

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2014/CLE/GEN/001615

BETWEEN

FINANCE CORPORATION OF BAHAMAS LIMITED

Plaintiff

AND

DONZEL HENRY PRATT

Defendant

RULING

Appearances: Mr Audley Hanna for the Plaintiff
Mr Wilver Deleveaux for the Defendant and the Defendant was present

Hearing Date: 21st March, 2022

DARVILLE GOMEZ, J

1. This action arose out of property mortgaged by the Defendant to the Plaintiff to secure a loan. It was commenced by the Plaintiff by an Originating Summons filed in 2014 and heard and determined in 2016.
2. The Defendant had previously filed several Summonses claiming a plethora of relief and in a written decision rendered on December 8, 2021, I found that only the Summons to discharge the injunction filed on August 24, 2021 remained extant. I adjourned that hearing sine die.
3. The Defendant has now applied to the Court to have that interim injunction discharged.
4. The Court heard the application by the Defendant to discharge the injunction and for the reasons hereinafter set out, I have refused and awarded fixed costs to the Plaintiff to be paid by the Defendant in the sum of \$750.

BACKGROUND

5. This action was commenced by the Plaintiff by Originating Summons filed on October 3, 2014 for inter alia, the following relief:
 - (a) A declaration that the Plaintiff is entitled to possession of the Mortgaged properties;
 - (b) A declaration that the Plaintiff is entitled to exercise its power of sale with respect to the Mortgaged properties;
 - (c) An Order directing the Defendant to deliver up possession of the mortgaged properties to the Plaintiff within twenty-eight (28) days of the Order;
 - (d) Judgment for the sums outstanding under the said Mortgage.
6. By an Order made on November 3, 2016 the Plaintiff was granted the following relief:
 - (i) Vacant possession within sixty (60) days from the date of the Order of the Mortgaged properties;
 - (ii) Power to exercise its power of sale with respect to the Mortgaged properties;
 - (iii) Judgement for the sums owing; and
 - (iv) Costs.
7. This decision was appealed to the Court of Appeal by the Defendant in December, 2016. It would appear from the Affidavit of the Plaintiff filed on November 6, 2019 that the appeal was dismissed however, it is open to the Defendant to have the appealed restored.
8. The Defendant failed to deliver up possession of the mortgaged properties and a Writ of Possession was issued on February 22, 2017.
9. The Plaintiff applied by Summons filed on October 17, 2019 supported by affidavit for an injunction against the Defendant. By an Order dated October 7, 2020 the Court granted an injunction against the Defendant and provided him liberty to be heard with respect to the Order on certain terms as to time.
10. The terms of the Injunction are as follows:
 1. ***The Defendant be and is hereby restrained (whether by himself, his servants or agents or otherwise howsoever) from entering onto, or in any way interfering with, any portion of all that piece parcel or lot of land being a portion of a larger tract of land containing 34,570 square feet and situate South of Carmichael Road opposite Johnny Hill and about two (2) miles Westward Blue Hill Road in the Western District of the Island of New Providence which said piece parcel or lot of land has such position shape boundaries marks and dimensions as are more particularly delineated on the plan attached to an Indenture of Conveyance dated 7th March, 2011 made between Julian Pedican of the one part and the Defendant of the other part and now about to be lodged for record in the Registry of Records in Volume***

11523 at pages 531 to 543 in the City of Nassau in the Island of New Providence thereon coloured pink and designated Lot E (“the Property”)

- 2. The Defendant whether by himself or by his agents or servants or otherwise be and is hereby restrained from entering any part of the house situate upon the Property.**
- 3. The Defendant be and is hereby restrained (whether by himself, his agents, servants or otherwise howsoever) from assaulting molesting annoying or contacting any intended purchaser of the Property and/or any employee agent, affiliate, or servant of the Plaintiff and/or from interfering with the exercise of the Plaintiff’s power of sale in any manner in relation to the Property.**
- 4. The Defendant be and is hereby restrained (whether by himself, his agents, servants or otherwise howsoever) from:**
 - (i) Harassing, threatening, pestering or molesting the Plaintiff, its employees, agents, affiliates or servants or;**
 - (ii) Communicating with the Plaintiff’s employees by electronic communication (email), telephone, letter or any other means howsoever, save via his attorney; or**
 - (iii) Harassing, threatening, pestering, molesting any member of staff of Messrs Higgs & Johnson in particular the attorneys of Higgs & Johnson the Plaintiff’s attorneys in relation to the instant action; or**
 - (iv) Communicating with any member of staff of Higgs & Johnson, in particular the attorneys of Higgs & Johnson in relation to the instant action by any means howsoever, save via his attorney.”**

11. At the hearing of the injunction, neither the Defendant nor his attorney was present. However, the Plaintiff in their Affidavit in support averred that the Defendant’s attorney was served with the hearing date via email and further, that the Defendant had been served in accordance with the terms of an Order for substituted service.

12. The Plaintiff conceded in today’s hearing that the email address with which the Defendant’s attorney had been served was incorrect and therefore, he did not have actual notice of the hearing date. However, the Plaintiff submitted that the Defendant had been served in accordance with the Order for substituted service.

13. In any event, the terms of the injunction did eventually come to the attention of both the Defendant and his attorney.

14. The Defendant has by Summons filed on August 24, 2021 applied to have the injunction discharged.

15. The Defendant’s attorney laid over submissions which the court considered. The Defendant have distilled the issues for the court’s consideration as follows:

- (i) Whether the Plaintiff’s Originating Summons of CLE/GEN 01615 was served correctly on the Defendant and proceeded before the expiration of one year?

- (ii) Whether the Plaintiff made application before the Court to extend the time?
- (iii) Was the process an irregularity?
- (iv) Was there a non-disclosure to the Court on the application of the Plaintiff for injunctive relief?
- (v) Did the facts justify the grant for injunctive relief?
- (vi) Is the effect of the injunction oppressive and does it affect rights of third parties?

DECISION

16. The issues raised by the Defendant for consideration are issues that ought to have been raised earlier once the Defendant became aware of the injunction. They are part technical and part procedural.
17. The injunction was granted over fifteen months ago (having been granted on October 7, 2020) and since November 3, 2016 there has been an order for judgment and vacant possession against the Defendant. It is even unclear what would be the effect of the discharge of an injunction given the said orders.
18. The Defendant's conduct which necessitated the reason for the injunction has not been addressed at all. There is a real likelihood or chance that the Defendant may recommence the actions which led to the grant of the injunction in the first place. The Plaintiff has already obtained an order for vacant possession and judgment against the Defendant and are presently proceeding with their writ of possession. Therefore, this action is substantially at an end, subject to the Defendant's appeal. The court is concerned that to discharge this action when the Defendant has refused or failed to address the conduct or behavior which led to the grant of the injunction is cause for concern as to whether it would be repeated.
19. I have considered **American Cyanamid Co. Ltd. v Ethicon [1975] 1 All ER 504** and the principles enunciated regarding injunctions.
20. Despite the multiplicity of issues raised by the Defendant none of them amount to a sufficient reason for the discharge of the injunction and therefore, I do not accede to the Defendant's application.
21. Accordingly, the Defendant's application to discharge the injunction is refused and I have fixed costs at \$750.

Dated the 4th day of May, 2022



Camille Darville Gomez
Justice