

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0383 (formerly CLAIM NO. GDAHCV2019/0338)

**IN THE MATTER OF A SPONSORSHIP CONTRACT AWARDED BY SPICE
MAS CORPORATION TO GLENELEG WATER**

AND

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC PROPERTY ACT NO. 39 OF 2014**

AND

**IN THE MATTER OF A STIPULATION BY SPICE MAS CORPORATION IN
CONTRACTS MADE WITH VENDORS TO DISTRIBUTE WATER PRODUCTS
AT EVENTS ORGANIZED BY OR UNDER THE JURISDICTION OF SPICE MAS
CORPORATION DURING THE PERIOD OF SPICE MAS 2019 THAT THEY
ARE NOT TO SELL MOUNT PURE WATER PRODUCTS**

AND

**IN THE MATTER OF AN APPLICATION BY MC QUEEN ENTERPRISE
LIMITED T/A MOUNT PURE FOR JUDICIAL REVIEW OF THE DECISION OF
SPICE MAS CORPORATION TO AWARD A SPONSORSHIP CONTRACT TO
GLENELEG WATER**

AND

**IN THE MATTER OF AN APPLICATION BY MC QUEEN ENTERPRISE
LIMITED T/A MOUNT PURE CORPORATION FOR JUDICIAL REVIEW OF THE
DECISION OF SPICE MAS CORPORATION TO INSERT A TERM IN
CONTRACTS WITH DISTRIBUTORS OF WATER PRODUCTS RESTRAINING
THEM FROM SELLING MOUNT PURE WATER AT EVENTS ORGANISED BY
OR UNDER THE JURISDICTION OF SPICE MAS CORPORATION DURING
THE PERIOD OF SPICE MAS 2019**

BETWEEN:

**MCQUEEN ENTERPRISE LIMITED
(T/A MOUNT PURE WATER)**

Claimant

and

SPICE MAS CORPORATION

Defendant

Before:

The Hon. Justice Raulston L.A Glasgow
Judge

High Court

Appearances:

Mr. Ruggles Ferguson KC for the Claimant
Ms. Sheriba Lewis for the Defendant

2024: February 29
July 31

JUDGMENT

BACKGROUND

- [1] **GLASGOW, J.:** Grenada hosts its carnival celebration coined ‘Spicemas’ on the second Monday and Tuesday of August annually. This claim is about the events that occurred during Spicemas carnival in 2019 between the entity responsible for Spicemas and a local water manufacturer concerning sponsorship for that year’s carnival event. The claimant, McQueen Enterprises Limited, trades locally as Mount Pure Water and supplies natural mineral water locally, regionally and internationally. The claimant will be referenced by its local moniker (Mount Pure). Spicemas Corporation

is the statutory establishment responsible for the planning and execution of Spicemas pursuant to the Spicemas Corporation Act¹.

CHRONOLOGY OF EVENTS

[2] Mount Pure claims that it wished to participate in the 2019 carnival as an official sponsor of Spicemas carnival in that year. In this regard, Mount Pure expressed this interest to Spicemas Corporation in 2018. Mount Pure later became aggrieved with the way Spicemas Corporation awarded sponsorship in 2019, contending that Spicemas Corporation awarded a 'sponsorship contract' to their competitor, Glenelg, without following the process of tendering as outlined in the Public Procurement and Disposal of Property Act². Further dissension ensued as Mount Pure also alleges that Spicemas Corporation unreasonably required that its carnival vendors only sell Glenelg's products during the carnival celebration, due to the exclusive sponsorship contract awarded to Glenelg. These grievances caused Mount Pure to file an application on 17th July 2019 for leave to apply for judicial review of Spicemas Corporation's actions.

[3] On 23rd July 2019, the application came before the court which then granted leave, finding that there was an arguable case that Spicemas Corporation had acted in breach of the Public Procurement and Disposal of Public Property Act. The judge on hearing the application also granted an interim injunction restraining Spicemas Corporation from prohibiting its vendors from selling Mount Pure products during Spicemas 2019, and an interim declaration that:

¹ Act No. 10 of 2011 of the Laws of Grenada.

² Act. No. 39 of 2014 of the Laws of Grenada.

“the decision of the Respondent (Spicemas Corporation) to contract with vendors prohibiting the sale of the Applicant’s (Mount Pure) products during the activities of Spicemas 2019 is unreasonable and in violation of the Public Procurement and Disposal of Public Property Act.”

- [4] Mount Pure later filed its substantive claim for judicial review on 2nd August, 2019.

MOUNT PURE’S CLAIM

- [5] After being granted leave as aforesaid, Mount Pure claimed 8 declarations concerning Spicemas Corporation’s actions of awarding Glenelg sponsorship, inserting contractual terms into vending contracts, and preventing vendors from selling Mount Pure’s water during carnival³. Mount Pure sought an order quashing Spicemas Corporation’s decision to award sponsorship to its competitor, Glenelg and an order restraining Spicemas Corporation from inserting terms into vending contracts. Mount Pure also sought damages for the loss ostensibly caused by Spicemas Corporation’s actions, interest and costs. Mount Pure filed affidavits in support of their claim from Mr. Kevin Peterkin, the sales and marketing manager of Mount Pure and Ms. Shirley Roland McQueen, the managing director and sole shareholder of McQueen Enterprises Limited.

Kevin Peterkin’s Evidence

- [6] In his initial affidavit in support of a request for leave to apply for judicial review, Mr. Peterkin deposes that McQueen Enterprises is a forward-looking business aiming to establish a firm foothold for production of water

³ See page 1 – 3 of the Trial Bundle.

in Grenada and the Caribbean by bringing Grenadian produced water to the world. As sales and marketing manager, Mr. Peterkin explains that his responsibilities include building and promoting the brand and establishing and managing relationships with customers. As part of its marketing strategy, he explains that in 2019, Mount Pure entered the Berkeley Springs International Water Competition, where 112 competitors from 54 countries participated.

[7] Mount Pure later obtained the bronze prize for best bottled water in the competition. Mr. Peterkin asserts that Mount Pure's profile in Grenada grew tremendously thereafter. As part of Mount Pure's marketing strategy locally, he indicates that Mount Pure was interested in participating in carnival, as it is the largest single festival in Grenada and a key plank of establishing Mount Pure's presence as a major player in carnival. By email dated 25th September, 2018, Mr. Peterkin recalls that he contacted Spicemas Corporation through Ms. Keisha Lawrence, a member of Spicemas' administrative staff, indicating Mount Pure's desire to become a sponsor of Spicemas 2019. He recalls receiving a prompt response from Ms. Lawrence on even date, wherein she explained that information was not yet available and promising to get back to him.

[8] Mr. Peterkin claims that he remained in regular telephone contact with Spicemas Corporation, calling biweekly to find out when the process to obtain sponsorship contracts would open. He explains that in addition to sponsorship, Mount Pure also wished to set up booths during carnival events to sell its products on its workers account and its own. The plan, as articulated by Mr. Peterkin, was to give their workers products at special prices, so that they could make a profit for themselves. Mr. Peterkin further deposes that he contacted established vendors to encourage them to sell Mount Pure products at carnival, and overall, they were expecting to do good business, due to the high interest in their

products. Mr. Peterkin deposes that in June 2019 he was informed by Spicemas Corporation that applications for contracts to vend products during Spicemas 2019 would commence on 9th July, 2019.

[9] On 9th July, 2019, Mr. Peterkin states that he went to Spicemas Corporation's office to sign up to obtain booths to sell Mount Pure products for carnival on behalf of the company and in his own personal capacity. After writing out the applications, Mr. Peterkin states that Ms. Lawrence told him that Mount Pure's application would not be considered because Glenelg was the official sponsor for water for carnival and only Glenelg's water was to be sold at events under the control of Spicemas Corporation.

[10] Mr. Peterkin alleges that this information came as a complete surprise to him, given that he remained in contact with Spicemas Corporation since 2018 about Mount Pure's interest in sponsorship of Spice Mas 2019. He claims that he was never informed of any process through which business entities could bid for sponsorship. Mr. Peterkin states that he was further taken aback when Ms. George, a Spicemas Corporation official, made an announcement to the over 100 vendors gathered at the Spicemas Corporation office, that persons receiving contracts were only to sell Glenelg water and they could not sell Mount Pure water. He observed that a notice to this effect was also posted on Spicemas Corporation's compound.

[11] Mr. Peterkin recalls that his personal application for a booth was accepted, but that he was made to sign an undertaking that he would not distribute Mount Pure products. Mr. Peterkin alleges that Mount Pure had invested in excess of \$250,000.00 to purchase new equipment for production, expansion of Mount Pure's storage capacity and the hiring of additional staff for carnival. He also alleges that Mount Pure entered into contracts to employ dozens of distributors of their water at carnival, but those

contracts would be cancelled if they were not allowed to sell their products.

[12]Due to the losses that Mount Pure could have incurred, Mr. Peterkin explains that Mount Pure retained its present counsel to write to Spicemas Corporation, seeking to have the decision to blacklist Mount Pure's products immediately rescinded. His counsel received an email acknowledgement with a promised response, but none was forthcoming. Mr. Peterkin states that Spicemas Corporation's actions as a public body unfairly undermined Mount Pure's business strategy and sent a negative message to the market about the Mount Pure brand. He further states that Spicemas Corporation's actions caused serious and irreparable damage to Mount Pure's competitive position in the market.

[13]Mr. Peterkin also filed a supplemental affidavit dated 2nd August 2019 in support of Mount Pure's claim. In this affidavit, he deposes that on the eve of the grant of the interim injunction, Spicemas Corporation issued a public announcement on radio and television indicating that the process to obtain licences for vending during the carnival period was closed. Mr. Peterkin claims that the statement also gave the impression that everything included in contracts which vendors had signed with Spicemas Corporation remained. In the days following, he recalls that Mount Pure contacted their distributors to inform them of the court's order – that vendors were free to sell Mount Pure products at Spicemas Corporation activities.

[14]Mr. Peterkin claims that their distributors responded by saying that they heard and read Spicemas Corporation's announcement that the Glenelg contract was valid and that they could sell Glenelg's products at Spicemas Corporation's events. Mr. Peterkin indicates that he made written representations to the CEO of Spicemas Corporation, Mr. Kelvin Jacobs for reconsideration of Mount Pure's application to operate a booth for

carnival, but Spicemas Corporation's staff refused to accept it. Upon receiving information that the letter was not accepted, Mr. Peterkin deposes that he sent an email to the CEO, and the CEO responded that he was aware of the attempt to deliver the letter, but that he had instructed his staff that the process for issuing licences had been closed. Mr. Peterkin and Mount Pure asks the court to draw the inference at trial that the statement issued by Spicemas Corporation and the decision to refuse to reconsider Mount Pure's application were deliberate attempts to circumvent the interim injunction and declaration granted by the court.

Shirley Rolands McQueen's Evidence

[15]Ms. McQueen simply deposes in support of the claim that Mr. Peterkin applied to Spicemas Corporation for a licence to carry on business in his own personal capacity, and the bar operated by Mr. Peterkin was for his own benefit. She concludes that McQueen Enterprise Limited did not obtain even a penny in benefit from his operation of the bar.

SPICEMAS CORPORATION'S RESPONSE

[16]Spice Mas Corporation filed affidavits in response to Mount Pure's claim, from their Chief Executive Officer (CEO) Mr. Kelvin Jacobs, their sponsorship liaison Ms. Akeira Patterson, and their office manager Ms. Keisha Lawrence.

Kelvin Jacobs' Evidence

[17]Mr. Jacobs deposes that Spicemas Corporation is a statutory body established by the Spicemas Corporation Act (the Act), and part of its duties under the Act include securing sponsorship and management of

vending for carnival activities, including entering into contracts on terms and conditions at such fees as the Board may determine. He claims that Spicemas Corporation's receptionist Ms. Julian George usually answers their telephone. Ms. George advised him that Mr. Peterkin had called on 2 occasions and that he did not remain in regular telephone contact as he alleges. Mr. Jacobs indicates that Spicemas Corporation does not have a sponsorship application process, and that vendors are granted a Spicemas Corporation pass to vend along the carnival route in a booth. Although these vendors are not to sell products that compete with Spicemas Corporation's official sponsors, Mr. Jacobs indicates that this does not exclude the sale of these products in established businesses that are situated along the route.

[18]Mr. Jacob denies that a notice was placed on Spicemas Corporation's compound about Mount Pure and avers that a list of all official sponsors was placed both outside and inside the building. He further indicates that Mount Pure was neither singled out by name in the announcement nor did the notice state that vendors selling water products during carnival were only to sell Glenelg products. Mr. Jacobs avers that their official sponsorship list is standard, as it allows their vendors to know the official sponsors and be able to approach those sponsors to purchase goods at reduced prices. Mr. Jacobs also claims that there were other notices posted on the building about how to apply for a liquor license, the process for vending (period and times), and the collection of score sheets for artists to assist and aid in the ease of the process by providing as much information as possible.

[19]Mr. Jacobs explains that the clause was placed in Mr. Peterkin's vending contract because he had informed Ms. Lawrence that he intended to sell Mount Pure water by taking out their label and selling his water. As a result, he informed Ms. Lawrence that they should have Mr. Peterkin

expressly sign that he would not sell Mount Pure water. Mr. Jacobs avers that if Mount Pure could incur the losses as alleged, the onus was on them to follow up with Spicemas Corporation about the sponsorship process. He asserts that Spicemas Corporation never attempted to blacklist Mount Pure's products, as they could be sold outside of the carnival route by vendors or at established business places along the carnival route.

[20]Mr. Jacobs confirms that a reply was sent by email to Mr. Peterkin on 14th July, 2019, but avers that it recited that they were investigating the complaints made, and explains that the letter from Mount Pure's lawyer was passed to the Government's legal advisors for reply. Mr. Jacob concludes that Spicemas Corporation has never blacklisted or intended to unfairly undermine Mount Pure's products.

[21]In Mr. Jacob's supplemental affidavit, he deposes that Mount Pure's recitation of the judge's order was not what was actually ordered. He avers that after the order was made, they did not prohibit any Spicemas vendors from selling Mount Pure's products during Spicemas, as the period for applying and granting of licenses to vendors at Spicemas ended on 12th July, 2019. Mr. Jacobs explains that Spicemas Corporation had notified the public about the 12th July, 2019 deadline for applications through various media programs, events and interviews with news outlets and by affixing notices on the door of its offices.

[22]Mr. Jacobs further avers that the proper interpretation of the court's order was that Spicemas Corporation was unable to contract further with its vendors to prohibit them from selling Mount Pure's products during carnival, but the order did not grant Mount Pure permission to have its products sold at carnival. He states that Spicemas Corporation issued the statement to educate and inform the public about the court's ruling, as Mount Pure held a press conference directly after the court order which

was confusing. He went to state that vendors contacted Spicemas Corporation for information about what occurred in court, and their rights and responsibilities resulting from the order. He also explains that Spicemas Corporation felt that it was their duty to advise the public of their understanding of the court's ruling.

[23]Mr. Jacobs states that Mount Pure ought to have been aware that at the time of the letter, applications for vending licenses for carnival had passed, as Spicemas Corporation made this clear in its press release on 23rd July, 2019. He urges the court not to draw any inferences from Spicemas Corporation's issued statement, as they owe a duty to the public to inform them of the court order and to ensure that its contracted vendors were aware of the effect of the order. This was especially in light of the fact that carnival was being held a few days after the court made its ruling.

[24]Mr. Jacobs avers that the Spicemas Corporation Act and its amendments⁴ by which Spicemas Corporation is governed allows them to secure financial and other sponsorship for carnival and Spice Mas 2019, and their powers under those Acts were adhered to in the instant case. Mr. Jacobs points out that during carnival on 12th and 13th August, 2019 Mount Pure, by way of its sales and marketing manager Mr. Peterkin, set up a booth along the carnival parade route and sold Mount Pure products, although Mount Pure had not obtained a vendor's license to vend along the carnival route.

⁴ Act No. 8 of 2017 of the Laws of Grenada.

Akiera Patterson's Evidence

[25]Ms. Patterson deposes that she is responsible for sourcing sponsorship for Spicemas Corporation, formulating sponsorship proposals and ensuring that Spicemas Corporation's sponsorship requirements are met. She also formalises agreements between corporate sponsors, both new and existing. To obtain sponsors, Ms. Patterson indicates that she firstly conducts a situational analysis to ascertain the names of the existing sponsors. She explains that there was no outlined mode in the Act specifically speaking to the process by which sponsors should be engaged. Rather, it was within the power and duty of Spicemas Corporation to promote carnival independently or in conjunction with any other company or organisation concerned with the development and promotion of carnival.

[26]Ms. Patterson further deposes that she was appointed on 20th March, 2019 and was provided with a list of Spicemas Corporation's sponsorship information for 2017 and 2018. This list referenced companies that had existing or continued partnerships with Spicemas Corporation. She further explains that Spicemas was due to launch on 27th April, 2019 but due to time constraints, a collective decision was made to engage with existing sponsors to find out which were most willing to renew their sponsorship.

[27]As Spicemas Corporation's sponsorship duties are primarily to solicit funds or donations from companies for the staging of carnival, Ms. Patterson states her role to be that of seeking donations to assist with carnival. In exchange for these donations, she explicates that there are various forms of recognition extended by Spicemas Corporation to donors, primarily branding and brand presence. If companies do not have cash to donate, they donate services or products. In furtherance of this, companies usually reach out to Spicemas Corporation to indicate their

interest in sponsorship. A determination on sponsorship is then made by Spicemas Corporation based on the companies' proposals, and how much they are willing to donate to the Spicemas product.

[28]Prior to being appointed, Ms. Patterson continues, the CEO informed her that the previous month, the brand manager at Glenelg had contacted him and was interested in continuing their support of Spicemas. She states that the CEO informed Glenelg that they could contact Ms. Patterson directly. On 23rd March, 2019, Ms. Patterson mentions that she was contacted by Glenelg's brand manager, who requested a meeting to discuss continuing sponsorship of Spicemas for 2019, as Glenelg was the official water sponsor of Spicemas 2018.

[29]Ms. Patterson agreed to the meeting, which was set for the following Friday 29th March, 2019, and up to that time, she had not been approached by any other sponsor that produced water. At the meeting with Glenelg, she was shown Glenelg's 2018 contract, and informed that they had been sponsors of Spicemas for the past 6 years because Glenelg felt that it was their corporate responsibility to give back to Spicemas. Ms. Patterson indicates that she asked the company to donate more to Spicemas, as the product had grown.

[30]Ms. Patterson deposes that Glenelg agreed and increased their donation to \$12,000.00 along with 400 cases of water which could be used by Spicemas Corporation for refreshments. In exchange for this donation, Ms. Patterson recites that Glenelg was granted exclusivity for carnival events operated by Spicemas Corporation. In this regard, vendors were made aware that Glenelg was the official sponsor of water for carnival. Due to Glenelg's willingness to sponsor Spicemas, and with no other proposal for water sponsorship made to Spicemas Corporation, Ms. Patterson discloses that Spicemas Corporation accepted Glenelg's proposal in April, 2019.

[31]A cheque for the donation amount was presented to Spicemas Corporation at the Spicemas media launch on 2nd May, 2019. Ms. Patterson avers that the granting of exclusivity to Glenelg does not exclude Mount Pure from selling its products at established business along or outside of the carnival route. She further avers that Mount Pure never made a sponsorship proposal to Spicemas Corporation that could have been considered. Ms. Patterson states that Spicemas had 28 sponsors and the total sponsorship to Spicemas Corporation for Spicemas 2019 amounted to \$884, 357. 50, excluding the contribution from the Government of Grenada.

Keisha Lawrence's Evidence

[32]Ms. Lawrence acknowledges receiving Mr. Peterkin's 2018 email, but indicates that Spicemas Corporation did not have a CEO at that time, and was wrapping up Spicemas 2018. When Spicemas Corporation started to consider sponsorship, Ms. Lawrence indicates that she spoke to Mr. Peterkin, and set up a meeting for 22nd February 2019 at 10 am. Mr. Peterkin was expected to attend that 22nd February 2019 meeting and converse with Mr. Jacobs, Spicemas Corporation's CEO, about providing sponsorship. Ms Lawrence deposes that sponsorship is usually obtained by companies indicating their interest and making proposals to Spicemas Corporation. Mr. Peterkin agreed to attend the meeting.

[33]On 22nd February, 2019, when Mr. Peterkin did not show up to the meeting as agreed, Ms. Lawrence avers that she called him at 11 am and reminded him that he was supposed to attend Spicemas Corporation's office for a sponsorship meeting with Mr. Jacobs. Ms. Lawrence claims that Mr. Peterkin informed her that he was presently in the Trade Centre and had forgotten about the meeting. Ms. Lawrence informed Mr. Jacobs of that conversation on even date, and she claims that Ms. George,

Spicemas Corporation's receptionist, informed her that Mr. Peterkin called and requested an appointment to see Mr. Jacobs the following day. She alleges that Ms. George told him that Mr. Jacobs was not available due to his schedule being fully booked, and that Mr. Peterkin responded okay. Ms. Lawrence further claims that Mr. Peterkin did not reschedule an appointment to conduct the sponsorship meeting.

[34]Ms. Lawrence next made contact with Mr. Peterkin when he attended Spicemas Corporation's office in May 2019, and enquired about when vending applications were opening. Ms. Lawrence claims she informed him that applications for vending opened on 9th July, 2019. She was later informed by Ms. George that Mr. Peterkin called sometime thereafter to confirm that the date was still 9th July, 2019. Ms. Lawrence explains that there is no sponsorship application. Companies that are interested in making donations to Spicemas Corporation by becoming sponsors usually contact Spicemas Corporation and a meeting is held regarding sponsorship. On 4th May, 2019, carnival was launched. Ms. Lawrence recalls that Glenelg attended this launch.

[35]Prior to this, a media launch was held on 2nd May, 2019 where she recalls that Glenelg was named the official sponsor for water for Spicemas 2019. Up to this time, Ms. Lawrence recalls that Mount Pure had made no further contact with Spicemas Corporation or any of its officers with respect to the provision of sponsorship. Ms. Lawrence admits that Spicemas Corporation opened its offices at 9 am on 9th July, 2019 and that Mr. Peterkin made applications on behalf of Mount Pure and for himself personally to sell non – alcoholic beverages. She confirms that Mount Pure's application was voided as Mr. Peterkin was informed that Glenelg was the official sponsor of water.

[36]Ms. Lawrence deposes that Mr. Peterkin told her that he intended to sell Mount Pure water at carnival, and that she informed him that Spicemas Corporation already had an official sponsor for water, which was Glenelg. She alleges that Mr. Peterkin said to her and the Administrative Assistant of Spicemas Corporation that he could just remove the label and sell the water. She asked Mr. Peterkin if he was joking and he said "*if I take out the label they won't know*" and continued to insist that he wanted to sell Mount Pure water. Persons interested in obtaining vendor's licences were lined up outside of Spicemas Corporation's establishment. Ms. Lawrence states that Ms. George handed out the list of official vendors, and this list was also placed on the door amidst other notices, as well as outside the establishment. Throughout the day, Ms. Lawrence claims that she informed vendors of all the official sponsors of Spicemas 2019, as sponsors were offering specials on their products.

[37]Ms. Lawrence further states that when Mr. Peterkin attended their office sometime in May, 2019, it was solely to enquire about the opening of vending applications. She denies that she singled out Mount Pure, as the announcement of the names of all official sponsors was made throughout the day so that vendors knew the names of the sponsors and to ensure that vendors knew that Glenelg was the official sponsor for water. Ms. Lawrence observed that on that very day, Mr. Peterkin had been advertising Mount Pure water outside to the vendors. She indicates that Spicemas Corporation expressly requested that Mr. Peterkin sign an undertaking that he would not sell Mount Pure water, and when she asked him to sign this undertaking, he read it and signed it without objection.

[38]Ms. Lawrence denies that Mount Pure would have to cancel any contracts or that they were not allowed to sell their products. She avers that the vending licences granted by Spicemas Corporation relate to registered Spicemas Corporation vendors along the carnival route and nothing

prohibits the sale of Mount Pure water at business establishments situated along the carnival route or those who are not registered Spicemas vendors. She further avers that any business establishment can sell Mount Pure's water during the carnival period, as Spicemas Corporation does not host all events during the carnival period.

[39]Ms. Lawrence also denies that Spicemas Corporation blacklisted or intentionally unfairly undermined Mount Pure products. She explains that Spicemas Corporation had 28 sponsors who donated goods or money to Spicemas Corporation to ensure that Spicemas 2019 was successful.

[40]In respect of Mount Pure's request for an injunction, Ms. Lawrence further explained that if an interim injunction was granted at the time, it would mean that Spicemas Corporation would have merely 19 days to seek to obtain further sponsorship in order to cover the loss likely to be incurred, may run the risk of sponsors pulling their sponsorship and open Spicemas Corporation to further litigious actions brought by other businesses. This would all affect the production of the Spicemas 2019 product and the public at large.

[41]Ms. Lawrence further explains that Spicemas Corporation would also be at risk of facing further action for breach of contract with Glenelg, who if the interim injunction was granted at the time, would have adverse financial implications despite not being a party to these proceedings. She suggests that Spicemas Corporation would have faced irreparable harm to its brand and its relationships with its then contracted sponsors and any businesses that may wish to partner with Spicemas Corporation in the future. Ms. Lawrence concluded by urging the court to consider the financial consequences for Spicemas Corporation and the hardship that would be faced by the wider public and the nation on a whole if an interim injunction was granted. It is of note that the court on hearing the application for interim injunction, did grant the same.

ISSUES FOR THE COURT'S DETERMINATION

[42] This matter came on for trial almost 5 years after filing on 29th February, 2024. Counsel for the parties had previously filed fulsome submissions on their respective positions for the court's consideration. At the conclusion of the trial, counsel for the parties were asked to file precise written submissions on the issues raised at trial. In consideration of the submissions filed by counsel both prior to and after trial, and the evidence elicited, I found the following issues presented themselves for the court's consideration:

- 1) Do the provisions of the Public Procurement and Disposal of Public Property Act apply to the awarding of sponsorships granted by Spicemas Corporation;
- 2) Whether Spicemas Corporation's decision to award Glenelg sponsorship of carnival in 2019 was procedurally irregular, improper or unlawful;
- 3) Whether Spice Mas Corporation's decision to prohibit its vendors from selling Mount Pure's products at carnival events was irrational;
- 4) Whether Spicemas Corporation's decision to insert provisions into its vending contracts amounted to unlawful restraint of trade or unlawful interference with Mount Pure's business; and
- 5) Whether Mount Pure is entitled to the relief sought or any relief at all

Each of these issues will be analysed and discussed in turn.

LEGAL ANALYSIS AND DISCUSSION

Do the provisions of the Public Procurement and Disposal of Public Property Act apply to the awarding of sponsorships by Spicemas Corporation?

[43]Counsel for Mount Pure submits that both the Spicemas Corporation Act and the Public Procurement and Disposal of Public Property Act apply in this case because Spicemas Corporation was established by Parliament and is a public entity. Counsel also submits that the awarding of the sponsorship contract to Glenelg fell within the definition of ‘public procurement’ under the Public Procurement and Disposal of Public Property Act if a purposive interpretation and the ejusdem generis rule of construction is applied. As the sponsorship contract gave rights of advertisement and commercial exposure by Spicemas Corporation to Glenelg in exchange for Glenelg’s money, counsel submits that a procurement occurred, as Spicemas Corporation acquired an asset in the form of money. He also argues that this money fell within the definition of public funds under the Public Procurement and Disposal of Public Property Act.

[44]Counsel for Spicemas Corporation counters that the Public Procurement and Disposal of Public Property Act is inapplicable as Spicemas Corporation’s actions are not governed by the terms of that Act. While admitting that Spicemas Corporation falls within the definition of a public entity, counsel submits that Spicemas Corporation was not involved in public procurement or the use of public funds, which have specific meanings under the Public Procurement and Disposal of Public Property Act. Thus, only the Spicemas Corporation Acts apply, as counsel indicates that these Acts established the corporation to be the sole body responsible for carnival with the power of acquiring sponsorship therefore, which now forms the subject of this dispute.

[45]The answer to this issue is quite simple. When one reviews the Public Procurement and Disposal of Public Property Act and its amendments, it is manifestly clear that while Spicemas Corporation falls within the definition of a public entity, it was not involved in public procurement when it dealt with Glenelg's sponsorship. Section 2 of the Public Procurement and Disposal of Public Property Act provides these definitions:

“procuring entity” means a public entity making a procurement to which this Act applies;

“public entity” means ...any body, board or corporation or authority or trust or autonomous body (by whatever name called) established or constituted under an Act of Parliament;

“public funds” has the meaning assigned to it in the Public Finance Management Act and also includes monetary resources appropriated to procuring entities through the budgetary process, as well as extra budgetary funds, including aid grants and credits, put at the disposal of procuring entities and funds that are –

- (a) Received or receivable by the Government, a statutory body, an executive agency or a state controlled enterprise;
- (b) Raised by an instrument from which it can be reasonably inferred that the Government accepts ultimate liability in the case of default;
- (c) Spent or committed for future expenditure by the Government, a statutory body or a Government controlled enterprise;
- (d) Distributed by the Government, a statutory body or a Government controlled enterprise to a person; or

(e) Raised by a private body in accordance with a statutory instrument for a public purpose.

“procurement” means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services, consultancy services or goods including livestock or any combination thereof by a procuring entity commencing with the identification of the need for the works, assets, services, consultancy services or goods and ending with the performances of the related contracts and the term “procure” or “procured” shall be construed accordingly;

“public procurement” means procurement involving the use of public funds.

[46]I find that Mount Pure’s argument stretches the Public Procurement and Disposal of Public Property Act beyond its legislative intent and meaning. Drawing from the locus classicus of **Sussex Peerage Case**⁵, Acts of Parliament should be construed according to the intent of Parliament which passed the Act and if the words of the statute are themselves precise and unambiguous, then no more can be necessary than to interpret those words in their natural and ordinary sense. If any doubt arises from the terms employed by the legislature, one can have, recourse inter alia to the preamble, which is a key to opening the minds of the makers of the Act, and the mischiefs which it intends to redress⁶.

[47]The preamble of the Public Procurement and Disposal of Public Property Act recites that it is “*an Act of Parliament to promote the public interest by*

⁵ (1844) 8 ER 1034 at 1057.

⁶ *Stowel v Lord Zouch* 1 Plowden 369 at 560.

prescribing the principles of good governance namely accountability, transparency, integrity and value for money in public procurement and to establish a framework of operational principles and procedures for efficient public procurement and for the disposal of public property by public entities and to provide for other related matters.” When one examines the meaning and tenor of the legislative provisions in the Public Procurement and Disposal of Public Property Act, it is clear that the Act was enacted to provide a framework for accountability in government spending, primarily for the acquisition of goods and services.

[48]Mount Pure’s interpretation of the Public Procurement and Disposal of Public Property Act posits a meaning clearly not signalled by Parliament on a plain and ordinary reading of the Act. If one follows what counsel is contending, it would mean that Spicemas Corporation would have to go through the arduous process of advertising that it required sponsorship for the carnival, request and accept bids and submit these bids to the Tenders Board for consideration.

[49]This interpretation overlooks one very crucial step – raising money and/or obtaining goods by way of sponsorship is not a request, acquisition or purchase of the goods or services themselves. Moreover, the raising or donation of funds, which is what Spicemas Corporation is empowered by law to do, has to be distinguished in this case from the use of public funds for public procurement of goods and services under the Public Procurement and Disposal of Public Property Act. It is the latter instance which the Public Procurement and Disposal of Public Property Act seeks to concern itself.

[50]That Act sets up a regime to ensure that principles of transparency, fair dealing and accountability play a central role in all cases where Governmental and parastatal entities use public funds for the acquisition of goods and services. The long and short of it is that there was no use of

public funds by the Spicemas Corporation in the strict sense when they were exercising this statutory power to acquire sponsors for the carnival. One can properly say that they were actually raising funds. It is not to say that when Spicemas Corporation is engaged in raising funds by way of sponsorship, that it is not to be guided by principles of fairness, propriety and accountability. But these are matters that may be interrogated elsewhere in the law. There is no basis on which I can say that the Public Procurement and Disposal of Public Property Act applies in that regard.

[51]Parliamentary material may also be decisive if there is statutory ambiguity⁷. In this case, there is no such ambiguity, but for the sake of completeness, when one examines the Hansards Notes of Parliament so helpfully provided by counsel for Spicemas Corporation, it becomes even clearer that counsel's assertions are erroneous. The Hansard Notes of 14th August, 2014 and 19th January, 2018 when the Public Procurement and Disposal of Public Property Act and its amendment were respectively read and debated in Parliament show that Gregory Bowen, then leader of Government Business in the legislature, presented the Bill and provided elucidation on the purposes and rationale of the Acts.

[52]The rationale gleaned therefrom being primarily accountability in Government's buying of goods and services, the functions of the Tenders Board and the process and rationale for tendering of goods and services through competitive bidding. Part of Parliament's intention as explained by the then Honourable Leader of Government Business was to create a competitive, transparent and efficient bidding process when governmental and parastatal bodies were procuring goods and services utilising public funds above a stated amount.

⁷ Pepper v Hart [1993] AC 593.

[53]Further, counsel for Mount Pure’s contentions that Glenelg’s donations of money constitute assets or goods which fit within the meaning of procurement is an impermissibly elasticated reading and understanding of the Public Procurement and Disposal of Public Property Act. This interpretation ignores the Spicemas Corporation Act and its amendments. The Spicemas Corporation (Amendment) Act⁸ which went into effect on 19th May, 2017⁹ tidily puts this issue of the classification of the donations received by Spicemas Corporation to Glenelg to rest.

[54]The Spicemas Corporation (Amendment) Act provides that Part III of the Cultural Corporations Act¹⁰ shall apply to Spicemas Corporation, and Spicemas Corporation is a designated Cultural Corporation¹¹ under that Act. When one examines Part III of the Cultural Corporations Act, section 13 defines the funds and resources of a cultural corporation, which include funds and donations given by way of gifts, grant or otherwise in accordance with section 62 of the Public Management Act¹², funds accruing from operations¹³, and funds arising from any source consequential upon the performance of its functions under the Act or the enactment by which it is established¹⁴.

[55]It is quite apparent that there is a marked difference between the funds raised from sponsors like Glenelg or any other sponsor and the funds described as public funds under the Public Procurement and Disposal of Public Property Act. I therefore agree with counsel for Spicemas Corporation that the Public Procurement and Disposal of Public Property Act does not apply to this case, as there was no public procurement within

⁸ Act No. 8 of 2017 of the laws of Grenada.

⁹ See the Spicemas Corporation (Amendment) Act (Commencement) Notice S.R.O. No. 10 of 2017.

¹⁰ Act No. 9 of 2017 of the laws of Grenada, which went into effect on 19th May, 2017 – see Cultural Corporations Act (Commencement) Order S.R.O. 11 of 2017.

¹¹ See section 11 and Schedule II of the Cultural Corporations Act No. 9 of 2017.

¹² See section 13(1)(b) of the Cultural Corporations Act No. 9 of 2017 of the laws of Grenada

¹³ See section 13(1)(d) of the Cultural Corporations Act No. 9 of 2017 of the laws of Grenada.

¹⁴ See section 13(1)(f) of the Cultural Corporations Act No. 9 of 2017 of the laws of Grenada.

the meaning of that Act. The applicable Acts in this claim are the Spicemas Corporation Act and its amendments, and by extension the Cultural Corporations Act as discussed above.

Whether Spicemas Corporation's decision to award Glenelg sponsorship of carnival in 2019 was procedurally irregular, improper or unlawful?

[56]The general grounds on which the decisions of a public authority can be challenged in the courts by way of judicial review are broadly –

- 1)that the decision made was outside of the authority's powers and is therefore unlawful,
- 2)the decision was irrational or perverse, or
- 3)the way in which the decision was made was unfair or procedurally improper¹⁵.

These three grounds simply mean that the courts is tasked with assessing whether the decision was made due to –

- 1) a misdirection or misapplication of the law – leading to an illegality,
- 2) no reasonable decision maker would have made the decision – leading to irrationality; or
- 3)the decision maker failed to conform to the rules governing its own conduct or to the rules of natural justice – leading to procedural irregularity.

[57]The question of the lawfulness or procedural propriety of Spicemas Corporation's decision to award the sponsorship contract to Glenelg was a question that seriously divided the parties at trial. This disputation was especially contentious in light of the differing stances taken by the parties on whether Spicemas Corporation actually had a process for the

¹⁵ Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.

acquisition of sponsorship for carnival and whether this 'process', if it existed, was well known to the Grenadian public or persons interested in being sponsors for carnival. Counsel for Spicemas Corporation argued that there was in fact a process which was well – known, while counsel for Mount Pure argued that there was no process for sponsorship and if there was, it was unknown and not followed in this case.

[58] Mr. Peterkin deposed that when he made enquiries about the process for sponsorship in 2018, no information was forthcoming from Spicemas Corporation, and that he did not know how to apply for same or the requirements for sponsorship. Mr. Peterkin was asked at trial about his knowledge of Spicemas Corporation's announcements and requiring sponsors. Mr. Peterkin answered that he paid attention to activities and notices from Spicemas Corporation for public consumption, especially from a corporate point of view, but he could not remember if he viewed Spicemas' launch in 2018. He also indicated that he did not know how Spicemas invited sponsorship, and sent his email in 2018 based on his own knowledge about the process generally.

[59] When it was put to Mr. Peterkin that based on his answer, he knew of Spicemas Corporation's process of making an oral or written application expressing interest and the scheduling of a meeting, he responded that those were two of the ways that one can show interest in becoming a corporate sponsor of an event. When it was put to Mr. Peterkin that he knew of Spicemas Corporation's specific process and that was why he sent the email expressing interest, he responded that he did not know of Spicemas Corporation's specific process, as Spicemas Corporation did not have a CEO at the time that he enquired.

[60] Mr. Peterkin later accepted that his counsel's letter to Spicemas Corporation dated 12th July, 2019 only dealt with the issue of licences for

vending, and did not mention the issue of sponsorship. When the evidence from Spicemas Corporation's officials about Mr. Peterkin's missing the meeting scheduled with Spicemas Corporation's CEO Mr. Jacobs was put to him, Mr. Peterkin confirmed that the meeting was indeed scheduled. However, he averred that he called Spicemas Corporation to reschedule the meeting because he was engaged in another Caricom event that Mount Pure had to attend that day. When He called, he was told that the CEO was busy. Mr. Peterkin was also asked whether Mount Pure had provided the court with any documentary evidence of his assertions of Mount Pure's hiring of workers or loss of profits, and he responded that his evidence spoke for itself.

[61]In closing submissions, counsel for Mount Pure contends that there was a 'hat trick of confirmations in the evidence which left no doubt that there was an absence of process' and it appears that the onus lay on a potential sponsor to make a request of their own initiative to the corporation, without invitation, knowledge of rules, criteria or deadlines. Counsel points out that Mr. Peterkin's evidence did not show that he knew of an established process for sponsorship at carnival, as no evidence was given by Spicemas Corporation of advance notice to potential sponsors, criteria for selection, procedure for an application or timelines for either Spicemas Corporation or a potential sponsor to make a proposal..

[62]Reference was made to Mr. Jacobs', Ms. Patterson's and Ms. Lawrence's evidence to make the point that it was confirmed by them that there was no established process by Spicemas Corporation for sponsorship. Counsel argues that everything seemed arbitrary as Spicemas Corporation seemed to expect Mount Pure to continue to make phone calls and inquiries until something worked out or the issue died a natural death. The court was urged to find that this meant that there was no fair play amongst potential competitors. The court was also asked to note that

Mount Pure contacted Spicemas Corporation in writing in 2018 expressing interest, and 6 months later, Glenelg made contact and ended up being the exclusive sponsor of water for carnival – ‘simply put Glenelg did it before, and they can do it again’.

[63]Counsel also addressed Mr. Peterkin missing the scheduled meeting, explaining that even if Ms. Lawrence’s evidence is accepted, it confirms that Mr. Peterkin attempted to reschedule the meeting, but the CEO was unable to accommodate him. Counsel concludes that all of this must be viewed in the context of Spicemas Corporation having exclusive control and authority as conferred by law over the annual carnival celebration, which is the largest cultural activity on Grenada’s calendar and a major income earner for businesses such as Mount Pure.

[64]In response, Counsel for Spicemas Corporation submits that Parliament did not lay out a procedure about how sponsorship should be obtained for Spicemas Corporation to obtain sponsorship. While accepting that the exercise of power must be fair and unbiased, counsel argues that Mount Pure and other companies indicated their desire to sponsor Spicemas 2019, and the process in place for obtaining sponsorship was that persons reached out to Spicemas Corporation or Spicemas Corporation would go in search of sponsors. Counsel’s position is that Mr. Peterkin began part of the process by indicating his desire but failed to follow through by attending the meeting scheduled with the CEO.

[65]Counsel submits that this procedure was not unfair to Mount Pure, as this was the procedure applicable to all sponsors for Spicemas 2019. Counsel proceeded relying on **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**¹⁶ to argue that Mount Pure would have to prove that there was a failure to observe procedural rules expressly laid

¹⁶ [1948] 1 KB 223

down in the legislative instrument conferring jurisdiction. As there were none in the Spicemas Corporation Act, counsel submits that this ground is not applicable.

[66] Counsel further posits that there was nothing irregular, flawed or improper with respect to Spicemas Corporation's process as it did not exclude Mount Pure, but Mount Pure had excluded itself by failing to make a proposal like the other sponsors. Had Mr. Peterkin attended the meeting and made the proposal, she argues that Spicemas Corporation would have considered both proposals before it with respect to water and made a decision with respect to sponsorship. In the absence of a proposal made by Mount Pure, counsel asserts that the sole proposal for sponsorship for water was accepted, and Mount Pure's failure to reschedule and make a proposal should not be blamed on the corporation.

Discussion

[67] There is no disputation between counsel that Spicemas Corporation is a public entity, as it is a statutory corporation created by an Act of Parliament from which it derives its powers. As the corporation performs public duties, it must act properly and fairly, and within the confines of the law in the manner and execution of its duties¹⁷ under the Spice Mas Corporation Act and the law generally. Regrettably, as pointed out by counsel for Spicemas Corporation, and as admitted in their evidence, the Act provides no guidelines on a process for sponsorship. Section 3(d) of the Act makes mere reference to sponsorship as one of the powers reposed in the corporation. Section 18(1) provides that the Minister (with responsibility for culture) may, after consultation with the Chairperson, give policy directions to the Board about the performance of its functions about matters in the public interest.

¹⁷ Regina v Panel on Take – Overs and Mergers, Ex parte Datafin Plc and another [1987] QB 815.

[68]Section 18(2) recites that the Board, under the direction of the Minister, shall develop specific policy guidelines as necessary and circulate and disseminate them with the consent of the Minister. Further, section 37(b) gives the Minister the power to make regulations for the proper carrying out of the provisions of the Act. Notably, neither of these avenues have been pursued by either by the Board, under the direction of the Minister (pursuant to section 18(2)) or the Minister (pursuant to section 37). It appears to me that the lack of procedural guidelines in the Act generated and fuelled the Spicemas Corporation/Mount Pure contretemps about sponsorship for the 2019 carnival. Spicemas Corporation's officials were left to chart their own path due to the evident lack of procedural guidelines.

[69] Given the absence of any legislative guidance on how their functions ought to be exercised, Spicemas Corporation's officials cannot be faulted for attempting to navigate their statutory powers to obtain sponsorship in the best way that they saw fit. That is what makes this case interesting, as there can be no examination of the law in question to determine if the terms of the legislative guidelines were followed. What the court is left to examine is whether fairness and natural justice principles occurred in the manner in which Spicemas Corporation approached the issue of obtaining sponsorship. Factors aiding the court's determination on these issues include, among other things, the costs of exercising the discretion and fairness to persons affected by administrative action caused as a result, as well as the general public interest¹⁸.

[70]The evidence from Ms. Patterson and Ms. Lawrence is that the Spicemas Corporation Act did not stipulate a process for sponsorship, and the process was therefore that an expression of interest made by a potential sponsor. However, the evidence on the process thereafter from Spicemas Corporation diverges, as Ms. Patterson indicates that the potential

¹⁸ R v Monopolies And Mergers Commission, Ex Parte Elders Ixl Ltd [1987] 1 All Er 451.

sponsor has to submit a proposal on what they would offer for consideration by the Spicemas Corporation Board, while Ms. Lawrence indicates that the potential sponsor is required to attend a meeting with the CEO of Spicemas Corporation. Counsel for Spicemas Corporation contends that a meeting and a proposal form Spicemas Corporation's process.

[71]This divergence among the members of the corporation shows quite definitively that there was no definitive, established process for obtaining sponsorship, as everyone seems to have a different interpretation of what ought to occur. Further, it is equally unclear to the court if any of these apparently disparate processes were expressly described and presented to Mr. Peterkin or more significantly to all potential sponsors or persons interested in becoming sponsors. No evidence was presented by Spicemas Corporation about informing the public or Mr. Peterkin about any process for becoming sponsors. It can be said that at the launch of the carnival event, Spicemas asked persons to contact Spicemas Corporation to sponsor the event, but thereafter the murky waters of uncertainty appear.

[72]In my view, in the absence of specified legislative guidelines on how it ought to acquire sponsors, Spicemas Corporation is enjoined in law to create, publish and implement a definitive set of criteria available to all potential sponsors. The process for sponsorship as articulated ought to be specifically delineated, readily accessible, fair and guided by procedural propriety generally. The obligations of fairness and procedural propriety can be hardly be said to have been met in the seemingly amorphous and obscure "process" that has been presented on these facts. Some may even conclude, reasonably so, that Spicemas Corporation does not have a process for this exercise at all. In view of all this, I am inclined to accept Mount Pure's argument that the application process was opaque, non – transparent and subject to unknown

subjective criteria. Equality of opportunity would therefore be lacking due to the absence of this information publicly. This cannot be reasonable or fair in any of the circumstances of the case.

[73] If not to further belabour the point, Ms. Patterson's evidence indicates that time was short, and as Glenelg had expressed interest, a meeting was held, a prior contract was shown and an additional figure was requested. We are not told of whether Glenelg made a proposal and the contents of same, or that Glenelg attended any meeting with the CEO, which are the matters relied on by Spicemas Corporation to argue that it had a process to obtain sponsors. In short, it does not appear that its own purported "process" was followed with the granting of the Glenelg sponsorship.

[74] Evidence was provided of notices and signage affixed all over the Spice Mas Corporation compound about other carnival related matters as deposed by Ms. Lawrence and Ms. Patterson, which they claim was done to make sure that information was readily accessible and to provide ease of process. The process, criteria, and deadlines for acquisition of sponsorship could also have been similarly posted and/or otherwise publicised by various media to provide the same ease of process and ensure availability of information.

[75] The air of obscurity, amorphous and ill- or non – defined criteria, lack of publicity of criteria and the absence of a definitive objective process lead me to accept Mount Pure's argument that what transpired on the facts of this case regarding sponsorship was patently unfair and completely procedurally improper. It would follow that Spicemas Corporation's decision to award Glenelg the sponsorship contract without having an established or clearly defined and articulated process for sponsorship taints any decision it made about sponsorship with procedural irregularity as it cannot be said that it was fair and transparent particularly in the circumstances of this case. The facts indeed

demonstrate the evident unfairness as it cannot be seriously contended that Mount Pure or for that fact any potential sponsor could have fairly competed for the sponsorship contract awarded to Glenelg given the uncertain methods adopted by Spicemas in awarding contracts for sponsorship. What remedies attend this finding will be explored below.

Whether Spice Mas Corporation's decision to prohibit its vendors from selling Mount Pure's products at carnival events was irrational;

[76]Counsel for Mount Pure relies on **Associated Provincial Picture Houses Ltd and Civil Services Union v Minister of the Civil Service**¹⁹, and submits that the test is whether the decision in issue is so outrageous that no reasonable decision maker would have arrived at the decision. The sale of bottled water is a major and lucrative activity, especially during carnival Monday and Tuesday. Counsel for Mount Pure contends that it is irrational that the benefits derived from selling bottled water should be handed over to a sole supplier of bottled water. It is argued that it is equally as irrational to say to patrons on carnival Monday and Tuesday that they have no other option other than Glenelg's water.

[77]Counsel for Spicemas Corporation contends that as stated in **Associated Provincial Picture Houses Ltd** the court must determine whether the body has contravened the law by acting in excess of the powers which Parliament entrusted to them. Counsel posits that Spicemas Corporation was acting within its statutory powers under the Spicemas Corporation Ac. Accordingly, the decision that was made to prevent Mr. Peterkin from selling Mount Pure water products was reasonable, rational and had a legal basis, as it was made to protect the contract entered into with a third – party sponsor. Counsel also indicates that there is no evidence that there was a decision taken to prevent other vendors from selling Mount

¹⁹ [1948] 1 K.B. 223 At 224.

Pure's products, as Mount Pure's products were not singled out in any way.

[78]A decision exercised by a statutory or public body is only quashed for irrationality or unreasonableness in very limited circumstances. As stated by Lord Diplock in **Council for Civil Service Unions v Minister of Civil Service** – a decision is Wednesbury unreasonable where it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it²⁰. Courts will not quash a decision merely because they disagree with it or consider that it was founded on a grave error of judgment, as the court operates a supervisory and not an appellate jurisdiction. Thus, a court will not blithely substitute its own view for that of the body charged by Parliament for exercising a discretion²¹. The court must take into account the context of the case, as the standard of reasonableness varies with the subject matter of an act or decision²².

[79]On this issue, I wholeheartedly agree that there was nothing outrageous done by Spicemas Corporation. Mount Pure's argument on this point is surprising given that if they were awarded the sponsorship contract, they would have been in Glenelg's position of being the sole water sponsor, which they complain was lost by Spicemas Corporation's actions. From the evidence, the corporation simply acted within the exercise of their powers on the issue of vending licences for the carnival. The sponsor was chosen for water, as with other sponsors, and the documentary evidence shows the notices affixed to Spicemas Corporation's building simply list the names of sponsors.

[80]Mount Pure has not challenged that this was untrue, and provided no evidence to support Mr. Peterkin's contentions that Mount Pure was

²⁰ [1985] AC 374 at 410.

²¹ Chief Constable of the North Wales Police v Evans [1982] 3 ALL ER 141 at 143.

²² R v Department for Education and Employment, ex parte Begbie [2000] 1 WLR 1115.

singled out as persona non grata in these notices .Mr. Peterkin further has not challenged Ms. Lawrence's evidence that when she told him that Glenelg was the official sponsor for water, he announced to Spicemas Corporation's officials that he would remove the labels and sell his water anyway. Though the sponsorship contract between Spicemas Corporation and Glenelg was not placed before the court, both parties accept in their evidence that one of the benefits of sponsorship was exclusivity. If Mr. Peterkin's actions were allowed, it would have amounted to an infringement on that exclusivity. Neither Mr. Peterkin nor Mount Pure have shown how including this term in the sponsorship contract was in fact outrageous and contrary to what a reasonable entity in like circumstances would have sought to do.

Whether Spicemas Corporation's decision to insert provisions into its vending contracts amounted to unlawful restraint of trade or unlawful interference with Mount Pure's business?

[81]Mount Pure submits that the unchallenged evidence reveals that Mount Pure invested over \$250,000.00 to prepare for Spicemas 2019, by purchasing equipment to increase production, expanding storage capacity and hiring additional staff, and Spicemas Corporation's actions as a public body of blacklisting Mount Pure products unfairly undermined Mount Pure's business strategy and sent a negative message to the market about the brand, causing irreparable damage. Counsel further contends that Mount Pure had entered into contracts to employ dozens of persons as distributors at carnival, but these contracts had to be cancelled as vendors were not allowed to sell Mount Pure's products at carnival activities.

[82]Counsel for Spicemas Corporation argues that there are several classifications of restraints of trade and unlawful interference with

business. Counsel points out that Mount Pure has not specified any of these classifications on its claim. She therefore surmises that the restraint alleged must be by agreement and highlights that Mr. Peterkin did not say he was forced to sign the contract with the restraint clause or that he disagreed with signing same. Counsel contends that Mr. Peterkin freely signed the document. Counsel also submits that Mount Pure has not presented any documentary or other evidence of Spicemas Corporation's unlawful interference with its business.

[83] Where the claim for unlawful restraint of trade is concerned, it is helpful to recite that it is a general principle of the common law that a man is entitled to exercise any lawful trade or calling. Restraints upon the general freedom to trade may be divided into 4 categories, restraint imposed by statute, by operation of law, by agreement or by the rules or practices of professional or other bodies controlling particular activities²³. With restraints imposed by agreement, the law provides that a person may be restrained from carrying on his trade by reason of an agreement voluntarily entered into by him, as the general principle of freedom to trade must have regard to the public policy principle that persons of full age and understanding have the utmost freedom to contract²⁴.

[84] In the recent case of **Quantum Actuarial LLP v Quantum Advisory Ltd**²⁵, the Court of Appeal of England and Wales pronounced that where there are no substantive inequality of bargaining power or public policy concerns to justify engagement of the doctrine of restraint of trade, the court should look at whether the covenant was oppressive or unfair, and whether the public interest in holding parties to a freely negotiated contract outweighed the effect of restricting trade ability. It has also been confirmed that where a body invested with statutory powers exercises

²³ Halsbury's Laws of England, (Competition, Volume 16(2022) at 195.

²⁴ *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] 3 WLR 521 at 45–47.

²⁵ [2021] ALL ER (D) 44

those powers lawfully and not unreasonably, its decisions cannot be challenged under the restraint of trade doctrine²⁶.

[85]When looking at unlawful interference with business interests, this tort occurs where actions are done by persons with the intention of causing loss to another person's economic interests. If wrongful dealing, intent and loss are proven, liability may arise for causing loss by unlawful means²⁷. In finding that the tort of causing loss by unlawful means is distinct from the tort of inducing breach of contract, the court in **OGB Ltd v Allan**²⁸ elucidated that the essence of the tort of causing loss by unlawful means is proven where there is wrongful interference by the defendant with a contract between 2 or more parties coupled with an intention to cause loss to the claimant.

[86]In short on this issue, I do not find that Mount Pure's contentions have been made out on either unlawful restraint of trade or unlawful interference with business. There has not been an iota of documentary or supporting evidence on this assertion by Mount Pure about interference with its business interests as no contracts, invoices or other supporting material have been provided to the court. Even if I am to pull from the limited material and look to Mr. Peterkin's evidence of what Mount Pure claims that it did in preparation for carnival, I cannot see how Spice Mas Corporation bears fault about the alleged improvements done to Mount Pure's storage facilities and contracts with workers.

[87]A large portion of this claim is about Spicemas Corporation's alleged failure to consider Mount Pure's application for sponsorship. If the application was never considered, then I fail to follow Mount Pure's contention on this issue as their acts would have been of their own

²⁶ R v General Medical Council, ex p Colman [1990] 1 All ER 489

²⁷ Secretary of State for Health and another v Servier Laboratories Ltd and others [2022] 1 LRC 111

²⁸ [2007] UKHL 21.

initiative. With no evidence to support these contentions, documentary or otherwise, I do not find that Spice Mas Corporation's actions amounted to an unlawful restraint of trade or an unlawful interference with Mount Pure's business. Most notably, Mr. Peterkin did not deny that he signed the vending contract with the restraint clause willingly, or that he was under any duress, or that he lacked competence and understanding of what he was signing. Any investments made by Mount Pure were of its own account and cannot be attributed to Spicemas Corporation's actions or inactions as the case may be, and I find these assertions wholly without merit.

Whether Mount Pure is entitled to the relief sought?

[88]In light of the above findings, the last issue to be considered by the court is the appropriate remedy. On the claim for damages, counsel for Mount Pure submits that Spicemas Corporation induced a breach of contract by persons with whom Mount Pure had contracted to distribute its products during Spicemas 2019, and that the unlawful interference with Mount Pure's business by Spicemas Corporation warranted damages in a global sum of \$150,000.00. Counsel for Spicemas Corporation countered that Mount Pure has provided no evidence of having been damaged by Spicemas Corporation's actions, or any proof of money that was spent investing for Spicemas 2019. Given my findings on these matters in the previous sections of this judgment, an award of damages has not substantiated and will not be granted in this case.

[89]As to the eight limbs of declaratory relief sought by Mount Pure, I have found that only one is sustainable and I will dismiss the others for the reasons stated above. Spicemas Corporation's decision to award Glenelg the sponsorship contract in 2019 without having an established, well defined and easily ascertainable process for sponsorship was

procedurally irregular and unfair. As to the quashing order and the restraining order sought in the claim, I will not grant those orders, given that the matters as I see it are now moot given the time that has elapsed. It is hoped though that, for the future exercise of its functions, Spicemas Corporation and its Board would be guided by the declarations made in this case.

[90]In this regard, it is hoped that for the future exercise of its powers to acquire sponsorship it moves prepare and publish definitive, clearly articulated guidelines and processes for sponsorship applications. As I have stated above, it is empowered to do so under the direction of the Minister responsible for Culture (see section 18(2). The Minister responsible for culture may also issue guidelines as subordinate legislation on this issue in accordance with section 37 of the Act.

[91]On the issue of costs, given that the matter went to trial, the applicable costs regime is that of prescribed costs, and Mount Pure is entitled to 100% of the costs as calculated. As this claim is not for a monetary sum, I assess the value of the claim to be \$50,000.00, which would entitle Mount Pure to \$10, 000.00 in costs.

[92]However, given that Mount Pure has only been partially successful, and that I have not been able to find that the officials of Spicemas Corporation acted with any malice or deliberately made attempts to undermine Mount Pure's competitiveness in the market or acted unreasonably in their defence of this claim, I will exercise my discretion to vary the amount of costs awardable, utilizing rules 64.6 (4) and (5) of CPR 2023, and award costs to Mount Pure in the sum of \$ 3,500.00 .

CONCLUSION

[93]Mount Pure has been partially successful in their claim against Spicemas Corporation, and a declaration in this regard that in awarding the 2019 sponsorship contract to Glenelg, Spicemas acted unfairly and procedurally improperly is sufficient in the circumstances. I have not been able to find that Mount Pure has made out their claim that they suffered losses as a result of Spice Mas Corporation's actions and as such no damages are awarded.

[94]It is therefore ordered as follows:

- 1) A declaration is granted that Spicemas Corporation's decision to award Glenelg the sponsorship contract without having an established process for sponsorship was procedurally irregular and unfair;
- 2) The remaining aspects of Mount Pure's claims are dismissed;
- 3) Costs are awarded to Mount Pure in the sum of \$3,500.00 .

[95]The Court wishes to thank counsel for the parties for their elucidating submissions and their patience in awaiting a ruling on the issues.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar