THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2001/0520

BETWEEN

VULGINA ALEXANDER (deceased)

(Representative of the Estate of Vulgina Alexander, Mr. Silmo Alexander)

CLAIMANT/RESPONDENT

AND

NOLLIE ALEXANDER

DEFENDANT/APPLICANT

AND

VULGINA ALEXANDER

(Executrix of the estate of Sylvester Alexander, deceased)

DEFENDANT/RESPONDENT

AND

HONOURABLE ATTORNEY GENERAL

of Saint Vincent and the Grenadines

DEFENDANT/ADDED RESPONDENT

Appearances:

Mr. Duane Daniel and Ms. Patina Knights for the claimant.
Mr. Emery Robertson Snr. for the first respondent/applicant.
Mrs. Patricia Marks-Minors for the second respondent.
Mr. Kezron Walters for the added respondent.

2016: Jul. 11
Nov. 28
2017: Jan. 18

DECISION

BACKGROUND

[1] **Henry, J.:** This is an application by Nollie Alexander for leave to appeal a decision of this court. In that matter, Nollie Alexander had applied for an order varying or discharging a permanent injunction in a judgment delivered by Thom J. in 2005. His application was dismissed on the ground that a court of concurrent jurisdiction may not set aside a final judgment. His application is resisted by the other parties. The application is dismissed for the reasons outlined below.

ISSUE

[2] The issue is whether Nollie Alexander should be granted leave to appeal.

ANALYSIS

Issue – Should Nollie Alexander be granted leave to appeal?

[3] The decision from which Nollie Alexander seeks leave to appeal was delivered on 8th June, 2016. Fourteen days later on 23rd June, 2016, he filed this application. It is supported by an affidavit of Constantine Alexander, self-proclaimed attorney on record for Nollie Alexander[1]. It outlined 8 proposed grounds of appeal. Nollie Alexander did not file any skeleton arguments. When the matter came on for hearing on 11th July, 2016, Nollie Alexander was ordered to file skeleton arguments and list of authorities by 29th July, 2016 and the other parties were required to file theirs on or before 19th August, 2016. None of the parties complied with the order.

[4] On 28th November, 2016, Nollie Alexander was granted an extension of time to 6th December, 2016 to file and serve skeleton arguments and list of authorities. Likewise, the respondents were granted an extension of time to 9th December, 2016 to file and serve theirs. None were forthcoming.

[5] These applications arise out of a dispute among the parties surrounding ownership to land on Union Island. The claimant Vulgina Alexander now deceased, began this claim to obtain a judicial

[1] Filed on 23rd June, 2016.

pronouncement as to whether she was entitled to a share in property which was registered in her husband's sole name. At some point, the property was transferred to Nollie Alexander who happened to be Sylvester Alexander's son. When Sylvester Alexander died, Nollie Alexander gave Vulgina Alexander notice to quit. Vulgina Alexander sued him alleging that the property was owned by her husband, Sylvester Alexander and her. As the executrix of Sylvester Alexander's will she was added as a defendant.

[6] After a full trial, in a judgment delivered on 4th October, 2005, Thom J. ruled that Vulgina Alexander was entitled to an undivided half share in the property. The Deed conferring title to Nollie Alexander was cancelled and a permanent injunction was issued restraining him and the executrix from selling or disposing of the property. Neither party appealed. Eleven years later, on 20th November 2015, Nollie Alexander applied for an order discharging or varying the order in paragraph 33 iii of Thom J's judgment. That paragraph contained the referenced injunction. Nollie Alexander now seeks leave to appeal from the decision not to vary or discharge the injunction.

[7] An applicant seeking leave to appeal from an interlocutory decision must file his application within 14 days.[2] It must be in writing and outline the grounds of the proposed appeal. Nollie Alexander's application satisfies those requirements. If he is to be granted leave to appeal, it must be demonstrated that he has a realistic prospect of success. An examination of the proposed grounds of appeal will indicate whether Nollie Alexander's chances of success are realistic or merely fanciful.

[8] In paragraphs 1 and 8 of his proposed grounds of appeal, Nollie Alexander submits that the court erred when it did not interpret section 20 of the Eastern Caribbean Supreme Court Act[3] as 'expressly or implicitly authorizing the high court to discharge or vary a permanent injunction granted in its concurrent jurisdiction after a trial. This is essentially a challenge to the court's ruling that it has no authority to set aside a permanent injunction granted in a final judgment after trial by a court of concurrent jurisdiction. Nollie Alexander was ordered specifically to file copies of decided cases or

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[2] Eastern Caribbean Supreme Court Act, section 32 (2) (g), Chapter 24 of the Laws of Saint Vincent and the Grenadines; Civil Procedure Rules 2000, Part 62.2(1); David Shimeld et al v. Doubloon Beach Club Limited SLUHCVAP 2006/0033.

[3] Cap. 24.

other legal authority which empowers the court to do so. He failed to do so. This court is not aware of any such legal authority.

[9] In fact, the correct legal position was urged on the court by Silmo Alexander in the previous application. He submitted the learning set out in Halsbury's Laws of England is applicable. Quoting the learning in that text he contended:

> 'The law discourages re-litigation of the same issues except by means of an appeal.' and 'The principles of res judicata, issue estoppel and abuse of process have been used to address this problem.'[4]

[10] I agreed then with Silmo Alexander's submissions and remain resolute that the judgment of the Privy Council in **Leymon Strachan v. The Gleaner Company Limited and Dudley Stokes**[5] articulated the guiding principle by which this court is bound in such cases. In that regard, once a court has rendered a final decision after a full trial, a court of coordinate jurisdiction is not competent to set that judgment aside. In my estimation, Nollie Alexander's chances of success on grounds 1 and 8 of the proposed grounds are doubtful.

[11] In grounds 3 and 4, Nollie Alexander contended that the court misunderstood the nature of the application and failed to exercise its inherent jurisdiction and the overriding objection of the CPR, when it ruled that it had no inherent authority to set aside a permanent injunction. Although Mr. Alexander was invited on two separate occasions to provide decided cases which supports the setting aside of a permanent injunction in those circumstances he failed to do so on both occasions. I have located no such decisions.

[12] Nollie Alexander contended earlier[6] that the court may vary or discharge the injunction pursuant to its inherent jurisdiction, and the overriding objective of the Civil Procedure Rules 2000, ('CPR') under

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[4] 5th Ed. Vol. 12, para. 1166; Hunter v Chief Constable of West Midlands Police [1981] 3 All E.R. 727, paras. 35 and 38; cited with approval in Dion Friedland v Charles Hickox AXAHCV2012/0039.

[5] [2005] UKPC 33.

[6] In his submissions in support of his application to set aside to vary the injunction.

section 20 of the Eastern Caribbean Supreme Court Act ('the Act')[7]. The respective legal personal representatives of Vulgina Alexander's and Sylvester Alexander's estates and the Honourable Attorney General disagreed and contended that the injunction could be varied or discharged only by an appellate court.

[13] That provision does not empower the high court to discharge or vary a permanent injunction. Section 20 of the Act authorizes the Supreme Court to grant legal or equitable remedies to parties based on the facts and applicable law. In doing so, the court endeavours to completely resolve all issues thereby eliminating opportunities for multitudinous proceedings regarding the same subject matter as between the parties. Nollie Alexander does not stand a realistic chance of succeeding on grounds 3 and 4 of his proposed grounds of appeal.

[14] In his proposed grounds of appeal 5, 6 and 7, Nollie Alexander stated:

> '5. The learned trial judge failed to take into consideration the grounds on which the applicant was relying to support the application for variation and/or discharge of the injunction and 'did not advert to any and had she done so it would have become clear to her that the challenge was not to the order of Justice Thom's decision of the property division but that the order made in paragraph 33 iii is unworkable and until a further order is made the property becomes inalienable to the manifest injustice of the applicant as he cannot exercise the rights under the mortgage of sale, foreclosure and possession.'
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> 6. The order of costs was unreasonable in the circumstances and ought not to have been made and the same ought to be set aside by the court as in its present form it appears to be a punishment for the applicant.
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> 7. The learned Attorney General's and Vulgina and Silmo Alexander's submissions' were wrongly upheld and indicated that the judge she had not

[7]Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

directed her mind to the effect the order could have on both parties to the suit when she held that 'The learned trial judge formed the opinion that Vulgina Alexander should not be deprived of either her interest in the subject property or the benefit of enjoying such interest. The impugned sub-paragraph serves to protect her enjoyment of the property, and is in keeping with the rest of the judgment.'

I now examine them seriatim.

Proposed ground of appeal No. 5

[15] Nollie Alexander based his earlier application on 8 'grounds'. The first four of those grounds rehearsed allegations or facts of:

(1) Vulgina Alexander's death;

(2) non-payment by Sylvester Alexander's estate, 'Virginia' Alexander or her estate;

(3) Non-payment of the mortgage debt by Silmo Alexander; and

(4) receipt by Silmo Alexander of $121,800.00 from the government and accusation of his failure to pay Nolly Alexander any monies on the mortgage debt.

They introduced allegations which were not considered by the trial judge and of which no evidence could have been appropriately led within the context of an application to discharge or vary the order. In those circumstances, it would have been improper and unjust to consider them apart from the central application for discharge or variation of the injunction. The underlying application for variation or discharge was fully explored and addressed. The superfluous assertions contained in 'grounds 1 through 4' were not entertained separately as it would have been contrary to established legal principles to consider 'fresh evidence', and consequently improper and unjust to do so.

[16] In grounds 5 and 6 of his application to vary the order, Mr. Alexander alleged that Silmo Alexander is in possession of the mortgaged property and that consequently great and irreparable damage was being done to the applicant because he has no way of recovering his monies unless the injunction is discharged, which would make the property saleable and transferable. He also contended that an order for possession is necessary to implement the terms of paragraph 33 and that unless the order is discharged the applicant cannot realize his security.

[17] Essentially, those two grounds repeat the central prayer for the injunction to be varied or discharged and introduced new material which was not considered by the trial judge. The application for variation was fully explored and determined in paragraphs 3, 5, 6, 7, 11 and 12 of the decision. No mention was made, of the fresh allegations of irreparable damage or the suggestion that the property needed to be sold as it would have been improper and unjust to consider them.

[18] Ground 7 of the subject application requested that an order be made directing Silmo Alexander to pay over one half of the monies realized from the rental of the property. It introduced details regarding sums realized from such rental. To the extent that it supported the application for variation or discharge of the injunction, the application proper was considered but not the new factual assertions which this ground introduced. It was unnecessary to have regard to those allegations in order to address the main subject of variation or discharge of a permanent injunction. The allegations were totally unrelated to the application to vary or discharge the injunction and constituted instead a prayer for a remedy which was not canvassed at the trial, included in the judgment or included as part of the prayer. That aspect of this 'ground' appeared to be an attempt by Nollie Alexander to re-litigate the claim which is impermissible. It was therefore not entertained.

[19] In ground 8 of his earlier application, Nollie Alexander alleged that there was a material change in the circumstances because Sylvester and Vulgina Alexander have both died, Nollie Alexander is experiencing Alzheimer's disease and is dependent on this source of income for his livelihood. No connection was made between this ground and the relief sought. It introduced new considerations which were not part of the factual background before the learned trial judge. It was seemingly advanced in support of the application to vary the injunction. It was therefore unnecessary to allude to those statements of new developments to evaluate and resolve the application for variation or discharge of the injunction which was fully considered. There is no merit in Mr. Alexander's proposed ground of No. 5.

[20] Nollie Alexander in this ground of appeal contended that 'until a further order is made the property becomes inalienable to the manifest injustice of the applicant as he cannot exercise the rights under the mortgage of sale, foreclosure and possession.' It must be noted that

his application never sought 'a further order', rather it sought 'variation or discharge of an existing order'. That application which was considered fully. Although requested to file legal authorities on which the court could have granted his application on those new assertions, Nollie Alexander has failed to do so.

Proposed ground of appeal No. 6

[21] In this proposed ground, Nollie Alexander has signified his intention to challenge the costs order on the basis that it was unreasonable. Costs were agreed by the parties and incorporated as part of the order. CPR 64.5 authorizes the court to award costs pursuant to agreement of the parties as was done in the instant case. Furthermore, the court is given wide authority to award costs to a successful party. The general rule is that a costs order will be part of any decision on application, unless the court in its discretion considers it unnecessary, undesirable or unjust to make such an award. Nollie Alexander's challenge of this part of the decision is baseless.

Proposed ground of appeal No. 7

[22] Nollie Alexander contended in this proposed ground that the judge should have taken into account the effect the order would have on the parties. He was invited to provide legal authorities which obligate the judge to take such matters into account in assessing whether a permanent injunction should be discharged or varied. He did not. I am not aware of any. This proposed ground has no realistic prospect of succeeding. For the foregoing reasons, grounds 5, 6 and 7 have little chance of success.

[23] Suffice it to say, while CPR Part 42 permits the court to amend a judgment, this is permissible only where necessary to correct a clerical error or accidental slip or omission. It is trite law that a court becomes *functus officio* once a decision has been rendered. Substantive variations can only be made at the appellate level.

Costs

[24] None of the respondents filed written submissions even though they were given additional time to do

so. They basically participated as observers in this stage of the proceedings. This is an appropriate case in which no costs order should be made.

ORDER

[25] It is accordingly ordered:

1. Nollie Alexander's application for leave to appeal against the decision refusing him an order to vary or discharge paragraph 33 iii of Thom J.'s judgment dated 4th October 2005, is dismissed.

2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE