IN THE HIGH COURT OF BELIZE

CLAIM NO: 359 of 2024

BETWEEN:

KATHERINE RENEE BARTRON-CARLSON	**First Claimant**
SCOTT ADAIR CARLSON	**Second Claimant**
AND	
MERLENE CLARK	**Defendant**

Appearances:

Ms. P. Ghanwani for the Claimants

Ms. J. Matus for the Defendant

2024: December 12
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DECISION

Interim injunction – Trespass – Adverse possession – Limitation – Adequacy of damages – Balance of convenience

[1] The claimants filed a fixed date claim and followed it up with an application for interim injunction. The application is to restrain the defendant from trespassing on the subject property, which the claimants say belongs to them. The defendant denies that the plaintiff is the owner of the property comprising 50 acres and described as lot 2 on grant No.3 of 1894, recorded at the general registry at Belize City in crown land book (plans) No.2 at folio 340 ("property").

[2] On 31 July 2024, the court issued an interim injunction for 28 days. Subsequently, the injunction was temporarily extended on two occasions. The hearing of the application for interim injunction was

held on 12 December 2024. Counsel for the claimants made oral submissions at the hearing. Counsel for the defendant did not make submissions but sought time to file submissions. The defendant filed submissions on 13 December 2024, which was replied by the claimants on 18 December 2024.

[3] The second claimant, Scott Adair Carlson, gave an affidavit in support of the application. Subsequently, he filed a second affidavit. The first claimant is the second claimant's wife. The averments in the affidavits filed on behalf of the claimants is to the following effect. The claimants acquired legal ownership to the property on or about 21 May 2019. Prior to that the property was owned by the first claimant and her sisters, Deanna and Pamela. They inherited the property from their father Ira Black, who purchased it on 13 May 1987. The first claimant's father constructed several buildings on the property. Ira Black died in January 1991 and the property was transferred to the first claimant and her sisters by Deed of Assent dated 30 January 1995. The first claimant and her sisters visited the property in 1993 and found no one in occupation and the buildings had been looted and stripped of anything valuable. The second claimant married the first claimant on 10 August 2003. The claimants intended to construct a marina on a part of the property. On his visits to the property, the second claimant did not encounter anyone until January 2024. In 2008, 22.5 acres of the property was the subject of an environmental impact assessment (EIA) conducted by Eco Works on behalf of Dreamscapes Belize Limited, a company in which he is a director. The EIA confirms that, as of 2008, there was no one in occupation of the property. On 23 June 2011, provisional approval to subdivide the property into two residential parcels was granted along with the remaining portion of 22.5 acres for the marina. Throughout this time, there was no person in occupation of the property. In February this year, a survey of the property was conducted by licensed surveyor Leonard Ysaguirre who installed pegs on the property. The defendant unlawfully entered the property, demolished the flora and fauna habitats to build a road, began constructing wooden structures on cement piles and removed the surveyor's boundary pegs. The second claimant, Mr. Lismore Flowers, the Mullins River Village Commissioner, and officer Moore, informing the defendant that the property did not belong to her. During a meeting between himself, the defendant, and officer Moore in February 2024, he informed the defendant of his joint ownership of the property.

[4] The defendant filed a defence and counterclaim on 13 September 2024 and an affidavit in opposition on 16 October 2024. The application for interim injunction is opposed on the following basis. The defendant claims to have been residing on the property and has had sole control since 1968. She began occupying the property with her common-law husband, Mr. David Soper. They went into occupation after making payment of the purchase price to Mr. Frederick Arthurs. Despite various attempts, title to the property was not conveyed to the defendant. She has constructed several structures and developed the property at her expense. She states that the ministry of natural resources is aware of her occupation of the property. She denies having unlawfully entered on the property or causing any harm, although she admits to having some cement pillars removed. She

concedes that the second claimant and officer Moore met her once. By then she had constructed nine pillars on the property. She denies any warnings were issued to her.

[5] The defendant's stance is that she was initially approached by the claimants in February 2024. She received a letter from the claimants in June 2024 and was served with the fixed date claim form on 11 August 2024. The defendant submits that she is the only person to have maintained and developed the property. She has paid land taxes and cultivated various crops. It is submitted that the property is in a location that has ecological significance and that the defendant has been contributing to the preservation of the area. She says she has done much work to protect marine life, especially that of the manatees. An injunction, it is said, would have environmental repercussions and cause damage to the defendant and if the claimants are successful she would lose the most.

[6] Section 34 of the Senior Courts Act vests the court with the jurisdiction to grant an injunction. Rule 17.1 of the Supreme Court (Civil Procedure) Rules 2005 allows for an interim injunction to be granted. In ***American Cyanamid v Ethicon Limited***[1], the House of Lords explained that 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. Lord Diplock's speech in American Cyanamid outlines the proper exercise of the court's discretion when called upon to issue an interim injunction. The decision in American Cyanamid was endorsed by the Belize Court of Appeal in ***Belize Telemedia Limited v Speednet Communications Limited***[2]**.**

[7] At the interlocutory stage the court does not have to decide contentious facts or difficult questions of law. The court must decide whether to grant an interim injunction by examining the merits based on the affidavits given by the parties. An applicant seeking an interim injunction must show an arguable case with prospects of success at the trial. The way in which the court should exercise its discretion was explained in *American Cyanamid* in the following words:

> "The governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be [an] adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiffs 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

[1] [1975] 1 All ER 504
[2] Civil Appeal No.27 of 2009

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 on this ground to refuse an interlocutory injunction".

[8] Subsequent decisions of the House of Lords refer to Lord Diplock's observations as laying down guidelines for the exercise of the court's discretion. In ***R v Secretary of State for Transport, Ex p Factortame Ltd***[3], Lord Goff explained that he did not see the speech of Lord Diplock as intending to fetter the court's broad discretion. The same position was taken in ***Lansing Linde Ltd v Kerr***[4]. The guidelines laid down in American Cyanamid must not be used mechanically. The circumstances in each case warrant careful consideration when applying principles applicable to interim injunctions.

[9] In ***National Commercial Bank of Jamaica Ltd v Olint Corp Ltd***,[5] the Privy Council outlined the matters to be considered before granting an interlocutory injunction:

> "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 defendants 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 cross undertaking 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."[6]

In later paragraphs it was stated:

> "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".

> "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

[3] (No 2) [1991] 1 AC 603
[4] [1991] 1 WLR 251
[5] [2009] 1 WLR 1405
[6] At 1409

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"

[10] Determining the respective interests based on a fuller evaluation of the evidence is not required at this stage; that is an exercise to be performed at trial. It is not necessary for the parties to firmly establish the outcome of the case[7]. The court's resources need not be expended in a detailed inquiry to make this interlocutory decision. At this point, the court must make up its mind based on the affidavits and in line with settled principles.

[11] The claimants submit that the defendant entered their property and demolished valuable trees to create a roadway without a licence from the forestry department. If true, this is a serious matter. There is no independent evidence of this from the local authorities or the forestry department. However, the claimants have a cause of action to protect based on their title to the property. They are entitled to prevent another person from causing harm to their property.

[12] Having decided that there is a serious issue to be tried at the trial, the court will consider whether an award of damages to the claimants will suffice as fair recompense. The claimants submit that the property has distinct values such as natural resources and ecological significance, factors that make it difficult to assess damages in monetary terms. They say that the unique flora and fauna on the property are integral to the success of their project. They have provided evidence of a provisional approval to sub divide issued on 23 June 2011 and the project report for a proposed development of the property. The subdivision of the property and proposed development have not taken place as scheduled.

[13] 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 court is conscious that the nature and location of the property, with its ecological significance, may pose difficulties in the calculation of damages if at the conclusion of the trial damages appear to be the most suitable remedy. The difficulties in assessing losses was considered in the English case of ***Bath and Northeast Somerset DC v Mowlem plc***[8]**.** The defendant has also not provided evidence to the court of having the means to settle a damages award. Although this may not always be a suitable approach, lack of means is a factor that can be taken into consideration when considering the grant of an injunction.

[14] An award of damages may not be sufficient recompense for the claimants if the defendant is not restrained from making the changes to the property alleged by the claimants. The court must next assess the balance of convenience to the parties in the context of the factual material presented by the parties. The court must take a course that seems likely to cause the least irremediable prejudice

[7] Cayne v Global Natural Resources plc. [1984] 1 All E.R 225
[8] [2015] 1 WLR 785

to one party or the other: In the ***Belize Telemedia*** case the Belize Court of Appeal stated at paragraph 53 of the judgment:

> "….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 claimants have shown that they are the owners of the property. The deed of conveyance dated 21 May 2019 gives ownership to the claimants. The deed reveals that the first claimant acquired an interest in the property by virtue of an instrument made on 30 January 2025. The claimants rely on a valuation report dated 13 April 1993 prepared by Morrison & Associates. The report names Ira Evans Black, who was then deceased, as having owned the property, and his next of kin to be in possession. The property is described as rural and agricultural, and the accommodation is stated as vacant. The report makes no reference to any person in occupation of the property. In her affidavit, the defendant submitted her occupation of the property began following payments made to Fedrick Arthurs. The defendant has not produced any documentation in support of her position.

[16] The defendant says she has been residing on the property since 1969 after occupation a year earlier. This is not corroborated by other evidence. The claimants say the defendant entered the property in January 2024. They deny that the defendant resides on the property. In February, they visited the defendant along with officials of the local authority. The claimants say they warned the defendant to desist from entering the property. They sent the defendant a written demand dated 20 May 2024 through their attorney at law to cease trespassing on the property. The fixed date claim was filed on 27 June 2024. An urgent notice of application for injunction (without notice) was filed on 28 June 2024. Between the time the claimants became aware of the occupation by the defendant and the filing of the application, they did not move at pace to remove the defendant from occupying the property.

[17] The defendant says that based on her continuous and undisturbed possession for a period far more than thirty years, she is entitled to claim an overriding interest in the property and a right to prescriptive title pursuant to section 42 of the Law of Property Act (Cap 190). By virtue of section 12 of the Limitation Act (Cap 170), the defendant states, the claimants' predecessors in title ought to have exercised their right to recover possession before the expiry of 30 years but failed to do so. She submits that in terms of section 12(2) of the Limitation Act, no action can be brought to recover any land after the expiration of 12 years from the date on which the right of action accrued. Section 22 of the Limitation Act states that at the expiration of that period the title of that person to the land would extinguish. In this case, the defendant says that the 12 years limitation under the Limitation Act expired in the year 1980. Even if the right of action to recover possession is a period of 30 years, the defendant submits, such period was satisfied in the year 1998. The relevant parts of these enactments are reproduced for ease of reference.

[18] Section 42 (1) of the Law of Property Act (Cap 190) states:

> "Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had such possession".

[19] The relevant portion of section 12 (1) of the Limitation Act (Cap 170) states:

> "No action shall be brought by the State to recover any land after the expiration of thirty years from the date on which the right of action accrued to the State or, if it first accrued to some person through whom the State claims, to that person".

Section 12 (2) states:

> "No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person".

[20] Section 22 of the Limitation Act states:

> "Subject to the provisions of section 15 of this Act and of any law relating to the registration of land titles, at the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person to the land shall be extinguished".

[21] Based on the above provisions, the defendant is claiming adverse possession in challenging the claimants' legal ownership. The claimants rightly acknowledge that the court must ultimately determine, on the facts, when the defendant took possession of the property, and whether she had the intention to possess it as her own. They acknowledge that these are questions that cannot be resolved at this interlocutory stage without a full trial.

[22] When the defendant appeared in court at the outset, she claimed to possess a document showing her interest in the property. The document was not tendered to court. The claimants exhibited a statement to their affidavit which relates to a neighbouring parcel of land having an extent of 53.27 acres in the name of George Arthurs. The claimants contend that the defendant's transaction may have concerned the neighbouring land and not the subject property. The defendant claims to have transacted with one Frederick Arthurs, but no details of the transaction have been made available. These are assertions that need investigation at the trial.

[23] Considering the totality of the circumstances, the court is of the view that the least amount of prejudice will be caused by allowing the defendant to continue in possession of the property until the conclusion of this action. The time taken by the claimants to file action is an indication that immediate eviction of the defendant is not the primary purpose of the application although they have sought to preclude the defendant from trespassing on the property. Of greater urgency seems to be the need

to stop the defendant's alleged acts of construction and the clearing of trees to construct a roadway or any other act prejudicial to the claimants' interests in the property. The defendant denies constructing a roadway, and says she is merely maintaining an old road. The claimants, who are the title holders of the property, are entitled to secure the property until the court determines the rights of the parties. In these circumstances, the defendant will be restrained from carrying out any construction work. She must also not indulge in any activity that causes damage to the property.

Costs

[24] Counsel for the claimants sought costs on separate matters concerning these proceedings. When the parties appeared on 23 August 2024, the court gave directions for the defendant to file an affidavit in opposition by 13 September and the claimant to respond by 23 September. Hearing of the interim injunction application was fixed for 9 October 2024. On the day of the hearing, Mr. Tillet appeared on behalf of the defendant and sought time to file the affidavit in opposition, saying that miscommunication resulted in the affidavit not being filed on time. The defendant was given time as requested. However, the claimants sought costs. The second occasion was when the hearing was adjourned. On the adjourned day of hearing, another counsel appeared but did not make submissions. She sought time to file submissions. This was allowed, with a right of reply given to the claimants. Costs were sought again. Having considered the matter, the court observes that the defendant was given sufficient time to comply with directions, but did not do so. The claimants are entitled to costs on both matters.

ORDER

A. The defendant is restrained from carrying out construction work or causing any damage to the property until the final determination of this action.

B. Claimants are entitled to costs stated in paragraph [24], which is to be assessed

C. Subject to the costs in paragraph [24], costs of this proceeding to be in the cause.

M. Javed Mansoor
Judge