

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 014 OF 1999

BETWEEN INFOCHANNEL LIMITED PLAINTIFF
A N D CABLE & WIRELESS JAMAICA LIMITED DEFENDANT

Dr. L. Barnett and Mr. H. Brady
instructed by Brady & Co. for
the Plaintiff
Mr. D. Goffe Q.C. and Ms M. Palmer
instructed by Myers, Fletcher &
Gordon for the Defendant

21st, 22nd, 25th, 27th January and 3rd February, 1999

MCINTOSH, M. J. (Ag.)

The Plaintiff's application concerns matters which relate to the new technological age and the developments resulting therefrom and seeks Interlocutory Injunctions in the following terms:

1. The Defendant by itself, its servants or agents, or otherwise howsoever be restrained from suspending, terminating altering or compromising the facilities which the Defendant has supplied to the Plaintiff pursuant to it's All Island Telephone Licence, and in particular:-
 - (a) the provision of dial-up local access lines over the public telephone network operated by the Defendant to allow communication between the Plaintiff's facilities and those of its subscribers;
 - (b) the provision of leased digital data communication circuits interlinking InfoChannels facilities and those of its subscribers wishing such services.
2. A mandatory order to the Defendant to:-
 - (a) restore to the full characteristic of the lines so that they can operate in the manner which they operated prior to Thursday 7th January 1999.
 - (b) supply the leased circuits requested linking the Plaintiff's internet services and those persons wishing to contract for such services including the World Bank and the Bank of Jamaica.

3. The Court grant such further and other relief.

4. The cost occasioned by this application be costs in the cause.

The Plaintiff operated a company, Infochannel Limited, which was established to offer to the public value-added information services, which includes electronic mail transmission (e-mail), electronic mail facsimile machines (fax) Usenet news services, Internet Talk Radio, voice over internet (I.P. Telephony), video over internet (vidéo over I.P.) and other services. This value-added information service is based upon telecommunicating transmissions and computer networking technology. The Plaintiff offered this service since 1995. One such value-added information service is access to the INTERNET, an international federation of computer based information network which allows users of the Internet (including Infochannel subscribers) to obtain any and all information stored in vast network of computers, and the opportunity to project information on their goods and services into the international market place by storing such information in the Infochannel local computer network, which can be accessed by worldwide users of Internet services. The Plaintiff is an Internet Service Provider (ISP)

One of the value-added services voice over Internet is the major source of contention between the Plaintiff and the Defendant.

Cable & Wireless, the Defendants claim that they have an exclusive right to provide voice telephone service and that the Plaintiff by making available to its subscribers the service of overseas voice telephone calls is violating the Defendant's exclusive right to provide such a service.

An Internet Service Provider such as the Plaintiff requires two kinds of telecommunication links to provide service to its customers,

- (1) A local link by means of which customers can communicate with their internet computer system and
- (2) An external link from Jamaica whereby the customers can access the Internet to transmit or retrieve data.

The local link re the dail-up local access lines and the external link, that is the external satellite link to transport the Internet data to and from Jamaica, were for the past 4 years provided by the Defendant. In April 1998 the Plaintiff required cancellation of the external link to the Internet and it transpired and was discovered that the Plaintiff was providing the

external link to the Internet through a radio transmitting station known as a VSAT (very small aperture terminal) under the Authority of a licence granted to it by the Minister of Commerce and Technology under the Radio and Telegraph Control Act. The granting of this licence although not relevant to this application had been challenged by the Defendant and is the subject of another suit before the Supreme Court.

The Plaintiff contends that on Thursday 7th January 1999 Cable & Wireless without the consent of Infochannel and without giving any notice, unilaterally altered the characteristic of the local access lines supplied by Cable & Wireless to Infochannel by converting its (the Plaintiff's) dial-up access lines from being bi-directional (i.e. 2 way access) to uni-directional (i.e. 1 way access) - this the Defendant denies but has admitted that it has taken "certain technical steps within its network to reduce the transmission by the Plaintiff of overseas voice telephone calls into the Defendant's network in breach of inter alia, the All Island Telephone Licence."

The Defendant further explained in the affidavit of TREVOR OWEN PATTERSON, a director of the Defendant Company that "In essence the Defendant has created a funnel which reduces the capacity of the access lines assigned to the Plaintiff to carry transmission from the Plaintiff's facilities into the Defendant's network. The funnel does not reduce the capacity for those access lines to facilitate two-way transmission once a customer of the Plaintiff is on line."

PLAINTIFF'S CASE

The Plaintiff is in effect seeking 2 types of injunctive relief (1) prohibitory (as set out - paragraph 1(a) and (b) of the summons and (2) mandatory (as set out in paragraph 2(a) and (b) of the summons).

Cable & Wireless Jamaica Limited (Cable & Wireless) is a company duly incorporated under the Companies Act of Jamaica and is the Defendant in this case.

Cable & Wireless applied to the then Minister of Public Utilities and Transport (The Honourable Parnell Charles) for an exclusive All-Island Telephone Licence pursuant to The Telephone Act of 1893. The Minister, in the exercise of the powers vested in him under S5 of The Telephone Act, granted Cable & Wireless an exclusive All Island Telephone Licence.

The Plaintiff claims that Infochannel applied and Cable & Wireless agreed to supply and supplied local access lines from 1995 when Infochannel first started its operations. The telephone service and facilities provided to Infochannel by Cable & Wireless under this Agreement are subject to the Terms and Conditions of Service which govern the provision of such service by Cable & Wireless and which have been approved by the Minister and referred to Clause 6 of the Telephone Licence which provides:

"The exclusive right to provide a service in terms of The Telephone Act within the framework of an All-Island Telephone Licence and the All-Island Telephone System: PROVIDED that no firm or corporation, the Government of Jamaica, or other entity or person shall be prevented from providing a service within the curtilage of its own premises for its own exclusive use".

The Telephone Licence imposes on Cable & Wireless supply obligations and Clause 15 stipulates that: -

"The Company shall at all times during the term of this License or any extension thereof furnish and maintain an efficient and modern telephone integrated network throughout the area of this licence in accordance with reasonable standards of dependability as understood in the telephone utility business. The Company is hereby granted power within the area of this Licence to erect and carry out all the necessary work of construction and maintenance and to operate the network subject to the provisions of this Licence and of the Telephone Act. The Company shall be under a duty to operate a continuous and efficient night and day telephone service for the full period of twenty-four hours giving full privacy and security to the users except in the case of shared or party line service or as otherwise approved by the Minister subject to uncontrollable forces and to any temporary cessation caused by circumstances which the Company could not reasonably foresee. Shared or party line service shall be employed only with the express consent of the Subscriber involved.

All contracts entered into between the Company and the Subscriber should state therein the type of service that the subscriber will enjoy, that is to say, whether it will be a single line service, a shared or party line service."

Section 2 of the Telephone Act defines "telephone" as follows:-

"telephone" means an instrument which, being connected by a wire or wires with another similar instrument at a distance therefrom, receives and transmits, by electrical or magnetic agency, audible sounds which are correctly reproduced by the other instrument, and similarly reproduces audible sounds received and transmitted thereto by the other instrument; and the word "telephone" includes also the call bell, and all other accessories and fittings necessary for establishing and maintaining good and efficient telephone communication.

Cable & Wireless was granted and enjoys an exclusive monopoly in the Jamaican market place for telephone service, as defined by the Telephone Act of 1893.

The Plaintiff submitted that there is nothing in these terms and conditions which permit Cable & Wireless without the consent of the member of the public who is a subscriber to limit that person's use of the phone system to either only receiving transmission or sending transmission, thus limiting transmission to half of the requirements of the Telephone Act. Further it was submitted that the Telephone Act makes it clear that the telephone under which it gives licence is to establish a system receiving and transmitting - these terms cannot diminish or limit that statutory right and in fact an examination will show that there is nothing limiting the statutory right.

Cable & Wireless altered the characteristics of the local access line supplied by them by converting the characteristics of the bi-directional lines to uni-directional thereby blocking and preventing Infochannel from being able to dial up calls and as a consequence had denied Infochannel the ability to provide their subscribers with certain services including:

1. Subscriber authentication and automatic sign on
2. Numerous "push" technology applications
3. Bonded modem facilities.

Dr. Barnett on behalf of the Plaintiff referred to letter from Angella Nelson,

Data Sales executive of Cable & Wireless to the World Bank in which she stated "Infochannel has yet to make formal arrangements with Cable & Wireless for interconnection to our network and as such we will not knowingly terminate additional facilities at their premises until this is resolved." The word "terminate" in this context meaning "link".

Technologically there is nothing to prevent the Defendant from providing the access to the Plaintiff's customer, the World Bank, but until the dispute about the VSAT services are determined the Defendant would not consider the Application. That dispute is the subject matter of proceedings in Court. The Plaintiff made reference to a letter from Brady & Co. to Cable & Wireless in which reference is made to the Fair Trading Commission which is a variation and the Fair Trading Agreement to which is appended a number of equipment eg. fax machines, paging systems, modems etc. which are required now to be part of the equipment which the Cable & Wireless customer would be entitled to use along with other systems.

A letter from Patterson, Phillipson & Graham on behalf of Cable & Wireless dated January 8, 1999 is also referred to and in paragraph 2 of this letter to Brady & Co. an attempt is being made to provide a distinction between telephone service which the Telephone Company must provide and the telephone service which the company must maintain, the customer then uses the service to receive and transmit data.

The Plaintiff referred to the affidavit of Trevor Patterson and submitted that it is a "man in the street" concept of telephone connection that is at the basis of the Defendant's contention, but to say that the definition in the act deals with a concept of that nature is untenable.

The Telephone Act says the Plaintiff must comply with terms and conditions.

Reference is made to paragraphs 26 and 27 of the affidavit of Trevor Patterson which deals with matters which are in dispute under the Telephone Act and the licences granted under that Act as well as licenses granted to other operators by the Minister and which are the subject of Judicial Review Proceedings.

These matters are matters of disputed fact, technical issues and construction of technical issues and are clearly fit for trial and the Plaintiff in accordance with the Cyanamid principle has an arguable case.

The Plaintiff argued that the Defendant as the holder of an exclusive licence namely the All Island Telephone Licence and being the operator of an island wide

telephone network is in a monopolistic position and in that respect the provisions of the Fair Competition Act are relevant as this act was passed specifically to provide consumers with competitive prices and choices; freedom of keeping up with trends and fair competition and service, and clearly includes service provided by the Defendant. Further the Act seeks to protect persons seeking to establish and maintain a business against any enterprise that seeks to abuse its dominate position.

The Plaintiff referred to Ss 19, 20, 21, 34 and 35 of the FAIR COMPETITION ACT in support of its submissions.

The Plaintiff cited SCCA 40/95 Infochannel Ltd. v. Telecommunications of Jamaica 5th - 6th June and July 5, 1995 which case related to a dispute involving provision of Internet service.

There was in his case evidence of the use of the Defendant's dominant position to restrict the competition which the Plaintiff's services offer in the market place for value-added information services.

The Court was invited to examine the basis of the defendant's conduct referred to letter dated December 24, 1998 from Ms Angella Nelson, Data Sales Executive of Cable & Wireless to the World Bank in which the Plaintiff contends that the Defendant was rejecting the arrangement with World Bank and Bank of Jamaica and doing so in the context of taking a position prior to the resolution of the matter by the Court in so far as the VSAT is concerned.

This is a ground on which the Court should readily grant an injunction and also in the case in which action was taken prior to the Courts adjudication on the matter.

In support of the arguments advanced cases were cited by the Plaintiff:

The first was *Praire Hospitality Consultants Ltd. v. International Hospitality Consultants Ltd.* 11 D.L.R. (3rd) p. 121 which case related to a franchise operation and the Defendant made arrangements which would prevent the Plaintiff from continuing the franchise operations, Court made an order to enable business to continue.

The second case *Von Joel v. Hornsey* 1895 Ch. D. 774 illustrates the principle above and *Roland Bricks Ltd. v. Morris* 2 W.L.R. 1437 a case which concerned a situation where excavation work had been done which would remove support of the adjoining land and a mandatory injunction was granted which would restore the support.

Dr. Barnett referred to the Affidavit of Patrick Terrelonge and in particular to paragraph 16 which sets out the services with which Infochannel is unable to provide its subscribers and paragraph 23 which indicates the monthly loss of revenue which has resulted from the action of Cable & Wireless. In addition a further Affidavit of Mr. Terrelongesworn to on 20th January 1999 in paragraph 1 sets out the seven major subscribers of Infochannel and in paragraph 2 of the fact that the action of the Defendant will have very serious immediate effect and prospective damages would be suffered, in that not only would the Plaintiff lose clients but the development of his business would be restricted and in fact the potential damage would be incalculable.

The Plaintiff referred to paragraph 28 of Mr. Trevor Patterson's affidavit filed on behalf of the defendants in which he stated that "the Defendant has suffered and continues to suffer loss from the actions of the Plaintiff ...". The Plaintiff submitted that there has been no indication given of the loss of which the Deponent speaks. Further that the assertion of the Defendant (Paragraph 29) that damages is an adequate remedy ignores the important factor that the loss of the Plaintiff cannot be measured only in immediate loss of revenue to the Plaintiff but the destruction of his business prospects, the undermining of his credibility of business and the loss of customers who will sign up with others and be lost forever must be taken into account. So that the fact that the Defendant has massive wealth is not an answer to the irreparable damage which would be done to the Plaintiff.

Finally the Plaintiff referred to the case of *Luganda V. Service Hotels Ltd.* 1969 2 W.L.R. In this case it was decided in effect that where a tenant, licensee, franchise holder, commercial operator has a relationship which is dependent on the Defendant's co-operation or conformity then an injunction will be granted to prevent the interruption of the service which is provided under that relationship or to order the restoration of the service or facility pending the trial of the action, so long as it is on the balance of convenience just to do so and the damages or injury with which the Plaintiff is threatened are substantial and in effect cannot be adequately compensated in money.

DEFENDANT'S CASE

Although paragraph 1 of the Plaintiff's summons uses the language of prohibitory injunction properly understood it is seeking a mandatory injunction because the order sought at 1 is that the "Defendant be restrained from

suspending ..." What has brought these summons is the fact that that has happened and so what is being sought is to have the defendant restore what has been restricted.

Paragraph 2 (a) says in express terms what paragraph 1 says by necessary implication.

Paragraph 2 (b) obviously is a mandatory injunction.

Rudd v. Crowne Fire Extinguisher Ltd. & Others 1989 26 J.L.R. p. 565.

The defendant submitted that for a mandatory interlocutory injunction to be granted it is never enough for the applicant to have an arguable case, the threshold is much higher, The case of **Localbail International Finance Ltd. v. Agroexport** (1986) All. E.R. 900 at p 907 Mustill, J speaking for the Court said:

"It was pointed out in argument that the judgment of Megarry, J antedates the comprehensive review of the law as to injunctions given by the House of Lords in **American Cyanamid Co. v. Ethicon Ltd** (1975) 1 All E.R. 507, but to my mind at least the statement of principle by Megarry, J in relation to the very special case for the mandatory injunction is not affected by what the House of Lords said in the Cyanamid case."

and the judgment went on to state that the learned judge should have gone on to consider, having regard to the aforesaid evidence whether the plaintiff's claim that the defendant had breached its contract was "unusually strong and clear" such that he would feel a "high degree of assurance" that at the trial it will appear that the injunction was rightly granted."

At this point the Defendant dealt with the case cited by the Plaintiff **Redland Bricks Ltd v. Morris** 1976 2 W.L.R. 1437 and pointed out that in this case the appeal by the Defendant (i.e. the person in favour of whom the mandatory injunction was granted) was allowed, the mandatory injunction was set aside and that was in keeping with the authorities cited that there is a high threshold that must be cleared before mandatory injunction can succeed.

In addition the Defendant submitted that there were many important and difficult issues of law involved and there were also issues which could be categorised as issues of mixed law and fact and to the extent that fact is involved simply to understand those facts will involve understanding highly technical aspects of telecommunication services which no judge on the basis of these Affidavits could even begin to comprehend because it would require evidence from those who are trained in the relevant areas.

Indeed it was common ground that there are difficult interpretations of law and statute, and also the technical aspects of both the Plaintiff's and the Defendant's operations which are extremely difficult for laymen - even well educated intelligent laymen grappling with the technology language of it, to understand. Continuing the defendant's submission referred to the Affidavit of Ms Laurel Gregg.

Ms Gregg was, at the time of the criminal trial of Patrick Terrelongé and Infochannel Ltd in the Resident Magistrate's Court, the Clerk of the Court present, and she seeks in her Affidavit to state the findings of the learned Resident Magistrate.

These findings accepted that a certain set of acts took place and it is being asserted in paragraphs 17, 18 and 20 of the Affidavit of Mr. Trevor Patterson that these acts again took place.

In my view these are matters which will have to be determined at the trial of this case and cannot be properly dealt with or even considered at this time and the findings of the learned Resident Magistrate as related by Ms Gregg cannot affect this application. The Defendant referred to the case of Leverock and Cable & Wireless PLC a case decided in Bermuda in July 1993 and submitted that there was a strong parallel between the instant case and that case. The case dealt with a situation in which Mr. Liverlock traded as Global Access (Bermuda) and was affiliated with a company in the USA called Telegroup Inc. in connection with providing a "call back service" for international telephone calls whereby the customer would telephone a privately assigned telephone number in the USA and allow the telephone to ring once. thereafter the customer would immediately be called back through their automated switchboard service which gave him access to telephone lines for overseas calls at a reduced rate.

✕ The Defendant submitted that the difference between Leverock's Case and the instant case, which difference is not material, is that the Jamaican Act refers to the Telephone Service and the Bermuda Act refers to the Telecommunications Act. In both countries it is provided that the companies are obliged to give the service upon a reasonable request being made. In the Leverock case it was held that the Defendant "must be entitled to regulate the provision of its service so as to prevent the infringement of any exclusive rights under its licences."

It is this very assertion which the Defendant in the instant case makes and the

Affidavit of Mr. Trevor Patterson makes it clear the Defendant's (i.e. Cable & Wireless) view is that to restore to the Plaintiff (Infochannel) the right to do what it has been doing would be to facilitate a breach of the Defendant's exclusive privilege and that also would apply to the facility sought in respect of the World Bank and the Bank of Jamaica.

As regards the VSAT licence the Defendant is asserting the the Minister lacked the power to grant the licence but that issue has yet to be decided and is not being considered for the purposes of this application.

That a request has to be reasonable to trigger the statutory duty was submitted by the Defendant as also was the fact that reference to the number of subscribers of the Plaintiff company is an irrelevant consideration. Further it was argued that if the Plaintiff were successful and the injunctions requested were granted it would result in the restriction which the Defendant has put in place being removed and all the approximately 450,000 lines would be accessible because the Plaintiff's customer base would no longer be restricted to the number of internet customers it has - a person would not have to be connected to the internet to receive a telephone call through the Plaintiff's service.

At this stage in the submissions the Defendant went on to refer to certain tests and investigations in respect of overseas calls to Jamaica through the Plaintiff Company conducted by a Mr. Rainford Osbourne who submitted a report to the Defendant company and this report was exhibited to the Affidavit of Mr. Trevor Patterson. The result of these tests and investigations indicate according to the Defendant, that the Plaintiff was involved in an exercise which resulted in the degradation of the Caller ID of the person receiving the call displays a local number and not an overseas one which local number is not the point of origination of the call.

The Defendant emphasised that the Plaintiff has no right to provide such a service.

Mr. Goffe Q.C. submitting on behalf of the Defendant did not elect to deal with the cases cited by Dr. Barnett for the Plaintiff as he stated that these cases did not assist the Plaintiff.

For all the years that the Defendant has had its licence no one has doubted that this licence was exclusive and covered telephone communications by WHATEVER MEANS and the advent of different means can do nothing to take away a statutory monopoly. As long as the communication remains telephonic communication it

matters not that the means by which such communication is accomplished develops as technology marches forward.

This case does not come anywhere near approaching the high threshold which applies to upholding a mandatory injunction. If this relief were granted the effect would be to lend the Court's authority to compel the Defendant to facilitate a breach for its own exclusive licence. On the Defendant's submission if the Court should reach to the stage where it would consider whatever damages is an adequate remedy the Defendant is well able to pay damages and the Plaintiff in his affidavit has given a figure for loss of revenue.

Mr. Goffe later refer to the case of *Von Joel v. Hornsey* cited by the Plaintiff and stated that it clearly illustrates how a party by "stealing a march" on another party can create a new status quo and then state that that is the status quo which the Court must preserve. He submitted that the long established status quo which existed prior to the violation of any rights that the Defendant seeks to retain that is the status quo which existed prior to June 1998.

REPLY BY DR. BARNETT

It is clear that what the Defendant is complaining of is the use by the Plaintiff of its telephone facilities for the purpose of selling voice telephone to others.

The Edison Telephone Case (*Attorney General v. Edison* 1880 A.B. Vol. 6 244) is distinguishable as there what the Court was concerned with was the exclusive privilege of the Postmaster General for sending telegrams and to understand the case one would have to look at the statute. Any reference to an authority which is concerned with the construction of a statute and its application to another case must begin and end with an examination of the terms of the statutes which are involved.

Dr. Barnett proceeded to examine the case and submitted that the definition in the Edison case as early as 1880 covered all types of telegraphic, telephonic or any transmissions and because of the width of the definition the scientific evidence referred to by Mr. Goffe in his submissions was irrelevant as the new development fell within the language and the Court expressly said that.

The same submissions Dr. Barnett stated could be made in *Leverock v. Cable & Wireless* (the Bermuda case). In that case the Plaintiff had set up his scheme for the making of ordinary phone calls from the U.S. to Bermuda and was

in the business therefore of providing a phone service pure and simple.

This case Dr. Barnett argued differed from the instance case - Mr. Goffe said they were similar - similar trespass to licence.

There was, Dr. Barnett submitted a vast difference in that case as what is done overseas is not alleged to the Plaintiff's contrivance. What was done in Bermuda that Plaintiff admitted that he set up his scheme for his own purpose. Dr. Barnett referred to the statutory provisions which governed 'telecommunication service'

In neither of these two cases (Edison Telephone and Leverqck..) did the legislature make any relevant changes which had to be considered by the Court with respect to legitimate rivalry in a field of providing service to the public as is the case here where there is a Fair Competition Act.

Against that background it was the submission of the Plaintiff that it has a very strong case in that

- (a) it is not acting illegally and
- (b) it is entitled to be provided to the service to which references are made in the Affidavit of Patrick Terrelonge and Trevor Patterson and therefore even if the application is to be seen as a purely mandatory injunction (which it is not) the cases cited by the Defendant have to be read in the light of that situation and submissions erected on the Edison case and the Bermuda case that an injunction could not be granted because it would create an illegality or breach of licence since the statutory definition in each of those cases is unlike the statutory definition in the instant case.
Esso Standard Oil S.A. Ltd. v. Chan 1988 25 J.L.R.

What the Court said quoting from Megarry, J "ordinarily" it is not an absolute provisions as the defendant contends.

In Rudd v. Crowne Fire Extinguisher Ltd. & Others (1989) 26 J.L.R. 565. That act unlike the Telephone Act did not provide a statutory duty to provide service but left it to the company to whom and when to provide service the case of Hounslow v. Twickenham Garden Development Ltd [1970] 3 All E.R. 326. Plaintiff's view does not assist the defendant.

There is no doubt in this case there are difficult issues of fact and law which are to be decided but it is clear having regard to the Affidavits filed by both the Plaintiff and the Defendant and in the light of the statutes involved (the Telephone Act and the Fair Competition Act) that the Plaintiff has a strong case.

The fact is that having been granted a licence for VSAT the Plaintiff is able to access the Internet without going through the Defendant's network. Any data can be transmitted over the internet and voice is just one of them. The Telephone Act of 1893 does not refer to such technological advancement and perhaps it was not even in the contemplation of the Legislators when the Act was passed.

The Defendant ought not to be allowed to use its enormous wealth and power to stifle small businesses who merely utilize the services to which they are entitled.

I have reviewed the evidence presented before me and the submissions made and in spite of the great caution which I must exercise and observe in deciding whether or not to grant this application I am of the view that the Plaintiff is entitled both to the prohibitory injunction sought in paragraphs 1(a) and (b) of the Amended Summons and the mandatory injunction sought in paragraphs 2(a) and (b) of the Amended Summons.

Damages in my opinion would not be an adequate remedy even though a sum of money has been quoted by Patrick Terrelonge in his Affidavit as being the approximate monthly loss which the Plaintiff suffers. This monetary loss measures only the immediate loss suffered by the Plaintiff however, the damage to his business prospects, the loss of his credibility, the loss of customers who will discontinue their business with the Plaintiff perhaps never to return and the loss of customers who because of the inability of the Plaintiff to provide them with a full service will go elsewhere, cannot be quantified.

The Plaintiff remains a customer of the Defendant and as such is entitled to certain services in the normal course of business. The Defendant has admitted in the affidavit of Trevor Patterson doing certain acts which were calculated to and did effectively deprive the Plaintiff of certain services which the Defendant had contracted to supply to the Plaintiff. There is little doubt that if the Defendant is allowed to continue to deprive the Plaintiff of these services

the Defendant will effectively put the Plaintiff out of business.

The Order is made in terms of paragraphs 1(a) and (b), 2(a) and (b) and 4 of the amended summons.