[2024] JMCC COMM. 41

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2024CD00279

IN THE MATTER OF CABLETRON NETWORK SYSTEMS LIMITED and MAUD INTERCONNECT SYSTEMS LIMITED and HOME TIME ENTERTAINMENT LIMITED

AND

IN THE MATTER OF THE TERMINATION OF AN EARNOUT PURCHASE AND MANAGEMENT AGREEMENT

BETWEEN	**CABLETRON NETWORK SYSTEMS LIMITED**	**CLAIMANT**
AND	**MAUD INTERCONNECT SYSTEMS LIMITED**	**1ST DEFENDANT**
AND	**HOME TIME ENTERTAINMENT LIMITED**	**2ND DEFENDANT**

Mr. Douglas Leys KC and Mr. Able-Don Foote instructed by Able Lawyers Attorneys-at-law for the Claimant

Ms Zara Lewis instructed by Zara Lewis & Co. Attorneys-at-law for the 1st and 2nd Defendants

IN OPEN COURT

Heard on: 28th August, 4th, 23rd, 24th September and 15th October, 2024

Injunction- Application for Interim Injunction pursuant to Section 49(h) of the Judicature (Supreme Court) Act- Rules 17.1(a), 17.1(4) and 17.2 of the Civil Procedure Rules, 2002-Whether there is a serious issue to be tried– Whether damages an adequate remedy- Balance of convenience- Preservation of Status Quo

STEPHANE JACKSON-HAISLEY, J

INTRODUCTION

[1] On October 15, 2024 I delivered an oral judgment with the promise to provide a written version. This is now the written judgment.

THE CLAIMANT'S CASE

[2] The Claimant, Cabletron Network Systems Limited (Cabletron Network) is a company principally in the business of providing cable and internet services to customers in the parish of Westmoreland, covering Little London, Grange Hill, Frome, Dunbar Corner, Savanna-la-Mar, Petersfield, Darliston and Ferris Cross.

[3] Ms. Vianne Morgan is the founding member of Cabletron Network and she operated this company from 1996. Due to certain requirements of the Broadcasting Commission, in particular their requirement for cable operators to transition from analog to digital and the expense involved in doing so, she decided to exit the business. She therefore entered into an agreement to sell the business to the 1st Defendant, Maud Interconnect Systems Limited (Maud Interconnect). On the 29th July, 2016, Cabletron Network entered into an Earn-out Purchase Agreement (Earn-out Agreement) with the 1st Defendant, for the agreed price of Two Million, One Hundred Thousand United States Dollars (US$2,100,000.00) and contemporaneously with the execution of the Earn-out Agreement, a Memorandum of Understanding (Management Agreement) was executed with the 2nd Defendant Home Time Entertainment Limited (Home

Time). The purpose of the Management Agreement was to exercise management of the Cabletron Network for the 5-year period of the Earn-out Agreement.

[4] In addition to the agreed sale price, the Earn-out Agreement also contemplated that at the end of the 5-year period, there would be an additional payment of Seven Thousand United States Dollars (US$7,000.00) monthly for the goodwill of the business and the period of payment was an additional 5 years.

[5] Cabletron Network alleges that Maud Interconnect failed to honour its obligation since its inception and has not made the requisite monthly payments under the Earn-out Agreement.

[6] This led Cabletron Network to file a Fixed Date Claim Form on July 16, 2024 seeking declarations and orders as follows:

(i) *A declaration that Cabletron Network Systems Limited is entitled at law and in equity to assume ownership, custody, control and possession of the assets (tangible and intangible), the subject of an Earnout Purchase Agreement between Cabletron Entertainment Systems and Maud Interconnect Systems Limited, the 1st Defendant dated the 29th day of July 2016, by effluxion of time and the failure of Maud Interconnect Systems Limited to honour its obligations thereunder.*

(ii) *A declaration that Home Time Entertainment Limited, the 2nd Defendant assumes the outstanding liabilities for the time it exercised management responsibilities and oversight of Cabletron Network Systems Limited pursuant to a Memorandum of Understanding also referred to as a Management Agreement, dated the 29th day of July 2016, which has expired by effluxion of time and the failure of the said Home Time Entertainment Systems to meet its obligations thereunder.*

(iii) *An Order that the said Maud Interconnect Systems Limited deliver up custody and control of the assets both (tangible and intangible) of Cabletron Network Systems Limited.*

(iv) An Order that Home Time Entertainment Systems Limited cease to exercise management and control of Cabletron Network Systems Limited.

(v) An interlocutory injunction restraining Home Time Entertainment Limited by its servants and/or agents from continuing to manage the operations and affairs of Cabletron Network Systems Limited until the determination of the issues in this claim.

(vi) ….."

[7] In her Affidavit in support of Fixed Date Claim Form, Ms. Morgan stated that on June 30, 2014, The Broadcasting Commission issued a 10-year Subscriber Television Licence to Cabletron Network which expired on June 29, 2024. The Office of the Utilities Regulations (OUR) also issued a 10-year Service Provider Licence (domestic voice service) which took effect on November 1, 2015, a 2-year Subscriber Provider Licence (international voice service) which took effect on November 2, 2015, a 2-year Service provider Licence (internet services) which took effect on December 23, 2015 and a 10-year Carrier Licence (internet services) which took effect on December 22, 2013. Ms. Morgan asserted that the licences were all issued when Cabletron Network was under her control and at that time, all statutory obligations were honoured.

[8] She further asserted that under the Earn-out Agreement, Maud Interconnect was required to pay a monthly sum of Twenty-Five Thousand United States Dollars (US$25,000.00) or the Jamaican equivalent into a designated United States Dollar account and it was agreed that if the Jamaican Dollar exceeded the rate of One Hundred and Sixty Dollars (J$160.00) to One United States Dollars (US$1.00), the agreement would be renegotiated. She also asserted that even though Maud Interconnect made payments, those payments were inconsistent and at all times made in Jamaican Dollars at a rate of One Hundred and Thirty Dollars (J$130.00) despite the fact that the Jamaican dollar depreciated against the United States Dollar.

[9] She stated that by failing to adhere to the payment schedule in the Agreement, the sum of Eight Hundred and Ninety-Two Thousand United States Dollars (US$892,000.00) is due and owing as at February 23, 2023. Ms. Morgan averred that she had access to Cabletron Network's billing system which revealed that the income generated was sufficient to meet the payments under the Earn-out Agreement.

[10] Ms. Morgan contended that one of the terms of the Earn-out and the Management Agreement was the determination and implementation of a growth strategy for Cabletron Network and the Defendants have failed to implement such a strategy. She stated that though there were upgrades and expansion, it related solely to Home Time's operations and this was done at the expense of Cabletron Network. She also contended that Home Time has not honoured statutory obligations, has failed to file all reports and returns associated with Cabletron Network's operations, has not kept the telecommunication bills current and its customer base has diminished as there has been numerous complaints about the service being offered.

[11] Ms. Morgan asserted that as a result of the continued breaches of the Earn-out and Management Agreements, she instructed her attorney-at-law to write the 1st Defendant setting out the breaches and requesting payment of the outstanding balance however to date, the outstanding amount has not been settled. She stated that by letter dated March 19, 2024, the Defendants were informed that in light of the several breaches and the amount owed, the operations and control of the business should be returned within thirty (30) days however, they have indicated that they are not willing to hand over the business operations as they do not consider that they are in breach of their obligations under the Agreements.

[12] In her 4th Affidavit filed September 3, 2024, Ms. Morgan admitted that she had a desire to get out of the business based on the Broadcasting Commission requirement for cable operators to move from analog to digital however, this was

too expensive and she entered into discussion with Mr. Graham since she had a prior association with him and he had the experience of selling his business to FLOW. Ms. Morgan also admitted that at the time the Defendants assumed management of Cabletron Network, its operations were profitable and she was able to circumvent an encryption issue she was having previously.

[13] She disputed that the agreed exchange rate was One Hundred and Twenty-Five Jamaican Dollars (J$125.00) to One United States Dollar (US$1.00) and countered that the agreed rate was the prevailing exchange rate at the time of payment. She denied that there was an agreement to pay a reduced sum of Two Million Jamaican Dollars (J$2,000,000.00) and countered that this is an attempt by the Defendants to modify the agreement. She stated that Mr. Graham was removed as a Director of Cabletron Network as it became apparent that he was not acting in the company's best interest given the several breaches and the failure to meet all the operational expenses. A Further Amended Notice of Application for Court Orders was filed on September 20, 2024 seeking the following Injunctive reliefs:

I. An interlocutory injunction to restrain the 2nd Defendant whether by itself, its servants, agents and/or employees from continuing to manage the operational affairs of the Claimant.

II. An interlocutory injunction restraining the 2nd Defendants from continuing to assert management and control of the Applicant's operations pursuant to a Memorandum of Understanding entered into with the Claimant/Applicant on the 29th day of July, 2016 which has expired by effluxion of time.

III. The Claimant/Applicant undertakes to abide by any order as to damages caused by the granting of the injunctive orders made herein.

[14] The grounds on which the Claimant sought the orders are:

(i) Pursuant to section 12 of the Arbitration Act 2017, the Court has jurisdiction to grant interim relief notwithstanding an arbitration agreement.

(ii) Pursuant to rule 17.3 of the CPR the Court has jurisdiction to grant interim injunctive relief.

(iii) The 2nd Defendant can no longer operate under the Memorandum of Understanding (MOU) over the operation of the Claimant/Applicant as that agreement is no longer in force and despite the request of the lawful owners for the 2nd Defendant to relinquish such control, it has steadfastly refused to relinquish such control to the lawful owners.

(iv) The 2nd Defendant's refusal to relinquish control aforesaid has placed the continued operation of the business of the Claimant/Applicant in jeopardy, as the Claimant/Applicant is in danger of losing its subscriber television licence and the renewal of its internet service provider licenses issued by the Broadcasting Commission and the Office of Utilities Regulation respectively, thus putting the Claimant/Applicant, out of business, damaging its reputation with its lawful customers and causing it to suffer loss and damage.

(v) The 2nd Defendant has not complied with the various statutory obligations for which it was responsible while the MOU was in force.

(vi) Damages cannot adequately compensate the Claimant/Applicant herein, for the damage and loss which it has suffered by and is likely to further suffer.

(vii) ***....***

DEFENDANTS' CASE

[15] Mr. Anthony Graham is the Managing Director of both Maud Interconnect and Home Time. In his affidavit in response to the affidavits of Mrs. Viannie Morgan, he stated that in or about 2009, Ms. Morgan informed him that she had a small cable company called Marimax Communications Limited which operated out of Black River, St. Elizabeth which she desired to sell. He agreed and on or about December 15, 2009, he made a one-time purchase of the company. He stated that he had recently acquired another small cable company in Lilliput, St. James and Home Time was created to offer a unified brand.

[16] Mr. Graham added that Ms. Morgan asked him to share a cable signal with her company Cabletron Network as she was having difficulty with her service provider especially since she was unable to implement parental control mechanism over adult content programs and as a result of this issue, her revenue plummeted. He asked her to consider an earn-out arrangement where whatever price agreed would be paid from the earnings over a five-year period.

[17] He stated that the earn-out agreement was predicated on a few key criteria that firstly, Cabletron Network was the only cable operator in certain zones, secondly, Cable Television was going to be the primary source of entertainment and that significant investment would be required to change out the Motorola system to the system used by Home Time. He noted that the projected value of Cabletron Network was Two Hundred and Sixty Million Jamaican Dollars (J$260,000,000.00) which worked out to Three Million, Two Hundred and Fifty Thousand Jamaican Dollars (J$3,250,000.00) per month at an exchange rate of One Hundred and Twenty-Five Jamaican Dollars (J$125.00) to One United States Dollar (US$1.00). He admitted that Ms. Morgan indicated that she would like the payments in United States Dollars as she would be migrating soon.

[18] Mr. Graham indicated that as FLOW network had entered the zones covered by Cabletron Network with fierce pricing, new technology and free installation switching from Home Time, there was a spiral downward movement in the business as early as 2018. By 2019, it became impossible to continue to pay the sum of Three Million, Two Hundred and Fifty Thousand Jamaican Dollars (J$3,250,000.00) monthly under the earn-out agreement and the best the business could pay was One Million, Five Hundred Thousand Jamaican Dollars (J$1,500,000.00) per month, however Ms. Morgan was not inclined to accept that sum but stated that the least she would accept was Two Million Jamaican Dollars (J$2,000,000.00) which was agreed.

[19] Mr. Graham stated that the original monthly payment was paid from August 2016 to May 2019 and subsequently, the adjusted figure was paid up to January 2023. He said based on the accountant's assessment, Ms. Morgan received the sum of Two Hundred and Fourteen Million, Six Hundred and Seventy-Seven Thousand, Five Hundred Jamaican Dollars (J$214,677,500.00) however she has not transferred the ordinary shares to Maud Interconnect or its nominee, and she has removed him as a Director of the company thus preventing the acquiring company from making an application for the licences. He indicated that despite paying a significant sum, Home Time has not received any equity or shares in the Claimant company.

[20] Mr. Graham averred that the Claimant provided a Cable Subscriber Television business that is now obsolete as the business has moved to an internet centric provided service with fiber to home and a licence for this service was not provided. The Defendants deny a failure to abide by the terms of the Earn-out Agreement and instead countered that a reduced monthly sum was agreed upon between the parties which was diligently paid.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[21] On behalf of the Claimant, King's Counsel Mr. Douglas Leys submitted that Home Time was not a party to the Earn-out Agreement which is subject to an arbitration clause however, that clause is confined to the agreement with Maud Interconnect. King's Counsel emphasized that the Claimant is not seeking to invoke the arbitration clause which has expired but is only seeking a prohibitory injunction against the 2nd Defendant to prevent them from continuing to manage the operations of the Claimant.

[22] King's Counsel contended that the 2nd Defendant is in breach of the Agreement which was entered into in July 2016 by failing to operate in conformity with its licences.

[23] King's Counsel quoted the relevant principles in the context of injunctive relief and relied on paragraph 48 in **Earl Jackson v Carlton Coakley and Michelle Coakley [2020] JMCA App 40** where Foster-Pusey JA quoted the seminal principles in **American Cyanamid Co. v Ethicon Ltd [1975] 1 All ER 504** which were also adopted in **National Commercial Bank Jamaica Limited v Olint Corporation Limited [2009] UKPC 16**. King's Counsel also quoted **Renford Nunes v Sheron Nunes and Content Solar Limited Claim No. 2017 HCV 03872 [2019] JMSC Civ 73.**

[24] In support of the submissions that there is a serious issue to be tried, King's Counsel relied on paragraph 55 of **Sonic Limited v Courtney Richards et al [2019] JMSC Civ 1** which states:

> *"[55] There must be a serious question to be tried. This test is not a high threshold. In determining whether there were serious questions to be tried, one must first assess whether the claim was "frivolous or vexatious". The next hurdle is that the applicant must have some prospect of succeeding. The court must not at this stage try to resolve any conflicts of evidence on affidavits as to the facts on which the claims of either party may ultimately depend nor call for detailed argument and mature consideration cited in Kodilinye's Commonwealth Caribbean Civil Procedure Text page 98 per the decision of Best J in Jockey Club v Abraham (1992) High Court, Trinidad and Tobago, no 2520 of 1990 (unreported). The affidavit evidence needs only to show a serious question be investigated, one of substance and reality per the decision of McDonald-Bishop J (Ag), as she then was, in Patvad Holdings v Jamaican Redevelopment Foundation Inc. (2007) Supreme Court 2006 HCV 01377 (unreported). It is only where a determination is made on whether there is a serious issue to be tried that the other factors are then taken into account.*

[25] It is contended that as provisions of the management agreement are spent and are no longer in force, the 2nd Defendant's management of the affairs of the Applicant is illegal and that this is a serious issue to be tried. It is contended that

the Court should have regard to the issue as the legality of the 2nd Defendant's position is seriously in issue.

[26] As it relates to the issue of damages, it is submitted that damages would not be an adequate remedy due to the reputational loss and impossibility to calculate precisely the actual or potential economic loss that the Applicant would face in not being able to renew its licence. King's Counsel contended that the Applicant is likely to suffer serious prejudice if the injunction is not granted, that there is a real risk that if the licences cannot be renewed, it will have to exit from the market and suffer irreparable reputational harm if the 2nd Defendant is not restrained.

[27] On the other hand, King's Counsel pointed out that the Defendants will suffer no financial loss by their conduct, and if not restrained would continue to profit from their unlawful conduct of remaining in possession of the Applicant's premises and equipment. It was also submitted that the balance of convenience lies in favour of the Applicant.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

[28] Counsel for the Defendants Ms. Zara Lewis submitted that Claimant will not be able to prove that the claim has any real prospect of succeeding at trial. In support of her proposition, she relied on page 431 of Re **Lord Cable (deceased) Garratt and others v Walters and others [1976] 3 All ER 417** which states:

> *"…..Nevertheless, in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the Court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. If the facts adduced by him in support of his motion do not by themselves suffice to satisfy the court as to this, he cannot in my judgment expect it to assist him by inventing hypotheses of fact on which he might have a real prospect of success…"*

[29] This reasoning, Counsel contended, was applied in **Reliance Group of Companies Limited v Ken Sales and Marketing and another; Christopher Graham v Ken's Sale and Marketing and another [2011] JMCA Civ 12** and is

consistent with the seminal case of **American Cyanamid Co. v Ethicon Ltd**. Reliance was also placed on **Brian Morgan (Executor of the Estate of Rose I Barrett) v Kirk Holgate [2022] JMCA Civ 5** where the Court of Appeal held that a failure to establish that there is a real question to be tried means that the injunction should be denied and that this obviates the need to discuss the issue of whether damages would be an adequate remedy and the balance of convenience.

[30] Counsel argued that the market infiltration by telecommunications giant FLOW who offered cheaper rates as well as the transition from cable to internet which placed significant strain on the Defendants' business revenue caused the Defendants to become practically unsustainable. Though payments were still made at an agreed reduced rate, it is submitted that the impact of market evolution and technology replacement effectively frustrated the contract between the parties. Counsel relied on **Davis Contractors Ltd. v Fareham Urban District Council [1956] 2 All ER 145** to submit that the contract is frustrated, therefore the Claimant has no reasonable prospect of success at trial. She further stated that had the agreement proceeded according to the original terms, the Claimant would have no interest in the company at this time.

[31] Counsel argued that even if it is found that there is a serious issue to be tried, a breach can be quantified in damages thus rendering damages an adequate remedy. It is submitted that the Claimant has been in breach of the contractual obligations as she failed to hand over the shares to Maud Interconnect. It is contended that the contract was not for the sale of goods or property but the Claimant wishes to recover money allegedly owed under the contract.

[32] As it relates to where the balance of convenience lies, it is submitted that the balance is plainly in the Defendants' favour. It is argued that since the Defendants manage the Claimant company, which is responsible for the

livelihood of many workers and the provision of cable services, any disruption caused by the injunction could lead to service interruptions, adversely affecting the local population and their access to necessary services. It is also argued that the Defendants have invested heavily in the company financially taking all the necessary steps to upgrade to state-of-the art technology. It is submitted that the injunction would not impact Ms. Morgan who ordinarily resides outside the jurisdiction and is not readily able to manage the operational affairs of the company if the injunction is granted. It is further submitted that the Claimant's interest is monetary for which it can be compensated therefore the prejudice it would suffer is less than that of the Defendants.

[33] Counsel relied on paragraphs 843 and 844 of The Halsbury's Laws of England, Volume 24 (2004) to support her position that the Claimant has exercised undue delay in seeking the interim injunction. She submits that The Halsbury's indicates that an injunction may be refused on the ground of the plaintiff's acquiescence in the Defendants' infringement of rights. She stated that more than a year has passed since the last communication about arbitration proceedings with the Claimant failing to set a date to resolve the matter amicably. She submits that it would be unconscionable for the Claimant to seek an equitable remedy given her delay and acquiesce in the matter.

[34] It is submitted that the status quo should be preserved and by granting the injunction, it would create unnecessary disruption with the company's operations.

DISCUSSION

[35] An appropriate starting point is to examine the orders sought pursuant to the Fixed Date Claim Form in the context of the considerations that a Court must take into account before it grants an interlocutory injunction. These considerations are well known as has been set out by the House of Lords in **American Cyanamid Co. v Ethicon Ltd** which are as set out below:

i. *Whether there is a serious question to be tried.*

ii. *Whether damages would be an adequate remedy for the Claimant.*

iii. *Whether the undertaking in damages is adequate protection for the Defendant.*

iv. *The balance of convenience.*

[36] Essentially, the Claimant is seeking to regain management and control of the company based on the fact that the Earn-out Agreement and the Memorandum of Understanding have both expired. Although the Fixed Date Claim Form seeks orders against the 1st and 2nd Defendants, the Amended Notice of Application only seeks orders against the 2nd Defendant.

[37] The rationale for seeking these Orders is set out in Ms Morgan's affidavit and could be summarized by saying that it is as a consequence of the 1st Defendant not adhering to the payment schedule, failing to pay the statutory obligations and failing to operate in a business-like manner. Counsel on behalf of the Defendants has pointed out that the 2nd Defendant was only a party to the Memorandum of Understanding and not a party to the Earn-out Agreement. Although this is so, the Earn-out Agreement and the Memorandum of Understanding are connected so in making a determination as to whether an injunction should be granted the Court has to examine both agreements. Both are relevant to the main issues raised in the Fixed Date Claim Form. It is with that in mind I embark on considering the first issue.

Whether there is a serious question to be tried?

[38] Among the questions that the Court would have to address is whether the Claimant is entitled to assume ownership or regain custody and control of the company and its assets? The Court would also have to consider whether the 2nd Defendant's management and responsibility for the management of the company

pursuant to the Memorandum of Understanding had expired. In addressing these questions, the subject matter of the Earn-out Agreement and the Memorandum of Understanding would have to be scrutinized as well as the evidence by Ms. Morgan.

[39] Ms. Morgan in her Affidavit at paragraph 16 stated that she had a desire to get out of the business which was to take place over the five (5) year period of the Earn-out Agreement. It is not denied that there have been significant payments pursuant to this agreement. The evidence of Mr. Graham that he paid some Two Hundred and Seventeen Million Jamaican Dollars (J$217,000,000.00) has not been contested. If the Claimant were to be ordered to assume control over the company, the Court would have to determine what is the value of the payments made by the 1st Defendant and whether the 1st Defendant would be entitled to the return of these sums.

[40] It is not denied that the 2nd Defendant against whom the injunction is sought is operating under an expired Memorandum of Understanding, it having expired from July 2021. The Court also has to consider what is the effect of the parties continuing to operate even after its expiration. King's Counsel for the Claimant contended that the criteria for establishing that there is a serious issue to be tried has been satisfied in that the 2nd Defendant continues to manage the affairs of the Claimant illegally though the Management Agreement has expired.

[41] The Defendants have raised the question of delay and acquiescence suggesting that the fact that the arrangement continued even after the expiration of time is tantamount to acquiescence on the part of the Claimant. One of the very real questions is the effect of the continued operations of the Company even though on paper the time for doing so has expired. The 2nd Defendant operates in tandem with the 1st Defendant who has paid some significant sums in pursuance of the Earn-Out Agreement so the effect of that would have to be determined by the Court. All these are questions which would be best resolved through the trial

process and the provision of evidentiary material by each side to support their respective cases. It is clear to me that there is a serious issue to be tried.

Whether damages are an adequate remedy

[42] On behalf of the Defendants, it has been argued that this Claim constitutes a breach of contract which can be satisfied by damages. Counsel Ms Lewis stated that it is accepted that the Defendants have not made the full payments under the contract, however, the contract was frustrated due to the infiltration by telecommunication giant FLOW who offered cheaper rates than the Defendants and diverted the Claimant's customers.

[43] The Defendants argued that the breach can easily be quantified in damages thus rendering damages an adequate remedy as essentially, the claim is one for the payment of money and but for the non-payment of the sums under the Earn-out agreement, the Claimant would not be seeking these orders. The Claimant has admitted that the Defendants are indebted to it under the Earn-out agreement but has also stated that damages would not be an adequate remedy due to the reputational loss and the impossibility to calculate precisely the actual or potential economic loss that the Applicant would face in not being able to renew its licence.

[44] The main contention of the Claimant on this point is that the Claimant's reputation and goodwill is at risk of being ruined and that damages could not compensate for this. King's Counsel also highlighted the difficulty or impossibility of quantifying damages in these circumstances where the extent of the reputational damage would be significant.

[45] The Claimant, Ms. Morgan has expressed in her affidavit that she entered into the agreement to sell the Claimant's company to the 1st Defendant. Such a sale must have contemplated that she would be divested of not only the assets of the company but any goodwill attached to it. Any agreement for the sale of a company and the sums arrived at would no doubt have contemplated any

goodwill acquired by the vendor which would be reflected in the sums agreed for the sale. In fact, it was embedded in the agreement that even after the expiration of the five-year period the 1st Defendant would continue to make a monthly payment for "goodwill". The agreement with the 2nd Defendant was for them to assume full control of the management of the company and this has persisted for over five years. I agree with the observation made on behalf of the Defendants that it is only because the sums have not been paid in accordance with the agreement that the Claimant is seeking to regain control.

[46] The Court must therefore give due consideration to the effect of a company losing its reputation. This must be influenced that the fact that such a company as this is operating a commercial venture. Its arrangement is for subscribers to pay sums of money to them for the service provided. This is by no means a provident society engaged, for example, in trying to uplift a community. It is a company that is seeking to generate income and "make money". They are operating for financial gain. Any reputation the company has acquired would have to be considered in this context and the effect if the company were to lose its reputation.

[47] The usual result of loss of reputation by a company is that customers would no longer want to do business with the company. This would result in the company being no longer able to attract income. So it comes back to monetary gain. In these circumstances, it is difficult to separate reputation from monetary gain as any diminishment in reputation would result in financial loss

[48] Although any quantification of loss in these circumstances would be difficult, it would not be impossible or unquantifiable as has been suggested by King's Counsel. I am therefore of the view that damages would be an adequate remedy.

Balance of convenience

[49] The Claimant has submitted that one of the main reasons why the injunction should be granted is to stop the Defendants from operating illegally. Having reviewed the materials, some of these licences had expired prior to the intended sale of the Claimant company and in fact, some have expired in excess of five years and possibly during the time Ms. Morgan had full control of the Claimant company. I have also considered Mr. Graham's argument that he has had to transition from cable to internet and replace the now obsolete technology that existed under the old contract. According to Mr Graham, the licences referred to by Ms. Morgan are no longer required as they are operating based on the digital system which does not require the same licencing procedures.

[50] In an affidavit filed during the hearing on October 10, 2024 the affiant Mr Graham exhibited several licences to include Service Provider Licence and Carrier Licence held by the 2nd Defendant as well as a Licence to operate Subscriber Television Service all of which bear future expiry dates. Based on these licences, Counsel argued that this shows that they are operating legally. This raised questions regarding whether or not the 2nd Defendant is operating legally or not. It is not patently clear that they are operating illegally and so this is one of the questions that would have to be resolved during trial.

[51] When considering the balance of convenience, the Court would also have to examine how convenient it would be for the Claimant to regain control and the effect of that on the company. The main founding member Ms. Viannie Morgan sought to divest herself of the company over seven (7) years ago. There is no evidence that she has continued in this business subsequently or in any business providing such similar services. Based on her evidence it appears that she is not familiar with nor did she intend to transition to operating in the era of the digital system. In fact, on the evidence presented by her, she currently resides overseas. If the injunction were to be granted, it would no doubt affect employees of the company as well as subscribers. The 2nd Defendant is still running the

operations. On the face of it, it has certain licences. It would be more convenient for them to continue operating the company until a final determination can be made by the Court.

The Preservation of the Status Quo

[52] As it relates to the preservation of the status quo, the court has to consider which course would result in the least prejudice and least irreparable harm. The 2nd Defendant would have to stop in its tracks. Subscriber services may have to be aborted or suspended. This may even open the flood gates for many dissatisfied customers, subscribers and even employees to take action against the Defendants which may result in further complication to all the parties. It is therefore in the best interest that the status quo remains until trial. I am not prepared to award the injunctive reliefs sought on the Notice of Application for Court orders. The application is denied.

[53] The orders are as follows:

1. The orders sought in the Claimant's Further Notice of Application for Court Orders filed September 20, 2024 are refused.
2. Costs in the Application to the 2nd Defendant to be agreed or taxed.

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Stephane Jackson-Haisley
Puisne Judge