

EASTERN CARIBBEAN SUPREME COURT
THE FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE COURT OF APPEAL

HCVAP 2012/009

BETWEEN:

NORTH SHORE VENTURES LIMITED

Appellant

and

[1] JIREHOUSE FIDUCIARES NEVIS LIMITED
[2] JIREHOUSE RESETTLEMENT FOUNDATION
[3] JIREHOUSE MANAGEMENT NEVIS LIMITED
[4] WILLIAM TACON
[5] ELEANOR FISHER
[6] ZOLFO COOPER (BVI) LIMITED
[7] ZOLFO COOPER (CAYMAN) LIMITED
[8] FREDERICK CHARLES SATOW
[9] FRANK MICHAEL EVELYN

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

On written submissions:

Ms. Dahlia A. Joseph of Daniel, Brantley & Associates for the Appellant
No appearance for the Respondents

2012: July 13.

Civil appeal – Interlocutory appeal – Injunction – Whether judge exercised discretion correctly in light of applicable law

An order was made by Benjamin J which directed that Mr. Tacon and Ms. Fisher be appointed joint liquidators of Anstead Holdings Trust Foundation in place of Mr. Satow and Mr. Evelyn. Jirehouse Fiduciaries Limited later filed an application against North Shore and respondents 4-7 seeking an injunction to restrain Mr. Tacon, Ms. Fisher and Zolfo from taking any further steps pursuant to the same order. Redhead J granted their application

and ordered a limited stay of the order. North Shore Ventures Limited filed an appeal against the order of Redhead J. The appeal was served on all the respondents. However, no submissions of any kind were filed by any of the respondents.

Held: setting aside the order of Redhead JA dated 3rd April 2012 and ordering that costs be costs in the cause, that:

1. The grant of the injunction required that there be allegation of wrongdoing on the part of the liquidators. There were no such allegations. The learned judge failed to give any or appropriate weight to this fact. In light of that, the learned judge erred in the exercise of his judicial discretion.
2. The order which appointed Mr. Tacon and Ms. Fisher joint liquidators of Anstead is a valid order unless set aside. The learned judge failed to give sufficient consideration to the fact that the liquidators were validly appointed, therefore they had the requisite authority to seek and obtain information concerning and in relation to the winding up of Anstead. Accordingly, his decision was wrong in law and ought to be reversed.

JUDGMENT

[1] **MITCHELL JA [AG.]:** This is an interlocutory appeal against an order made by a High Court judge exercising a discretion to issue an injunction. Although I am satisfied that all the respondents were properly served with the notice of appeal, none of them has chosen to comply with the notice of the Chief Registrar requiring them to file and serve their skeleton arguments for the assistance of the Court in determining this appeal.

[2] The record of appeal reveals that on 21st February 2012, John Benjamin J in Chambers in Nevis allowed an application by North Shore Ventures to continue the voluntary winding up of a company Anstead Holdings Trust Foundation under the supervision of the court. He ordered the removal of the two liquidators appointed by the shareholders, Mr. Satow and Mr. Evelyn, and appointed in their place Mr. Tacon and Ms. Fisher. He also ordered accounts from Mr. Satow and Mr. Evelyn.

- [3] On 6th March 2012, Jirehouse Nevis and Jirehouse Resettlement applied to intervene in the proceedings and to set aside the order of Benjamin J, and for leave to appeal the order of Benjamin J, and for a stay of execution. On the same day, Mr. Satow and Mr. Evelyn filed an application for leave to appeal the order of Benjamin J and they also filed a notice of appeal against the order, and they applied for a stay of execution.
- [4] On the 20th March 2012, Jirehouse Nevis and Jirehouse Resettlement filed an application against respondents 4-7 and North Shore seeking an injunction restraining Mr. Tacon and Ms. Fisher and Zolfo from taking any further steps pursuant to the order of Benjamin J. This, it will be recalled was the order which removed Mr. Satow and Mr. Evelyn as voluntary joint liquidators and replaced them with the court-appointed joint liquidators, Mr. Tacon and Ms. Fisher. North Shore challenged the application on the basis that Mr. Tacon and Ms. Fisher were validly appointed joint liquidators by the court. They objected that the injunction sought was effectively a stay of the Justice Benjamin Order by circumventing the law in relation to a grant of a stay. They argued that Jirehouse had shown no legal basis for the grant of the injunction, nor had Jirehouse alleged or established any wrongdoing on the part of the joint liquidators. They also submitted that Jirehouse had no cause of action against the respondents. The application was supported by an affidavit of Mr. Colin Walwyn of Jirehouse Nevis.
- [5] The parties appeared before Redhead J in Chambers on 27th March 2012 when, in response to the submissions of North Shore, Jirehouse withdrew its application of 6th March 2012, and costs were awarded in favour of North Shore. On 3rd April 2012, Redhead J considered the Jirehouse application of 20th March 2012, seeking the injunction restraining Mr. Tacon and Ms. Fisher. He granted the injunction restraining the respondents from taking any steps pursuant to the order of Benjamin J of 21st February 2012, until the determination of the appeal. On 19th April 2012, he delivered written reasons for his decision. He wrote that he was

satisfied that if the respondents obtain the documents which they are requesting, even if the appeal is successful, irreversible and irreparable harm would have been done to the applicants, whereas, if the stay was granted, there would be no prejudice to the respondents in having to wait a few months. He was persuaded by the argument and in his discretion and in the interests of justice he ordered a limited stay.

[6] On 24th April 2012, North Shore filed the notice of appeal against the order of Redhead J. They urge that no wrongdoing was alleged against the joint liquidators and they appeal against the finding that if the respondents obtain the documents in question irreversible and irreparable harm would be caused to the applicants, whereas if a stay was granted there would be no prejudice to the respondents having to wait a few months. North Shore urges that the decision of Benjamin J was a valid order unless set aside. Jirehouse had no standing to apply for and obtain an injunction against the Order of Benjamin J. North Shore urges, among other things, that Redhead J erred in considering the argument that the appointment of the joint liquidators by Benjamin J was wrong in law without any basis being presented to substantiate the argument and without that issue being before the Court for it to determine. They seek an order that the Order of Redhead J be set aside and for costs.

[7] As indicated above, this notice of appeal and the written submissions were served on all of the respondents. There is an affidavit of service of Bailiff Jared Cotton on the Chambers of Adrian Scantlebury, the address for service for Mr. Tacon and Ms. Fisher; on Dr. Henry Browne for Jirehouse Fiduciaries Nevis, Jirehouse Resettlement Foundation, Jirehouse Management Nevis, Mr. Satow, and Mr. Evelyn. There are two affidavits of service of Ms. Viyana Gumbs on Zolfo Cooper Cayman and on Zolfo Cooper BVI. None of them has complied with **Practice Direction 10 of 2011** which provides that skeleton arguments and lists of authorities must be lodged in opposition to every appeal. Nor has there been any indication that any of the respondents opposes the appeal by filing and serving a

notice of objection as required by rule 62.10(3) of the **Civil Procedure Rules 2000**.

[8] The appellants are conscious of the heavy burden¹ that rests on them in challenging the exercise by a judge of a discretion given to him by law in the matter of the grant of an interlocutory injunction. However, they have filed extensive written submissions and authorities in support. I have read them, and I am satisfied that, in the absence of any argument to the contrary, they make a good case for the reversal of Redhead J's order. I therefore set aside the Order made by Redhead J dated 3rd April 2012 on the ground that the learned judge failed to properly exercise his discretion in light of the facts before him and the applicable law. More specifically:

- (i) Having found that Mr. Tacon and Ms. Fisher were validly appointed joint liquidators of Anstead by Benjamin J, the learned trial judge failed to give sufficient consideration to the fact that the joint liquidators were clothed with the requisite authority to seek and obtain information concerning and in relation to the winding up of Anstead and therefore the issue of any alleged breach of confidentiality did not arise;
- (ii) The learned judge failed to consider whether the Jirehouse entities had the requisite standing to apply for the injunction sought;
- (iii) The learned judge failed to consider that the injunction sought was effectively a stay of the Benjamin J Order by circumventing the law in relation to the grant of a stay and in the circumstances ought not to have been granted;
- (iv) On the evidence filed in the Court below, the Jirehouse Entities showed no legal basis for the grant of the injunction sought;

¹ See the judgment of Rawlins CJ in *David Shimeld et al v Doubloon Beach Club Limited* St. Lucia Civil Appeal No. 33 of 2006 (delivered 23rd March 2007).

- (v) The learned judge failed to give any or the appropriate weight to the fact that the Jirehouse Entities did not allege and/or establish wrongdoing on the part of the joint liquidators so as to justify the grant of the injunction sought to prohibit them from carrying out their functions as joint liquidators of Anstead;
- (vi) The learned judge failed to consider that the Jirehouse Entities failed to establish any valid cause of action against the respondents herein.

[9] I have no submissions on costs. The order will be that costs of this application will be costs in the cause.

Don Mitchell
Justice of Appeal [Ag.]