7.8.98 Mr. Haylock's file

CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 835/97

BETWEEN : **(1) GARRETT HAYLOCK**
(2) SHAUNA HAYLOCK
(3) REBA MANDERSON
(4) HOPE RIVERS
(5) JANE HYDES
(as representatives of the Church of God Full Gospel Hall (West Bay) **PLAINTIFFS**

AND: **(1) WILBUR DaCOSTA**
(2) ARAUNAH POWERY
(3) ROBERT EBANKS
(4) AUDREY THOMPSON-EBANKS
(5) ROXIE BODDEN
(6) W.B. SMITH
(in their capacity as Members of the Board of Trustees of The Church of God)
DEFENDANTS

RULING

APPEARANCES

Donald Scharschmidt Q.C. instructed by N.L. Levy for the Defendants
Norman Hill Q.C. instructed by H. Delroy Murray for the Plaintiffs

Before me are two summonses filed on behalf of the Defendants (hereinafter called the Applicants.) The first seeks an order that the ex parte injunction obtained on the 23rd day of December 1997 be discharged on the ground that the Plaintiffs (hereinafter called the Respondents) in obtaining same failed to disclose material facts to the court.

By their second summons the Applicants seek two orders. Firstly that the statement of claim be struck as disclosing no reasonable course of action or being frivolous or vexatious or is otherwise an abuse of the process of the court. The second order sought is corollary to the first, in that it seeks to have the action dismissed, or all further proceedings stayed.

Here a brief outline of the events leading up to the filing of these summonses will suffice.

All the parties involved are members of the church of God, Full Gospel Hall in the Cayman Islands. This is an unincorporated religious body with branches in various districts of the Island including West Bay. In February 1997 differences arose between

members of the West Bay congregation and the trustees of the church. As a result the trustees had the church padlocked, and, thereafter filed cause no. 816/97 claiming damages for trespass against five members of the West Bay congregation. The four Plaintiffs are the trustees of the church, and the Applicants in these summonses . That action was filed on 5 December 1997 and the affidavit of service shows that the Respondents were served between the 9th and 10th of December 1997. Along with this a writ of summons for an interlocutory injunction was also filed and set for hearing on 26 January 1998. This sought an order restricting the Respondents from trespassing upon Block 5 B parcel 139 (the land on which the church stands).

On 12 December, just two days after receiving the writ five members of the West Bay congregation, four of whom are defendants in Cause no. 816/97, filed an ex parte Originating Summons seeking, inter alia, the following two orders. Firstly that leave be granted for them to be joined as plaintiffs in a new action, Cause no. 835/97. Secondly, that the six Applicants, four of whom are the plaintiffs in Cause no . 816/97, be ordered to unlock and re-open the Church of

God (West Bay) in order to allow the congregation of that church, including of the Plaintiffs, to attend at the church for the purposes of carrying on their worship therein. This summons was heard on the 19th day of December and the orders made as sought.

It would appear that the order to re-open the church did not have the desired effect as on the 24 December the five Respondents filed another ex parte summons seeking, and obtaining an order requesting West Bay Police to give assistance to the carrying out effect of paragraph 2 of the ex parte summons which was as follows:-

> **"That the defendants be ordered to unlock and re-open the Church of God (West Bay) in order to allow the congregation of the said church, inclusive of the Plaintiffs, to attend at the said Church for the purposes of carrying on their worship therein."**

As a result the church reopened. It is this injunction that the applicants now seek to have discharged. This Application is based primarily on the contents of paragraphs 14 and 15 of Wilbur Dacosta's supporting affidavit dated 23 February 1998. In paragraph 14 Mr. Dacosta avers that Mr. Garrett Haylock, the First Plaintiff in cause number 835/97, in para 12 of his affidavit

supporting the application made an assertion that was calculated to, and did mislead the court.

In making this application the Applicants are relying on the rule stated in the R.S.C.P. 32/1-6/25 that requires the party applying for an ex parte order to make a full and fair disclosure to the court of all relevant facts of which he knows, and failure to do so may itself be a ground for setting aside such an order.

Paragraph 12 of Mr. Haylock's affidavit reads as follows.

> **That the property on which the said church is situated was previously registered in the name of Church of God (Full Gospel Hall) West Bay.**

The wording of this paragraph differs from that of the Land Register in that on that document the registered owner is shown as the Church of God (full Gospel Hall) c/o Wilbur Dacosta, West Bay. The omission of the words "Wilbur Dacosta", could lead one to believe that the West Bay Church is the registered owner. The

question is, did the deponent intend to mislead the Court by this omission. Such intention can only be determined by looking at the affidavit as a whole. Exhibited by that document is a copy of the Land Register. Notwithstanding the omission complained of in paragraph 12, any appearance of wrongful intent is negatived by the exhibit. The power to discharge an injunction is a discretionary one and the Court ought to be satisfied that the applicant wilfully intended to mislead the court before exercising its power. I regard the wording of paragraph 12 as a mere overstatement of the Applicants' case. The exhibiting of the Land Register brings to the Court's attention the true position regarding the ownership of the land at that time. There is nothing to support the Applicants' submission that the Plaintiffs in cause no. 835/97 failed to disclose material facts to the Court in obtaining their injunction.
Accordingly this application is dismissed.

I will now come to the summons filed by the applicants on 23rd February 1998 in which they seek the following orders under the inherent jurisdiction of the Court:-

1. **That the statement of Claim may be struck as disclose no reasonable cause of action or being frivolous or vexatious or it is otherwise an abuse of the process of the Court.**
2. **That the action be dismissed or all further proceeding stayed.**

The wording of this application has its origin in Grand Court Rule 19 order 18 which is as follows:

> **(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that -**
>
> > **(a) It discloses no reasonable cause of action or defence, as the case may be or**
> >
> > **(b) it is scandalous, frivolous or vexatious; or**
> >
> > **(c) it may prejudice, embarrass or delay the**

fair trial of the action; or

(d) it is otherwise an abuse of the process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

As seen from the summons, the grounds of this application relate to the Statement of Claim, although many of the arguments in support are directed at the filing of the Originating Summons and the applications for the ex parte injunction to which it gave birth. It is submitted by learned Attorney for the Applicants that the subject matter of the Statement of Claim being the same as that of the Applicants' action Cause no. 816/97, the Respondents ought to have filed a defense and counterclaim, instead of filing Cause no. 835/97. The contention is clearly that the Statement of Claim discloses no reasonable cause for a separate action, and is therefore frivolous, vexatious or otherwise an abuse of the process of the Court.

I propose to first deal with the submission regarding the contents of the Statement of Claim. The filing of a separate action containing the same subject matter as that filed by the other party cannot, ipso facto, be considered to be frivolous or vexatious, nor does it constitute an abuse of the process of the Court. When the such similar plaints are filed, the Court has the power to consolidate both actions. What is clear is that the Statements of Claim do not only contain the same subject matter, but also the same cause. I say this because both parties are challenging the others' title. In Cause no. 816/97 the Applicants are exercising what they consider to be their legal right of ownership by seeking a judgment from the Court restricting the Respondents from entering the church, thereby trespassing on their land. It is a claim in title, although seeking relief in trespass. The Respondents' action, Cause no. 835/97 is also a claim in title. The writ of summons challenges the claim of the applicants in cause no. 816/95 as can be seen by its very wording which is as follows.

> **The Plaintiffs' claim as against the Defendants for an Order pursuant to section 140(1) of the Registered Land Law causing the registration of Wilbur DaCosta, Aranuah Powery, Robert Ebanks and Audrey Thompson-Ebanks, as joint**

> **trustees, as proprietors of Registration Section West South Block 5 B Parcel 139 ("the property) to be canceled on the ground that the said registration was obtained by fraud or alternatively by mistake and that the register be rectified accordingly. Further the plaintiffs claim a Declaration that the property belongs to the members of the congregation of The West Bay Church of God (Full Gospel Hall) and that they as representatives of the said congregation are entitled to the property as trustees on behalf of the said West Bay Church of God (Full Gospel Hall).**

In assuming that the respondents' Statement of Claim discloses no reasonable cause of action the Applicants are pre-supporting that their title is valid and inviolable. They are seeking the Court's aid in their bid to deny the Respondents their right to challenge the title on a ground provided by law, viz section 140 (0) of the Registered Land Law.

In Cyamid Co. v Ethicon, a House of Lords case reported at (1975) 1 All ER 504, it was held that the grant of interlocutory injunction for infringement of patents was governed by the same principles as these in other actions. There was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he

would be successful at the trial of the action. All that was necessary was that the court should be satisfied that the claim was not frivolous or vexatious.

In order to establish that the Statement of Claim is frivolous and vexatious the Applicants must show that there is no serious question to be tried. This means that it must not be one that no reasonable person can treat as bona fide. The Plaintiff does not have to show a prima facie case, but only an issue for which there is some supporting material and the outcome of which is uncertain. (see Smell's Equity, p.661).

On considering all these circumstances I am satisfied that the Respondent's claim does contain a serious question to be tried. In its challenge to the Applicants' title it goes far beyond what is required by the law to satisfy the Court that it is Bona Fide and can under no circumstances be considered frivolous and vexatious.

I now come to the final ground contained in this application which is that the Statement of Claim is an abuse of the process of the Court. Having determined that the above arguments put forward on behalf of the Applicants have little merit, I must now examine the

submissions directed mainly at the filing of the Originating Summons and the Ex parte Injunction Application immediately after the service of the Applicants' writ 816/97. It is contended that in so doing without telling the other parties that there would be such an application, the Respondents were seeking to obtain a collateral advantage in that the filing of those documents was not used in good faith and for proper purposes. It is therefore submitted that this constituted an abuse of the process of the Court.

There is no harm in seeking to obtain a collateral advantage. What the Court has to consider is whether it would be unjust for them to retain the advantage gained.

In support of his submission Learned Attorney for the Applicants argued that it is a fundamental principle of law that the injunction should be made inter partes, and that principle should only be departed from in case of extreme urgency or that the applicant would be at a disadvantage in that the other party could do something to forestall the applicant.

In Castanho v Brown & Roots, another House of Lords case reported at (1981) 1 All ER. 144, the Plaintiff in a claim for personal

damages brought an action in England claiming damages. The Defendant was ordered to make interim payments after admitting liability. The Plaintiff then commenced action in America in the hope of getting higher damages. He then purported to discontinue the English Action. The Defendant then applied for an injunction to restrain the Plaintiff continuing proceeding in America and commencing other proceedings there or elsewhere. It was held, inter alia, that the termination of legal process such as a notice of discontinuance, <u>like any other step in the process</u> , could be used by a party to obtain a collateral advantage which would be unjust for him to retain and could therefore be prevented by the court under its inherent jurisdiction to prevent an abuse of the process.
In the present matter the Applicants further argued that there was no urgency. The facts show that this is not so.

In this matter the Applicants in the ex parte summons were members of the congregation of the West Bay Gospel Hall a Christian denomination. For a month their church had been pad locked by the Defendants. There seemed to be little hope of having it opened for their Christmas celebrations. Two days before making the

application they had been served with notice of an inter partes hearing listed to take place on 26 January 1998. Failing to have the door unlocked before 25 December would have meant that they would have been unable to gain access to their place of worship to celebrate what is, to most Christians, the most significant festivity of the year. It could be argued that on the 12 December there was sufficient time in which to file an inter partes application. However, looking at the reality of the situation one can see that they had very little time. The application, the subject of this summons, was made on the 24th December and sought the assistance of the police to enable them to carry out the Court's order that the church be re-opened in time for Christmas Day. It seems to me that both the circumstances, and the events, prove the extreme urgency of the situation.

The principle on the hearing of an ex parte application is that the Court will balance the need of the plaintiff for immediate relief, together with any difficulties which may be encountered in proceeding inter partes, against the undesirability of making an order in the absence of the Defendants and the various other matters which affect the balance of conscience. (see the spry's principle of

Equitable Remedies, Second Edition. p. 343). The reason behind this principle is that no man is to be condemned unheard, and therefore no order should be made to the prejudice of a party unless be has the opportunity of being heard in defence.

What of the balance of convenience, or any prejudice to the Applicants. Surely the opening of a church door to give a congregation access to worship must weigh the balance of probability in their favour, without any prejudice to the other parties .

I find that on the balance of convenience, and all the circumstances surrounding this matter, the collateral advantage gained by the Respondent could not in anyway be said to be one that it would be unjust for them to retain. It cannot therefore be considered an abuse of the process of the court.

Accordingly this application is dismissed.

Costs to Respondent.

Dated this 7th day of August, 1998.

Kipling Douglas

Judge of the Grand Court