

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2023/0217

BETWEEN

GARTH LANCE OLIVER

APPLICANT

AND

PHYSICAL PLANNING AND DEVELOPMENT BOARD

1stRESPONDENT

AND

CHIEF ENVIRONMENTAL HEALTH OFFICER

2ndRESPONDENT

AND

PERMANENT SECRETARY MINISTRY OF AGRICULTURE

3rdRESPONDENT

AND

ATTORNEY GENERAL

4th RESPONDENT

Appearances:

Ms. Kensha Theobalds for the applicant.

Ms. Franeek Joseph with her Ms. Gabrielle Myers for the respondents.

2024:Jan.24

ORAL DECISION

INTRODUCTION

[1]**Henry, J.:** This is an application by Garth Lance Oliver filed on Dec. 21st 2023 for an interim injunction to restrain the respondents from removing the animals such as pigs and ducks from his farm until determination of a Fixed Date Claim filed by him on 22nd December 2023 or further order. The

application is supported by an affidavit filed by Mr. Oliver on 22nd December 2023 and a further affidavit by him filed on 22nd January 2024.

- [2] In the Fixed Date Claim, Mr. Oliver seeks judicial review of a decision by the Physical Planning and Development Board ('the Board') communicated by letter dated 30th November 2023 by which the Board reportedly refused to grant Mr. Oliver an extension of time to relocate his pigs and ducks to a location approved by the Board as requested by him in a letter dated November 20th 2023.
- [3] By way of reliefs, Mr. Oliver seeks by the Fixed Date Claim a permanent injunction to restrain the Board, the Chief Environmental Health Officer, the Permanent Secretary in the Ministry of Agriculture and the Attorney General (collectively 'the respondents') from removing the referenced animals from his farm until determination of the claim or further order; an order of certiorari quashing the Board's decision not to grant him an extension of time and any other relief that the court deems just.
- [4] The respondents vigorously opposed the application for interim injunctive relief. They contended that Mr. Oliver's operation of the animal farm in the Villa neighbourhood has constituted a nuisance over many years; that a series of notices have been issued to Mr. Oliver as far back as 2013 directing him to ameliorate the conditions on the farm to remove the nuisance and ultimately culminating with the issuing of a letter to him dated 25th September 2023 to move all pigs and ducks from the farm by midnight on 25th November 2023 (i.e. within a period of 60 days).
- [5] Ultimately, by the enactment of **SR&O No. 44 of 2023 ('the SRO')** that was duly published in the Gazette, the Minister of Transport, Works, Lands and Physical Planning pursuant to powers vested in him under section 30 of the **Town and Country Planning Act**¹ ('the Act') made the **Protection of the Environment (Villa) Order, 2023** directing the Board to take certain specified steps within 4 weeks in relation to Mr. Oliver's farm at Villa, including mandating that he ceases the rearing of all farm animals on the land described in the Schedule; and complete the demolition of all unauthorized structures on it more specifically animal stalls.

¹ Cap. 334 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

- [6] It is not contested that the Board, by letter dated January 5th 2024 to Mr. Oliver directed him to comply with those directives within four weeks from the date of receipt of the letter. The respondents submitted that the **SRO** is presumptively legal and renders moot the issue that is before the Court. Mr. Oliver countered that the **SRO** is not binding on him given its nature.

ISSUE

- [7] The sole issue to be decided is whether the court should grant an interim injunction to Mr. Oliver to restrain the respondents from removing the animals such as pigs and ducks from his farm?

APPLICABLE LAW

- [8] The legal principles which guide the court when considering an application for an interim injunction are well settled and well known. Section 24 of the **Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act**² provides that the High Court or judge of the High Court may grant an interlocutory injunction ‘in all cases in which it appears to the Court or Judge to be just and convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Court or Judge deems just.’ This provision is buttressed by the **Civil Procedure Rules 2023 (“CPR”)**³ which expressly outlines the Court’s power to grant interim injunctions. The Court is required to act judicially and seek to give effect to the overriding objective of the **CPR** to act justly.⁴
- [9] In determining such an application, the court applies the discretionary principles enunciated in the *locus classicus* **American Cyanamid Co. v Ethicon Ltd.**⁵ Firstly, the court would consider whether there is a serious issue to be tried between the parties and if there is none, will refuse the injunction. If there is, the court will go on to consider whether damages would be an adequate remedy to the respective parties depending on the outcome of the application and in doing so will examine if the respective parties are financially able to satisfy an award of damages. In a doubtful

² Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

³ CPR 17.1 (1) (b).

⁴ CPR 1.2.

⁵ [1975] A.C. 396.

case, the court proceeds to assess the parties' respective needs and will evaluate where the balance of convenience lies.

Serious Issue to be tried?

- [10] The substantive claim involves the determination of whether the Board committed a procedural irregularity in arriving at its decision not to extend the time within which Mr. Oliver is required to remove his animals from his farm at Villa, by among other things not giving him an opportunity to be heard. Mr. Oliver submits that this is fatal to the Board's decision. The Board and other respondents argued that in light of the **SRO**, it is not. In my estimation, this is not a serious issue for several reasons.
- [11] Firstly, Mr. Oliver's application is expressly stated to be in relation to a letter dated 20th Nov. 2023 that he claimed that he wrote to the Board. Its Secretary Ms. Dornette Hull denied that the Board received such a letter and countered that it received instead a letter dated 22nd Nov. 2023. Both the letter relied on by Mr. Oliver and the letter relied on by the Board (as exhibited by Ms. Hull) were exhibited.
- [12] Interestingly, Mr. Oliver did not in his second affidavit refute that he had sent the Nov. 22nd letter to the Board. His Legal practitioner in her oral submissions indicated that there was some mix-up about the letters. In answer to a question from the court during oral submissions she accepted that the Nov. 22nd letter was under Mr. Oliver's signature and was sent to the Board.
- [13] The problem for Mr. Oliver is that his entire application rests on the letter dated Nov. 20th 2023 and the Court cannot substitute the letter of Nov. 22nd in its place or amend his application to correct this patent error. I make no order doing so. I find therefore that Mr. Oliver has not satisfied the court on a balance of probabilities that the Board's decision not to extend his time to remove his animals was in response to his letter dated Nov. 20 2023.
- [14] In any event, the issue of whether he ought to have been given an opportunity to be heard by the Board takes center stage irrespective of which letter is operational. I address this issue, purely by the way.
- [15] Mr. Oliver contends that an opportunity to be heard is granted when the decision maker holds a

meeting with the person affected by the decision. On the issue of a right to be heard, the law is quite clear that it is not always necessary to grant an aggrieved party or party being affected by a decision an opportunity to be present before the decision maker, or even an opportunity to be heard. In the latter instance are cases involving matters of national security.⁶

[16] What amounts to an opportunity to be heard varies depending on the circumstances. In **Leonart Matthias v Antigua Commercial Bank**, an industrial matter, Webster JA stated:

‘There is no fixed definition of what amounts to being given an opportunity to be heard. In every case it is a question to be determined on the facts and circumstances of each case. The decided cases provide useful guidance but I will start with a reference to Dr. Albert Fiadjoe in his work *Commonwealth Caribbean Public Law, Text, Cases and Materials*[Albert Fiadjoe, *Commonwealth Caribbean Public Law*, 4th Edn. Routledge-Cavendish, (UK), 2011.]where he said: “Fair hearing does not mean a hearing according to what would be required in a court of law. Basically, it means an opportunity to put one’s side of a case before a decision is made. Accordingly, the legal requirement on the adjudicator is nothing more than a basic duty of fairness. Of course, in deciding on what is fair the courts have to balance several interests...There are no fixed rules nor is there a requirement that any rules of evidence should be followed or applied. There is no insistence that there must always be an oral hearing. It all depends on the circumstances of the case. It is however possible to identify from the practice of the courts what are the ingredients of a fair hearing.”And he added:

‘... In an appropriate case an opportunity to present one’s case in writing can be sufficient.’⁷

[17] Whether or not Mr. Oliver issued the letter dated Nov. 20 2023 to the Board, I am satisfied that he placed his concerns before the Board in that letter and to the extent that the Board responded to the letter dated Nov. 22nd, those concerns were addressed in the Board’s response. Mr.

⁶ See *Minister of National Security of Saint Christopher and Nevis and the Attorney General of Saint Christopher and Nevis v Khaled Awad and Walid Awad* SKBHCVP2022/0015, decided on September 22nd 2023.

⁷ ANULTPAP2017/0002, at paras. 28 and 29; (decided on May 28th 2020).

Oliver cannot now be heard to complain that he did not have an opportunity to be heard even if he could rely on the Nov. 22nd letter. I find that there is therefore no serious issue to be tried.

Adequacy of damages

- [18] Moreover, even if there is a serious issue to be tried, what is at stake if compensation is to be paid by the respondents to Mr. Oliver would be the replacement value of his animals inclusive of pigs, ducks and perhaps chicken or other animals; the cost of re-establishing a farm elsewhere including building expenses. Those are quantifiable and can be met by an award in damages. I need not go on to consider the balance of convenience and refrain from doing so.

Miscellaneous

- [19] Also germane to the disposition of this matter is the trite legal principle that primary and subsidiary legislation are presumed to be legal and validly enacted unless declared otherwise by order of Court. Mr. Oliver has not in this Notice of Application his Fixed Date Claim Form impugned **SR No. 44 of 2023** and is therefore taken to have accepted its validity. There is no basis for this court to make a ruling that it is not valid, it having been signed by the relevant Minister and promulgated by publication in the Official Gazette.
- [20] Finally, I make the observation that while Mr. Oliver alluded in his affidavit to needing more time to seek funding from a financial institution to facilitate the move of the animals from his farm and stated that this would ordinarily take at least 3 months, he has put no evidence before the court as to steps he has taken in that regard, although a period of almost 4 months has elapsed since he was served with the letter on Sept. 25th 2023 directing him to move the pigs and ducks. He has also not made any application in form or substance under section 16 of the **Act** for approval of an alternative site for his farm.
- [21] In all the circumstances, I hold that Mr. Oliver has failed to establish that it is just and convenient to grant the order prayed for by him. His application for an interim injunction is therefore denied.

DISPOSITION

- [22] It is therefore ordered:

1. The application for interlocutory injunctive relief is refused.
2. Each party shall bear his, her or its own costs.

[23] I am grateful to counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar