ST. VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.SVGHCV22/ 2001

BETWEEN:

[1] WILLIAM HARRY
DEPUTY COMMISSIONER OF POLICE

[2] LENROY BREWSTER
STATION SERGEANT OF POLICE

Appellants

and

PHILLIP MARK VAUGHN

Respondent

Before:

The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]
The Hon. Mr. Brian Alleyne, SC	Justice of Appeal [Ag.]

Appearances:

Mr. Grahame Bollers and Mr. Ronald Burch-Smith for the Appellants.
Ms. Nicole Sylvester and Ms. Rochelle Forde for the Respondent.

2002: December 3;
2003: March 6.

JUDGMENT

[1] **ALLEYNE, J.A. [AG.]**: This is an appeal by the appellants who, at the relevant time were the Deputy Commissioner of Police and a Station Sergeant in the Royal St. Vincent and the Grenadines Police Force respectively, against the decision of Justice Paul Webster made on the 11th July 2002 dismissing a preliminary motion by them to strike out the respondent's motion to commit them for contempt of court.

[2] The learned trial Judge delivered a written judgment, and the appellants' notice of appeal set out five grounds of appeal. However, in arguing the appeal the appellants relied only on the first two grounds.

[3] The grounds relied on were:

> "(a) That the Learned Trial Judge erred in law when he found that the order of His Lordship Mr. Justice Ian Donaldson Mitchell Q.C. made and entered on 25th April 2001 was clear and unambiguous in its terms.
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> (b) That the Learned Trial Judge having found that the purpose of the Order was to preserve the status quo until the Applicant's application could be heard *inter partes*, erred in law by finding that the said order was coercive in nature."

The Factual Background

[4] The respondent, who is an American citizen, instituted proceedings by Notice of Motion for the committal of the appellants for breach of the terms of an *ex parte* order granted by Mitchell J. on 25th April 2001. The order was in the following terms:

> "That this application be heard inter partes on Wed. 2nd May 2001 at 1.30 p.m.
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> That documents be served on the Respondent forthwith and that in the meantime the order is that no official action be taken against the applicant towards his removal from St. Vincent and the Grenadines or in restraint of his liberty until further ordered (*sic*) or until the hearing of this application."

[5] At about 3.15 p.m. on the day the order was made, that is to say 25th April 2001, the respondent's Solicitor's clerk purported to serve the said order on the Commissioner of Police and the Attorney-General by leaving sealed copies of the *ex parte* summons, the affidavit in support thereof, and the said order at the office of the Commissioner of Police and the Chambers of the Attorney-General respectively. In each case a member of the staff of the respective officials signed a duplicate copy of each document in acknowledgment of receipt thereof.

[6] Notwithstanding the order and despite the strenuous protestations and best efforts of the respondent's Solicitor, on 20th April 2001, the respondent was taken into police custody and was subsequently placed aboard an aircraft at E.T. Joshua Airport and removed from the island against his will.

[7] The respondent applied to the High Court for the committal of the appellants for breach of the terms of the injunction. The appellants applied by motion to strike out the motion for committal. The appellants' motion was denied, and they have appealed against that order.

The Case

[8] The appellants' Counsel chose to argue the second ground first. Learned Counsel contends that the learned judge having found that the purpose of the order was to preserve the status quo until the applicant's application could be heard inter partes, erred in law in finding that the order was coercive in nature. Counsel contended that in light of the trial Judge's interpretation of the purpose of the ex parte order, being to allow the applicant/respondent to remain in the state, without his liberty being restrained, until his application could be heard inter partes on 2nd May, "the Learned Judge ought to have considered whether it was Justice Mitchell's intention to grant a prohibitory injunction". Counsel argued that unless an order is coercive and injunctive in form it cannot be enforced by committal: Bowrie & Lowe, The Law of Contempt 2nd edition page 395**.** There is no dispute on this principle.

[9] Learned Counsel further argued that it is a fundamental principle of law that coercive orders made by the court should be obeyed until they are set aside. That principle is clearly and unequivocally set out in the advice of the Privy Council in **Isaacs v Robertson** [1984] 43 WIR 126, an appeal from a judgment emanating from this jurisdiction. Further Counsel submitted that in cases where Ministers of the Crown or Government Departments are involved in litigation, the court will

normally decline to make coercive orders *because the court normally expects agents of the Crown to comply with any declaratory order it may make.* Counsel quoted from **Re M [No. 3]** [1993] 3 WLR 433, the judgment of Lord Woolfe at page 439, letter B:

> "(I)n ordinary circumstances ministers of the Crown and government departments invariably scrupulously observe decisions of the courts. Because of this it is normally unnecessary for the courts to make an executory order against a minister or a government department since they comply with any declaratory judgment made by the courts and pending the decision of the courts will not take any precipitous action."

[10] I think it needs to be said that this case provides a clear indication that no such assumption can be necessarily made, and that such an expectation on the part of the court will not necessarily be honoured, in cases where the executive's wishes or perceived interests and the effect of the declaratory order are divergent. In any event, such an assumption does not assist in this case in an interpretation of the effect of the order.

[11] Learned Counsel for the respondent submitted that the order in this case can aptly be described as a conservatory prohibitory order. Counsel referred to **The Declaratory Judgment** by I. Zamir at page 1 for a definition of a declaratory order, one which merely proclaims the existence of a legal relationship and does not contain any order which can be enforced against the defendant. In contrast, Zamir defines executory judgments as those by which "the court declares the respective rights of the parties, and then proceeds to order the defendant to act in a certain way".

[12] Learned Counsel for the appellants submitted further that the order, not being in the usual form of an injunction, and further lacking the usual undertaking in damages, cannot be considered an executory injunction capable of being enforced by committal. Counsel argued that the order was made on the adjournment of the application and was merely directory and thus incapable of forming the basis of committal proceedings.

[13] In response learned Counsel for the respondent submitted that the efficacy of an order depends on substance, not form, and that the absence of an undertaking, which is "the price the applicant pays for the exercise of the discretion", does not determine the nature of the order, its validity or effectiveness.

[14] In this case there can be no question but that the order was executory and coercive and can properly be classified, as learned Counsel for the respondent has submitted, as a conservatory prohibitory order. Indeed, as learned Counsel for the respondent pointed out, the appellants in their application to strike out the ex parte order described it as "the alleged prohibitory injunction". This ground of appeal accordingly fails.

[15] Learned Counsel for the appellants argued, under ground (a), that the ex parte order complained of was even wider than the order sought by the respondent in his application. The order amounts to a general restraint, and the court could not properly grant a general restraint against the Crown to restrain all actions by the State. Counsel contended that, if literally interpreted, the order would mean that the respondent could not be arrested or his liberty restrained on any ground. He could act with impunity and enjoy the protection of the order. Counsel urged that such an order flies in the face of the Immigration (Restriction) Act, CAP. 78 which gives the Magistrate power to order the removal of a prohibited immigrant, and of the powers of the Governor-General under the Expulsion of Undesirable Aliens Act CAP. 78.

[16] Counsel submitted that such an order is too wide to be enforceable. It is unclear and ambiguous. Counsel posed the question whether the Governor-General and the Magistrates were to be restrained from properly exercising their respective statutory powers in advance, whether Police Officers were to be restrained, in advance, from restraining the respondent in every eventuality, indeed generally

what are the limits of the restraint effected by the court's order. Counsel submitted that that indeed would be the effect of a literal interpretation of the order, and posited that such an order is not competent for the court to make and is unenforceable.

[17] In **Low v Innes** 4 De G. J. & S. 929 at 933 Lord Westbury, L.C. had this to say;

> "The first duty of the Court in granting an injunction of this kind is to lay down a clear and definite rule. If the language of the order in which the injunction is contained be itself ambiguous, uncertain, indefinite, giving no clear rule of conduct, the injunction becomes a snare to the defendant, who violates it, if at all, at the peril of imprisonment. The Court therefore should, in granting an injunction, see that the language of its order is such as to render quite plain what it permits and what it prohibits."

After examining in some detail the language of the injunction under consideration, and determining that the injunction followed the language of the covenant which was being sought to be enforced, the learned Lord Chancellor continued:

> "but if the language of the covenant be ambiguous and uncertain, it is a reason for not granting an injunction upon it, or, at all events, it does not supply a reason for introducing the indefinite and uncertain language of the covenant into an order of the court, which the party disobeys, as I have said, at the peril of imprisonment."

[18] It was contended on behalf of the appellants that the order of the court appears to restrain a wide range of lawful actions, of a general and non-specific character, including actions which were neither threatened nor feared.

[19] In response learned Counsel for the respondent urged that it is clear that the rule of law was ignored and the authority of the court was imperilled by the conduct of the appellants who, on the uncontroverted affidavit evidence of the deponents P.R. Campbell and Marcelle Foyle, had notice of the terms of the injunction. One cannot gainsay the merit of that observation. The dicta in the case of **Issacs v Robertson** earlier referred to is apropos.

[20] Notwithstanding that, the court is bound by the principle, set out with clarity in the text on Injunctions by David Bean, seventh edition, referred to by learned Counsel for the respondent, at page 88, paragraph 5.5.4 in the following terms:

> "Since an injunction carries with it the sanction of committal for breach, it is particularly important that the order of the court should be stated with precision. Lord Upjohn in *Redland Bricks Ltd. v Morris* [1970] AC 652 at 666 said that 'the court must be careful to see that the defendant knows exactly what he has to do, and this means not as a matter of law but as a matter of fact': the case was one of a *quia timet* application for a mandatory injunction but it is submitted that the dictum is of general application. Similarly Balcombe LJ in *Lawrence David Ltd. v Ashton* [1991] 1 All ER 385, said:
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> > "I have always understood it to be a cardinal rule that any injunction must be capable of being framed with sufficient precision to enable a person being injuncted [sic] to know what it is he is to be prevented from doing. After all, he is at risk of being committed for contempt if he breaks an order of the court."

[21] Learned Counsel for the respondent, in citing the case of **Lawrence David v Ashton** *supra* and conceding the need for clarity, nevertheless argued that in the order of Mitchell J. the acts prohibited were sufficiently clear that all would know what they were prevented from doing.

[22] Further in reference to **Re M** *supra*, Counsel argued that the court's order is severable and that any part of the order that is considered ambiguous may be severed and the remainder enforced.

[23] I am of the clear opinion that the ex parte injunction, in its substance, is far too wide and is ambiguous. It is impossible, on a literal interpretation of the order, for the persons enjoined thereby to know precisely the limits within which they are restrained from acting. The order is therefore, in my view, unenforceable by contempt proceedings. For this reason I would allow the appeal. However, bearing in mind my observations regarding the actions of the appellants in reference to the principles set out in **Issacs v Robertson,** I would make no order as to costs.

[24] I express the sincere appreciation of the court for the assistance rendered to us by Counsel on both sides.

Brian Alleyne, SC
Justice of Appeal [Ag.]

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]