

C.A. Action Breach of Contract Injunction — Appeal from Order of
Master granting injunction — Balance of convenience —
whether Master directed mind to adequacy of damages.
C.A. holds "order that an injunction should issue --- cannot stand."
JAMAICA
Appeal allowed.

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 15/87

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

BETWEEN - CORNWALL HOLDINGS CORPORATION
(t/a TRELAWNY BEACH HOTEL) - DEFENDANT/
APPELLANT
AND - JUTA LIMITED & NEVILLE GRANT - PLAINTIFFS/
RESPONDENTS

R.N.A. Henriques, Q.C., and Allan Wood instructed by
Livingston, Alexander & Levy for the
Defendant/Appellant.

Carl Rattray, Q.C., and Maurice Tenn instructed by
Tenn, Russell, Chin Sang & Ramsay for the
Plaintiffs/Respondents.

18th March & 6th April, 1987.

ROWE, P.:

This is a matter in which the respondents brought an action against Cornwall Holdings Corporation, trading as Trelawny Beach Hotel, and in the action they allege a breach of contract, they also allege that there has been a breach of natural justice in relation to the second plaintiff and they allege that there is some constitutional interference with the right of the plaintiffs to associate the one with the other.

The allegations arise out of the issue of a "Stop Order" by the manager of the Trelawny Beach Hotel in relation to the second plaintiff, to the effect that the second plaintiff ought not to drive his minibus into the premises of the hotel to pick up or to set down guests. This "Stop Order" the plaintiffs say is in breach of an oral agreement with the hotel by virtue of which they were allowed to both pick up and set down guests at the entrance to the hotel.

Now, Mr. Rattray argues that there are serious questions of law and of fact raised and he categorized them as being:

- (a) whether there was a contract between the plaintiffs and the defendant;
- (b) whether the defendant's action was a breach of that contract;
- (c) whether there was a contract between the two plaintiffs inter-se;
- (d) whether the defendant's action was an interference with that contract between the plaintiffs;
- (e) whether there was a right in the plaintiffs to take up and set down passengers at that hotel in front of its lobby and whether that right arose out of the contract;
- (f) whether the defendant is in breach of that right and whether the defendant's action in barring the plaintiffs was interference with the plaintiffs' right to work.

He said another question to be decided was whether the defendant's action was an interference or hindrance to the second plaintiff's right of association with JUTA and, therefore, in breach of the Constitution. These serious questions he said would require detailed and serious argument on difficult questions of law. We are of the view

that he may be right in any or on all of these points and that these are questions of law and of fact for the determination of the judge at the trial.

The next question which would arise is whether, having regard to his application for an injunction, damages would be an adequate remedy for the breaches claimed in the statement of claim. We are of the view, that the master in giving consideration to the application did not address her mind to the question of the adequacy of damages. What we have as a note of the oral judgment of the master reads, in so far as it is material thus:

"I think that the Hotel under the Interpretation Act is a public place. The Affidavit says it's his private premises and can have who he wants there.

However, it's not for me to determine the issues."

Then she continued:

"Plaintiff has expensive bus and must continue his trade, he alleges. Loss will be greater on the part of the Plaintiff if he cannot continue his business.

Damages less to Defendant than to Plaintiff.

There are facts which should be of interest."

It is clear from the summary, that the learned master was saying that there were serious questions to be tried.

She was also saying that on the balance of convenience the plaintiffs have more to lose than the defendant because there was this greater hardship on the plaintiffs, certainly the second plaintiff if he was not allowed to continue his business. Clearly the learned master did not consider the question as to whether or not damages could be an adequate remedy having regard to the claims made in the endorsement to the statement of claim.

The prayer, apart from the prayer of the injunction, was for general damages and special damages. The special damages consisted of lost trips pursuant to being assigned for duty at a rate of \$500 per trip. So that what, in fact, it appears the plaintiffs certainly wanted to recover was the loss of profits from being unable to carry on his business at the Trelawny Beach Hotel.

The learned master before considering any question as to the balance of convenience ought to have directed her mind to the adequacy of damages. This she did not do and, therefore, we think that her order that an injunction should issue in the terms of the particular order made cannot stand and the appeal ought, therefore, to be allowed with costs to the appellants to be agreed or taxed.