JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 100/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

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| **BETWEEN** | **ELINOR INGLIS** | **1ST DEFENDANT/APPELLANT** |
| **AND** | **WILLIAM McCABE** | **2ND DEFENDANT/APPELLANT** |
| **AND** | **VERNE GRANBERG** | **PLAINTIFF/RESPONDENT** |

Dennis Goffe and Douglas Leys for appellants

Enos Grant for respondent

February 26 & March 19, 1990

**DOWNER, J.A.:**

It is appropriate at the outset to advert to the fact that this Court has granted Elinor Inglis, in unreported Supreme Court Civil Appeal No. 84/89, an Interlocutory Injunction on an appeal from the order of Langrin, J. That order, directed a speedy trial and confirmed the occupancy of the appellant at Pharos Villas until the issues have been determined at a hearing in the Supreme Court. It is sufficient to say at this stage that

the 1st appellant, Elinor Inglis, has leased Pharos Villas from the respondent, Verne Granberg, and that Mrs. Inglis also has a management contract to administer the Villas, which can be read as a partnership agreement.

In this appeal, the appellants seek to have the order of Parkin, J. (Actg.), set aside. That learned judge had granted the respondent an ex parte interim injunction on 28th November, 1989, which reads as follows:

> "That the Defendants [the Appellants in this Court] be and are hereby restrained from trespassing on the premises at Unity Hall, Reading, in the parish of St. James, registered at Volume 1171 Folio 827 of the Register Book of Titles, by occupying any part thereof and/or keeping their servants and/or agents on the said premises and/or by causing or permitting any of their property to remain on the said premises for a period of 14 days from the date hereof.
>
> The Plaintiff by his Attorney-at-Law giving the usual undertaking as to damages."

Dates are important in these proceedings and the appellants acted properly and with promptitude in seeking to dissolve this interim injunction. This was sought on 1st December before Parkin, J. (Actg.). The application was dismissed.

It was against that background that the appellants came to this Court to set aside the order granting the interim injunction and the application raises a question of principle as to the true grounds on which this remedy ought to be granted.

No complaint was made concerning full disclosure by the respondent, but dates must be referred to again. The respondent filed his Writ of Summons on 28th November, the same day on which the interim injunction was sought and granted. The gist of his claim was to recover arrears of

rental and it was averred that on 4th August he had exercised his right to re-entry. Significantly, he alleges that the appellant had begun to trespass on Pharos Villas from that day and in his particulars he stated that -

"P A R T I C U L A R S

(a) she has maintained hired armed guards in the said villa to prevent me from entering or occupying the whole villa;

(b) she has continued to occupy 5 suites and all the common rooms;

(c) on the 8th day of November, 1989, while the Plaintiff was away from the said villa, she changed locks on the suite occupied by the Plaintiff, locked away the Plaintiff's goods and she denied him entry into the said villa."

Further, paragraph 9 of the respondent's (Granberg) affidavit reads:

"9. From or about the last week of October, 1989, 2nd Defendant and his family have been trespassing in the said villa by moving their furniture into the said villa and occupy a suite there."

It is clear, therefore, from the affidavit supporting the summons for application for the interim injunction that the respondent knew of the alleged trespass from the 4th of August and that the trespass was aggravated by William McCabe, the 2nd appellant, in October. Yet an interim injunction was not sought until November 28. Further, in the Summons to dissolve the interim injunction, specific reference was made to the affidavit of the respondent of November 28, 1989. Here is the relevant paragraph of the Summons at page 49 of the Record:

"That the Order for interim injunction made herein on the 28th day of November, 1989 be set aside on the grounds that

> "(a) the Plaintiff [Respondent] in his Affidavit dated the 28th November 1989 and filed herein failed to show the required or any urgency."

Interim injunctions belong to that exceptional category of remedies which are granted in the absence of the defendant. In exercising its discretion to grant such a remedy an essential prerequisite was that the matter was of such urgency that there was no time to serve the defendant. In exceptional cases the certainty of success at the interlocutory stage may persuade the Court to grant the remedy where urgency is not established, but this must be a rare event. Generally speaking, the time granted for these injunctions is between five and seven days. Seton, J., in March v. Campbell 3 J.L.R., p. 194 in refusing an interim injunction did so on the basis that the grounds to justify the remedies being granted ex parte were not sufficiently strong. This can be taken to mean that he dismissed the matter in limine. Rowe, P., in the course of argument, referred to the case of Bates v. Lord Hailsham [1972] 1 W.L.R. 1373 and Mr. Geoffe relied on the following passage at page 1380A:

> "If there is a plaintiff who has known about a proposal for 10 weeks in general terms and for nearly four weeks in detail, and he wants an injunction to prevent effect being given to it at a meeting of which he has known for well over a fortnight, he must have a most cogent explanation if he is to obtain his injunction on an ex parte application made two and a half hours before the meeting is due to begin. It is no answer to say, as Mr. Nicholls sought to say, that the grant of the injunction will do the defendants no harm, for apart from other considerations, an inference from an insufficiently explained tardiness in the application is that the urgency and the gravity of the plaintiff's case are less than compelling. Ex parte injunctions are

> "for cases of real urgency, where there has been a true impossibility of giving notice of motion. The present case does not fall into that category. Accordingly, unless perhaps the plaintiff had had an overwhelming case on the merits, I would have refused the injunction on the score of insufficiently explained delay alone."

When these principles are applied to the instant case it is clear that the order made in the Supreme Court was wrong. The respondent had full opportunity to, and ought to have given to the appellant notice of his intention to seek an injunction. So at the end of the hearing we set aside the order of Parkin, J. (Actg.) and ordered that the taxed or agreed costs of this hearing be for the appellants.

The foregoing are the reasons we promised to put in writing.

**ROWE, P.:**

I agree.

**WRIGHT, J.A.:**

I agree.