

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 262 OF 2000

BETWEEN:

**MARLENE JAMES
GUDRUN BERG-STEINMEIER
DIVE PARADISE COMPANY LIMITED**

Plaintiffs

and

**HARALD HESS
ROLAND MINDER**

Defendants

Appearances:

Mr Emery Robertson, Ms Zoila Ellis with him, for the Plaintiffs
Mr Hansraj Matadial for the Defendants

2000: July, 14, 18

DECISION

[1] **MITCHELL, J:** This case is a dispute between shareholders over the ownership of shares in a dive shop company in Bequia in St Vincent and the Grenadines. The application for determination at this stage is for an interlocutory injunction to restrain the 1st Defendant from appointing any other person to be a director of the company; and to restrain the Defendants from negotiating any sales of the company or its assets without the knowledge of the Plaintiffs.

[2] The application for the injunction was made by an *inter partes* summons filed on 20 June 2000. It was supported by affidavits of the 1st and 2nd Plaintiffs sworn on 19 June and filed on 20 June, and of the 1st Plaintiff and Dorothee Ollivierre, the

attorney of the 2nd Plaintiff, of 7 July 2000. It was opposed by the Defendants who put in an affidavit of the 1st Defendant sworn and filed on 29 June 2000.

- [3] The substance of the Plaintiffs' application is that the 1st and 2nd Plaintiffs are majority shareholders and directors of the 3rd Plaintiff Company. The allegation is that the 1st Defendant is also a shareholder and director of the company, and that he has wrongfully filed documents at the Registry of Companies removing the 1st and 2nd Plaintiffs and others as directors of the company. They complain that these actions show an intention on the part of the 1st Defendant to control the company and to take major decisions without their knowledge and consent. They seek an order restoring them as directors and removing the 1st Defendant from his position as Managing Director of the company.
- [4] The Affidavit in opposition filed by the 1st Defendant claims that the 1st Plaintiff sold and transferred to him her shares in the 3rd Plaintiff since 12 August 1996, while the 2nd Plaintiff also did so on 31 December 1999. He claims to be the sole shareholder of 100% of the company. He claims that the 2nd Defendant has now been removed as a director of the company, so that he is the sole director. He claims that the 1st Plaintiff is his ex mistress and is motivated by vengeance, anger, spite and malice. The 2nd defendant was his maid for some years, and she has never paid or contributed any monies towards the business of the 3rd Plaintiff. He claims that the 1st Plaintiff has no assets in the State of St Vincent and the Grenadines and is a permanent resident of Germany. The 2nd Plaintiff holds no assets of any kind to his knowledge. He, by contrast, holds real property to a value of US\$300,000.00. The net assets of the company are worth only US\$75,000.00. In the event of any damages being awarded against him, he will be in a position to pay the damages. The 1st and 2nd Plaintiffs, in reply, protest that the share transfers are forgeries, and that the injunction prayed for is essential to protect their interest in the company.

[5] Both counsel relied on the case **American Cyanamid Co v Ethicon Ltd [1975] AC 396**. In argument on the application, counsel for the Defendant made two principal points. If I can paraphrase him, they were as follows. First, that the affidavit evidence established that, if damages were awarded against the 1st Defendant, he has more than adequate assets to pay the damages, while if he were to recover an order for damages against the 1st and 2nd Plaintiffs on their undertaking in damages, he will not be able to recover anything from them. Secondly, the Plaintiffs have not established that damages will not be an adequate remedy, and, in the circumstances, the court should not grant the injunction sought. Counsel for the Plaintiffs' response was that once there was a triable issue the court should preserve the status quo by granting the interlocutory injunction.

[6] I have considered the evidence, the law, and the argument. There is clearly a triable issue between the parties in that there is a serious question to be tried of which the outcome is uncertain. If the injunction is not granted, the 1st Defendant will likely feel free to proceed to offer to sell either the company or its assets. If the company is sold, the 1st and 2nd Plaintiffs will have to establish their loss and to commence and carry through to completion a lawsuit for damages. They will have lost their years of investment and involvement in what they allege is principally their dive shop company. I cannot be certain that damages will be an adequate remedy. If the injunction is granted, the only result will be that the 1st Defendant will not be able to sell the company or its assets without the concurrence of the 1st and 2nd Plaintiffs prior to the trial. There should be no inordinate delay in having these proceedings completed and determined. This is an originating summons procedure. The issues do not involve complicated facts. They are principally, from the Plaintiffs' point of view, whether the 1st Defendant complied with the provisions of the Act and the company's Articles in changing the registered shareholding and directorships of the company. From the Defendant's point of view, the only issue is whether the 1st and 2nd Plaintiffs have any interest at all in the company. Those issues should be capable of being determined on Affidavit

evidence together with any desired cross-examination. There is no evidence of an impending sale of the company or of its assets that is likely to be held up or frustrated by the grant of an injunction, thus causing loss and damage to the shareholders. It is desirable to preserve the status quo until these issues are determined.

[7] On the 1st and 2nd Plaintiffs giving the usual undertaking in damages the following orders are made pending the trial of the originating summons in this matter:

- (1) The Notice of Change of Directors filed on 1 June 2000 in relation to Dive Paradise Company Limited is suspended;
- (2) Subject to their own deliberate resignation or their removal from the Board of Directors in accordance with the Articles of the company, Gudrun Berg-Steinmeire, Harald Hess, Melvina Browne, Marlene James, and Pat James are declared to be the directors of the company and the persons authorised to act on its behalf in accordance with the Articles of the company;
- (3) Any transfers of the shares of Marlene James and Gudrun Berg-Steinmeire in Dive Paradise Company Limited are suspended;
- (4) Rules of Court relating to the trial of an originating summons to apply;
- (5) Costs of the application to be costs in the cause.

I D MITCHELL, QC
High Court Judge