

BARBADOS

[Unreported]

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

No. 430 of 2015

**IN THE MATTER OF THE DECISION
BY THE COMMISSIONER OF POLICE
TO IMPOSE CONDITIONS ON THE
ISSUING/RENEWAL OF FIREARM
LICENCES OTHER THAN THOSE
CONTAINED IN THE FIREARMS ACT
CAP. 179 OF THE LAWS OF
BARBADOS**

**AND IN THE MATTER OF THE
ADMINISTRATIVE JUSTICE ACT,
CAP. 109B OF THE LAWS OF
BARBADOS**

**AND IN THE MATTER OF THE
FIREARMS ACT, CAP. 179 OF THE
LAWS OF BARBADOS**

BETWEEN

BERNARD MCDONALD CHASE

CLAIMANT

AND

**THE COMMISSIONER OF POLICE
ATTORNEY GENERAL OF BARBADOS**

**FIRST DEFENDANT
SECOND DEFENDANT**

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

Dates of hearing: 2015 April 07 and 20.

Date of decision: 2015 April 22

Appearances:

Mr. Wilfred A. Abrahams, Attorney-at-Law for the Claimant

Mr. Jared K. Richards of the Solicitor General's Office, Attorney-at-Law for the First and Second Defendants

Mr. Garth St. E. W. Patterson Q.C. *amicus curiae*

DECISION

Nature of the Application

[1] The Claimant, by notice of Application filed 27th March, 2015, applied to the Court for:

- (1) An Order that the First Defendant be restrained whether by himself and or his agents or servants or otherwise howsoever from refusing to renew and/or from revoking any firearm licence that was issued by the First Defendant for sporting purposes or those endorsed with "For Use of Target Shooting Only" otherwise than upon the grounds and in accordance with the conditions set out **in Section 15 of the Firearms Act, CAP. 179 (the Act)** until the hearing and determination of the claim herein or further order;
- (2) An Order that the costs of and incidental to this application be the Claimant's in any event; and
- (3) Such further or other relief that the Court deems fit.

[2] The application is supported by (1) an affidavit of the Claimant and (2) an affidavit of Pierce Antonio Rudder (Mr. Rudder) both filed on even date with the application. The salient points in the Claimant's affidavit are:

- (1) He is the holder of four firearm licences, two of which are for sporting or competitive purposes and are endorsed with the words “For use of target shooting only.”
- (2) He has been a member of the Barbados Rifle and Pistol Federation since 1997 and is a competitive marksman.
- (3) He attended the firearms section at District A Police Station to renew his firearms licences for his target pistols on 23 March 2015 and was informed by a Sergeant of police that, due to pending litigation before the Court, the First Defendant had made a decision not to renew any sporting licences or target pistol licences and advised him to turn his firearms into a licensed dealer, or if no dealer was willing to take the firearms, to notify the First Defendant in writing.
- (4) He was invited to and attended a meeting of the Barbados Rifle Association (BRA) at which Mr. Garth Patterson QC and the BRA’s Attorney-at-Law Mr. Wilfred Abrahams were also in attendance.
- (5) He was advised by Mr. Abrahams that the decision of the First Defendant not to renew or to revoke all licences that were issued for sporting or target shooting was unlawful and amounted to an abuse of power and that **Section 15 of the Firearms Act** clearly stipulated the circumstances under which the First Defendant could revoke licences. That the actions of the First Defendant in refusing to renew and/or purporting to revoke all licences endorsed with the words "For Use of Target Shooting Only" without any consideration of the requirements of the Firearms Act was illegal and actionable in a court of law.
- (6) His Attorney-at-Law further informed him that, pursuant to **Section 15 (2) of the Firearms Act**, the First Defendant had a duty to inform him in writing of his intention not to renew his licences and that he ought to have been given an opportunity to show cause why his licences should be renewed.
- (7) The effect of the arbitrary decision of the First Defendant will be to create a class of unlicensed firearms in Barbados and to place otherwise law abiding firearm holders including himself in breach of the **Laws of Barbados** and liable to arrest and prosecution.
- (8) He verily believed that, unless the First Defendant is restrained by this

Honourable Court from refusing to renew and/or revoking any firearm licence that was issued by the First Defendant for sporting or target shooting purposes and/or endorsed with the stamp "For Use of Target Shooting Only" otherwise than upon the grounds and in accordance with the conditions set out in section 15 of the **Firearms Act, CA. 179**, the First Defendant will continue on his path of acting arbitrarily, illegally and unlawfully.

- [3] The affidavit of Mr. Rudder, the President of the Barbados Shooting Council (the Council), is supportive of the Claimant's application. He deposed that the Council was of the opinion that the actions of the First Defendant in relation to the non-renewal of firearm licences was arbitrary, illegal, unfair and prejudicial to all members of the Council. He further deposed that the Council had agreed that the Claimant should represent its members in a representative action so as to protect the rights of its members.
- [4] A claim Form No. 1 was also filed on 27 March 2015 seeking the following relief:
1. A Declaration that the unilateral decision of the First Defendant not to renew and/or revoke the licences of the Claimant endorsed with the words "FOR USE OF TARGET SHOOTING ONLY" is contrary to law and contravenes the principles of natural justice and/or constitutes an irregular exercise of his discretion.
 2. A Declaration that pursuant to **Section 15** of the **Firearms Act Cap. 179** of the **Laws of Barbados**, the First Defendant has a statutory duty to give written notice prior to revoking and/or refusing to renew the firearm licences of the Claimant and that the First Defendant failed and/or omitted and/or

refused to give the claimant adequate notice of his decision not to renew and/or revoke the licences of the Claimant endorsed with the words “FOR USE OF TARGET SHOOTING ONLY”.

3. An injunction to restrain the First Defendant from refusing to renew and/or revoking any firearm licence that was issued by the Respondent for sporting or target shooting purposes and/or endorsed with the words "FOR USE OF TARGET SHOOTING ONLY" otherwise than upon the grounds and in accordance with the conditions set out in **section 15 of the Firearms Act, CAP. 179**.
4. Costs; and
5. Such further or other relief as this Honourable Court may deem fit.

[5] The grounds upon which the relief is sought are as follows:

- “1. ...
2. ...
3. The decision of the First Defendant not to renew and further to revoke all firearm licences issued for sporting or target shooting was apparently made by the First Defendant in direct response to and in retaliation against Judicial Review proceedings filed against the said First Defendant by Mr. Garth Patterson QC as Claimant in claim number **CV 173 of 2014** entitled **Garth Patterson v Commissioner of Police (Patterson v COP)**. As a result the First Defendant misdirected himself in the purported exercise of his discretion to revoke or to refuse to renew a firearm licence and his decision was based on irrelevant considerations as such the decision of the First Defendant is unlawful, illegal, unfair and an abuse of the power vested in the Commissioner.
4. ...
5. The First Defendant has no power or discretion to refuse to renew or to revoke any licence issued by him on any ground other than those contained in Section 15(1) of the Act. Pending judicial review

proceedings without more do[es] not form a sufficient basis for refusing to renew or revoking licences.

6. The First Defendant has failed to issue any written notice pursuant to Section 15 (2) of the Act of his intention not to renew the licence of the Claimant stamped “For Use of Target Shooting Only” and he has also failed to give the Claimant an opportunity to show why his licence should be renewed.
7. The First Defendant has also breached Section 15 (3) of the said Act in failing to give notice in writing requiring sporting licence holders and those holding licences endorsed “For Use of Target Shooting Only” to surrender the licence within 10 days of the date of the said notice.
8. The effect of the arbitrary decision of the First Defendant will be to create a class of unlicensed firearms in Barbados and to place otherwise law abiding firearm holders in breach of the Laws of Barbados and liable to arrest and prosecution.”

[6] The documents were served on the First Defendant on the 1st April, 2015 with a date of return of 7th April, 2015 contained in the Form 10 application.

[7] On 7th April, 2015, counsel appeared for the First and Second Defendants (the Defendants) who did not appear in person and the Court ordered that the Defendants file and serve an affidavit or affidavits in response on or before 13th April 2015. A date of hearing was fixed for 22nd April, 2015 at 1.00 p.m.

[8] The Court also ordered, by consent, that the Claimant be appointed to represent the entire class of persons in this Island who presently hold

sporting licences and those licences bearing the stamp “For Use of Target Shooting Only”.

[9] On the adjourned date counsel for the Defendants appeared. The First Defendant did not appear. The order of Court had not been complied with. Both parties had prepared written submissions which had not been filed but which were handed up to the Court.

The Claimant’s Submissions

[10] The Claimant submitted that, based upon **section 15(1)** of the **Act**, there were serious issues to be tried namely:

- (1) Whether the First Defendant failed and/or omitted and/or refused to give notice in writing to the Claimant prior to unilaterally deciding not to renew and/or revoke the licences of the Claimant endorsed with the words “FOR USE OF TARGET SHOOTING ONLY”?
- (2) Whether the failure of the First Defendant to give written notice to the Claimants of his intention not to renew and/or revoke the licences of the Claimant prior to unilaterally implementing this decision, and by so doing denied the Claimant the opportunity to make representation as to why his licence should be renewed or not revoked, was in breach of the principles of natural justice and

an unfair and/or unreasonable and/or an ultra vires exercise of discretion under the **Firearms Act, Cap. 179** of the **Laws of Barbados** and constitutes a continuing breach of or omission to perform a duty, **Narsham Insurance (B'dos) Ltd. v The Supervisor of Insurance et al BB 1999 CA, Kioa and Others v Minister for Immigration and Ethnic Affairs and Another [1985] 159 CLR 550.**

- (3) Whether the First Defendant in making his decision improperly exercised his discretion and applied criteria other than those contained in **s. 15** of the **Firearms Act**?

[11] As a corollary to that issue counsel outlined a further issue namely if the decision was not based on the statutory criteria, then what criteria did the First Defendant take into account when making his decision not to renew the licences under **section 15** of the **Act**?

[12] He submitted that it is a breach of the rules of natural justice for the First Defendant to arbitrarily refuse to renew the licences of the Claimant without notice to the Claimant.

The Defendants' Submissions

[13] Counsel conceded that there was a serious issue to be tried. He submitted that the Court should find that damages would be an adequate remedy in the

circumstances of this case. The question whether or not damages would be an adequate remedy ought to be assessed in the context of the Court's overall function in granting or refusing the injunction sought. The Court ought to hold the balance as justly as possible between the parties until the trial. He also submitted that the refusal of the injunction, would hold the balance justly between the parties until trial of the substantive matter. He relied upon **American Cyanamid Co. v Ethicon Limited [1975] A.C. 396 HL (American Cyanamid)**.

[14] He further submitted that the Claimant was the holder of four (4) firearm licences, two of which were endorsed "For Use of Target Shooting Only". Only two of these had not been renewed. The non-renewal of two of the licences did not prevent the Claimant from engaging in the sport of target shooting. Licensed shooting clubs were allowed to maintain and organize pistol ranges, shooting events and provide facilities for target practice. The Claimant could therefore avail himself of these facilities under **section 12 (1)** of the **Act**. It was his submission that the Court should refuse to grant the injunction sought.

Mr. Patterson's Submission

[15] Mr. Patterson QC submitted that there was a process for non-renewal or revocation of licences set out in **s. 15** of the **Act** which the First Defendant

was duty bound to follow. He had failed to perform that public duty. The grant of the injunctive relief would simply ensure the First Defendant's compliance with his duty.

The Law

[16] It is useful to note that both parties agreed that the law relative to the issuance of an interlocutory injunction is contained in **Toojays Limited v Westhaven Limited, (Toojays) Civil Appeal No. 14 of 2008 (unreported)**. The decision in **American Cyanamid** was analysed in **Toojays** which is now regarded as the signal authority on the law relating to interlocutory injunctions in this jurisdiction. **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 Defendants and (2) the balance of justice favours the grant.

Is there a serious issue to be tried?

[17] The issue relates to whether or not the First Defendant can refuse to renew a licence without first giving the holder of the licence notice under **s. 15** of the **Act**. **Section 15** of the **Act** is now reproduced:

“**Section 15.** (1) The Commissioner may refuse to renew or may revoke a licence where he is satisfied that the holder of the licence

(a) by reason of conduct, age or unsoundness of mind is not fit to be entrusted with a firearm or ammunition;

- (b) is convicted of
 - (i) an offence against this Act; or
 - (ii) any offence involving the use of a firearm; or
- (c) is in breach of any condition subject to which the licence is issued.

(2) When the Commissioner intends not to renew or to revoke a licence, he shall give written notice to the licence holder of his intention not to renew or to revoke the licence, as the case may be, and shall require the licence holder to show cause why the licence should not be renewed or not be revoked, as the case may be.

(3) Where a licence is revoked by the Commissioner under this section, he shall by notice in writing require the holder to surrender the licence within 10 days of the date of the notice.”

[18] On a literal reading of the section, notice of the intention not to renew must first be given. The First Defendant is obliged by statute to comply with the section. This raises an issue of the right of the Claimant to be heard with respect to the proposed non-renewal or revocation. On the face of it, serious issues of (1) the alleged failure of the First Defendant to comply with the law arises pursuant to **section 15 (2)** of the **Act** and (2) whether or not there was a failure to comply with the rules of natural justice namely *Audi Alteram Partem* arise for trial since section 15(2) mandates that the licence holder be required “... to show cause why the licence should not be renewed or not be revoked as the case may be.”

[19] I am also of the opinion that there is a serious issue to be tried in relation to the reasonableness and lawfulness of the alleged conduct of the First Defendant.

[20] I have looked at the terms of the licence issued to the Claimant which expired on 16 March, 2013. All counsel agreed that it exemplified the licences which are the subject of this case.

[21] It is a licence to “have, use and carry” a point .22 target pistol bearing marks T02 and number 870135. Counsel for the First Defendant submitted that it is the First Defendant’s opinion that he does not have the authority to issue a licence for a target pistol and hence no authority to renew one. No affidavit was filed to support this submission. There is therefore no factual basis upon which such an opinion is posited. A submission is not evidence, it must be substantiated by evidence.

[22] The **Act** gives authority to the First Defendant to issue a licence, to have, use and carry a firearm under **section 5**. **Section 5** is now also reproduced in this decision:

“**Section 5.** (1) Subject to this Act, a person who is desirous of possessing, carrying or using a firearm shall apply to the Commissioner in the prescribed form for a firearm licence.

(2) An application for a firearm licence shall be accompanied by the Prescribed fee.

(3) Where the Commissioner is satisfied that an Applicant for a firearm licence

- (a) is of good character;
- (b) is a fit and proper person to possess a firearm; and
- (c) is physically and mentally competent,

the Commissioner may, subject to subsection (5), grant him a firearm licence.

(4) A firearm licence shall contain permission for the holder to have in his possession ammunition of a type, and not exceeding an amount, specified in the licence.

(5) The Commissioner shall not grant a firearm licence to a person unless he is satisfied that that person

- (a) has good reason for possessing, carrying or using the firearm and ammunition the subject of the application; and
- (b) can be permitted to possess, carry or use that firearm and ammunition without danger to the public safety or to the peace”.

[23] The licence in question authorizes the holder to “have use and carry” the firearm described in the licence. *Prima facie*, therefore, we are dealing with the non-renewal of a licence to have use and carry a firearm issued under **section 5** of the **Act**.

[24] In the circumstances I am of the opinion, at this interlocutory stage, that the above submission of counsel for the First Defendant has no merit.

Status Quo Ante

[25] Counsel for the First Defendant submitted that the Court should maintain the *status quo ante* by refusing to accede to the Claimant’s application for

injunctive relief and submitted that the position ought to be maintained where the First Defendant had already refused to renew the Claimant's licence.

[26] The Application for injunctive relief is to restrain the First Defendant from doing the acts complained of. In summary, it is asking the Court to ensure compliance with **section 15** of the **Act**. The *status quo ante* relates to the fact that licences were issued prior to non-renewal or revocation. I am of the opinion and hold that to maintain *the status quo ante* is to prevent the non-compliance with **section 15** of the **Act**. I therefore agree with the submissions of Mr. Patterson QC and Mr. Abrahams on this point.

[27] It was submitted that the Claimant as a member of a shooting club can avail himself of section 3(6) of the Act and can obtain ammunition from the licensed shooting club.

[28] In the light of the fact that what is under consideration by the Court is the non-renewal or revocation of a firearms licence, not simply the ability of a person to enjoy the facilities of a licensed shooting club, I am of the opinion that the submission of counsel for the First Defendant is based upon irrelevant considerations and that there is no merit in it.

[29] It is alleged in the grounds of the application that the Claimant was informed by one Sergeant Hinkson that the First Defendant had made a decision that,

with immediate effect, he (the First Defendant) would not renew any, and that he intended revoking, all licences issued for sporting purposes or target shooting and that the holders would have to apply for a new licence.

[30] A further ground alleges that the Claimant was told that this position was taken as a result of a pending judicial review matter in which Mr. Garth Patterson QC (Mr. Patterson) had brought an action (Patterson v COP) against the First Defendant.

[31] This matter involves a public official charged with responsibilities in relation to the licensing of persons to hold, carry and use firearms under statute. No affidavit was filed to deny or confirm the grounds alleged in the application. The substance of the matter involving Mr. Patterson is not before this Court. The First Defendant must put his case in affidavit form to rebut or refute what has been pleaded against him. That has not been done.

[32] It is not a difficult matter to depose by way of affidavit whether or not notice was given and whether or not the opportunity was given to the Claimant to be heard in respect of the proposed non-renewal or revocation of the licence. Consequently, there is no denial of the allegation that instructions were given not to renew the licences because of the pending litigation in the Patterson's matter. This does not obviate the need to comply with **section**

15 of the **Act**. I find no merit in the First Defendant's submissions on this point.

[33] Counsel for the Claimant submitted that damages are an inappropriate remedy because the matter involves a public official and a class of persons who, if the relief sought was not granted, would be rendered subject to criminal penalties since the Claimant would be in possession of a firearm without the appropriate licence. Mr. Abrahams also submitted that in matters such as these where the public interest is involved damages would not be an adequate remedy.

[34] Mr. Richards submitted that damages would be an appropriate remedy in the circumstances and accordingly the injunction ought not to be granted. He conceded that the consideration of the adequacy of damages as a remedy was one of the considerations in determining where the balance of justice lay.

[35] In **Toojays**, the Court held per **Burgess JA**, that:

“The principle that adequacy of damages is to be considered as "a significant factor in assessing where the balance of convenience lies" means that the question as to whether or not damages would be an adequate remedy must be assessed in the context of the overall function of the court in the granting or refusal of an interlocutory injunction which is to hold the balance as justly as possible between the parties until trial.”

[36] I am of the opinion that, in all the circumstances of this case and considering the adequacy of damages as a component of the issue whether or not the balance of justice favours the grant, that the balance of justice in this particular case favours the grant. I make this determination based upon the strength of the Claimants' case, the fact that the application seeks to ensure compliance with **section 15** of the **Act** and the further fact that the First Defendant has not by way of affidavit, provided any or any reasonable explanation for his actions. There is consequently no basis upon which I can determine whether or not there is any reasonable defence to the Claimant's action. Consequently the Court has not been provided with a basis upon which I can assess the relative strength of the First Defendant's case.

[37] In the circumstances I am of the opinion that the balance of justice favours the grant of injunction against the First Defendant and I so order. At the request of both counsel, the issue of costs is reserved for argument.

WILLIAM J. CHANDLER
JUDGE OF THE HIGH COURT