IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CIVIL)
A.D. 2009

CLAIM NO. AXAHCV 2009/0034

IN THE MATTER OF THE ESTATE OF
PRECIOUS MILLICENT ADAMS, deceased

AND

IN THE MATTER OF RULE 67.4 OF THE EASTERN
CARIBBEAN SUPREME COURT CIVIL
PROCEDURE RULES, 2000

BETWEEN:

PETER M ADAMS
(as Co-Administrator of the Estate of Precious Millicent Adams)
Claimant/Applicant

AND

ERMINE PLOTKIN
(as Co-Administrator of the Estate of Precious Millicent Adams)
Defendant/Respondent

Appearances:
Ms. Jean Dyer and Ms. Merline Barrett for the Claimant/Applicant
Mr. Courtney Abel and Mrs. Cara Connor for the Defendant/Respondent

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2009: March 31st,
June 30th

JUDGMENT

[1] MICHEL, J. (Ag.): On 23rd March 2009 the Applicant, Peter Adams, as Co-Administrator of the Estate of Precious Millicent Adams, issued a Fixed Date Claim

against the Respondent, Ermine Plotkin, as Co-Administrator of the Estate of Precious Millicent Adams. The Fixed Date Claim was filed pursuant to Part 67 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (CPR) and seeks the Court's approval of the sale of the family home forming part of the Estate of Precious Millicent Adams to Ena Angela Adams on such terms and in such manner as shall be fixed by the Court. The Fixed Date Claim was filed together with an Affidavit of Peter Adams in Support of the Fixed Date Claim.

[2] The Applicant also filed at the same time a Notice of Application for interim relief seeking an order that the Respondent, by herself, her servants and/or agents or otherwise, vacate and cease to occupy the aforesaid family home until after the determination of the substantive proceedings and an order to permit Ena Angela Adams to re-enter and occupy the family home until the determination of the substantive proceedings. An injunction was also sought to restrain the Respondent, by herself, her servants or agents or otherwise, from disturbing or otherwise interfering with Ena Angela Adams' occupation of the family home until after the determination of the substantive proceedings. The Notice of Application was supported by an Affidavit of Peter Adams and the Applicant also indicated his reliance on the Affidavit in Support of the Fixed Date Claim.

[3] An Affidavit of Ermine Plotkin in opposition to the application for interim relief was filed by the Respondent on 27th March 2009.

[4] The application for interim relief came up for hearing on Friday 27th March 2009 but was adjourned at the request of Counsel for the Respondent, with costs for the day awarded to the Applicant. The application was adjourned to Friday 3rd April 2009 but was heard on Tuesday 31st March 2009, with the agreement of both parties, when this date became available.

[5] Counsel for the Applicant relied on Skeleton Arguments filed on behalf of the Applicant on 26th March 2009 and served on Counsel for the Respondent on 30th March 2009. Counsel for the Applicant supplemented her written submissions with oral submissions and additional authorities.

[6] Counsel for the Respondent did not file any Skeleton Arguments but relied instead on oral submissions and authorities handed in to the Court at the time of making the oral submissions.

[7] The essence of the application is for the Court to grant interim relief to the Applicant which maintains the status quo ante 25th February 2009, at which date Ena Angela Adams was in exclusive occupation of the property described in the Land Registry as Registration Section South East 78913B Parcel 223 and which property is referred to as the family home.

[8] Learned Counsel for the Applicant submitted that the juridical basis for granting interim injunctive relief in Anguilla is twofold. It derives firstly from Section 23(1) of the Eastern Caribbean Supreme Court (Anguilla) Act, Revised Statutes of Anguilla, Chapter E15, which states that:

> *"…an injunction may be granted…by an interlocutory order of the High Court or a judge thereof in all cases in which it appears to the Court or judge to be just or convenient that the order should be made and any such order may be made unconditionally or upon such terms and conditions as the Court or judge thinks fit."*

Secondly, it derives from Part 17 of the CPR which empowers the Court to grant interim relief, including interim injunctions.

[9] Learned Counsel for the Applicant then proceeded to address the various factors to be considered by the Court in exercising its discretion whether or not to grant an interim injunction, as laid down by the House of Lords in American Cyanamid Co. v Ethicon Ltd.[1]. On the conclusion of the submissions of Learned Counsel for the Applicant, Learned Counsel for the Respondent then responded to each of the submissions made by Counsel for the Applicant. The Court then reserved its decision.

[1] [1975] A.C. 396

[10] In accordance with the judgment of the House of Lords in the case of American Cyanamid Co. v Ethicon Ltd., the first factor to be considered is whether there is a serious question to be tried in the substantive case. As Lord Diplock stated at page 408 of the report:

> "*It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of 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 great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing'…. 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 relief that is sought."*

[11] Considering that the substantive action is one brought by one administrator against the other under Part 67 of the CPR for the disposal of the remaining asset of the estate for which they are the co-administrators, and on the disposal of which they cannot agree, there is obviously a serious question to be tried.

[12] The second factor to be considered is whether – if the Applicant were to be successful at the trial of the substantive claim – he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the Respondent continuing to do what was sought to be enjoined between the time of the application for the interim injunction and the trial of the substantive matter. Lord Diplock had also said at page 408 of the report earlier referred to:

> *"If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at*

> *the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason under this ground to refuse an interlocutory injunction."*

[13] In the present case, there is no question of damages being paid to the Applicant by the Respondent and no basis upon which damages could be awarded to the Applicant by the Respondent if the Applicant were to be successful at the trial of the substantive matter. There can therefore be no analysis of the adequacy of an award of damages in compensating the Applicant for any loss that may be occasioned to him by the Respondent continuing in occupation of the family home until the trial of the substantive matter. There can however be an issue as to the adequacy of damages to compensate the Respondent for being displaced from her occupation of the family home during the period between judgment on this application and the eventual trial of the substantive matter if the Respondent were to prevail then. And, having regard to the undertaking as to damages which would have to be given by the Applicant if an interim injunction were to be granted, and having regard also to the fact that the Respondent does presently have another home to reside in and that no irreparable harm is likely to be caused to her if she were displaced from her occupation of the family home, there does not appear to be any reason to refuse to grant the interlocutory injunction sought by the Applicant.

[14] This position having been arrived at, it is not necessary to continue on to address the question of the balance of convenience, but – for the sake of completeness – it can be stated that this balance would favour the Applicant who seeks to continue the occupation of the family home by one of the beneficiaries to whom it has been home not just in the growing up years, as it was to all of the other six beneficiaries, including the Respondent, but to whom it has been the only place called home for the last twenty years and who appeared to have expended considerable sums towards its improvement in the course of these years to render it more comfortable

as a home for herself. The Respondent, on the other hand, has another home in Anguilla and has not lived in the family home for well over twenty years and only entered the family home in contentious circumstances between February and March of this year when its occupant had gone away for medical attention. If therefore I had to rule on where the balance of convenience lies I would rule that it lies in favour of granting the injunction to the Applicant.

[15] There is no need therefore to seek to preserve the status quo by granting or not granting the injunction sought. However, the issue of the preservation of the status quo arises in determining what state of affairs will be maintained until the hearing of the substantive proceedings by the grant of an interim injunction.

[16] Learned Counsel for the Applicant submits that the status quo to be preserved is the status quo ante 25th February 2009. This is disputed by Learned Counsel for the Respondent who submits that there is no judicial authority for the submission of Counsel for the Applicant and that the status quo to be preserved is the status quo existing at the time of the institution of the proceedings, which is 23rd March 2009, at which time the Respondent was in occupation of the family home.

[17] Counsel for the Applicant cites Blackstone's Civil Practice as authority for the proposition that the status quo to be preserved is the state of affairs existing before the Respondent embarked upon the conduct complained of, which in the present case is the status quo ante 25th February 2009. Indeed, this proposition is expressly stated at paragraph 37.29 on page 424 of the 2006 issue of Blackstone's Civil Practice.

[18] Counsel for the Respondent, however, contends that this is an incorrect statement of law by the authors of Blackstone's Civil Practice, because they rely on the case of Garden Cottage Foods Ltd. v Milk Marketing Board[2] to arrive at this statement of law, but the House of Lords did not so hold in the Garden Cottage Foods Ltd. case.

[2] [1984] A.C. 130

[19] This Court notes that the authors of Blackstone did not say or suggest even that the House of Lords had made this specific ruling in the Garden Cottage Foods Ltd. case, but stated only that:

> *"From Garden Cottage Foods Ltd. v Milk Marketing Board [1984] AC 130, it appears that the status quo ante is the state of affairs before the defendant started the conduct complained of, unless there has been unreasonable delay, when it is the state of affairs immediately before the application."*

Moreover, the House of Lords did say, in the judgment of Lord Diplock reported at page 140 of the 1984 Appeal Cases, that:

> *"The duration of that period since the state of affairs last changed must be more than minimal, having regard to the total length of the relationship between the parties in respect of which the injunction is granted; otherwise the state of affairs before the last change would be the relevant status quo."*

In the present case, the duration of the period since the change in the status quo and the application for the injunction was less than a month and the total length of the relationship between the parties in respect of which the injunction is sought, however measured, is several years. There is also express authority, derived from the English case of Unigate Dairies Ltd. v Bruce[3], in which it was held that the status quo to be preserved is that which obtained before the breach complained of.

[20] I find myself, in the circumstances of this case, in agreement with Learned Counsel for the Applicant that the status quo to be preserved by an interlocutory injunction is the status quo ante 25th February 2009 or, in other words, the status quo as it obtained before the conduct of the Respondent complained of in this case. Any other conclusion would have the effect of endorsing or legitimizing a

[3] (1988) The Times, 2 March

course of conduct by the Respondent, who – having been twice rebuffed by the Court in her attempts to occupy the family home – forced her way into it when its occupant for the last twenty years had left the house temporarily to obtain medical attention.

[21] It is therefore ordered that, upon an undertaking by the Applicant to abide by any order this Court may make as to damages in the event that the Court finds that the Respondent has suffered any by reason of the grant of an interim injunction which the Applicant has to pay –

1. the Respondent, whether by herself, her servants and/or agents, including Lena Lloyd or Lisa Lloyd, or howsoever otherwise, shall forthwith vacate and cease to occupy the family home erected on Registration Section South East Block 78913B Parcel 223 at Flowers Avenue, Rey Hill, Anguilla; and

2. the Respondent is hereby restrained, whether by herself, her servants and/or agents, or howsoever otherwise, from disturbing or otherwise interfering with the occupation of the aforesaid family home by Ena Angela Adams;

until judgment on the Fixed Date Claim or until further order of this Court.

[22] Both sides appear to be of the view that the costs of this application should be borne by the Estate of Precious Millicent Adams and it is so ordered.

[23] In conclusion, I want to apologise to both parties and their respective Counsel for the delay in the rendering of this judgment. I had hoped to have rendered a judgment almost immediately after the hearing of the matter, but there was a six week delay in the receipt of the transcript and this triggered a further six week delay in the preparation of the judgment. I do hope though that the parties might

have used the delay to work on reconciling their differences, as I urged them to do at the conclusion of the hearing, failing which there ought to be an early trial of the Fixed Date Claim.

Mario Michel
High Court Judge