

IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO: 117 OF 2007

BETWEEN:	1. JOSE LUIS MORENO 2. RICARDO CORRERA (trading as Cormor Gas)	APPLICANTS CLAIMANTS
	AND BELIZE NATIONAL L.P.G. LTD	RESPONDENT DEFENDANT

Ms. V. Flowers for the applicants-claimants
Ms. M. Mahler for the respondent-defendant

AWICH J

29.4.2008

DECISION

1. *Notes: An application for an interim injunction order; difficulty in tracing the objects of the claim, equipment and goods, and large expenses to be incurred at interim stage are circumstances unfavourable for the exercise of discretion to grant an interim injunction order. Mandatory injunction order at interim stage is an exceptional form of relief.*

2. This is a decision in an application for an interim order to compel the return of certain items of equipment and goods to the applicants-claimants while the case proceeds to trial. The application was made under *r: 17.1 of the Supreme Court (Civil Procedure) Rules 2005*. Presumably the order would preserve the items while the claim proceeds to trial. The items are:

- “1. Gas Mini-plant – 1 tank (910 capacity) equip with
gas pump and gas meter
2. Bob Trail Truck (yellow) GMC CZL-A3922
3. 1 fire extinguisher (XE-951012)
4. 4- Wooden Chairs
5. Business official stamp
6. Pick-up truck
7. 30 Tanks
8. White 1992 Toyota Pick-up – CY C-20935”

The four wooden chairs have since been returned.

3. The substantive claim on which the application was made was based on a lease of business premises by the applicants to the respondent-

defendant. The lease terminated, but the respondent remained on the premises on the understanding that the parties would renew the lease. They did not agree. The applicants allege that the respondent left the premises in circumstances which gave rise to the substantive claim. They claimed that the respondent wrongfully ended the arrangement and took with it the items of equipment and goods listed. The claimants have applied for an interim order that the items be returned to them while the case proceeds to trial.

4. The respondent deny wrongful termination of the lease or the arrangement that followed, and wrongful taking of the items, and deny that the applicants are entitled to the items anyway. The respondent says that the items were the subject of a separate lease between itself and another, not a party to this claim.
5. I had no doubt that the applicants established an arguable case to entitle them to apply for an interim order for the preservation of the equipment and goods. The difficulty in the case was whether in the circumstances established so far by affidavits, it was just for the court to exercise discretion in favour of granting an interim injunction

order, and in particular, an order which would compel other than restrain action; the so called mandatory injunction order. The court can grant such an order, for example where the defendant was acting to defeat any court order that could be made on an application he has had notice of see – *Bonner v G. W. Ry (1883) 24 Ch D1* and *Daniel v Ferguson [1891] 2 Ch 27 CA*. However, a mandatory injunction order is an exceptional relief at an interim stage. – see *Canadian Pacific Ry v Gaud [1949]2K.B 239*. The case of *Redland Bricks Ltd v Morris [1969]2 All ER576 or [1970]CA 652*, outlines the principles to be applied.

6. At the hearing, court pointed out some of the circumstances in the claim that were not favourable for granting an interim injunction order generally. Some of them were the apparent difficulties and expenses involved in tracing some of the assets, some of which the respondent denied were in its possession. I had to bear in mind that the expenses would be incurred before final judgment was obtained by the applicants. The applicants agreed to some extent, and chose to pursue their application only in regard to the first two items, namely, the 30 gas tanks and a “bob trail truck” said to be used in a rival business.

The gas tanks were each kept at various customers' business premises. Removal of the gas tanks could lead to several other court claims by the customers.

7. The other point I considered was the fact that breach of the lease or agreement that followed, could be redressed by payment of money compensation. If appropriate sum of money was paid, there would be no permanent loss. The items of goods and equipment are also replaceable by payment of replacement prices.
8. The last point I considered was that the mandatory injunction order may require compulsion by an order of mandamus and contempt order which is not warranted, given the difficulties in tracing the items. Courts are slow to grant such orders as interim measures, unless it is really necessary.
8. My conclusion was that the proper decision was to refuse to exercise discretion in favour of granting an injunction order in the circumstances of this case. The application is dismissed.

10. This case is overdue for case management conference. The Registrar is to list it for case management conference before him immediately.

11. Costs are reserved to the trial of the claim.

12. Delivered this Tuesday the 29th day of April, 2007
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court of Belize