

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO. 509 OF 2000

BETWEEN:

CANOUAN RESORTS DEVELOPMENT LIMITED Plaintiff

and

TERRANCE BYNOE
ELI DE ROCHE
KERON BAPTISTE

Defendants

Appearances:

Hans Matadial and G. Grahame Bollers for the Plaintiff
Victor Cuffy for the First Defendant

.....
2001: February 16, 26, 27
June 21 and July 18
.....

DECISION

- [1] **WEBSTER, J. (*acting*).** This is an application by the Plaintiff, Canouan Resorts Development Limited, for an order restraining the Defendants until the trial of this action from:
- (a) entering, remaining or committing any act of trespass on the Plaintiff's properties known as the Carenage Bay Beach and Golf Club, The Warehouse and The Tamarind Beach Hotel respectively;
 - (b) assaulting, threatening or molesting any of the Plaintiff's officers, employees or guests; and

(c) doing any acts with the intention of disrupting the Plaintiff's business in relation to the said properties including but not restricted blocking the public roads leading to the said properties (hereinafter called "the Injunction")

FACTS

- [2] The Plaintiff commenced this action on November 20, 2000 by filing a generally indorsed Writ of Summons and the application for the Injunction. The Defendants entered Appearances and at the commencement of the application before Mitchell, J. on November 24, 2000 the Defendants gave the Court an undertaking in similar terms to the Injunction. On February 12, 2001 the Plaintiff filed a Notice of Discontinuance against the Second and Third Defendants, and on February 16, 2001 the action was formally discontinued against them. The First Defendant is referred to hereinafter as the Defendant.
- [3] The application for the Injunction is supported by the affidavit of Eden Galdi, a security officer employed by the Plaintiff. Affidavits in reply were filed by the Defendant on January 8, 2001, and by the Second and Third Defendants on January 19, 2001. The Plaintiff responded with affidavits from Dianne Collen, Anella De Roche, Amir Alter and Nick Dougan on January 29, 2001. Three additional affidavits were filed by the Defendant on February 26, 2001, along with an affidavit by Alexander Lewis. Finally, the Defendant filed an affidavit on June 7, 2001 complaining about the contents of the affidavit of Anella De Roche and exhibiting a letter that the said Anella De Roche wrote to the Court on February 21, 2001.
- [4] The evidence discloses that by virtue of **The Canouan Resorts Development Limited (Lease Ratification) Act**, Cap. 100A ("the Act") the Government of St. Vincent and the Grenadines leased to the Plaintiff the entire northern part of the island of Canouan for a term of 99 years from 1990 for the purpose of constructing a luxury resort. The resort was duly constructed at a cost of approximately US\$160 million. The Plaintiff alleges that the Defendant organised a blockade of the resort 24 hours before the official opening in November 1999. This resulted in the signing of an agreement between the Government

and the Plaintiff on November 6, 1999 which confirmed that the roads in the resort are private "*as per lease agreement*", and that the Plaintiff would allow access to the beaches over the said roads on the terms set out in the agreement.

- [5] In August 2000 the Defendant organised another blockade of the resort. This resulted in an agreement between the Government, the Plaintiff and the Canouan Progressive Movement. The Canouan Progressive Movement is a group of Vincentians living in Canouan. The Defendant signed the agreement as the president of the organisation. This agreement also confirmed that the roads in the resort are private and that public access to the beaches is on the terms set out in the agreement.
- [6] The Defendant deposes in paragraph 8 and 9 of his affidavit filed on the 8th January that he and the other members of the Canouan Progressive Movement do not accept paragraphs 3, 4, 5, 6 7 and 8 of the first agreement. Further, that access to the beaches in Canouan is the natural and inherent right of the citizens of St. Vincent and the Grenadines, and does not depend on the provisions of the second agreement. Finally, that the Act cannot take away access to the beaches in Canouan, and that free and unrestricted use of the access roads to the beaches is the implied right of all Vincentians.
- [7] The bulk of the remainder of the evidence consists of allegations of improper and illegal use of the access roads in the resort by the Defendant in October and November 2000 culminating in the filing of this action and the application for the Injunction.

PRINCIPLES FOR GRANTING INTERLOCUTORY INJUNCTIONS

- [8] The principles for granting an interlocutory injunctions were authoritatively stated by Lord Diplock in **American Cyanamid Co. v Ethicon Ltd.** [1975] 1 All ER 504. In order to succeed the Plaintiff must show that:
 - (a) there are serious questions to be tried;
 - (b) damages are not an adequate remedy; and
 - (c) the balance of convenience favours the grant of an injunction.

Additionally, the Court, in the exercise of its equitable jurisdiction, has a discretion to refuse the injunction even if the foregoing requirements are satisfied.

SERIOUS QUESTIONS TO BE TRIED

- [9] There are undoubtedly questions issues to be tried in this case. The Plaintiff is the holder of a statutory lease for 99 years granted by the Government of St. Vincent and the Grenadines. By Clause 2 of the Lease the Lessor warranted title to the premises free from all liens, defects in title, easements, restrictions and agreements, except for the matters set forth in Appendix B to the Lease. Appendix B states that: *"As far as is known to the Lessor there are no matters adversely affecting title to the premises."* There is also the two written agreements, one signed by the Defendant, confirming that the roads in the resort are private and that the Plaintiff exercises control over their use by the public. There is therefore ample evidence on which a court could find that the Plaintiff has a *prima facie* right to regulate the use of the roads in the resort. The Defendant asserts that the Plaintiff does not control the use of the said roads, and that the public has a natural and inherent right from time immemorial to use the roads without any restrictions by the Plaintiff. These conflicting issues are best left for the trial and it is no part of the Court's function to resolve them at this stage.
- [10] The Plaintiff has satisfied the requirement that there are serious questions to be tried.

DAMAGES NOT AN ADEQUATE REMEDY

- [11] The affidavit of Eden Giladi discloses that the Plaintiff lost in excess of US\$100,000 as a result of the blockade in August 2000, and that if the Defendant's action are allowed to continue the Plaintiff will suffer irreparable damage which no monetary award can compensate. Further, that the Plaintiff may have to close its business, and the livelihood of its 600 employees may be affected. There is no evidence before the Court that the Defendant is a person of sufficient means to compensate the Plaintiff in the event that it suffers any substantial losses as a result of the Defendant's actions. In the circumstances I find that damages would not be an adequate remedy.

BALANCE OF CONVENIENCE

[12] The grant of the injunction will mean that the Defendant, and only the Defendant, will not be able to enter the resort until the trial of the action. If the injunction is not granted the Plaintiff will be exposed to possible interference with its business, its employees and guests, by having the Defendant on the resort. The balance of convenience favours the grant of the Injunction.

EXERCISE OF DISCRETION

[13] I am satisfied that the Plaintiff has met the requirements for the grant of the Injunction and that the Injunction would have been granted if the application was completed in February. However, this case presents an unusual problem in the exercise of the Court's equitable jurisdiction. The general rule is that an interlocutory injunction is granted to preserve the status quo until the rights of the parties are determined in the action. The application must be made promptly and the party who is entitled to the benefit of the injunction must proceed to trial expeditiously. In this case the application was made promptly on November 20, 2001. The proceedings relating to the application for the Injunction were keenly contested until February 27, 2001 when the Defendant withdrew the undertaking given to the Court on November 24, 2000, and the hearing of the application was adjourned by consent to April 26, 2001. The purpose of the adjournment was to give the parties a chance to resolve their differences out of Court. Apparently the attempt at a resolution failed and the hearing resumed and was completed on June 21, 2001. The Court records show that the Statement of Claim that was due since early December 2000 has not been filed, and that there has been no application to strike out the action for want of prosecution. The action is therefore no closer to trial than it was in December 2000. The issue then is whether the Court should grant the Plaintiff the relief that it is obviously entitled to on the facts, or deny the application on account of the delay in filing the Statement of Claim. In deciding this issue I have considered that the case against the Defendant is that he went to the Plaintiff's resort on several occasions between November 1999 and November 2000 and conducted himself in a manner that disrupted the Plaintiff's business and interfered with its employees. There is no evidence that the Defendant did

anything after the action started, but the Court is concerned that a refusal of the application could precipitate fresh action by the Defendant.

CONCLUSION

[14] The Plaintiff has satisfied the requirements for the grant of an interlocutory injunction and in exercise of my discretion I will grant the Injunction notwithstanding the delay in filing the Statement of Claim. Accordingly, an injunction is hereby granted restraining the Defendant his servants or agents from:

- (a) entering, remaining or committing any act of trespass on the Plaintiff's properties known as the Carenage Bay Beach and Golf Club, the Warehouse and the Tamarind Beach Hotel respectively ;
- (b) assaulting, threatening or molesting any of the Plaintiff's officers, employees or guests; and
- (c) doing any acts with the intention of disrupting the Plaintiff's business in relation to the said properties including but not restricted to blocking the public roads leading to the said properties.

[15] The costs of the application are in the cause.

Paul Webster
High Court Judge (*Ag.*)