1.8.96

Legal Dept
Rec'd 31/12/96
Rec'd.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO:399/96

BETWEEN : SEAVIEW HOTELS LIMITED PLAINTIFF

AND : DR. EDWARD JOHNS TRADING UNDER THE BUSINESS NAME OF CAYMAN DIVE SCHOOL DEFENDANT

RULING

Appearance: W. Dacosta for plaintiff/applicant

I have before me an ex parte summons brought by the plaintiff for certain injunctive relief relating to fixtures located at the premises Registration Section, George Town, South Block, 14E, Parcel 4. While the relief sought is broadly worded, in reality it appears that the dispute relates to an Ingersol-Rand air compressor. This appears from the affidavit evidence.

Stated shortly, the dispute arises out of a larger dispute involving possession of dive shop premises in part of the subject property.

I expressed initial concern that Mr. Dacosta himself was the deponent of the affidavit. I understand that the appropriate representative of the plaintiff is not present in Grand Cayman,

but I do frown on the practice of counsel acting as deponents-and particularly so in applications of this sort for a remedy as serious as an injunction. However, I do not dismiss the application on that basis.

I am also concerned that in the course of submissions it became obvious that there had been some prior correspondence with the defendant over the matter of the air compressor. In such a case, and for other reasons disclosed in the submissions, I would have thought it would be much more appropriate that such an application would be brought inter partes rather than ex parte .

In any case I dismiss the summons for other reasons.

I am guided by the principles in American Cyanamid v. Ethicon [1975] A.C 396, and other related authorities. The highest basis upon which the evidence can be put is that (para.12) " I have been informed and believe that the defendant will remove or attempt to remove an Ingersoll-Rand compressor from the premises"; and (para.14) "unless restrained by the Court, I am informed and verily believe that the defendant threatens and intends to remove the plaintiff's fixtures including the compressor from the premises". I regard this evidence as speculative. It does not contain the degree of urgency that would normally be required for the drastic remedy of an injunction. In any case the circumstances amounting to fear of loss of a compressor, are not such as to cause me to grant this drastic remedy. There is

nothing before me to suggest that, even if there is a real risk of removal of the compressor, the normal remedies of conversion, damages or an order for return of a chattel, would not be sufficient. One of the tests I must apply is whether damages would not be a sufficient remedy. There is nothing before me to suggest that damages would not be a sufficient remedy and there is nothing before me to suggest that the defendant could not pay such damages. Briefly put, there is no evidence of irreparable non-pecuniary loss sufficient to be the basis for a successful application for an injunction.

For these reasons the application will be dismissed without costs.

Dated this 1st day of August, 1996.

#228

J.D.Murphy

Judge of the Grand Court