

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 190 of 2024

BETWEEN:

SHAOBING YAN

Claimant

AND

CARIBBEAN INTERNATIONAL BREWERY LIMITED

Defendant

Appearances:

Mr. Immanuel Williams for the Claimant

Mr. Richard Bradley for the Defendant

2024: July 16

October 8

DECISION

Interim injunction – Claim based on oral contract – Alleged consignment agreement – Whether there is a serious question to be tried – Adequacy of damages as a remedy – Rule 17.1 (1)(a) Civil Procedure Rules 2005 – Section 34 (1) Senior Courts Act 2022

[1] The claimant filed a claim form seeking damages and an injunction against the defendant. Subsequently, an application was filed to obtain an interim injunction against the defendant. The defendant filed a defence which was later amended, but did not file a response to the application for interim injunction. The claimant is a businesswoman and says that she

operates several businesses in Belize. She is one of the proprietors of Island Supermarket, located in San Pedro Town in Ambergris Caye.

- [2] The claimant states that she and the defendant entered into an oral consignment agreement in terms of which she and her husband agreed to sell the defendant's products. The products included purified water, mine beer, blue pirate beer and green pirate beer. At the time of filing this application there were 2166 cases of blue pirate beer in her warehouse. After the defendant filed its defence, there were 1584 cases blue pirate and 208 cases of mine stout. The claimant also refers to 29 refrigerators, 157 fans, 6 bicycles and 136 shirts; there is no clear indication that these goods have given rise to dispute as in the case of the beer. Her husband was to pay a discounted wholesale price based on sales by cash, wire transfer or cheques and the defendant was to retrieve unsold beer. The claimant was appointed as exclusive agent for the defendant's products in San Pedro.
- [3] The claimant states that the defendant's beers and other chattels prevents her from using her warehouse. As these items prevented her from using the warehouse, the claimant purchased two containers from China for \$20,000.00. She states that this arrangement is unsafe as opposed to storage in the warehouse which has continuous surveillance and other security measures. She states that the busy season from November to easter would require her to purchase more containers unless the defendant's goods are removed.
- [4] At the hearing, the claimant submitted that the parties entered into a business relationship in 2020. The claimant submits that she and her husband made an oral contract for a consignment arrangement as there was insufficient demand for blue pirate beer. As the beer remained unsold, she requested the defendant to retrieve the goods. By letter dated 12 April 2024, the claimant attempted to negotiate with the defendant to settle the dispute. The parties were unable to settle their differences. The claimant submits that the defendant's refusal to remove its products amounts to trespass and she is unable to use the warehouse for storage of her products. The claimant submits that there is an unjustifiable intrusion by the defendant by placing its chattels on the claimant's land. What the claimant seeks is an order directing the defendant to remove unsold goods belonging to the defendant that are in the claimant's warehouse. Among the issues suggested by the claimant is whether she is entitled to compensation for incurring storage fees and due to the defendant's trespass and use of her warehouse. The claimant cited the decisions in *Gregory v Piper*¹, *American Cyanamid v Ethicon Limited*² and *National Commercial Bank of Jamaica Limited v Olint Corporation*³.

¹ [1829] 9 B & C 591

² [1975] 1 All ER 504

³ [2009] UKPC 16

- [5] The defendant submits that the parties have a written agency agreement by which the claimant agreed to be the exclusive distributor for the defendant's products and denies that is a consignment arrangement between the parties and said that the goods stored in the claimant's warehouse was purchased by her. The defendant states that payments for some of the goods made by cheque were dishonored and that there are criminal proceedings in respect of the claimant's cheque returns. The ownership of the goods is a matter in dispute.
- [6] Section 34 (1) (a) of the Senior Courts Act 2022 states that the court may grant an injunction in all cases in which it appears to the court to be just or convenient to do so. Rule 17 (1) (1) (a) allows the court to grant an interim injunction. From the authorities it is evident that the court's inquiry should normally consider whether there is a serious question to be tried at the trial or if the applicant can establish the prospect of succeeding at the trial. If the answer is in the affirmative, the balance of convenience affecting the parties, including the question whether damages will suffice, must be considered.
- [7] In the American Cyanamid case Lord Diplock stated:
- “The object of the interlocutory injunction is to protect a claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the ‘balance of convenience lies’.”⁴
- [8] Clearly, there is no written consignment agreement between the parties. The defendant by its amended defence has disclosed a written agency agreement between them. The claimant makes no mention of the written agency agreement, which is drafted in the Chinese language. At the time the claim was filed the claimant's warehouse had 2166 cases of the defendant's unsold goods. The claimant's affidavit does not say when the alleged consignment arrangement was orally made. The alleged arrangement is disputed by the defendant, who says that it sold the beer and stout to the claimant, and that there are still amounts owing on those sales. There is no clear averment as to the length of time the defendant's unsold goods have been in the claimant's warehouse. That disclosure would have been material in understanding whether the claimant has proceeded against the defendant without delay.

⁴ At page 510

- [9] The defendant's application lacks sufficient clarity and evidence to establish a case for the purpose of granting an interlocutory injunction. In those circumstances, the court must have the benefit of oral testimony and cross examination of witnesses to determine the propriety of making such an order, especially as the claimant relies on an oral contract to claim injunctive relief. This, however, is not the stage to conduct a detailed examination of the facts. That exercise can take place at the trial. At this point, it suffices to say that the claimant has not shown that there is a serious question to be tried or that there is a real prospect of succeeding at the trial.
- [10] The claimant's affidavit states that the court can make an order that the defendant provide an undertaking for damages instead of granting an injunction. In the same breath it is said that "the payment of damages does not fix the problem". An issue suggested by the claimant is whether she is entitled to compensation for the defendant's actions. If damages are an adequate remedy and the defendant can pay the sum ordered by the court, the authorities suggest that an interlocutory injunction is normally not likely to be granted. The claimant has not persuaded the court that damages will not be an adequate remedy for the alleged losses.
- [11] The court declines to grant the reliefs sought by the claimant's application.

ORDER

- A. The claimant's application is dismissed.
- B. The claimant is to pay the defendant's costs in this proceeding.

M. Javed Mansoor
Judge