

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA 833/2001

BETWEEN

HARRY MEDFORD

Plaintiff

AND

ROOKMIN MEDFORD
JAMES CHRIS MEDFORD
EDWARD MEDFORD

Defendants

Before: The Hon. Justice Nolan P.G. Bereaux

Appearances: H. Seunath S.C., M. Johnatty for Plaintiff
C. Gobin for Defendant.

REASONS

On 30th April, 2001, by an oral ruling, I discharged an injunction granted by Marcus J. against the second and third defendants restraining them from breaking and destroying the plaintiff's home, preventing or attempting to prevent the plaintiff from occupying his home or securing his home with body guards. He also enjoined the third defendant from entering the parcel of land on which the plaintiff's home stood.

I discharged the injunction because I considered that the plaintiff had been less than frank with the court as to his status on the property, the period of time during which he lived there and the nature of his interest in the property, with the consequence that Marcus J. had been misled into granting the injunction.

In discharging the injunction I accepted Ms. Gobin's submission as to non-disclosure and found it unnecessary to rule on her other submission as to the lack of a serious issue to be tried. Mr. Seunath for the plaintiff had taken a number of objections to certain paragraphs in the defendant's affidavit in reply. In view of the decision to which I came I also found it unnecessary to rule on those objections.

The injunctions were obtained ex-parte on 2nd April, 2001. The ex-parte summons was supported by the affidavits of Harry Medford, Carlton Medford, Patrick Medford and Dulcie Saith, all filed on the 2nd April, 2001. The plaintiff's affidavit was the main affidavit in support of his summons for the ex-parte injunction. In it the plaintiff deposed to the following:

- (1) the first defendant was his mother and the second defendants were his brothers;
- (2) the plaintiff lived at Eric Street, Montrose, Chaguanas on land owned by his mother;
- (3) in 1983, there were two buildings on the parcel of land: a house which was the family home with an annex next to it. He lived in the annex. His mother lived in the house;
- (4) in 1983, his mother and the second defendant brought proceedings in court against him (HCA 3889/1983) with respect to his occupation of the annex. He did not serve any defence and as he put it:

*"I believe that they obtained default judgment against me.
Sometime in about 1983 I moved out of the annex."*

The plaintiff gave no particulars of the nature of the action or the reliefs sought. Nor did he seek to annex the proceedings or the default judgment obtained. He then stated vaguely that *"sometime in 1983 or 1984 I moved out of the annex."*

The plaintiff next deposed that the family home was destroyed by fire

“and my mother moved to live elsewhere. Around that time notwithstanding that she had obtained a default judgment against me for that piece of land, my mother and I reconciled our differences and in late 1984 she told me that I could build on the same piece of land at Eric Street.

Based on her ‘encouragement’ at about January 1985 he built a house on that piece of land at Eric Street *“which is the place I live at present”*. He deposed that *“I have lived there undisturbed since 1984.”* and adds that *“apart from the structure itself, I left a good deal of building material stored around the house including 1000 hollow clay blocks, angle iron, frames, pipes and stainless steel roofing sheets”*.

The plaintiff said he built at a cost of \$18,000.00 using his own labour and that of friends. He then deposed to the necessity for the injunction. These may be summarized as follows:

- (1) The second defendant agreed to sell the parcel of land making use of a power of attorney given to him by the first defendant.
- (2) His mother gave him tacit permission to remain on the property warning him that the second defendant had talked to him about breaking down the house.
- (3) On 28th March, 2001, he discovered that materials from around his home had been removed during his absence from his home the previous day. The materials were removed on the instructions of the third defendant.
- (4) The second and third defendants were overheard by his nephew Patrick Medford (a deponent in these proceedings) talking about breaking his home so as to facilitate the sale.

- (5) On 29th March 2001, the second and third defendants tried to remove the security guards from the premises. They had been placed there by his brother Carlton.
- (6) The second defendant is using the authority given by his mother by way of power of attorney, to try to remove him from the land despite his mother having given him permission to stay.

The affidavits of Carlton Medford, Patrick Medford and Dulcie Saith all supported the plaintiff's allegations as to the efforts of the second and third defendants to demolish the plaintiff's home and to remove the security guards from his premises.

In response, James Chris Medford swore to an affidavit in opposition on 19th April, 2001. In it he made a number of allegations against the plaintiff. I shall refer only to those allegations relevant to my ruling:

- (1) that as a result of HCA 3884 of 1983 an order for possession was made against the plaintiff in respect of the parcel of land;
- (2) an interlocutory injunction was also obtained against the plaintiff and Philip Medford restraining them inter alia from:
 - (i) interfering in any way with the access to or occupation of Lot 41;
 - (ii) entering or remaining on Lot 41;
- (3) the plaintiff breached the injunction and was committed to prison for contempt. He also has not paid the costs of that action;
- (4) that until 1998, the plaintiff resided at his mother-in-law's home at the corner of Smith & Penco Streets, Montrose, Chaguanas. On 13th March, 1998, the plaintiff, in domestic violence proceedings

brought by his wife in the Chaguanas Magistrate's Court, undertook not to enter or remain on those premises and to leave the premises on or before 3rd April, 1998. A copy of the undertaking and a certified copy of the extract of the Magistrate's Case Book were exhibited. The extract from the Magistrate's Case Book gives the plaintiff's address as Penco Street;

- (5) it was only after he had been evicted that he sought permission of the first defendant to occupy the structure at Lot 41.

At the hearing of the summons to continue the injunction, Miss Gobin submitted inter alia that there had been a material nondisclosure and that the plaintiff had misled the court in obtaining the injunction. She submitted he ought to have disclosed that an order for possession had been made against him and that he had also been excluded by injunction. She pointed to inconsistencies in the plaintiff's affidavit and that which he had sworn in the earlier proceedings.

In my judgment the submissions of Ms. Gobin were well founded. Firstly, the documentary evidence provided by the defendant was clear. There was an order for possession in respect of Lot 41 made in favour of the first and second defendants and against the plaintiff. There was no evidence that the judgment had been set aside. In his affidavit in support of his summons the plaintiff made reference to the previous High Court proceedings and to the fact that a judgment had been obtained against him. He was short on detail. No effort was made to explain what was the nature of the proceedings or what was the order obtained. No part of the proceedings was exhibited although he was aware of the High Court Action number.

Mr. Seunath submitted that there was no evidence of service of the order on the plaintiff. That submission missed the point. The plaintiff invoked the equitable jurisdiction of the court. He had a duty to disclose all relevant facts. That duty includes not only those facts peculiarly within his knowledge but also those facts which he ought reasonably to have

known. In my judgment he ought to have known of the order. Indeed his evidence was that he believed a default judgment had been taken up against him. It was incumbent upon him to verify what the order was. He knew the High Court action number of the proceedings. A simple search of the file in the High Court Registry would have produced the order. The dictum of Ralph Gibson L.J. at page 192 in *Brinks- MAT Ltd. v Elcombe* [1988] 3 All ER 188 is relevant:

(ii) “The applicant must make proper inquiries before making the application: see Bank Mellat v Nikpour [1985] FSR 87. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries. (iv) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application, (b) the order for which application is made and the probable effect of the order on the defendant.”...

Balcombe L.J. in the same case:

“The courts today are frequently asked to grant ex parte injunctions, either because the matter is too urgent to await a hearing on notice or because the very fact of giving notice may precipitate the action which the application is designed to prevent. On any ex parte application, the fact that the court is asked to grant relief without the person against whom the relief is sought having the opportunity to be heard makes it imperative that the applicant should make full and frank disclosure of all facts known to him or which should have been known to him had he made all such inquiries as were reasonable and proper in the circumstances.”

The fact that the plaintiff may have been invited back onto the premises by his mother was of little moment. It did not in any way diminish his duty to disclose. I entertain no doubt that had Marcus J been aware of the order for possession he would not have granted any injunctive relief at the ex parte hearing.

But I did not accept that the plaintiff was unaware of the order. The absence in his affidavit of any detail as to the nature of the proceedings led me to conclude that the plaintiff was well aware of the existence of the order hence his relatively brief reference to the previous High Court proceedings and his vague statement as to when he left the annex.

The extracts from the Magistrates' Court of the domestic violence proceedings were also instructive. They showed that the plaintiff had been living with his wife at Penco Street in 1998. The inference must be that he had been living there for some time before (given the efforts of his wife to have him removed.) They also rendered untrue his contention in paragraph 8 of his affidavit that he had been "*living undisturbed*" at Lot 41 since 1984.

Further the plaintiff sometimes expressed himself with an economy of detail that suggested that some matters were not being fully told and that he was being selective with the truth. I have already referred to the absence of any particulars of the contents of the default judgment. There is also the statement in paragraph 18 of his affidavit that he was "*resting elsewhere*" on March 29th 2001, which Ms. Gobin submitted referred to his matrimonial home at Penco Street (he was by then reconciling or had reconciled with his estranged wife.) There was also inconsistency between the plaintiff's affidavit and his previous affidavit in HCA 3884 of 1983, in which he deposed that he had built a wooden house on Lot 41. In paragraph 8 of his affidavit, in these proceedings, the plaintiff deposes building "*a concrete two-bedroom 32ft x 18ft structure*".

These inconsistencies and his obvious lack of candour fortified me in my conclusion that the injunction should be discharged. Further, there was the second defendant's evidence

that the plaintiff had been committed to prison for breaching the interlocutory injunction. This too was not disclosed by the plaintiff (there was no denial of this allegation). In my judgment any such matter should of necessity have been disclosed to Marcus J. Certainly it ought to have prompted him to order an inter partes hearing rather than granting of interlocutory injunction.

For those reasons I considered that Marcus J had been misled into granting the injunction and I ordered it discharged.

NOLAN P.G. BERAUX

26th January, 2004