

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 59/2006

BETWEEN:

ANDRE EDGAR
A & M HOLDINGS LTD.,

Claimant

AND

ST. LUCIA AIR & SEA PORT AUTHORITY

Defendant

Appearances:

Mr. L. Ogilvy for Petitioner

Mr. H. Deterville Q. C. in association with Ms. T. John for Respondent

.....
2006: 27th January
3rd February
.....

DECISION

MASON J:

[1] On 25th January 2005, Petitioner applied without notice to the Respondent for an interim injunction in alternative terms viz:

- 1) that the Respondent (Saint Lucia Air and Sea Ports Authority) is forbidden by itself, agent or servants from interfering with, or in any manner obstruct (sic)

or to intimidate (sic) the Petitioner from trading at any of its airports and must not encourage (sic) or in any way suggest (sic) that any person should do so, or

- 2) that the Respondent undertakes not to interfere with, or in any manner, obstruct or intimidate the Petitioner from trading at any of its airports and that it would not encourage or in anyway suggest that any person should do so.

[2] The Court, after hearing the application granted the interim remedy making it returnable on 27th January, 2005, at which time the Court would hear the matter, that is, whether an injunction should be granted.

[3] In making the returnable date merely two days after the granting of the injunction the Court sought to recognize the urgency of the matter as well as to dispense with the requisite notice required in Part 17.4 (7). CPR 2000.

[4] The Court reviewed the arguments and submissions of Counsel and decided as follows:

[5] Rather than attempt to reinvent the wheel, I propose to quote directly from Blackstone's Civil Practice 2004.

[6] Interim injunctions are temporary orders made with the purpose of regulating the position between the parties and an action pending trial Such an order is particularly useful where there is evidence that the respondent's alleged wrong doing will cause irreparable damage to the applicant's interest in the period between issue of process and trial.

[7] An injunction circumstances of urgency and are expressed to continue in force for a limited period, usually a few days sufficient for the application to be renewed on a hearing with notice being given to the Respondent.

[8] The Court invoked its inherent jurisdiction and granted the injunction because it considered the matter of an urgent nature.

[9] The Court has a discretion in only two (2) situations:

- 1) where a party has invaded or threatened to invade a legal or equitable right of another party which is amenable to the jurisdiction of the court; or
- 2) where a party has behaved or threatened to behave in an unreasonable manner.

[10] In what is familiarly called the American Cyanamid case, Lord Diplock laid down the guidelines on how the court's discretion to grant an interim injunction should be exercised.

Serious question to be tried

[11] It was determined that the Court needed only to be shown that the Claimant's cause of action has substance and reality. It is not the Court's function at this stage of the proceedings to try and resolve conflicts of evidence nor to decide difficult questions of law.

[12] I am of the opinion that there are serious questions to be tried namely whether the Respondent in issuing the letter complained of was acting ultra vires the St. Lucia Air and

Sea Port Authority Act #10 of 1983 and also whether the Respondent in preventing the Petitioner from plying his trade as a taxi operator is guilty of restraint of trade.

Adequacy of damages to the Petitioner

[13] Having decided that there are serious questions to be tried, the court has next to consider whether the Petitioner would be adequately compensated by an award of damages at trial.

[14] The Respondent argues that this is a commercial matter wherein the Petitioner is losing money, the damages are quantifiable and so the Petitioner is not entitled to an injunction.

[15] The Petitioner rebuts this argument by saying that because there has been a disruption of his business, damages would be difficult to assess.

[16] The Court is minded to accept this proposition because without going with the merits of the case, while if the Petitioner were successful in the suit against the Respondent and damages are awarded, it is safe to say that the Petitioner is more concerned with continuing the trade/business of taxi operation than being compensated or paid out.

Undertakings and damages

[17] It is my opinion that whether or not the undertaking as to damages is pleaded, it is within the court's discretion to order an interim injunction subject to an undertaking in damages

See Article 842 of the Code of Civil Procedure and Part 17.4(2) of the Civil Procedure Rules 2000.

[18] The Order as to undertaking in damages serves to provide a safeguard for the Respondent who might have been unjustifiably prevented from doing something it was legally entitled to do. The undertaking would also allow the Respondent to be adequately compensated for any loss incurred during the currency of the injunction if it were ultimately decided in the injunction had been wrongly granted.

Balance of convenience

[19] This is not to be determined merely by weighing the convenience of one against the other, but rather weighing the risk of doing an injustice to one side or the other.

[20] In this instance the balance of convenience is weighted more in favour of the Petitioner in that he stands to lose more if he is deprived of the opportunity to ply his trade.

Maintenance of the Status quo

[21] This also relates to the balance of convenience in that if all appear to be evenly balanced, the law favours maintaining the status quo, that being the status of affairs before the Respondent started the conduct complained of but it is incumbent upon the Petitioner to act quickly. And so he did.

[22] These premises when translated to the present case would favour the granting of the interim injunction.

[23] Counsel for the Respondent was of the opinion that the Petitioner not having given in its Affidavit any reason for not giving notice - a requirement by Part 17.3 (3) of the Civil Procedure Rules 2000 - that the injunction should not be given.

[24] I am of the opinion that all other things considered, this should not be allowed to be fatal to the application.

[25] In granting the injunction, I neglected to comply with the requirements of Part 17.2 (5) in that the Petitioner was not given a date by which to issue and serve a claim form.

[26] In confirming the grant of the injunction, I make the further Order that in light of the nature of the grant, the Petitioner must file and serve the claim form by Friday 10th February, 2006.

[27] The Court further Orders that this matter will be given an early date of hearing.

[28] Costs reserved.

SANDRA MASON

High Court Judge