

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 341 of 2024

BETWEEN:

[1] GLADWIN PENNER 1<sup>ST</sup> Claimant

[2] ANNIE HERRERA 2<sup>ND</sup> Claimant

AND

JERRY FRIESEN Defendant

Appearances:

Ms. V. Flowers for the Claimants

Ms. D. Munoz for the Defendant

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2024: December 19  
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DECISION

***Interim injunction – Trespass – Damages as a remedy – Balance of convenience – Delay***

[1] The claimants filed a fixed date claim form and an *ex parte* application for an injunction on 19 June 2024. When the application was taken up, instead of granting relief *ex parte*, notice was issued on the defendant and *inter partes* hearing was fixed for 29 July. As service was not made on the defendant, the matter was adjourned. When it was eventually taken up, the parties were directed to file submissions, which they did on 30 October 2024. There was no oral hearing.

- [2] The proceedings concern a property described as parcel 2649, block 24, Society Hall Registration Section in the Cayo district consisting of 70.01 acres (“the property”). The claimants seek to restrain the defendant from planting or harvesting any crop after the current crop has been harvested and from disposing the proceeds from recently harvested crops, to give a full account of the proceeds from the sale of crops and to place such proceeds in an escrow account until the determination of these proceedings and to give a full inventory of the crops with expected harvest dates.
- [3] Gladwin Penner, the first claimant, gave an affidavit in support of the application. The essence of the affidavit is this. The claimants are the legal and equitable owners of the property. The defendant has been in unlawful occupation since the middle of 2017 and has grown crops which are harvested bi-annually. The claimants’ attempts to lease the property to the defendant failed. They could benefit more by working the land with their family members.
- [4] The defendant replied by affidavit filed on 11 October 2024. The defendant admits that the claimants are the registered proprietors of the property. On 10 February 2017 Wayne Tucker Sr (“Tucker”) executed a written agreement with Edward Penner to purchase the property and paid a deposit of \$300,000.00 towards the purchase price of \$420,270.03. The claimants are the children of Edward Penner. The balance sum was to be paid on receipt of titles to certain tracts of property. The defendant made an agreement with Tucker for a crop sharing arrangement, which included deforestation, laying down infrastructure and cultivation. The defendant says this agreement cannot be found. A 15% return was paid to Tucker. Tucker died on 13 November 2021 without paying the balance purchase price to Edward Penner.
- [5] The defendant filed a second affidavit stating that he has been in continuous and exclusive possession of the property pursuant to a tenancy arrangement with Tucker and that he has used the land for farming, making substantial investments in improving and maintaining it for agricultural purposes. The claimants did not object during the time he cultivated. In November 2023, the claimants made a proposal like the crop lease arrangement he had with Tucker. No formal agreement was reached with the claimants. He believes that Tucker had the authority to grant him a tenancy of the property. The claimants consented to his occupation of the property, as they knew he was paying 15% of the gross return from each crop to Tucker. The defendant states that the claimants’ lack of timely action led him to reasonably believe that he could continue farming without issue. By letter dated 20 September 2023, the claimants informed him that they would exercise their rights to take possession of the property. That is a summary of the defendant’s response.
- [6] Gladwin Penner replied by affidavit filed on 28 October 2024. He denies that the defendant invested substantial sums on the property. An agreement between the parties did not

materialize though a lease agreement was prepared and sent to the defendant. He denies the claimants consented to the defendant's occupation of the property. They had recently learnt that the defendant was renting the property from Tucker. The claimants deny there is any harvest due from the property in 2025.

[7] Having regard to the submissions of the counsel, the court's inquiry should consider whether there is a serious question to be tried at the trial or if the applicant can establish the prospect of succeeding at the trial. If the answer is in the affirmative, the balance of convenience affecting the parties, including the question whether damages as a remedy will suffice, must be considered.

[8] In the House of Lords decision in *American Cyanamid v Ethicon Limited*<sup>1</sup>, Lord Diplock stated:

"The object of the interlocutory injunction is to protect a claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the 'balance of convenience lies'."<sup>2</sup>

[9] In *National Commercial Bank of Jamaica Ltd v Olint Corp Ltd*,<sup>3</sup> the Privy Council stated:

"The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the crossundertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted."

[10] The claimants have shown they have title to the property. Their contention is that the defendant's occupation and use of the property for farming activity is without permission. They are aware of an arrangement the defendant has with Tucker, who they say has no

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<sup>1</sup> [1975] 1 All ER 504

<sup>2</sup> At page 509

<sup>3</sup> [2009] 1 WLR 1405 at 1409

rights to the property. In these circumstances, it is evident that there is a serious question of law to be tried at the trial. The court will now consider whether the balance of convenience, which includes deciding whether damages will suffice as a remedy, favours the granting of relief to the claimants.

[11] In *American Cyanamid* the Privy Council stated:

“The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. It is no part of the court’s function at this stage to resolve conflicts of evidence on affidavit as to facts on which either party may ultimately depend nor to decide difficult questions of law which calls for detailed argument and mature considerations. These are matters to be dealt with at trial. So, unless the material available to the court at the hearing of the application for interlocutory injunctions 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”.

[12] The decision in *American Cyanamid* was endorsed by the Belize Court of Appeal in ***Belize Telemedia Limited v Speednet Communications Limited***<sup>4</sup>.

[13] In ***National Commercial Bank of Jamaica Ltd v Olint Corp Ltd***,<sup>5</sup>

“Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties cases”.

In a later paragraph, their Lordships’ said:

“What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. If it appears that the injunction is likely to cause irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in *Shepherd Homes Ltd v Sandham* [1971] Ch 340, 351, a high degree of assurance that at the trial it will appear that the injunction was rightly granted”

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<sup>4</sup> Civil Appeal No.27 of 2009

<sup>5</sup> [2009] 1 WLR 1405 at 1409

[14] The court must take a course that seems likely to cause the least irremediable prejudice to one party or the other: In the *Belize Telemedia* case the Belize Court of Appeal stated at paragraph 53:

“...the question whether or not an injunction should be granted, having first ascertained that there is a serious issue to be tried, is to consider which course is least likely to cause irremediable prejudice to one party or the other, bearing in mind the question of what role an award of damages on either side is likely to play”.

[15] The fixed date claim form seeks damages for trespass and unlawful use of the property, in addition to an injunction preventing the defendant from trespassing. The claimants also seek to recover from the defendant a fee calculated at the rate of 15% of the gross value of crops until possession is handed over to them. There are claims for compensation by both parties. The defendant seeks to set off his expenses in improving the property against the claim for damages.

[16] If damages are an adequate remedy and the defendant can pay the sum ordered by the court, the authorities suggest that an interlocutory injunction is normally not likely to be granted. The claimants submit that damages are not an adequate remedy, as they have been deprived of the use of the property for about seven years and that during this time the defendant has derived significant benefits from the land.

[17] Over that time, a sense of urgency on the part of the claimants to assert rights to the property is not clearly evident. The defendant confirms having cultivated the property since 2017. That is a considerable period of inaction by the claimants knowing that the defendant was using the property without consent or payment for occupation. Such a delay though is not an entirely reasonable explanation.

[18] There are competing claims as to interests in the property. The defendant does not contest the claimants' ownership of the property but asserts rights to its commercial use. Determining the respective interests based on a fuller evaluation of the evidence is not required at this stage. That exercise can take place at trial. The court's resources need not be expended in a detailed inquiry to make this interlocutory decision. At this stage, the court must make up its mind based on the affidavits and in line with principles relating to interim injunctions.

[19] The defendant is asking the court to allow him to continue farming until the final determination of the substantive claim. In the alternative, if the injunction is to be granted, he asks to be permitted to harvest the current crops. These are said to be due for harvest in March 2025. The court holds the view that it is prudent and causes the least amount of harm to the parties to maintain the status quo until the defendant's crop is harvested in March

2025. The court notes that there is controversy about the presence of crops at this point. The claimants deny there is currently any plantation. Considering the material before the court and the overall circumstances, an order that will allow the harvesting of crops is appropriate. The defendant must not cultivate any new crops on the property. He must provide an inventory of current crops and an account when they are harvested.

**ORDER**

- A. The defendant is restrained from growing new crops on the property until the determination of the action.
- B. The defendant is allowed to harvest the crops that have already been planted. Harvesting is to be completed by 31 March 2025.
- C. The defendant is to send the registrar an inventory of the current crops by 20 January 2025.
- D. The defendant is to provide an account of the proceeds of the current crops.
- E. Costs to be in the cause.

**M. Javed Mansoor**  
Judge