

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2011/1201

BETWEEN

CHURCH OF GOD SEVENTH DAY INCOPORATED

Claimant/ Applicant

And

1. HECTOR MATHURIN

2. GABRIEL GOOLAMAN

3. PHILLIP MCLAUREN

4. BERNARD AUGUSTINE

5. MOUNT ZION CHURCH OF GOD SEVENTH DAY INCOPORATED

Defendants/ Respondents

Appearances:

Ms. Andra Gokool Foster for the Applicant

Ms. Isabella Shillingford, Mrs. Wauneen Louis-Harris, and Mr. Horace Fraser for the Respondents

2011: 19th December

2012: 10th & 18th January

DECISION

- [1] **BELLE J:** On the 18th day of November, 2011, the Applicant, The Church of God Seventh Day Incorporated (The Church) filed an Application asking for certain restraining orders against the Respondents. The Application was made by the Chairman of the Council of

Members Pastor Joseph Deterville and its Assistant Secretary/ Treasurer Pastor Lee St. Juste on the behalf of the Church.

[2] The Application prayed for:

1. "An interim injunction to restrain or prohibit the Defendants whether by themselves, their servants and or agents or howsoever otherwise from entering, remaining in or in any way interfering with the Applicant's properties being:
 - (a) A portion of land registered in the Land Registry as Block 0031C Parcel 28 together with a Church building erected thereon and the contents therein situate at Fond Bernier, in the Quarter of Soufriere.
 - (b) A portion of land registered in the Land Registry as Block 162B Parcel 112 together with a Church building erected thereon and the contents therein situate at Ti Rocher, in the Quarter of Micoud.
2. An interim injunction restraining or prohibiting the Defendants whether by themselves, their servants and or agents or howsoever otherwise from:
 - (a) Fraudulently and unlawfully purporting to be conducting the business of and acting as Elders, Deacons, Ministers, Executive Officers or other representatives of the Applicant.
3. An interim injunction prohibiting the Defendants whether by themselves, their servants and or agents or howsoever otherwise from confiscating, removing, destroying or in any way interfering with the assets, records, receipts and other documents and materials within and belonging to the Applicants' Fond Bernier, Soufriere and Ti Rocher, Micoud branches or Churches and property.
4. An interim injunction compelling the Defendants whether by themselves, their servants and or agents or howsoever otherwise to produce and hand over an inventory of assets, records, receipts and other documents and materials, financial statements including bank statements of all funds belonging to the Applicant's Fond Bernier, Soufriere and Ti Rocher, Micoud branches of the Churches and property.
5. An interim injunction compelling the Defendants to produce a membership list, an inventory of assets, records, receipts and other documents and materials financial statements including bank statements, an inventory of assets and all funds belonging to Defendant No. 5 Mount Zion Church of God Seventh Day Incorporated.

6. An order that the Registrar of Companies be directed to remove Fond Bernier, Soufriere as the Address of office of Defendant No. 5, Mount Zion Church of God Seventh Day Incorporated.
7. Interest.
8. An order that the Defendants be made to bear the costs of and occasioned by these proceedings.
9. Further or other relief."

[3] In the Affidavit in Support, the Applicant states that they are Joseph Deterville and Lee St Juste, Chairman of the Council of Ministers and Assistant Secretary/ Treasurer of the Church of God Seventh Day Incorporated of Headquarters Entrepot, in the Quarter of Castries.

[4] The Deponents set out in an Affidavit the reasons for seeking the restraining orders. The Church is the registered owner of lands already identified in the application. The Defendants had been expelled or defellowshipped and are no longer members of the Applicant Church. Neither were they ordained by the Council of Ministers to perform ministerial duties.

[5] The Applicants alleged that the 5th Defendant, Mount Zion Church of God Seventh Day Incorporated was registered on 22nd August, 2011 as Company No. 2011/C239 with its registered address purportedly being that of the Applicant Church's Fond Bernier Property. This allegation was not denied and is accepted by the Court.

[6] The Affidavit claims that the Defendant No.1; Hector Mathurin had been informed of his expulsion from the Church by letter dated 5th July, 2011. But he refused to leave the Church and continued unlawful activities and incited some of the Church's members to join his rebellion.

[7] Among the persons recruited by the No. 1 Defendant were the Nos. 2, 3, and 4 Defendants, Gabriel Goolaman, Phillip McClaren, and Bernard Augustine. Consequently,

they have all been fraudulently and illegally engaging in activities which are later particularised as follows:

1. Operating as a separate De Facto Council within the Applicant Church.
2. Performing functions of Deacons, Elders, Executive or other Administrative Officers for which they were never appointed by the Council of the Applicant Church.
3. Performing religious rites including baptisms and communion which are duties performed only by ordained ministers and purporting to register new membership to the Applicant Church in breach of the constitution.
4. Collecting and keeping for their own purposes tithes, offerings and other monies belonging to the Applicant Church which should be submitted immediately on receipt to the Head Office.
5. Generally usurping the authority of the Council and attempting to operate as independent Churches in the Applicant Church's property at Fond Bernier, Soufriere and Ti Rocher, Micoud.
6. From August, 2011 operating their own Church registered as Mount Zion Church of God Seventh Day Incorporated with the Applicant's Church properties at Ti Rocher, Micoud and Fond Bernier, Soufriere which is the registered address of the Mount Zion Church of God Seventh Day Incorporated.
7. Refusing to leave the Applicant Church's property even after being expelled from membership.

[8] The Applicants stated that after serving letters confirming the expulsion of Defendants 1, 2, 3, and requesting that they vacate the property and pre-action lawyers letters on Defendants 1 and 2 demanding that they no longer enter the premises of the Church at Fond Bernier, Soufriere and Ti Rocher, Micoud, they proceeded with the action because the Defendants refused to comply. Defendant No. 3 who was out of state was not served this letter neither was No. 4 at the time of the making of the Affidavit.

[9] This is the substance of the Application filed and served on the Defendants and which came on for hearing before the Court on the 22nd day of November, 2011.

- [10] After giving the Defendants time to respond, the Claimants argued in favour of the injunctive relief which had been requested.
- [11] The Applicant argued that the application was in keeping with the **American Cyanamid**¹ guidelines. Firstly, there was a serious issue to be tried. Secondly, the Applicants had made an undertaking in damages.
- [12] Thirdly, damages would not suffice as a remedy in the circumstances. Fourthly, the balance of convenience was in favour of the Church and against the Respondents. It should be noted that the Court should not be involved in detailed examination of conflicting evidence at this stage, but would restrict itself to the issue whether there is a serious issue to be tried and the other issues mentioned above, based on the application before the Court.
- [13] In *American Cyanamid Co. v Ethicon*² Ltd, Lord Diplock stated:
- “it is no part of the Court’s function at this stage to try to resolve conflicts of evidence on Affidavit on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations . These are matters to be dealt with at the trial.”*
- [14] It is based on this backdrop that the Applicant argued that the restraining orders should therefore be granted.

Respondents’ Arguments

- [15] The Respondents took a preliminary point that the Applicants lacked *locus standi* because they were not the trustees of the Church’s property. According to the Respondents, the Church had to act through trustees because of its fluctuating membership, it is of a non juristic nature and case law supported this contention. A Church was not a juristic creature

¹ *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396.

² [1975] AC 396

Counsel contended. Therefore, the legislature had to create a statutory trust to make it possible for the Church to act as a legal entity. However, the cases cited all referred to non-incorporated associations not statutory corporations as was created under the Church of God (Seventh Day) Incorporated Act No.7 of 1983.

- [16] Counsel for the Respondents argued that the law of trust applied and there was no way around acting in the name of the trust unless there was evidence that the trustees were appointed under the Act and acted as such in this application. According to Counsel, the authority **Re Tonbridge School Chapel No.2 Rochester Consistory Court**³ quoting from **Re St Mary's Banbury**⁴ a Church is a house of God, which does not belong to conservationists, to the state or to the congregation.
- [17] The Church was operating contrary to the Act and according to the Respondent/ Defendants; the persons named had not identified themselves and shown their authority to bring these proceedings.

Applicant's Arguments

- [18] Counsel for the Applicants was of the view that the Church acted by way of one trustee and another member. The Church under the Act did not have to act through the trustees. Counsel asked the Court to take cognizance of the words of the statute which said the corporation could sue in its name. There was no reason to go beyond this and the Respondents' arguments had not shown that there was any legal authority to the contrary in the case of Saint Lucia.
- [19] Indeed Section 3 of the statute states:

"The President, the Secretary and the Treasurer of the Corporation and their Successors in office are hereby appointed Trustees of the Corporation and are hereby created a Body Corporate by the name of the Church of God (Seventh Day) Incorporated and by that name shall have perpetual succession and may sue

³ [1993] Fam 281

⁴ [1987] Fam 136

and be sued, in all Courts of Justice in the State and shall have and use a Common Seal provided that such seal shall only be used in the presence of at least two of the trustees.”

[20] Section 5 of the Act states:

“No Act or Proceeding of the Corporation shall be invalidated by reason of any defect in the appointment of any person to any of the offices mentioned in Section 3 of this Act or by reason of any defect in the notification or in the registration required by Sub-section (1) of Section 4 of this Act.”

[21] Section 8 (a) of the Act states:

“The corporation shall have the following powers:-

(a) To acquire, hold, purchase, lease, possess and enjoy any lands and hereditaments whatsoever, absolutely or for leasehold or for any other estate or interest therein and all other property, real or personal;”

[22] It may be instructive to point out at this time that it is well known trust law that the inaction of trustees does not defeat the purpose of the trust. Section 5 of the Act therefore puts beyond doubt that in relation to the role of the trustees, even if they have not been properly appointed or failed to act, the Body Corporate must continue to function for the purpose of the trust. The Court’s assistance can be obtained in this regard.

[23] Article 2194 of the Civil Code may be of some assistance in that it enables any person with an interest in land held under a trust to apply for orders in relation to that interest. In this case the interested person would be the Church.

General Issues

[24] The Respondent raised a number of issues intended to defeat the application including that they were agents of the trustees of the Church. They also alleged that the application was not urgent since there had been matters in contention between themselves and the Church from 2004. They alleged that the Applicants did not come to equity with clean hands because they failed to disclose evidence upon which the Court can be satisfied that

the purported expulsions were invalid being in breach of natural justice and unconstitutional.

[25] The Respondents also pointed to material which they considered to be scandalous, embarrassing and unsubstantiated and which should be struck as being in violation of Part 30 (3) of the CPR 2000.

[26] The Respondents went into detail on the many problems with the internal governance of the Church which are clearly matters of evidence which would be in contention at a full blown trial but which the Court should not delve into at this time to substantiate or refute these claims of oppressive behaviour in violation of the Church's constitution.

[27] The Respondents also stated that they were doing nothing fraudulent and had paid all tithes and offerings received towards the work of the Church of God. They said they were in a position to account for these receipts and produced an account of income and expenditure for the branches of the Church for the said period.

[28] Finally the Respondents say that the Applicants never refused to hand over tithes and offerings demanded. It was therefore misleading for the Applicant to suggest that the money belonged to the Applicant and that they were keeping it for their own purposes.

Conclusions

[29] The preliminary point taken by the Respondent's is rejected for a number of reasons. Firstly, a literal reading of Section 3 of the Legislation does not convey the meaning being urged upon the Court by the Respondents. Indeed, there is no stipulation that a law suit must be filed in the name of a trustee or the trustees. The section says the Corporation has the power to sue and be sued in its name as stated in the statute. That name is The Church of God (Seventh Day) Incorporated.

[30] I am of the view that the argument that the trust is established because the Church is a fluctuating group is flawed. The Act facilitates the existence of the Church as a body

corporate, a legal personality known as Church of God (Seventh day) Incorporated. It is the Act which enabled the church to purchase the land. The Church as a Corporation is not a fluctuating entity.

[31] The Corporation is a statutory corporation which must confine itself to the objects of a Church.

[32] This is therefore not the same creature as an unincorporated association referred to in cases such as **Theo v Wijerwa Dena et al**⁵ and **Re. Tonbridge School Chapel (No.2)**⁶ where the entities had no legal personality and could not hold property.

[33] Secondly, as previously stated the Court will not become engaged at this time in examining whether the internal governance of the Corporation is ultra vires the statute or other legal rules of governance. See: **American Cyanamid** Guidelines as stated above. The undertaking in damages releases the Court to take the chance of leaving these issues to be tested at trial.

[34] The Applicants named seem proper since the legislation itself calls for flexibility with regard to the processes and Acts of the Church Council pursuant to Section 5 of the Act. There is no need to rely on the CPR 2000. Thirdly, any examination of the history of the expulsion of the Respondents and the election of council members will involve examination of contentious evidence which is not the role of the Court in an application for injunctive relief.

[35] On the whole the Court finds that the Applicant has demonstrated that there is a serious issue to be tried and the cause of action to preserve the property of the Church for its membership is clear. There is evidence of the election to the Church Council of the persons whom have signed and filed affidavits which the Court accepts.

On the issue of Damages being adequate:

⁵ [1960] AC 842

⁶ [1983] Fam. 281

- [36] Since the Defendants allege that they are agents of the Applicant it should not be difficult for them to accept that they must follow the instructions of their principals even if improperly constituted as they allege until they can prove the said impropriety. They have not shown any document to the Court which demonstrates that the trustees made them agents and meaning that only the trustees can dismiss them. Indeed registering another Church and having it function on the premises of the original Church must be prima facie evidence of repudiation of the alleged agency agreement by the Respondents. Damages would therefore not be an adequate form of relief in the circumstances.
- [37] In this case I am of the view that the balance of convenience must lie in favour of the Applicants on the evidence. The incorporation of a rival Church is simply incompatible with a peaceful co-existence of the competing factions.
- [38] I therefore hold that the Respondents should not use the Church's properties in any way inconsistent with their alleged agency or licence granted by the Church Council or as permitted by the Applicants. At the highest they would be permitted to enter and use the Church property as licensees even if they are members of the Church since they do not themselves have any interest in the properties.
- [39] The Court will not order that the accounts of Zion etc. be disclosed without further evidence to show the entitlement to such information.
- [40] I recognize Ms. Isabella Shillingford as Counsel on record in this matter. However, Counsel is entitled to have lead Counsel assist her even though such Counsel is/ are not on record and are not to be served with process or to serve process in the matter.
- [41] I do not agree that at an inter-partes hearing for an injunction the Respondent cannot raise issues to defeat the application without making an application for alternative orders or for dismissal. The evidence in reply may be enough to raise doubt as to whether an injunction should be granted.

[42] As far as the issue of scandalous material being used is concerned, even if this material re: the moral standing of the No. 1 Respondent is struck out it would not change the result which is that the Respondents cannot claim more than agency or license in relation to the use of the properties in issue and therefore should obey the instructions of the principals in their use of the properties until further order of the Court.

[43] I therefore order as follows:

IT IS HEREBY ORDERED

1. An interim injunction is granted to restrain the Respondents whether by themselves, their servants and or agents or howsoever otherwise from entering, remaining in or in any way interfering with the Applicant's properties being:
 - (a) A portion of land registered in the Land Registry as Block 0031C Parcel 28 together with a Church building erected thereon and the contents therein situate at Fond Bernier in the Quarter of Soufriere. AND
 - (b) A portion of land registered in the Land Registry as Block 162B Parcel 112 together with a Church building erected thereon and the contents therein situate at Ti Rocher in the Quarter of Micoud.
2. An interim injunction is granted restraining or prohibiting the Respondents whether by themselves, their servants and or agents or howsoever otherwise from:
 - (c) Fraudulently and unlawfully purporting to be conducting the business of and acting as Elders, Deacons, Ministers, Executive Officers or other representatives of the Applicant AND
 - (d) Fraudulently and unlawfully conducting the operations of Respondent No. 5 on the pretext of acting for the Applicant.
3. An interim injunction is granted prohibiting the Respondents whether by themselves, their servants and or agents or howsoever otherwise from confiscating, removing, destroying or in any way interfering with the assets, records, receipts and other documents and materials within and or belonging to the Applicant's Fond Bernier, Soufriere and Ti Rocher, Micoud branches or Churches and property.
4. An interim injunction is granted compelling the Respondent's whether by themselves, their servants and or agents or howsoever otherwise to produce and hand over an inventory of assets, records, receipts and other documents and materials, financial

statements including bank statements of and all funds belonging to the Applicant's Fond Bernier, Soufriere and Ti Rocher branches or Churches and property.

5. The No. 5 Respondent is restrained from using Fond Bernier, Soufriere as the Address of Office of Defendant No.5 Mount Zion Church of God Seventh Day Incorporated. The said address should be removed from the Company Registration record forthwith.
6. Interest.
7. Respondents are to bear the costs of and occasioned by these proceedings, pursuant to Paragraph 65 of CPR 2000.
8. All orders will remain in force pending the outcome of the trial or future order of the Court.


FRANCIS H V BELLE
High Court Judge