

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO: SLUHCV20071014

BETWEEN:

L.G. WHITE CONSTRUCTION CO. INC.
DENNIS SARVER

Claimant

and

DCG PROPRIETORS

Defendant

Appearances:

Mr. D. Theodore for Claimant
Mr. P. Foster and Ms. R.T. St. Rose for the Defendant

RULING

2007: December 4
December 10

JUDGMENT

- (1) The Claimant filed a claim on 27th November, 2007 and on the same day applied for injunctive relief. Though the application is phrased as requesting an order restraining

the defendant, a closer examination reveals that the claimant actually seeks a mandatory injunction.

- (2) The claimants say that the defendants have seized certain property belonging to the claimants or to which the claimants are entitled. The claimants seek an order restraining the defendants from continuing to detain the goods.
- (3) The defendants are parties to a contract with a local company called White Construction Co. Ltd. The defendants, acting under that contract, have taken possession of the goods in question. The claimants say they are not parties to the contract and that the defendants have no right to take their goods. The defendants say that the first claimant is really once and the same person as White Construction Company Limited.
- (4) I make no effort to decide that issue at this stage. The only question for the Court now is whether to grant the injunction sought or not.
- (5) The principles which govern the grant of an interim injunction are well known. They have been authoritatively explained by Lord Diplock in American Cyanamid Co. v Ethicon Ltd. I do not repeat them here in full.
- (6) Firstly I note that it is rare that a court will grant a mandatory injunction at the interlocutory stage, as the purpose of the injunction is usually to preserve the status quo until the substantive rights of the parties can be determined.
- (7) The claimant must first establish a good arguable claim. I do not seek to decide the matter on the affidavits filed, however, I consider that the claimant has successfully cleared this hurdle. In fact Mr. Theodore for the claimant goes further. He argues that the matter is so clear that it is the defendants who have no arguable answer. He says

the Court should eschew its usual reluctance to grant a mandatory injunction in this case. He cites the case of Weir v Herman et al 2001 N 1 Ch 8. If the resolution of the issues in dispute would be resolved by determination of a point of Law that can be answered at the interlocutory state the court should decide the point and dispose of the matter.

- (8) I agree with that statement. The issue here is quite simply whether there is privity of contract between the parties. Unfortunately, to determine that issue the court will need evidence. The claimants say there is no privity the defendants deny this.
- (9) Consequently I think that I must fall back to the usual attitude of the court vis a vis the grant of mandatory interlocutory injunctions.
- (10) I would require a high degree of certainty before I grant such an injunction. I also consider that damages would be an adequate remedy should the claimants succeed at the time.
- (11) I do not wish to be taken as endorsing an attitude by defendants to recklessly seize a claimants goods and pay damages later a kind of compulsory acquisition, but the fact remains that these goods are largely commercial profit earning chattels that the claimants expected would be used in the contract between the defendants and White Construction Company Limited. The claimants then are in no worse position that they would have been if the contract had been performed, once they are compensated for the use of their goods.

- (12) The application of the claimant for the interim injunction is not granted.
- (13) The issue of the costs of this application was not argued fully before me I direct that
These costs be for the claimants to pay to the defendants in any event and they will be
determined at the substantive trial.

.....
BRIAN S. COTTLE
HIGH COURT JUDGE