

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. J207 OF 1990

BETWEEN THE JAMAICA RECORD LIMITED PLAINTIFF

A N D MARK RICKETTS DEFENDANT

SUMMONS FOR INTERLOCUTORY INJUNCTION

Hilary Phillips and Denise Kitson, instructed by Messrs. Perkins, Grant, Stewart, Phillips and Company for the plaintiff.

Crafton Miller and Nancy Anderson, instructed by Messrs. Crafton S. Miller and Company for the defendant.

HEARD: 24th to 28th July, 1990.

IN CHAMBERS

PANTON, J.

The plaintiff has filed a writ of summons with an endorsement claiming, among other things, damages for breach of fiduciary duty, and an injunction restraining the defendant from removing the plaintiff's assets and from otherwise interfering with the affairs of the plaintiff.

In this summons, the plaintiff seeks, among other things, an injunction to restrain the defendant from removing the plaintiff's assets from its premises; and from acting in the capacity of managing director, executive editor, or in any managerial capacity, in relation to the plaintiff or in any other manner from interfering in the management of the plaintiff's affairs.

It should be noted that the plaintiff operates a daily newspaper.

The affidavits indicate that prior to the filing of the writ and the instant summons, the defendant was dismissed by the Board of Directors from his position of managing director and executive editor.

There are allegations and counter-allegations between the parties as to various events that have occurred since the newspaper commenced operations in 1988. Particular reference has been made to meetings held in 1988 and in May, June and July, 1990. The plaintiff is claiming that there is in existence a valid Board of Directors which excludes the defendant.



On the other hand, the defendant is claiming that prior to July 23, 1990, he and Maurice Charvis were the only valid members of the Board of Directors, and since that date there is a completely new Board which does not include any of the members listed by the plaintiff, with the exception of Val Hart.

At this stage, it is perhaps unnecessary for me to say that my task at this point is not to resolve the issues of fact or law that exist. That is a matter for the trial of the action. My duty is first and foremost to see if there is a serious issue to be tried. It cannot be doubted that there is a dispute between the parties as to the defendant's use of the plaintiff's money. In one case, there is an allegation that he has not accounted for \$280,000; in another case, it is said that he has converted a personal loan of \$250,000 into a loan in the name of the plaintiff. The defendant has offered an explanation but that has not satisfied the plaintiff. I have waded through the documentary exhibits and I see nothing to substantiate the defendant's response to the allegations in relation to these sums of money. In my judgment, the position of the plaintiff does not appear to be frivolous. On the contrary, there are substantial issues raised for trial so far as the breach of fiduciary duty is concerned.

In this situation where there are issues relating to trust between the parties, and the de facto Board has dismissed the defendant from his managerial position, the question arises as to whether he can be allowed by the Court to work in the position from which he was dismissed.

At this stage the Court has to consider the balance of convenience to the parties and the nature of the injury which the defendant on the one hand would suffer if the injunction was granted and he should ultimately turn out to be right; and that which the plaintiff on the other hand might sustain if the injunction was refused and the plaintiff should ultimately turn out to be right.

If the injunction is granted and the defendant in the end is proved right, it would seem that damages would be an adequate remedy. His loss would clearly be quantifiable in terms of lost earnings. His reputation would not be injured. It would probably soar as he would have been vindicated.

On the other hand, if the injunction is refused and the plaintiff is eventually proven right, it would seem to me that damages would not be an adequate remedy. As indicated earlier, the plaintiff operates a daily newspaper. In my view, such operations require the presence of a managing director who has the confidence of the de facto Board of Directors. If there is no such confidence, there can hardly be expected to be confidence in the newspaper and its operations so far as bankers, creditors and the general public are concerned. It seems to me that in such a situation, irreparable damage to the plaintiff would be a strong probability.

I consider further the question of the preservation of the status quo which is an imperative feature of injunctions.

Mr. Miller, learned attorney-at-law for the defendant, has urged me to preserve the status quo as it was up to June 27, 1990.

I cannot turn back the hands of time. Since that date there have been other events on both sides. I ought to look at the factual situation today and in doing so I am constrained to observe that there is a Board of Directors in charge. There is legal authority on which the Board may rely for its existence. Its legality is probably unchallengeable. The status quo that is to be preserved is that which exists today.

In all the circumstances, the Court has no alternative but to grant the injunction until judgment in the substantive action or further order. In view of the peculiar position of the defendant in being the founder of the newspaper, and also in view of the need for an institution such as this to have no doubt surrounding its existence and operations, there seems to be the need for an early trial of the action brought by the plaintiff. I would suggest to the parties that efforts be made to have the matter tried within the first month of the next term.

Looking at the specific requests in the summons dated July 5, 1990, I am ruling as follows:

Paragraph (1) is too wide. The evidence indicates that the defendant has the plaintiff's electrograph scanner in his possession. The order therefore in relation to this paragraph is that -

"The defendant is restrained, whether by himself, his servants or agents or otherwise from dealing or parting with the electrograph scanner, the property of the plaintiff to any other person except the plaintiff."

Paragraph (2) of the summons as amended on July 25, 1990, is granted as prayed.

Paragraph (3) is granted in a limited way. It is also varied. The order is that -

"The defendant is to facilitate the removal of the electrograph scanner by the plaintiff from Skibo Avenue, St Andrew during the week commencing July 29, 1990, or at such later time as may be agreed between the parties."

If any problem should arise in relation to the removal of this equipment, the parties are at liberty to apply to the Court for specific directions. It is hoped that good sense will prevail and that no problems will arise.

The plaintiff, in having its request substantially granted, is to give the usual undertaking as to damages.

The costs of this application are to be costs in the cause.

Certificate of counsel granted.