

BARBADOS.

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT**

CIVIL JURISDICTION

No. 781A of 2006

BETWEEN:

BARBADOS DIOCESAN TRUSTEES

PLAINTIFF

AND

REVEREND WINFIELD COLLINS

DEFENDANT

Before the Honourable Mr. Justice William J. Chandler, Judge of the High Court.

Mr. Bryan L. Barrow Attorney-at-law for the Plaintiff.

Date of Hearing: 5 May 2006

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REASONS FOR DECISION

[1] This matter involved an ex parte application filed on the 9th day of May 2006 for the following relief:

1. A Declaration that the Defendant ceased to be Rector of the Church of St. Cyprian on the 31st day of March 2006 the last day of the month in which he attained the age of 65 years in accordance with Regulation C10 11 of Statutory Instrument No. 7 of 1992, the Constitution, Canons and Regulations of the Diocese of Barbados.
2. A Declaration that the appointment of the Defendant as Priest in Charge came to an end on the 30th day of April 2006 on the expiration of his appointment.
3. A Declaration that the Defendant has no authority to act as Priest in Charge of the Church of St. Cyprian.
4. An Order that the Defendant be restrained from doing whether by himself or by his agents or servants or otherwise howsoever the

following acts or any of them that is to say disturbing hindering or molesting any person duly appointed as the Priest in Charge in the execution of his lawfully assigned duties and/or members of the Church of St. Cyprian.

5. An Order that the Defendant be restrained from officiating as and/or representing to be and/or continuing to function as the Priest in Charge of the Church of St. Cyprian and from preaching at and/or intermeddling with the services to be performed in the Church of St. Cyprian.
6. An Order that the Defendant deliver up or cause to be delivered up to the Plaintiff or its servants and/or agents possession of and control over all keys, all registers, accounts books, bank books, minute books, rolls of attendance, records of services and all other records with respect to the Church of St. Cyprian.
7. There be such further Order as this Honourable Court deems fit.
8. Costs.

[2] The application was supported by the affidavit of Eric Edwin Lynch, Archdeacon of Barbados filed on the 4th day of May 2006. The salient parts of the affidavit are as follows:

- [2] I am the Archdeacon of Barbados and have general oversight of persons holding ecclesiastical office in each cure and am authorized to make this Affidavit on behalf of the Plaintiff.
- [3] The Plaintiff is a body incorporated by Act of Parliament under the provisions of the Anglican Church Cap 375 of the Laws of Barbados and was at all material times the employer of the Defendant.
- [4] The Defendant was employed by the Plaintiff and instituted as the Rector of St. Cyprian Church situate at Belleville in the parish of Saint Michael by a licence of institution dated the 5th day of October 2002 and swore to the oath of Obedience and the Declaration as to Synod.
- [5] That the Defendant's appointment as Rector of St. Cyprian came to an end on the 31st day of March 2006 the last day of the month in which he attained the age of sixty-five years in accordance with Regulation C10:11 of the Constitution Canons and Regulations of the Diocese of Barbados.
- [6] That in accordance with Regulation C 10:8 the Defendant was appointed Priest in Charge of St. Cyprian Church from the 1st day of April 2006 to the 30th April 2006 by the Bishop of Barbados the Right Reverend Dr. John W.D. Holder as is evidenced by

- copy letter dated the 16th day of March 2006 addressed to the Defendant annexed hereto as exhibit "A".
- [7] That the Defendant was informed by the Bishop the Right Reverend John W.D. Holder that new pastoral arrangements for the parish of St. Cyprian would be in place with effect from the 1st day of May 2006 and requested him to attend a meeting on Monday, the 24th day of April 2006 at 10:00 am to facilitate the transition. Copy of Letter of 21st day of April annexed hereto and marked "B".
- [8] That the Defendant refused and or neglected to attend the said meeting scheduled for the 24th day of April 2006.
- [9] That by letter dated the 24th day of April 2006 addressed to the Defendant requested him to attend a meeting on the 26th day of April 2006.
- [10] That the Defendant refused to accept the said letter from Fast Track Couriers Inc the courier service hired to deliver same to him.
- [11] That on Wednesday the 3rd day of May 2006 on or about the 6:30 am the Defendant conducted public worship and administered the sacraments and performed such other rites of the Church in violation of the Constitution Canons and Regulations of the Diocese.
- [12] That in the premises the Defendant acted ultra vires and/or unlawfully in that he had no permission authority or power to conduct public worship or administer the sacraments or perform other rights of the Church in St. Cyprian Church after the 30th day of April 2006.
- [13] That in the premises the Defendant has misrepresented that he is the Servant and/or Agent employee and/or of the Plaintiff in conducting Public worship administering sacraments and performing rites of the Church, his term of appointment as Priest in Charge having been determined on the 30th day of April 2006.
- [14] That I verily believe that the Defendant will again represent that he is the Priest in Charge of St. Cyprian Church thereby preventing the duly appointed Priest in Charge of the said Church from acting in that capacity.
- [15] I make this Affidavit in support of an ex parte application on behalf of the Plaintiff for an Order restraining the Defendant from doing by himself or through his Agents and/or otherwise howsoever the following acts or any of them that is to say disturbing hindering or molesting the appointed Priest in Charge in the execution of his lawfully assigned duties and members of the Church of St. Cyprian or from officiating as Priest in Charge of St. Cyprian Church and from preaching and

intermeddling with the services to be performed in St. Cyprian Church.

- [3] The Court dealt only with the relief sought at paragraphs 4, 5 and 6 of the application since the relief sought at paragraphs 1, 2 and 3 appeared to be final relief and not in the nature of interlocutory relief. To give such orders would have been to finally decide the major issue between the parties and deny the Defendant the right to be heard with respect to the issue whether or not his contract came to an end.
- [4] The Court, of its own motion, considered the case of **Gatherer v Gomez (1992) 27 Barb. L.R. 244** to see whether or not the same or similar issues arose in this matter with respect to the publication of the Constitution, Canons and regulations of the Diocese of Barbados. That is, whether or not the regulations had been published. This matter was raised with Mr. Barrow and a copy of the Regulations entitled “The Constitution, Canons and Regulations of the Diocesan of Barbados” being statutory instrument No. 77 of 1991 was produced to the Court. The date of publication was 17th day of August, 1992.
- [5] Having satisfied itself that the regulations were indeed published the Court went on to consider the five points required by the decision in **American Cyanamid Corporation v Ethicon Ltd.**
- Damages as an adequate remedy**
- [6] This matter involved the conduct of public worship and the administration of the sacrament and other rites of the Anglican Church. A new priest had been appointed and it was alleged that the continuation of the Defendant to act as priest in charge, in spite of the letters sent to him by the Bishop of Barbados, would prevent the duly appointed priest from being able to perform his duties.
- [7] Mr. Barrow informed the Court that a wedding was to be celebrated on the coming Saturday and that the new priest had been asked to perform the ceremony by the couple. The Plaintiff feared embarrassment if problems arose concerning with who should be the priest to perform the ceremony. This would result in further embarrassment to the couple.
- [8] Having regard to the fact that it appeared prima facie, that the Defendant’s appointment as priest in charge, had come to an end, the Court was of the view and found that, damages would not have been an adequate remedy. If the appointment was validly terminated, the Bishop would have the authority to appoint a new priest and having done so, the Court was of the opinion that it should preserve the status quo as at the date of application; namely that a new priest was appointed and should be allowed to act.
- Prima facie case**
- [9] The Court considered that on the basis of the affidavit evidence, the Defendant’s appointment had come to an end on the 31st day of March, 2006 as deposed to in paragraph 5 of the affidavit. In the circumstances, the Court was of the opinion that a prima facie case had been made out. Thus, the Court held that the status quo as at the date of application ought to be maintained pending resolution of the matter. Leave was granted for the Defendant to apply to have the injunction discharged.
- [10] The Court took into account the fact that, in an interlocutory application made ex parte, there was the potential for one side, the Defendant, to be disadvantaged. Having regard to the fact that the pleadings disclosed a prima facie case for the

- Plaintiff, the Court found that any disadvantage to the Defendant could be compensated in damages if the injunction was subsequently discharged.
- [11] For this reason the Court extracted the usual undertaking in damages from the Plaintiff through its Counsel. The Court also made this a requirement of issuing the interlocutory relief sought since Counsel did not have it in his draft order.

Strength of the Plaintiff's claim

- [12] In paragraphs 4 and 5 of the affidavit, the Archdeacon deposed to the terms of the Defendant's appointment and its determination under the regulations of the Diocese. On the face of it, the Plaintiff's case appeared to be a strong one for the purposes of interlocutory relief in the absence of any affidavit from the Defendant.

A Serious Question to be tried

- [13] The matter involved the termination of the contractual relationship between the Plaintiff and the Defendant on his attaining the age of 65 years. The available evidence was that the Defendant's contract came to an end on his attaining his 65th year. In his affidavit, Cannon Eric Layne deposes that the time was extended by the Bishop for the period ending 30th April, 2006 and no further. This provided clear prima facie, evidence that there is a serious question to be tried and was also indicative of the strength of the Plaintiff's case.

Status Quo

- [14] Having regard to the affidavit evidence in support of the application, the Court is of the opinion that the position immediately preceding the application was one where the contractual relationship had come to an end. The further extension of time had likewise ended, and, therefore, on the face of it, the balance of convenience favoured the grant of an injunction to prohibit the Defendant from carrying out the functions of priest in charge of St. Cyprians and allow the new pastoral arrangements instituted by the Bishop to continue until the matter was resolved.

Balance of Convenience

- [15] Having had due regard to the above considerations, the Court was of the opinion that the balance of convenience favoured the granting of the injunction and, accordingly, issued the injunction.
- [16] Bearing in mind the ex parte nature of the application, a return date was set and leave granted to the Defendant to apply to the Court to discharge the injunction on giving notice.
- [17] The Defendant did not appear on the fixed return date and two other dates of hearing were fixed.
- [18] On the 26th day of May 2006 an application by way of affidavit was filed for the discharge of the injunction which was finally heard on the 16th day of June 2006 and dismissed.

William J. Chandler
Judge of the High Court.