

COMMONWEALTH OF THE BAHAMAS
2022/CLE/gen/00090
IN THE SUPREME COURT
Common Law and Equity Division

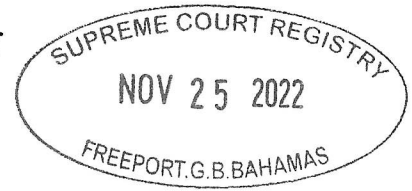
In the Estate of the Late Mavis Jmayoff

BETWEEN

MARGRETTE CURRY
Plaintiff

AND

SHAWON CURRY
Defendant



BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Miss Constance McDonald, KC along with Mrs. Tashana Wilson for the
Plaintiff

Mr. Harvey O. Tynes QC together with Mrs. Tanisha Tynes-Cambridge
for the Defendant

HEARING DATE: September 13, 2022

RULING

This is an application for an interlocutory injunction by the Plaintiff.

Introduction

1. The Plaintiff by way of a Summons for Injunction filed August 22, 2022, makes an application pursuant to Order 29, Rule 1 of the Rules of the Supreme Court (“RSC”) for an Order that the Defendant, her agent or servants or employees cease from interfering with the Plaintiff’s quiet enjoyment (particularly that the Defendant cease from interfering with the water and electricity) of the house located at Lot No. 19, Spinney Road, in the City of Freeport, Grand Bahama (“the house”), until the matter herein is determined by the Court. The Plaintiff also seeks an Order that the Defendant restores the water to the house, costs and such other relief as to the Court deems just pursuant to Order 29, Rule 2 (4) of the

RSC. The Plaintiff relies on the Affidavit of the Plaintiff filed August 22, 2022, and the Submissions made orally to the Court on September 13, 2022.

2. The Defendant relies on the Affidavit of Remilda Thomas filed September 12, 2022 and Written Submissions filed on September 12, 2022 and, with the leave of the Court, by letter filed on September 14, 2022.

Statement of Facts

3. While being careful to refrain from deciding the underlying claim in the action, that is, conducting a “mini trial”, any court which is hearing an application for interlocutory relief, must nonetheless seek to obtain a broad appreciation of the claim, as well as the nature of the dispute which is to be ultimately determined at the substantive trial. It is for this reason that I have considered the claims of the parties as set out in their pleadings and contending submissions and the evidence contained in their affidavits filed herein.
4. The Plaintiff by her Statement of Claim states that she is the sister of Mavis Curry Jmayoff, deceased (“**the Deceased**”) and that the Defendant is her niece. The Plaintiff contends that in 1985 the Plaintiff agreed with the Deceased that she could occupy her condominium unit #302 Cove House Condominium, Freeport, Grand Bahama (“**the Condominium**”) since the Plaintiff was relocating to Florida. That it was agreed that the Deceased would pay the Plaintiff’s mortgage over the Condominium at RBC Finco, Freeport Branch. That in 1989 the Plaintiff was notified that the mortgage was delinquent. That the Deceased had rented the Condominium and collected \$5,000.00 representing rental income, security and utility deposits. That the Deceased subsequently informed the Plaintiff that she had used the deposits paid to make a deposit on the purchase of the house. The Condominium was repossessed by the bank. That the Plaintiff and the Deceased agreed that the Deceased would compensate her for the value of the Condominium. In 2002 the Plaintiff relocated to Freeport and in 2004 the Plaintiff and the Deceased agreed that the Deceased would pay her \$80,000.00. That in 2004 the Plaintiff moved into the house which was in a dilapidated state. That she invested \$30,000.00 in renovations to the house. She also repaired the damages to the house after the passage of Hurricane Matthew with no assistance from the Deceased.
5. The Plaintiff contends that it was agreed between the Plaintiff and the Deceased that she would will the house to the Plaintiff and that she would enter into an Agreement to give

the Plaintiff \$80,000.00 from her retirement fund in Canada. In December of 2017 the Deceased told her that she had spent her retirement fund and that she would be returning to The Bahamas and that she would do an agreement whereby the Plaintiff could occupy the two bedroom side of the house and use the one bedroom as an Airbnb. That the Deceased told the Defendant not to come back to the house, that the Plaintiff was in charge and that she had to work out what was for her and what was for the Plaintiff. That the Deceased never got the chance to work out anything because she was killed in a traffic accident before Christmas.

6. That the Defendant has asked the Plaintiff to vacate the house. She agreed to do so upon payment of \$150,000.00. That she has been in occupation of the house for 17 years and that she has not been compensated for her condominium nor for her interest in the house.
7. The Plaintiff seeks a Declaration that she is beneficially entitled to an interest in the house. Alternatively, that the Defendant pays her \$80,000.00 for her interest in the house; an injunction to prevent the Defendant and her servant or agents from interfering with her quiet enjoyment of the house; an order that the Defendant be estopped from denying the Plaintiff's interest in the house, costs and damages and such further relief that the court deems just.
8. The Defendant by her Defence contends that divers claims set out in the Statement of Claim are Statute Barred. That the Defendant has requested the Plaintiff to vacate the house which is unlawfully occupied by the Plaintiff and the Defendant denies that she has been in exclusive occupation of the house. By way of Counterclaim the Defendant contends that the Deceased purchased the house by an Indenture of Conveyance dated March 22, 1985; that the Deceased died on December 17, 2016 and that Letters of Administration were granted to her daughter Shakera Marie Swizdaryk, the sister of the Defendant on October 20, 2017; that the said LOA were resealed in this Court in Action No. 2021/PRO/npr/FP/00091; and that by way of Conveyance by way of Assent dated December 20, 2021 ("**the Conveyance**") the house was vested in the Defendant. That prior to December 20, 2021, the Plaintiff wrongfully entered and took possession of the house and thereafter wrongfully remained in possession thereof. That the Defendant has been deprived of the use and enjoyment of the said premises and has suffered damage estimated in the reasonable sum of \$1,500.00 per month.

9. The Defendant seeks an order for possession of the house and mesne profits at the rate of \$1,500.00 per month until possession is delivered up.

The Evidence

10. The Plaintiff's evidence in support of this application is that she is a self-employed farmer. That she has been residing at the house since 2005. That she began to reside there because the Deceased allowed her Condominium to be repossessed. That they came to a verbal agreement that she could reside there until the Deceased was able to pay her \$80,000.00 as compensation for the loss of the Condominium. That she and the Deceased had a verbal agreement that she would reside in the Condominium and pay the maintenance fees and the mortgage while the Plaintiff lived abroad. That the Deceased had rented the Condominium out and had used the rental income to purchase the house. That the Condominium was repossessed by the bank. That she invested \$30,000.00 to renovate the house. That in December 2017 the Deceased died before she could get a chance to make arrangements to fully compensate the Plaintiff. That the Defendant is aware of the Agreement between the Deceased and the Plaintiff and the Deceased told the Defendant in the presence of the Plaintiff that the Plaintiff was in charge of the house and that she was not to attend the house and interfere with the Plaintiff.
11. That once the Writ of Summons was served on the Defendant, she went to the Grand Bahama Power Company and the Grand Bahama Utilities Company Limited to have the power and water to the house disconnected. That her attorney was able to get the power reconnected because the deposit was in her name but because the water account was in the name of the Deceased, "care of" the Plaintiff, the water was not reconnected. That she has ornamentals, fruits trees, vegetable and spices in and around the yard that need to be watered daily. That she has chickens that need water twice daily. That currently a lot of her plants have been burnt due to lack of water. That as a farmer her livelihood is being affected adversely. That the Defendant told her that it is her house and that if she does not leave, she will have it demolished.
12. The Affidavit of Remilda Thomas filed in opposition to the Plaintiffs' application states, in part, that she is the eldest sister of the Deceased and that the house was conveyed to the Defendant by the Conveyance.

Submissions

13. Mrs. Tashana Wilson Counsel for the Plaintiff submits, in part, that the Plaintiff relies on Order 29, Rule 1 of the Rules of the Supreme Court (“**RSC**”) and the case of **American Cyanamid Co. Ltd. v Ethicon** [1975] A.C. 396 (“**American Cyanamid**”) in which the Court sets out what ought to be considered when granting an interlocutory injunction. That the Court should consider:
- (1) That the Court’s role in an interlocutory application is not to consider conflicting evidence as considering conflicting evidence is a matter for trial;
 - (2) That the Plaintiff should show that there is a real issue to be tried;
 - (3) Whether damages are an adequate remedy if the injunction is not granted;
 - (4) If damages are not an adequate remedy whether the Plaintiff can give an undertaking as to damages;
 - (5) The balance of convenience between the parties;
 - (6) If the factors are evenly balanced the Court should consider maintaining the status quo.
14. Mrs. Wilson submitted that due to the surrounding facts in this case, the fact that the Plaintiff has an equitable interest in the property, the injunction should be granted. That there is a real issue that ought to be tried; that damages in this case are not an adequate remedy for the Plaintiff who has invested directly and indirectly into the property from inception and the balance of convenience lies in favour of the Plaintiff, furthermore, the status quo, that is the Plaintiff residing in the property undisturbed with her utilities on, ought to remain.
15. Mr. Harvey O. Tynes, QC Counsel for the Defendant took the Court through his written submissions, which the Court now refers to in part. He referred the Court to Section 21 (1) of the Supreme Court Act 1996, which is similar to the provisions of Section 37 (1) of the Supreme Court Act 1981 in England, and which set out the Court’s discretionary jurisdiction to grant injunctions in all cases if it appears to the Court just and convenient to do so. He submits that the first criteria applicable to the grant or refusal of an injunction is that the Plaintiff must have a cause of action against the Defendant. That the Defendant contends that neither in the Statement of Claim nor in the supporting Affidavit does the Plaintiff disclose a cause of action or an actual or threatened invasion of a legal or equitable right of the Plaintiff by the Defendant. That the assertions made by the Plaintiff do not

provide the basis upon which the inference can be drawn that the Plaintiff acquired an estate or equitable interest in the house.

16. Mr. Tynes, QC further contends that at the highest these assertions would constitute a “contractual license” in the nature of an agreement between the Plaintiff and the Deceased whereby the Plaintiff was permitted by the Deceased to occupy the house until the Deceased paid the Plaintiff the sum of \$80,000.00. That the contractual agreement between the Plaintiff and the Defendant would not be binding or enforceable against the Defendant who was not a party to the agreement. Essentially, that the Plaintiff has no cause of action against the Defendant. That in the circumstances the application should be dismissed. Mr. Tynes, QC relies on the following authorities:

The Siskina [1979] A. C. 210, Lord Diplock at page 256;

Channel Tunnel Group Ltd. v Balfour Beatty Construction Limited [1993] A.C. 334, Lord Mustill at pp.360-362;

King v David Allen and Sons Bill Posting Limited [1916] A.C. 54 Lord Buckmaster at p 61;

Clore v Theatrical Properties Ltd [1936] 3 All E.R. p 483.

17. Mr. Tynes, QC referred the Court to **American Cyanamid Co. Ltd. v Ethicon Ltd.** (supra) and the well-established criteria set out therein, none of which he submits were addressed in the Plaintiff’s Affidavit:

- whether the Plaintiff has shown that there is a serious issue to be tried: he submits that the Plaintiff has failed to show that there is a serious issue to be tried;
- whether the balance of convenience lies in favour of the grant or refusal of interlocutory relief;
- whether the Plaintiff would be adequately compensated in damages between the time of the application and the completion of the trial, however, a claim for damages may not be pursued by the Plaintiff against the Defendant who was not a party to the contractual arrangement between the Plaintiff and the Deceased.
- whether the Defendant would be adequately compensated under the Plaintiff’s undertaking should the Plaintiff fail at the trial.
- The court must consider the relative strength of each party’s case.

18. Mr. Tynes, QC submits that none of these issues arise because there is no cause of action against the Defendant nor does the Plaintiff allege an actual or threatened invasion of a legal or equitable right of the Plaintiff by the Defendant. That there is no real dispute as to the facts once the Plaintiff accepts that the Defendant is the owner of the premises. Mr. Tynes, QC referred the Court to the additional authority of **Fellowes v Fisher** [1976] QBD 122.
19. Miss Constance McDonald, KC, Counsel for the Plaintiff, submits in Reply that this action is brought in the Estate of Mavis Curry Jmayoff. The Defendant claims through the estate of the Deceased. That Mrs. Wilson was not agreeing to anything but was saying that she was well aware of the Conveyance by way of Assent and that the Defendant was claiming through her mother's estate. That the Plaintiff is relying on the equitable principle of Detrimental Reliance. Miss McDonald, KC referred the Court to paragraph 7 of the Plaintiff's Affidavit which states "Since 2005 to present I have relied upon the agreement between the deceased and I and have made number 19 Spinney Road my home. In 2005 I spent over \$30,000.00 to renovate the home and make it livable as the same was in disrepair." She submits that Mr. Tynes, QC says a lot about the fact that the Plaintiff did not state a lot in her Affidavit, but is aware that an Affidavit states facts not law and those facts are used to state the law that are being relied on. Additionally, the Plaintiff relied on the promise between herself and the Deceased. Further, the Defendant claims through the Deceased.
20. With respect to the Defendant's claim that there is no cause of action Miss McDonald, KC referred the Court to the case of **Errington v Errington and Woods** [1952] 1 KB 290, the brief facts of which are that a father, wishing to provide a home for his son, who had recently married, purchased a dwelling-house through a building society, paying a lump sum and leaving the balance on mortgage to be paid by weekly instalments. He retained the conveyance in his own name and paid the rates, but promised that if the son and daughter-in-law continued in occupation and duly paid the instalments until the last one was paid, he would then transfer the property to them. He was on affectionate terms with the daughter-in-law and handed her the building society's book, directing her not to part with it. When the father died he, by his will, left all his property, including the house in question, to his widow. Up to that time the son and the son's wife had together occupied

the dwelling-house and paid the instalments, but the son then left his wife and went to live with his widowed mother. The wife continued to occupy the dwelling-house and to pay the instalments. The mother brought an action for possession against the daughter-in-law, which was dismissed by the county court judge on the ground that the son and daughter-in-law were tenants at will and the claim was barred by the Limitation Act, 1939. On appeal it was held that the daughter-in-law and her husband were licensees, with no power to assign or sublet, but entitled under a personal contract to occupy the house for so long as they paid the instalments to the building society, and the appeal failed. Somervell L.J stated: "The right to a conveyance of the property if and when the instalments had been paid might raise a question under sections 53 and 55 of the Law of Property Act, 1925, since the contract was oral. The issue was not directly before the court, but it would seem to him that the doctrine of part performance would clearly apply."

21. Miss McDonald, KC submits that what Lord Somervell said is applicable in this case. She submits it can be called Detrimental Reliance or Promissory Estoppel (as in the High Trees case), however, in a situation whereby you are dealing with land and a person is made a promise which has been acted upon by the Plaintiff they cannot turn around afterwards and not honour that promise. She referred to the judgment of Lord Denning in the case: "The couple were licensees having a permissive occupation short of a tenancy, but with a contractual right, or at any rate an equitable right, to remain so long as they paid the instalments, which would grow into a good equitable title to the house itself as soon as the mortgage was paid." The Court held that the father could not put the son and his wife out and so nobody could have subsequently put her out. Further, that the Court decided even though the house was left to her in a will the Widow could not put them out and they were entitled to a conveyance of the property once they had done what the father said, pay the mortgage.
22. Miss McDonald, KC submits that Mr. Tynes, QC stated that there is no privity of contract between the Plaintiff and the Defendant but that in the circumstances there does not have to be any privity of contract because the Defendant's claim is only through the Estate of the Deceased. In the same way that the Deceased was obligated to the Plaintiff in terms of paying her the monies that was agreed between them, since the Defendant's right comes through the Deceased, the Defendant has no greater right than the Deceased, the Defendant

is not purchasing the house based on consideration. The Defendant's claim is through the Estate of the Deceased and the Defendant, since she is claiming through the Deceased, does not have any greater right than the Deceased would have had based on the case of **Errington v Errington (supra)**. She can only claim through the Estate of the Deceased. The Defendant is bound by any agreement between the Deceased and the Plaintiff. Further, it is not necessary to put law in the Affidavit. That Damages is a question of law not of fact. Based on the facts it would be a question of law whether damages was an adequate remedy.

23. Mr. Tynes, QC with the leave of the Court, was permitted to comment on **Errington v Errington (supra)** although he had not been provided with a copy of the case. He submits that the decision of **King v David Allen and Sons Bill Posting Limited (supra)** is a House of Lords decision and **Errington v Errington** is a Court of Appeal decision. He further submits that Miss McDonald, KC made reference to "part performance" which suggests a precursor to an application for specific performance. So, if this is a case which had to do with part performance and ultimately whether there had to be specific performance, it ought to be analyzed from that stand point. Moreover, there was reference to tenants at will however, there is no allegation or assertion of a tenancy by the Plaintiff in this case. Additionally, there has been reference to Promissory Estoppel, which is a principle which can be relied upon as a shield and not a sword. Counsel for the Plaintiff is seeking to rely on **Errington v Errington (supra)** as a sword and not a shield. Therefore, a critical analysis needs to be done by all of the parties and the same should have been done by Counsel for the Plaintiff, in response to Submissions made in the application heard. Moreover, if **Errington v Errington (supra)** is a Court of Appeal decision it cannot overturn the principles established in **King v David Allen and Sons Bill Posting Limited (supra)**. Finally, Mr. Tynes, QC states knowledge of the terms of a contract does not give rise to privity of contract and that **Errington v Errington (supra)** has no bearing on the principles in this case, which has authority of **King v David Allen and Sons Bill Posting Limited (supra)** behind it.
24. By letter filed September 14, 2022, Mrs. Tynes-Cambridge provided the court with another authority, **Ashburn Ansalt v Arnold** [1989] 1 CD. 1, a Court of Appeal decision, where

the Court, inter alia, rejected the proposition that a contractual licence was a proprietary interest in land capable of binding successors in title to the licensor.

Issues

25. The issues to be determined by the Court are whether:
- a. There is serious issue to be tried;
 - b. The Plaintiff can be compensated by damages;
 - c. The Plaintiff can provide an undertaking in damages to compensate the opposing party should it be later determined that the injunction was wrongly granted;
 - d. The balance of convenience lies in maintaining the status quo.

Analysis/Discussion

The Law

26. The Court has the power to grant an interim injunction by virtue of Section 21 of the Supreme Court Act which states:-

“The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.”

27. Additionally, Order 29, Rule 1 of the RSC outlines the procedure by which the Court is to grant such an injunction. In particular it states:-

“(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.”

28. It is clear that the Court has the jurisdiction pursuant to Section 21(1) of the Supreme Court Act and Order 29, Rule 1 of the RSC to grant injunctive relief. I am also guided by the principles found in **American Cyanamid** an authority which Counsel for the parties referred the Court to. **American Cyanamid** laid down guidelines as to how the Court's discretion to grant interim injunctions should be exercised thusly: (i) whether there is a serious issue to be tried; (ii) whether the applicant will be adequately compensated by an award of damages at trial; (iii) whether the applicant can provide an undertaking in damages to compensate the opposing party should it be later determined that the injunction was wrongly granted and; (iv) where the balance of convenience lies.

Serious Issue To Be Tried

29. The first consideration that must be given before granting an interim injunction is whether there is a serious issue to be tried. Having considered both parties submissions and the evidence before the Court I am satisfied that there is a dispute as to the equitable proprietary interest allegedly acquired (Proprietary Estoppel) in the house by the Plaintiff which can only be determined at trial. The Defendant claims to hold the legal interest pursuant to the laws of intestacy and a Conveyance by way of Assent and that the Plaintiff has taken unlawful possession of the house. The facts upon which the Plaintiff relies and the defence and facts contained in the counter-claim of the Defendant are facts in dispute between the parties and raise some difficult questions of law which must be carefully considered and analyzed by the Court. This can only be done at trial after the dispute as to the facts has been determined and the applicable law raised and argued by the parties and applied by the Court.

30. I refer to Lord Diplock at paragraph 407 in **American Cyanamid** whereby he stated that "It is no part of the court's function at this stage of litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at trial." The Court has made no determination as to whether the Plaintiff is aided by the doctrine of Proprietary Estoppel, nor whether the agreements asserted by the Plaintiff are statute barred, nor whether at its highest, the facts establish that the Plaintiff is a contractual licensee. These are matters that will be determined at trial.

31. Indeed, as Lord Diplock himself observed, “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.” I have examined the pleadings and the evidence before me for the purpose of satisfying myself that the underlying claim by the Plaintiff is not frivolous or vexatious and that there is indeed a serious issue to be determined at trial. In the circumstances, on an application for injunctive relief the Court needs to be satisfied **ONLY (emphasis mine)** that there is a serious question to be tried on the merits. So, I therefore conclude that there are triable issues to be determined by the Court.
32. Although the Court may be satisfied that there are triable issues to be determined at trial, in keeping with the principles laid out in **American Cyanamid** the Court must then determine whether damages would be an adequate remedy for the Plaintiff.

Adequacy of Damages

33. I refer to Lord Diplock at paragraph 408 of **American Cyanamid** whereby he stated that “...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's 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 adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's 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 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 upon this ground to refuse an interlocutory injunction.”

34. The only known asset available is the subject matter of this action in which the Defendant has a legal interest and in which the Plaintiff claims to have an equitable proprietary interest. The prima facie evidence is that the Plaintiff has been in actual possession of the house since 2005 and she has made it her home and the actions of the Defendant are interfering with her peaceful possession and enjoyment of the house; that she is a self-employed farmer, whose farm and livelihood is being adversely impacted by the disconnection of the water to the house, where her farm is situate. The Defendant contends that she is being deprived of her property and her rent in a reasonable sum of \$1,500.00 per month while the Plaintiff remains in unlawful possession. I am of the view that in these circumstances, due to the inconvenience that would be suffered by the Plaintiff in having to remain in occupation without water or in having to give up possession until the determination of this action, that damages would not be an adequate remedy.

Undertaking in damages

35. The Court should also consider whether the Plaintiff can provide an undertaking in damages to compensate the Defendant should it be later determined that the injunction was wrongly granted. The Plaintiff describes herself as a self-employed farmer which suggests that she would be in a position to meet any losses in rent or otherwise that the Defendant is able to justify should it be determined that the injunction was wrongly granted.

36. If the Plaintiff's undertaking as to damages would be an adequate remedy for the Defendant and if the Plaintiff is in a financial position to pay them there is no reason to refuse the Plaintiff an interlocutory injunction.

Balance of Convenience

37. If the Court is incorrect in finding that the Plaintiff is able to provide an undertaking in damages, or that damages would be an inadequate remedy, or if there is any doubt in this regard, the Court ought to consider in whose favor the balance of convenience lies. Lord Diplock continues at page 408 of **American Cyanamid (supra)** **"It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises."**

38. In the Privy Council decision of **National Commercial Bank Jamaica Limited v. Olint Corp. Limited**, [2009] UKPC 16 at paragraphs [17] and [19] their Lordships explained:

“17. ...The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the *American Cyanamid* case [1975] AC 396, 408: “It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.” ...

“19. There is however no reason to suppose that in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. ...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.”

39. In seeking an interlocutory injunction all that the Plaintiff is really seeking from the Court is an order which would restrain the Defendant from interfering with her previously unhindered enjoyment of the house and the amenities to the house until trial of the substantive action. As stated above, damages would obviously not provide the Plaintiff with an adequate remedy for the inconvenience she would suffer in the interim pending resolution of the dispute; and in any event, the balance of convenience clearly lies in favour of the grant of interlocutory relief.
40. Having considered the evidence and having accepted the submissions by Miss McDonald KC and Mrs. Wilson on this principle the Court is satisfied that the balance of convenience lies in favor of the Plaintiff and in maintaining the status quo, particularly the restoration of the water supply to the house.

Disposition

41. Therefore, having considered all of the relevant facts, having accepted the submissions of Counsel for the Plaintiff and having applied the principles laid out in **American Cyanamid** I have come to the determination that the Plaintiff’s application for injunctive relief ought to be granted. The Defendant is to restore immediately the water and electricity services to the house and the Plaintiff is to continue to pay for those services and the Defendant shall

not interfere with the Plaintiff's peaceful enjoyment of the house until the completion of the trial in this action.

Costs

42. Costs are always in the discretion of the Court and as such costs usually follow the event save for where unusual circumstances or exceptions to justify the departure from that rule exist. I see no such unusual circumstances or exceptions. Therefore, the Plaintiff is awarded her costs occasioned by this application to be taxed if not agreed, such costs to be determined at the conclusion of the trial of this action.

This th25 day of November 2022


Petra M. Hanna-Adderley
Justice