

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 37 OF 1978

BETWEEN	GENERAL SERVICES SECURITY LIMITED	PLAINTIFF
A N D	VINCENT A. BUNTING	FIRST DEFENDANT
A N D	MORRIS HART	SECOND DEFENDANT
A N D	KENTON COPPIN	THIRD DEFENDANT
A N D	SAFEGUARD SECURITY SERVICES LIMITED	FOURTH DEFENDANT

Dr. Lloyd Barnett and John Vassell, instructed by Dunn Cox and Orrett for Plaintiff.

K. Von Cork instructed by Williams and Williams for First, Second and Third Defendants.

Miss D. Lightbourne instructed by Livingston Alexander and Levy for Fourth Defendant.

May 31; June 1 & 2; October 19, 20, 21, 22, 1982;
June 13, 14, 15, 16, 1983; February 20, 21, 22,
July 9, 10, 11, 12, 1984 and October 10, 1985.

MALCOLM, J:

What is the basis of the plaintiff's claim? It is disclosed in the Statement of Claim which reads in part:

- " 1. The plaintiff is a Company registered and incorporated under the Laws of Jamaica with registered office at No. 11 Balmoral Avenue, Kingston 10, and carries on business of the operator of Security Service;
2. The first defendant is at all material times a Director and the General Manager of the plaintiff, the second defendant is at all material times the Operations Manager of the plaintiff, the third defendant is at all material times Supervisor and a Director of the plaintiff;
3. In the premises, at all material times the first, second and third defendants were in a fiduciary position to the plaintiff;
4. The fourth defendant is a Company registered and incorporated under the Laws of Jamaica and carries on business as operators of a Security service and was formed by the first, second and third defendants in breach of the fiduciary duty aforesaid with a view to taking over the business of the plaintiff and/or competing with the plaintiff;

5. In the premises, the fourth defendant is in a fiduciary position to the plaintiff;
6. From or about June 1977, in breach of the said fiduciary duty the defendants or each of them has embarked on a course of conduct which was intended to have or had the effect of closing down the operation of the plaintiff and/or diverting the plaintiff's business from the plaintiff to the fourth defendant."

Thereafter followed particulars of the course of conduct alleged. The Statement of Claim further reads:

- " 7. Further and in the alternative the defendants unlawfully conspired and/or agreed together to close down the plaintiff's business and/or to divert the plaintiff's business to the fourth defendant and/or to induce the servants and/or clients of the plaintiff to breach their contracts with the plaintiff and/or to spread injurious falsehood about the plaintiff and in pursuance of the said conspiracy the defendants or each of them did the overt acts full particulars of which have been set out etc.;
8. Further and in the alternative the defendants or each of them have induced the servants and/or clients of the plaintiff to breach their contracts with the plaintiff full particulars of which have been set out etc.;
9. Further and in the alternative the defendants or each of them has falsely and maliciously published injurious falsehoods of and concerning the plaintiff full particulars of which have been set out etc..... The said falsehoods were calculated to cause pecuniary damage to the plaintiff and to it in respect of its said business;
10. Further and in the alternative the defendants or each of them have collected money for and behalf of the plaintiff but has failed to account therefor to the plaintiff;
11. In the premises the plaintiff has suffered loss and damages in its trade or business, and its clientele among the airlines has been substantially reduced in that the following airlines have transferred their business to the fourth defendant: - Lufthansa Airlines, Air Canada; American Airlines; Ajax, (Braniff Airlines); and Air Jamaica. "

In addition the plaintiff claimed \$211,787.52 with interest by way of Special Damages. There were also alternative reliefs sought for a Declaration, an Account and an Injunction.

Defences were filed by all four defendants as also Counter-claims by the first three. They counter-claimed for varying sums for wrongful dismissal by the plaintiff or alternatively that their dismissals from the plaintiff company were unlawful as a result of which they suffered loss and damages.

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THE EVIDENCE:

Rob Chung was the lynchpin of the plaintiff's case. In summary he testified that the plaintiff company was incorporated in November 1971.

The shares were owned by one Ivor Chin (Managing Director) the third defendant Kenton Coppin (Senior Supervisor) and himself a Director. The company was subsequently joined by the first defendant Vincent Bunting and later by the second defendant Morris Hart.

He testified that Mr. Chin was in Miami "going back and forth" and that he himself visited the U.S.A. in June 1977, as his family had gone there earlier in that year for a short period.

On his return in August 1977, he had a discussion with Mr. Hart who in colloquial language remarked to him that Mr. Chin had "rinsed out all the money out of the company" and gone away. Mr. Hart told him that both Mr. Chin and he the witness were being investigated by the police and suggested he should leave the country immediately before his passport was seized. None of the first three defendants had informed him of the formation of a new company and it was not until sometime in November 1977, that he became aware of the formation of the fourth defendant company.

Mr. Chung spoke of a Jamaica Society for Industrial Security of which the plaintiff company was a member. This Society laid down rules governing tenders by Companies and these were adhered to by members.

In the latter part of 1977 there was a strike in the Industry. Mr. Bunting spoke to him re the nature of the strike and what it was all about. A letter dated 29th July, 1977, from the Airports Authority of Jamaica to the first defendant Bunting was tendered in evidence as Exhibit 4. This letter was brought to his attention by Mr. Bunting and reads:

" 29th July, 1977.

Confidential

Mr. Vin Bunting
General Manager
General Services (Security) Ltd.
11 Balmoral Avenue
Kingston 10.

Dear Sir:

This letter serves to confirm our earlier discussions in which I gave you notice of the Airports Authority's intention to put the Security contract at Manley up for tender.

You are therefore hereby advised that with effect from 1st September, 1977, you have thirty (30) days from that date to continue your current contract of Security Services at the Norman Manley International Airport.

After that time, that is to say, on the 1st October, 1977, the new supplier of Security Services at that airport, as such services relate to the Airports Authority of Jamaica will be that Company considered most eligible by Tender Board to provide the said services required.

The reason for putting this contract out to tender has not been as a result of your Company's performance of its duties, but is due rather to the new increases in cost for security which have forced us to review current market prices for this service

You may therefore, if you so desire, tender with the rest of Companies who we hope will be responding to our newspaper ads.

Yours truly
Airports Authority of Jamaica
(Sgd.) Peter Playfair Scott
Security Inspector. "

When he read this letter the witness said he gave Mr. Bunting certain instructions as it was his duty to tender on behalf of the plaintiff company for the said contract. Mr. Bunting did not, as far as he knew, submit any tender on behalf of the company.

A telegram, addressed to the defendant Bunting was put in evidence as Exhibit 5. It came from one "Williams" of the B.I.T.U. and protested what it called the unilateral **agreement** by the company to make workers redundant and change uniforms without official identification.

Mr. Chung testified that when he saw the telegram he told Mr. Bunting that it was his ~~under~~standing that a new company had been formed and that the Union had sent the telegram and that Mr. Morris Hart "was behind the whole thing".

He instructed Mr. Bunting to terminate Mr. Hart's employment but these instructions were never carried out. On the 20th January 1978, a letter (Exhibit 6) was sent to Mr. Morris Hart by Messrs. Dunn, Cox and Orrett which reads in part:

" We advise that we act on behalf of General Service Security Limited who instructs us that you have been engaged in activities inimical to the interest of the company.

In the circumstances this is to formally notify you that your services with the Company are forthwith and hereby terminated and you are relieved of all duties and functions etc. "

A letter of even date was addressed to Mr. Bunting by Dunn, Cox and Orrett (Exhibit 6A) enclosing a copy of the letter referred to above (Exhibit 6) and stating, inter alia:

" You are instructed to terminate his services without any compensation or payment whatsoever save his salary up to and including the 20th January, 1978. Mr. Hart is not to be permitted to have any access to any of the Company's assets effective immediately".

After further correspondence Mr. Bunting by letter to the plaintiff company informed: - " I hereby tender my resignation as a Director of this company effective immediately" and by a letter of similar date the third defendant Kenton Coppin also tendered his resignation as a Director. Mr. Chung went on to say however that Mr. Coopin continued after this in his capacity as Senior Supervisor.

The witness testified that with the help of a locksmith he changed all the locks on the cabinets and desk drawers in the office. He found certain documents, some in the desk drawers used by Mr. Hart and he testified that the handwritings on them were recognizable as Mr. Hart's and Mr. Bunting's. The documents were tendered as Exhibits 11, 12 and 13.

He stated that in June 1978, he had a discussion with Mr. Coppin who remarked that he had been unfairly treated by Mr. Chin and that was one of the reasons he had joined forces with Mr. Hart and Mr. Bunting and formed this new Company. He went on, the witness testified, to say that if " I could make it right he would stick to the plaintiff company".

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When asked to explain he said if the plaintiff company would pay for the house he occupied he would disassociate himself from Safeguard - the fourth defendant.

Mr. Chung said he carried out certain investigations and consequently spoke to Mr. Coppin again outlining to him his reasons for believing that he Coppin was lying to him about his connections with the fourth defendant company.

Thereafter followed correspondence between Messrs. Dunn, Cox and Orrett and Mr. Coppin terminating with a letter by the said firm to Messrs. Karl Von Cork and Company dated 26th June, 1978, (Exhibit 16A). It reads in part:

" Dear Sirs,

Re: Kenton Coppin - General Services
Security Limited

We acknowledge receipt of your letter dated 26th June 1978 and wish to advise that the 'Without Prejudice' notation on our letter of the 12th June, 1978 to your client was added in error. We wish to state that this notation should be disregarded and the letter have the effect of terminating your client's employment on the grounds stated therein and we state again his refusal to carry out the reasonable and lawful instructions of the Managing Director with regard to coming in to work at the office and the engagement of your client in activities inimical to the Company's interest.....
.....
we enclose herewith, a new letter of termination addressed to your client" etc.

A letter signed " V. A. Bunting" was next tendered in evidence as Exhibit 7 and provides interesting reading: -

" Safeguard Security Services Limited
11 Balmoral Avenue
Kingston 10

September 26, 1977

Airports Authority of Jamaica,
25 Constant Spring Road,
Kingston 10

Dear Sir,

With reference to the Airport's Authority of Jamaica request for tenders for security guards at the Norman Manley International Airport, Safeguard Security Services Limited hereby apply for the contract to service the Norman Manley International Airport with Security guards.

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The Company is able to furnish all the necessary requirements as stated below".

Thereafter followed items 1 - 9
as also the rates chargeable.

The letter concludes as follows:-

" The General Manager of the company is Mr. V.A. Bunting ex Deputy Commissioner of Police who has been associated with the servicing of security guards at Norman Manley International Airport for the past 4 years. The Operations Manager, Mr. M. Hart, is an assistant Commandant of the Island's Special Constabulary Force, and he has been associated with the servicing of the security guards at the Norman Manley International Airport for the past 5 months.

Should our tender be accepted the company will endeavour to the best of its ability to give an efficient security service.

Yours faithfully,
Safeguard Security Services Ltd.

V.A. Bunting
General Manager"

The witness Chung went on to testify that when he went on leave the Plaintiff Company was supplying Security Services to the Airport Authority, to Roberts Products Ltd., National Commercial Bank and to various Airlines at the Norman Manley Airport. He stated:-

"I took over back the running of the Plaintiff Company on my return - 25th January, 1978. The contracts I mentioned with the above companies were taken over by the fourth Defendant. The company's employees were all taken over by the fourth named Defendant. Claims were made on the Plaintiff Company. They were all made redundant. The Plaintiff company had to pay out some \$25,000.00 in redundancy money."

In crossexamination he denied that he had left Jamaica in 1977 because the police were investigating Mr. Chin and himself and he was afraid of being arrested. He had heard however that Mr. Bunting, Mr. Hart and Mr. Coppin had given statements to the police. This could have been when he was in America. He denied buying a home in Miami and stated that he was unable to say whether Mr. Chin had acquired a Supermarket there.

He said Mr. Hart was the first person he spoke to when he returned in August 1977 and stated that Mr. Hart told him that the Police had a file "running" on Mr. Chin and himself.

He made mention of a Mrs. Mason who was the Company's Secretary

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before he went away. He said it was not correct that the Company was insolvent when he left Jamaica. It was put to him that he had realised all his assets and migrated, this he adamantly denied.

The witness said that when he came back to Jamaica he bought out Mr. Chin's shares - if his recollection was correct he thought this was after he returned in January 1978 but could not be specific on the point. He recollected however that he paid for them in cash to Mr. Noel Chin, Mr. Ivor Chin's brother.

The witness on being shown one of the Company's books said it was on 16th December 1971 that Mr. Bunting was appointed a Director.

In answer to the question "Since 1974 up to Mr. Bunting's resignation in 1978 was he ever reappointed a Director?" the answer was "The records do not indicate he was ever reappointed."

He denied that when he was leaving the island in June 1977 he told Mr. Bunting he was leaving for two months - he had told him that it would be for at least six months.

Further, on the question of his absence from the island he said he never made a formal application for leave but it was discussed and agreed upon at a meeting between Mr. Bunting, Mr. Chin and himself. He could not recall if any notes of this meeting were taken.

He became aware in January 1978 that Messrs. Bunting, Hart and Coppin had given statements to the police but it was quite untrue that the reason for the dismissal of Messrs. Bunting and Hart was because they refused to withdraw their statements.

Mrs. Yvonne Mason testified that she was Secretary to the Plaintiff Company and categorised some of her duties including keeping the Cash Book and typing. She stated that Mr. Chin was Chairman, Managing Director and Financial Controller - Mr. Chung was operations Manager, Vice-Chairman and a Director and Mr. Coppin was Senior Supervisor. When she first met Mr. Bunting he was not then an employee but only a frequent visitor to the office. He came as General Manager sometime in 1973.

She said that sometime in June 1977 Mr. Morris Hart who had not been known to her before came to work at the office. In reply to

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her inquiry as to who he was Mr. Coppin, in language more appropriate to the playing field than to an office said he was "Mr. Chung's substitute." The following day Mr. Hart informed her that he had taken up the position of Operations Manager. He remarked, after examining the Cash Book and other records that "the Chinnie man them wicked, they draw out all the money and leave the company bankrupt" and asked her if she knew anything about it. To which in quite picturesque language she said:- "I told him I come to drink milk and not to count cows".

She said that Mr. Bunting who had not been in good health was hospitalised and when he came out she was told by Mr. Coppin that Mr. Bunting wanted to see her. Accompanied by Mr. Coppin she went to the "Bunting home". There they saw Mr. and Mrs. Bunting, Mr. Morris Hart and a gentleman who owned Roberts Products Limited. Among other things Mr. Hart is alleged to have remarked that the company was in a state and the only thing was for them to decide and form a new company; a suggestion which met with the approval of the gentleman from Roberts Products.

Subsequently Mr. Coppin informed her that Mr. Bunting wanted them to go to Mr. Von Cork's office as he, the attorney, wanted to see them. They duly attended. Mr. Hart came afterwards and asked Mr. Von Cork how everything was getting on and "if we had also signed the papers for the minutes" but, said Mrs. Mason, at that time the minutes had not then been typed. Mr. Hart then remarked to Mr. Von Cork "Karl in a few years time what will we do with money?".

Mr. Coppin later told her that Mr. Hart and Mr. Bunting (just to mention two) had decided to use the office of General Services Security Limited as the office of Safeguard Security Services Limited the fourth defendant. The instructions were that when the phone rang whoever answered should say "Safeguard Security Services Limited" not General Services Security Limited. The signs bearing the name of the plaintiff company would still remain in place until the company was phased out.

She recounted how she spoke to Mr. Bunting and told him she needed to contact Mr. Chin as her cash flow with the Bank was low and she needed

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money for the Guard's Pay-Roll. She told Mr. Bunting she wanted to get in touch with Mr. Chin so he could call the bank and arrange more funds. She said Mr. Bunting took a piece of paper from his pocket with a telephone number and gave it to her. At this juncture, Mr. Hart came in and after being told what was wrong told Mr. Bunting that the number was private and confidential and that the only persons who should have it were Bunting and himself. Mr. Bunting told Hart that she was in difficulty and needed the number. She telephoned Mr. Chin and explained the position to him.

The witness then gave figures as to the Company's collections for 1976, 1977 and 1978.

She testified that sometime in October 1977 Mr. Hart gave her some yellow foolscap sheets of paper. She was shown three sheets of foolscap and she identified them as the ones given to her by Mr. Hart (Ex. 19). She said they were in Defendant Hart's handwriting. He instructed her to type it on plain paper and not on General Services Security Limited letter-head.

She said that after reading the documents she told Mr. Hart she would have to contact the Company's lawyers before carrying out his instructions. The witness went on:- "There are some names on the draft letter and on the other sheets, I know the firms - we had contracts with all the persons listed there - contracts for provision of security services. When I got this from Mr. Hart the Plaintiff Company was providing services to these" She stated that the following day Mr. Hart asked her for the letter and she told him, which was not true, that she had destroyed it.

Page 1 of Ex. 19 reads in part:-

"Safeguard Security Services Ltd.
72 Church Street
Kingston.

Attention Lukong,

Dear Sir,

Further to our discussion re Security Guards.

As of the 1st November 1977 your security services are being operated by Safeguard Security Services Ltd.

Please note that all payments due as of the abovementioned date should be made payable directly to us (Safeguard Security Services Ltd.).

We look forward to a very good relationship between us.

Yours faithfully,

M. Hart
Managing Director"

The above letters to be sent to the following"

Then follows on this 1st page 17 names commencing with Mr. Lukong of Grace Kennedy Company Ltd. Page two contains a letter of like vein - "Attention Mr. W. Shakes" this letter bears after it six more names numbered 18 - 23 and commencing "Mr. W. Shakes etc."

The witness stated that sometime after she saw Mr. Bunting at the office and told him she had got in touch with Mr. Chung because she was being harrassed she told him that Mr. Chung was asking him to call him to which he retorted that if Mr. Chung wanted him he should get in touch with him.

Shortly after Mr. Bunting told her he would be giving her certain directives because he was the one running the Company and "just as well he mash it up and every body go home and sit down."

Subsequently she called Mr. Vincent Chen, Attorney-at-Law and got from him Ex. 28 a document headed "Minutes of Directors meeting held on the 25th January, 1978 at 11 Balmoral Avenue, Kingston 10" It reads in part:-

- "Mr. Chen mentioned that Mr. Chin instructed to dismiss Mr. Bunting from his post as General Manager. The reasons being
- (A) Mr. Chin had no confident (sic) in him.
 - (B) Mr. Bunting was reluctant to carry out the clear instructions of Mr. Chin as the Managing Director of General Services (Security) Ltd.
 - (C) Mr. Bunting whilst he was the General Manager of the Company had made himself party to the formation of a Company called Safeguards Security Services Ltd. which attempted or intended to solicit business from the Company Customers.

Mr. Chin appreciated his services in the past, but in view of these developments could not continue to have him as the General Manager, a position requiring great trust and consequently required that he be relieved of his duties immediately."

The minutes further read:

"Mr. Chen proposed a resolution that Mr. Bunting be dismissed from the company as General Manager and a vote was taken. The resolution was carried 3 - 1".

After Mr. Arlington McIntosh testified Mrs. Mason was recalled further examined by Dr. Barnett and said she was able to pay all bills up to February 1978 - None of the Company's cheques were dishonoured.

The testimony of Mr. McIntosh in a nutshell was that he was Senior Security Supervisor employed to the Plaintiff Company. He recalled having a conversation with Messrs. Bunting, Hart and Coppin at which they told him they were forming a new company and they would like him to be a part of it. He continued - "They said the new company would be doing Security Services - the reason given to me by them was that Mr. Chin and Mr. Chung the Directors had left the Company bankrupt and gone away".

Vincent Bunting a retired Deputy Commissioner of Police and 1st Defendant herein gave evidence on his own behalf. He testified that his retirement took effect in May 1973 and thereafter he joined the Plaintiff Company as General Manager at the request of Mr. Ivor Chin. Chin and Robert Chung who he got to know after he went to the Company, were the Directors.

In 1976 they started going to Miami - to use his words - "I would say they started to commute". He said that in July 1977 Mr. Chin said he was going to Miami for a week or two - he never saw him again. He said Mr. Chung gave no forwarding address. As for Mr. Chin, the witness said, "he gave me a telephone number. I tried to contact him at this number but was unable to do so as no such number existed" It is to be remembered that Mrs. Mason said Mr. Bunting (to Mr. Hart's chargin) gave her Mr. Chin's private number and she telephoned him and explained certain difficulties to him. In the light of Mrs. Mason's evidence which, I accept as truthful, I am persuaded to the view that Mr. Bunting was less than candid when he said he was unable to contact Mr. Chin.

He spoke of the poor financial state of the Plaintiff Company and of his endeavours to collect outstanding bills; he also said he stopped payment of post dated cheques to Messrs. Chin and Chung.

As regards Ex. 4 he said this letter terminated the services of

the plaintiff company as from 30th September, 1977. He explained the serious effects this would have including the fact that many of the Guards would lose their jobs. He spoke of the island-wide six weeks strike of Security Guards and testified that during all this time neither Mr. Chin nor Mr. Chung could be located.

His evidence was that he spoke to Mr. Rodgers - General Manager of the Airport and also to Mr. Playfair Scott. He said - "he came to my office." It is not too clear who "he" refers to but in all probability it was Mr. Scott. He stated "we had a discussion when he advised we should form a Company and apply for the tender". After further talks with Mr. Rodgers said he - "we applied for Safeguard to be formed". He said they registered Safeguard and made a tender for the Airport contract. He said he applied for extension for General Services and got it. A further extension was secured and people (presumably the guards) were kept on.

He said they got some contracts which they gave to General Services such as Jamaica Telephone Company etc. He stated they gave all these to the plaintiff company and not to Safeguards and said - "Safeguard never operated". It is somewhat difficult to comprehend these manouvures and the thinking behind them unless one were to say they were rooted in deception. The witness told of receiving instructions from Mr. Vincent Chen to terminate Mr. Hart's services, this he refused to do. The witness was shown a copy letter (Exhibit 8) addressed to him by Mr. Vincent Chen and said - "this is a letter dismissing me and terminating my services."

On the 13th February, 1978, he was asked to attend at the Airport Authority and on doing so was first asked why he was fired and then was asked whether Safeguard Security had any connection with Chin and Chung he replied "no". He said "they then offered me the Airport Contract". He said the fourth defendant company had never operated, there were no directors - it was just registered.

He testified that he never informed anyone that the plaintiff company had ceased operating neither had he informed clients that the

shareholders had migrated and abandoned the company. It was not true that by false reports he had discouraged the majority shareholders from returning to Jamaica. He denied that he had ever given Mrs. Mason a piece of paper with Mr. Chin's number.

To Miss Lightbourne the witness said the fourth named defendant never appointed Directors - had no Registered Office and had no Bank. He said that at first meeting of Safeguard those present were himself, Mr. Hart and Mr. Von Cork. He stated - "at that meeting we appointed first Directors. They were myself Mr. Hart and Mr. Cork - we signed a note to that effect". He said Mr. Coppin was subsequently appointed a Director. He denied that fourth defendant company had collected money for the plaintiff company and failed to account for such sums. Safeguard never conspired to close down the plaintiff company neither had it induced employees of General Services to breach their contract. He stated that Safeguard never operated from Balmoral Avenue and that when it opened it operated from 72 Church Street.

Cross-examined by Dr. Barnett he said Exhibit 4 was addressed to him as General Manager and he understood that the Airport Authority expected tender from General Services. He said that the only tender he submitted was on behalf of Safeguard. Shown Exhibit 17, already referred to, he stated - "that tender was in this letter dated 26th September 1977" and added - "it is signed by me as General Manager - this is not a tender, it is a letter giving particulars". He went on further to state, obviously in some confusion and dilemma:- "when the word tender is used in the last paragraph of Exhibit 17 that word by me was wrong". Referring to paragraph 1 of the said Exhibit which read in part - "Safeguard Security Services Limited hereby apply for the contract etc." he said "the word hereby in letter Exhibit 17 is another mistake". Then follows:-

Ques: Was it agreed amongst those who formed Safeguard that you should be Managing Director?

Ans: Yes.

Ques: Were you not signing as General Manager in September?

Ans: I suppose so.

He said he agreed that by Exhibit 17 he was performing the functions of General Manager.

He attended a Board Meeting of the plaintiff company in January 1978, he attended as Director. Mr. Chung was present but he never disclosed anything about Safeguard - "I was trying to explain but they said they didn't want to hear me".

He denied that he had asked Mr. McIntosh to come and work for Safeguard, he had never asked anyone to come over into the new company.

Mr. Robert Evelyn Manager of Roberts Products Limited stated in his evidence that he was a good friend of Mr. Bunting for a number of years. He used to get security services from him but never on a regular basis. He discovered that Bunting was fired by General Security Service and that he had formed his own new service - Safeguard Security.

He said Mr. Coppin supervised the guards who came to his place. The persons who performed the duties were employees of General Services Security.

The second named defendant testified that he was employed to the plaintiff company from May 1977 as Operations Manager on a temporary basis, but was never a Director of this Company. Prior to this he was accustomed to pay social visits to the office to see Mr. Bunting. He subsequently met Messrs. Ivor Chin and Robert Chung. At a discussion with Mr. Chin at which the witness's wife (a real estate agent) was present, Chin told him he was selling his house and he was not purchasing another, saying he was tired of Jamaica and as far as he could see it he would not be coming back. When asked how he could contact him while he was away Chin said he would give him a telephone number. This he did. He tried the number on several occasions but he never got a response. This evidence I reject as being untrue.

Mr. Hart stated that he asked Mr. Chin if Chung would be taking over the running of the company. The reply - Who? Rob? he set up his service station in Miami and he won't be coming back either". I formed the impression and came to the conclusion that Mr. Hart was far from being frank with the Court. He spoke of the general condition of

the company and said Mr. Bunting mentioned something the gist of which was that a company should be formed to protect workers at the Airport. Safeguard was formed but the company never started operations at all. He was shown a document (Exhibit 30) and said he tendered his resignation by that letter but at Mr. Bunting's request he remained on at the company as there were no signing officers in the island.

Still to Mr. Von Cork the witness said - "I never attended at your office at 72 Church Street while Mr. Coppin and Mrs. Mason were there" and added that Safeguard never operated from any office at 11 Balmoral Avenue. He said his salary when dismissed was \$1,000.00 per month - he had got no notice or pay in lieu of notice. The witness denying that he was guilty of any act inimical to the interest of the plaintiff company said:- "I am claiming damages for wrongful dismissal - three months pay in lieu of notice by way of compensation - Special Damages".

On being shown Telegram (Exhibit 5) Mr. Hart commented "I don't recall seeing this telegram or it being discussed with me", whatever else (if any) of his evidence was truthful this certainly to my mind was not. He said he never tried to get Mrs. Mason to join company. He stated:- "we had found her to be dishonest". Shown a document headed "New Company" he said he could not remember what "new company" referred to and didn't know if it was Safeguard. When shown Exhibit 17 the witness again with what I regard as another evasion of the truth remarked:- "This is a tender. I was not a party to it. This is the first time I am seeing this. I was never shown this". He could not recall saying to Mrs. Mason that the Chinese men were wicked neither could he recall meeting with her at Mr. Von Cork's office. He never had discussions with Mr. McIntosh regarding the formation of Safeguard Security - only with Mr. Bunting but no one else. When shown Exhibit 17 again he said to Dr. Barnett - "I never made arrangements as such with General Security guards. When I see here we have the necessary Security Guards, it suggests we had made arrangements to rid plaintiff company of its contracts". Re-examined the witness said - "I anticipated that General Services would lose contract. I registered the company and had it on

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standby. Shown Exhibit 19 he said that no letter like that was ever sent off. He said he "designed" the letter and continued - "I would seek advice - if person who advised me agreed to it then I would visit different individuals discuss it with them and hand them the letter at the same time. My advisor said no way so the letters were never sent out".

The third defendant Kenton Coppin testified that he left Protection Security Company and joined the plaintiff company at Mr. Chin's invitation. He was offered shares (15%) as an inducement. His job was Senior Supervisor of all the guards.

He spoke of the all island strike in August 1977 which was of workers and managerial staff but not Directors. Safeguard was registered but apart from signing the document he knew nothing about Safeguard Security.

In October 1977 Bunting had an eye operation. The company had no Directors and Bunting told him to seek advice as he, the witness, was the only shareholder in Jamaica. He went to 72 Church Street the office of Von Cork and Company. He said "we convened a shareholders meeting we prepared notices for the meeting" these he said were left at the homes of the other two shareholders. He went on: - "we convened a meeting and myself and Mrs. Mason were appointed Directors". He said he resigned as Director in 1978. He got \$7,000 from Mr. Chung when he returned and to use his words - "Mr. Chung appreciated how I handled things while he was away - it was by way of compensation".

He testified that he never disobeyed reasonable and lawful instructions of the Directors neither had he engaged in activities inimical to the company's interest. Mr. Coppin stated that he was claiming one month's pay in lieu of notice and damages for wrongful dismissal.

To Dr. Barnett he said it was not to his knowledge that the fourth defendant started to seek work in 1977. At first he said Safeguard was formed in 1978 but later agreed to the suggestion that Safeguard was formed in 1977 with himself as one of the subscribers. To

the suggestion that he was fully aware that Safeguard was arranging to take over the Airport contract his answer was - "No Sir". He said he appreciated that Safeguard would be doing the same kind of business as the one General Services was in.

He invited Mrs. Mason to Mr. Van Cork's office but denied that Mr. Hart was present. He said the new company was never discussed at the meeting. He stated that he never at any time told Mrs. Mason that he didn't like how the new company was going. He testified that about March 1978 Safeguard took over the Airport contract. He further went on to say:- "I continued to visit on behalf of General Services Security. I noticed that most of the people I used to supervise for General Services were now employed to Safeguard" In the light of his previous answers it was not surprising that his last statement to Dr. Barnett reads:- "I was confused because of the state of things. I sought no clarification from anyone".

At the close of the case for the first 3 Defendants, Miss Lightbourne, perhaps not surprisingly said she would call no witnesses for the 4th Defendant.

The Submissions

In his opening Dr. Barnett said that the first three Defendants were engaged to the Plaintiff Company and held fiduciary duties to them. the claim was for, inter alia, damages for Conspiracy and breach of Fiduciary duty. He stated that two major areas of law arose for consideration:-

1. Conspiracy to injure a person in his business, and
2. Nature and extent of the fiduciary duties of Directors of a Company and the employees of a business.

He referred to Halsbury's Laws of England, 4th Edition at paragraph 545 Volume 16. Under the rubric "Employee's obligations under contract of employment" the following is to be found :- "If an employee in violation of his duty to serve faithfully, takes advantage of the opportunities of his position to enrich himself, he is accountable to his employer for the proceeds etc." At paragraph 549 of the same work under obligations after Employment is ended the position is put thus:-

"The principle that an employee is under a duty not to disclose confidential information obtained in the course of his employment continues to apply after he has left the employment. Accordingly the employer is entitled to an injunction or damages, or both, if, after leaving his employment and against his interests, his former employee uses confidential information gained by him during that employment".

As put by Dr. Barnett the gravamen of the Plaintiff's complaint is /that the first three defendants utilised their positions and all the utilised defendants' /facilities belonging to the Plaintiff Company for their own benefit. He referred to Pennington on Company Law 4th Edition P.532 - "Director's duty to Company" and argued that fiduciary duty is owed exclusively to the Company. A Director, he submitted, is accountable to the Company if he uses the Company's property or his knowledge of the Company's customers to enrich himself.

If a Director for his private profit anticipates a business opportunity which the company would otherwise obtain, he is accountable. He cited Cook v. Deeks and others (1916) 1 A.C. 554. I note the observations of Lord Buckmaster L.C. at P. 563.

"It is quite right to point out the importance of avoiding the establishment of rules as to directors' duties which would impose upon them burdens so heavy and responsibilities so great that men of good position would hesitate to accept the office. But, on the other hand, men who assume the complete control of a company's business must remember that they are not at liberty to sacrifice the interests which they are bound to protect, and, while ostensibly acting for the company, divert in their own favour business which should properly belong to the company they represent.

Their Lordships think that, in the circumstances, the defendants were guilty of a distinct breach of duty in the course they took to secure the contract and they cannot retain the benefit of such contract for themselves, but must be regarded as holding it on behalf of the company."

He cited also Thomas Marshall (Exporters) Ltd. v. Guinle (1978) 3 W.L.R. 116. The facts put briefly were that the defendant was appointed managing director of the Plaintiff Company for a fixed period. His service agreement provided that he was not to engage in any other business without the company's consent while he was employed

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as Managing Director; that during and after his employment he was not to disclose confidential information in relation to the affairs, customers or trade secrets of the company and its group; and that after ceasing to be Managing Director he was neither to use or disclose confidential information about the suppliers and customers of the group nor employ any person who had worked for the company during the last two years of his appointment. Without the company's knowledge, the defendant began to trade on his own account and on behalf of his two companies in competition with the company and, in doing so, he bought from the company's suppliers and sold to the company's customers. Four of the company's former employees appeared to be either employed by or associated with the defendant or his companies. The defendant purported to resign as Managing Director at a time when his contract had another 4½ years to run.

The company brought proceedings against the defendant and his companies and applied for Interim Injunctions to restrain the defendant from:-

- (a) soliciting orders from or otherwise dealing with any customer of the company, and
- (b) from disclosing or using any confidential information or trade secret of the company during or after his employment as managing director.

It was held, inter alia - granting the injunction, that the defendant was in breach of an employee's obligation of fidelity and good faith to his employer and in breach of a director's fiduciary duty to the company in dishonestly buying business from the company's suppliers and selling to the company's customers on his own behalf. It was further held that the use of the Company's confidential information by the defendant for his own purposes was a breach of an employee's duty of fidelity and good faith towards his employer.

Dr. Barnett further submitted that even if a director does not forestall a business opportunity which his Company could have exploited he is accountable for any property he obtains in consequence of putting himself in a position where his duty to promote the company's affairs conflicts with his private interest; and this is so even if the company

suffers no damage by his conduct e.g. if the company could not legally make the contract in question or lacks the resources. He cited Regal Hastings Limited v. Gulliver and others (1942) 1 All E.R. 378 and cited also Industrial Development Consultants Limited v. Cooley (1972) 1 W.L.R. 443.

This latter case dealt with a director's fiduciary duty to a company and his duty to account for profits to the company. The defendant an architect employed to the plaintiff company entered into negotiations with a third party, a Gas Board, on his own behalf.

He discovered that if he could obtain a release from the plaintiffs he would have a good chance of obtaining for himself a valuable contract from the Board. The defendant obtained his release from the plaintiffs by dishonestly representing that he was in ill health. The defendant was subsequently given the contract by the Board as a result of work which, unknown to the plaintiffs, he had done while still their Managing Director.

On an Action by the plaintiffs, claiming that the defendant was accountable to them for the whole of his benefit under the contract it was held that it was an overriding principle of equity that a man would not be allowed to place himself in a position in which his fiduciary duty and his interests conflicted.

Counsel submitted that it is not an excuse that the Airport contract would be put up for tender and might have been lost, because the duty of care and fidelity required the first three defendants to maintain the contract. In any event, he said, before the Airport contract terminated the defendants had begun to solicit other contracts which were not in any similar danger.

Touching on the question of the migration of Chin and the absence of Chung Counsel contended that despite these factors the defendants continued in the employ of the plaintiff company and assumed wider responsibilities.

Referring to the Defence's argument that the first, second and third defendants were not Directors Counsel submitted that under the Companies Act a person who occupies the position of a Director does so more in

substance than in form. He referred to Section 2 (the Interpretation Section) of the said Act it says "director" includes any person occupying the position of director by whatever name called.

I have thought it more convenient to deal with Dr. Barnett's submissions first although he followed Mr. VonCork. He had argued that the action was improperly brought, he did not take the point in limine because he only became aware of the illegality when he discovered there were no Directors. Addressing himself to this contention Dr. Barnett submitted that the action was brought not by resolution but as part of Management functions and added that only other directors could question Mr. Chung - not shareholders.

Mr. VonCork for the first three Defendants addressed on the Law and the facts with commendable brevity. The commendation stands notwithstanding the fact that I cannot accede to the contentions made by him.

I have already referred to the fact that he urged that Mr. Chung had no authority to bring the action. He stated that Mr. Chin owned 55% of the shares and to use his words - "he had nothing to do with this action". He cited Heyting v. Dupont and Another (1964) 1 W.L.R. P. 843. I find no comfort on the point from this case. I lean to the view that the action was properly brought.

He asked the Court to find that "the Plaintiff Company abandoned by Chin and Chung was 'rescued by Messrs. Bunting, Hart and Coppin". I do not agree. To continue the nautical language used I am of the view that the Plaintiff Company was "torpedoed" by the first three defendants.

Miss Lightbourne contended that the first three Defendants were not directors of the Plaintiff Company but employees. Commenting on the cases cited by Dr. Barnett on the subject of Fiduciary duties she said the principles enunciated by him only applies to well run companies not where as in the instant case the directors had "taken off" and had lost interest. I trust that she will acquit me of any discourtesy when I say that not only is the submission somewhat vague but does not bear

the stamp of her accustomed logic. Surely breaches of fiduciary duties are not confined to companies that are "well run" and I may add that the evidence as far as Mr. Chung at any rate is concerned does not support the contention that he had "lost interest". She referred to Palmer's Company Law 21st Edition at P. 577 and argued that Messrs. Chin and Chung had clearly abandoned the Plaintiff Company. She cited Cranleigh Precision Engineering Limited v. Bryant and Another (1964) 3 All E.R. 289 and H.L. Bolton (Engineering) Company Ltd. v. T.J. Graham & Sons Ltd. (1956) 3 All E.R. 624. I do not consider either of these two cases of assistance in determining the issues before me.

On the subject of rival Companies and a Director acting for another Company she cited London and Mashonaland Exploration Company Ltd. v. New Mashonaland Exploration Company Limited (1981) W.N. 165. This was a Motion on behalf of the Plaintiff Company to restrain the Defendant Company from publishing any announcement that a certain Lord Mayo was one of its directors, and to restrain Lord Mayo from authorising or permitting any such publication and from acting as director of the Defendant Company. The abovenamed companies were incorporated for the same object and were rival companies. The Plaintiff Company was duly registered in the following month a resolution was passed at a meeting of the directors appointing Lord Mayo a director and Chairman. The Plaintiff Company alleged that Lord Mayo accepted the appointment and approved of a prospectus privately circulated wherein his name appeared as director and chairman and that numerous applications for shares had been received upon the faith of such prospectus. The prospectus of the defendant company was circulated with the name of Lord Mayo at the head of its list of directors. It was admitted that Lord Mayo had never acted as a director nor attended any board meeting of the Plaintiff company, and had never agreed, either expressly or by the articles of association, not to become a director of any similar company.

Chitty J. said that even assuming that Lord Mayo had been duly elected chairman and director of the Plaintiff Company, there was nothing in the articles which required him to give any part of his time,

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much less the whole of his time to the business of the company or which prohibited him from acting as a director of another company; neither was there any contract express or implied to give his personal services to the plaintiff company and to another company. No case had been made out that Lord Mayo was about to disclose to the defendant company any information that he had obtained confidentially in his character of chairman; the analogy sought to be drawn by the Plaintiff Company's Counsel between the present case and partnerships was incomplete: no sufficient damage had been shown, and no case had been made for an injunction; the application was wholly unprecedented and must be dismissed with costs. In my opinion the analogy sought to be drawn by Miss Lightbourne between the instant case and the Mashonaland Case cited above is inappropriate.

Was there a conspiracy by the defendants to injure the Plaintiff in its business? In my view the answer to this is clearly in the affirmative. The fourth named Defendant Company was in my view formed with similar objectives to the Plaintiff Company and the 1st three defendants initiated moves designed to destroy the business of the Plaintiff Company. Clerk & Lindsell on Torts 14th Edition at Paragraph 810 under "Conspiracy" reads - "A conspiracy consists in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means", as per Willes J. *Mulcahy v. R.* (1868) L.R. 3H.L. 306, 317. "As a tort, conspiracy arises chiefly from a combination of which the real purpose ... is the inflicting of damage on A as distinguished from serving the bona fide and legitimate interests of those who so combine, resulting in damage to A".

There is no doubt that it is clearly actionable to interfere with the business of another to cause damage.

I find:-

1. That the action was properly brought and is maintainable before the Court.
2. That the first three defendants acted in breach of their Fiduciary duties and the 4th named defendant company participated with them in breach of those duties and in the attainment of a common purpose.

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3. That the 1st three defendants formed the fourth named company to operate as a rival of the plaintiff company and to take over its customers.
4. That it was clearly false when the defence alleged that they were unable to communicate with Messrs. Chin and Chung.
5. That the defendant Bunting drew cheques for payment of telephone bills for calls made to Florida from the plaintiff company.
6. That Mr. Chung when he did leave the island did so only on a temporary basis and I cannot accede to the contention that he abandoned the plaintiff company.
7. I find that the plaintiff company lost the benefit of contracts to (a) The Airport Authority (b) Roberts Products Limited, and (c) National Commerical Bank Computer Centre. All these from the 26th September, 1977 to approximately the 31st January, 1978.

Mr. Chung mentioned the loss of contracts in relation "to various Airlines at Norman Manley Airport". The evidence in this regard is imprecise and I make no findings as to these.

There will be Judgment for the plaintiff against the defendants on the claim for \$55,000.00 by way of General Damages. It is hereby ordered that the Registrar do take all necessary accounts as to what sums have been received by the defendants for which they ought to account to the plaintiff company under (a), (b) and (c) of 7 above and that the sum so ascertained be referred to the Court for confirmation.

As regards the counter-claims I find that the first, second and third defendants have not established their case to my satisfaction and that these are barren claims.

There will also be Judgment for the plaintiff against the first three defendants on the counter-claims.

All costs to the plaintiff company such costs to be agreed or taxed.

Interest on General Damages at 8% from date of filing of the action to the date of this Judgment.

Stay of execution in respect of General Damages granted for six weeks.