IN THE SUPREME COURT OF GRENADA·
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2012/0062

BETWEEN:

THE INCORPORATED TRUSTEES OF THE SEVENTH DAY ADVENTIST CHURCH

Applicant

and

JESTER EMMONS
JERRY EMMONS
GODWIN EMMONS

Respondents

Appearances:

Mr. James Bristol instructed by Ms. Ria Marshall for Applicant
Mrs. Celia Edwards Q.C, with Ms. Karina Johnson for Respondents

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2012: July 5;
2013: May 27.

JUDGMENT

[1] **ELLIS, J.:** By Amended Notice of Application (the Application) filed on 5th June 2012 the Applicant seeks an injunction to restrain the Respondents whether by themselves or agents or otherwise howsoever from entering and or using the lot of land and church building situated at Hillsborough in Carriacou (the Property) or in any way hindering the Applicant's enjoyment thereof. This interim application is made within the context of a Fixed Date Claim Form and Statement of Claim filed on the 29th February 2012 in which the Applicant seeks *inter alia* an injunction to restrain the Respondents whether by themselves or by the servants or agents or otherwise howsoever from entering or using the Property or in any way hindering the Applicant's use and enjoyment thereof.

[2] The substantive grounds of the amended Application are as follows:

i. That the Applicant is the owner of the Property,

ii. The Applicant operated a church on the Property through the agency of the Respondents.

iii. The Applicant dissolved the congregation of the church on 5th June 2011 and the Respondents have failed to deliver up possession of the Property despite being requested to do so.

iv. There is a serious issue to be tried.

[3] This Application was served on the Respondents and the hearing proceeded on an *inter partes* basis.

[4] The Application was supported by two affidavits sworn by Clifton Lewis, an officer of the Applicant (filed on 29th February 2012) and by Charles Gittens, an officer of the Applicant and Secretary of the Grenada Conference of Seventh Day Adventists (filed on 25th June 2012).

[5] In his affidavit, Clifton Lewis avers that the Applicant is the owner of the Property and church building by virtue of a Deed of Gift dated 18th October 2011 between the General Conference Corporation of Seventh Day Adventists and the Incorporated Trustees of the Seventh Day Adventists.

[6] He deposes further that on or about the 23rd July 2003, the Applicant formed an organisation called the Grenada Conference of Seventh Day Adventists pursuant to the Church Manual which Conference consists of the local Seventh Day Adventist Churches in Grenada. This Church Manual governs the relationship between members of the Church, and as the Carriacou congregation were members of the Grenada Conference they too are bound by the Church Manual.

[7] He stated further that the Respondents were members of the Carriacou congregation and respectively held the positions of First Elder, Treasurer and

Head Deacon. He alleged that from September 2007 to June 2011 the Respondents and other members of the Carriacou congregation, in breach of the Church Manual, failed to recognise the authority of the Conference with the result that on 5th June 2011, the Conference in accordance with the Church Manual dissolved that congregation.

[8] He also stated that despite reasonable requests to the First and Third Respondents the deliver up possession of the Property they have failed to do so. He contends that as a result the Applicant has been deprived of the use and enjoyment of the Property and has suffered loss and damage. Paragraphs 17 and 18 of his affidavit particularises this loss and damage.

[9] The affidavit of Charles Gittens provides details as to the governance of the Seventh Day Adventist Church and the local, regional and international structure of that Church.

[10] The Respondents' response to the Application is set out in an affidavit sworn on 10th April 2012 by the First Defendant, Jester Emmons. In it he avers that the church building in Carriacou was built in 1903 by the Carriacou congregation of Seventh Day Adventists, which at the time included his grandfather. He contends that the building was built with the consent of the General Conference Corporation of Seventh Day Adventists by the congregation for the worship by the congregation. He asserts that by virtue of this, the Carriacou congregation has an irrevocable licence by proprietary estoppel to worship in the said Church.

[11] Mr. Emmons further avers that the Church was destroyed in the 1955 Hurricane and was rebuilt in 1957 by the members of the congregation which at that time included his father, the third named Respondent.

[12] The Respondents' position is that the Deed of Gift in 2011 does not change the fact that the Church building was built by the congregation to their detriment and

with the consent of the owner thereby creating an irrevocable licence by proprietary estoppel.

[13] The Respondents do not accept the validity of the Grenada Conference of Seventh Day Adventists and dispute its legal status. They deny the Church Manual was produced by the Applicant or that the Manual governs their relationship. They state rather that the Carriacou congregation is governed by the Word of God. The Respondents state that they do not represent themselves to be members of the Conference of Seventh Day Adventists. In fact they indicate that the members of the Carriacou congregation have recently registered a company called the Hillsborough Adventist Church and that they continue to worship in the church which they have built and worshipped in since 1903.

[14] They deny that the Applicant ever sought possession of the Property but state rather that the request came from the Grenada Conference of Seventh Day Adventist, which has no authority to demand possession of the Property. Further, even if the request had come from the Applicant, the Respondents state that the Applicant would not be entitled to possession because of the irrevocable licence.

Interlocutory Injunctions – The Court's Approach

[15] The grant of any injunction is in the discretion of the court and the court is vested with a wide discretion. The general principles which a court must take into account have long been laid down in the classic case of **American Cyanamid Co. v Ethicon**[1]. In that case the House of Lords prescribed that the court must first be satisfied that the applicant's case is not frivolous or vexatious and that there is a serious question to be tried. Once that is established, the governing consideration is the balance of convenience. A significant factor in assessing the balance of convenience is the adequacy of damages to each party. If that does

[1] [1975] 2 WLR 216

not provide a definitive answer, then other aspects of the balance of convenience will have to be considered. If the balance of convenience does not clearly favour either party, then the preservation of the status quo will be decisive. Only as a last resort is it proper to consider the relative strength of the cases of both parties and only when it appears from the facts set out in the affidavit evidence as to which there is no credible dispute, that the strength of one party's case is disproportionate to that of the other.

[16] The **American Cyanamid** case has since been critically considered in recent case law. In **Series 5 Software v Clarke**[2] Laddie J held that where on an application for an interim injunction the court is able from reading the evidence to form a clear view as to the relative strengths of the parties' cases, it should take that view into account in deciding whether to grant of refuse the injunction. In his judgment, the proper approach of the Court should be as follows:

> *"(1) The grant of an interim injunction is a matter of discretion and depends on all the facts of the case. (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. (3) Because of the practice adopted on the hearing of the applications for interim relief, the court should rarely attempt to resolve the issues of fact or law. (4) the major factors the Court can bear in mind are (a) the extent to which damages were likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo and (d) any clear view that the court was able to reach as to the relative strength of the parties cases."*

[17] While these cases set out the general approach which a court must adopt when considering an application for an interim injunction, it is clear that over the course

[2] [1996] 1 All E.R. 853

of time the application of these principles has been further refined in particular circumstances.

Interlocutory Injunctions - No arguable defence

[18] By way of example, which is particularly relevant to the facts of this case, the courts have determined that a landowner is prima facie entitled to an injunction to restrain trespass on his land (where title is not in issue and even if he suffers no harm) unless the defendant can show an arguable case that he has the right to enter or remain on the Claimant's land.[3] This legal position was definitively outlined by the English Court of Appeal in **Patel v W H Smith (Eziot) Ltd. and Another**[4] in which it held that it is only where a defendant could show an arguable case that he had the right to do what an applicant seeks to prevent, that a court should then proceed to consider the balance of convenience, the preservation of the status quo or the adequacy of damages as a remedy.

[19] In that case, the applicant and the defendant were freehold owners of adjoining properties which once had been in common ownership. There was a right of way in favour of the defendant over the applicant's yard, plus the right to park for the purpose of loading and unloading. For 30 years the defendant had used the yard for general parking. The applicant commenced proceedings to restrain that use. The defendant claimed a prescriptive right by virtue of a lost modern grant or 20 years' user as of right. The court of first instance refused an interlocutory injunction.

[20] On appeal, the Court allowed the appeal and held that that where title was not in issue, a landowner was prima facie entitled to an injunction to restrain a trespass even if the trespass did not harm him. Only if the defendant could show an

[3] Woollerton and Wilson Ltd. v Richard v Costain Ltd. [1970] 1 WLR 411; John Trenberth Ltd. National Westminster Bank Ltd. (1979) 39 P&C.R. 104

[4] [1987] 2 All E.R. 569

arguable case that he had a right to do what the plaintiff sought to prevent should the court go on to consider the balance of convenience, the preservation of the status quo and the adequacy of damages as a remedy. After concluding that there was no such arguable case made out, the Court granted the injunction.

[21] The reasoning in **Patel** has since been approved in several recent decisions including **Calor Gas Ltd. v Homebase Ltd.**[5] and **Quick Draw LLP v Global Live Events LLP**[6]**.** In the latter case the court considered the **American Cyanamid** guidelines and concluded in accordance with that test that an applicant has to establish at least that its claim raised a serious issue to be tried, otherwise no injunction would be granted, irrespective of the balance of convenience. Equally, the Court concluded that an applicant would be granted an injunction irrespective of the balance of convenience or the adequacy of damages if a respondent could not establish an arguable defence which raised a serious issue to be tried.[7]

[22] It is therefore for a defendant to proffer sufficient cogent evidence to establish that he has a right to do what is sought to be restrained. In considering this evidence the court must, in the words of Lord Diplock[8] "... *be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature consideration. These are matters to be dealt with at the trial.*"

[23] In the case at bar, the Respondents do not deny the Applicant's title to the Property. Rather, they allege that they have a right to enter and to use the Property by virtue of the legal principle of proprietary estoppel. They contend that

[5] [2007] EWHC 1173 (Ch.)
[6] [2012] EWHC 233 (Ch.)
[7] Official Custodian for Charities v Mackey [1985] Ch. 168
[8] American Cyanamid at page 407

the congregation in Carriacou (of which they form part) holds an irrevocable licence which entitles them to worship in the church building. On this basis they claim that the Applicant should be denied the injunctive relief sought.

[24] If the Respondents are to demonstrate that they have an arguable case they must adduce sufficient evidence to establish that they have the right or entitlement to remain in possession of the Property by virtue of an irrevocable licence. They are not required to prove this right on a balance of probabilities. Indeed the Court is mindful that it is not justified in embarking on anything like a trial of the substantive action. Rather, in the words of Neill J at page 568 of **Patel v W H Smith (Eziot) Ltd. and Anor,** the Respondents are required "only to put forward some evidence ... which goes beyond the stage of mere assertion."

[25] The Court must therefore determine whether the Respondents' pleadings and evidence demonstrates that there is an arguable case. In so doing, the Court must consider whether the Respondents have sufficiently discharged their burden to show that they have a legitimate legal or equitable right or interest which entitles them to persist in their use of the property.

Irrevocable Licence – Proprietary Estoppel

[26] The doctrine of estoppel is said to have played a significant part in the modern development of the law of licences. There is no question that a licence may be irrevocable at common law if the licensor is estopped by having allowed or encouraged the licensee to act to his detriment on the understanding that this right would be permanent. The doctrine of estoppel by encouragement or acquiescence has therefore flourished under the principle now commonly referred to as proprietary estoppels, and in the context of licences the doctrine is particularly attractive because a court will usually be required to "*look at all the circumstances in each case to decide in which way the equity can be satisfied.*"[9]

[9] Plimmer v Wellington Corp.(1884) 9 AC 699 at 714

[27] The modern law of proprietary estoppel stems from the House of Lords' decision in **Ramsden v. Dyson** [1866] L.R. 1 HI 129 in which the Lord Chancellor (Lord Cranworth) set out the circumstances in which proprietary estoppel may arise. At page 140 of the judgment he stated:

> *"If a stranger builds on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title; and that it would be dishonest in me to remain willfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented."*

Lord Cransworth further elaborated:

> *"But it will be observed that to raise such an equity two things are required, first, that the person expending the money supposes himself to be building on his own land; and secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all of the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights."*

[28] A simple formulation of the principle of proprietary estoppel stated by Mr. Edward Nugee QC in **Re Basham Deed** [1986] 1 WLR 1498 at 1503 and approved by Robert Walker LJ (as he then was) in **Gillett v. Holt** [2001] Ch. 210 is as follows:

"The Plaintiff relies on proprietary estoppel, the principle of which, in its broadest form, may be stated as follows: where one person, A, has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, C, cannot insist on his strict legal rights, if to do so would be inconsistent with A's belief."

[29] The factors which a court must therefore consider in determining whether an equitable estoppel is established include:

(1) The conduct of the claimant: The claimant must have acted to his detriment upon an assumption or expectation that a particular legal relationship existed or would exist between the claimant and the defendant or that the claimant would acquire some interest in the defendant's property.

(2) The conduct of the defendant: the defendant must have induced the claimant to adopt the assumption or expectation and encouraged the detriment of the claimant or at least failed to deny the assumption or expectation with knowledge that the claimant was relying on it to the claimant's detriment.

(3) The subject matter: that the assumption or expectation was one that defendant could lawfully satisfy.

[30] The Court must therefore now examine the facts and evidence in the case at bar in order to determine whether the Respondents are able to establish an arguable defence that they are entitled to by virtue of an irrevocable licence to enter and remain on the Applicant's property.

Respondents' Evidence – Court's Analysis

[31] The evidence relied on by the Respondents in support of their contention is set out at paragraphs 3 to 6 and 10 of the affidavit of Jester Emmons. This essentially repeats what is pleaded in paragraphs 11-15 of the Defence filed on 10th April 2012.

[32] As regards the constituent elements of the estoppel, the Respondents state that the church building was built by the Carriacou congregation in 1903 with the consent of the then owners for the worship by the congregation. They contend that the then owners acquiesced in the congregation acting to their detriment by using their financial and physical resources to construct the said Church. The Respondents stated further that the congregation worshipped at the said Church until it was destroyed in 1955, whereupon it was rebuilt by the members of the congregation (including the Third Named Defendant) with the acquiescence of the owners. The Respondents therefore assert that the detriment incurred in 1903 and again after 1955 gave rise to an irrevocable licence by estoppel in favour of the Congregation.

[33] This is the entirety of the evidence which the Respondents put forward as meeting or grounding the requirements of an irrevocable licence created by proprietary estoppel. Counsel for the Respondents states that their claim goes beyond mere assertion and that sufficient facts have been presented to show that there is a serious issue to be tried and an arguable case made out.

[34] Although it appears to be common ground that the church building on the Property was constructed by certain members of congregation in Carriacou in 1903 and later rebuilt by members of the congregation after 1955, the Court is not persuaded that this affords the named Respondents an arguable defence.

[35] Firstly, although the application is brought against the Respondents personally, their defence is grounded or based on an alleged equitable right or interest which they contend is vested in the Carriacou congregation. Their individual entitlement to enter and remain on the Property is hinged solely on the fact that they are currently members and representatives of that congregation. Respondents do not contend that the congregation (as at 1903 or 1955) was an incorporated body.[10] In fact, the evidence is that the Respondents only recently incorporated a church body known as the Hillsborough Adventist Church, no doubt to give legal status to the new church.

[36] It is clear that as an entity, a congregation could only be described as a group of persons who at any material time assemble regularly to worship. It has a non-juristic nature and by its very nature a fluctuating membership. At its best, the congregation would have no greater legal capacity than a voluntary association.

[37] Generally, a voluntary or unincorporated association is not regarded as a legal person and therefore cannot be the owner of property or the subject of legal rights and duties.[11] Any interest in real property would therefore have to be held by someone with legal personality and unless other arrangements are agreed, the usual practice is that it is owned jointly by all the members.

[38] As an entity, the congregation would therefore have no separate legal personality apart from its individual members. It follows that the Respondents would need to demonstrate that the constituent elements of proprietary estoppel can be made out in respect of the individual members who would have incurred a detriment. The Respondents' case does not in any way contemplate or attempt to satisfy this requirement.

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[10] The Hillsborough Seventh Day Adventist Church was incorporated only in 2012

[11] Halsburys Laws of England (4th Edition) Vol. 7 page 11

[39] It is noteworthy that save for the Third Named Respondent, the evidence of detriment is dealt with on a collective basis and in the following terms:

> *"The members of the congregation acted to their detriment by expending their financial and physical resources to construct the church for the purpose of worshipping therein."*

[40] Indeed, of the individual members who could lay claim to this proprietary right, only the grandfather of the First Defendant (in 1903) and, the Third Named Defendant (after 1955) have been specifically identified as members who may have acted to their detriment in contributing to the construction of the church.

[41] It is now trite law that equity will not assist volunteers or persons who have given no consideration. If he is to rely on this equitable estoppel, an occupier must have incurred expenditure or otherwise prejudiced himself or acted to his or her detriment. In the case at bar, the evidence reveals that at best, actual detriment could only possibly be made out by the Third Named Defendant who it is alleged had some role to play in the rebuilding of the church after 1955. In respect of the First and Second Respondents, no detriment is alleged.

[42] Secondly, even assuming that detriment could be made out (even by the Third Named Respondent), the Respondents must not only allege but their evidence must be sufficient to prove that in incurring this detriment, the members of the congregation acted in the belief that they already owned a sufficient interest in the property to justify the detriment or that they would obtain such an interest. It is clear that if an occupier has no such belief and improves the land when he knows that he is merely a tenant, licensee or occupier under an incomplete or revocable contract, he has no equity as a result of his expenditure. **Cherry Cabral v Alice Robinson King** Unreported Belize Civil Appeal No. 4 of 1994 (8th September 1994), at page 6; Nicholas Lansiquot v Ignatius Leon et al. ECSC Civil Appeal No 29 of 2005.

[43] So that if the members of the congregation in 1957 had no such belief and yet improved the land in which they had no interest, apart from the mere interest of a licensee or occupier, they would have no equity in respect of their detriment.

[44] This critical issue is not addressed in the Respondents' pleadings save to say that the church building was built with the consent of the Applicant's predecessor in title for the worship by the congregation. Indeed the Respondents have provided no evidence that the members of the congregation acted to their apparent detriment in the belief that they already owned a sufficient interest in the property or that they would obtain an actual interest in the property. In any event, it is clear that the Respondents do not contend that they personally had any such assurance.

[45] Thirdly, although the Respondents allege that the Applicant's predecessor in title consented to or acquiesced in the construction of the Church building on the Property, they do not contend that in doing so the Applicant, or rather its predecessor in title encouraged them to believe that it would give the congregation or the ever evolving myriad, an interest in the Property.

[46] This Court is guided by the Privy Council dicta in **Knowles v Knowles** where it was observed

> *"In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalize those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In* ***E & L Berg Homes Ltd v Grey*** *(1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108:*

[47] The essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result.[12] In considering whether the doctrine of proprietary estoppel can arguably be made out on the facts of this case, the Court must, however, be mindful of the admonition of Slade, L.J in **Watts & Ready v. Storey**[13] that courts should apply the doctrine with a degree of caution since the estoppel principle may have the drastic effect of conferring on one person a permanent, irrevocable interest in the land of another, even though he has given no consideration for such acquisition, by way of contractual arrangement, and no legally effective gift of it has been made in his favour. A similar caution was sounded by Ormrod, J. in **E & L Berg Homes Ltd. v. Grey** (1979) 253 EG 473 at 479 C.A.

[48] In the Court's view, it would be almost impossible to discern how an estoppel could be satisfied on the basis of the facts of the case at bar, given that the licence by proprietary estoppel is claimed in favour of the 1903 or 1957 congregation as a collective and in the absence of sufficient evidence supporting the key components of the estoppel.

[49] In any event, what is clear is that the application before this Court is in respect of the named Respondents and it is for them to show that they have some right to do what is sought to be restrained. Counsel for the Respondents submitted that, as members and representatives of the Carriacou congregation, the Respondents are by virtue of the congregation's irrevocable licence entitled to enter and to use the Property.

[50] Even assuming that the proprietary interest could be made out by members of the congregation as constituted in 1903 or 1957, Counsel was not able persuade the Court that that interest could then devolve to the benefit of the named

[12] Jennings v Rice [2002] EWCA Civ. 159

[13] [1984] 134 New, L.J. 632 C.A

Respondents. The Respondents have advanced no legal theory by which the 1903/1957 congregation (assuming it could acquire an equitable interest by way to proprietary estoppel) or its members could then assign or devolve that interest to successive and ever emerging third parties so that it may be enforced by such third parties against the original legal owner. Could they (or for that matter any other member of the public) by virtue only of becoming a member of that congregation claim that they too have the benefit of an irrevocable licence or interest in the Property which would have to be recognised by the legal owner?

[51] At its highest, even if they were members of the congregation, the Respondents' case discloses that they would have been permitted to enter and use the church property as licensees since they do not themselves allege or have not established that they have any interest in the properties.

[52] The central basis upon which the Respondents resist the Application is that the congregation holds an irrevocable licence created by proprietary estoppel for the use and worship in the church building. Having found that there is scant evidence to support this contention and having found no legal basis upon which such licence (if made out by the members of the congregation) could inure to the benefit of the named Respondents, the Court finds that the Respondents' defence has not been addressed beyond a mere assertion.

[53] The Applicant claims that the Application is in keeping with the guidelines set outlined in **American Cyanamid.** It alleges that there is a serious issue to be tried and has given an undertaking in damages. On a whole, the Court finds that the Applicant has demonstrated that there is a serious question to be tried and a clear cause of action to secure possession of the Property for its membership. There is undisputed evidence that the Applicant is the owner of the Property and is therefore entitled to demand possession. Conversely, the Respondents have on their pleadings or by their evidence failed to discharge the burden which lies on them to demonstrate an arguable case which goes beyond mere assertion that

they personally have a legal or equitable right to enter and to remain on the Property.

[54] The Court finds that the Applicant is therefore prima facie entitled to an injunction to restrain the hindrance of their enjoyment of the Property. On the strength of **Patel v W H Smith** the Court does not need to go further to consider the balance of convenience, the adequacy of damages as a remedy and the preservation of the status quo. Notwithstanding this, the Court is persuaded by the submissions of Counsel for the Applicant that the balance of convenience lies in favour of the grant of the interim injunction. Having regard to paragraph 17 and 18 of the affidavit of Clifton Lewis, the Court finds it impossible to say that there is no potential damage to be suffered by the Applicant if the injunction is not granted. Further, given that the Respondents have registered a new church to be operated out of the same premises as the previously endorsed church body, the Court is of the view that damages would not be an adequate form of relief. Conversely, given the Claimant's undertaking in damages, the Court is satisfied that Respondents can be adequately compensated in damages assuming they can demonstrate that they have suffered loss.

Irrevocable Licence – not arising through estoppel

[55] Counsel for the Defendant at some point in her oral submissions also intimated that the Respondents rely on an irrevocable licence which does not arise out of estoppel. She submitted that the licence became irrevocable because the church building which was constructed is immovable and was constructed with the labour of the members of the congregation. Needleless to say, the Respondents' defence does not seek to advance an irrevocable licence separate from estoppel, neither have they provided any evidence in support of this contention. Indeed, during her submissions, this was not pursued by Counsel with any real vigour and she provided no authorities in support. The Court therefore is not able to properly consider this contention.

Conclusion

[56] Following the hearing of this application (July 2012), the parties at the Court's urging agreed to mediate this matter in the hopes of arriving at an amicable resolution. Given the parties involved and the nature of the issues in dispute, this would certainly have been the most desired outcome. The parties were therefore permitted ample time to facilitate mediation and the Court agreed to withhold its decision pending a report on the outcome of the mediation. Unfortunately, the Court has been advised that the mediation was unsuccessful and the parties have evidently elected to proceed to litigation.

[57] Sadly, the conclusions drawn in this case are not without precedent. There are a number of regional and international cases where a similar unfortunate scenario has played out. They include the **Church of God Seventh Day Incorporated v Hector Mathurin et al**[14] **and Lloyd Dobson v Ethiopian Orthodox Church in Jamaica**[15]. Although in both of these cases the applicants successfully obtained interim injunctive relief, the cases reinforce the Court's view that it is in the interest of all parties that this matter be quickly and finally resolved. The substantive claim is ripe for case management and there is no reason why this should not proceed with promptitude.

[58] The Court therefore orders as follows:

1. **An interim injunction is granted to restrain the Respondents whether by themselves or agents or otherwise howsoever from entering and or using the lot of land and church building situated at Hillsborough in Carriacou (the Property) or in any way hindering the Applicant's enjoyment thereof.**

[14] SLUHCV2011/1201 (unreported)

[15] [2011] JMCA Civ. 39

2. This injunction will remain in force pending the outcome of this trial or further order of this Court.

3. The substantive claim will be promptly set down for case management before the Master.

4. The costs of this Application are reserved.

Vicki Ann Ellis
High Court Judge