

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV2021/0409

BETWEEN:

ASOT A. MICHAEL

Applicant

and

(1) MARY-CLARE HURST

**In her capacity as General Secretary of the Antigua and Barbuda Labour
Party**

(2) PAUL CHET GREENE

In his capacity as Chairman of the Antigua and Barbuda Labour Party

(3) GASTON BROWNE

**In his capacity as the Political Leader of the Antigua and Barbuda
Labour Party**

Respondents

Before:

Justice Jan Drysdale

Appearances:

Hugh Marshall and Kema Benjamin of counsel for the Applicant

Dr. David Dorsette and Gail Christian of counsel for the Respondents

2021: December 8th

December 16th

DECISION

[1] The matter for consideration is a claim for interlocutory relief. An interim injunction was granted with a returnable date for an inter partes hearing. The Court is therefore tasked with the responsibility to determine whether the injunction should continue or be discharged.

[2] The Applicant on the 8th day of November 2021 filed a Fixed Date Claim Form and an application for injunctive relief. The application for interim relief sought to restrain the Respondents from inter alia excluding him from any Central Executive meetings, giving effect to any decision taken at a meeting on 22nd October 2021, from recognising any Constituency Branch executive of the constituency of St. Peter elected on 27th October 2021 and recognising any other Constituency Branch executive other than that provided for under the Revised Constitution of the Antigua and Barbuda Labour Party.

[3] The parties each filed affidavit evidence and submissions in support of their respective positions. They were also heard on oral submissions.

The Applicant's Evidence

[4] The Applicant is an elected member for the Constituency of St. Peter and a member of the Antigua and Barbuda Labour Party (hereinafter ABLP). The Applicant asserts that although once close that now he and the Third Respondent have an appalling relationship with the Third Respondent characterising him in the media in the most unpleasant terms. Notwithstanding, the Third Respondent has never formally raised or called him to answer any allegation.

[5] In October 2020 an unlawful disciplinary tribunal was established. It was challenged in the High Court and an injunction was granted against the First Respondent and others.

[6] The Applicant deposed that not only has the Third Respondent made it abundantly clear that he has been “deemed to be unfit to serve as a candidate of the ABLP” he has stated that I ‘cannot run on his ticket.’.

[7] Several attempts have been made to engage in dialogue with the members of the ABLP but these attempts have always been rebuffed with the Third Respondent then resorting to social media to express his sentiments.

[8] Although he has filed several matters against the Respondents, these were only to protect his rights and prevent his unlawful expulsion from the ABLP.

[9] Recently he observed a person he considers to be a comrade post on his Facebook page “St. Peters Constituency ABLP” and described himself as a ‘candidate hopeful’. Additionally, there are several billboards within the constituency bearing Comrade Turner’s face in the party’s colours. No objection has been raised by the ABLP. Therefore, having regard to all of the circumstances he has come to the conclusion that it is the intention of the

Respondents to appoint another and replace him as the candidate for the constituency of St. Peter.

- [10] The Applicant states that has been precluded from attending meetings held by the Central Executive pursuant to a letter dated 22nd October 2021. That letter stated that he had been excluded from the meeting scheduled for that day and advised that if he proceeded to enter the premises he would be escorted off the premises. As an elected member he has the right to sit on the Central Executive and the right to represent the interest of his constituents. These rights have been breached.
- [11] With respect to the Constituency Branch the Applicant deposed that there has been in existence a Constituency Branch as far back as 2004 when he entered the political arena. The Constituency Branch has a chairman, executive and members and this is within the knowledge of the Respondents. Despite this the First Respondent and others including the 'candidate hopeful' convened a meeting for which he was neither given notice of the same nor invited by the Respondents or the members of the executive save the Chairman. At that meeting they purported to have an election of an executive. This is clearly a clandestine attempt to create another constituency branch and remove him as the candidate for St. Peter.
- [12] The Applicant asserts that these actions are contrary to the Constitution of the ABLP that provides a mechanism in the form of Primary if he is to be removed as the candidate.
- [13] His belief that all these are attempts to have him unlawfully removed were fortified upon hearing the Second Respondent whom he admittedly does not believe spoke for everyone on a radio program state the words "we don't want him" and "we had to kick him out but he has our hands tied with the tribunal so we the Central Executive decided to appoint our own branch and kick him out." These comments he believed referred to him. Therefore, unless restrained until the determination of the claim the Respondents will continue their unlawful actions designed to inter alia remove him as the candidate for the constituency of St. Peter.

The Respondents Evidence

- [14] The Respondents evidence was contained in the affidavit of the First Respondent. The Respondents allege that since the Applicant's entrance into the political arena there has always been allegations of corruption against him. However, the party stood by him during that time. In 2014 when the ABLP was returned to the seat of power the Applicant was given a Ministerial portfolio but

a mere three years later resigned amidst speculation of another act of indiscretion that led to him being detained at Gatwick Airport. The Applicant though an Elected Member is now a back bencher but continues to hold influence in the ABLP though not as much influence as he has been accustomed to in the past.

- [15] It has always been the position of the Third Respondent that any act of malfeasance or criminal activity would necessitate swift resignation from the offender. This position is applicable to any person found to be in such a situation.
- [16] The Respondents agree that the relationship between the Applicant and the Third Respondent is not good. In support an extract of an interview with the Applicant wherein he made certain choice statements about the Third Respondent was produced.
- [17] The Respondents aver that although the Applicant has characterised the Facebook statements of the Third Respondent as unpleasant, he has not denied them as factually untrue nor has he posited that the views held by the Third Respondent are contrary to the views of the Central Executive.
- [18] In response to the Applicant's assertion that he had not been confronted about any allegations made against him, the Respondents contend that the ABLP is not a law enforcement or criminal investigation organisation. Therefore, there is no duty on the part of the ABLP to call upon the Applicant to answer criminal allegations. However, the Respondents submit that as a practical matter, it is not in the Party's interest to have on its slate of candidates, persons like the Applicant who are the subject of whispering, suspicion, or speculation that they are or may have been involved in criminal activity or otherwise dishonourable conduct.
- [19] The Respondents deny being aware of attempts as alleged by the Applicant that he has made to engage in dialogue with ABLP party officials. Furthermore, the Respondents contend that the Applicant has launched several legal proceedings against the Third Respondent. As such it would be highly inappropriate for the Third Respondent to engage in dialogue with him especially where the actions of the Applicant have been to destabilize the ABLP.
- [20] They also contend that the Applicant raised a legal challenge to disciplinary proceedings that the ABLP attempted to bring against him. An interim order by way of an injunction was granted in his favour in that claim. The Applicant was also ordered to file his Claim within seven (7) days in the matter "herein". However rather than proceed with the litigation in the manner ordered by the

Court, the Applicant launched new legal proceedings in High Court action ANUHCV2020/0446 (“the second court action”) and added the Third Respondent as a defendant. The Party has applied for proceedings in the first court action to be struck out as the Applicant has not complied with the Court’s Order but has had the benefit of an injunction against the Party for more than a year.

- [21] Regarding the Central Executive the Respondents state that it is empowered to administer the affairs of the Party subject to the consideration and ratification by the National or Special Convention. They contend that effective administration of the affairs of the Party, particularly at the level of the Central Executive, is almost impossible with a member who is engaged in litigation with the Party Leadership and is hostile and disruptive towards Party Leadership. They allege that the affairs of the ABLP at the Central Executive level cannot be put in order or stay in proper order where a member of Central Executive is attacking the Party’s leadership.
- [22] The Respondents assert that the next General Elections for Antigua & Barbuda are constitutionally due in 2023. As such the ABLP is duty bound to ready itself for this process. One of the first steps is ensuring that all branches of the Party are properly constituted. For that reason, the Central Executive at a meeting held on the 22nd October 2021 decided to hold elections in each branch in order to regularise each constituency executive bodies ahead of the Party Convention. As General Secretary the roster for these elections was set by the First Respondent and approved by the supervisor of elections, and the first vice chair, who has responsibility for setting up branches. The Chairman of the St. Peter’s branch was duly informed that the elections were set for the 27th October 2021. It was the duty of Chairman of the St. Peter branch to summon the members of the Branch and to inform the Applicant of the meeting.
- [23] The Applicant as parliamentary representative by virtue of his position is an ex officio member of the Constituency Branch and is without voting rights. The meeting was called to order after which time the Chairman presented a slate of candidates to hold positions as executive members of the Constituency Branch. The process was properly followed, and nominations were received. There was no improper conduct.

The Submissions of the Applicant

- [24] The Applicant applying the American Cyanamid principles submits that there is a serious issue to be tried and if the Respondents are not restrained then the chances of the Court in being able to do justice on the determination of the merits of that claim would be minimal.

- [25] Regarding the first limb of that principle, a serious issue to be tried, the Applicant states that the Respondents acting under the leadership of the Third Respondent are attempting to oust him from the ABLP in breach of the ABLP Constitution. However, the Third Respondent and in fact all members of the ABLP are bound by the rules of the Constitution of the ABLP. That the constitution and rules of any incorporated association can only be altered in accordance with the constitution and rules themselves.
- [26] If not restrained the Respondents will be able to prevent the Applicant from performing his duties within the ABLP as the Elected Representative for the Constituency of St. Peter on the ABLP ticket and prevent him from having the opportunity to be the ABLP candidate at the upcoming general elections for a constituency he has represented since 2004. The Respondents actions would also prevent the constituents of St. Peter who are ABLP members from being able to elect him as their candidate should they so choose.
- [27] The Applicant argues that damages upon conclusion of the claim would not be able to adequately compensate him for the unlawful ousting from the ABLP. In fact, he advanced that no amount of money could compensate him for the loss of a political career within the ABLP.
- [28] Regarding the balance of convenience, the Applicant argues that the court should have in mind 'what practical consequences of the injunction are likely to be'¹ and should take whichever course seems likely to cause the least irremediable prejudice to one party. In support of this the Applicant argues that the Revised Constitution of the ABLP governs the relationship between the ABLP and its members by virtue of the law of contract. That section 8.5.1 of the ABLP Constitution established a Central Executive as the Chief Administrative Authority subject only to the National Party Convention. Moreover section 8.5.2.4 provides that all Elected Representatives for all constituencies are members of the Central Executive. Therefore, the Applicant is entitled to attend all of its meetings.
- [29] Pursuant to the ABLP Constitution only a Constituency Branch can elect its own officers. In circumstances where there are two or more candidates, the Constituency Branch must arrange a Primary. There are detailed rules governing how a Primary is to be conducted.
- [30] The Applicant as an Elected Representative is an ex officio member of the Constituency Branch and he in conjunction with the elected Chair of that body

¹ National Commercial Bank Jamaica v Olint Corp'n Ltd (Practice Notes) [2009] UKPC 16

is responsible to the Central Executive for the conduct and performance of that branch.

- [31] The Applicant posits that the interim injunction will not prevent the Respondents and or any members within the ABLP from supporting Comrade Turner as a candidate for election in a lawfully constituted Primary. It would only restrain them from doing other than in accordance with the ABLP Constitution which contains detailed provisions governing the situation. That will not cause any unjust or irredeemable prejudice. Accordingly, the third element of the balance of convenience lies in the favour of the Applicant.

Respondents Submissions

- [32] The Respondents argue that the injunction should not be granted as it is neither just nor convenient. Whilst the Respondents accept that the principles in the case of **American Cyanamid Co. v. Ethicon Ltd.**² usually serve as a guide in the Court's exercise of discretion for injunctive relief they submit that this is in the context of commercial situations where loss, hardship or misfortune could be compensated by payment of money. They posit that those rules could not apply to a political situation where there is internal wrangling in a political party in which everything is in a state of flux.
- [33] The Respondents submit that in any event that there are well established exceptions to the American Cyanamid principles. They rely on the case of **Cayne v Global National Resources Plc**³ and propound that one such exception is where the interim relief would have the resultant effect of resolving the dispute without a trial thereby defeating the need or probability that the matter will proceed to trial. The Respondents submit that this exactly is the effect of the injunction. In support of this they highlight the fact that the claim for injunctive relief is a mirror image of the reliefs claimed in the Fixed Date Claim. They question what motivation the Applicant could now have to produce with any alacrity to trial. They also ask the Court to take judicial notice of the fact that the Court's calendar as far as the availability of trial dates is already heavily packed and a trial in the instant matter for all intents and purposes is at least two years away. Therefore, they submit that there is no realistic prospect of a trial on the horizon or in the immediate future. These factors coupled with the reality that general elections could if not coincide with easily pre-date the hearing of the matter are grounds for the discharge of the injunction.

² [1975] A.C. 396

³ [1984] 1 All ER 225

- [34] The Respondents also allege that the misconduct of the Applicant is a bar to equitable relief for an injunction. They argue that the actions of the Applicant have been deplorable and as such that disentitles him to any relief.
- [35] They contend that the Applicant's claim is one in contract. They claim that the Applicant is attempting to force the Respondents to associate with him and to attend meetings of the Central Executive in circumstances where the Respondents do not wish to do so as he has been deemed to be unsuitable consequent upon his behaviour. They claim that for all intents and purposes the Applicant is seeking an order for specific performance by the back door and that it should be refused as specific performance would not be granted for performance of contract for partnership. They lay emphasis on their constitutional right of freedom of association and relying on the case of **California Democratic Party v Jones**⁴ which stated that "a corollary of the right to associate is the right not to associate" and which concluded that "[i]n no area is the political association's right to exclude more important than in the process of selecting its nominee" as support their arguments that the injunction should be discharged. They underscore that the Court should be averse to interfering with the selection of candidates by political parties.
- [36] The Respondents submit that the Applicant is in serious and serial breach of Article 11 in particular articles 11.11, 11.20 and 11.28 of the ABLP Constitution. They argue that it being the case that the Applicant is in blatant, conspicuous, unmitigated, and unrepentant breach of the ABLP's Code of Conduct he is not entitled to a restraining order against the Respondents. They rely on the case of **Telegraph Despatch and Intelligence Co v Mclean**⁵ wherein an injunction was refused to a claimant on account of serious contractual breach.
- [37] Finally, the Respondents submit that the Applicant does not have any proprietary interest in the assets of the ABLP and accordingly an injunction ought not to be granted in his favour.

Analysis and the Law

- [38] There being a dispute as to the principles that should govern the Court's discretion, the first issue for resolve is whether the guidance found in the case of **American Cyanamid** should found the basis in determining whether an interlocutory injunction should be granted.

⁴ 580 U. S. 567 at 574 and 575 (2000)

⁵ (1873) LR 8 Ch App 658

[39] The **American Cyanamid Co. v. Ethicon Ltd**⁶ case has generally been accepted as the most authoritative case on the manner in which the Court should exercise its discretion in the determination of matters of injunctive relief. That is not to say it is the sole test as there are various formulations which are based on the type of injunctive relief sought.

[40] As far back as 1979 Lord Diplock in the case of **NWL Ltd v Woods**⁷ recognised that circumstances may necessitate a modification of the American Cyanamid guidelines. He explained that this may arise in circumstances where the refusal or granting will have the effect of determining the matter summarily. He articulated a modified approach to American Cyanamid, and stated:

‘My Lords, when properly understood, there is in my view nothing in the decision of this House in *American Cyanamid Co. v. Ethicon Ltd* to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. *American Cyanamid Co. v. Ethicon Ltd*, which enjoins the judge on an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party’s interest to proceed to trial.’

[41] This modified approach was applied in the recent case of **Global Gaming Ventures (Group) Ltd and another v Global Gaming Ventures (Holdings) Ltd and another**.⁸ In that case the Court endorsed the approach taken in the **NWL Ltd. v Woods**⁹ case and found that where an order was likely to dispose of the matter the judge should have ‘concentrated on the relative strength of each party’s case rather than merely asking himself whether there were serious issues to be tried and then deciding the application on the balance of convenience.’ The Court found that in such cases where it was now or never that it was ‘permissible for the court to consider the degree of likelihood of the applicant succeeding in its claim at trial when weighing up the balance of convenience.’ They advised that the Court should have regard to the potential consequences of the relief sought compared to the strength of the case and not merely by reference to what would cause the least harm.

⁶ [1975] AC 396

⁷ [1979] 1 WLR 1294

⁸ [2018] EWCA Civ 68

⁹ [1979] 1 WLR 1294

- [42] In this case the Respondents have strenuously argued that the effect of the injunction would be to dispose of the matter without a trial. They further contend that the effect of the injunction would provide no motivation for the Applicant to advance this matter. Moreover, regard given to the likelihood when this matter may be set down for trial which may either coincide with or post-date general elections that there would be no real exploration of the triable issues as the same would have been rendered nugatory at that time. I am inclined to agree with the Respondents on this issue. Therefore, having regard to the guidance given in the above cases, I believe that it is apt for the modified American Cyanamid approach now considered the American Cyanamid plus test to be applied to this matter.
- [43] The Applicant is an elected member of the House of Representatives. By virtue of this, the Constitution of the ABLP provides that he is an automatic member of the Central Executive and is entitled to attend meetings. The Respondents have sought to bar him from such attendance by deeming him to be unsuitable. It is not contested that the Applicant was handed a letter the day scheduled for a Central Executive meeting prohibiting him from attending the meeting and or any future meetings. Whilst the Constitution of the ABLP does seem to provide that a person may be deemed to be unsuitable it seems to be silent on the process by which this may be done. The fact that the Respondents do not wish to associate with the Applicant is secondary to whether that decision is subject to natural justice principles and accordingly the lawfulness of the same. This I believe may be a strong argument which if successful would entitle the Applicant to certain relief.
- [44] Having weighed the strength of the Applicant's claim that he is entitled to attend meetings of the Central Executive, I now turn to weigh the balance of convenience. The Central Executive because of its role and function and the frequency of meetings may be the most significant of the various bodies in the ABLP. It is only subject to the National Convention which body only meets every two years. The Central Executive is responsible for the administration of the party and its powers are wide ranging. Therefore, if the Applicant is barred from attending those meetings his voice in the affairs of the party especially as it relates to the Constituency, he represents will be silent. This I believe qualifies as irreparable harm.
- [45] Although the Respondents have argued that the misconduct of the Applicant is a bar to equitable relief, I do not find that they have provided the evidence or made out a claim at least at this juncture that there is misconduct sufficient to preclude the Court from granting this limb of the injunction. Whilst the Respondents have cited certain provisions from the code of conduct in the ABLP Constitution which they allege the Applicant has breached, there has been no disciplinary process as set out by the Constitution to determine

whether such behaviour amounts to misconduct and requires some form of sanction. The mere allegation of misconduct is insufficient to act as a bar to equity in the circumstances.

- [46] The Applicant's other remedies sought fare less well. In relation to the issue of the Constituency Branch, the Applicant is the ex officio member. By virtue of this he has no voting rights in the affairs of that entity. The Applicant complains that save the notification from the Chairman elections were held largely without his knowledge and consent. On the face of it there doesn't seem to be an obligation to notify the Applicant. However, if my analysis is wrong in any event the election of a new executive does not adversely affect the Applicant. The ABLP Constitution appears to only recognise one Constituency Branch. Therefore, despite the composition of elected members, the Applicant retains his position as ex officio member with the same rights and duties. The Applicant's case is not sufficiently strong to justify any injunctive relief. Furthermore, there seems to be no irreparable harm as according to the Applicant the appointment of a new executive does not have the effect of removing him as a candidate as this must be done by holding a Primary in accordance with the ABLP Constitution.
- [47] Much has been made about Comrade Turner purportedly holding himself out to be the candidate for the Constituency of St. Peter. However, the Applicant by his own evidence states that Comrade Turner is a self-described 'candidate hopeful.' The fact the Comrade Turner is of that belief and may have attempted to influence constituency members that he should be the next representative has not affected the Applicant's position as elected member of the House of Representatives for the constituency of St. Peter.
- [48] The Respondents have categorically stated that they do not desire the Applicant as a candidate moving forward. As such it appears that they may be tacitly endorsing the actions of Comrade Turner. However, the Applicant is the elected member for that constituency and the silent approval of the Respondents is insufficient to found a cause of action that he has prevented him in functioning as the duly elected member in the House of Representatives.
- [49] In light of the above there is a need to vary the terms of the interim injunction as the Applicant has only demonstrated that relief regarding the first limb of the application should be granted.

Order

- [50] It is hereby ordered that:

- a. The Respondents are restrained from excluding the Applicant from Central Executive meetings of the Antigua and Barbuda Labour Party until the determination of this matter.
- b. All other provisions of the interim injunction are hereby discharged.
- c. No order as to costs

Jan Drysdale

High Court Judge

By The Court

Registrar