

BARBADOS

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

CIVIL DIVISION

No. 1787 of 2014

BETWEEN:

REV. J. WILLIAM ST CLAIR

CLAIMANT

AND

REV. DR. CUTHBERT A. EDWARDS
(President, South Caribbean District of the
Methodist Church in the Caribbean and
Americas)

ROGER MARSHALL AND DAVID
HAREWOOD
(Circuit Stewards of the Ebenezer Circuit)

DEFENDANTS

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

Date of Hearing: 2014 December 11th

Date of decision: 2014 December 17th

Appearances:

Mr. Hal Gallop Q.C. Attorney-at-Law for the Claimant

Mr. Elliott D. Mottley Q.C. with Mr. Stewart Mottley of Elliott D. Mottley & Co.
Attorneys-at-Law for the Defendants/Respondents

DECISION

The Application

[1] The Claimant filed a fixed date claim form on the 5th December 2014 claiming:

1. Breach of contract;
2. Restitution in sum of \$30 000.00 for renovations and/or improvements and restoration on amenities in the Ebenezer Methodist House (Ebenezer Manse) St. Philip; and
3. Further or other relief as may be just to the Honourable Court.

[2] On the said date the Claimant/Applicant filed a notice of application for the following interlocutory relief namely: that the Defendant/Respondent [sic] be restrained whether by

himself, his agents and/or servants from evicting the Claimant/Applicant from the residence at Ebenezer, Ebenezer Manse St. Philip until a final order is made pursuant to the claim initiated by the way of fixed date claim form in these proceedings. The grounds on the application are:

1. It is just to make such an order.
2. The decision and/or determination and/or advice and/or recommendation of the Defendant/Respondent to evict the Claimant/Applicant from the Ebenezer Manse was carried out by an improper and or irregular procedure and in breach of contractual obligations which speak to accommodation and occupancy of the Manse as part of the emoluments associated with the post of priest in the Ebenezer Church Circuit, and are in breach of the rules of natural justice.
3. The events which transpired into a decision and/or determination and/or recommendation and/or advice of the Defendant/Respondent to evict the Claimant/Applicant from the Ebenezer Manse have disregarded the equitable interest which the Claimant/Applicant has acquired in the said residence.

[3] The application is supported by an affidavit sworn by the complainant and filed on the 5th December, 2014. The relevant parts of which are as follows:

- “1. I am an Ordained Elder with the West Virginia Annual conference of The United Methodist Church appointed by my Conference to serve with the Methodist Church in the Caribbean and Americas (MCCA), South Caribbean District, Ebenezer Circuit. I reside and serve as a minister of religion in the parish of Saint Philip under appointment since 1 September 2013.
2. My first appointment to the Ebenezer Circuit was by way of the stationing by the District Council effective from 1 September 2013 to 31 August 2014. I was reappointed by the same procedure of the Church for the period 1 September 2014 to 31 August 2015. The MCCA Constitution and Discipline provides that all ministers serving under such one-year appointments shall be entitled to the rights and bound by the obligations specified in the Standing Orders of the Constitution. The Constitution and Discipline further provide that the one-year appointment may be interrupted by disciplinary action taken against a minister.
4. In late August 2013, my family and I took up residence at the Ebenezer Manse, which is the residence provided to ministers serving under appointment with the Ebenezer Circuit. The accommodation is just one part of the emoluments to which a minister serving under appointment is entitled; also provided is a monthly stipend and the use of a car owned by the Ebenezer Circuit.
5. When I first moved into the residence with my wife and three school-age daughters, it was in a habitable condition but sorely in need of improvements if my family were to be comfortably accommodated. My wife and I took it upon ourselves to make these improvements at our own expense.
6. The appropriate leaders of Ebenezer Circuit were at all times aware that refurbishment of the house was being carried out, and did not object. They

asked only that I notify them of the improvements, but never asked me to stop the work.

.....

10. I have estimated that I have spent so far a sum in excess of \$30,000.00. I have however not kept accurate records of the exact amount as I did not think it necessary. I was not at the time seeking compensation for these expenses. There is however included a bundle of invoices and receipts giving some indication of the expenditures, which are exhibited and marked "JWSTC 1".
11. Around or about the month of September 2014, a slight disagreement developed between my Superintendent Minister of the Ebenezer Circuit, Rev. P. Blackman, and me over the preparation of Worship at the Ebenezer congregation. That was followed by disagreements surrounding me serving communion more frequently than customary, and my practice of not wearing shoes during worship.
12. On 6 October 2014, Rev. P. Blackman decided to re-assign my pastoral responsibilities within the Ebenezer Circuit from serving the Ebenezer and Rices congregations to serving the Shrewsbury congregation. Such re-assignment is within the purview and discretion of the Superintendent Minister, but the punitive nature of the re-assignment without any remedial purpose shows that that discretion was abused. In effect, Rev. Blackman was disciplining me without following the detailed disciplinary procedure in the Constitution and Discipline of the MCCA. There is exhibited and marked "JWSTC 2" a copy of the said letter.
13. On 15 October 2014, Rev. Cuthbert Edwards, the District President of the South Caribbean District, wrote me a letter purporting to transfer me from the Ebenezer circuit to the James Street-Speightstown Circuit where Rev. Dr. Edwards also acts as Superintendent Minister. There is exhibited and marked "JWSTC 3" a copy of the said letter. The letter does not explain why I was needed in the James Street-Speightstown Circuit, nor are there any specifics as to why the move from Ebenezer was necessary.
...
18. There then followed an even more shocking letter from the Ebenezer Circuit Stewards: Roger Marshall and David Harewood dated 28 November 2014 requesting me to vacate the Manse at Ebenezer "*on or before December 20, 2014*".
19. They have also requested that I "*return the Manse to the state in which you found it on your arrival in September 2013; namely remove all structures erected ...*". There is herein exhibited the said letter marked "JMSTC 6".
20. I consider this a totally absurd request, unworthy of serious consideration. I also consider such a decision to be lacking in charity, given the fact that they know of my plight. My three daughters would have to be uprooted from their school programme at a very crucial time in the school calendar.

21. I have been advised by my attorney-at-law that Rev. Dr. Edwards' action of 19 November 2014 is totally at variance with Standing Order 73(2A) of the Constitution and Discipline of the MCCA.
22. There is quoted herein the said section:

“Where any minister in full work or probationer is duly appointed to a station but fails to take up such appointment on the due date then, notwithstanding anything to the contrary in these Standing Orders, the Ministerial Session of the Conference shall be and is hereby empowered by the conference to take all such steps and final decisions of discipline in the name of the Conference against such defaulting minister or probationer as the Ministerial Session of the Conference may consider necessary, including the disciplinary action of exclusion from the ministry, provided the defaulting minister or probationer is first given a reasonable opportunity of at least 28 days of exculpating himself from the allegation of such failure.”

.....

27. My Bishop has not recalled me to date. It is reasonable then to infer that unless and until such recall is made by my Bishop, I remain a minister serving under appointment with the MCCA.
28. Therefore, as of the date of making this Affidavit, I am a minister of the MCCA entitled to all the rights and bound by all the obligations specified in the Standing Orders, including the right to continued use of the church house and vehicle.
29. I fear that if there is no judicial intervention in this matter, the Church will continue to breach its obligations, commitments and contract of employment with me, all to the detriment of my wife and three daughters.
30. I request this Honourable Court grant the following relief while this action pends:

“(1) that the Defendants cease and desist from attempting to discipline me in contravention of my Constitutional right to notice of charges, an opportunity to respond and to otherwise have a fair hearing;

(2) that the Defendants cease and desist all efforts to remove me and my family from the Ebenezer Manse during the pendency of this matter;

(3) that the Defendants continue to maintain and pay for the current utilities and other services to the Ebenezer Manse (electric, water, telephone, security and cable) during the pendency of this matter;

(4) that the Defendants cease and desist from retaking the Circuit's vehicle (P341) which was and continues to be provided for me; and

(5) that the Defendants take no action with respect to the immigration status of me and my family during the pendency of this matter.”

31. I hereby give the undertaking that should my substantive action fail, subsequently to compensate the Defendant in damages accordingly.

32. The statements herein are true and have been given of my own knowledge and information.

- [4] On the 11th day of December, 2014 a document entitled “**The Constitution and Discipline of the Methodist Church in the Caribbean and the Americas**” 3rd edition (the Constitution) was admitted into evidence by consent and marked “Exhibit CA1.” It contains The Methodist Church Ordinance 1967 (The Ordinance) which was enacted by Her Majesty The Queen, by and with the consent of the Legislative Council of Antigua and came into effect on 15 February 1967. The relevant section is section 13 thereof referred to later in this decision.

THE DEFENDANTS’ SUBMISSIONS

- [5] On 11 December 2014 Mr. Elliott Mottley QC submitted, *in limine*, that the Defendants Mr. Roger Marshall and Mr. David Harewood (Messrs. Marshall and Harewood) cited in the claim as Circuit Stewards of the Ebenezer Circuit ought to be struck out as parties to the claim. The basis of this submission was that there was no contractual nexus between them and the Claimant. The Affidavit did not show that they had contracted in any way with the Claimant in respect of his occupation of the residence or his use of the motor car. The Claimant had therefore failed to disclose a cause of action against either or both of them. Mr. Mottley submitted also that the Claimant had sued the wrong person or entity, and he relied upon section 13 of the Ordinance to ground his submission.
- [6] On 17 December 2014, Mr. Mottley enlarged his application to submit that Rev. Dr. Cuthbert Edwards (the Defendant) should also be struck out as a party to the action since the affidavit evidence did not disclose that the Defendant employed the Claimant. He further submitted that he was not the correct party to be sued. In effect, the Claimant had sued the wrong legal person.

THE CLAIMANT’S SUBMISSIONS

- [7] Mr. Gollop submitted that there was a contractual relationship between the Claimant and the Defendant. He referred to paragraphs 3 and 4 of the affidavit in order to establish that the provision of a residence a motor car and a monthly stipend were part of a contractual relationship. He also referred to Exhibit “JWSTC 6”, a letter dated November 28, 2014 written to the Claimant by Messrs. Marshall and Harewood Circuit Stewards in which the Claimant was requested to “...vacate the Methodist Manse in Ebenezer **on or before December 20, 2014.** “Secondly, that you return the Manse to the state in which you found it on your arrival in September 2013 ...” in support of his submission that a contractual relationship existed between the parties. It is noteworthy that this letter is written on the letter head “The Methodist Church in the Caribbean and the Americas South Caribbean District” and immediately thereunder these words Ebenezer Circuit are found.
- [8] Mr. Gallop submitted that the effort to remove the Claimant from the house were made by Messrs. Marshall and Harewood. They were also the persons who made efforts to take the car from the Claimant. He made reference to the Exhibit “JWSTC 6” (above referred to). He submitted that the provision of a car, a house and emoluments was part of the contractual arrangements. It was patent therefore that they had to be an agreement.

- [9] Mr. Mottley, in reply, submitted that the Claimant had to establish a cause of action against the Defendant, Messrs. Marshall and Harewood. An interlocutory injunction could not be obtained where there was no cause of action. There was nothing in the affidavit to show that either Mr. Marshall or Mr. Harewood had broken any contract with the Claimant or had claimed any monies in respect to any renovations. Mr. Mottley made reference to section 13 of the Constitution and Discipline of the Methodist Church in the Caribbean in support of his submission that there was no contractual relationship between the Defendants and the Claimants.
- [10] Both counsel made reference to **American Cyanamid Co v Ethicon Ltd [1975] AC 396 (American Cyanamid)**.

THE ISSUE

- [11] There is one issue before me at the preliminary stage namely whether or not the Defendant and Messrs. Marshall and Harewood ought to be removed as parties to this Suit. This issue arises out of Mr. Mottley's submissions.

The Law with respect to the legal entity

- [12] The law recognises natural persons and artificial or juristic persons as having legal capacity to own land or other property, enter into contracts, employ persons and sue or be sued in their own names: **Salomon v Salomon & Co Ltd [1897] AC 22**. It is trite law that natural persons are human beings and artificial or juristic persons are entities created by Act of Parliament or under and by virtue of the **Companies Act, Chapter 308** of the Laws of Barbados. The law also recognizes unincorporated associations, firms and persons trading under the provisions of the **Registration of Business Names Act, Chapter 317** of the Laws of Barbados.
- [13] Mr. Gollop Q.C., did not specifically deal with the submission in relation to section 13 of the Ordinance, save and except that he relied upon the law of unincorporated associations to establish that the Defendant and Messrs. Marshall and Harewood could be sued. I will not dilate upon the law relative to such bodies because I do not consider that it is relevant here. The relevant law is that with respect to legal entities created by Act of Parliament.
- [14] Section 4 of the Ordinance provides that:
“Upon the execution of the Deed of Church Order in accordance with the Provisions of section 8 (b) hereof the Church shall by virtue of this Ordinance and of the Deed of Church Order be constituted and established as an autonomous body of Christian believers in the area specified in section 8 (c) hereof by the name of 'the Methodist Church In the Caribbean and the Americas' and under the constitution provided for by the Deed of Church Order.”
- [15] Section 2 of the Deed of Church Order provides that:
“The Methodist Church In the Caribbean and the Americas is established as an autonomous body of Christian believers under the constitution provided for by this Deed.”

- [16] The manner of bringing legal proceedings against the Church is provided for in Section 13 of the Ordinance in the following terms:

“(a) All actions and proceedings by or on behalf of or against the Church may be brought or defended by and in the name of 'the President of the Methodist Church in the Caribbean and the Americas' by that description (without naming the holder for the time being of that office) for and on behalf of the Church and the death or incapacity of the President for the time being of the Conference or the expiration of his term of office or any act or thing done or suffered by him shall not abate or affect any such action or proceeding.”

Discussion

- [17] The word church is defined in the Ordinance as “The Methodist Church in the Caribbean and the Americas.” It is a legal entity whose instrument of creation provides its powers and the manner in which legal proceedings may be brought against it. Section 13 is clear in its purport and intent that the Church may be sued in the name of “the President of the Methodist Church in the Caribbean and the Americas.” It goes on to say without naming the holder for the time being of that office. It seems to me that the clear legislative intent was to make a distinction between office holders in their capacities as such office holders and in their individual capacities as well and the President as the Church’s representative in legal proceedings.
- [18] The decision in **American Cyanamid** was analysed in **Toojays Limited v Westhaven Limited, (Toojays) Civil Appeal No. 14 of 2008 (unreported)** which is now regarded as the signal authority on the law relating to interlocutory injunctions. **Toojays** established that, in order to succeed in a claim for interlocutory injunction, the Claimant must prove (1) that he has a strong arguable case against the Defendant, and Messrs. Marshall and Harewood and (2) the balance of convenience favours the grant. He must sue the correct party against whom his remedies lie.
- [19] He must prove that damages are not an adequate remedy. In considering whether or not there is a strong arguable case, the court must consider whether there is a contractual nexus between the Claimant, the Defendant, and Messrs. Marshall and Harewood. This is so because paragraph 1 of the fixed date claim form claims damages for breach of contract. A perusal of the affidavit of the Claimant at paragraphs 1 and 2 shows that the Claimant’s appointment was by the West Virginia Annual Conference of the United Methodist Church, in which he was ordained to serve with the Methodist Church in the Caribbean and the Americas (MCCA). South Caribbean District Ebenezer Circuit. In paragraph 2 he deposed that his first appointment to the Ebenezer Circuit was by way of stationing by the District Council and he was re-appointed by virtue of the same procedure. The MCCA Constitution and discipline provides that all ministers serving under such one year appointments shall be entitled to the rights and are bound by the

obligations specified in the standing orders of the Constitution. He is, therefore, deposing that he is serving under the constitution and is serving with the Methodist Church in the Caribbean and the Americas. It is incumbent upon him to sue the correct entity.

Reverend Dr. Cuthbert A. Edwards

[20] The Defendant is Reverend Dr. Cuthbert A. Edwards (President, South Caribbean District of the Methodist Church in the Caribbean and Americas). Section 13 of the Ordinance has already been quoted in this decision and is clear in its nature and purport. The description of the Defendant in the proceedings is unclear as to whether he is being sued in his private capacity or in his capacity as the representative of the church.

[21] The creation of Districts is provided for in clause 50 of the Deed of Church Order as follows:

“The Church under the Connexional Conference shall be ordered in Districts, Which shall be numbers of Circuits grouped in areas designated as the Connexial Conference may from time to time determine. The General Superintendence of a District shall be vested, in each case, in the District President, and the administration of the District in the District Conference. The District President shall have such powers, privileges and duties and shall be appointed by the District Conference in a manner, which the Connexional Conference may, subject to the provisions of this Deed, by Standing Order determine.”

[22] These Districts are not created as separate legal entities or autonomous bodies by the Order and therefore have no separate legal personality from that of the Church. I am of the opinion and hold that the creation of Districts, like the creation of Councils, is for the convenience of the Church’s administration. The affidavit of the Claimant fails to depose to the capacity in which Rev. Dr. Edwards is being sued and the relationship between himself and the Claimant. In any event, it is not alleged that Rev. Dr. Cuthbert Edwards, in his individual capacity, employed the Claimant. There is therefore, no evidence of a contractual nexus between the Claimant and the Defendant. It is for the Claimant to prove the contract upon which he relies.

[23] Furthermore, the Defendant is sued as “President, South Caribbean District of The Methodist Church In The Caribbean And Americas”. He is not sued as, nor is it alleged or averred, that he is “The President of the Methodist Church in the Caribbean and the Americas.” There is a distinction between the President of the Church and the President of the South Caribbean District of the Church. In any event, the South Caribbean District of the Methodist Church in the Caribbean and Americas is not a legal entity established by the Ordinance.

[24] The claim against Mr. Marshall and Mr. Harewood name them as Circuit Stewards of the Ebenezer Circuit. Clause 51 (1) of the Deed of Church Order provides that:

“Within a District all Congregations and institutions shall be ordered by District Conference into Circuits for each of which shall be established Circuit Council a Circuit Pastoral Council, a Local Preachers Meeting such other committees as are stipulated by Standing Orders. Each Circuit

shall be under the general oversight of a Superintendent Minister who shall be Chairperson of the Circuit meeting, the Circuit Council, Pastoral, the Local Preachers Meeting and the Circuit Nominations Committee.”

[25] Clause 93(4) b of the said Order provides that:

“The Circuit Stewards (who may also have responsibilities to the trustees) shall act as officers of the Circuit Council in relation to all matters within this Section so far as they concern dwelling houses occupied by a Minister or Probationer, stationed in the Circuit.”

[26] It appears to me that the divisions into Pastoral and District Councils are for administrative convenience only. The constitution does not establish the Circuits of the Church nor the Circuit Council as autonomous bodies nor does it invest them with legal Personality separate and distinct from the Church so that they may be sued. If Messrs. Marshall and Harewood are to be properly sued they must be sued as officers of a legal entity. That has not been done. The filed documents fail to make any nexus between them and the Defendant as his servant and or agent. It has not been alleged that Messrs. Marshall and Harewood rented the dwellinghouse to the Claimant. It bears repeating that my findings with respect to the correct entity to be sued under Section 13 of the Ordinance are also relevant to this point.

Disposal

[27] In the circumstances, the Claimant has failed to establish that he has a strong arguable case against the Defendant, Mr. Marshall and Mr. Harewood. Simply put, he has sued the wrong parties. I, therefore, order that the claim against the Defendant, Mr. Marshall and Mr. Harewood be struck out. The Claimant is to bear the costs of the application to strike out to be assessed if not agreed.

William J. Chandler
Judge of the High Court