

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2009

Claim No. SKBHCV 2009/0105

BETWEEN

EURICK DORSET

Applicant

And

VALENTINE THOMAS

Respondent

Appearing:

Mr. Sylvester Anthony counsel for the Claimant/ Applicant

Mrs. Angela Inniss, and Sir. Probyn Inniss, counsel for the Respondent

2009: June 8th and 12th

DECISION

- [1] **BELLE J.** The parties entered into an agreement styled Memorandum of Understanding for a lease of premises, equipment, the trade name and full management control of the Radio Station by the name of Sugar City Roc FM at Greenlands Basseterre, St. Kitts
- [2] The agreement included covenants to pay various sums of money in consideration for the right to access to the premises and the control of the Radio Station Sugar City Roc.
- [3] It was also clear by the process, which preceded the Memorandum that Dr. Denzil Douglas the Prime Minister of the Federation would be one of the financial benefactors of the new business arrangement, but the business would be run by Mr. Dorsett the Applicant.

- [4] After about three months of the existence and operation of the agreement the respondent for some reason decided to terminate the said agreement by letter dated 11th May 2009, claiming that Memorandum of Understanding was invalid, that the Applicant had failed to meet certain obligations under the agreement and demanding an account from the Applicant for the receivables and payable of the business, and that the keys for the premises be handed over to the Respondent in 7 days.
- [5] The Respondent subsequently changed the locks on the premises and resumed control of the business of Sugar City Roc preventing the Applicant from enjoying the fruits of the Memorandum for which he or the benefactor had paid substantial sums of money.
- [6] The Applicant applied for an injunction based on trespass and breach of the aforesaid agreement. This application was heard inter-parties on 10th of June 2009.
- [7] The Respondent stoutly resisted the application for the injunction arguing that it was not urgent, any wrong committed could be compensated in damages which the Respondent was prepared to pay and that the Applicant did not come to equity with clean hands.
- [8] I find that the Application is properly made in accordance with Part 17 of the CPR 2000.
- [9] Based on the guidance of **American Cyanamid v Ethicon Ltd** [1975] AC 396 the court is not to be concerned with settling evidential disputes at this time but only to assess the following:
- i. Is there a real issue to be tried?
 - ii. Does the claimant have an arguable case?
 - iii. Can the wrong committed be compensated in damages?
 - iv. What is the balance of convenience between the parties?

- v. Can the Applicant compensate the Respondent for any damages done to the Respondent by the grant of the injunction.

- [10] Counsel for the Respondent has argued that the Applicant has not come to court with clean hands. But in the peculiar circumstances of this case for the court to find that the parties have not come to court with clean hands would involve the determination of issues of fact which are the foundation of the possible cause of action, and going beyond the necessary steps for the determination of an interim injunction.
- [11] I find that there is a real issue to be tried based on the affidavit of the Applicant. The Applicant would have an arguable case at trial.
- [12] The fact that the Applicant was put in possession is an indicator that some consideration was received by the Respondent.
- [13] The value to be accrued over time in running a business such as a radio station cannot be fairly compensated in damages. Furthermore the position of the Respondent tends to imply that there are certain benefits, which were not contemplated by the Memorandum.
- [14] However it does not matter if the Memorandum in its form is irregular what matters is whether it reflects the intention of the parties, its terms were certain, and there was adequate consideration for the discharge of its various obligations.
- [15] The Respondent himself relies on provisions of the Memorandum to mount his challenge to the Application.
- [16] I find that all of the essential features were present in the Memorandum of Understanding to establish legal relations between the parties and that there were provisions for termination of the agreement, which would mitigate possible loss. These provisions were not complied with.

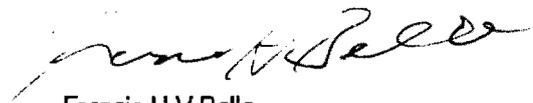
[17] I therefore find that the balance of convenience falls in favour of the Applicant and an order for an interim injunction against the respondent should be made to protect his rights under the agreement styled "Memorandum of Understanding."

[18] I therefore make the following orders:

IT IS ORDERED that:

- v. An injunction is hereby granted restraining the Respondent by himself his servant and/or agents and/or any person from trespassing on lands leased by the Applicant situate at Greenlands, Basseterre.
- vi. An injunction be and is hereby granted restraining the Respondent by himself his servants and/or agents and/ or any persons from entering upon and remaining on the said premises leased by the Applicant.
- vii. An injunction be and is hereby granted restraining the Respondent by himself his servants and/or agents or any person from interfering with and altering the said premises leased by the Applicant.
- viii. An injunction be and is hereby granted restraining the Respondent by himself his servants and/or his agents or any person from holding himself out to any third party as being entitled to operate the radio station and/or entering into contracts for and on behalf of the radio station and/or receive and collect debts on behalf of the radio station.
- ix. This order shall remain in force for a period of three months from the date of the order but may be discharged by the Respondent's compliance with paragraph 16 of the Memorandum of Understanding by refunding the Applicant any costs incurred by him in respect of the restoration of the company Sugar City Roc FM Limited to the Companies Register.

- x. The Respondent is hereby restrained from committing any breach of the terms of the Memorandum of Understanding between the parties until the meaning and effect of those terms are declared and determined by the court.
- xi. The Applicant shall serve this order along with a Claim Form and Statement of Claim on the Respondent in 7 days.
- xii. The costs of this Application are to be paid by the Respondent.



Francis H V Belle
High Court Judge