

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO. ANUHCV 2007/0194

BETWEEN:

VERNON G. QUINLAND

Claimant

AND

HARNEY MOTORS LIMITED

Defendant

Appearances:

Ms. C. Debra Burnette, Ms. Sheri Anne Bradshaw and Ms. Jasmine J. Wade for the Claimant/Respondent

Mr. Charlesworth Brown for the Applicant/Defendant

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2007: April 20, April 30
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RULING

[1] **Thomas J:** By Notice of Application filed on 18th April 2007, the Applicant is seeking an order discharging the order made on 10th April 2007.

The grounds of the Application are:

1. The Applicant took no or no reasonable steps to avoid or mitigate his loss.
2. The Applicant is not entitled to the benefit of the said order, damages or any relief in respect of the loss which he could have avoided but failed to avoid through unreasonable action or inaction.

3. The Respondent is entitled to exercise a lien over the Respondent's vehicle for fees and expenses incurred by the Applicant in repairing the damage to the Respondent's vehicle.

[2] At the hearing learned Counsel for the Applicant, Mr. Charlesworth Brown, focused on the conduct of the Respondent and his responsibility for the damage to his vehicle after seeing the red oil light illuminated and the reasonableness of his conduct in the circumstances. Learned Counsel also addressed the Respondent's failure to mitigate and the expenses incurred by the Applicant in repairing the vehicle.

[3] According to learned Counsel for the Applicant, the principles which govern the grant of an ex parte order are settled.

[4] In conclusion learned counsel for the Applicant submitted that if the court finds that the Respondent/Claimant saw the red light and drove the vehicle then the order should be discharged.

[5] In response learned counsel for the Respondent/Claimant, Ms C. Debra Burnette, identified the issues raised by the application as being:

1. The discharge of the injunction
2. The unreasonable conduct of the Respondent
3. Applicant/Defendant's lien on the Respondent/Claimant's vehicle.

[6] According to learned counsel the injunction granted is mandatory in nature and as such the court is only concerned with what is requisite in this regard. She contends that the Claimant has satisfied the requirements. In support the case of **SHEPHERD HOMES LTD v SANDHAM (1970) 3 WLR 348** is cited.

[7] It is also the contention of learned counsel for the Claimant that the grounds set out in the Defendant's application are not grounds upon which the Court ought to consider in relation

to the application to discharge the injunction. Further that damages would not be an appropriate remedy in these circumstances.

ANALYSIS

[8] With respect to grant an *ex parte* injunction, David Bean, *INJUNCTIONS* at page 41 has this to say:

“The general criteria for interlocutory injunctions, such as the balance of convenience, cannot favour the grant of an *ex parte* injunction unless the case is one of great urgency, e.g. where a sale of property, on the demolition of building or the publication of libelous or obscene matter is about to take place. The applicant must, in other words need the court’s protection immediately. If he has delayed with knowledge of the facts before coming to court an injunction will be refused, even where the defendant would not be greatly inconvenienced by the restraint promptness is essential *Bites v Lord Hailsham* (1972) 1WLR 1373. It is fundamental to any *ex parte* application for an injunction that the party applying for it should show utmost good faith in making the application and that the doctrine of *uberrimae fidei* in effect applies.”

[9] And with respect to mandatory injunctions the learned author says this: “At an interlocutory stage the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must, *inter alia*, face a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and thus is a higher standard than is required for a prohibitory injunction.” He continues: “It requires a still more exceptional case for a mandatory injunction to be granted *ex parte*, even where the plaintiff gives a proper undertaking in damages.”

[10] At the time of the application for the injunction the Claimant’s position was this:

1. In November 2006 he purchased a vehicle from the Defendant for the purpose of transportation to and from work.
2. Monthly payments had to be made to the bank under a bill of sale.
3. In February 2007 the said vehicle was taken to the Defendant was a service which was paid for. On the same day the vehicle was collected but after driving it for a while the Claimant noticed the oil light illuminated. He made certain inquiries and was told *inter alia* to put oil in said vehicle.

4. In the course of driving the vehicle, engine damage resulted but the Defendant admitted that there was a failure to remove a certain seal during the servicing.
5. There were meetings and correspondence between the Claimant and the Defendant concerning the damage to the vehicle. This culminated in the receipt of a letter from the Defendant's attorney-at-law on 4th April 2007 seeking 70% of the cost of the repairs from the Claimant before the vehicle could be returned.
6. A vehicle provided by the Defendant for the Claimants use in the interim turned out to be unlicensed and was returned. The Claimant then rented a vehicle at US \$75.00 per day.
7. The Claim in this matter was filed on the 5th April 2007.

[11] As noted above, learned counsel for the Defendant placed emphasis on the conduct of the Claimant after seeing the red light and also his failure to mitigate. Given the stage of the matter, the Court agrees with learned counsel for the Claimant that these are matters for trial and further the sole question must be whether or not the injunction should be discharged.

[12] Given the circumstances of the Claimant, which in material respects was corroborated by the affidavit filed on behalf of the Defendant the Court is of the view that the Defendant has not advanced any legal principle which would warrant the discharge of the injunction.

[13] On the evidence the Claimant acted promptly in that a claim form filed on 5th April 2007, the day after the letter from the Defendant's attorney-at-law. The Claimant was in need of the Courts' protection given his circumstances and there is nothing to suggest that he did not act with *uberrimae fidei*.

[14] In *SHEPHERD HOMES LTD v SANDHAM*, *supra* MEGARRY J noted at page 356 that: "At the trial of the action, the court will of course, grant such injunctions as the justice of the case requires; but at the interlocutory stage, when the final result cannot be known and the court has to do the best it can, I think the case has to be unusually strong and clear before a

mandatory injunction will be granted, even if it is sought to enforce a contractual obligation.”

- [15] It is the view of the Court that the Claimants’ case falls well within the ‘unusually strong’ rule enunciated by Mr. Justice Megarry. The Court is also of the view that damages would not be an appropriate remedy in the circumstances, see: **CAMBRIDGE NUTRITION LTD v BBC (1990) 3 All ER 523**. In this regard the Court must consider the expenditure which the Claimant will have to incur up to the final determination of the matter if the injunction is discharged. On this further account, the balance of justice lies with the Claimant.
- [16] The Defendant’s application is dismissed. The Defendant must pay costs to the Claimant in the amount of \$1500.00. Order accordingly.

ERROL L. THOMAS

Judge