

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2019/CLE/gen/00729

BETWEEN

ANDREW TURNQUEST

Plaintiff

AND

CYNTHIA BURROWS TURNQUEST

Defendant

Before Hon. Mr. Justice Ian R. Winder

**Appearances: Owen C. B. Wells for the Plaintiff
Sidney A. Dorsett for the Defendant**

17 June 2019, 8 July 2019 and 28 November 2019

RULING

WINDER, J

This is my decision on the respective applications of the plaintiff and the defendant for injunctive relief restraining each other with respect to property situate in Long Island. The defendant also sought to strike out the plaintiff's statement of claim.

1. The claim of the plaintiff is for possession and a declaration as to the plaintiff's entitlement to land situate in Lower Deadman's Cay, Long Island and injunctions restraining the defendant. The Statement of Claim provides, in part, as follows:

1. By virtue of a Deed of Assent dated 11th August, 1964 in favour of the said Benedict Maurice Roosevelt Turnquest out of the Estate of Charles Turnquest (the Plaintiff's grandfather), the Plaintiff is and was at all material times the fee simple owner in possession of ALL THAT piece parcel or tract of land situate in Lower Deadman's Cay, Long Island together with the multiple buildings erected thereon ("the said land").

2. Since on or about 30th April 2019, the Defendant and their servants or agents have wrongfully entered into possession of the said Property and has forcibly evicted the Plaintiff and other authorised occupants thereof.

3. The Plaintiff has requested the Defendant to desist from having any further dealings with the said land but the Defendant have failed to do so.

4. That the Defendant has removed and wrongfully converted to her own all the personal possessions, including furnishings, appliances and other fitting out of the houses on the Property and has asserted that she has a right to these personal property items.

2. The defendant was married to the plaintiff's brother Noel Turnquest (Noel) on 9 February 2019. The defendant, who owns her own home elsewhere in Long Island, moved into the house where Noel lived ("the disputed house"), upon the marriage. The house is situated upon the property the subject of the dispute. Other structures are located on the property where the disputed house is

located including a house where the plaintiff lives. Noel died shortly after the marriage in April 2019.

3. The documentary title to the property where the disputed house is situated, appears to be in the name of Benedict Turnquest by virtue of a Deed of Assent dated 11 August 1964. Benedict Turnquest died intestate in 2001. The plaintiff is the eldest son and heir at law to Benedict Turnquest, entitling him to the entirety of his father's real property.
4. Following the death of Noel, the defendant moved out of the disputed house and returned to her personal home where she lived prior to the marriage. The dispute arose as a result of the defendant laying claim to the disputed house notwithstanding her withdrawal therefrom. The plaintiff's evidence is that following the burial of Noel, the family returned to the disputed house and found that the locks had been changed and a deadlock placed on it. The defendant's claim to the disputed house appears to be her contention that her deceased husband, Noel, solely contributed financially to the construction of the disputed house and that Noel occupied the property for a considerable period of his life. The defendant also says that Benedict Turnquest informally allocated the disputed house, their marital home, to Noel. The defendant filed a defence and counterclaim which provides in part as follows:

21. Save as hereinbefore expressly admitted, the Defendant denies every allegation in the Statement of Claim as if the same were here set out and traversed seriatim.

And the Defendant Counterclaims:-

- 1 An Order that ALL THAT piece parcel or lot of land built upon, occupied by and recently in the possession of Noel Roosevelt Turnquest, deceased husband of the Defendant, in excess of 30 years last past situate at the end of a public road to the West of the Lower Deadman's Cay Main Road, on Long Island, in The Bahamas, be partitioned out of the tract of land

described in paragraph 1 of the Statement of Claim herein (viz, ALL THAT piece parcel or tract of land situate in the said Lower Deadman's Cay, Long Island, together with the multiple buildings erected thereon);

- 2 A mandatory perpetual injunction restraining Andrew ("Flyer") Turnquest, his sister, Michaela Turnquest-Rolle, and their servants, agents, or otherwise howsoever from entering upon ALL THAT piece parcel or lot of land built upon and occupied in excess of 30 years last past by the said Noel Roosevelt Turnquest, the deceased husband of the Defendant/Plaintiff by Counterclaim, and situate at the end of a public road to the West of the Lower Deadman's Cay Main Road aforesaid;
- 3 Reimbursement of \$3,505.00, for property removed/stolen;
- 4 Exemplary damages; and
- 5 Costs.

5. The plaintiff disputes the claim of exclusive occupation by Noel and the evidence is that the home was occupied by various family members over the years, including his parents, their grandchildren and his other siblings.
6. The law on the grant of interlocutory injunctive relief is fairly well settled and generally commences with a consideration of the decision in ***American Cyanimid v. Etchicon*** [1975] A.C. 386. That criterion provides for the following:
 - a) a serious issue to be tried;
 - b) good prospects of success;
 - c) damages not an adequate remedy; and
 - d) A favorable balance of convenience.

My assessment of the evidence and these factors leans in favor of the grant of the relief in favor of the plaintiff. There is a serious issue to be tried but on the question of prospects of success it is the plaintiff who succeeds in this category and not the defendant. The paper title devolves beneficially to the plaintiff and

I did not find that the defendant could establish, at this stage, on the evidence which I could accept, an exclusive right to possession of the property to her husband and or herself. Further, the claim of adverse occupation was not shown. Finally, the defendant has voluntarily surrendered residence in the property suggesting that the balance of convenience would not favor her.

7. In as much as I found in favour of the plaintiff on the question of prospects of success, the question of a strike out pursuant to Order 18 rule 19 becomes otiose.
8. In the circumstance therefore I grant the interlocutory injunction prayed for by the plaintiff in his summons of 23 May 2019 and I dismiss the defendant's application for injunctive relief and the striking out of the plaintiffs claim. The plaintiff is given leave to enter a defence to the counterclaim within 14 days.
9. The plaintiff shall have his costs to be taxed if not agreed.

Dated this 8th day of April 2020

Ian R. Winder
Justice