IN THE SUPREME COURT OF GRENDA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2019/0447

BETWEEN:

GBSS FOOTBALL CLUB

Claimant/Applicant

AND

GRENADA FOOTBALL ASSOCIATION

Defendant/Respondent

Appearances:

Ms. Claudette Joseph, with her Mr. Ian Sandy, for the Claimant/Applicant
Mr. Cajeton Hood for the Defendant/Respondent

2019: October 28; 29;
November 11.

RULING

[1] **GILFORD, J.:** The claimant/applicant is the director and the secretary of the GBSS Football Club, hereinafter referred to as '1he Club". The Club is a non-profit company incorporated under the Company's Act, Cap 58A of the 2010 Revised Laws of Grenada. The Grenada Football Association, hereinafter referred to as the "GFA", is the governing body of football in Grenada and handles overseeing top football matches in Grenada.

[2] The Grenada Football Association is guided by the Grenada Football Association 2018-2019 General Competition Rules and Regulations, hereinafter referred to as the "Rules". Article 6.3.e states:

> "Any team found guilty of fielding an ineligible player shall forfeit the match. Victory and the resultant three points and three goals or higher differential score will be awarded to the opposing team."

Article 35, the pertinent parts states:

"c. Protests against the eligibility of players taking part in any matches shall be submitted in writing to the GFA's General Secretariat within twenty-four (24) hours of the match in question.

f. **All questions of eligibility**, qualifications of players or interpretations of the rules, except where stated in these rules or any other rules or regulations of the Association **shall be referred to the Executive Committee or a Committee acting on its behalf.** However, no objection relative to the dimensions of the ground, goal post or other aspects of the game shall be entertained by the Association unless a protest is lodged with the Referee before the commencement of the match. Any Club lodging a protest with the Referee and failing to withdraw the protest or not proceeding with it shall be deemed guilty of serious misconduct and shall be dealt with by the Executive Committee.

g. Protests and complaints must contain full particulars of the grounds upon which they are founded and must be lodged in duplicate with the General Secretariat of the Association within 24 hours of the conclusion of the match or occurrence to which they refer. No objection or protest shall be withdrawn except by permission of the Executive Committee. Any member of the Executive Committee being associated in any manner with the Membership Organization concerned shall not be present at the deliberations (except as a witness or representative) when such objection or protest is being considered and decided.

h. Any dispute occurring between Membership Organizations shall be referred to the Committee acting on behalf of the Executive Committee whose recommendation upon acceptance by the Executive Committee shall be binding upon all parties.

i. No protest shall be considered by the Executive Committee unless the complaining member has deposited with the General Secretariat the applicable fee of Fifty Eastern Caribbean dollars ($50.00 EC) along with submission of the protest."

[3] On the 25th August 2018, the Club played the Hurricanes Football Club, hereinafter referred to as "the Hurricanes". The Club learnt on the 9th September 2018 that the Hurricanes allegedly fielded two ineligible players.

[4] The claimant/applicant wrote to Mr. Bruce Swan, the Competition Officer, on the 1Oth September at 1020 a.m., via email, informing him of the alleged ineligibility and, "an official protest from GBSS FC".

[5] Mr. Swan responded via email at 12:49 p.m. on the said day. He acknowledged receipt of the email and referred the claimant/applicant to Article 35.c of the Rules.

[6] Mr. Swan responded via email at 4:49 p.m. on the said day. He acknowledged receipt of the email and referred the claimant/applicant to Article 35.c of the Rules.

[7] The claimant/applicant responded to Mr. Swan's email at 6:49 p.m. The claimant/applicant in that email indicated that they would not have been able to know about the players' ineligibility, among other things.

[8] The matter the claimant/applicant alleged was never brought to the attention of the Player Status Committee. The season ended with the claimant/applicant's team automatically being elevated at eighth position, by the last qualifying spot, in the Premier League, hereinafter referred to as "the League".

(9] Eagle Super Striker FC, hereinafter referred to as "the Striker" placed 9111 in the Premier League. The Strikers, who placed 9111 in the League, protested. Their protest was heard, and they were elevated to the eighth position, thereby

relegating the claimant/applicant to the ninth position and ultimately the playoffs. The claimant/applicant alleged that the Striker's protest was heard out of time and not in compliance with the Rules by the Appeals Committee.

[10] The decision of the Appeals Committee was conveyed to the claimants/applicants on the 29th August 2019. The claimant/applicant submitted a protest to their relegation. On the 27th August 2019 the claimant/applicant paid a protest fee, which was accepted.

[11] The defendant/respondent by email dated 28th August 2019 informed the claimant/applicant that it was their understanding that the protest was against the decision of the Appeals Committee. The claimant/applicant did not take up the invitations to the Arbitration Tribunal on the ground that they were not parties to the hearing before the Appeals Committee and, even if they did attend, the minimum standards as mandated by FIFA Circular 1010 were not complied with.

[12] The claimant/applicant received a Notice of Fixture on the 23rd September 2019. The Notice was withdrawn on the 24th September 2019. On the 1st October 2019 the claimant/applicant received another Notice. The Notice indicated that the first match would be played on the 1st October 2019. The claimant/applicant informed the defendant/respondent by letter dated the 2nd October 2019 of their intention not to participate in the said game.

[13] On the 3rd day of October 2019 the claimant/applicant applied to the court by way of application without notice for injunctive relief to prevent the defendant/respondent from proceeding with the playoffs. The application was dismissed.

[14] Thereafter, the claimant/applicant applied to the Court of Appeal without a Claim Form being filed and an injunction was granted in the following terms:

> **"AND UPON** the claimant by his counsel undertaking
>
> (1) To issue the claim form on or before Wednesday the 9th of October 2019

(2) To serve a copy of the application, affidavit in support together with a copy of this order, on or before 3:00 p.m. on Saturday the 5th October 2019

(3) To abide by any order of this Court as to damages, in case this Court shall hereafter be of the opinion that the respondent shall have sustained any damage by reason of this order which the claimant ought to pay.

IT IS **HEREBY ORDERED THAT:**

(1) The respondent whether by itself, its servants or agents be restrained from proceeding with the football playoff match scheduled for Sunday 61h October 2019 until Monday 14111 October 2019 or until further order and in the meantime from proceeding with the playoff matches for the relegation to the conference or promotion to the Premier League, pending the hearing of this appeal

(2) The application for interim injunction shall be further considered by a judge below, at an Inter partes hearing on 141h October 2019, or in any event no later than 28111 October 2019

(3) The respondent is at liberty to apply to the court to discharge this injunction on 48 hours previous notice to the applicant/appellant. "

[15] The claimant/applicant discharged their undertaking regarding issuing the claim form and serving the Order of the Court on the defendant/respondent.

[16] The claim issued by the claimant/applicant prayed for both declaratory and injunctive relief.

[17] This ruling is in respect of the application by the claimant/applicant for an injunction. The Court heard the application on the 28111 and 29111 October 2019. Evidence in support and opposition of the application is by affidavits. The

court also heard submissions from both counsel for the claimant/applicant and the defendant/respondent.

[18] **Part 11 Argument**

"Service of application where order made on application made without notice

11.15. After the court has disposed of an application made without notice, the applicant must serve a copy of the application and any evidence in support on all other parties.

Applications to set aside or vary order made on application made without notice

11.16 (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.

[19] The Court has heard both Counsel on the issue of Part 11.16 of the CPR.

[20] Paragraph 3 of the order shortened the time under rule 11.16 (2) within which the defendant/applicant could have applied to have the order discharged. This may have been due to the exigencies of the case. In the view of this Court, what paragraph 3 of the order does is, it prevents the defendant/respondent from applying to the court after the expiration of the 48 hours. It therefore meant that they were bound by the order and had to await the outcome of the inter partes hearing of the application. Apparently, there was no urgency on

the part of the defendant/respondent to have the order discharged. The court is of the view that the failure to apply to have the order discharged does not in any way prevent this Court from hearing the matter inter partes.

[21] Paragraph 2 of the order specifically directed this Court to conduct an inter partes hearing of the matter. This must be to allow this Court to determine the merit of the application after hearing both parties. This is to be done whether the defendant/respondent exercised his right under paragraph 3 of the order. The claimant/applicant fails on this issue.

Whether to have the Injunction stand

[22] In **American Cyanamid Co. v Ethicon** Ltd1 Lord Diplock laid down guidelines on how the court's discretion to grant interim injunctions should be exercised.

[23] The court must also be careful to apply the overriding objective, and to grant an injunction only if it is 'just and convenient'.

Status Quo

[24] The objective of an interlocutory injunction is to ensure that the status quo is maintained. Lord Diplock in **American Cyanamid**[2] said, "Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo'.3

Serious Question to be tried

[25] Counsel for the claimant/applicant referring to the authority of **Bradley v Jockey Club4** submitted that the role of the court, in these proceedings, is merely a supervisory one, not a determinative one, of the substantive disputes. Counsel submitted that the function of the court at this stage is not to

[1] [1975] AC 396.
[2] Ibid.
[3] Ibid. p. 408.
[4] [2004] All ER (D) 11 (Oct}.

determine whether the proper procedure was followed, but whether there is a serious issue to be tried. Counsel urged the court not to embark on a mini trial upon the conflicting affidavit, to evaluate the strength of each party's case.

[26] She also submitted that there is a serious issue to be tried. The issue involves whether in refusing to transmit the applicant/claimant's protest first filed on 1Qth September 2018 and renewed on 27111 August 2019, to the Player Status Committee as is required by Art. 6.1.c of the Rules, the defendant/respondent breached the claimant/applicant's rights to natural justice. This is in the light of the fact the claimant/applicant alleges that another team was heard despite not following the required procedure.

[27] Counsel for the defendant/respondent submitted that there is no serious issue to be tried and damages are an inadequate remedy. The defendant/ respondent contended that the only outstanding matter is whether, based on a proper interpretation of the Rules, there is any serious issue to be tried.

[28] In **National Commercial Bank Jamaica Limited v Clint Corp. Limited,**[5] the High Court and the Court of Appeal of Jamaica in deciding whether to grant the injunction embarked on a process of classification of the injunction to determine whether it was mandatory or prohibitory, respectively. In dealing with the issue their Lordships, "consider[ed] that this type of box-ticking approach does not do justice to the complexity of a decision as to whether or not to grant an interlocutory injunction•,s and outlined factors which the court could have taken into consideration in determining whether or not to grant an injunction.

[29] In determining whether there is a serious issue to be tried, Lord Diplock said:

> "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult

[5] [2009] UKPC 16.
[6] 1bid. para 21.

> questions of law which call for detailed argument and mature consideration ."[7]

Lord Diplock said further,

> "It may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case s

[30] Therefore, it is the duty of the court at this stage is to ascertain whether there is a serious issue to be tried on the merits of the case. However, the claimant/applicant "**must show a likelihood of success at the trial".9**

[31] The court finds that there is a serious issue to be tried. The claimant/applicant has proved on the face of the evidence that there may be a breach of its right to natural justice. Further, the fact that the defendant/respondent has recognized that there is a need to interpret the Rules is indicative of a serious issue to be tried.

(32] The claimant/applicant outlined what the claimant/applicant did to assert its rights. However, the facts show that the claimant/applicant did not follow the Rules and took no recognizable action on the matter for an entire year,desptte being directed to Article 35 of the Rules by the representative of the defendant/respondent. The claimant/applicant only acted when the claimant/ applicant was relegated to the playoff series. The court agrees with the defendant/respondent that the claimant/applicant "only now seeks to prosecute an alleged protest ... in the hope that success in the prosecution would save the claimant/applicant from having to be involved in a playoff". The court finds that the claimant/applicant has not shown a likelihood of success at the trial.

---

[7] American Cyanamid p.407.
[8] Ibid. p. 409.
[9] Jetpak Services Ltd v. BWIA International Airways Ltd. (1998) 55 WIR 362 at 370.

Adequacy of Damages

[33] The court having found that there is a serious issue to be tried on the merits, will now determine whether the claimant/applicant will be adequately compensated by an award of damages at trial. Lord Diplock said:

> "If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no [interim] injunction should normally be granted."[10]

[34] Both parties submitted that damages would not be an adequate remedy. The claimant/applicant made no averments to the adequacy of damages in its initial affidavit. However, in paragraph 16 of its affidavit filed on the 11th October 2019, it is averred that,

> "Prejudice to the Applicant is set out clearly in the letter to the Respondent exhibited as LE-20. Additionally, the Applicant has already lost the following players to other teams ... Another disadvantage to the Applicant in the Respondent switching the points standings at this time is that if the Applicant is forced to participate in the playoffs, it will not be able to field the same team that played throughout the season because of the players that have transferred."

(35] The defendant/respondent averred in its affidavit filed on the 1Qth October 2019 that damages would not be an adequate remedy. That an injunction would have a negative impact on their reputation, both nationally and internationally. The defendant/respondent also averred that it "is presently at risk of losing significant cash incentives from FIFA for successful completion of its competition."

(36] The learned writers of **Blackstone** in addressing the issue of damages, highlighted that damages will be inadequate if:

> (a) The defendant is unlikely to be able to pay the sum likely to be awarded at trial;

[10] Ibid. p, 408.

(b) The wrong is irreparable;

(c) The damage is non-pecuniary;

(e) Damages would be difficult to assess.[11]

[37] The court is satisfied, having regard to all the evidence, that damages in this case would be an adequate remedy for the claimant/applicant. On the other hand, the claimant/applicant has not shown that it is in a position to pay the defendant/respondent damages. The evidence shows the defendant/respondent stands to suffer both pecuniary as well non-pecuniary loss.

[38] In the light of the foregoing, it is clear to the court that the defendant/respondent would be in a better position to compensate the claimant/applicant financially or otherwise if the claimant/applicant succeeds with the claim. The claimant/applicant has not categorically proven that damages would be inadequate should the claim succeed.

Undertakings in Damages

[39] In dealing with the issue of damages the court must be satisfied that the claimant/applicant will be able to compensate the defendant/respondent for any loss that the defendant/respondent may sustain. Lord Diplock in **American Cyanamid[12]** said,

> "If, on the other hand, damages would not provide an adequate remedy for the plaintiffs in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiffs undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an [interim] injunction.

[11] Para. 37.22.
[12] American Cyanamid Co. v Ethicon ltd [1975) AC 396.

[40] Counsel for the claimant/applicant submitted that there was no requirement at this stage of the proceedings to prove that the claimant/applicant would be able to compensate the defendant/respondent. Counsel also submitted that in deciding whether the claimant/applicant could meet the costs undertaken in damages is a whole separate application and is not to be considered by this Court. The court does not agree with counsel on this point, for if it were so, it simply means that anyone, being a man of straw, could come before the court knowing that the undertaking can never be met. Since the undertaking is to the court and the burden rests on the claimant/applicant to satisfy the court as to its undertaking, it is only proper that some evidence is presented to satisfy the court that the undertaking to damages could be enforced or met.

[41] The claimant/applicant has not convinced the court that the defendant/ respondent can be adequately compensated under the claimant/applicant's undertaking as to damages.

Balance of Convenience

[42] In relation to this aspect of the test, Lord Diplock said,

> "It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises ..."[13]
>
> "It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case."[14]

[43] In considering the balance of convenience the court must find which course would be "likely to cause the least irremediable prejudice to one party or the other".[15]

---

[15] Ibid at p. 408.
[14] 1bld.
[15] Clint, para 17 and 19.

[44] In **Jetpak Services Limited v BWIA International Airways** Limited[16] de la Bastide CJ, as he then was, said:

> "I think that given the facts of this case, the judge ought to have approached the matter by asking himself the question whether the risk of injustice would be greater if he granted the injunction or if he refused it. That was the way in which the question whether or not to grant an interlocutory injunction was approached by the Court of Appeal in England in Cayne v Global Natural Resources plc[17] and by Hoffman J in Films Rover International Ltd v Cannon Film Sales Ltd.'[18]

[45] Counsel for the claimant/applicant submitted that the balance of convenience lies in granting the injunction. Counsel for the defendant/respondent submitted otherwise. In the light of the evidence provided to the court, the claimant/applicant was only able to satisfy the court that there is a serious issue to be tried. The claimant/applicant, on whom the burden lies, did not satisfy the court that damages would be adequate. The claimant/applicant has not convinced the court that the defendant/respondent can be adequately compensated under the claimant/applicant's undertaking as to damages. The court finds that the balance of convenience is in favour of the defendant/respondent and therefore the injunction will not be granted.

[46] The Court hereby orders the application is dismissed. Cost is in the cause of the matter.

[47] The Court takes note of paragraph 34 of the affidavit of Bruce Prescott Swan for the defendant/respondent and states that there was material non-disclosure on the part of the claimant/applicant as it relates to Article 35 of the Rule, which speaks to the procedure to be followed as it relates to complaints.

PAULA GILFORD
High Court Judge

[16] (1998) 55 WIR 362.
[17] [1984] 1All ER 225.
[18] Supra fn 20 at p. 370.