123 So.2d 473
District Court of Appeal of Florida, First District.

STATE ROAD DEPARTMENT OF FLORIDA,
an Agency of the State of Florida, Appellant,
v.
Frank FRUGOLI and Martha Frugoli, his wife, and
Roy E. Hyne and Agnes Hyne, his wife, Appellees.

No. C–163.
|
Oct. 6, 1960.

Action by State Road Department to require defendants to remove certain unspecified encroachments from right of way of public road in course of construction and improvement. The Circuit Court for Columbia County, R. H. Rowe, J., entered judgment dismissing complaint and department appealed. The District Court of Appeal, Sturgis, J., held that complaint contained sufficient allegations to state cause of action for injunctive relief.

Reversed and remanded.

Wigginton, C. J., dissented.

West Headnotes (4)

[1] **Highways**
Proceedings

Complaint of State Road Department for mandatory injunction requiring defendants to remove certain property encroaching on right of way of public road in course of construction and improvement by Road Department, being a project in which the federal government was participating to the extent of 50 percent of cost, was sufficient to state cause of action for injunctive relief.

Cases that cite this headnote

[2] **Injunction**
Remedies at law in general

Injunctive relief should be readily available where public right or injury to any is concerned and is to be distinguished from those cases where injunctive relief may be deferred without undue hardship pending result of action at law.

1 Cases that cite this headnote

[3] **Highways**
Grounds of relief

Injunction ordinarily lies at suit of proper public authorities to compel removal or abatement of an **obstruction**, encroachment or a **nuisance** upon a public road **right of way**.

Cases that cite this headnote

[4] **Highways**
Grounds of relief

It is not necessary that an **obstruction** or encroachment on a public road **right of way** be established as a **nuisance** per se at law preliminary to the issuance of an injunction compelling removal thereof.

Cases that cite this headnote

Attorneys and Law Firms

***474** Clyde G. Trammell, Jr., Tallahassee, for appellant.

J. B. Hodges and A. K. Black, Lake City, for appellees.

Opinion

STURGIS, Judge.

The State Road Department, plaintiff below, filed its complaint in equity seeking a mandatory injunction requiring the defendants to remove certain unspecified property owned by them from the right of way of a public road in course of construction and improvement by the plaintiff, being a project in which the federal government is participating to the extent of 50% of the cost. On motion of defendants the trial court entered an order dismissing the complaint for failure to state a cause of action and plaintiff appeals.

We feel compelled to comment on the inadequacy of the briefs in this cause. That part of appellant's brief devoted to 'Argument' is limited to a citation of several authorities supporting the elemental propositions that in passing on such motion all well-pleaded allegations of ultimate fact are to be treated as true, that unlawful obstruction of a public highway may be enjoined where relief at law is inadequate, and that a complaint is sufficient if its wellpleaded allegations adequately inform the defendant of the nature of a cause of action falling within the jurisdiction of the court, followed by the assertion of the briefer that the complaint 'is deemed to sufficiently allege a cause of action against the defendant.' With that polemic there is left to the doubtful ingenuity of this court the problem of penetrating the veil of an unusual galaxy of vague intendments and inferences indulged by that pleading, as well as to make an independent research to discover whether legal precedent supports the sufficiency that appellant so confidently ascribes to it.

We derive no greater comfort from appellees' brief which is devoid of a single citation of authority. The sum and substance of its 12-line dissertation, captioned 'Argument', is that the statement of facts contained therein 'include adequate grounds for this court to sustain the lower court.' However, our examination of that phase of appellees' brief revals that in the main it ***475** is a rehash of things that are said to have occurred in the course of an eminent domain proceeding that has no connection with the issue on appeal, and we find that the appendix to that brief is also burdened with excerpts from that separate and irrelevant suit in eninent domain.

The purpose and importance of briefs on appeal and the set-up and structure of their composition is too well known to require discussion. This court is entitled to proper criticism for having heretofore failed to take appropriate steps to guard against the submission of faulty briefs. We must not, however, tolerate a continuation of that fault. It is axiomatic that a case worthy of appeal deserves efficient and effective presentation. It will hereafter be our policy to return under appropriate penalties and directions those briefs which fail to measure up to minimum standards.

The sole point for determination on this appeal is the sufficiency of the complaint as tested by the motion to dismiss. It alleges in substance: That the State Road Department is the owner of described real property upon which the defendants are trespassing by the maintenance thereon of improvements that encroach upon the right of way of a public road in process of construction by plaintiff; that the encroachments hinder the progress and prevent the completion of the work upon said road; that defendants have been requested but refuse to remove the encroachments; that the construction project is one in which the federal government is participating to the extent of 50% of the cost; that the encroachments prohibit a contractor, engaged to construct the road, from leveling, grading and landscaping that portion upon which the encroachments are located; that unless this work is completed prior to acceptance of the construction contract by the State Road Department, the contractor will be released from the performance of that part of the work, with the result that at a later date the State Road Department will be called on to incur the additional expense of performing it; and finally, that unless the encroachments ments are removed pror to acceptance of the contract in progress, the State Road Department will be called on to bear the total cost of the project because the federal government's participation will be withdrawn. Upon these facts plaintiff alleges that it will suffer irreparable in jury unless defendants are mandatorily enjoined to remove the encroachments.

One of the obscurities of the complaint is its failure to state the nature of the alleged encroachments, what use if any is made of them by the defendants, or the length of time they have existed on plaintiff's land, particularly in point of the time plaintiff acquired title. This omission, however, is not regarded as sufficient to destroy the efficacy of the complaint to state a cause of action. The defendants obviously have knowledge of most of these matters. Corrective pleadings and other pretrial procedures are available to supply the remainder, if necessary to the defense.

[1] **[2]** Although ineptly framed and stingy of allegations of fact to a fault that requires indulgence, we conclude that the complaint does nevertheless contain allegations sufficient to state a cause of action for injunctive relief of the character involved by this suit and to withstand the assault of the motion to dismiss. The relief contemplated should be readily available where the public right or injury to many is concerned, and is to be distinguished from those cases where injunctive relief may be deferred without undue hardship pending the result of an action at law. Such considerations drive to the very heart of the inherent power of courts of equity to provide the type of relief here sought.

[3] **[4]** It is well settled that injunction ordinarily lies at the suit of the proper public authorities to compel the removal or abatement of an **obstruction**, encroachment or **nuisance** upon a public road **right of way**. 25 Am.Jur., Highways § 324; Annotations: 40 A.L.R. 1169, s. 91 A.L.R. 322; 65 A.L.R. 699; 6 L.R.A. 161; 8 L.R.A. 831; ***476** 39 L.R.A. 650; 41 L.R.A. 328; 42 L.R.A. 814; 7 L.R.A.,N.S., 72; 12 Eng.Rul.Cas. 569. The public is entitled to the speediest and most effectual way to prevent the invasion of its rights, and where the obstruction is itself an invasion of the public highway it is not necessary that the fact that it is a nuisance per se be established at law preliminary to the jurisdiction by injunction. Smith v. McDowell, 148 Ill. 51, 35 N.E. 141, 22 L.R.A. 393. These general principles are followed in Pasco County v. Johnson, Fla., 67 So.2d 639, reversing the trial court's dismissal of a complaint for mandatory injunction against landowners who had barricaded an alleged public road, and in Dade County v. Harris, Fla., 90 So.2d 316, which also reversed a decree granting defendants' motion to dismiss a complaint for a mandatory injunction to remove from lands held for highway purposes obstructions consisting of concrete 'mushrooms' or 'buttons'. While that latter case involved a population act applicable only to Dade County, conferring specific authority upon officials having charge of maintenance of roads to compel by mandatory injunction the removal of encroachments from the right of way, this provision only reaffirms the inherent power of courts of equity to grant such relief upon a proper showing of inadequacy of relief at law.

Appellees argue that they are entitled to a trial by jury. Our conclusions do not preclude that possibility, depending on the future pleadings. It is fundamental that we do not hereby predetermine any questions of proof or procedure that may be raised by the pleadings yet to be filed or future proceedings in this cause.

The order dismissing the complaint is vacated and this cause is remanded for proceedings consistent herewith.

Reversed and remanded.

CARROLL, DONALD, J., concurs.

WIGGINTON, Chief Judge, dissents.

WIGGINTON, Chief Judge (dissenting).

I regret my inability to agree with the majority that the complaint filed in this case alleges facts entitling plaintiff to the mandatory injunction prayed for.

The salient allegations of the complaint are fairly set forth in the majority opinion. In addition, it should be pointed out that the real property alleged to be owned by the plaintiff on which defendants' encroachments allegedly exist are two parcels of land, one of which consists of ten acres and the other of which consists of that part of a twenty-acre parcel of land lying west of U. S. Highway 41. It is alleged that the plaintiff is in the process of reconstructing a public road in the area of the property described in the complaint, and that improvements provements owned by defendants which allegedly encroach upon plaintiff's property are hindering and preventing completion of the road construction. It is prayed that the court grant a mandatory injunction requiring defendants to remove their improvements from plaintiff's property.

It is my opinion that the rule of law which controls the question of whether the complaint in this case states a cause of action is fully set forth by our Supreme Court in the Johnson case. [1] It was there held that mandatory injunctions are looked upon with disfavor, and the courts are even more reluctant to issue them than prohibitory ones. For most obvious reasons a mandatory injunction should be granted only in situations which so clearly call for it as to make its refusal work real and serious hardship and injustice. The court commented that the remedy of injunction is a drastic one which should be granted only cautiously and sparingly, but never in a case where the plaintiff has an daequate remedy at law. The decision recognizes that an injunction of this character may issue, in proper instances, to require the removal of an encroaching structure. Instances where the remedy will be be made available to a complaining party are those ***477** in which the encroachment is intentionally committed as by constructing a building without determining the true boundary line during a dispute as to its location and in the face of a warning that the building must be confined within the true boundaries of defendants' land. Other illustrations of situations in which the issuance of mandatory injunctions have been held to be proper are typified by the cases decided by our Supreme Court

on which the majority opinion relies for reversal. In the Pasco County case[2] an adjoining property owner was mandatorily enjoined to remove a barricade placed by him across an existing public road which had been in use for many years prior to the time defendant purchased the adjoining property. Likewise in the Dade County case[3] mandatory injunction was held to be the proper remedy to require an adjoining landowner to remove from an existing road right-of-way concrete 'mushrooms' or 'buttons' placed thereon by him. In each of the cited cases the encroachment committed by defendants was wilful and intentional, and involved the right-of-way of an existing public road or highway which had been in use by the traveling public for many years prior to the time the defendants acquired an interest in the adjoining property. To the same effect are the remaining authorities cited in the majority opinion. No comparable factual situation is alleged in the complaint which we now review.

The complaint under consideration contains no allegations showing when in the point of time defendants' improvements were erected which are now claimed to encroach on plaintiff's property, whether before or after plaintiff acquired title to its adjoining land. There are no allegations to the effect that defendants were careless in deternining the true location of their property line before the improvements were erected. The complaint does not charge that the defendants wilfully, maliciously or with full knowledge of the true boundary line erected the improvements which are alleged to constitute the encroachment. Nor does the complaint allege that defendants' improvements encroach upon an existing public road which has heretofore been in use by the general public.

The only irreparable injury which plaintiff alleges it will suffer unless the relief prayed for is granted is that the contractor employed to construct the new highway will not be able to level, grade and landscape that portion of plaintiff's property on which defendants' improvements are located. It affirmatively appears from the complaint itself that plaintiff was derelict in not first determining that it had both title to and possession of the land lying within its proposed road right-of-way before entering into a contract which requires that the full right-of-way be available in order that the contract may be performed. The inconvenience and possible increased cost which now confronts plaintiff is due to its own dereliction, and cannot be considered as sufficient to warrant the drastic remedy of mandatory injunction. It is because of the foregoing insufficiencies that the complaint fails to state a cause of action.

The majority opinion states: 'One of the obscurities of the complaint is its failure to state the nature of the alleged encroachments, what use if any is made of them by the defendants, or the length of time they have existed on plaintiff's land, particularly in point of time plaintiff acquired title. This omission, however, is not regarded as sufficient to destroy the efficacy of the complaint to state a cause of action. The defendants obviously have knowledge of most of these matters. Corrective pleadings and other pretrial procedures are available to supply the remainder, if necessary to the defense.' It is thus seen that while holding the complaint states a cause of action, the majority opinion recognizes that the complaint fails to allege certain stated ultimate facts. By pointing to these facts ***478** which are omitted from the complaint, the majority opinion seems to concede that such facts must be established before plaintiff will be entitled to the relief of mandatory injunction. Such conclusion is supported by the rule of law laid down in the Johnson case, supra. Such interpretation of the majority opinion is given support by the remaining quoted language to the effect that such omitted facts may be later developed through pre-trial discovery procedures, and when discovered may be incorporated in the complaint by amendment. If the foregoing interpretation of the majority opinion is correct, the rule of law announced thereby is an anomaly which defies reconciliation with settled principles of law in this jurisdiction. If the complaint states a cause of action as concluded by the majority opinion, it is axiomatic that the relief prayed should be granted upon froof of the ultimate facts alleged in the complaint. No burden rests on plaintiff to prove other facts in addition to those alleged. If, however, there are ultimate facts omitted from the complaint which plaintiff must establish by competent evidence before being entitled to the relief sought as the majority opinion implies, then it cannot be disputed but that the complaint fails to state a cause of action for the relief prayed.

In the ultimate, all the complaint in this case alleges is that plaintiff owns two parcels of property across which it is in the process of constructing a highway, and that improvements owned by defendants encroach over the boundary line onto plaintiff's land within the right of way of its proposed road. Although requested to do so, defendants have refused to remove their improvements

from plaintiff's property. Under the allegations of the complaint it is apparent that the sole issue consists of a dispute between the parties as to the true location of a boundary line. Traditionally such disputes are settled only by suits in ejectment where both parties have the opportunity of offering evidence as to the location of the boundary line, and are guaranteed the right to have this dispute resolved on trial by a jury.

For the foregoing reasons it is my view that the chancellor was correct in ordering that the complaint be dismissed.

All Citations

123 So.2d 473

Footnotes

1 Johnson v. Killian, 1946, 157 Fla. 754, 27 So.2d 345.
2 Pasco County v. Johnson, Fla.1953, 67 So.2d 639.
3 Dade County v. Harris, Fla.1956, 90 So.2d 316.