IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL

CIVIL APPEAL NO. H1/98/05

11TH FEBRUARY, 2005.

MADAM CATHERINE OSEI … PLAINTIFF/APPELLANT
V E R S U S
FRANK ADDO … DEFENDANT/RESPONDENT

J U D G M E N T

HEWARDS-MILLS [MRS] J :- This is an appeal against the dismissal of an application for interlocutory injunction pending the hearing of the substantive suit between the parties.

F A C T S

The defendant/respondent had by an agreement taken a 30 year sub-lease of property originally leased to the plaintiff/appellant by the Government. The full value of the rent for the duration amounting to $80,000 (eighty thousand) was paid to the plaintiff. The defendant took possession of the property, demolished a structure which was already on the land and commenced a building project. Plaintiff after letting the defendant into possession of the property obtained a valuation of the property which according to the report placed the value of the property at $175,000 (One hundred and seventy-five thousand). Plaintiff attempted to retrieve her property by offering the defendant a cheque for ¢704,000,000.00 (Seven hundred and four million). This amount was said to be the equivalent of $80,000.00 received under the contract from the defendant. When the defendant refused the cheque, plaintiff instituted a suit seeking to set aside agreement. She also by an application for an interlocutory injunction sought to prevent the defendant from continuing with the building project he had started on the following grounds.

1. The demolition of the structure on the land, without her consent and approval, constituted a fundamental breach of the lease agreement.

2. The agreement was unconscionable because she was rushed into the agreement without allowing proper investigation and valuation of the property and without a proper arrangement.
3. She would suffer irreparable damage because "There is a great likelihood of plaintiff's reversionary interest being lost/defeated on the Government exercising its right to re-enter the property on the breach of head-lease's condition by the defendant in putting up a development for business purpose."

RULING OF THE COURT BELOW

The judge refused the application, taking into account the fact that the building on the land had already been pulled down, and that the plaintiff would be adequately compensated in cost. He concluded that the balance of hardship learned more against the defendant than the plaintiff.

As indicated above, it is the refusal of that application in the lower court that has prompted this appeal.

CASE OF PLAINTIFF ON APPEAL

The plaintiff's case on appeal in effect repeats the issue raised in the lower court.
She claims that if the defendant is allowed to put up the building, it will breach a convent of the head lease. It is her case that the ruling of the court is wrong because the possible penalty of re-entry and the defeat of her reversionary interest can not be adequately compensated for.

LAW

The essence of an application for an interlocutory injunction is to preserve the subject matter of the suit. **GNTC VRS. S.S. PACIFIC CURRENT & ANOT. {1977} 2GLR/321.**

The governing principle is whether there is a need to preserve the interest of the parties in order to avoid irreparable damage to either litigant. The court is enjoined not to "indulge in speculative discussion of averments contained in pleadings which might amount to

prejudging." **WAKEFIELD VRS. RE DUKE OF BUFFLEUGH {1865} 121 L.T. 628.**

The onus however lies on the applicant to show that a greater harm would be done by the refusal to grant the application than not. The facts supporting this claim must be evidence on the face of the applicant's supporting affidavit**. MENSAH VRS. MORO {1981} GLR 728.**

It is the policy of the court that where one party is in actual and legal occupation of the land and has embarked on the process of developing the land, the party who seeks to prevent further development by way of a an injunction must establish a "strong and compelling case." The threat to the applicant's legal right must be real, imminent and uncompensatable**. ANAAMAN VRS. OSEI TUTU 76] 1/111.**

Facts available to the court indicate that it is with the support of the Plaintiff that the defendant obtained the necessary statutory consent for the very structure he has started developing on the land. Plaintiff has provided no proof of the allegation that the defendant's building will breach the conditions imposed by the Head Lease. Such a bare and speculative averment offends the rule against frivolous or vexatious applications.

It is also a fallacy for the plaintiff to maintain that her reversionary interest can not be compensated for. If it has been possible to quantify the value of the 30 year leasehol;d interest granted to the defendant then surely it is not beyond the realms of possibility to do the same with the interest remaining in her. Where quantification of compensation is possible and the defendant is in a position to pay such an amount, an application for an injunction would normally fail. See **AMERICA CYANAID VRS. ETHICON LTD. {1975} ALL. ER. 504.**

It is agreed between the parties that at the expiration of the term granted to the Defendant is to hand over to the applicant <u>all buildings on the land</u> "in substantial state of repair." That in my opinion confirms that the judge was right in concluding that "the balance of hardship learned more against the defendant than the plaintiff."

VERDICT

It is for the above reasons that I concur with the judgment of this court that the application for injunction be dismissed with costs.

HEWARD-MILLS [MRS]
HIGH COURT JUDGE

COUNSEL - DR. KWAKU NSIAH FOR APPELLANT.
SAMMY ADDO FOR RESPONDENT.

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