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Encalada v Foreman

Jurisdiction: Belize

Judge: Staine, J.

Judgment Date: 11 January 1979

Reported In: BZ 1979 SC 3

Court: Supreme Court (Belize)

Docket Number: Action No. 211 of 1978

Date: 11 January 1979

PDF

Supreme Court

Staine, J.

Action No. 211 of 1978

Encalada
and
Foreman

Appearances:

Mr. Dean Barrow for the plaintiff

Mr. Raymond H. Barrow for the defendant

Injunction - Application for interlocutory injunction — Defendant had constructed pier on plaintiff's property in 1987 — Plaintiff took no action — Defendant commenced construction of another pier — Finding that although there were serious issues to be tried the Court could not grant the injunction since it would deprive the defendant of the use and enjoyment of something he had enjoyed for a long time — Finding that the Court could not grant an injunction in respect of the second pier since it was not a separate motion.

Staine, J.

By this motion the plaintiff seeks an injunction to restrain the defendant from continuing to maintain piers and a dive shop and from continuing to build a restaurant and bar so as to become a nuisance to the plaintiff.

The evidence in support of the motion has been given by one affidavit sworn to by the plaintiff who resides at the Corner of Hyde's Lane and New Road in Belize City, and is the owner and occupier of a dwelling house and house on beach front property situated at San Pedro, **Ambergris Caye**. The defendant is the owner of a hotel situated behind her property.

Sometime in 1978, the defendant built a pier leading into the sea and a dive shop at the end of the pier, directly off the plaintiff's property at **Ambergris Caye**.

The defendant has, since that time, commenced building another pier off the front of the plaintiff's property, and also started building a restaurant and bar next to the first pier and dive shop.

The plaintiff, therefore, moves the Court to obtain an injunction as aforesaid.

In answer to the plaintiff, the defendant has filed an affidavit in which he alleges that he is in the tourist business and that the first pier and dive shop are used in providing services which the tourist business offers to customers, and that the first pier was in fact built in November 1977.

The defendant also alleges that the area of beach land used for swimming by the public abuts the plaintiff's property, but is the property of the Crown. He further traverses other allegations contained in the plaintiff's affidavit.

The matters have been fully argued before this Court by Mr. Dean Barrow for the plaintiff and by Mr. D.B. Courtenay for the defendant.

It is clear from the affidavits and the arguments adduced that there are serious issues to be tried, but the Court is not in a position to resolve the conflicts raised by the affidavits, nor should it attempt to do so. See *American Cyanamid v. Ethicon Ltd.* [1975] 2 W.L.R. But there are matters raised on the face of the affidavit which do not require the evaluation of the evidence at present before the Court.

It is noted that it is not disputed that the defendant is in the tourist trade and that the first pier used in connection with that business was built in 1977 or 1978; the year does not matter. What matters is at the time of the construction of the first pier, the plaintiff apparently took no steps to redress what she now terms an infringement of her legal rights. She now seeks an injunction to restrain the defendant from using this first pier and the restaurant.

An injunction is an equitable remedy, and like all equitable remedies it must be quickly claimed, otherwise the doctrine of laches and the maxim, "Delay defeats equity" will attach to its operation. Were the Court to grant an injunction at this stage restraining the defendant from using this first pier and restaurant, it would mean that the Court would in effect be depriving him of the use and enjoyment of something he has had for sometime. Furthermore, the defendant being in the tourist business, were the Court now to enjoin him from maintaining this first pier and restaurant, at a time when the tourist season is about to commence, it would mean the defendant was being deprived of a means of livelihood and a

living. If the allegations contained in paragraph 8 of the plaintiff's affidavit can be taken literally, then it is all the more difficult to appreciate the delay in bringing this matter before the Court with a view to seeking relief.

Turning to the second pier being built, it is noted that there is one motion before the Court seeking to restrain the maintenance and building of two piers. It is therefore not possible to deal with the motion as if it were applications in respect of separate piers.

Further, the defendant's affidavit deposed to having removed the second pier from in front of the plaintiff's property. If this is so then there is no matter of complaint in this respect. This is made all the more the case when it is noted that the plaintiff resided in Belize City and I have not had to consider the question of nuisance or other matter of law. I would dismiss this motion on the grounds of undue delay defeating an equitable claim, and on the grounds that if a question of nuisance arises it can be properly remedied by awarding damages.