

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Suit No. 972 of 1999

IN THE MATTER of an Application by
(1) CONWAY BAY LIMITED and
(2) SANDY BAY LIMITED for leave to
apply for Judicial Review

AND IN THE MATTER of order 44 of
The Rules of the Eastern Caribbean
Supreme Court

AND IN THE MATTER of an Application for
Certiorari against the Coroner pursuant to a
Verdict of The Coroner's Inquest dated
13th July, 1999

BETWEEN:

- (1) CONWAY BAY LIMITED**
(2) SANDY BAY LIMITED

Applicants

and

- (1) THE CORONER**
(2) THE HONOURABLE ATTORNEY GENERAL

Respondents

MONICA PLUMMER

Opposant

Appearances

Mr Anthony Mc Namara for Applicants
Mr. Paul Thompson for the Respondents
Mr. Parry Husbands Q.C. for the Opposant

2000: May 5th
September 19th

JUDGMENT

[1] **d’Auvergne, J.** On the 23rd day of February 2000 the Applicants filed for an Order of Certiorari to remove into the High Court for the purpose of it being quashed, a verdict of a Coroner’s Inquest returned on the 13th July, 1999, wherein it was recorded that the three named individuals namely, (1) Pascal Conza (2) Donald Paul and (3) Trevor James “died as a result of an explosion of a boat owned by Sandals Halcyon and that the explosion was caused by the inadequate maintenance of the said boat by the said boat captain Mr. Mervin Mathurin and the Mechanic Mr. Andrew Celestin and by extension their employer Sandals Halcyon.”

[2] They further sought a declaration that the said finding, in so far as it related to Mr. Mervin Mathurin and (2) Mr. Andrew Celestin was *Ultra Vires* the scope of authority of the Coroner’s Inquest and as such was and is unlawful.

[3] The grounds on which the relief was sought are as follows:

- (1) That the verdict was wrong in law both in substance and on the face of it.
- (2) That the verdict was contrary to the provisions of Section 27 (4) of **The Coroner’s Ordinance No 35 of 1965** in that without making a finding of murder or manslaughter it purports to name parties who “Caused” and by extension “Caused” an explosion which resulted in the death of three named individuals.

- (3) That the verdict is formed in such a way as to appear to determine a question of civil liability which is in excess of the jurisdiction of The Coroner's Inquest.
- (4) That there was no evidence that Sandals Halcyon caused any explosion either by extension or otherwise.
- (5) That the verdict was contrary to natural justice.

[4] The application was supported by the affidavit of Konrad Wagner which reads as follows:

I, Konrad Wagner of La Toc in the quarter of Castries make oath and say as follows:

- (1) **THAT** the applicants are Companies registered under the **Companies Act of Saint Lucia No. 19 of 1996** which have their registered offices at La Toc, in the Quarter of Castries and are the owners and operators respectively of **SANDALS HALCYON**.
- (2) **THAT SANDALS HALCYON** is a resort hotel and is one of a chain of up market International Resort Hotels with Resorts in several Caribbean Islands.
- (3) **THAT** I am presently the General Manager of **SANDALS LA TOC** which is also located in Saint Lucia but on the 19th October, 1997 and for some time both before and after I was the General Manager at **SANDALS HALCYON**.

(4) **THAT** consequent on an explosion of a boat owned by **SANDALS HALCYON** on Sunday 19th October, 1997 in which three (3) persons lost their lives an Inquest touching the deaths of **(1) PASCAL CONZA, (2) DONALD PAUL** and **(3) TREVOR JAMES**, was held commencing on 11th May, 1999 and I gave evidence on that day.

(5) **THAT** having read a copy of the notes of evidence in the said Coroner's Inquest I note that the taking of evidence concluded on the 13th July, 1999 whereupon the Coroner gave the jury certain instructions and later that day the jury returned a verdict which I have also read.

(a copy of the notes of evidence and the verdict are exhibited herewith marked "A" and "B" respectively and will be relied on in any matter relating to this application for their full terms and effects).

(6) **THAT** having been advised on and having read Section 27(4) of the **Coroner's Ordinance No. 35 of 1965** I am aware that it dictates that it is only on a finding of murder or manslaughter that the jury is charged with naming the person or persons who they believe to have been guilty of such offences or of being accessories before the fact of such murder.

(7) **THAT** in the jury's verdict aforementioned there is no such finding and as such I am advised that the mentioning of persons or entities as having

caused the explosion or having “caused” the explosion “by extension”, is outside the charge of the jury and outside the scope of their authority.

- (8) Further that in as much as I have been advised that a Coroner’s jury should not frame a verdict in such a way as to appear to determine any question of civil liability, and as neither I nor any of the witnesses whose statement I read as aforesaid gave any or any sufficient or specific evidence which would show liability or a causative link between the **SANDALS HALCYON** and the said explosion, and in any event **SANDALS HALCYON** was not directed to such issue nor given any opportunity to respond to such issue, I would urge that the verdict is wrong in law and against the principles of natural justice

- (9) **THAT** I am aware that the content of the said Coroner’s verdict was given both over the radio and television and was also the subject of a newspaper article. As such **SANDALS HALCYON** and the whole chain of Sandals Resorts have been held out to the World at large to be in a position of culpability and/or liability which is neither merited on the evidence, nor a finding within the scope of authority of the Coroner’s jury, and such position is clearly likely to have a serious detrimental effect on the Sandals chain of Resorts.

- [5] Meanwhile on the 14th day of April 2000 the Opposant filed an Ex parte application for an order that she be joined as a Respondent or an Opposant to the suit.
- [6] On the 4th day of May 2000 an order was granted whereby the said opposant was granted leave to oppose the application for Judicial review filed on the 23rd day of February 2000.
- [7] On the following day namely 5th of May 2000 the matter came to trial whereupon Learned Senior Counsel for the Opposant submitted as a point *in limine* that the Applicants have no *locus standi*. He tendered as an exhibit the deposition of Konrad Wagner taken at the Preliminary Examination where the latter stated that at the time of the explosion he was the General Manager at Sandals Halcyon St Lucia; that he never said that the Applicants were the owners of Sandals Halcyon.
- [8] He further argued that the Applicants never proved their existence and quoted from Vol. 13 second re-issue of the Digest. He argued that if *Locus Standi* was granted to the Applicants it would transfer the criminal liability from Sandals Halcyon to the Applicants.
- [9] Learned Counsel for the Applicants commenced his arguments by referring to the Coroner's verdict delivered on the 13th July 1999 which reads as follows:

“That Pascal Conza was 32 years of age and that Pascal Conza died at Choc Bay, Castries on Sunday 19th October 1997 and that Pascal Conza died as a result of an explosion of a boat owned by Sandals Halcyon and that the explosion was caused by the inadequate maintenance of the said boat by the boat Captain Mr. Mervin Mathurin and the Mechanic Mr. Andrew Celestin and by extension their employer Sandals Halcyon.

Touching death of Donald Paul, we find Donald Paul was 27 years old; and that he died on October 19, 1997 and he died as a result of a boat explosion at Sandals Halcyon, Choc Bay, Castries and that the explosion was caused by the inadequate maintenance of the said boat by the Captain Mr. Mervin Mathurin and the Mechanic Mr. Andrew Celestin and by extension their employer Sandals Halcyon.

Touching death of Trevor James, we the jury find that he was 27 years old and that he died on 19th October 1997 at Victoria Hospital, Castries and that he died as a result of the boat explosion at Sandals Halcyon, Choc Bay, Castries and that the explosion was caused by the inadequate maintenance of the said boat by the Captain Mr. Mervin Mathurin, the Mechanic Mr. Andrew Celestin and by extension their employer Sandals Halcyon.”

[10] Learned Counsel contended that the verdict clearly established ownership and employment of two named individuals noted above in Sandals Halcyon and therefore Sandals Halcyon has a position in the case.

[11] He vehemently argued that Counsel having received a brief for one of the deceased persons came into the case through the back door and at this late stage was arguing that the Applicants were and are not registered companies. He referred to paragraph two (2) of the Affidavit of Konrad Wagner noted above.

[12] He concluded his arguments by stating that Judicial Review can only be considered after the granting of leave.

[13] **Conclusion**

The supporting affidavit evidence of Konrad Wagner clearly states that the “Applicants are companies registered under the **Companies Act of St. Lucia No 19 of 1996** having their registered offices at La Toc, in the quarter of Castries and are the owners and operators respectively of Sandals Halcyon.” The above affidavit supported both the Notice of application for leave to the application for Judicial Review (to which leave was granted on the 19th of January 2000 and entered on 17th of February 2000) and the application for an order of certiorari presently before the Court.

[14] The application for an order of Certiorari stated earlier was filed on the 23rd of February 2000, the application for leave was filed in accordance with **Order 44 Rule 2 of the Rules of the Supreme Court 1970** “within six months after the date of the proceeding” namely the delivering of the verdict, which in my judgment is in keeping with the rules. The supporting affidavit of Konrad Wagner clearly states the position of the Applicants *vis a vis* Sandals Halcyon. Therefore I should dismiss the submission.

[15] In the premises my order is as follows:

- (1) The point in limine that the Applicants have no *Locus Standi* be and is hereby dismissed.
- (2) That the application for the order of Certiorari filed on the 23rd of February 2000 be given a speedy trial.
- (3) That costs be costs in the cause.

Suzie d’Auvergne
High Court Judge