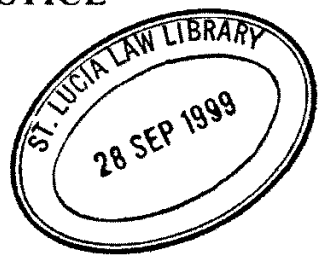
SAINT LUCIA

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



Suit No: 1083 of 1998

Between:

1. Solar Tour & Travel
2. Carmelita Xavier

Plaintiffs

Vs

1. Sunlink Ltd
2. Linda Gray
3. St Lucia Representative Services Ltd

Defendants

Appearance

Mr. Marcus Foster for Plaintiffs
Mr. Anthony Mc Namara for Defendants

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July 21st 1999
September 20th 1999

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JUDGMENT

D'Auvergne J

The Plaintiffs filed a petition under **Articles 841 and 850 (17) of the Code of Civil Procedure Chapter 243 of the Revised Laws of St Lucia 1957** claiming injunctive relief; that the defendants be restrained from

doing any business with Hayes and Jarvis in St Lucia until the outcome of a defamation suit against the Second Defendant Linda Gray.

The facts

Hayes and Jarvis a United Kingdom Tour Company herein after referred to as the Company contracted with the Defendants to act as ground handlers in St Lucia for the former.

Sometime however in April 1998 the said Company through their agent and representative one Paul Shields engaged in extensive discussions with the second Plaintiff who is the managing director of the First Plaintiff. The result was he assured the Plaintiff that he would inform Barry Hobbs the Chief Executive Officer of the Third Defendant that the Company would cease dealing with them and that he would fulfil the promise made to the Second Plaintiff and would contract with the First Plaintiff instead, a statement which was held out to the Second Plaintiff up to the 24th day of April 1998. However, on that same day viz the 24th day of April 1998 Paul Shields informed her "in a most dramatic fashion" that after discussions with Linda Gray and Barrie Hobbs he could no longer entertain the prospect of doing business with her Company because he had been informed by Linda Gray that the Second named Plaintiff had a bad business reputation and that she was heavily indebted to a Tour Company which she had done business with namely Caledonian Airways/Golden Lion Travel, that Linda Gray also informed him that the debt was to the tune of 19,000.00 pounds and in the circumstances it would not be wise to engage in business with the Plaintiffs.

It is the Plaintiffs' contention that it was the dafaming of the Second named Plaintiff's good name as a sound and trustworthy business person that the Plaintiffs' lost the contract with Hayes and Jarvis and thereby stood to lose approximately US$1,100,000.00 which they would have realised had the contract materalized. The Defendants on the otherhand contented that the application for injunctive relief is based totally on "Sour grapes" consequent on being outbid and out maneuvered in a strictly business negotiation and as a result of offering a better price and deal for handling services in St Lucia. The hearing took place in Chambers on the 21st day of July 1999.

Arguments

Learned Counsel for the Plaintiffs/Petitioners argued that this was an Interlocutory application, that the Respondent Linda Gray defamed the Second named Plaintiff and that she suffered loss as a result. He vociferously argued that this case was on all fours with the **American Cyanamid v Eticon Ltd 1975 AC 396.1975 1ALLER.504** and that the Plaintiffs do not have to establish a prime facie case and that it was sufficient that there was a serious issue to be tried.

He said that the application was essentially to stop the Respondent from doing business by virtue of the fact that they maligned the Second named Plaintiff.

He further argued that though the loss was financial it was not capable of precise calculation, for example loss of profit for not running a business. Learned Counsel urged the Court to grant the injunction and grant the

Plaintiffs time to file a defamation suit within seven days failing which the injunction would be discharged.

I pause her to note that reference was made in the affidavit of Barrie Hobbs of two letters written by Paul Shields to Lucy Gray on the 17th of April 1988 and to Barrie Hobbs on the 27th April 1998. The affidavit evidence was accepted and formed part of the proceedings but the two letters were never served on the Plaintiffs who objected to their production in evidence and the objection was sustained.

Learned Counsel for the Defendants argued that the affidavit of Carmelita Xavier could not be relied on to the support the application since it was based on hearsay, unproven supposition and conclusion and that the statements were false.

He argued that the main evidential aspect of the Plaintiff's cause of action in defamation was hearsay, that there was no affidavit or viva voce evidence from Paul Shields and therefore the legal requirement of communication of the alleged offending words was missing, moreover she did not deny that she was at some stage indebted to Caledonian Airways/Golden Lion Travel and that the draft exhibit showing that 18,921.70 pounds paid to Caledonian Airways confirms that at some time she was indebted to the said airline.

He contended that there was no factual evidential basis for the amount of loss of business as alleged by the Second named Plaintiff in her affidavit.

He said that she relied on suppositions as a result of things said for the loss of business.

He strenuously argued that the Second named Plaintiff made false statements in her petition and affidavit, for up to the time of the hearing of the application, she had not filed any suit in Defamation against the Defendants and that the first named Defendant Sunlink had no contractual relationship with Hayes and Jarvis.

He said that the affidavit of the Second named Plaintiff did not state any undertaking as to damages as required under the Code of Civil Procedure.

Learned Counsel argued that the American Cyanamid case quoted earlier also indicates that as a general rule it is wiser to delay a new activity rather than risk damaging one that is established.

He concluded his argument by quoting order 29 Rule 1 **(11 A Rules of the Supreme Court 1981 Edition** that no interlocutory Injunction should normally be granted however strong the Defendants' claim appears to be at the interlocutory stage.
Once more I note that the Second named Defendant at the hearing gave an undertaking as to damages and this was accepted.

Conclusion

Whereas the guidelines laid down by **Lord Diplock in the American Cyanamid Co V Ethicon Ltd 1975 AC 396** are regarded as the leading source of law on the subject of injunctions, they are based on the

proposition that there will be a trial on the merits at a later stage when the rights of the parties will be determined. With regards to this matter a petition was filed on the 19th day of November 1998 seeking the following:

(i) That Sunlink (St Lucia Representatives be restrained from doing any business with Hayes and Jarvis in St Lucia until the outcome of my defamation suit against Linda Gray.

(ii) That the Respondents do pay the costs of and occasioned by this application.

(iii) Further or other relief.

On the 23rd day of March 1999 a Second petition was filed in identical terms but to the date of hearing the matter (21st of July 1999) no action for defamation against the Defendants was filed by the Plaintiffs.

The principles involved in considering an application for an interlocutory injunction as enunciated in the American Cyanamid Case (Supra) are as follows.

(1) The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect.

(2) the Court must not attempt to decide this claim on the affidavits; it is enough if the Plaintiff shows that there is a serious question to be tried.

(3) If the Plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on

the balance of convenience **(Supreme Court Practice 1995 page 514.)**

In the case of **Cayne v Global National Resources PLC 1984 1ALLER Page 225 Kerr L. J at Page 234** had this to say referring to the American Cyanamid case, "nor do I regard that decision as going further than to lay down guidelines in situations where two prerequisites are present.

The first, as stated by Lord Diplock, is that the question whether to grant or refuse an interlocutory injunction has been placed into a state of balance to the extent that the Court can see that the Plaintiffs' case raises a serious issue to be tried. If the Plaintiffs fail at that point, then clearly there is no case for an injunction, and obviously the Cyanamid guidelines cannot come into play.

The second pre-requisite, as it seems to me, is that a trial is in fact likely to take place, in the sense that the Plaintiff's case shows that they are genuinely concerned to pursue their claim to trial, and that they are seeking the injunction as a means of a holding operation pending the trial.....The test for the application of Cyanamid is therefore whether the case is one where the Court can see that it is likely to go to trial at the instance of the Plaintiffs, and whether the grant of an injunction is therefore appropriate or not, as a way of holding the situation in the interim."

In my judgment, that though it could not be said that this is an unarguable case I find it unlikely that the Plaintiffs could make out a case for the exercise of the Court's discretion in their favour.

I turn now to examine the **balance of convenience**. The authorities show that the governing principles is whether the Plaintiff would be adequately compensated by an award of damages which the Defendant would be in a financial position to pay, and if so, the interlocutory injunction should normally not be granted.

Having considered the various guidelines and legal principles involved in the granting of an Interlocutory injunction, it is my judgment that damages would be an adequate remedy when the suit is filed and that it would be more prudent to preserve the **Status Quo** and allow the Defendants to continue to operate under their existing contract with Hayes and Jarvis since the balance of convenience lies in favour of the Defendants.

My order is as follows.

The application is dismissed.

The Plaintiffs is to pay costs to the Defendants in the sum of $500.00.

Justice Suzie d'Auvergne
High Court Judge