will have to consider alternative remedies

[9] There was, in this case, a failure on the part of the learned trial Judge's part to adequately exercise her discretion.

[10] In the premises I would allow the appeal subject to paragraph 11 hereunder.

[11] The Respondents have been put to considerable inconvenience and expense (to which the trial Judge referred) to achieve little, and this is solely the fault of the Appellant through her failure to file a defence or witness statement. I am therefore of the view that a fair order in respect of costs is that all costs to date, which I assess in the sum of \$5,000.00, be paid by the Appellant to the Respondents. The payment of such costs must be made on or before the 31st December 2005 failing which this appeal shall stand dismissed.

Michael Gordon, QC
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Hugh Rawlins
Justice of Appeal