

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G 085 OF 1990

BETWEEN GEORGE AND BRANDAY LIMITED PLAINTIFF

A N D KENDEL CONSTRUCTION EQUIPMENT
RENTALS LIMITED DEFENDANT

SUMMONS FOR MANDATORY INJUNCTION

John Vassell for Plaintiff.

Lawton Heywood for Defendant.

HEARD: July 9 and 12, 1990

IN CHAMBERS

PANTON, J.

On the 28th June, 1990, the plaintiff filed a writ of summons seeking -

1. an order for a declaration that it is entitled to immediate delivery of two trucks that are being detained by the defendant; and
2. a mandatory injunction compelling the delivery of the said trucks to it. .

On the very date of filing its writ, the plaintiff filed another summons seeking a mandatory injunction for the delivery up to the plaintiff of the two trucks. This summons came before me for determination on the 9th July, 1990.

In support of this summons, the plaintiff filed two affidavits that indicate that the trucks were let on written terms of hire to a third party which in turn had them repaired from time to time by the defendant. Monies are due to the defendant for some of these repairs. On the last occasion that the trucks were repaired, the defendant decided to detain them until full payment is made to it for all work already done.

The plaintiff has offered to the defendant a portion of the sum due; that portion represents the costs of the repairs effected on the last occasion that the trucks were repaired. The plaintiff has refused to pay the balance.

Learned attorney-at-law, Mr. Vassell, has submitted that the defendant has no legal basis for detaining the trucks as any lien that it may have had expired on the giving up of possession to the hirer following each period of repairs.

The defendant filed no affidavit in response. However, Mr. Heywood submitted that the injunction ought not to be granted as the defendant was unaware of the existence of the plaintiff and of the written agreement between the third party and the plaintiff.

The Court's main concern here is to ensure that no injustice is done to either party.

The Court cannot overlook the fact that these proceedings are interlocutory.

The English Court of Appeal in Cayne and Another v. Global Natural Resources (1984) 1 A.E.R. 225, held thus:

"Where the grant or refusal of an interlocutory injunction will have the practical effect of putting an end to the action, the court should approach the case on the broad principle of what it can do in its best endeavour to avoid injustice, and to balance the risk of doing an injustice to either party. In such a case the court should bear in mind that to grant the injunction sought by the plaintiff would mean giving him judgment in the case against the defendant without permitting the defendant the right of trial. Accordingly, the established guidelines requiring the court to look at the balance of convenience when deciding whether to grant or refuse an interlocutory injunction do not apply in such case, since, whatever the strengths of either side, the defendant should not be precluded by the grant of an interlocutory injunction from disputing the plaintiff's claim at a trial."

Our own Court of Appeal has accepted this principle. It re-stated it in W.D. Miller and W. Parkes v. O'Neil Cruickshank (Supreme Court Civil Appeal No. 19/86 dated May 5, 1986.

If the injunction is granted at this stage, the plaintiff would have received the major relief that it seeks. There would then really be no need for the substantive action to be proceeded with.

It seems to me that an injustice would be done if, without the defendant's side being heard, the Court were to grant this injunction which would for all practical purposes terminate the action in a situation where the plaintiff is apparently admitting that its vehicles have been repaired by the defendant, and that the defendant has not been fully paid for its work.

It seems to me that the Court's discretion ought not in the circumstances to be exercised in favour of the plaintiff.

The application is accordingly refused.

Costs to be costs in the cause.

Leave to appeal granted.