

NMLJ

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMOM LAW

SUIT NO C.L.2002/C138

BETWEEN LIBERAL ARTS COLLEGE OF JAMAICA LTD. 1<sup>ST</sup> CLAIMANT

A N D DR. W. VAL CHAMBERS 2<sup>ND</sup> CLAIMANT

A N D UNIVERSITY COUNCIL OF JAMAICA DEFENDANT

Mr. Leighton Miller for Claimants.

Mr. Patrick Foster and Miss Julie Thompson for Defendant instructed by Director of State Proceedings.

IN CHAMBERS

**Heard: 17<sup>th</sup> and 23<sup>rd</sup> October 2003**

Application for Injunction

**Brooks, J.**

On the 23<sup>rd</sup> October when submissions were completed in this matter, I delivered my decision on the basis of the Claimants having stated that the matter was urgent. At that time, I refused the application of the Claimants and I promised then to put my reasons in writing. I do so now.

The Liberal Arts College of Jamaica Limited has applied to the Court for an injunction to prevent the University Council of Jamaica from withdrawing accreditation of the College's courses. The College also seeks

an injunction to compel the Council to withdraw a notice that it made public concerning the accreditation.

The College has made these applications over a year after it filed the Writ of Summons commencing this action. The applications concern the actions by the Council in the post-Writ period. The Council has resisted the application on the basis that the College has not shown that it has a serious issue to be tried.

I shall firstly give an outline of the background facts before assessing the College's position.

#### Background

The Statement of Claim in the case is dated the 24<sup>th</sup> day of June 2002. It essentially complains that the Council has unreasonably and/or unfairly neglected and/or refused to grant approval and/or accreditation to the College and its courses. Dr. Chambers, the President of the College, also has a claim for relief but that claim is not relevant to this application.

The College, by the Statement of Claim has sought damages for negligence, and for breach of statutory duty. It has also claimed aggravated and exemplary damages for the Council's failures.

Having been served with the Writ of Summons and the Statement of Claim, the Council, by letter dated July 10, 2002, granted accreditation to

the College for the Bachelor of Science Degree in Business Administration and the Bachelor of Science Degree in Education courses. It made this grant upon specific terms and conditions. It is not necessary to set out terms and conditions in detail here.

Dr. Chambers on behalf of the College, signed a copy of the letter mentioned above, placed the date 7 August 2002 on it and returned it to the Council.

Between October 1, 2002 and September 8, 2003 correspondence took place between the College and the Council about complaints by the Council of breaches of the conditions laid down in its letter of July 10, 2002.

The Council by letter dated September 11, 2003 informed the College of its decision “to withdraw its accreditation of the B.Sc. in Education and the B.Sc. in Business Administration” courses offered by the College.

The letter went on to say:

“The withdrawal of accreditation will take effect as of December 31, 2003 in order to allow for the issuing of a public notice in the matter, and to give students time to make adjustments. Credits taken by students admitted to the above programmes after this date will not be recognized by the UCJ.”

The Council shortly thereafter published a public notice to the effect that it would be withdrawing its grant of accreditation. The College acted promptly in making this application for the grant of an injunction.

### The College's Position

The College has framed its position in the application thus:

- (a) It has a right that ought to be protected.
- (b) It has a serious issue to be tried.
- (c) Damages is not an adequate remedy.
- (d) The balance of convenience lies in its favour.
- (e) The status quo ought to be preserved.

I commence with the first issue.

(A) Is there a right that ought to be protected?

The Council has not sought to contradict the College's assertion that it is entitled to challenge the Council's decision. Mr. Foster for the Council has however said that this method used by the College is the incorrect procedure. He submits that the College ought to have applied for Judicial Review. I made no ruling on that submission, as it doesn't affect the present application.

I shall however proceed on the basis that the claimant is seeking to protect its right not to have its accreditation improperly removed.

(B) Is there a serious issue to be tried?

The College asserts that the Council has been capricious and pedantic in dealing with it. The result, submits Mr. Miller for the College, is that the

withdrawal of accreditation by the council is based on complaints that are “factually flawed”. Further, Mr. Miller submits that the Council’s action contradicts the fact that it has never impugned the academic standard of the College and in fact has praised it for that standard. The Court questioned Mr. Miller on the correctness of the College bringing this application in the context of a suit filed over a year before the occurrence of the events now being complained of. In answer to the question, Mr. Miller submits that the accreditation status raised by the Writ of Summons is still in issue.

In assessing this submission, an examination of the College’s Statement of Claim is necessary. In that document, the College complained of the delay and/or refusal and/or failure of the Council in granting accreditation to the courses offered by the College. The College asserts in those pleadings that the Council owes it a duty of care in not unreasonably or unfairly withholding accreditation of the courses.

Since the courses were subsequently accredited all that remains as a live issue in the context of this suit is whether or not the College and its President are entitled to damages for the Council’s delay in granting the accreditation. The College does not allege any continuing breach in its Statement of Claim.

There is no doubt that the College would be entitled to commence a new suit complaining about the recent actions of the Council. I am of the view, however that it cannot properly secure an injunction for these post-Writ developments, which do not fall within the context of the Writ.

Mr. Foster on behalf of the Council cited the case of Siskina (Cargo Owners) v Distos Compania Naviera S.A. (1979) A.C. 210. The case is authority for the proposition that the injunction sought must be part of the substantive relief to which the College's claim entitled it. Based on what I have said it clearly is not.

I also find support for this position in the case of Gafoor v. Choy (1960) 2 W.I.R. 276. In that case the Federal Supreme Court in exercising its Civil Appellate Jurisdiction ruled that a Claimant was unable to recover damages for a trespass committed after the issue of the Writ where the trespass was not a continuing one.

I am also influenced by the fact that the Claimant seeks as part of its relief, a mandatory injunction to compel the Council to rescind the public notice of its withdrawal of its accreditation of the College's courses. The case of Locabail International Finance Ltd. V. Agroexport and others (The Sea Hawk) [1986] 1 All E.R. 901 provides guidance in this area. The principle behind the decision in that case is that a mandatory injunction

ought not to be granted on an interlocutory application in the absence of special circumstances. Further, where such circumstances exist the court will only grant the injunction if it felt a high degree of assurance that at the trial it would appear that the injunction had rightly been granted.

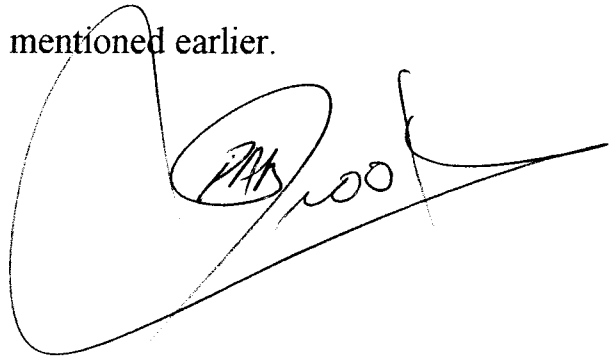
I am not convinced that the College has satisfied those requirements.

I acknowledge that the College is entitled to apply for an injunction before the issue of a new claim form dealing with the post-Writ developments. It may do so on an undertaking to file the new claim form promptly after the hearing of the application. It has not however proceeded on that basis.

For the reasons stated above namely:

- (a) The College has failed to show that it has a serious issue to be tried.
- (b) The College has failed to show that a grant of a mandatory injunction would most likely be upheld at trial.

The application was refused as was mentioned earlier.

A handwritten signature in black ink, appearing to read "P. H. Hood". The signature is written in a cursive style with a large, sweeping initial "P" and a long horizontal stroke extending to the right.