

✓ Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CHAMBERS

SUIT NO. HCV 0212/03

BETWEEN	ST. CLAIR SHIRLEY	FIRST CLAIMANT
AND	ALISTER COOKE	SECOND CLAIMANT
AND	VINCENT MORRISON	THIRD CLAIMANT
AND	LLOYD REID	FOURTH CLAIMANT
AND	CARLTON SHURTON	FIFTH CLAIMANT
AND	FREDERICK LEIGHTON	SIXTH CLAIMANT
AND	CHARLES JOHNSTON	FIRST DEFENDANT
AND	ROGER HINDS	SECOND DEFENDANT
AND	GRANTLEY STEPHENSON	THIRD DEFENDANT
AND	HYLTON CLARKE	FOURTH DEFENDANT
AND	PAULA PINNOCK	FIFTH DEFENDANT
AND	WARREN SWEENEY	SIXTH DEFENDANT
AND	JAMES WHARTON	SEVENTH DEFENDANT
AND	STEPHEN BELL	EIGHTH DEFENDANT

Lord Gifford, Q.C. and Conrad George instructed by Hart, Muirhead & Fatta for all Claimants

Miss Hilary Phillips, Q.C. and Charles Piper instructed by Emile Leiba of Piper & Samuda for all Defendants.

SUIT N: HCV 0222/2003

BETWEEN	GRACE KENNEDY AND COMPANY (SHIPPING) LIMITED	FIRST CLAIMANT
AND	HAMBURG SUD/COLUMBUS LIMITED	SECOND CLAIMANT
AND	INTERNATIONAL SHIPPING LIMITED	THIRD CLAIMANT
AND	PORT SERVICES LIMITED	FOURTH CLAIMANT
AND	H. McCAULAY ORRETT LIMITED	FIFTH CLAIMANT
AND	THE SHIPPING ASSOCIATION OF JAMAICA	FIRST DEFENDANT
AND	GRANTLEY STEPHENSON	SECOND DEFENDANT
AND	HARRY MARAGH	THIRD DEFENDANT
AND	THE SHIPPING ASSOCIATION OF JAMAICA PROPERTY LTD.	FOURTH DEFENDANT

John Vassell, Q.C. and Miss Sheena Stubbs instructed by Conrad George of Hart Muirhead and Fatta for all Claimants
Mrs. Pamella Benka Coker, Q.C., Dave Garcia and Miss Malika Wong instructed by Lance Hylton of Myers, Fletcher And Gordon for all Defendants

Heard on February 17, 18, 20, 2003

CORAM: WOLFE, CHIEF JUSTICE

Suit No. HCV: 0212/2003

The claimants are Trustees of the Port Workers Superannuation Fund. This Fund is comprised of assets to which all port workers are beneficially entitled in accordance with the terms of a trust deed.

The first four defendants were themselves trustees of the said Fund up until February 10, 2003, when they tendered their resignations.

The 5th, 6th, 7th and 8th defendants were appointed as trustees of the Fund on February 11, 2003 to replace the first four defedants.

The claimants contend that the first four defendants have been guilty of breaching their trust as trustees of the fund in that they have not, as trustees, acted in the best interests of the beneficiary of the Trust. It is further contended that the said Trustees have used the assets of the Fund to further their own interests.

It is being further alleged that the 5th to the 8th defendants have been purportedly appointed in circumstances that raise an inference that they have been so appointed to complete the breaches of trust put in motion by the first to fourth defendants.

The complaint is that the defendants are part of a consortium seeking to change the management and board of Kingston Wharves (K.W.) and that the said Consortium is allied to stevedoring interests currently engaged in litigation with K.W.

Against this background the claimants seek:

- (i) a declaration that the first to fourth defendants acted in breach of trust;
- (ii) an injunction restraining the fifth to the eighth defendants or any of them from exercising any voting rights attaching to the Fund as a shareholder of Kingston Wharves Limited in connection with the Extraordinary General Meeting of the Company scheduled for 18th February, 2003 or any adjournment or continuation thereof.

Worthy of note is the fact that the injunction is being sought against the fifth to the eighth defendants.

I ask myself: Is there a serious issue to be tried between the fifth, sixth, seventh and eighth defendants and the claimants?

The allegation of breach of trust is between the claimants and the first four defendants. There is no issue joined between the last four defendants and the claimants. The allegations against the last four defendants are at best speculative.

The last four defendants, it would seem, are being regarded as agents of the first four defendants but there is no valid basis for so regarding them.

I repeat, the real issue lies between the first four defendants and the claimants, namely, the issue as to whether the first four defendants have been in breach of their duties as trustees of the Fund.

I find that there is no serious issue to be tried between the 5th, 6th, 7th, 8th defendants and the complainants. Consequently, there is no basis on which the court could properly order that they be restrained as requested by the complainants.

A number of cases were cited by Counsel on both sides. My failure to refer to them in this brief note is not to be construed as disrespectful but for purposes of deciding whether an interim injunction should be granted, I find it unnecessary so to do.

The Application for an interim injunction is hereby refused.

Costs to be Costs in the Cause.

HCV: 0222/2003

All the claimants herein are Limited Liability Companies incorporated under the laws of Jamaica and are subscribers of Grace Kennedy Company Limited. They are also members of the Shipping Association of Jamaica.

The first defendant, founded in 1939, is a registered employers trade union and represents companies in the private sector of the Island's shipping industry including the claimants.

The second and third defendants are members of the Management Committee of the Shipping Association of Jamaica and the Trustees of the Shipping Association of Jamaica.

The fourth defendant is a registered company owned by the first defendant.

The first defendant is a registered trade union under the Trade Union Act.

Section 8 of the Trade Union Act provides that all real and personal estate whatsoever belonging to any trade union registered under the Act shall be vested in the trustees for the time being of the trade union for the use and benefit of such trade union and the members thereof.

The first defendant having acquired a number of shares in Kingston Wharves Limited has transferred all those shares to the fourth defendant contrary to the provisions of section 8 of the Trade Union Act.

Mr. Vassell contends that the shares should be vested in the second and third defendants, who are the Trustees of the first defendant. Having acted contrary to the provisions of section 8 of the Trade Union Act, as Mr. Vassell contends, the transfer is void and of no effect. Nothing has passed to the fourth defendant hence the fourth defendant has no good title to the shares and therefore is not entitled to vote the said shares or to exercise any rights attaching thereto.

The claimants as members of the first defendant are beneficiaries of the said shares and are therefore entitled to relief based upon the alleged breach by the defendants.

Mrs. Benka Coker quite properly conceded that there is a serious issue to be tried but argued that in the circumstances the beneficiaries have suffered no real damage and consequently, nominal damages would be adequate compensation for a breach of the right which they have as beneficiaries.

The question is: Where the breach or threatened breach is of a statutory duty can it be said that damages is adequate remedy?

Statutes are enacted by the Legislature for the benefit of the members of society and must therefore be observed by all. Persons cannot be allowed to breach a statute and then say, we will compensate persons who are affected by the breach. The role of the Court, certainly must be to ensure that the laws enacted by Parliament are faithfully

observed. The right given by statute is not a private right. It is a public right and as such, I am of the view that damages cannot in such circumstances be adequate remedy.

In the light of the above, the fourth defendant, its servants or agents are hereby restrained for a period of fourteen (14) days from exercising any voting rights in respect of the shares purportedly transferred to it by the first, second and third defendants.

By virtue of the purported transfer the shares must certainly now be standing in the name of the fourth defendant and can only be voted by the fourth defendant or its servants or agents. Having restrained the fourth defendant, its servants or agents from exercising any voting rights in respect of the said shares, I find it unnecessary to order that the first, second and third defendants be restrained.

Costs to be Costs in the Cause.