

168.
87/62.

IN THE ROYAL COURT OF JERSEY

9TH OCTOBER, 1987

ST. BERNARDS GARAGE and Hire Cars Ltd

-v-

KENNETH SKINNER

JUDGEMENT

THE BAILIFF: The plaintiff company in this action is the tenant of a Mrs. Buesnel, and occupies two pieces of land adjacent to a house called "St. Bernards". For the purposes of their business, the plaintiff company requires unrestricted and clear access to the two pieces of land it rents from Mrs. Buesnel. It exercises that right of access from the public road over a courtyard which was coloured blue in the Lease between Mrs. Buesnel and the plaintiff company. It has claimed interim injunctions in respect of the use of that blue area against the defendant in a number of ways. It has claimed infact, four. They are as follows:-

- a) From parking or causing, permitting or allowing to be parked in the courtyard more than two private motor vehicles, these to be parked side by side in an area immediately to the west of the hoggin area, which is one of the areas leased to the plaintiff company, in the south eastern part of the courtyard and not in any manner or area which obstructs the entrance to any part of the demised premises or interferes with the plaintiff's right of way over the courtyard aforesaid.
- b) From using the courtyard for any purpose other than as stated

in paragraph (a) of the prayer and for the purpose of access to, and egress from the said property St. Bernards.

c) From allowing to be deposited and/or stored on or about any outbuildings or other area adjacent to the demised premises, any quantities of loose wood or other material which are not securely tied so as to prevent the same being blown by the wind onto any part of the demised premises or the courtyard.

d) From using at any time the said chainsaw and any other noisy apparatus in the courtyard or at the said property St. Bernards, such as would constitute a nuisance of the plaintiff.

Included in the Lease between Mrs. Buesnel and the plaintiff is a general clause reserving to Mrs. Buesnel a number of rights, one of which is the right in common, and I quote from clause 6.2.0 "together with others deriving such right from the lessor to come and go over the area referred to in sub clause 6.1.0 hereof and coloured blue". Now, Mr. Sinel for the defendant claims that the restriction as to the type of parking that can take place on that area is beyond the powers of the plaintiff to enforce. He admits that if the plaintiff were merely asking that his right of way be unimpeded, he would be unable to resist the continuation of the interim injunction. He has submitted that as regards (b), that is not a matter which is proper for the plaintiff to obtain an interim injunction on. He accepts (c) and as regards (d), he accepts that it would be proper for ^{the} injunction to prevent the defendant from using a chainsaw, which I haven't mentioned, but there is an allegation that the defendant uses a chainsaw, a noisy apparatus in the courtyard. He admits that an injunction would lie promptly such as would constitute a nuisance, but objects to the word "or might constitute a nuisance to the plaintiff".

Having considered the authorities referred to. There was the Jersey case of ~~Cerqueira~~ and ~~Bilbao~~ International Bank Limited and the Royal Trust Limited which was a case in 1981, where the Court considered the application of an interim injunction and referred to Halsbury, but that case, I think, was overtaken, or at any rate there is no record in it of a later case of the Cyanamid case, which is, of course, the well known case which this Court now knows and has used in the past. We have looked at the American Cyanamid case very carefully and we have also looked at a later case of Films Robe International Limited & Others -v- Canon Film Sales limited reported at 1986 All E.L.R. Chancery Division

at page 773 and the Judgement of Mr. Justice Hoffman. The head note to that last case reads "in determining whether to grant an interlocutory injunction the question for the Court was not whether the injunction sought was mandatory or prohibitory, but whether the injustice that would be caused to the defendant if the plaintiff was granted an injunction and later failed at trial, outweighed the injustice^{that} would be caused to the plaintiff if an injunction was refused and he succeeded at the trial." We say that in general terms. But having looked at the wording of the proposed interim injunction which is now sought to be lifted, we propose to vary the injunction as follows:-

The injunction (a) will now read "from parking or causing, permitting or allowed to be parked in the courtyard, any motor vehicle in any manner or area which obstructs the entrance to any part of the demised premises or interferes with the plaintiff's right of way over the courtyard aforesaid"; (b) we do not think is a suitable matter to continue in an interim injunction, therefore the interim injunction as regards (b) is lifted, because it will remain for trial in the main hearing; (c) will continue because that is not denied by the defendant, and (d) will continue except we will remove the words "or might" from the clause, "such as would or might constitute a nuisance to the plaintiff". So (d) would read:- "From using at any time the said chainsaw or any other noisy apparatus in the courtyard or at the said property St. Bernard, such as would constitute a nuisance to the plaintiff".

And the costs will be in the cause.

Authorities referred to in the judgment:-

José Miguel Cerqueira -v- Bilbao International Bank (Jersey) Limited et al
Jersey Judgments 1981 at p.141 et seq.

American Cyanamid Co v Ethicon Ltd - 1962 A.C. 396

Film Rights International Ltd et al -v- Canon Film Sales Ltd - 1980
ACR Canon Division at p.773

Other authorities referred to:

David Bean on Ejectments (3rd edition) pages 12 and 13
and pages 22 to 27 (re "balance of convenience" and
"interference with property rights")