Judgement Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2008 HCV 05999

BETWEEN VANESSA MASON CLAIMANT

AND UNIVERSITY OF THE WEST INDIES DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE ROY ANDERSON

IN CHAMBERS

Heard January 19, 2009

ANDERSON. J

Appearances: Ms. Fara Brown of the Norman Manley Legal Aid Clinic for the Claimant; Mr. Christopher Kelman and Ms. Lisa Russell instructed by Myers Fletcher & Gordon for the Defendant.

Mr. Carl Lawrence, Legal Officer and Ms. Nadeen Spence, representatives of the University of the West Indies were also present..

Application for injunction to prevent student being excluded from university hall of residence; whether justiciable in court; whether jurisdiction of University Visitor exclusive; whether jurisdiction of court concurrent with university visitor; whether injunction mandatory or prohibitory; whether,in any event, damages would be an adequate remedy;

In this action, the Claimant Vanessa Mason, a national of Trinidad and Tobago and a student of the University of the West Indies (the "UWI") seeks certain orders. The orders are set out below:

1. That the expulsion of the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew be suspended until the Claimant's claim is determined by this honourable court;
2. That the Defendant be restrained from expelling the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew;
3. That the Claimant be allowed to reside at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew without interference or harassment from the Defendant their employees, servants or agents;

4. That the Defendant by their employees, servant, or agents be restrained from removing, damaging or interfering with the Claimant's property currently in situ at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the Parish of Saint Andrew;
5. That there be such further and other relief as this Honourable Court may deem fit in all the circumstances;
6. Costs.

The Claimant in her affidavit dated the 20th day of December 2008 and filed on December 22, 2009, sets out the circumstances in which she is seeking redress. Her affidavit catalogues a series of events commencing with what appears to have been an altercation between the Claimant and another student and attempts by the university authorities to find a resolution. These attempts which I need not rehearse here, culminated in the Claimant receiving a letter dated the 5th of December from Dr. Reynolds of the UWI advising her that she would be required to vacate the accommodation she was provided with in Mary Seacole Hall ("the hall") the hall of residence in which she had hitherto been a resident. In essence, counsel for the Claimant has sought to argue that this is a simple case of a breach of the contract which the Claimant had entered into with the University to be provided accommodation during the academic year 2008 to 2009. This application therefore was an effort to restrain the University from carrying out its attempt to exclude Miss Mason from accommodation in the hall.

The Claimant's notice of Application came before me on January 6, 2009 and I adjourned it for a full hearing on Monday, January 19, 2009, both because of the inadequacy of the time available and the fact that the Defendant's counsel indicated that there was an authority which was dispositive of the issue that should be brought to the court. In preparation for that hearing the Claimant and the Defendant University were asked to file and serve submissions so that I would have had the benefit of these submissions before the hearing. This was done.

By the time of the hearing on the 19th, the Claimant had filed her Claim Form and Particulars of Claim which set out the specific nature of her claim as well as the reliefs sought. In the particulars of claim the Claimant averred that she had entered into a contract with the Defendant for it to provide her with accommodation for the period August 2008 to

May 2009 in the hall at the UWI. She alleges that she paid all the relevant hall fees and was allowed into occupation. On the 5th December, 2008 the Claimant received a letter from the University authorities informing her that she should vacate the accommodations provided in the hall. She alleges that this is in breach of her contract in that the UWI failed to provide the accommodation as provided for in the contract and that in contravention of clause 19 of the contract of accommodation, it had effected that termination and had given no reason for the termination.

It is useful to recall here that although the Claimant says she was not given any reason for determining her residence in the Mary Seacole Hall in the letter of December 5, 2008, nevertheless, her affidavit which is before the court provides considerable information as to the purported basis of the termination. Of course, for the purposes of this judgment, I offer no opinion as the justification or otherwise of the basis of that decision.

In her "Particulars of Loss", the Claimant claims (a) "unlawful eviction"

(b) Cost of alternative accommodation.

Further, the reliefs which she seeks are stated to be, inter alia,

(a) Specific Performance

(b) Damages for breach of contract

(c) Interest

It should be noted en passant, that it is common ground that the Claimant has been out of the jurisdiction from before Christmas in 2008 and will not return to the jurisdiction until January 22, 2009.

Counsel for the Defendant University Mr. Kelman, submitted on preliminary point that the Claimant ought not to be allowed to bring this suit against the University because the Charter of the University provided for resolution of disputes between or among members of the University by the Visitor, as provided for by the Charter. Accordingly, the jurisdiction of the court was excluded in matters of this kind involving the UWI's domestic matters.

By way of clarification, it should be noted that the Claimant's counsel in her submission specifically disavowed any attempts here by the Claimant to seek judicial review of the decision to terminate the Claimant's accommodation or the processes by which any such decision had been arrived at. She submitted that the Claimant's cause of action "does not concern the disciplinary process embarked upon by the Defendant, or the status of such matters, or whether they are subjected to the court's power to look at those issues upon an application for judicial review. Further, the Claimant's cause of action does not rely on the status of the disciplinary process as a basis for terminating the contract. The Claimant's cause of action *rests on whether the letter of December 5, 2008, can terminate the contract and nothing more*. (Emphasis mine)

Just for purposes of completeness, the letter of December 5, 2008, is set out below:

Miss Vanessa Mason
Mary Seacole Hall
The University of the West Indies
Mona Campus
Dear Miss Mason,

Re: Expulsion from Mary Seacole Hall

Documents pertaining to the captioned matter were referred to the Campus Legal Officer for advice. The Legal Officer stated that he has examined the allegations in your letter and also the points raised by Miss Fara Brown, Attorney-at-Law, who wrote to me on your behalf.

I note your expressions of breach of specific aspects of the Charter of Hall Principles and Responsibilities. I also note that you did not comply with Appendix B of the said Charter which states that a student in disagreement with the decision of a Disciplinary Committee may, within seven days of the decision "appeal in writing to the Director of Student Services."

After the matter was directed to me, an appointment was set for you to meet with me on October 10 at 8:30 a.m. to deal with the matter. You did not keep the appointment. You came to see me only after an e-mail dated October 14, 2008 from the Deputy Principal, addressed to you indicated "the Director of Student Services and Development should be the person to raise the matter with before coming to me." He suggested in the e-mail that you should see me on that day or the following day, as I would not be available to see you on Thursday and Friday.

The discussion with you was not completed when you came to see me on Wednesday, October 15, due to a previous appointment that I had. I asked you to put your concerns in

writing and gave you an appointment for October, 23 at 1:30 p.m. to discuss the concerns. Again, you did not keep the appointment, nor submit the written concerns.

Subsequently to the foregoing, in an effort to bring closure to the matter, you were invited to attend a meeting with the Hall Disciplinary Committee for the matter to be reheard. You did not attend, but was represented by Ms. Fara Brown, Attorney-At-Law who stated that she was attending the meeting in the capacity as "a friend". It was reported that the meeting had to be aborted on account of unacceptable behaviour displayed by Ms. Brown.

Based on the advice of the Campus Legal Officer with respect to the above matters, it is agreed that you vacate the Hall as of Monday, December 22, 2008, pending further investigation of this matter. You are required to comply with this directive.

Kindly acknowledge receipt of this correspondence by signing the attached copy.

Yours sincerely,

Thelora Reynolds, PhD
Director, Student Services and Development

In submitting that the court should uphold the preliminary objection and decline to hear the matter, Mr. Kelman cited the Charter of the U.W.I. which appointed Her Majesty Queen Elizabeth 11 as "Visitor". Clause 6 of the Charter is in the following terms"

> We, Our Heirs and Successors, shall be and remain the Visitor and Visitors of the University and in the exercise of the Visitorial authority from time to time and in such manner as We or They shall think fit may inspect the University, its buildings, laboratories and general work, equipment, and also the examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf.

The Visitor, in his submission, is the arbiter of all internal university matters. The Charter provides at clause 3 that: "The University shall be both a teaching and examining body and shall, subject to this our Charter and the Statutes, have the following powers…:

> (o) To establish and maintain and to administer and govern institutions for the residence of the students of the university whether College Hall or Houses and..... supervise such intuitions and the other places of residence whether maintained by the University or not so maintained.

The matter of accommodation within the UWI's halls of residence is entirely within the purview and jurisdiction of the visitor based on the authorities. He submitted secondly, that the claimant was a 'member' of the University, as the term is defined in its second statute

to include "undergraduate" and she is, accordingly, bound by the rules of the Charter and Statutes as to members. Thirdly, it was pointed out that Clause 18 of the Charter provided:

> The Statues shall prescribe or regulate as the case may be the composition, constitution, powers and duties of the Authorities of the University and all other matters relative to the Authorities which it may be thought are proper to be so prescribed or regulated.

Counsel said he pointed out these factors because it was relevant to show that as a member of the UWI, the claimant's accommodation in a hall was subject to regulation by the UWI within its domestic matters. It was submitted by counsel that:

> ".....The relationship between the Claimant and the Defendant though contractual, involves as well a further contract governing her residence on the Hall. However, her contract of residence incorporates its own binding procedures for discipline and dispute resolution. The resolution of the dispute between the Claimant and the Defendant is a domestic matter falling within the internal management of the Defendant. The provision of hall of residence on the Defendant's campus is a University activity, as much as examination and courses of learning are University activities".

In light of this, the court must decline to hear this matter. In support of the submissions, counsel for the defendant UWI cited a number of authorities including **Patel v University of Bradford Senate and Another [1978] 3 All E. R. 841, [1978] 1 W.L.R. 1488; Hines v Birkbeck College [1985] 3 All ER 156**; **Thomas v University of Bradford, [1987] 1 All ER 834;** the unreported decision of Brooks J. in this court in **Matt Myrie v University of the West Indies and Others Claim No. 2007 HCV 04736**, and **Wadinambiaratchi v Hakeem Ahmad and Others [1985] 35 WIR, 325** and **Thorne v University of London [1966] 2 All ER 338**.

I shall return to a consideration of the authorities below. However, I should note that counsel for the UWI also submitted that, in the event that the court was not with him on the preliminary objection, the claimant must still fail in her quest for an injunction because of the well-known principles set out in **American Cyanamid Co. v Ethicon Ltd. [1975] 1 All ER 504**. In particular, he submitted that damages would be an adequate remedy and that to give the relief sought in the injunction would effectively give the claimant all that she sought in the substantive claim, this especially as it related to her claim for specific performance.

It will be recalled that the Claimant's case is that the letter of December 5, 2008 represents a breach of contract. "The Claimant's cause of action is in contract alleging that the defendant agreed to provide accommodation in the Mary Seacole Hall of Residence from August 2008 to May 2009". The offending letter was "seeking to terminate the agreement contrary to its terms and is therefore in breach of clause 1 of the agreement. The claimant seeks specific performance and other remedies". Among the other remedies sought by the claimant are damages.

It was the argument of the claimant that the defendant's preliminary objection should fail because the authorities cited could be distinguished. In particular, she argued, the cases of Hines and Thomas, (in which the Hines case was affirmed), related to a contracts of employment of persons on the academic staff. She also sought to distinguish Myrie which related to a UWI student who sought a remedy in relation to an academic issue, that is his exclusion from an examination. She submitted that the jurisdiction of the visitor was not unlimited. Thus, it was submitted, since the visitor's power to act rests upon the exercise of internal or domestic law provisions, if the internal rules are silent, then the visitor has no jurisdiction. She also says if the contract at issue, such as the instant one, "is not in respect of the university's core activities, the visitor's jurisdiction is not gained simply by putting into the category of other activities because all the visitor's activities are set firmly within the framework of the core business and the internal laws".

Two other submissions of claimant's counsel exemplify the basis of her opposition to the preliminary point and perhaps demonstrate the misconceptions which underpin the application. Firstly, it is said that "if a merchant enters into an agreement to supply the university with goods and a dispute should arise then clearly unless the Sale of Goods Act has been unwittingly incorporated into the university's domestic rules, the visitor would have no jurisdiction". But this ignores the fact that the visitor is not the arbiter between the university and a non-member of the university. Such a person is within the charter's contemplation. Secondly, it was submitted that "the claimant's case does not fall within the visitor's jurisdiction because it is a contract to provide accommodation and does not concern 'academic or disciplinary activities'. It represents the creation of legal relations

quite distinct from those issues governed by the visitor". It seems to me that these submissions are misconceived and fail to appreciate the significance of the dicta of Brooks J. in Myrie about the breadth of the visitor's jurisdiction. Essentially, claimant's counsel seeks to restrict the role of the visitor to academic matters.

Having considered the submissions from both sides, I have formed the view after a careful review of the authorities that the defendant's preliminary objection should succeed. A citation of relevant dicta in the cases cited will suffice to show why I have so decided. The first case to which reference is made is that of **Patel**. The headnote reads as follows:

> In 1972 the plaintiff was admitted to the University of Bradford, a university incorporated by royal charter in 1966. He failed his examination at the end of the academic year and was permitted to sit it again in September 1973, when he again failed. The university authorities decided that the plaintiff should be required to withdraw from the university and notified him of the fact. The plaintiff requested the university authorities to permit him to re-enter but his request was refused. He brought an action against the university in which he sought (i) declarations that the university had arbitrarily, unreasonably and unlawfully refused him re-admission and lawful access to the university and (ii) an injunction and exemplary damages. The university contended that the exclusive jurisdiction to hear the matter was in the visitor of the university and not in the courts. Although the charter establishing the university reserved to the Crown the right to appoint a visitor, no appointment had been made, and the question arose whether the university had a visitor.

It was held that:

> (i) Subject to any appointment that the Crown was pleased to make, the Crown was the visitor to the university, and the Lord Chancellor was the proper person to exercise the visitatorial powers on behalf of the Crown.
>
> (ii) The jurisdiction of the visitor to a corporation, including a modern university, was sole and exclusive and extended as much to whether any person lawfully had or ought to have become a member of it as to whether a member had or had not lawfully been removed, there being in each case a dispute as to membership which was a matter internal to the corporation. The courts had no jurisdiction over matters within the visitor's jurisdiction, but would, in appropriate cases, exercise control over the visitor by issuing prohibition or mandamus.

In **Patel**, Sir Robert Megarry V.-C. in the course of his review of the modern authorities said, at pp. 1493-1494 of the WLR:

> "In **Rex v. Dunsheath, Ex parte Meredith [1951] 1 K.B. 127**, a King's Bench Divisional Court refused to grant an order of mandamus directing the Chairman of Convocation of London University to summon an extraordinary meeting of convocation in accordance with one of the university statutes, on the ground that the proper remedy was to apply to the visitor. 'The court,' said Lord Goddard C.J. at p. 132, 'will not interfere in the matter within the province of the visitor; ...' Perhaps the strongest authority is Thorne v. University of London [1966] 2 Q.B. 237. There, an unsuccessful candidate for the London LI.B. sued the University of London for damages for negligently misjudging his examination papers, and for an order of mandamus requiring the university to award him the grade that his papers justified. The Court of Appeal refused leave to appeal from a decision which had struck out the writ and statement of claim and dismissed the action. In the words of Diplock L.J. at p. 242: 'actions of this kind relating to domestic disputes between members of the University of London (as is the case with other universities) are matters which are to be dealt with by the visitor, and the court has no jurisdiction to deal with them.' This case makes it plain that the question is not merely one of refusing discretionary remedies or requiring alternative forms of relief to be pursued first, but is truly a matter of jurisdiction. Two interlocutory observations by Diplock L.J. on p. 240 emphasise that the visitor has the sole and exclusive jurisdiction, and that at common law the court has no jurisdiction to deal with the internal affairs or government of the university, because these have been confided by the law to the exclusive province of the visitor."

The Vice-Chancellor expressed his conclusion in the following words, at p. 1493E

> "On the authorities it seems to be clear that the visitor has a sole and exclusive jurisdiction, and that the courts have no jurisdiction over matters within the visitor's jurisdiction"

In **Thorne v University of London [1966] 2 All ER 338**, the facts of which are set out in the judgment of Sir Robert Megarry V.C. in Patel cited above, the United Kingdom Court of Appeal held that the High Court had no jurisdiction to hear complaints by a member of London University, or by a person seeking a degree from the university, against the university about its examinations or conferment of degrees, because those matters are within exclusive jurisdiction of the visitor of the university. Also, in **Hines v Birkbeck** (citation given above) where there was a dispute over a contract of employment, the court held that since the matters in dispute involved, inter alia, complaints of defective procedure, lack of a fair hearing, and questions of membership of a college, they were domestic disputes and were within the exclusive jurisdiction of the college visitor. As stated by Hoffmann J. (as he then was):

> The visitor is a domestic forum appointed by the founder for the purpose of regulating the foundation's domestic affairs in accordance with its statutes, including determination of domestic disputes. As Megarry V.C. said in Patel v University of Bradford Senate: "The visitor has a general jurisdiction over all matters in dispute relating to statutes of the foundation and its internal affairs and membership of the corporation".

In discussing the jurisdiction of the visitor as compared to that of the courts in matters of this kind, and whether the nature of the cause of action affected that issue, the learned judge had this to say:

> In **Thorne v. University of London [1966] 2 Q.B. 237** another dissatisfied candidate for a law degree complained that his examination papers had been negligently marked. He framed his action as a common law claim in damages for negligence but it was nevertheless struck out on the ground that it related to a domestic dispute within the university. This decision of the Court of Appeal makes it impossible to argue, at least in this court, that the nature of the cause of action determines whether the case falls within the visitor's jurisdiction. The only plausible alternative criterion is that the question is determined by the domesticity of the dispute. For one thing, it is settled law that the jurisdictions are mutually exclusive. The authorities also make it clear that, irrespective of whether the courts would be as well or better qualified to deal with the particular case, a dispute has the necessary domesticity if it involves members of the corporation and the interpretation or application of its internal rules, customs or procedures. Further, as Sir Samuel Romilly said in argument in ex parte Kirkby Ravensworth Hospital (1808) 15 Ves. 305, 311,
>
> > "A visitor is ... a judge, not for the single purpose of interpreting laws, but also for the application of laws, that are perfectly clear, requiring no interpretation, and, further, for the interpretation of questions of fact..."
>
> *In my judgment the dispute is no less domestic because the rules, customs or procedures in issue are alleged to constitute terms of a contract or because their construction or the questions of fact involved in their application are equally conveniently justiciable in a court.* (Emphasis Mine)

I agree with the dicta of this outstanding judge and adopt it for purposes of the instant matter. Given the premise of the submissions of the Claimant's counsel, it seems to me that this would be dispositive of the application. However, I would wish to refer to other dicta in two local Caribbean cases, **Myrie** in which my learned brother, Brooks J. gave a very well-reasoned judgment here in Jamaica and **Wadinambiaratchi**, a decision of the Trinidad and Tobago Court of Appeal. In Myrie, the claimant sought to compel the UWI to

allow him to sit certain examinations from he had been excluded. His Lordship cited with approval **Halsbury's Laws of England 4th Edition, Re-Issue, Volume 15(1)** paragraph 495:

> The visitor has untrammelled power to investigate and right wrongs done in the administration of the internal laws of the foundation. A dispute as to the correct interpretation and fair administration of the domestic laws of the university, its statutes and its ordnances falls within the jurisdiction of the visitor subject to the supervisory jurisdiction of the High Court and therefore the court usually lacks jurisdiction in the first instance to intervene. However, a decision of the university visitor may be amenable to judicial review.

I also agree with Brooks J in his analysis of the Charter and statutes of the UWI as well as effect and breadth of clause 6 of the UWI Charter which deals with the UWI visitor.

> In my view a proper interpretation of clause 6 does not allow for the view that it includes a limit on the jurisdiction of the visitor. I find that the mention of the power to inspect only highlights one aspect of that jurisdiction. The relevant words in this regard are, "*and in the exercise of the visitorial authority*". These words do not bear the restrictive meaning which Mr. Samuels submits they have".

It is clear from both the affidavit of the claimant and the affidavit of Nadeen Spence for the defendant that there is a procedure which is to be adopted in cases where there is a complaint by a student about his treatment by the university, and that process, if not concluded to the satisfaction of the claimant, would entitle her, ultimately, to appeal to the visitor. The very letter of December 5, 2008 on which the claimant hangs her claim, does not in terms permanently exclude her but says that she is to vacate "pending further investigation of this matter". It may be that in any event there is not yet anything of which the claimant may complain, even to the visitor. I believe that this fact and the broad scope of the visitatorial authority are, together or maybe even individually, sufficient to dispose of the submission of claimant's counsel which sought to restrict the scope of the visitor's jurisdiction. I agree with Brooks J. that there is nothing in the line of authorities in this area which would allow for a restrictive view of the common law role of the visitor, in the absence of legislation as was effected in New Zealand. I would hold that the provision of accommodation by the UWI is clearly a matter, a dispute in relation to which, would appropriately be within the visitor's jurisdiction. In this regard the dictum of Sir Samuel

Romilly in **Ex parte Kirkby Ravensworth Hospital** set out above, indicates that the visitor's jurisdiction applies not only to issues of law but issues of fact.

It may be well to mention the case of **Thomas v the University of Bradford [1987] 1 All ER 834**, a House of Lords case which specifically approved Hines v Birkbeck. There the claimant, a lecturer at the defendant university was purportedly dismissed. She brought an action for a declaration seeking a declaration that her disinissal was wrongful or ultra vires and null and void. She alleged that her dismissal was in breach of the terms of her contract of service because the procedures set out in the university's charter, statutes etc. had not been followed. The university sought a stay of proceedings and the judge at first instance refused it. The Court of Appeal upheld the judge's refusal and the university appealed to the House of Lords. It was held:

> The jurisdiction of a university visitor, which was based on his position as the sole judge of the internal or domestic laws of the university, was exclusive and was not concurrent with the courts' jurisdiction. The scope of the visitor's jurisdiction included the interpretation and enforcement not only of those laws themselves but also of internal powers and discretions derived from them, such as the discretion which necessarily had to be exercised in disciplinary matters. Accordingly, if a dispute between a university and a member of the university over his contract of employment with the university involved questions relating to the internal laws of the university or rights and duties derived from those laws, the visitor had exclusive jurisdiction to resolve that dispute. Furthermore, in exercising that jurisdiction the visitor could order the university to reinstate a member and pay arrears of salary or to pay damages in lieu of reinstatement. Since the plaintiff's dispute centred on the charter, statutes, ordinances and regulations of the university and regulations of the university and whether they were correctly applied and fairly administered, it followed that the visitor had exclusive jurisdiction. The appeal would accordingly be allowed.

Lord Griffiths in the course of his judgment at page 839 paragraph e said: "....In my opinion the exclusivity of the jurisdiction of the visitor is in English law beyond doubt and established by an unbroken line of authority spanning the last three centuries from Phillips v Bury (1694) Skin 447, [1558-1774] All ER Rep 53 to Hines v Birkbeck College".

Finally, the above cited cases are reinforced by the "persuasive authority" of **Wadinambiaratchi** where Bernard J.A. in the Trinidad and Tobago Court of Appeal stated the following"

> It seems clear to me that the basic principle is that matters relating to the internal management of the university such as the admission to courses, the holding of exams…….. and such like matters fall outside the jurisdiction of the court once there is a visitor thereto endowed with visitorial jurisdiction. Such matters are classified as purely domestic matters falling within the exclusive province of the visitor or his delegate, whose decisions on such matters are regarded as final and conclusive…. I take the view that having regard to the broad terms of section 6 of the charter, Her Majesty's appointment was not ceremonial but one of general visitorial jurisdiction".

I again adopt the dicta and reasoning of the learned judge and rule that the defendant should succeed on the preliminary point.

If I am wrong in determining this case on the preliminary point, I would hold that he Claimant is in any event not entitled to an injunction. I do so firstly because it seems to me that the effect of granting an injunction to the Claimant in the terms in which it is sought would be to grant a mandatory injunction. Counsel for the Claimant sought, in her submissions, to say that this is really a prohibitory injunction preventing the defendant from doing certain things. However, it is common ground that at least since December 22, the Claimant has been out of the jurisdiction and the injunction, if granted, would mandate the University to readmit her to the hall. It is trite law that the standard which an applicant for a mandatory injunction must reach should be that the court should feel a high degree of the assurance that the grant of an interim mandatory injunction would be approved at the trial. As Brooks, J, noted in the case of Myrie, Megarry J, had opined in **Shepherd Homes v Sandham (1970) 3 All E.R. 402** that "The case has to be unusually strong and clear before a mandatory injunction will be granted even if it is sought to enforce a contractual obligation". The factual basis of the claimant's claim is far from being "unusually strong and clear" In my view, this represents a compelling reason to refuse to grant the application for the injunction.

It should be noted further that the effect of granting the injunction as sought would be to give specific performance of the contract. Specific performance is one of the remedies

sought by the Claimant. As I understand it, given the availability of dates for a full trial of the action, it is unlikely that there would be a trial before the Applicant would have graduated in May.

But more importantly it is a central tenet of **America Cyanamid** that where damages would be an adequate remedy, no injunction should lie. I accept without reservation the submission by counsel for the U.W.I. on this point that damages would be easily quantifiable by reference to a determination of the cost of alternative accommodation for the Claimant and even if the accommodation was inconvenient in that it required traveling from farther distances, the cost of that traveling would also form a part of the damages.

For all of the above reasons the Claimant's application for an injunction is denied and costs are awarded to the Defendant such cost to be taxed if not agreed.

Leave to appeal granted.

ROY K. ANDERSON
PUISNE JUDGE
JANUARY, 28, 2009