IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W 129 OF 1990

BETWEEN	PETER WILSON & OTHERS	PLAINTIFFS
A N D	STAFFORD SHANN	DEFENDANT

SUMMONS FOR INTERIM INJUNCTION

Bert Samuels for plaintiffs - instructed by Knight, Pickersgill, Dowding & Samuels.

Pauline Findlay for defendant - instructed by Dunn, Cox & Orrett.

HEARD: July 16 and 17, 1990.

IN CHAMBERS

PANTON, J.

The plaintiffs have filed a writ of summons with an indorsement seeking -

"1. a declaration that the defendant ... wrongly awarded points against the plaintiffs ... when they ... failed to field a team for the ... match scheduled for the 10th of May, 1990; and

2. an injunction restraining the defendant, his servant, or agent from permitting the playing of the finals in the 1990 Annual Hockey Competition between Kingston College Old Boys Hockey Club and Raiders United Hockey Club."

In the instant summons before me, the plaintiffs are seeking (until the trial of the action) "an injunction restraining the defendant, his servant or agent from permitting the playing of the finals in the 1990 Annual Hockey Competition between Kingston College Old Boys Hockey Club and Raiders United Hockey Club on the 19th of July, 1990."

The circumstances that have been set out in the affidavits are that the plaintiffs' club, Circus Circle, was given either 2 or 3 days' notice of a match between them and Kingston College Old Boys. The first named plaintiff indicated to a member of the Competitions Committee of the Jamaica Men's Hockey Association (hereinafter called "The Association") which organises the competition that Circus Circle would not be able to field a team in the given time.

The first-named plaintiff further orally sought a postponement of the match. The Competitions Committee subsequently refused the request for a postponement. Circus Circle did not show on the date appointed for the match and the Competitions Committee awarded the points to Kingston College Old Boys.

Circus Circle protested in writing to the Technical Committee of the Association which dealt with the protest by confirming the decision to award points to Kingston College Old Boys.

The defendant who is President of the Association summoned a special general meeting of the Association to review the decision of the Technical Committee. The plaintiffs were invited to attend that meeting and to put their case to the general assembly of members. The plaintiffs refused that invitation. The general meeting ratified by an overwhelming vote the decision of the Technical Committee.

The plaintiffs now say that there was a breach of natural justice in that -

1. they were not summoned to present their case before the Technical Committee; and
2. the defendant who is ex-officio a non-voting member of every committee of the Association was a judge in his own cause.

The learned attorney-at-law for the defendant has submitted that the use of a writ of summons by the plaintiffs is incorrect; that they should have sought orders for certiorari and prohibition. In response, the learned attorney-at-law for the plaintiffs has referred to a similar application in another case involving sports: Miller and Parkes v. Cruickshank (Supreme Court Civil Appeal 19/86). I have no hesitation in saying that I see nothing wrong with this method of bringing the matter before the Supreme Court.

The defence further submitted that the defendant has been sued in a personal, as opposed to a representative capacity, and that as such the wrong defendant is before the Court.

Now, there is no doubt that the defendant is president of the Association. However, it is not my impression from the affidavits filed that he can be regarded as the Association. It seems to me that the plaintiffs' challenge is aimed at the Association itself, particularly its Technical Committee. If this is so, how can the plaintiffs proceed against the president without indicating that he is being sued in a representative capacity?

In view of the fact that the Association is not incorporated, the proper thing for the plaintiffs to have done was to sue two or more members, prefarably members of the executive of the Association, by their names with the added statement that they are being sued on their own behalf as well as on behalf of all the other members of the Association - excepting of course, in this instance, the plaintiffs' club. The representative capacity in which someone is being sued must be indorsed on the writ before it is issued. This is not new law. It is in section 12 of the Civil Procedure Code. The representative capacity of the defendant should also be stated in the title of the action - Re Tottenham (1896) 1 Ch. 628.

Looking at what is sought in the summons before me, I am constrained to say that there can be no order made as prayed - that is, the Court cannot restrain this defendant, who has not been sued in a representative capacity, from permitting the playing of the finals scheduled for the 19th July. After all, he is not the Association. And, further, Equity does nothing in vain.

It seems to me also that the plaintiffs themselves have not sued in a representative capacity. However, that is not the basis of my decision.

Although it is not necessary for my decision, I have gone on to consider the question of whether there is a serious issue to be tried. Without making a final judgment on the evidence contained in the affidavits, I must say that it appears that the Association has followed the procedure laid down and accepted by its members and that there seems to be lacking a serious point of law for trial.

In the circumstances, the summons is dismissed. Costs of this application to the defendant to be agreed or taxed. Certificate for counsel granted.