

SULLIVANS (S.I.) LTD -v- S.I. TOBACCO CO. LTD

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 155 of 1992

Hearing: 9 June 1992

Judgment: 6 July 1992

J. Corrin for the Plaintiff

G. Young and T. Kama for the Defendant

MURIA ACJ: The plaintiff has taken out a Writ against the defendant in this case claiming damages for wrongful termination of a distributorship and/or agency agreement without due notice and for a permanent injunction restraining the defendant from so doing or from taking other actions pursuant to the wrongful termination. The plaintiff now applies by Notice of Motion to the Court for an interlocutory order against the defendant in the following terms:

- "1. *The Defendant be restrained from terminating the sole distributorship and/or agency agreement between itself and the Plaintiff until further order.*
2. *Further or in the alternative that the Defendant be restrained from entering into any distributorship and/or agency agreement with any person or body other than the Plaintiff until further Order.*
3. *Further or in the alternative that the Defendant be restrained from distributing any products of W.D. and H.O. Wills (Australia) Limited in the Solomon Islands until further order."*

The defendant is a company which manufactures and supplies tobacco and tobacco products in Solomon Islands. The plaintiff is the sole distributor in Solomon Islands of tobacco manufactured by the defendant. It was agreed orally that the plaintiff would be the sole distributor of the defendant's products. That agreement has been carried out and for about 20 years, the plaintiff has been distributing products of Will and the sole distributor for Solomon Islands of tobacco manufactured by the defendant.

In or about 2 March 1992 the defendant and Wills wrote to the plaintiff giving 3 months notice of its intention to terminate the distributorship agreement. There is

nothing to confirm the period of notice required for terminating the distributorship agreement.

The plaintiff now asks the Court to restrain the defendant from terminating the distributorship agreement until the question of the reasonableness of the notice of termination of the agreement has been determined by the court.

The principle governing the grant or refusal of an interlocutory injunction have been well established in numerous cases, the leading one of which is the *American Cyanamid Case* [1975] 1 All E.R. 504 which have been applied in a number of cases in this jurisdiction, namely, *Meke -v- Solmac*, CC 44 and 45 of 1982; *S.I. Government -v- SIPEU*, CC 102 of 1991 and *Beti & Ors -v- Allardyce & Ors* CC 45 of 1992. The first question being, whether there is a serious issue to be tried.

In this case, the plaintiff challenges the termination of its distributorship and agency agreement with the defendant on the basis that no due notice has been given. The plaintiff further claims for a permanent injunction against the defendant. The agreement between the parties had existed for at least 20 years and no doubt the question over the reasonableness of the notice will be a serious issue for the Court to consider when it comes to consider the plaintiff's claim for damages. There is therefore a serious issue to be tried in this case namely whether the distributorship and agency agreement was terminated without due notice. This is a question on which opinions are likely to differ and I think at this stage no useful purpose would be gained if I were to express any present views on it.

The next question needed to be considered is that of the balance of convenience. what on the balance of convenience would be the right order? As *Beese -v- Woodhouse* [1970] 1 WLR 586 pointed out that the question for the Court in all cases of interlocutory applications for injunction was "What on the balance of convenience was the right order?" In *Beti & Ors -v- Allardyce & Ors*, I set out the test following the *American Cyanamid* procedure, in ascertaining where the balance of convenience lies.

The parties in this case as I have said had been in business with each other for at least 20 years. The plaintiff now says that its rights as a distributor for and agent of the defendant has been breached and as such the defendant ought not to be allowed to continue to carry on the business in breach of the rights alleged by the plaintiff. I think at this stage, in such cases such as the present one, commercial consideration can be evaluated with a view to determining what on the balance of convenience is the right order. Furthermore, the evidence shows that not only the parties' pecuniary interests are affected but also those of other persons and those must also be taken into

account. This was pointed out in *Miller -v- Jackson* [1977] 7 WLR 20, at 36 where it was stated that:

"Regard must be had 'not only to the dry strict rights of the plaintiff and the defendant, but also the surrounding circumstances, to the rights or interests of other persons which may be more or less involved.' So it is that where the plaintiff has prima facie a right to specific relief, a court of equity will, if occasion should arise, weigh the disadvantage or hardship which he will suffer if relief were refused against any hardship or disadvantage which would be caused to third persons or to the public generally if relief were granted."

The nature of the business activities of both the plaintiff and defendant in this case justify the Court in adopting the concern raised in *Miller -v- Jackson*.

The evidence thus so far uncovered in the various affidavit would seem to me to present an arguable case from both sides and that being so, the balance of convenience in this case lies in favour of preserving the 'status quo' pending the determination of the substantive action.

I therefore order that the defendant should continue to sell all tobacco products manufactured by it to the plaintiff under the existing distributorship and/or agency agreement them. Further the defendant be restrained from selling its tobacco products to any other person.

I order that the plaintiff should order and purchase tobacco products only from the defendant and to pay for those products on the terms and conditions existing prior to the determination of the main action.

I do not feel I can make the order sought by the plaintiff in paragraph 3 of the summons.

The orders are subject to the parties giving the usual undertakings as to damages. Such undertakings are to be lodged with the Court by 4 p.m. on 9 July 1992.

Costs in the cause.

(G.J.B. Muria)
ACTING CHIEF JUSTICE