SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1999

SUIT NO: 1182 OF 1998

BETWEEN

DEVELOPMENT CONTROL AUTHORITY

PETITIONER

and

ALFIONA INVESTMENTS

RESPONDENT

Appearances

Cynthia Hinkson-Ouhla for the Plaintiff
Floisssac Fleming for the Respondent

FEBRUARY 8th & 16th 1999

DECISION

Allen J in Court

By a brief letter dated February 26, 1998 the Petitioner granted approval for a commercial development at Rodney Bay/Gros Islet to ALFIONA INVESTMENTS LTD the Respondents herein, subject to five conditions. None of them are conditions precedent; they are instead things to be done or safeguards to be taken in the course of the development works.

If I am to judge from the correspondence, other matters were subsequently discussed.

On the 21st December 1998 the Petitioner moved the Court EX PARTE for an injunction expressed in its heading to be an application under **Articles 841-852** of **Chapter 243** of the Code of Civil Procedure.

The Prayer of the Petition is in the form of a mandatory order directing the Respondents to perform certain acts and or do certain things within 48 hours of the making of the order.

The order was granted in terms of the prayer in the petition on the 23rd December 1998 and a Return Date was set for 13th January 1999.

In preparation for meeting the Court's order on the return date, on the 12th January 1999 the Respondent filed a motion under **Order 8 Rule 3** of the Rules of Court for discharge or dissolution of the order. This was supported by a lengthy affidavit of 30 paragraphs giving reasons why the Order of the Court made on the 23rd December 1998 ought to be discharged. Among them were references to obvious irregularities in the petition and in the affidavit filed in its support; this must have prompted the filing by the Petitioner of a summons dated 2nd February 1999 seeking leave to amend the Petition.

Counsel for the Respondent gave notice of her intention to resist this application and since the Return Date for the inter partes hearing was to be the day after the summons for leave to amend was being made, to the Court on a careful examination of the Petition and the affidavit in support and indeed of the summons to amend, agreed to dispose of all the matters at the same time.

I WILL DEAL FIRSTLY WITH THE APPLICATION FOR LEAVE TO AMEND.

The summons is asking that the Plaintiff be at liberty to amend the petition by including the Governing Director of the Respondent company as a Respondent and that the "correct petition" be served on the Respondents. I will accept that "correct petition" was a clerk's error and that "amended petition" was intended, because if the words are given their ordinary meaning the effect would be the withdrawal of the petition by which the proceedings were commenced and upon which the Court had already made an order.

There are numerous other irregularities in the petition which make it bad both in law and in fact and while the Court was inclined to take the view that in a matter of such public importance all the issues should be aired, such an amended as is sought, would not help the Petitioner. In fact in my view it would throw the case for the Petitioner further into confusion. I will give a few reasons why:

1. (a) There would now be two Respondents before the Court.

   (b) The Petitioner did not apply for any amendments to be made to the affidavit in support of the Petition and the affidavit as it stands could not now support the amended petition.

2. The inter partes hearing would now be in respect of a different matter from the one in which the exparte matter was heard and order made.

3. It is doubtful whether it would be proper for this Court to grant leave to amend a petition on which another Court

had already made an order.

MOTION TO DISCHARGE OR DISSOLVE INJUNCTION

The Respondent is asking the Court to discharge the injunction dated 23rd December 1998 on the ground that the allegations in the petition for the injunction or order are insufficient to render the injunction or order necessary reasonable rational or otherwise justifiable.

The motion is supported by the affidavit of the governing director of the Respondent Company sworn to and filed on 12th January 1999.

On 3rd February 1999 the Petitioner filed an affidavit in reply; it does not however seek to answer or oppose the Respondent's affidavit and barely mentions it in paragraph 4. In paragraph 5 it refers for the first time to a meeting of 10th December 1998 and refers to matters on which it would appear that the entire proceedings were or could have been based, but it is remarkable that neither the petition nor the affidavit in its support mentions such a meeting although from the record the proceedings were instituted some eleven days after that meeting.

In her arguments before this Court Counsel for the Plaintiff stressed that conditions attached to development take precedents over any other laws and regulations and that specific authorisation in a statute does not exclude the right to seek redress from the Court.

She contends that the affidavit of Margaret Alfred will show that there was total disregard for law and order.

She is appealing to the inherent jurisdiction of the Court under the **Supreme Court Act 1969** Sec 16.

She did not however touch upon the issue before the Court that is whether the injunction granted on 23rd December 1998 was unreasonable oppressive or irrational.

In addition to those written arguments presented to the Court which were repeated, in reply, Counsel contended that the Order of the Court is compelling the Respondent to commit a trespass.

I agree that **Articles 841-852** of the Civil Code confines injunctions to prohibitory or restrictive injunctions.

I agree that the injunction transcended the prayer of the petition and is an adjudication beyond the conclusion of the suit and therefore contrary to Article 23 of the Civil Code.

Again it is beyond doubt that what the Respondent is ordered by the injunction to do within 48 hours is virtually impossible. The Respondent exhibited a letter dated 4th January 1999 and addressed to Mr Michael Chastanet from the Permanent Secretary, Ministry of Communications works Transport and Utilities which is of interest. It reads in part:

> We wish to confirm the decision/agreement made during our (Chastanet/Fontenard and/Alexander) visit to your Mall at Rodney Bay to determine the road traffic measures to be instituted inlight of concerns expressed by the Road Transport Board.

These measures are-:

1) traffic will be allowed unto the compound from the Southern end of the Gros Islet Highway;
2) the entrance will be widened to accommodate a holding lane
3) there will be no exit next to the Mall at the Southern end;
4) there will be an entrance and exit from the Gros Islet end and along the Rodney Bay development road leading to the mall;
5) Bollards will be removed along the Highway - no taxis will be allowed in this area; a double yellow line will be marked along the highway indicating a no parking area;

This letter does not state when that visit to the Mall took place but coming soon after the order of the Court, did not, I would hold, seek to flaunt the order but to introduce a practical approach to dealing with the matter of traffic and establishes that the injunction, in part, is unnecessary.

Conclusion

It may well be, that some measure of control or other form of accommodation is necessary to ensure the best way forward to an orderly development for the good of the community generally, and this Court will not in the absence of expert evidence go into the question of necessity. It is sufficient to hold that the petition is irregular and that the injunction granted the 23rd December 1999 is unreasonable and unjustifiable.

The injunction granted to the Petitioner on the 23rd day of December 1999 is hereby discharged.

There will be costs to the Respondent to be taxed if not agreed.

KENNETH ALLEN Q.C. OBE
HIGH COURT JUDGE (Ag)