

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: CV1375 of 2016

BETWEEN

CHARLES LYNCH

INTENDED CLAIMANTS/APPLICANTS

N. KEITH SIMMONS

**PETER ST. AFFNER on
behalf of and as representing
the members of the Barbados
Cycling Union except the
Defendants**

AND

KEITH E. YEARWOOD

INTENDED DEFENDANTS/RESPONDENTS

GLENDENE BOYCE

**FAYE BOYCE on behalf of and
as representing the members of
de facto council of the Barbados
Cycling Union**

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

**2016: September 6, 8
November 11**

Appearances:

Mr. Larry A.C. Smith in association with Ms. Shanna C. Goddard, Attorneys-at-law for the Intended Claimants/Applicants

DECISION

Introduction

[1] On 21 October, 2016, the Intended Claimants/Applicants made an urgent application seeking the following relief against certain members of the Barbados Cycling Union (BCU):-

- (1) A date be set for, and an Annual General Meeting (AGM) of the BCU to elect a new Council be held by the Intended Defendants/Respondents within twenty-eight (28) days of this hearing.
- (2) That notice of the date, time, place and agenda of the AGM be disseminated to the members no less than seven (7) days before the date scheduled for the AGM.
- (3) The Intended Defendants/Respondents acting as de facto Council of the BCU is prohibited from conducting the Extra Ordinary Meeting scheduled for 25th October, 2016.
- (4) The de facto council of the BCU made up of the Intended Defendants/Respondents is refrained from making any decision and/or carrying out any acts regarding the affairs of the BCU and from making any representations to the media, any organization or individual save and except to give effect to the holding of the AGM in accordance with the proposed order.

[2] The matter came on for hearing on the 7th November, 2016 and was adjourned until 11th November, 2016 for a decision.

Issue

[3] The sole issue for determination is whether the court should grant an injunction to prevent the de facto council of the BCU from making any decision, acting on behalf of and making any representation on behalf of the BCU.

The Law

[4] **Section 44(b)** of the Supreme Court of Judicature Act gives the court “at any stage of any proceedings” the discretion to “grant a mandatory or other injunction...where it appears to the court to be just or convenient to do so.”

In granting an injunction the court is guided by Rule 17 of the Supreme Court (Civil Procedure) Rules (CPR).

[5] Under Rule 17.2 (1) an interim injunction may be sought any time before a claim is made and after judgment is given. However, in accordance with Rule 17.2 (2) (b) an injunction may be made before a claim is filed if the matter is urgent and it is necessary to do so in the interest of justice.

[6] Rule 17.2 (3) provides that where the court grants an interim remedy before a claim has commenced, it must require an undertaking to issue and serve a claim form by a specified date.

- [7] The approach of the court in this jurisdiction accepted the principles handed down by **Lord Diplock** in the English House of Lords decision in *American Cyanamid Co. v Ethicon* [1975] A.C. 396; [1975] 1 All E.R. 504 as establishing the guidelines to be applied in determining whether or not to grant or to discharge an interlocutory injunction.
- [8] In the decision of *Toojays Ltd. v Westhaven Limited* Civil Appeal No. 14 of 2008 **Burgess, JA** confirmed that the approach is one which has two stages – that is, the trial judge before whom the application is made has to consider the first question, namely whether there is a serious issue to be tried. In the words of **Lord Diplock** – “The court must be satisfied that the claim is not frivolous or vexatious.”
- [9] Based on the affidavit before me, and that is all that I can base this finding on, there appears to me to be a serious issue to be tried. The Intended Claimants/Applicants are alleging that the present council was not selected according to the provisions of the Constitution and should be prohibited from acting on behalf of the members of the BCU. Additionally, it is the Claimants/Applicants contention that the present council is seeking to entrench themselves on the council of the BCU. Among other issues for consideration, a meeting was scheduled to address an amendment to the Constitution to reflect that members of the council are to now serve four years instead of the two, but this has not been done.

- [10] Therefore on the pleading the Claimants/Applicants have shown that they have an arguable case, one which I cannot classify as being frivolous or vexatious.
- [11] However this is not the end of the matter. The second stage of inquiry as contemplated by **Burgess, JA** in the *Toojays* case is the inquiry into the balance of justice. Where does the balance of justice lie in determining whether or not the court should grant an injunction and in determining this, one of the factors which a court has to consider is whether or not the Plaintiff can be compensated in damages? In other words in order to determine the balance of justice in favor of granting or not granting an injunction, it is necessary for the court to perform the task of determining whether damages would be adequate.
- [12] If the court finds that damages would not be an adequate remedy, then an injunction should be granted regardless of the strength of the Claimants' case at the time of the application.
- [13] If however damages would be an adequate remedy and the Defendant would be in a financial position to pay them, then as **Diplock, L. J.** stated in *American Cyanamid* – “no interlocutory injunction should normally be granted, however strong the Plaintiff’s case appeared to be at that stage.”
- [14] In determining whether the balance of justice lies in favour of granting the injunction, a factor to consider would be whether it would interrupt the

conduct of affairs of the BCU or put another way what would be best for the Union to promote harmony and the smooth functioning of the Union.

[15] It is of note that a meeting to address the current situation was scheduled to be held since May 2016 and was only proposed to be held by the current council on October 25th, 2016. Further, the current situation was on-going from April, 2016.

[16] The court is therefore of the view that the granting of the injunction would not interfere with the functioning of the BCU but hopefully would encourage all the parties to act expeditiously in carrying out the affairs of the Union.

[17] Further the court is of the view that in the instant case, damages would not be adequate for any loss sustained between now and the trial as the BCU is a non-profit making organization which receives funding from the Barbados Olympic Association.

[18] If the de facto council is not prohibited from acting on behalf of the members until the amendment is made to the Constitution, or compel to abide by the Constitution of the BCU, then other members of the BCU could be severely disadvantaged.

[19] The court is however cognizant of the fact that the Intended Defendants/Respondents against whom the relief is sought are interested parties and have had no opportunity to be heard.

[20] The court therefore grants the injunction in the following terms:-

“It is HEREBY ORDERED THAT:

1. A date be set for an AGM of the BCU by the de facto council of the BCU made up of the Intended Defendants/Respondents to elect a new council of the BCU within twenty-one (21) days of the service of this Order.
2. The notice of the date, time, place and agenda of the AGM be disseminated to the members no less than seven (7) days before the date scheduled of the AGM.
3. The de facto council of the BCU made up of the Intended Defendants/Respondents is refrained from making any decisions and/or carrying out any acts regarding the affairs of the BCU save and except to give effect to the holding of an AGM in accordance with this Order.
4. The Intended Claimants/Applicants undertake to serve upon the Intended Defendants/Respondents a copy of the application and any evidence in support together with a copy of any order made pursuant to Part 11.12 of the CPR by serving a copy of the same on the Intended Defendants/Respondents or by leaving a copy for the Intended Defendants/Respondents at the office of the

Barbados Olympic Association situate at Olympic Centre, Garfield Sobers Complex, Wildey, St. Michael.

5. The Intended Claimants/Applicants undertake to file and serve within fourteen (14) days of this Order the claim form on the Intended Defendants/Respondents pursuant to Part 17.2 (3) of the CPR by serving a copy of the same on the Intended Defendants/Respondents or by leaving a copy for the Intended Defendants/Respondents at the office of the Barbados Olympic Association situate at Olympic Centre, Garfield Sobers Complex, Wildey, St. Michael.
6. The Intended Claimants/Applicants undertake to abide by any order as to damages to the Intended Defendants/Respondents caused by the granting, continuance or extension of the Order this court may make pursuant to Part 17.4 (2) of the CPR.
7. The Intended Defendants/Respondents may apply to the court pursuant to Part 11.13 of the CPR for any order made on the application to be set aside or varied within fourteen (14) days of the service of this Order.

PAMELA A. BECKLES
Judge of the High Court