Smellie's

22.9.97

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CICA 11/97 (GRAND COURT CAUSE NO. 367/97)
& CICA 12/97

BETWEEN: Thompson Shipping Co. Ltd. **PLAINTIFF/APPELLANT**

AND: The Port Authority of the Cayman Island **DEFENDANT/RESPONDENT**

For the Plaintiff - Mr. Pierre Lamontagne, Q.C., with him Mrs. Karen Thompson
For all Defendants - Ms. Cherry Bridges

Before Harre CJ

GRAND COURT CAYMAN ISLANDS

RULING

These applications arise out of appeals in two sets of proceedings. The first is a writ action and the second is an application for Judicial Review. In an interlocutory application in the writ action the Plaintiff sought before a Grand Court judge an order that the Defendant be enjoined and restrained whether by itself, its servants, officers or agents from compelling the Plaintiff to remove its two cranes from the George Town Port area until judgment or further order and in the application in the Judicial Review proceedings it sought an order that the Defendants be restrained and enjoined from giving any effect to their alleged decision to cancel a permit issued to the Plaintiff to conduct the business of mobile crane operation from 1st January until 31st December 1997 on the lands owned by the First Defendant, the Port Authority, which constitute the area of the Port of George Town and in particular from removing or compelling the Plaintiff to remove its two cranes from that area.

The judge of the Grand Court dismissed both applications and has given his reasons. He took the following three factors into consideration -

1. The relative strength of each parties case.
2. The adequacy of compensation and
3. Whether the grant of the interlocutory injunctions would lead to confusion.

After argument on the point as a preliminary issue I concluded that I had jurisdiction, as a single judge of appeal, to hear applications de novo in the appeals for, in the case of the appeal in the writ action, an injunction until the hearing and determination of the appeal or further order, and in the case of the judicial review proceeding, a stay of the cancellation of the permit until the hearing and determination of the appeal or the judicial review, or further order.

Among the several authorities cited to me I found the most helpful to be the analysis made by Laddie J in 1995 of the earlier English authorities in Series Five Software Ltd. V. Clarke et al (1996) 1All ER 853.

Laddie J summarizes his analysis in the following way at page 865 -

> ".....it appears to me that in deciding whether to grant interlocutory relief, the court should bear the following matters in mind. (1) The grant of an interlocutory injunction is a matter of discretion and depends on all the facts of the case. (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. (3) Because of the practice adopted on the hearing of applications for interlocutory relief, the

> court should rarely attempt to resolve complex issues of disputed fact or law. (4) Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases.
> In coming to this conclusion I am encouraged by the following considerations.
> (1) The House of Lords in American Cyanamid did not suggest that it was changing the basis upon which most courts had approached the exercise of discretion in this important area.
> (2) The only issue which it was expressly addressing was the existence of the inflexible rule of law which had been applied as a mandatory condition by the Court of Appeal.
> (3) It would mean that there was no significant inconsistency between the Hoffmann-La Roche and American Cyanamid decisions.
> (4) It would be consistent with the approval given by the House of Lords to the decision in Hubbard v Vosper and, implicitly, the decision to the same effect in Evans Marshall & Co Ltd v Bertola SA [1973] All ER 992, [1973] 1 WLR 349 (a decision of Lord Edmund Davies when in the Court of Appeal).
> (5) It would preserve what is one of the great values of interlocutory proceedings, namely an early, though non-binding, view of the merits from a judge."

There are a number of issues of fact and law in these appeals. For the purpose of enumerating what I regard as the most important for present purposes I do not think that I need to distinguish between them. They are -

(a) The construction of the powers and duties of the Port Authority and its Director;

(b) The extent of the right to be heard in relation to its decisions;

(c) The respective capacities of the plaintiffs' cranes and the crane of the Port Authority - a fundamental issue of fact which can only be resolved at trial;

(d) The suggestion of bias on the part of the Authority;

(e) The relationship between the parties and, in particular, the questions-

(a) whether there existed a contractual licence between the parties; and

(b) whether such arrangements as are found to exist have been properly

terminated;

(f) Whether damages are likely to be an adequate remedy for each party and the ability of each party to pay.

The judge of the Grand Court expressed himself in characteristically forthright style on the merits of the plaintiffs case. As Laddie J said in the Series 5 Software case, there is nothing inherently unfair in a court expressing at least a preliminary view based on written evidence. My own, also, is that the plaintiff faces considerable difficulties. These are non-binding views of the merits on which the plaintiff may place such weight as it thinks fit. In this context I acknowledge the following observation of Laddie J -

> "Before American Cyanamid a decision at the interlocutory stage would be a major ingredient leading to the parties resolving their differences without the need for a trial. There is nothing inherently unsatisfactory in this. Most clients ask for and receive advice on prospects from their lawyers well before there has been cross-examination. In most cases the lawyers have little difficulty giving such advice."

I base my conclusion on a very simple view of this interlocutory matter. It is that I should not grant the injunction in either case because damages will be an adequate remedy for each party. The plaintiff has offered a bond from a Class A Bank in the sum of $250,000. The ability of the authority to pay has not been challenged. The Authority has, in the exercise of its judgment, purchased a crane which it claims will provide good service to the plaintiff and other port users. Only if it has made a gigantic error, and persists in that error come what may does the plaintiffs concern

about the whole future of its business during any remaining period during which they may be found to have had a right to operate their cranes on the dock look realistic.

Accordingly I decline to grant the relief sought by the plaintiff in its summonses before me in Appeals Nos. 11 and 12 of 1997.

22nd September 1997

G.E. Harre
Chief Justice

GRAND COURT
CAYMAN ISLANDS