ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2008/0559

BETWEEN

GEOFFREY CROFT

Applicant

AND

JOSEPH W. HORSFORD

Respondent

Appearances:

Ms. E Ann Henry, Ms. C Debra Burnette and Mrs. Shahida Ali-Schneider for the Applicant
Mr. Joseph Horsford in person

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2008: December 17
2009: January 15, 29
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DECISION

[1] **Blenman J:** Mr. Geoffrey Croft has filed an application in which he seeks to have the Court restrain Mr. Joseph Horsford from restricting or blocking his access along the western and eastern roads that access his home.

[2] Background

Mr. Croft says that he is the Registered Proprietor of Land situated at Falmouth and registered as Registration Section: Falmouth and Bethesda, Block 34 2482B Parcel 217. He complains that having purchased the land in October 2006, he commenced the construction of his dwelling house

and around the end of 2007 he started to do the landscaping on the road. He has used the western and eastern roads with vehicular traffic, which form the subject matter of this application, for at least 9 months. Having used the roads for that period of time, he says that Mr. Horsford approached him and told him that the roads were private roads and that he (Croft) required permission in order to use the roads by vehicles and that he would have to pay for the ability to use vehicles on the roads.

[3] Mr. Croft contends that the Cadastral Survey plan does not indicate that the roads are private roads. He therefore continued to use the roads. However, Mr. Horsford wrote to him and indicated that unless he sought permission and enter into an agreement to pay, he will not be able to use the road for vehicular traffic. Exhibited to Mr. Croft's affidavit is a letter dated 15th August 2008 from Mr. Horsford to Mr. Croft. The letter states that unless he "requests vehicular access, and is prepared to pay for it, all vehicles travelling to or from your premises will be stopped, and legal action may be taken against offenders. I am allowing you up to the 30th September 2008 for you to make a request and to indicate that you are prepared to pay for such access. Note also, that the use of our property to carry telephone, water, television and/or internet services is a trespass, and action will be taken to stop the unlawful use of our property".

[4] Mr. Croft says that for several months, the trucks and other vehicles used by the building contractors who constructed his home, travelled along the road. For what it is worth, other home owners have been utilising the same roads. He complains that Mr. Horsford has harassed him. Mr. Croft indicates that the roads are public roads and he says that unless the Court restrain's Mr. Horsford, he will be prevented by Mr. Horsford from using the roads by vehicle, and that he will suffer grave hardship since the roads are the only access that he has to his home, which is on a steep hill.

[5] For his part, Mr. Horsford says that he was the owner of the parcel of land which Mr. Croft now owns and had no right of vehicular access to Parcel 171. There is no public road leading to Parcel 171 or 217 now or at any other time. He says that late in 2007, after he had learnt that Mr. Croft was in Antigua, he spoke to him and told him that his access did not include the use of any vehicles along the path. He indicated to Mr. Croft that there was the possibility of him being granted

a right of vehicular access. In fact, what Mr. Croft calls public roads are in merely foot paths and that he has personal knowledge of his having acquired this knowledge for several decades. Mr. Croft's right of access is by foot and he has no intention to restrict or hinder in any way, his exercising that right. He denies that Mr. Croft would suffer any hardship if he is confined to exercise that limited right.

[6] He strongly opposes the Court granting Mr. Croft the injunctive relief sought.

[7] Issues

The issues that arise for the Court to resolve are as follows:

(a) Whether, in the circumstances that obtain, the Court should grant the injunction restraining Mr. Horsford from blocking or impeding Mr. Croft's use of the eastern and western roads;

(b) If the Court is inclined to grant the injunction, whether there should be fortification of the cross undertaking for damages.

[8] Pleadings

Mr. Croft says that he is the registered owner of Parcel 171. He says that in August 2008, Mr. Horsford demanded that he obtain permission to drive on the roads. Mr. Croft has filed a claim in which he seeks a declaration that the roads running on the western and eastern sides of his lands are public roads and that he is entitled to the unrestricted passage along the roads, whether by foot or motor vehicle. He also seeks an injunction to restrain Mr. Horsford from blocking or in any way restricting his access along the road, as indicated in Mr. Horsford's letter dated the 15th August 2008. He has referred the Court to what appears to be a cadastral map.

[9] Mr. Horsford, in his defence, denies that the roads are public roads, but rather they are strips of land which are private in nature and belong to him. He contends that they are private roads and Mr. Croft has no right of vehicular access to them.

[10] He further says that the land that Mr. Croft occupies was never sold for residential or housing purposes. They were agricultural lands with only foot paths for access. Mr. Horsford denies that the

cadastral map indicates that the roads are public roads. He denies that he has ever threatened to block Mr. Croft's road access to Parcel 171.

[11] Mr. Horsford's submissions

Mr. Horsford asked the Court to refuse the injunction sought by Mr. Croft. He submitted that Mr. Croft's affidavit evidence discloses no reasonable ground upon which an interlocutory injunction should be granted. Next, he said that the issue in this case rests entirely on the fact of the road in question is a public road. There is not a scintilla of evidence that the road or path in issue is a public road. The contention, as expressed by Mr. Croft, seems to be "if there is no record showing the paths as private roads, then they must be public roads". Mr. Horsford said that there must be some evidence that raise the issue of the road being a public road. Mr. Croft's mere averment that he maintains that the roads are public roads bears no evidential value; it is his private opinion, and there is nothing for (him) Mr. Horsford to argue or oppose. Mr. Croft provides no evidence to establish his rights of user to which he lays claim. Mr. Horsford argued that Mr. Croft must at least provide some evidence which supports his contentions. If Mr. Croft's rights lay in common law, he should show that the road in issue is in fact a public road, but there are no grounds on which it can be argued, for there is no evidence in this regard. Mr. Croft has failed to show that there is reasonable and legitimate cause to be resolved at trial. Mr. Horsford said that to the contrary, the cadastral map clearly shows two strips of land, the one at Parcel 100 on the west and Parcel 143 on the east; the other starting at Parcel 189 on the north and Parcel 234 on the south, with both strips running into and forming part of Parcel 252.

[12] Finally, Mr. Horsford said that there is no evidence to show that the claimant would suffer any loss or damages if the injunction, which he seeks, is refused. Mr. Horsford quite properly referred the Court to American Cyanamid Co. v Ethicon Ltd [1975] 1 All ER 504. It was held:

> "The grant of interlocutory injunctions for infringement of patents was governed by the same principles as those in other actions. There was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he would be successful at the trail of the action. All that was

necessary was that the court should be satisfied that the claim was not frivolous or vexatious, i.e. that there was a serious question to be tried".

[13] In Series 5 Software Ltd v Clarke [1996] C.L.C. 631, Laddie J quoted from Lord Denning's judgment in Hubbard v Vosper [1972] 2 QB 84, where he said:

> "In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules".

[14] In the application, Mr. Horsford submitted that there is no foundation for the claim and no serious issue to be resolved at trial. The Court therefore should not grant Mr. Croft the injunctive relief sought.

[15] Alternatively, Mr. Horsford stated that where the Court is minded to grant interlocutory injunction sought, it be considered that the hearing of the substantive matter cannot proceed without a valid statement of claim that the filed statement of case is null and void. In the case of Komodo Holdings Ltd v Bank (BVI) Ltd British Virgin Islands Civil Suit No. 72 of 2002, Matthew JA in his judgment sights the provisions of the CPR 8.7 (5) and CPR 3.12 (1) and he stated: "They are mandatory." In Dennis O. Poseley et al v Mariner International Bank Limited St. Vincent and the Grenadines Civil Suit No. 300 of 2001, Alleyne J, as he then was, commented on the text of The Civil Procedure Rules in Action chapter 11 paragraph B (1), and concluded: "The certificate of truth is thus not a mere formality but a valid element in the process of the claim, and must not be treated lightly".

[16] In his submissions, Mr. Horsford asked the Court to appoint an assessor to determine the true value of the loss he is likely to suffer if he is forced to disrupt works that he is carrying out on the

roads. The Court, being mindful of the fact that he is a prose litigant, invited both sides to address the issue of the fortification of the cross undertaking.

[17] Finally, Mr. Horsford argued that if the Court were minded to grant the injunction that a cross undertaking be granted and that it be fortified.

[18] Ms. E Ann Henry's submissions

Learned Counsel Ms. Henry submitted that the most comprehensive and authoritative statement of the principles concerning the exercise of the Court's discretion were laid down by Lord Diplock in the locus classicus American Cyanamid Co. v Ethicon Ltd ibid. The principle matters to be taken into account are:

(a) Whether there is a serious issue to be tried on the merits. All that needs to be shown is that Mr. Croft's cause of action has substance and reality.
(b) Whether damages would be an adequate remedy were Mr. Croft to be successful at the trial of the action.
(c) Wherein lies the balance of convenience as between the parties.
(d) Whether an undertaking in damages would be an adequate protection for Mr. Horsford.

The principles in the American Cyanamid case have long been adopted by the Eastern Caribbean Supreme Court and applied to applications made in our Courts for interlocutory injunctions.

[19] Learned Counsel Ms. Henry said that Mr. Croft has pleaded and Mr. Horsford does not deny that he has threatened to restrict his user of these roads on the basis that he (Mr. Horsford) contends that the roads are not in fact, public roads but they are private roads owned by him. The cause of action of Mr. Croft is grounded in the tort of nuisance, in that he complains that Mr. Horsford is threatening conduct which will interfere with his right of enjoyment of the user of the public roads. The right of Mr. Croft to bring such proceedings depends on whether he has the requisite locus standi. This question exercised the mind of the Court in the case of Michael v Hutchens Civil Claim No. 298 of 2004 Antigua and Barbuda in which Blenman J stated as follows:

> "It is the law that substantial interference with someone's access to the highway, which is an easement of necessity, gives rise to an actionable nuisance. See Marshall v

Blackwood Corporation [1934] All ER 437 at 439. Further, it is well settled that to interfere with a person's right of access to the public road is an interference with a private right. Buckley J in Chaplin v Westminister Corporation [1901] 2 CH 329 at 334 said as follows:

> "A person who owns premises abutting on a highway enjoys as a private right the right of slipping from his own premises on to the highway, and if any obstruction be placed in his doorway, or gateway, or, and if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highways that obstruction would be an interference with a private right"."

[20] Learned Counsel Ms. Henry said that Mr. Croft has demonstrated that he has a proper cause of action. The issues which Ms. Henry submitted are required to be tried and determined by the Court in the substantive matter are whether:

(a) the roads, the subject of these proceedings, are indeed public roads over which he now has gained a private interest, and

(b) the threatened action by Mr. Horsford of imposing restrictions on Mr. Croft's user of these roads would amount to an interference with Mr. Croft's private rights.

Learned Counsel Ms. Henry asked the Court to find that Mr. Croft has satisfied the requirement of showing that he has a serious issue to be tried.

[21] Next, the Court must consider whether, as an alternative to the grant of the injunction, damages would be an adequate remedy. Learned Counsel Ms. Henry submitted that where the damage is non-pecuniary, as in this case, where the cause of action is grounded in the tort of nuisance, then damages would not be an adequate remedy and the Court would grant an injunction. Applying the learning in American Cyanamid, the question may be posed thus, if Mr. Croft were to prevail at the trial of the action and he were to prove that the roads are public roads over which he should have unrestricted access, would damages be a suitable remedy? Learned Counsel argued that damages would not be an appropriate or adequate remedy for Mr. Croft.

[22] The next question for consideration by the Court would be wherein the balance of convenience lies. This question requires the Court to consider whether by the grant of the injunction an injustice may be done to Mr. Horsford which will outweigh giving relief to Mr. Croft.

[23] Learned Counsel Ms. Henry said that there is no evidence before the Court that any injustice would be done to Mr. Horsford if the Court were to grant this interlocutory judgment. The evidence before the Court is that Mr. Croft and others have enjoyed the free and unrestricted user of the roads for at least two years, and Mr. Horsford has not sought to establish any inconvenience to him by Mr. Croft. Mr. Horsford has not given any evidence of loss that he would suffer were the Court to grant the injunction.

[24] Learned Counsel Ms. Henry submitted that the balance of convenience lies in favour of the grant of the injunction.

[25] In relation to the fortification of the cross undertaking, learned Counsel Ms. Henry said that Mr. Horsford not having foreshadowed in his affidavit that he would suffer any loss if the status quo is maintained, the Court should only require, as is the practice, that Mr. Croft give a written undertaking in damages and not require him to fortify the undertaking. Ms. Henry urged the Court to find that Mr. Horsford's affidavit raises in a vague and speculative manner the possibility of loss being suffered by him in the event of the injunction being granted. What is interesting is that Mr. Horsford has applied to the Court for the appointment of an assessor to determine the quantum of loss which he might suffer were the injunction to be granted. This is a clear indicator that Mr. Horsford accepts that any loss that he might suffer would be amenable to compensation by the payment of an amount which, for him, is unknown. Mr. Croft's evidence is that he is the sole owner of property in Antigua and Barbuda. Ms. Henry drew the Court's attention to the copy of the Land Register exhibited to his affidavit filed in support of the application for the injunction which indicated that he is the owner of Parcel 217 which parcel is unincumbered. It is also Mr. Croft's evidence that he has a dwelling house constructed on that parcel of land.

[26] Finally, learned Counsel Ms. Henry urged the Court to find that there is sufficient evidence that Mr. Croft would be able to honour an undertaking in damages. Ms. Henry submitted that the

requirement for fortification of an injunction typically arises where the Court entertains doubts about the resources available to Mr. Croft to satisfy an order made against him to pay damages to Mr. Horsford if, subsequently, Mr. Horsford prevailed in the action. This view is expressed in Bean on Injunction 9th Edition, Chapter 3, paragraph 3.04 at page 32.

[27] In this jurisdiction, the guiding principle relative to the fortification of an undertaking in damages is no different than that expressed in Bean. In the case of Boston Life Annuity Company Ltd. v Dijon Holdings Limited and others (British Virgin Islands) No. 70 of 2006 the Court took the view that as it was satisfied that the claimant, against whom the injunction was sought, would have no difficulty in recovering damages to which it may be entitled at the end of the proceedings and, as such, that there was no need for fortification of the undertaking in damages.

[28] Court's analysis and conclusions

I have perused the affidavits that relate to the application and have given deliberate consideration to the very helpful submissions from both sides. I have also noted that during the hearing of the matter, Mr. Horsford undertook not to prevent Mr. Croft from utilising the eastern road that accessed Mr. Croft's house until the determination of the matter.

[29] Both sides have quite properly referred the Court to the locus classicus on interlocutory injunctions namely American Cyanamid ibid, however each side has sought to persuade the Court that its application to the issue in this application should yield very different results. The principles that can be distilled from that case are as follows:

(a) The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case.

(b) There are no fixed rules as to when an interlocutory injunction should or should not be granted. The relief must be kept flexible.

(c) The evidence available to the Court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by cross-examination.

(d) It is no part of the Court's function at this stage to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor

decide difficult questions of law which will call for detailed and mature considerations. These are matters to be dealt with at the trial.

(e) The object of the interlocutory injunction is to protect the claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial; but the claimant's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the claimant's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial.

[30] The factors that the Court needs to bear in mind are:

(a) whether there are serious issues to be tried;

(b) The extent to which damages are likely to be an adequate remedy for each party and the ability of the other to pay;

(c) The balance of convenience;

(d) Maintenance of the status quo; and

(e) Any clear view the Court may reach as to the relative strength of the parties' case.

[31] The guidelines that are laid down by Lord Diplock are regarded as the leading source of law on the subject. See David Bean Injunction 9th Edition page 37. The underlying basis of any injunction is that it is discretionary in nature. Applying the principles distilled from the case, it seems to me that the first issue that the Court should seek to resolve is whether there is a serious issue to be tried. Should the Court answer that question in the affirmative, the Court is then required to determine whether damages will be an adequate remedy. Where the Court is uncertain that damages would be an adequate remedy, the Court thereafter seeks to ascertain where the balance of convenience lies. Finally, if the Court concludes that damages will not be an adequate remedy to the claimant, it should go on to determine where the balance of convenience lies.

[32] It is not for the Court during the application for an interlocutory injunction to seek to determine the facts in the matter. However, the applicant is required to persuade the Court that he has a prima

facie case. This, to my mind, is the threshold issue in the application at Bar. Mr. Croft's claim is founded on nuisance. It is apparent that the major issue in the claim is whether the roads in question are public roads or private roads. He contends that the roads are public roads and that he has used them for in excess of nine months without any restraint by Mr. Horsford. As stated earlier, Mr. Horsford argues that they are private roads and that Mr. Croft can only use them with his permission, if the latter is willing to pay Mr. Horsford for the usage of the road.

[33] The overriding requirement for obtaining an action is the existence of a cause of action which entitles the claimant to obtain relief. Mr. Croft pleaded case establishes the cause of action in nuisance.

[34] Bearing in mind the American Cyanamid principles, it seems to the Court that Mr. Croft must show the following:

(a) There are serious issues to be tried;

(b) Damages are not an adequate remedy, and

(c) The balance of convenience favours the grant of an injunction.

[35] Additionally, the Court, in the exercise of its equitable jurisdiction, has discretion to refuse the injunction even if the above requirements are met.

[36] Serious Issues to be Tried

In so far as the merits are concerned, the Court is only required to consider whether there are serious issues to be tried. The applicant has to establish that he has an arguable case. There is no need for Mr. Croft to establish that he has a prima facie case. See David Bean on Injunction 7th Edition page 38 paragraph 3.15. With respect, I do not accept Mr. Horsford's position that Mr. Croft's case does not raise any serious issues. I have reviewed the submissions and evidence in their entirety and I have no doubt that Mr. Croft has satisfied the Court that there are serious issues to be tried; his allegations are by no means frivolous. Should the Court, at the trial, determine that the roads in question are public roads then the issue of whether Mr. Horsford has committed acts of nuisance in relation thereto would have to be determined. It seems clear to me that in order to determine whether the roads are public or private roads would require the Court to hear evidence

from witnesses during the trial, and these persons would no doubt be open to cross-examination. It is no part of the Court's duty at this stage, to determine the facts in dispute. Further, the disputed facts appear to be highly contentious.

[37] In determining those issues, it would no doubt require the Court, during trial, to peruse plans and to hear from persons who are qualified to give that sort of evidence. Accordingly, the Court is of the view that there are undoubtedly serious issues to be tried.

[38] Adequacy of Damages

Lord Diplock in the seminal case American Cyanamid ibid helpfully stated:

> "If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted".

[39] In determining this issue, it is very useful to pay regards to the dicta of Sachs LJ in Evans Marshall & Co. Ltd. v Bertola SA [1973] 1 WLR 349 at 379:

> "The standard question in relation to the grant of an interlocutory injunction – 'Are damages an adequate remedy' – might perhaps, in the light of recent authorities of recent years, be rewritten- 'It is just, in all the circumstances, that a plaintiff should be confined to his remedy in damages'".

[40] With that guideline in view, the Court is mindful of the fact that Mr. Croft's house is on a steep hill. There is uncontroverted evidence that Mr. Croft has been using the roads to access his house by vehicle for several months without any objection by Mr. Horsford. In view of the circumstances of this case, the Court is of the view that damages would not be an adequate remedy to Mr. Croft. It is very apparent that Mr. Croft will suffer severe hardship if he is only able to walk up the steep hill where his house is situated, rather than to be able to drive as he does. I digress to note that other persons who reside in the area are able to access their house by vehicle and by using the same roads.

[41] On the contrary, the Court has no doubt that if Mr. Horsford is restrained from blocking the road and it were to be concluded at trial that the injunction was wrongly granted, an award of damages would adequately compensate him for the losses, if any, that he would have suffered.

[42] There is no evidence before the Court that addresses the loss that might be caused to Mr. Horsford by virtue of the Court granting the injunction and the undertaking given by Mr. Croft. In any event, it is the law that the fact that a claimant is in pecuniary without more, is no basis for refusing to grant an interlocutory injunction.

[43] Balance of convenience

The Court needs to consider where the balance of convenience lies. At the interim injunction stage no one can say whether the applicant will obtain an injunction at the trial. If he fails at trial, the respondent would have been prevented from doing something that he wishes to do.

[44] The Court therefore needs to consider how great a harm will the applicant suffer if the injunction is not granted and the respondent is left to do what he wants, until trial? A similar question in respect of the respondent - what will he suffer if he is inhibited until trial? When the Court examines the relative position of both litigants, it is clear that while Mr. Horsford is likely to be affected in a minimal way, Mr. Croft is likely to suffer greater harm or inconvenience. The Court must also determine whether the potential damage to the applicant/respondent could be sufficiently compensated in money. Further, it is important that the Court examines whether there are special factors in the individual case. There seems to be great force in the fact that other persons are using the said roads with vehicular traffic. Mr. Horsford has indicated that this is so with his permission only. The Court fails to see how Mr. Horsford would suffer any irreparable damage if Mr. Croft is able to continue to traverse the road by vehicles.

[45] I digress to state that I am satisfied that unless Mr. Horsford is restrained he will take steps to restrict Mr. Croft's user of the roads to only by foot.

[46] Status quo

The rationale for the maintenance of the status quo is that if the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not undertaken as yet. In the present case, the status quo is the state of affairs that existed immediately before the issue of the writ. Based on the evidence and the submissions, there is no doubt that the balance of convenience lies in favour of maintaining the present status quo pending the determination of the substantive matter.

[47] In view of the totality of the circumstances, I am not of the view that there is the need to restrain Mr. Horsford from blocking Mr. Croft's user of the western road by vehicle. Having reviewed the totality of circumstances, I am of the respectful view that the justice of the case requires that the Court grants the injunction to restrain Mr. Horsford, his servants or agents or whosoever, from blocking or in any way impeding Mr. Croft's use of the eastern roads that form the subject matter of this application, until the rights of the parties are determined.

[48] Fortification of cross undertakings

A cross undertaking for damages by the claimant ought to be given on every interlocutory injunction. The purpose of the cross undertaking for damages is that in the event the interlocutory injunction is discharged, the person obtaining the injunction undertakes to pay such damages as the Court may be of the opinion that the defendant has suffered. As a general rule, the Court will not deny the claimant an interlocutory injunction to which he is otherwise entitled on the ground that his cross undertaking in damages is of limited value.

[49] If damages would not adequately compensate the claimant for the temporary damages, and he is in a financial position to give a satisfactory undertaking as to damages, and an award of damages pursuant to that undertaking would adequately compensate the defendant in the event of the defendant succeeding at the trial, an injunction may be granted. One of the reasons for requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its greatest object; abstaining from expressing any opinion on the merits of the case until the hearing". Wakefield v Duke of Buccleigh [1865] LT 628 at 629.

[50] Upon the application of the defendant, the claimant may be ordered to fortify his undertaking. It is noteworthy that before an application to fortify an undertaking can succeed, there must be a likelihood of a significant loss arising as a result of the injunction and a sound basis for belief that the undertaking will be insufficient must be shown. Bhimji v Chatwani, Chatwani v Bhimji [No 2] [1992] 1 WLR 1158.

[51] It bears noting that Mr. Horsford did not file any seperate application in which he seeks to have Mr. Croft's fortification of the cross undertaking. Rather, by way of submissions, he requested the Court to appoint an assessor to determine the value of the loss, which he says that he will suffer if the injunction were to be granted. In so far as he is a prose litigant, the Court invited both sides to address the issue of fortification of damages. I am afraid that Mr. Horsford has not provided the Court with any evidence of the losses that he is likely to suffer. In any event, I am satisfied that there in no difficulty in him recovering damages, if he were to be successful at the trial, since Mr. Croft is the registered owner of Parcel 217, which parcel is unincumbered. There is also the uncontroverted evidence that he has constructed a dwelling house on the land. In my respectful view, and by way of emphasis, Mr. Horsford would have no difficulty in recovering the fruits of his judgment if he was to succeed at the trial and damages were to be awarded to him.

[52] In view of the above, I am not of the respectful view that this is a proper case in which to order Mr. Croft to fortify the cross undertaking in damages.

[53] Conclusion

In view of the foregoing, it is hereby ordered as follows. Upon Mr. Geoffrey Croft giving the usual undertaking for damages, in writing, an injunction is hereby granted restraining Mr. Joseph Horsford, his servants or agents from blocking or in any way impeding Mr. Croft's vehicular access of the eastern road that accesses Parcel 217, until the hearing and determination of the substantive mater or until further order of the Court.

[54] Costs

The costs of this application shall be costs in the cause.

[55] The substantive matter is referred to the Court Administrator for the scheduling of a Case Management Conference, with a view to expediting the hearing.

[56] The Court gratefully acknowledges the assistance given by both sides.

Louise Esther Blenman
High Court Judge