

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 537 OF 1999

BETWEEN:

HENDRICK ALEXANDER
ARTHUR CONNELL
MICHAEL DE FREITAS
HUDSON SOSO

Plaintiffs

and

RALPH BAYNES
RONALD T. BROWNE
FREDERICK BALLANTYNE
BRIAN GLASGOW

Defendants

Appearances:

Mr. Othneil R. Sylvester QC CMG for the Plaintiffs

Mrs Margaret Hughes-Ferrari and Ms Zhing Horne for first, second and third Defendants

Mr. Grahame Bollers for fourth and fifth Defendants

2001: February 16, 22

RULING

- [1] **WEBSTER, J (acting):** This action was commenced on October 29, 1999 by a generally indorsed Writ of Summons in which the Plaintiffs claim a declaration that the purported sale of the only asset of The Incorporated Trustees of Saint Vincent Jaycees ("the Corporation") by the first three Defendants to the fourth and fifth Defendants constitutes a breach of trust, being an improper sale at an undervalue. The subject matter of the sale is the Jaycees' headquarters at Stoney Ground, St. Vincent ("the Property"). The Plaintiffs also seek an injunction to restrain the sale of the Property.
- [2] The Statement of Claim was filed on December 6, 2000 and the Defence on January 20, 2001. No reply was filed.

- [3] The first Plaintiff is one of the trustees of the Corporation. The second to fourth Plaintiffs are senators of the Jaycees organisation. The defendants deny that the second to fourth Plaintiffs are members of the Jaycees organisation, and there is nothing in the pleadings, nor the Jaycees Constitution and Policy Manual, to suggest that they are members of the organisation.
- [4] The first three defendants are the other trustees of the Corporation. The fourth and fifth Defendants are the contract purchasers of the Property.
- [5] On January 14, 2001 Mr. Justice Adams granted an interlocutory injunction restraining the first three Defendants from selling the Property, and the fourth and fifth Defendants from completing the purchase of the Property, until the trial of the action or further order. The clear intention of this injunction was to maintain the status quo until the trial of the action. The trial is set February 26, 2001.
- [6] On February 8, 2001 the Plaintiffs applied for a further injunction to restrain the fourth and fifth Defendants from carrying out certain activities on the Property. The fourth Plaintiff's affidavit in support of the application avers that on February 6, 2001 the fourth and fifth Defendants, their servants or agents, carried out construction activities on the Property.
- [7] In the reply affidavit filed on February 14, 2001 the fourth Defendant did not deny that construction activities took place. Instead he took the position that the Plaintiffs do not have locus standi to bring the action, and therefore the Court should not grant an injunction. This is the first challenge to the first Plaintiff's ability to bring the action. The Defence filed on January 20, 2000 challenged the second, third and fourth Plaintiffs' capacity to bring the action. No challenge was raised to the first Plaintiff's capacity.
- [8] The Defendants' position is that the Property is owned by the Corporation which was incorporated by The Saint Vincent Jaycees Incorporation Act, No. 8 of 1978 ("the Act"). Section 2 of the Act incorporates the trustees as The Incorporated Trustees of the Saint Vincent Jaycees, a separate legal entity with perpetual succession, and power to sue and

be sued in its own name. The proper plaintiff in this case should therefore be the Corporation.

[9] The Defendant's further contend that if the Corporation cannot sue because three of the four trustees are in favour of the sale, then the action can only proceed as a derivative action pursuant to section 239 of the Companies Act, or as a representative action (pursuant to Order 15 rule 12 of the Rules of the Supreme Court).

[10] Learned Counsel for the Plaintiffs contends that the issue of locus standi does not arise at this stage, but if it does the first Plaintiff has standing to sue as one of the trustees of the Corporation, and the other plaintiffs as senators of the Jaycees.

[11] I do not agree that the issue of locus standi does not arise at this stage. If a plaintiff does not have capacity to bring an action, the action will ultimately fail. The Court will not grant an injunction to a plaintiff who cannot succeed in the substantive action.

[12] I am satisfied on the pleadings and the other documents before the Court that the second, third and fourth Plaintiffs do not have standing to bring this action against the Defendants. They are not members of the Jaycees and as such are not beneficiaries of the statutory trust created by the Act. Neither are they trustees entitled to enforce the trust. They are senators of the Jaycees organisation, a position that is not defined in the Constitution.

[13] It remains for me to examine the possible bases on which the first Plaintiff could have brought this action. The three bases that were canvassed at the hearing are:

- (a) a derivative action
- (b) a representative action
- (c) an action by one of several trustees against the remaining trustees for breach of trust.

I will deal with these in order.

Derivative Action

- [14] The possibility of a derivative action was raised and dismissed by Counsel for the fourth and fifth Defendants. He submitted that the Plaintiffs may have been able to bring a derivative action on behalf of and for the benefit of the Corporation (which is controlled by the first three defendants). However, the action is not pleaded as a derivative action, and in any event the plaintiffs would have needed leave to start the action pursuant to section 239 of the Companies Act.
- [15] The Corporation was incorporated by an Act of Parliament and the Court cannot resort to the provisions of another Act (the Companies Act), nor the general principles of company law, to determine Corporation's power to sue. The answer therefore is not to be found in the rules relating to derivative actions.

Representative Action

- [15] This was also raised and dismissed by Counsel for the fourth and fifth Defendants. It is clear from pleadings that there has been no attempt by the Plaintiffs to avail themselves of the procedures in Order 15 Rule 12 for bringing an action on behalf of the beneficiaries of the statutory trust, and I find that the action is not a representative action.

Action by Trustee

- [16] The only remaining issue is whether the first Plaintiff can sue his co-trustees for breach of trust. This is the position that Counsel for the Plaintiffs maintained throughout the hearing.
- [17] The trustees of a statutory trust are not relieved of their obligations and responsibilities as trustees by virtue of incorporation. They continue to be jointly and severally responsible for the proper administration of the trust property. It is for this reason that trustees can take proceedings to protect the trust property without joining the beneficiaries: RSC Order 15 Rule 14. The rule does not address directly an action by one trustee against his co-trustees for breach of trust, and I have not been referred to any such case. However, some support for this position can be found in the case of *In re Whiteley Bishop of London v. Whiteley* [1910] Ch 600. Questions arose between the trustees of the

testator's will as to the proper interpretation of the will, and eight of the ten trustees brought proceedings against the other two trustees for the Court's interpretation of the will. The Summons was heard by Eve J. who made orders regarding the proper interpretation of the testator's will.

- [18] I am satisfied that a trustee who perceives that the sole asset of the trust is about to be sold in circumstances that he thinks will amount to a breach of trust, and a loss to the beneficiaries, should not have to stand by and do nothing to stop the sale.
- [19] I therefore find that the first Plaintiff can bring an action against his co-trustees for breach of trust.
- [20] The fourth and fifth Defendants' only response to application for the injunction is that the Plaintiffs do not have standing to bring the action. Having found that the first Plaintiff does have standing, an injunction is granted restraining the fourth and fifth Defendants, whether by themselves their servants or agents or howsoever otherwise, from excavating or digging or erecting or constructing any building and structure on the Property until the trial of the action or further order.
- [21] And upon hearing counsel for the parties it is ordered that the costs of this application be costs in the cause.

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Paul Webster
High Court Judge [Ag.]