

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2009

CLAIM NO. AXAHCV 2009/0023

BETWEEN:

BENJAMIN WILSON RICHARDSON
(Personal Representative of the Estate of
John Richards Richardson, Deceased)

GLOBAL INVESTMENT (ANGUILLA) LTD.

Claimants

And

OLIVER MACDONNA	1 st Defendant
ROBERT JEAN-ELLIE WILLIAMS RICHARDSON	2 nd Defendant
ARTHUR FLEMING	3 rd Defendant
EVANS RICHARDSON	4 th Defendant
AUSTIN RICHARDSON	5 th Defendant
RHONA RICHARDSON	6 th Defendant
COLLINS RICHARDSON	7 th Defendant
TERRENCE FLEMING MACDONNA	8 th Defendant
EMILE RICHARDSON	9 th Defendant
VIOLET RICHARDSON	10 th Defendant

APPEARANCES:

Ms. Nicola Byer of Joyce Kentish and Associates for the Claimants
Mr. Mark Brantley and Ms. Samantha Wright of Hodge's Law Office for the
Defendants

2009: March 11th

JUDGMENT

MICHEL J (Ag.): On February 16th 2009 the Claimants in this matter made an ex parte application for an injunction against the Defendants herein to restrain them from entering upon property known as Parcels 40 and 44 of West End Block 18111B, from excavating, from placing any material thereon or in any way interfering with the peaceful utilization or occupation of the property by the Claimants, their servants or agents until the further hearing of the matter. The application was supported by an affidavit of the 1st named Claimant, Benjamin Richardson.

The Order was granted by the Court and a date for the further hearing of the matter was set for February 25th 2009. It was also ordered that the Claimants were to file and serve the claim form and statement of claim on all parties to this action on or before the 23rd day of February 2009.

On February 23rd 2009 the Claimants made an application to this Court for the Injunctive Order granted on February 16th 2009 to be continued until the trial of the matter or until further order.

At the further hearing of the matter on February 25th 2009 it was ordered that the Notice of Application filed herein on February 23rd 2009 was to be served on Counsel for the Defendants by 4.00 p.m. on that day, that the Defendants were to file affidavits in response to the Injunctive Order by March 3rd 2009, that the Claimants were to be at liberty to respond to the said affidavits by March 6th 2009, that the inter parties hearing and the hearing of the Notice of Application would take place on March 10th 2009 and that the interim injunction granted by the Court on February 16th 2009 be continued until the inter parties hearing on March 10th 2009. The sitting of the Court scheduled for March 10th 2009 was rescheduled for today, March 11th.

The claim form and statement of claim have now been filed and served by the Claimants, they have been amended and re-amended and the Defendants have filed their acknowledgements of service. The Notice of Application of February 23rd was served on Counsel for the Defendants, the Defendants have filed affidavits in response to the Injunctive Order and the Claimants have responded to the affidavits of the Defendants. The issue then at the inter parties hearing is whether to continue or discharge the interim injunction granted by this Court on February 16th 2009.

At the commencement of the inter parties hearing the Court attended to some preliminary issues, including the correction of the names of the 2nd, 8th and 9th named Defendants as follows – the name of the 2nd named Defendant be corrected to read “ROBERT JEAN-ELLIE WILLIAMS RICHARDSON”, the name of the 8th named Defendant be corrected to read “TERRENCE FLEMING MACDONNA” and the name of the 9th named Defendant be corrected to read “EMILE RICHARDSON”; the Rule referred to in the heading of the Notice of Application filed on behalf of the Claimants on February 23rd 2009 be amended to Part 17.4(7) of the CPR 2000; and three affidavits filed on behalf of the Defendants after March 3rd 2009 and two filed on behalf of the Claimants after March 6th 2009 are all withdrawn by mutual consent of the parties and are expunged from the Court’s file.

The Court was then treated to two eloquent submissions by Counsel on both sides in this case and was referred to several judicial authorities from the Eastern Caribbean, the wider Caribbean and England.

All things considered, the decision of the Court comes down to this. The interim injunction was granted by this Court upon an ex parte application in which it was represented that the Claimants were the definitive owners of the identified parcels of land by virtue of orders of the Court to this effect, that the Defendants had made several attempts to overturn the orders of the Court to this effect and

to re-litigate the issues already dealt with by the Court but had been rebuffed by the Court on every occasion, that the Claimants were now about to embark on a major development on the aforesaid parcels of land and the Defendants had responded to the public announcement to this effect by themselves publicly announcing their intention to resist the development and had then caused a backhoe and other heavy equipment to be brought on the land to do excavation and earth moving works with a clear intent of frustrating the impending major development of the land and in clear disregard of orders repeatedly made by the Court asserting the title of the 1st named Claimant to the land in question.

The evidence now before the Court in the form of the several affidavits filed by the parties to this case leads ineluctably to the conclusion that some at least of the representations made to this Court by the 1st named Claimant were misleading, in particular, the representation that the Claimants were the definitive owners of the identified parcels of land by virtue of orders of the Court to this effect. It now emerges, not just from the affidavit evidence of the Defendants, but also from the affidavit evidence of the 1st named Claimant himself, that in fact the Defendants are entitled to portions of the identified lands by virtue of orders of this Court. And I need only refer here to one of several statements of the 1st named Claimant in his affidavit in response to the affidavits of the Defendants. At paragraph 14 of his affidavit dated and filed on the 6th day of March 2009 the 1st named Claimant said: "... I have never denied that the Defendants are entitled to portions of the Parcel 40 and 44 being portions of Parcel 1 referred to in the Consent Orders of 1982 and 1983 but the basis of seeking an injunction in these present proceedings was simply to stop the expansion of their acts to areas beyond or outside the areas agreed to be transferred by the consent orders." Moreover, it is clear from all of the evidence now before this Court, including the evidence of the 1st named Claimant, that the precise area of entitlement of the Defendants to Parcel 40 and 44 has not yet been determined, with the necessary consequence that the precise area of entitlement of the Claimants to the remainder of Parcels 40 and 44 could not therefore have been determined.

In the circumstances, it is abundantly clear that had the Court been seized of the information now known to it, the interim order granted on February 16th 2009 would not have been granted and the Court now discharges the aforesaid order with costs to the Defendants to be assessed if not agreed.

I can only express the hope here that all parties who are required to do any acts or perform any functions which are necessary to bring about a final resolution of this long standing land dispute do so with the utmost of urgency so as to avert any collateral damage that might occur to anyone from the continuation of this dispute.

MARIO MICHEL
High Court Judge, (Ag.)