

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NOS. C.L. T015 OF 1983 AND C.L. S026 OF 1983

BETWEEN	TRANSATLANTIC INVESTORS LIMITED	PLAINTIFF
AND	SOUTHERN HOTELS (JAMAICA) LIMITED	1ST DEFENDANT
AND	NORMAN PUSHELL	2ND DEFENDANT
AND	NORTHWARD JAMAICA LIMITED	3RD DEFENDANT

Heard: 17th and 18th March, 1983

R. N. L. Henriques Q.C. and Allan Wood instructed by Livingston, Alexander and Levy for Plaintiff.
Dennis Morrison and Gordon Robinson instructed by Judah, Desnoes, and Co. for defendants.

ORAL JUDGMENT

Chambers

DOWNER J.

In this case both parties have obtained ex parte injunctions which they seek to have extended by means of Interlocutory Injunctions to give them undisturbed possession of the Leasehold estate in question, which adjoins Casa Blanca Hotel. It has been put to me that this is an unusual action because both parties are seeking the same rights in respect of the same leasehold property. I do not consider this to be exceptional, as in all cases where there is a conflict of Affidavit evidence, the Trial Judge has to take a view of the strength of each party's respective case to see whether the remedy sought is appropriate. This is all the more so when both parties have serious issues to be tried and the decision turns on the balance of convenience.

Although the right to possession concerns the Lease, both parties are interested in the operation of the Restaurant which it seems from the evidence of the case is a very profitable operation due to the buoyancy of the Tourist Industry. Mr. Henriques contends that the substance of his case rests upon the Lease which is in existence, the fact that there has been no surrender to that Lease and more importantly, to the fact that damages could never be an adequate remedy either now or at any trial for the disturbance of his Leasehold rights. He points out that the complexities involved in estimating loss of profits would put

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any Court in an untenable position because he who operates the Restaurant, determines its profitability.

Mr. Morrison, on the other hand, replying for Southern Hotels, and the other defendants who own the reversion on Casa Blanca Hotel, advances the argument that the Lease to Transatlantic was surrendered partly by operation of Law and partly by actions of Mr. Meglio purporting to act on behalf of Transatlantic in disconnecting electricity services. He puts forward the contention that, that action amounts in effect to giving Southern Hotels a claim to possession of the Lease and that this is in itself a serious issue to be determined at a trial. Moreover, although the restaurant is not being operated at this time because of the operation of both sets of ex parte injunctions, he asserts that Southern Hotels is in a position to operate it and that their hotel business is seriously inconvenienced by operating restaurant facilities partly in the salon and partly in the lobby. It was contended that there are resources from the hotel operations which could compensate for any loss Transatlantic may suffer now or subsequently if the injunction were granted to Southern Hotels. Additionally he pointed out the difficulty in quantifying the damage suffered by Casa Blanca Hotel for goodwill.

I find the arguments neatly balanced in this case. One has to take a view of the evidence without deciding on the merits. At this point, I would mention that I precluded any cross-examination of Mr. Pushell because in my opinion it would only multiply the conflicts already existing on the evidence without enabling me to take a clear view of the strength of the case of each party particularly as to where the balance of convenience lay.

Where does the balance of convenience lie in this case?

Both parties relied on American Cyamid Co. v. Ethicon Ltd. (1975) 1 All E.R. 504 H.L. (E) but despite the broad sweep of Lord Diplock's language one must recognise that the subject matter there was patent rights, here they are leasehold interests. Further that judgment recognises the manifold circumstances for which interlocutory injunctions are sought and that it would be inappropriate to lay down hard and fast rules for the

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exercise of a discretionary power. The passage which I find instructive at 511 (E) reads thus:

"It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list the various functions which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case".

Therefore one must consider the position of the rival claimants for the leasehold Title, as this is the subject matter in issue and there is a copy of the lease exhibited in these proceedings. Irrespective of what actions Mr. Meglio took in terminating electricity supplies together with the actions of the Bank of Nova Scotia in reclaiming the assets of the Restaurant when it was operated by Transatlantic, I have to consider that - in the face of a valid Lease and the actions of Mrs. Eva Myers for Transatlantic to provide security to protect that interest from the outset of the dispute, as compared to the defendants imprecise allegations as to its surrender, I have no alternative but to refuse to grant the injunctive relief to Southern Hotels as Mr. Norman Pushell has sought although an injunction would benefit the reversioner. After all the reversioner bought the freehold subject to the lease. On the other hand, without purporting to make any decision on the facts, I am prepared to grant an Interlocutory Injunction to Transatlantic as prayed.

DOWNER J.
18th March, 1983.