



[2024] JMSC Civ. 88

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2024CV02649

BETWEEN	CENTRAL DEALERS LIMITED	1st APPLICANT
AND	ORVILLE HENRIQUES	2ND APPLICANT
AND	SUE-ANN HENRIQUES	3RD APPLICANT
AND	MANCHESTER RIFLE AND PISTOL CLUB LIMITED	4TH APPLICANT
AND	THE FIREARM LICENSING AUTHORITY	RESPONDENT

IN CHAMBERS

Mr. Jabari K. Phillips instructed by Knight Junor & Samuels appearing for the Applicants

Respondent absent and unrepresented

Heard: July 10th, 2024 and July 19th, 2024

Application for Interim Injunction — Factors to be considered in granting Interim Injunction — Serious issues to be tried — Whether damages are an adequate remedy — Balance of convenience — American Cyanamid test.

T. HUTCHINSON SHELLY, J

INTRODUCTION

[1] This is an application for a prohibitory injunction to restrain the Respondent or its servants, agents or howsoever from taking and/or removing any firearms and ammunition from Central Dealers Limited without an order from this Court. The Respondent was served with the Application but did not attend or file a response and so the matter proceeded in their absence.

BACKGROUND

[2] The 2nd Applicant was issued a revocation order by the Firearm Licensing Authority ("FLA") pursuant to **section 26 of the Firearms Act** on the 9th of July 2018. The order revoked the firearm licenses issued to him.

[3] The Minister of National Security issued a Notice on the 13th of August 2018 which was published in the Jamaica Gazette Supplemental in which he required the 2nd Applicant to surrender all firearms and ammunitions in his possession to the FLA.

[4] The 2nd Applicant appealed to the Review Board of the FLA challenging the revocation of the licenses.

[5] On the 14th of May 2019, the Review Board of the FLA recommended to the Minister of National Security that Mr. Henriques be allowed to retain his licenses for personal protection and participation in shooting competitions.

[6] The Minister of National Security wrote to the FLA on June 6th, 2019 ordering that the 2nd Applicant's firearm license be restored for his protection and participation in shooting competitions as recommended by the Review Board.

[7] On the 16th of July 2019, the Minister of National Security wrote a further letter to the Chief Executive Officer of the FLA instructing him that none of the licenses which were revoked should be reinstated on the basis that the 2nd Applicant had failed to comply with the Order issued by the Minister to turn over all firearms and ammunitions to the FLA.

- [8] On the 29th of July 2019, the 2nd Applicant received a letter from the FLA indicating that the Minister of National Security has considered his application for appeal but had denied it.
- [9] This prompted the 2nd Applicant to initiate Judicial Review proceedings against the Minister of National Security, the Attorney General of Jamaica and the Board of the Firearm Licensing Authority which was decided on the 9th of October 2020.
- [10] The Learned Judge, Wolfe-Reece J, found that the notice issued by the Minister of National Security requiring the 2nd Applicant to surrender his firearms and ammunitions to the FLA was defective because it was only published in the Gazette and not in the newspaper as required by the Firearms Act. The Judge also made three (3) orders in favour of the 2nd Applicant. These orders are as follows:
- i. (2) *“Order of Certiorari quashing the decision of the Minister of National Security made on or about the 29th of July 2019 dismissing the Claimant’s application for review of the decision of the Authority and upholding the Authority’s decision to revoke the Claimant’s licenses is granted.*
 - ii. (6) *Declaration that the Minister of National Security acted ultra vires in the exercise of his statutory powers under 37A of the Firearms Act in making his decision on or about the 29th of July 2019 to deny the Applicant’s appeal is granted.*
 - iii. (11) *A Declaration that the decision taken by the Minister of National Security that none of the Claimant’s licenses which were revoked are to be instated is ultra vires and, therefore, null and void is granted.”*
- [11] The Learned Judge concluded that the failure on the 2nd Applicant’s part to surrender his firearms constituted a *“fresh offence, one which he had the right to*

be heard on before a final decision adverse to his interest could properly have been made.”

[12] The Minister of National Security stated that despite the Learned Judge’s conclusion that the notice issued by the Minister was defective, “*a notice was in fact published in the Sunday Gleaner October 14, 2018.*” This publication was not received or tendered as an exhibit at the Judicial Review hearing.

THE APPLICATION

[13] The Applicants are seeking an interim injunction against the Respondent on the following grounds:

- i. **Section 49(h) of the Judicature (Supreme Court) Act** provides that an injunction may be granted by an interlocutory order of the Court, in all cases in which it appears to the Court to be just and convenient.
- ii. **Rule 17.2 (1) of the Civil Procedure Rules 2002** (as amended) provides that an Order for an interim remedy may be made at any time including before a claim has been made.
- iii. The Minister of National Security by letter dated the 13th of August 2018 issued to the Applicant a Notice pursuant to the Firearms Act requiring the Applicant to surrender all firearms and ammunitions held to the Respondent.
- iv. By way of Judicial Review, on the 9th of October 2020, Wolfe-Reece J delivered judgment in **Orville Henriques v The Minister of National Security, The Attorney General of Jamaica and the Board of the Firearm Licensing Authority** [2020] JMSC Civ. 199 and inter alia, quashed the decision of the Minister of National Security made on the 29th of July 2019 to deny the 2nd Applicant’s

appeal on the basis that the notification issued by the Minister of National Security to the Applicant was defective.

- v. On the 15th of May 2024, the Respondent issued a letter to the 2nd Applicant informing him that the date for removal of his firearms and ammunitions from Central Dealers Limited has been rescheduled to the 2nd of July 2024 – 5th of July 2024.
- vi. By virtue of the defective notice issued by the Minister of National Security, the 2nd Applicant is not required by law to turn over any firearms or ammunition to the Respondent.
- vii. There are serious issues to be tried as the Applicants intend to file a claim for negligence, trespass to property and detinue and conversion against the Respondent in the Supreme Court of Jamaica within fourteen (14) days from the date of the hearing of this application to challenge the Respondent's conduct and to challenge the continued detention of his firearms and ammunition.
- viii. There would be no prejudice to the Respondent if the Orders being sought herein were granted as the Vault which stores the firearms and ammunition, located at the Central Dealers Limited in Mandeville has been sealed by the Respondent since the 10th of July 2018, and thus the contents of the vault i.e., the subjective matter of what the Firearm Licensing Authority is seeking to take has already been in the Firearm Licensing Authority's possession and control since 2018.
- ix. There have been no letters of communications by the Respondent speaking to any security concerns of the firearms and ammunitions remaining in the vault.

- x. The 2nd and 3rd Applicants have spent over **Three Hundred and Fifty Million Dollars (\$350,000,000.00)** on their firearms and ammunitions and fears the safety of his investment being removed from his vault.
- xi. That given the issues, damages would not be an adequate remedy if the Applicant were to succeed at trial.
- xii. The balance of convenience and the maintenance of the status quo favours the granting of the injunction.
- xiii. That there is a real prospect of the Applicant succeeding in its claim against the Respondent.

THE LAW

[14] The relevant considerations as to whether an interim injunction ought to be granted are found in the oft cited decision of **American Cyanamid v Ethicon** [1975] 1 All ER 50. This decision was endorsed and adopted in several decisions from our courts to include **The National Commercial Bank Jamaica Ltd v Olint Corp. Limited, Privy Council Appeal No. 61 of 2008** and delivered on the 28th April 2009. The principles enunciated are as follows:

- i. The Court must first consider whether there is a serious question to be tried. This means that the claim must not be frivolous or vexatious. This is different from the requirement to establish a prima facie case. The Claimant should have a real prospect of succeeding in her claim for a permanent injunction at trial. If there is no serious question to be tried, then the injunction should be refused.*
- ii. If there is a serious question to be tried the next question is whether damages would be an adequate remedy for the Claimant's whatever losses she may suffer pending the trial of the substantive matter. Also, one must consider whether the defendant is in a position to pay them. If damages are an adequate remedy, then an injunction should not be granted as then there is no basis for interfering with the Defendant's freedom of action by granting an injunction.*

- iii. *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. The court must be satisfied that the comparative mischief, hardship or the inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.*
- iv. *Hence, it is the duty of the court to consider the convenience of the plaintiff as against the convenience of the defendant. If the court thinks that by refusing the injunctions, greater or more inconvenience will be caused to the plaintiff, it will grant the interim injunction. Moreover, if the court finds that greater inconvenience will be caused to the defendant, it will refuse the relief.*

[15] In the Privy Council decision of **NCB v Olint** (supra), Lord Hoffmann stated at paragraph 16 that:

“[16] ...It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial... The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result...”

[17] ...The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other...

[18] Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.”

ISSUES

[16] The issues to be determined focus on the three (3) key considerations as recognised in the aforementioned decisions. These are as follows:

- i. whether there is a serious question to be tried;
- ii. if there is a serious issue to be tried, whether damages would be an adequate remedy; and

- iii. if damages would not be an adequate remedy or there is doubt as to the adequacy of damages as a remedy, whether the balance of convenience favoured the grant or refusal of the interim injunction.

APPLICANT'S SUBMISSIONS

Serious issue to be tried

[17] Mr. Phillips submitted that there is a serious issue to be tried. In advancing this point, he made reference to sections **35A (1) and (2) of the Firearms Act, 1967** which deals with the '*Delivery of firearms and ammunition to appropriate authority for safe keeping.*' **Section 35A** states:

35A- (1) *Where the Minister is satisfied that it is necessary in the interest of national security so to do, he may by notification in accordance with subsection (2), require the delivery to the Authority, of such firearms and ammunitions as may be specified in the notification, subject to such terms and conditions as may be specified in that notification.*

(2) *A notification pursuant to subsection (1) shall be published in the Gazette and in a daily newspaper and circulating in Jamaica. And upon a notification being so published, any person to whom the requirement contained therein applies shall, within fourteen days from the date of such publication, deliver any firearm and ammunition to which the notification relates, to the Authority for safe keeping."*

[18] Counsel submitted that the Respondent and members of the Jamaica Constabulary Force (JCF) went to Central Dealers Limited and placed a seal on the vault on the 10th of July 2018. The seal was placed on the vault because Mr. Henriques' Dealers license was being revoked. Thereafter, the Minister of National Security issued a notification that was published in the Gazette only and not in a daily newspaper as required by the legislation.

[19] The Court was referred to the decision of Wolfe-Reece J in **Orville Henriques v The Minister of National Security, The Attorney General of Jamaica and the Board of the Firearm Licensing Authority** [2020] JMSC Civ. 199¹ where the

¹ See paragraphs [62] and [63]

Learned Judge explained the effect of the notification being published in the Gazette only and declared it to be defective.

- [20] Counsel contended that despite the Learned Judge's ruling, the FLA has insisted that the notification was in fact published in the daily newspaper and has declared that the notification was therefore not defective.
- [21] Mr Phillips argued that despite the FLA's contention that the notice was placed in a daily newspaper, they were still obligated to prove this and until they have done so, any subsequent action by them to remove the firearms is beyond the scope of their authority and would therefore be ultra vires.
- [22] Counsel further submitted that upon a proper interpretation of the statute, the FLA is only permitted to remove said firearms pursuant to the Minister of National Security issuing a proper notice.

Is Damages an adequate remedy?

- [23] In support of the assertion that damages are not an adequate remedy, Counsel submitted that if the Applicants are successful at the substantive hearing, they would be required to remove **four hundred (400)** firearms valued at approximately **Three Hundred and Fifty Million Dollars (\$350,000,000.00)** from the Jamaica Defence Force and have them returned to Central Dealers Limited in Mandeville.
- [24] Counsel argued that this would be an arduous task that would require a lot of manpower/resources to conduct an audit on the firearms and ammunitions before these items are moved and it would take at least one week to be completed. He further submitted that if any of the firearms are damaged, then it would be excessively hard to quantify the damage, the cost of repairing the firearms as well as to quantify the cost of having the firearms returned to Central Dealers Limited.

Balance of convenience

- [25] On the issue of the balance of convenience, Counsel submitted that it favours the application being granted. He argued that by having returned Mr. Henriques'

personal firearms, the FLA have indicated that Mr. Henriques and his wife are fit and proper persons, which was the basis upon which the licenses were first revoked.

[26] Mr Phillips further submitted that given that the Respondent has been in control of the Applicants' firearms since July 10th, 2018, there are no reasons which they have identified which necessitates the removal of the firearms from Central Dealers Limited. He argued that the FLA has not identified any security breaches or any acts of improper conduct by the Applicants to justify the removal of their firearms.

DISCUSSION/ANALYSIS

Whether there is a serious issue to be tried

[27] It is well established that the decision of **American Cyanamid v Ethicon Limited** (supra) outlines the framework for the grant of interlocutory injunctions. In order to determine whether it is just and convenient to grant an interlocutory injunction, the Court must consider whether:

- a. There is a serious issue to be tried and if the Claimant has a real prospect of succeeding in the claim for a permanent injunction at the trial.
- b. Damages are an adequate remedy; and
- c. The balance of convenience lies in favour of granting or refusing the interim injunction.

[28] The Applicants have argued that there is a serious issue to be tried. At paragraph 404 of the **American Cyanamid** decision, Lord Diplock referred to a statement made by Russell L.J. in his concluding paragraph of the same judgment. Russell L.J. said:

“...if there be no prima facie case on the point essential to entitle the plaintiffs to complain of the defendants' proposed activities, that is the end of the claim to interlocutory relief.”

- [29]** It is the unchallenged evidence of Mr. Orville Henriques that representatives from FLA along with members of the Jamaica Constabulary Force visited his business place, Central Dealers Limited on the 10th of July 2018 and placed a seal on the vault. They informed him that the contents of the vault were now the official property of the FLA and that no business of any sort could be carried out.
- [30]** The Applicants averred that notwithstanding the fact that the FLA is already in control of their firearms and ammunitions, they now seek to remove these items from the Applicants' security despite the Judge's ruling.
- [31]** The provisions of the Firearms Act, make it clear that only the Minister of National Security has the power to issue such a Notice. Once this notice has been issued, the FLA could then act thereon. With the notice having been declared as defective, the current actions of the FLA appear to be based on a misunderstanding of the legal position.
- [32]** It is evident from the correspondence dated May 15th, 2024, that the FLA has either wilfully or in ignorance failed to acknowledge the effect of the ruling of the Learned Judge in the original claim. By the Court's pronouncement, the notice was defective and could not be acted upon until it complied with the Law. While the FLA and/or Minister of National Security have insisted that the notice was published in the newspaper, they failed to provide evidence of this before the Court for consideration. For the FLA to now seek to act on the basis that there had been compliance with the legislation places them in direct contravention of a Court ruling which they had never appealed. The impact of this conduct means that the Applicants are unable to operate their business in the usual manner as they are prevented from handling their own goods/property.
- [33]** Additionally, by placing a seal on the vault and insisting that a defective notice be complied with, the FLA has posed a significant challenge for the Applicants as not only is this position contrary to the ruling, but complying with the order while the issue is unresolved can only operate to the Applicants' detriment, financial and otherwise.

- [34] The FLA has no legal right to act in this manner as an Order of Certiorari had been granted which not only quashed the Minister's decision to dismiss the application for review of the FLA's decision, but also declared the Minister's decision not to reinstate the 2nd Applicant's licenses as ultra vires, null and void.
- [35] In light of the concerns identified, the Court finds that there are serious questions as to the authority on which the FLA now purports to act. The Court further finds that the Applicants have presented a strong prima facie case that there is a serious issue to be tried in this regard and their claim cannot be described as either frivolous or vexatious.

Whether damages would be an adequate remedy?

- [36] The dictum of Lord Diplock in **American Cyanamid** (supra) aptly addressed the principle as to damages as follows:

"The court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award in damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought as enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted."

- [37] The **American Cyanamid** (supra) decision states that an interim injunction should not be granted if damages recoverable at common law would be an adequate remedy and the Defendant can afford to pay them. In the instant case, the evidence indicates that the Applicants currently have over **four hundred (400)** firearms and in excess of **eight (8)** rounds of ammunition in his vault. The 2nd Applicant has averred that he has spent over **Three Hundred and Fifty Million Dollars (\$350,000,000.00)** acquiring all of the firearms and ammunition in their possession. It is arguable, that this is a large investment in building the Applicants' inventory and there are legitimate concerns as to the ability of the Respondent to compensate them for the ongoing loss of revenue occasioned by their inability to conduct their business or for any possible loss of or damage to the weapons and

ammunition in the course of retrieving same or if the integrity of the safe at the JDF where the weapons are likely to be held is compromised. Given the variables outlined and the likelihood that any loss incurred is unquantifiable at this stage, the Court finds that damages would not be an adequate remedy in these circumstances.

- [38] Having found that there is a serious issue to be tried and that damages would not be an adequate remedy, I then considered the balance of convenience.

The Balance of Convenience

- [39] In explaining when the balance of convenience should be considered, Lord Diplock explained that:

“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 all the various matters 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.”

- [40] **Section 49 (h) of the Judicature (Supreme Court) Act** provides:

A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

- [41] This provision makes it clear that the Court has the authority to grant the injunction sought by the Applicants if the evidence indicates that it would be just or convenient to do so. In the instant case, the evidence is that the Respondent is seeking to seize the Applicants' weapons and ammunition despite a ruling from Wolfe-Reece J that the notice revoking the permits is defective.

[42] It was submitted by Counsel for the Applicants that in considering the balance of convenience, the grant of the injunction is clearly justified as the Respondent do not stand to lose anything as they have no legal right to be holding the Applicants' property in light of the Court's ruling. Mr. Henriques averred that the Applicants would suffer irreparable harm if the Respondent takes or removes their firearm and ammunitions.

[43] Applying the relevant legal principles in **American Cyanamid** (supra) and **NCB v Olint Corporation** (supra) to the case at bar and analysing the extent to which the grant or refusal of the injunction could cause harm or irremediable prejudice to one party or the other, the Court finds that the balance of convenience weighs more heavily in favour of the Applicants. The Court accepts that whereas the Respondent would lose nothing if the injunction were to be granted, the Applicants' stand to suffer substantial financial and reputational loss if the FLA is allowed to remove and retain their property without any lawful authority to do so. .

CONCLUSION

[44] In light of the foregoing discussions and findings, the Court makes the following orders:

1. An Interim Injunction is granted in terms of paragraph 1 of the Notice of Application for Court Orders filed on the 21st of June 2024 until the 15th of August 2024 or so soon thereafter as Counsel may be heard.
2. Order made in terms of paragraph 2 of the Notice of Application for Court Orders of the same date.
3. An inter-partes hearing is scheduled for the 15th of August 2024 at 11am for one (1) hour.
4. Applicant's Attorney to prepare, file and serve the Formal Order herein on the Respondent and file an Affidavit of Service by the 9th of August 2024.