

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. 2011/4632

BETWEEN

VERNON BARNETT

CLAIMANT

AND

THE PROMOTION ADVISORY BOARD  
THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANTS

**BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER**

**APPEARANCES**

W. Campbell for the Claimant.

Mr. D. Byam for the Defendant.

**RULING**

**Introduction**

1. This was an application on the part of the defendants for the discharge of an *ex parte* injunction. The defendants contended that the claimants had failed to make full and fair disclosure in their application for the injunction. The court considered the principles which govern the obligation of the *ex parte* applicant to make full and fair disclosure.

In this ruling the Court considered in particular whether the Claimants had breached their obligation to disclose material facts.

## Procedural History

2. On 28<sup>th</sup> November, 2011, the claimant, Vernon Barnett filed proceedings under the *Civil Proceedings Rules 1998*<sup>1</sup> on behalf of thirty eight (38) Sergeants of Police and on his own behalf.
3. By this action, Sgt. Barnett sought the following relief against the Promotion Advisory Board:
  - a. *A Declaration that the present sitting of the said Board as constituted for interviewing Sergeants of Police for possible promotion to the Rank of Inspectors, is ultra vires the provisions of s. 20[1][a] of the Police Service Regulations, 2007.*
  - b. *A Declaration that the said Board, as now constituted, is ultra vires the said provisions of s.20[1] of the Police Service [Amendment] Act, 2007.*
  - c. *An Order terminating the sitting of the said Board with immediate effect.*
  - d. *Alternatively, an order restraining the said Board from continuing to sit, until the hearing and determination of this action, and Actions Cv. 2010-05005 and CV 2010-04226.*
  - e. *An Injunction restraining the said Board from requiring or requesting or inviting the claimants to appear before it in order to be interviewed for promotion.*
4. In his statement of case which accompanied the claim form, Sgt. Barnett alleged that the claimants had already been interviewed by the Promotion Advisory Board, had already been placed on an order of merit list and had been recommended for promotion to the rank of inspector.
5. By Notice of Application filed on 28<sup>th</sup> November, 2011, the claimants sought an injunction restraining the Board from requiring or requesting or inviting the claimants to

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<sup>1</sup> Civil Proceedings Rules 1998 Trinidad and Tobago

appear before it. In the alternative, the claimant sought an order restraining the board from continuing to sit pending the hearing and determination of the action filed herein.

6. The application for an injunction was supported by the affidavit of Sgt. Barnett. On the 1<sup>st</sup> December, 2011, the Honourable Justice Aboud granted an injunction in the following terms:

1. *An injunction is granted restraining the first defendant from requiring or requesting or inviting the claimants to appear before it in order to be interviewed for promotion.*
2. *An injunction is granted restraining the first defendant from preparing and submitting to the commissioner of police an order of merit list for the promotion of Sergeants to the rank of Inspector different from the order of merit list published on 3 March 2008*

7. On 19<sup>th</sup> December, 2011, the defendant filed an application for the partial discharge of the order of Justice Aboud, in the following terms:

*“... the injunction granted by the Honourable Mr. Justice Aboud on the 1<sup>st</sup> December, 2011 restraining the defendant from preparing and submitting to the Commissioner of Police an order of merit list ... be discharged.*

8. The Application of the defendant was based on the ground that there had been material non-disclosure in the application before Justice Aboud. The defendant’s application was supported by the affidavit of Stephen Williams Deputy Commissioner.

9. The law governing the effect of material non-disclosure has been authoritatively considered by the Court of Appeal in ***Brinks Material Ltd v Elcombe*** [1998] 1WLR 1350<sup>2</sup>. In that case Ralph Gibson LJ identified seven (7) principles which govern the obligation to make full and fair disclosure. For the purpose of this application, the first, second and fifth of those are relevant. They are:

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<sup>2</sup> ***Brinks Material Ltd v Elcombe*** [1998] 1WLR 1350

“1. *The duty of the applicant is to make full and fair disclosure of all material facts ...*

2. *The material facts are those which it is material for the judge to know in dealing with the application as made: ...materiality is to be decided by the court ...”*

“5. *If material non-disclosure is established the court will be ‘astute to ensure that a plaintiff who obtains (an ex parte injunction) without full disclosure ... is deprived of any advantage he may have derived by that breach of duty’ ... ”*<sup>3</sup>

10. In its application for the discharge of the Aboud injunction the defendant had identified three incidents of material non-disclosure:

- That the Commissioner of Police had given an undertaking in earlier consolidated actions to keep forty-five offices at the rank of inspector vacant.
- That by section 19 of the ***Police Service Act***<sup>4</sup> 2006 as amended by section 5 of the ***Police Service Amendment Act***<sup>5</sup> 2007 the defendant is required to sit at least once every three months.
- The claimants in the consolidated actions applied for an injunction restraining the Board from conducting or holding interviews ... . The Court refused to grant the injunction because it would have been contrary to law

11. Learned Counsel, Mr. Campbell argued that Justice Aboud had been fully apprised of the items in respect of which there had been a complaint of material non-disclosure.

In respect of the remaining allegations of material non disclosure, Mr. Campbell argued that the Promotion Advisory Board was conducting its statutory functions incorrectly.

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<sup>3</sup> ***Brinks Material Ltd v Elcombe*** [1998] 1WLR 1350 per Gibson LJ

<sup>4</sup> Police Service Act Chapter 15:01 No. 7 of 2006

<sup>5</sup> Police Service Amendment Act No. 13 of 2007

12. The obligation of full and fair disclosure is carried by the applicant who approaches the Court *ex parte*. Such an applicant enters into a contract with the court that it will make full and fair disclosure. See *R v Kensington Income Tax Commissions Exp. Princess Edmond de Polignac* [1917] 1KB 486.<sup>6</sup> Full and fair disclosure of material facts ought to be brought to the attention of the *ex parte* Court in the manner in which allegations of fact are properly brought to the Court's attention that is by way of evidence. In applications for *ex parte* injunctions evidence is put before the court by affidavit.
13. An examination of the affidavit in support of the application for the Aboud *ex parte* injunction reveals that the claimant omitted to alert the court of the undertaking which had been made in earlier consolidated proceedings.
14. The supporting affidavit also failed to disclose that the claimants had sought an almost identical injunction in earlier consolidated applications and that the court had refused to grant it.
15. In my view it would have been a material fact before Aboud J. that the identical injunctive terms had been refused on an earlier occasion. Knowledge of this factor could have conceivably persuaded Aboud J. against granting injunctive relief.
16. Accordingly it is my view and I hold that the claimants in their approach to Justice Aboud for an *ex parte* injunction had failed in their obligation to make full and fair disclosure. Accordingly the Aboud injunction ought to be and is hereby discharged<sup>7</sup>.

Dated this 19<sup>th</sup> day of March, 2012.

M. Dean-Armorer  
Judge<sup>8</sup>

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<sup>6</sup> *R v Kensington Income Tax Commissions Exp. Princess Edmond de Polignac* [1917] 1KB 486

<sup>7</sup> Learned attorneys for the defendants agreed that paragraph 1 of the Aboud injunction should continue. Paragraph 2 the injunction was discharged.

<sup>8</sup> Judicial Research Assistant            Ms. Kendy Jean  
Judicial Secretary                        Mrs. Irma Rampersad