IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV 2018/0003

BETWEEN

MAUREEN DYETT **Claimant**

(sole executrix of the late Mary Chapman)

And

MARY CASSARIN **Defendant**

APPEARANCES

Mr David Brandt for the claimant.

Dr David Dorsett for the defendant.

2018: MARCH 15

JUDGMENT

Concerning an interim injunction to gain access to late mother's home

1 **Morley J**: By a fixed date claim filed on 18.01.18, the claimant (Dyett)[1] wants access to, and ownership declared of, her late mother's home, Mary Chapman (Chapman), in the teeth of opposition from her aunt Mary Cassarin (Cassarin), one of Chapman's surviving sisters. Cassarin owns the land at block 14/09/11 on which Chapman built her concrete home from 1997, when Chapman had to move onto that land owing to the volcanic eruptions on

[1] For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, noting there are two Marys, with the same initials, and so I will use surnames, with no disrespect intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

Montserrat in 1995-7. Chapman died on 30.03.17and Cassarin has changed the locks. Dyett has applied for an interim injunction to stop Cassarin preventing her *'unrestricted possession, occupation, use and enjoyment'* of her mother's home. At trial, the question will be who owns Chapman's home, whether in law or in equity: is it Cassarin (who lives on Montserrat) or Dyett (on behalf of her and her three siblings under Chapman's Will, all of whom live in North America).

2 There is plainly great unhappiness in this family, with argument Cassarin is stripping the home of Chapman's personal possessions, though denied, and so I intend that the trial shall come on if possible on 28.03.18, or at the latest in July 2018.

3 In the background, Cassarin had the land belonging to her late mother Susanah Gerald registered in her name in 1991, with support from her sister Geneve, saying it had been gifted to Cassarin by her mother in exchange for being looked after in old age.

4 When Cassarin's other seven siblings learned of this, there was complaint alleging fraud, arguing the land should be shared by all nine. Eventually, on 27.04.01, by originating summons, claim was launched by Chapman and her brother Dudley Dyett to have Cassarin striped of sole title. There was a trial before Octave J(ag) on 20.03.06, with it seems judgment as much as three years later on 24.04.09[2]. Cassarin's title was upheld, Chapman was ordered to take down a fence that obstructed Cassarin on the land, and the Learned Judge noted at para 42 she did not believe Chapman on an important matter, citing a letter from Cassarin to the Land Development Authority of 09.12.97 which said Chapman was only to be on Cassarins's land in a temporary dwelling for 8 years until 2005.

5 Assessing the test for an injunction, in **Jipfa Investments v Brewley et al 2011** [BVI, ECSC], I must examine (1) whether there is a serious issue to be tried, and if so (2) whether damages would be adequate for the applicant, and (3) where the balance of convenience lies.

[2] Cassarin v Chapman MNIHCV 2001/0010.

6 As to a 'serious issue' to be tried, it is likely to be whether, at the very least, proprietary estoppel gives Chapman and her children an equitable interest in the home Chapman built and lived in.

7 The current situation is that no one is living at Chapman's home, Dyett and her siblings are abroad, there is a judgment Chapman was not truthful about her interest in the home she built, and I want the trial to come on quick.

8 Considering the injunction sought, I am of the view there is a serious issue to be tried, and while it appears either party could give an undertaking in damages, I find that the balance of convenience in this case is to preserve the status quo, namely that Cassarin, being in primary occupation of the land (though sometimes spends months in Canada), can continue to exercise control over access to Chapman's home on that land, and the question of who owns the home will shortly be settled at trial.

9 There is no order as to costs, which now await the trial outcome.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

15 March 2018