

SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2008/035

BETWEEN:

SAINT LUCIA AIR AND SEAPORTS AUTHORITY

Appellant

and

[1] LEROY MATHURIN  
[2] WAYNE ALBERTSON

Respondents

Before:

The Hon. Mde. Ola Mae Edwards  
The Hon. Mde. Janice George-Creque  
The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal  
Justice of Appeal  
Justice of Appeal

Appearances:

Mr. Mark Maragh for the appellant  
Mr. Horace Fraser for the respondents

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2009: October 21;  
2011: February 21.

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*Civil appeal – Compensation for assault, unlawful arrest and false imprisonment – Saint Lucia Air and Sea Ports Authority Act Cap. 8:13 (Revised Laws of Saint Lucia 2001) – Saint Lucia Airport Regulations – Interpretation of Regulation 27(1)(c) of the Saint Lucia Airport Regulations – The meanings of “plying for hire”, “soliciting”, and “carrying on business or trade” at the airport – Power of Port Police to arrest – Enforcing directions of the Authority’s General Manager – Whether Port Police can lawfully direct a transport driver collecting arriving passengers to depart from and not collect such passengers from the arrival lobby at the airport*

The appellant, the Saint Lucia Air and Sea Ports Authority (“the Authority”), appealed the decision of the learned trial judge in which judgment was entered for the respondents, Leroy Mathurin and Wayne Albertson, who were both seeking compensation for assault, unlawful arrest and false imprisonment. On Friday 18<sup>th</sup> August 2006, the respondents were arrested and detained by the appellant’s Port Police at the Hewanorra International Airport, for contravening the **Saint Lucia Airport Regulations** (“the Regulations”) and section 85(a)(iii) of their enabling Act, **Saint Lucia Air and Sea Ports Authority Act** (“the

Act"). The complaints proffered against the respondents charged them with: (1) remaining at the arrival lobby of the Hewanorra airport after having been required by a Port Police to depart therefrom, contrary to Regulation 27(1)(c) of the Airport Regulations; and (2) without lawful excuse contravening a direction given to each respondent by the Port Police: " Do not pick up any passengers on behalf of Sandals", contrary to section 85(a)(iii) of the enabling Act Cap 8.13. These complaints had been previously dismissed in the Magistrate's Court. The learned judge concluded that the appellant's servants had acted unlawfully in arresting the respondents and awarded them each \$1,200.00 for special damages and \$14,000.00 for general damages, together with interest at the rate of 6% per annum from the date of the judgment until payment. The grounds of appeal essentially allege that the learned judge erred in her interpretation of the Regulations as well as in making certain findings. Regulation 27(1)(c) provides that "A person shall not at an airport - remain on an airport or on any part thereof after having been required by the Superintendent or a police officer to depart therefrom." Section 85(a) (iii) of the Act Cap. 8.13 provides that "Any person who being on any premises of the Authority ... (iii) without lawful excuse contravenes any direction given by any officer authorised by the General Manager; ...commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment." The appellant's counsel contended that the respondents were engaged in taxi business, and as taxi drivers employed to C.J. Tours which was operating a business in the tourist industry, were breaching Regulation 6(1) and Regulation 15(1), as they were in the process of plying for hire from the airport without a permit and were carrying on the trade and/or business as taxi drivers at the airport without the approval of the Minister.

**Held:** dismissing the appeal, affirming the order of the court in relation to the damages and prescribed costs awarded to each respondent and awarding to the respondents costs in the appeal, that being two thirds of the prescribed costs in the court below, that:

1. The learned judge erred in holding that the heading and marginal notes of an enactment are to be used in the interpretation of the enactment and also in determining that Regulation 27 of the Regulations deals with the prevention of destruction and damage to the airport. Further, the judge erred in holding that Regulation 27(1)(c) does not apply to the lobby or checking areas of the airport as Regulation 3 states that "These Regulations apply to all persons who are at any time in any part of an airport." The scope and purpose of Regulation 27(1)(c) therefore should not be delimited to any particular category of offence.
2. It is essential before one could say that a vehicle was "plying for hire", first, that it should be exhibited, be on view to the public, and secondly, that it should, while on view, expressly or impliedly solicit customers in the sense of inviting the public to use it. The respondent's presence at the airport in the arrival lobby area did not amount to soliciting arriving passengers within the ordinary meaning of the word "solicit". The respondents by a previously booked arrangement were collecting the Sandals passengers in the arrival lobby at the airport so as to transport them to the Sandals Resort. Their

vehicles clearly were not on view to the public expressly or impliedly for soliciting customers in the sense of inviting the public to use their vehicles.

**Cogley v Sherwood** [1959] 2 All ER 313 applied.

3. Regulation 6 (carrying on trade or business) should be read in the context of section 73(1)(a) and (m) of the **Saint Lucia Air and Sea Ports Authority Act** Cap. 8.13 which speaks to business operations performed or provided at the airport; and/or connected with the airport. There is no evidence that the respondents were based or pegged at the airport to solicit fares, unlike the Southern Taxi Association members. Neither were the respondents looking for customers at the airport in order to do business or carry on any such trade therefrom.
4. An offence under Regulation 27(1)(c) is an arrestable summary offence by virtue of section 570 of **The Criminal Code** Cap 3.01 which states that a police officer may arrest without a warrant anyone who is or whom he or she, with reasonable cause, suspects to be in the act of committing or about to commit the offence. However, The Port Police at the material time could only be carrying out their duties under section 74(3)(a) of the Act Cap 8.13. Their lawful duties under these provisions were to prevent crime and maintain order within the airport; and generally to assist in the enforcement of the provisions of the Act and the Regulations. However, collecting or picking up Sandals passengers arising from booked arrangements with Sandals and the respondents' employer was not prohibited by the Act or Regulations. There was therefore no evidence before the trial judge that would justify a lawful arrest of the respondents on the grounds that the Port Police were lawfully enforcing the provisions of the Act and its Regulations or that the respondents were committing or about to commit a crime, or were behaving disorderly.
5. Though the trial judge may have erred in her reasoning, her conclusions that the directions given to the respondents were unlawful, and that the Port Police had acted unlawfully by arresting the respondents cannot be faulted.

## JUDGMENT

- [1] **EDWARDS, J.A.:** This appeal arises from a decision of the learned trial judge on the respondents' claim against the appellant ("**SLASPA**" or "the Authority") seeking compensation for assault, unlawful arrest and false imprisonment. The claim arose from the arrest and detention of the respondents by the appellant's Port Police on Friday, 18<sup>th</sup> August 2006, at the Hewanorra International Airport for

contravening the **Saint Lucia Airport Regulations**<sup>1</sup> (“the Regulations”) and their enabling Act. The judge interpreted the relevant Regulations, and found that the respondents did not commit any of the offences under the Regulations and the **Saint Lucia Air and Sea Ports Authority Act** Cap 8.13<sup>2</sup> (“the Act”). She concluded that the appellant’s servants acted unlawfully in arresting the respondents. The judge entered judgment in favour of the respondents, and awarded to each respondent the sums of \$1,200.00 for special damages, \$14,000.00 for general damages together with interest at the rate of 6% per annum from the date of the judgment until payment. The grounds of the Notice of Appeal essentially allege that the learned judge erred in her interpretation of the Regulations and her findings.

- [2] Despite the conflicting evidence of the respondents and the two Port Police officers as to exactly where at the Hewanorra Airport the two respondents were at the time of their arrest, the judge apparently found that they were not in a restricted area as the Port Police witnesses alleged, but that they were in the arrival lobby area of the airport where they had gone to pick up arriving Sandals guests. The respondents at the material time were employed as drivers by Mr. Kervin Mitchell who trades in the name CJ’s Touring Services. Mr. Mitchell is a certified taxi provider within the tourist industry, providing transport to tourists in Saint Lucia pursuant to section 3(2)(f) of the **Tourism Incentives Act** Cap. 15.30<sup>3</sup>. Mr. Mitchell transports overseas clients/guests on behalf of two hotels: Sandals Resorts and Windjammer Landing, on a contractual basis. Sandals Resorts at the material time, operated an information desk in the arrival lobby of the Hewanorra International Airport with the full consent and acquiescence of the appellant.

### **Factual and Legislative Background**

- [3] The Authority through its General Manager is responsible for the maintenance, supervision, management and control of the airports in Saint Lucia under the Act

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<sup>1</sup> Cap 8.13 Revised Laws of Saint Lucia 2001 (Statutory Instruments 42/1976 and 27/1977).

<sup>2</sup> The Revised Laws of Saint Lucia 2001.

<sup>3</sup> The Revised Laws of Saint Lucia 2001.

and Regulations. Section 19 of the Act provides:

"19.- (1) Subject to the provisions of this Act, the Authority is hereby empowered to provide in accordance with the provisions of this Act and any regulations co-ordinated and integrated systems of airports, seaports and port services and to levy charges and dues for the use of the facilities and services provided.

(2) Subject to the provisions of this Act, the Authority may for the purpose of performing any of its functions under this Act, do anything and enter into any transaction which in the opinion of the Authority, is necessary to ensure the proper performance of its functions.

(3) In particular and without prejudice to the generality of the provisions of subsection (1) and (2), it is the duty of the the Authority to –

(a) operate the ports as appears to it best calculated to serve the public interest;

(b)...

(c) maintain, improve and regulate the use of such ports and the services and facilities therein as it considers necessary or desirable;

(d)...(f)

However, the Authority may, with the approval of the Minister authorise in writing any person, corporation or other body to carry out the functions stated in this paragraph subject to such conditions and restrictions as the Authority may consider desirable.

(g)..."

[4] In furtherance of these objectives, a system was established whereby concession was granted to the Southern Taxi Association to operate transportation services for passengers from Hewanorra International Airport. As far as the appellant was concerned, the consequences arising from this concession, as stated in one of the documentary exhibits, was that "any other commercial operation of taxi/bus services at the Airport would be illegal. However, any organization/agency/persons who have secured any arrangements for commercial taxi/bus service from ... the Airport... will satisfy his/her clients by observing the following:

- (1) The entity will contact the executive of the Southern Taxi Association ... depending on whether the clients will be arriving at Hewanorra International Airport ... sufficiently in advance of the clients arrival.
- (2) Inform the respective taxi association of the expected date of arrival and service required by the clients.
- (3) Enter into arrangement with the respective taxi association for the transportation of the clients from the Airport to the destination that will be mutually beneficial to the organization/agency/persons and the respective taxi association.  
This arrangement can involve either the respective taxi association transporting the clients for an agreed fee or the contractor of the business providing the transportation service, and an agreed fee paid to the respective taxi association based on the number of passengers involved. Alternatively, the two parties can agree that the association and the contractor provide the service and are both compensated accordingly.
- (4) Once an agreement has been reached, the respective taxi association shall inform the Ports Police Inspector at the relevant Airport, of the arrangement in place, so that the pickup can be facilitated.

It must be noted failure on the part of the parties to reach an agreement that provides for an otherwise non-authorized taxi to make a pick-up will result in the Ports Police at the Airport not allowing the pickup to be effected. ...The Saint Lucia Air and Sea Ports Authority therefore solicits the co-operation of the general public, hotels, and transportation service providers so that law and order can be maintained at Hewanorra International ... Airport ... and the right image be projected to our arriving visitors who would be free from harassment by competing transportation service providers."

[5] It is unknown whether this airport taxi system procedure and other relevant information was ever gazetted or publicised, or the extent to which it was publicised if this was in fact done. Exactly two days prior to the arrest of the respondents the appellant had by letter communicated the following information to the Regional Director of Sandals: "...in order that consideration be given to all the issues that are relevant to securing what can serve the public interest, the Government of Saint Lucia in conjunction with all the major stakeholders of the Tourism Industry, has established a Committee to review the existing airports' taxi system and to make recommendations for the consideration of the Cabinet of Ministers. The Committee has commenced its work. While the Committee continues its work, the procedures that have been approved by SLASPA relating to the transportation of persons from the airport... remain[s] in effect. We are specifically concerned with what appears to be an undesirable situation developing between the Southern Taxi Association and Sandals at the Airport. We take seriously our responsibility to regulate the use of the airport in order that the activities at the Airport are in conformity with Airport regulations."

[6] Thereafter, the appellant quoted certain provisions of the Regulations:<sup>4</sup>

"Regulation 6: Carrying on Trade or Business

(1) A person shall not carry on any trade or business on an airport except with the approval of the Minister and under such terms and conditions as he or she may determine.

(2) Any person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of \$200 or to imprisonment for 3 months.

Regulation 7: Soliciting

(1) A person shall not solicit for any purpose whatever in an airport without the permission of the Superintendent.

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<sup>4</sup> Airport Regulations – Cap 8.13 Revised Laws of Saint Lucia 2001 (Statutory Instruments 42/1976 and 27/1977).

(2) Any person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of \$100 or to imprisonment for 3 months."

[7] The appellant stated in the letter to Sandals: "We have directed the Ports Police at the airport ... to ensure that these Regulations are complied with, and that the law is enforced. Should you know or have reason to believe that any activity is being undertaken which contravenes these Regulations, we request that you use your good offices to ensure that such activities are immediately brought to an end."

[8] There is also Regulation 15(1) which states that:

"(1) A driver of a public service vehicle shall not at an airport ply for hire or attempt to ply for hire from that airport unless he or she is the holder of a permit granted by the Superintendent."

Also, Regulation 16(1) states that:

"A person shall not operate any taxi, omnibus or other vehicle for the purpose of carrying passengers within an airport otherwise than in accordance with an order or directions of the Superintendent."

[9] The complaints proffered against the respondents charged each of them with: (1) remaining at the arrival lobby of the Hewanorra airport after having been required by Sergeant #70 President to depart therefrom, contrary to Regulation 27(1)(c) of the Airport Regulation No. 42 of 1976; and (2) without lawful excuse contravening a direction given to each respondent by Sergeant #70 President to wit: " Do not pick up any passengers on behalf of Sandals", contrary to section 85(a)(iii) of the Act Cap 8.13.

[10] Section 85(a)(iii) of the Act Cap. 8.13 provides that "Any person who – (a) being on any premises of the Authority ... (iii) without lawful excuse contravenes any direction given by any officer authorised by the General Manager; ...commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment."

[11] It is necessary to set out in its entirety Regulation 27, having regard to how the learned judge approached the interpretation of Regulation 27(1)(c):

**"27. PRESERVATION OF PROPERTY**

- (1) A person shall not at an airport-
  - (a) destroy, damage, deface or disturb in any way any building, sign, equipment, structure or other public property at an airport;
  - (b) obstruct any person acting in the execution of his or her duty in relation to any airport;
  - (c) remain on an airport or on any part thereof after having been required by the Superintendent or a police officer to depart therefrom;
  - (d) load or attempt to load any aircraft without the authority of the person in charge;
  - (e) smoke in or otherwise bring any naked light into-
    - (i) any place where any such act is prohibited by notice,
    - (ii) any place within 50 feet of an aircraft or a store of liquid fuel or explosives;
  - (f) fill or discharge from any container (including any part of a vehicle) liquid fuel elsewhere than in a place approved for that purpose;
  - (g) light any fire elsewhere than in a place provided for that purpose;
  - (h) use radio transmitting or receiving equipment that is intended for transmission or reception on the aeronautical frequencies allocated for use at that airport;
  - (i) throw, leave or drop anything capable of causing injury or damage to any person or property.
- (2) A person shall not, without the permission in writing of the Superintendent in addition to any other permission (if any) that may be lawfully required—

- (a) erect, alter, move, paint, distemper any building, sign, maps or other structures forming part of or provided for in connection with an airport;
- (b) lay any cable, wire or pipe or dig any part of an airport;
- (3) A person shall not—
  - (a) climb a wall, fence, barrier, railing or post of any airport;
  - (b) walk on any flowering bed planted area or anything growing thereon or any lawn on which walking is prohibited by notice; or
  - (c) remove, disturb, pull or damage any tree or plant growing on an airport.
- (4) Any person who contravenes this regulation commits an offence and is liable on summary conviction in respect of subregulation (1) and (2) to a fine of \$500 and in respect of subregulation (3) to a fine of \$250 or to imprisonment for 6 months and 3 months respectively or to both such fine and imprisonment."

[12] The duties, responsibilities and powers of the Port Police are covered by section 74(3) and section 86 of the Act. Section 74(3) states that:

"It shall be the responsibility of the Saint Lucia Port Police and the duty of every port constable –

- (a) **to prevent crime and maintain order within the [air]ports;**
- (b) to protect and ensure the safety of goods and other property within the [air]ports;
- (c) to prevent persons from boarding any ...aircraft without the permission of the person in charge and if necessary to remove any person from such ...aircraft;
- (d) to assist in the enforcement of the provisions of any law relating to quarantine and immigration;
- (e) to assist in the detection and prevention of contraventions of the revenue and customs laws; and

(f) **generally to assist in the enforcement of the provisions of the Act and the regulations.**" (My emphasis)

[13] Section 86 states:

- "(1) Any person who commits any offence mentioned in sections 76, 77 or 85 may be arrested without warrant by any officer authorised by the General Manager, police officer or port constable.
- (2) Any person who commits any offence against this Act or regulations other than an offence mentioned in subsection (1) may be arrested by any officer authorised by the General Manager, police officer or port constable if –
  - (a) there is reason to believe that such person will abscond;
  - (b) he or she refuses on demand to give his or her name or address; or
  - (c) there is reason to believe that the name or address given by him or her is incorrect.

However, where there is reason to believe that such person will not abscond, he or she shall, if his or her true name and address are ascertained, be released on his or her executing a bond for his or her appearance before a magistrate when required."

### **The Grounds of Appeal**

[14] The grounds complain that the learned judge: (a) misdirected herself in holding that the heading and marginal notes of an enactment are to be used in the interpretation of the enactment; (b) erred in determining that Regulation 27 of the Airport Regulations deal with the preservation of destruction and damage to the airport; (c) also erred in holding that Regulation 27(1)(c) does not apply to the lobby or checking areas of the airport; (d) erred in holding that the respondents by failing to comply with the direction given by the appellant's officer pursuant to Regulation 27(1)(c) did not commit an offence in relation to that Regulation; and the judge erred in holding that the appellant acted unlawfully in arresting the respondents by failing to ascertain prior to effecting the arrest, whether the respondents were in possession of the required permission to trade at the airport.

## Interpreting Regulation 27

- [15] The learned judge obviously erred at paragraph 7 of her judgment when she stated that section 10 of the **Interpretation Act** Cap 1.06<sup>5</sup> permitted her to look to the heading and marginal notes of Regulation 27 to assist in interpretation of Regulation 27(1)(c). In fact section 10 of Cap 1.06 prohibited this. Section 10 of Cap. 1.06 permitted the judge to rely only on the preamble (long title) to Cap 8.13 in her interpretation of the Regulation 27. Section 4 of Cap 1.06 states also that:

“This Act does not exclude the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act.”

Article 10 of **The Civil Code of Saint Lucia**<sup>6</sup> also gives guidance where it states that

“When a law is doubtful or ambiguous, it is to be interpreted so as to fulfil the intention of the Legislature and to attain the object for which it was passed.

The preamble which forms part of the Ordinance assists in explaining it.”

- [16] Having examined the preamble to the Act, I am of the view that it would not have assisted the trial judge in any event. It seems to me that it is the scope and not the meaning of Regulation 27(1)(c) that is doubtful in the instant case.
- [17] The learned judge was apparently influenced by the heading “**PRESERVATION OF PROPERTY**” when she found at paragraph 8 of her judgment that “The tenor of regulation 27 suggests that it is for the prevention of destruction and damage to the airport.” Learned counsel Mr. Fraser submitted that although section 10 of Cap. 1:10 made it impermissible for the judge to use the heading to control the language used in Regulation 27, she was permitted to take the heading into account when considering the general purpose of Regulation 27(1)(c) and the

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<sup>5</sup> Revised Laws of Saint Lucia 2001. Section 10 states: “(1)The preamble to an enactment shall be construed as a part thereof intended to assist in explaining the purport and object of the enactment. (2) Marginal notes and headings in an enactment and references to other enactments in the margin or at the end of an enactment shall not be construed as part of the enactment and shall be deemed to have been inserted for convenience of reference only”.

<sup>6</sup> Chap. 4.01, Revised Laws of Saint Lucia 2006.

mischievous at which it is aimed<sup>7</sup>. In light of section 4 of Cap 1:06, I accept this submission. In principle, it finds authoritative support in **Stephens v Cuckfield Rural DC**<sup>8</sup> where this rule of construction was recognised.

[18] However, this was not the only method used by the judge to arrive at her conclusions. She also relied on Regulation 4 which specifies the buildings and areas in the airport to which persons are restricted from entering unless they have “the general or specific written permission of the Superintendent and subject to such conditions as may be attached to such permission.” The judge accepted the submissions of learned counsel Mr. Fraser that since the airport lobby was not classified as a restricted area under Regulation 4(1), the words “**on any part**” in Regulation 27(1)(c) cannot contemplate standing in general public areas like the lobby or checking in areas.” Neither the judge nor counsel for the parties alluded to Regulation 3 which states that “**These Regulations apply to all persons who are at any time in any part of an airport.**”

[19] Mr. Maragh’s main argument as I understand it is that the plain meaning of the words in Regulation 27(1)(c) should operate within the context of any contravention of the Regulations generally, including Regulations 7(1) which forbids soliciting, 15(1) which forbids plying for hire without a permit at the airport, and 6(1) which prohibits carrying on a trade or business at the airport without permission; he contends that the scope of Regulation 27(1)(c) should not be delimited to any particular category of offence.

[20] On the other hand, counsel Mr. Fraser while admitting that the language of Regulation 27(1)(c) is not ambiguous, submitted that it was not the intention of the legislature to make Regulation 27(1)(c) applicable to persons picking up incoming passengers from the arrival lobby since Regulation 27 throughout speaks of matters that may destroy, endanger life and limb, cause damage to property, or

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<sup>7</sup> See Cross Statutory Interpretation 2<sup>nd</sup> Edition at page 130.

<sup>8</sup> [1960] 2 Q.B. 373 at 383.

interrupt aeronautical transmission frequencies at the airport – in other words this regulation seeks to prevent dangerous activity taking place at the airport.

[21] It is evident from a broad look at the scheme of the legislation that the process of the interpretation is not easy. As I saw it at first, Regulation 27(1)(c) does not stand alone; it is a sub-regulation standing in Regulation 27 with other sub-regulations which criminalise other types of conduct. I had formed the view that all of these sub-regulations though not mutually exclusive should be so read that they stand together as a single enactment, and should be read as a whole. Looking at it that way, I had reasoned that if the legislator had intended Regulation 27(1)(c) to be all embracing, that provision would have stood alone so as to make their intention clear. However, having had this broad look at the Act and the Regulations, it is significant that sub-regulation 27(b) which creates the offence of obstructing, like Regulation 27(1)(c), distinguishes itself from the rest of the other sub-regulations. I am no longer persuaded that Mr. Fraser's argument has much force; because the sweeping provision in Regulation 3 makes it quite clear that all of the Regulations are applicable to all persons in any part of the airport. In that regard I see no reason to restrict the scope and purpose of Regulation 27(1)(c) to preventing dangerous activity at the airport.

[22] I am therefore of the view that the learned judge erred in holding that the heading and marginal notes of an enactment are to be used in the interpretation of the enactment. She also erred in determining that Regulation 27 of the Airport Regulations deals with the prevention of destruction and damage to the airport. She further made another error in holding that Regulation 27(1)(c) does not apply to the lobby or checking areas of the airport. Grounds (a), (b) and (c) of the appellant's grounds of appeal would succeed.

#### **Did the Respondents commit any offence under the Regulations or Act?**

[23] Learned counsel Mr. Maragh made submissions before us which, though made in the court below, were rejected by the judge without any analysis in her judgment. Mr. Maragh contended that the respondents were engaged in taxi business, and

as taxi drivers employed by CJ Tours which was operating a business in the tourist industry, were “plying for hire” since they were working a route, travelling regularly, to and fro between two points consistent with the definition of “ply” at page 1116 in **Words and Phrases Legally Defined**. He relied also on the definition of “trade” at page 2796 to 2797 of the same work, which states among other things that “trade” in legal usage is a term of the widest scope often used in contrast with a profession or occupation, having the technical meaning of buying and selling; and it is not essential to a “trade” that the person carrying it on should make or desire to make a profit. Mr. Maragh submitted further, that the directions given to the respondents by the port police were lawfully given because the respondents were breaching Regulation 6(1) and Regulation 15(1)<sup>9</sup> as they were in the process of plying for hire from the airport without a permit; and were carrying on their trade and/or business as taxi drivers at the airport without the approval of the Minister.

[24] Section 85(a)(iii) of the Act Cap. 8:13 (see paragraph 10 above), assisted Mr. Fraser in advancing his submission that the directions given by the Port Police to the respondents were unlawful. To secure a conviction for disobeying a direction of the Port Police under section 85(a)(iii), the prosecution must establish that the defendant had no lawful excuse for disobeying the direction. Mr. Fraser therefore submitted that this provision requires that any direction given must be lawful, and there must be a just cause for giving the direction. Mr. Fraser submitted that there are no regulations making it an offence to pick up passengers on behalf of or for Sandals, or picking up passengers simpliciter at the airport. This conduct by the respondents would not constitute plying for hire or carrying on a business on the part of the respondents, he argued.

[25] Mr. Fraser submitted further that Sandals was lawfully at the airport lobby conducting business, and since Sandals had subcontracted and the subcontractor had employees which included the respondents, any breach of the Regulations by the respondents as agents, in picking up Sandals guests would have been in effect a breach by Sandals the principal. The evidence was that the Port Police

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<sup>9</sup> See paragraphs 4 and 9 of this judgment

before arresting the respondents, did not ascertain whether the respondents or Sandals had permission to collect the guests. Mr. Fraser concluded the trial judge was therefore correct at paragraphs 13 and 14 of her judgment in finding the following:

“[13] The Claimants were given the direction by the officer ‘not to pick up any passengers on behalf of Sandals’. Under cross examination, one of the Defence witnesses admitted that he did not enquire of the Claimants whether they or Sandals had the requisite permission from the Minister to pick up passengers.

[14] Thus not having ascertained whether the Claimants were contravening the Act, they were themselves acting unlawfully by arresting the Claimants.”

[26] In any event, said Mr Fraser, section 86(1) of the Act does not prescribe that the contravention of Regulation 27 is an arrestable offence<sup>10</sup>.

### **Analysis and Conclusions**

[27] The Port Police witnesses did not testify that they had reason to believe that the respondents would abscond; neither did they testify that they asked each respondent their name and/ or address and they refused to give this information; nor that they had reason to believe that the respondents had given them a name and /or address that was incorrect. Despite section 86(1) of the Act,<sup>11</sup> the Port Police have the same powers of arrest as a police officer. Section 75(3) of the Act Cap 8.13 states that “Every port constable shall in the execution of his duty under section 74, have all the protection, exercise all the powers, and be liable to the same responsibilities and discipline as a police officer.”

[28] In respect of a summary offence under Regulation 27(1)(c), section 570 of **The Criminal Code** Cap 3.01<sup>12</sup> states that “A police officer may arrest without a warrant anyone who is or whom he or she, with reasonable cause, suspects to be

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<sup>10</sup> See paragraph 14 of this judgment.

<sup>11</sup> See paragraph 12 of this judgment.

<sup>12</sup> Revised Laws of Saint Lucia 2006.

in the act of committing or about to commit the offence." I therefore do not agree with Mr. Fraser that the offence under Regulation 27(1)(c) was not arrestable.

- [29] The Port Police at the material time could only be carrying out their duties under section 74(3)(a) and (f) of the Act Cap 8.13. Their lawful duties under these provisions were to prevent crime and maintain order within the airport; and generally to assist in the enforcement of the provisions of the Act and the Regulations. Having regard to Regulations 6 (at paragraph 6 above) and 15 and 16 (at paragraph 8 above) the Port Police are under a duty to enforce these regulations.
- [30] A look at the **Motor Vehicles and Road Traffic Act** Cap. 8.01 can assist in determining whether the respondents were contravening Regulations 6, 15 and 16 at the material time. Section 2 of Cap. 8.01 states that a "Tourism Taxi" "means a public service vehicle including tourism tour bus, safari jeep or jungle vehicle and other such vehicle other than a commuter bus with seating capacity of not less than 4 passengers and not more than 45, used primarily for transporting visitors, and meets the minimum standards of the Tourism Taxi sub sector. Section 55(3) of Cap. 8.01 states that the tourism taxi permit shall "include... conditions considered necessary including restrictions on the place in which the tourism taxi may park for soliciting business." However, Mr. Kervin Mitchell who operates as C.J's Touring Services testified that his taxi licence did not restrict him from operating anywhere in Saint Lucia.
- [31] Section 2 of Cap. 8:01 also defines "taxi" to mean "a motor vehicle designed to carry not more than 45 persons, that with its driver is operated for hire but does not include a public omnibus"; "taxi stand" means "reserved parking for designated taxis from which fares may be solicited"; and "public omnibus" means a motor vehicle in respect of which an omnibus route permit is issued under section 54"
- [32] Section 54(3) of Cap. 8.01 states that the public omnibus route permit shall "include any conditions considered necessary, including restrictions on – (a) the places in which the public omnibus may be parked for soliciting fares; (b) the route

which the public omnibus may ply; and (c) the places in which the public omnibus may pick up or set down passengers. Pursuant to section 53 of Cap. 8:01 the Minister may publish in the Gazette the places which have been designated as a taxi stand or a public omnibus stand.

[33] The respondents were drivers employed by CJ's Touring Services which is a tourism taxi provider. They drove their employer's vehicles to the airport to collect the arriving passengers who were Sandals guests. CJ's Touring Services was not based or pegged at the airport to solicit fares, unlike the Southern Taxi Association members. In my view, the respondent's presence at the airport in the arrival lobby area did not amount to soliciting arriving passengers within the ordinary meaning of the word "solicit". In the absence of any definition in the Act or Regulations, the **Oxford Dictionary** meaning of "solicit" is to "approach someone and offer one's services." This connotes an element of uncertainty as to whether or not the services offered will be accepted. What the respondents were doing at the airport was well designed, planned, pre-arranged and certain. The arriving Sandals guests had already accepted that Sandals would through their agents, collect them and transport them from the airport to their resort. The respondents were not parked at the airport for soliciting business in such circumstances.

[34] In my judgment the evidence before the trial judge was also incapable of establishing on a balance of probability that at the time the respondents were arrested they were plying for hire, trading or operating a business at the airport. The term "plying for hire" is an idiom which means, according to the **Oxford Advanced Learners Dictionary** "to look for customers, passengers, etc. in order to do business." The term obviously has a different meaning from the individual words "ply" and "hire". In **Cogley v Sherwood**<sup>13</sup> the Court of Appeal Queens Bench Division held that it was essential before one could say that a vehicle was plying for hire, first, that it should be exhibited, be on view to the public, and secondly, that it should, while on view, expressly or impliedly solicit customers in

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<sup>13</sup> [1959] 2 All E.R. 313.

the sense of inviting the public to use it. The respondents by a previously booked arrangement were collecting the Sandals passengers in the arrival lobby at the airport so as to transport them to the Sandals resort. Their vehicles clearly were not on view to the public expressly or impliedly for soliciting customers in the sense of inviting the public to use their vehicles. Neither were the respondents looking for customers at the airport in order to do business.

- [35] Indeed, Regulation 17(5) appreciates that drivers of taxis, motor omnibuses, or commuter buses not plying for hire will come to or park at the airport for reasons other than plying for hire. Regulation 17(5) states that:

“A driver of a motor vehicle other than a public service vehicle or a driver of a public service vehicle not plying for hire shall on arrival at an airport park his or her vehicle in an area provided for private motor vehicles or public service vehicles not for hire as directed by the Superintendent or a police officer.”<sup>14</sup>

- [36] It must also be borne in mind that Regulation 6 (prohibiting carrying on trade or business on an airport) and Regulation 15 (prohibiting plying for hire from an airport) are enabled by section 73(1)(a)(b)(c) and (m) of the Act, which permits the making of Regulations for the control, management and maintenance of order at the airports providing for specific matters including:

(a) the regulation of any work, service or facility performed or provided thereat;

(b) the control of all persons and vehicles on such premises, the maintenance of order thereon and the admission or exclusion of persons therefrom...;

(c) regulating, controlling and prohibiting the doing or omission of any thing or class of thing within the boundaries of any [air]port or any specified part or parts of any [air]port either at all times and on all occasions or at any time or times...;

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<sup>14</sup> See Regulation 2 of the Airport Regulations which defines “motor omnibus” and “public service vehicle” by adopting the definition assigned to each of them by section 2 of the repealed Motor Vehicles and Road Traffic Act 1994; which also defines “taxi” as “a public service vehicle, other than a commuter bus with seating capacity of not less than four passengers and not more than forty-five”.

(d) to (l); (m) the licensing ...of contractors for supplies and victualling, and other persons concerned in or engaged in performing any service or work in connection with the [air]ports.”

- [37] Regulation 6 should be read in the context of section 73 (1)(a) and (m) in my view, which speaks to business operations performed or provided at the airport; and/or connected with the airport. There is no evidence that the respondents were carrying on any such trade or business.
- [38] It follows therefore, that the directions given by the Port Police officers “not to pick up Sandals passengers”, was a direction without force of law; since collecting or picking up Sandals passengers arising from booked arrangements with Sandals and the respondents’ employer was not prohibited by the Act or Regulations.
- [39] The Port Police officers were obviously enforcing the directions given to them by the General Manager of the Authority. Though such directions may have been given in good faith, believing that the General Manager had the power to give such directions pursuant to section 19 of the Act Cap. 8.13, the General Manager had no power to order members of the public having lawful business at the airport, not to collect their arriving passengers from an area which was not a restricted area without lawful cause. Such directions would have no binding effect on the public. The problem that those directions sought to cure is a matter best resolved by legislation.
- [40] There was no evidence before the trial judge that would justify a lawful arrest of the respondents by the Port Police on the grounds that the respondents were committing or about to commit a crime, behaving disorderly within the airport, or lawfully enforcing the provisions of the Act and its Regulations<sup>15</sup>.
- [41] The reasoning of the trial judge differs materially from my analysis and conclusions. Though she may have erred in her reasoning her conclusions that

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<sup>15</sup> See section 74(3)(a) and (f) at paragraph 30 above.

the directions given to the respondents were unlawful, and that the Port Police acted unlawfully by arresting the respondents cannot be faulted.

[42] Consequently, I would dismiss the appeal, and affirm the order of the court in relation to the damages awarded for damages and prescribed costs to each respondent. The respondents are entitled to costs in the appeal being two thirds of the prescribed costs in the court below in accordance with CPR 65.13(b).

**Ola Mae Edwards**  
Justice of Appeal

I concur.

**Janice George-Creque**  
Justice of Appeal

I concur.

**Davidson Kelvin Baptiste**  
Justice of Appeal