

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2018 – 01436

Between

PAN TRINBAGO INCORPORATED

RICHARD FORTEAU

ANDREW SALVADOR

MICHAEL JOSEPH

DARREN SHEPPARD

ALLAN AUGUSTUS

TREVOR REID

Claimants

And

KEITH DIAZ

GERARD MENDEZ

MARIE TOBY

Defendants

Before The Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Farid Scoon instructed by Mr Saeed Trotter for the Claimants

Mr Frederick Gilkes instructed by Mr Yuri Saunders for the First Defendant

The Second Defendant in person

The Third Defendant, not served, not appearing

Date: 4 May 2018

RULING

1. On 24 April 2018, the claimants brought a claim against the three defendants. The claimants 2 to 7 were all members of the central executive of Pan Trinbago Incorporated. At an extraordinary meeting of Pan Trinbago, they were purportedly removed from office. An interim Committee comprising the 3 defendants and other persons were appointed in their place to administer the affairs of Pan Trinbago until its Convention to be held in September/October 2018 when elections are due to be held. It is to be noted that the first defendant, Keith Diaz, was the President of Pan Trinbago. He too was removed from office, but was appointed to be a member of the interim Committee.
2. The second to seventh claimants filed this claim to challenge the validity of their removal from office. They say the Constitution and bye-laws of the organisation were not complied with in their removal. They have pointed to specific provisions of the Constitution which they say were breached. They have asked in their claim form for declarations to be made that the meeting be considered void; that decisions taken be quashed; and that they be restored to office. They have also asked for damages for breach of contract.
3. At the same time, they applied for injunctive relief that in the interim, until this claim is determined, that the defendants, their servants and agents be restrained from removing, terminating, suspending or displacing them from office or from passing any resolution to remove them from office. They have also asked that the defendants, their servants or agents along with other persons be restrained from exercising the functions of the Central Executive and constituting any interim Committee.

4. Evidence in the form of affidavits were filed by the second and third claimants on behalf of the other claimants. Mr Diaz filed an affidavit in reply. Mr Mendez gave no evidence.
5. Pan Trinbago is the national steel pan governing body. It is incorporated by an Act of Parliament. It is the custodian in a real sense of our national instrument and it is enjoined to promote the best interests of steel bands and members of the steel pan fraternity. It is an important national organisation in its influence and mandate. According to Mr Forteau, its deposed secretary, it receives significant sums of State money. For Carnival 2018 it received over 20 million dollars from the government. The public therefore has an important interest in the proper governance of the organisation.
6. In the affidavits filed on both sides reference was made to alleged financial misconduct against each other. These are, of course, troubling.
7. At this stage the court has to be concerned whether interim relief should be granted. In doing so, the court must consider, where does the balance of justice lie? In this case, is it restoring the status quo, which was that the claimants and the first defendant constituted the Central Executive or whether the interim Committee should remain in place until the elections due between 1 September 2018 and 31 October 2018.
8. I am mindful that if the relief sought is granted, this may, practically speaking, have a significant effect on the claim itself since, as noted, elections are due at latest 6 months from now.
9. In considering where the balance of justice lies, the court has to consider several factors. In the case of **National Commercial Bank Jamaica Ltd v. Olint Corp Ltd (Jamaica) [2009] UKPC 16 (28 April 2009)** Lord Hoffman set out the approach to be taken in deciding if to grant an injunction:

16... It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

17. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the *American Cyanamid* case [1975] AC 396, 408:

“It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.”

18. Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases."

10. In undertaking this analysis of if to grant an injunction, the starting point has to be with the Constitution of Pan Trinbago. Consideration has to be given to the meaning of certain Articles of the Constitution and what these articles mandated. In this sense, this is really a legal question of interpreting the Constitution as a whole, to find out what is the process under the Constitution to remove executive members. As will be shown later, the facts on several matters are not disputed. There is a factual dispute on some matters which are not relevant to the grant of an injunction at this stage and there is one aspect on which there is a significant disagreement. I will come to this later on.

11. Among the objectives of Pan Trinbago is to unite all members and associations worldwide: Article 4. Ordinary membership is restricted to steel bands. Steel bands are represented by delegates. Members must be in good financial standing to be able to vote: Article 6 A. The organisation is structured as the general body, the central executive committee and regional committees. There are four types of meetings of the body: the Convention; the Special Convention; Annual General Meeting and Extraordinary General Meeting: Article 7A. For meetings a quorum of 60% of the financial membership is needed.

12. The Convention is the supreme body of the organisation. It is held every three years. At it, general policy is determined and officers are elected to the Central Executive Committee. A Special Convention can be called for making amendments to the Constitution or to hold bye-elections. The Annual General Meeting is the next layer.

It is below the status of the Convention or Special Convention. At it, rules and regulations may be formulated; annual reports are submitted and considered; it can confirm, vary, or veto any decisions, by-laws or other rules passed during the year by the Central Executive. The final meeting is the Extraordinary General Meeting. This can be summoned by the President by giving all members qualified to attend 28 days prior notice. Further, an Extraordinary General Meeting must be called by the President “within 14 days after delivery to the Secretary... a requisition for the same signed by not less than 60% of the financial membership of the general body and stating the nature of the business to be discussed”. This meeting cannot deal with disciplinary matters pending before the Disciplinary Committee or Appeal Committee. Article 7 IV c also states “nor shall any other matters be discussed or otherwise dealt with at an Extraordinary General Meeting convened for any of the purpose”. This Article is not clear but presumably it means disciplinary matters cannot be discussed.

13. Members of the Central Executive hold office for 3 years. They may hold office “**until his removal from office** or until the next Convention, whichever is sooner”: Article 7 IV Part B 2. This, therefore, seems to allow a member to be removed from office before the next Convention. The Central Executive can also declare a member’s seat to be vacant and fill any vacancy until a by-election is held at a Special Convention.

14. Article 9 sets out the functions of the President. These include to preside over meetings, sign minutes, conduct the executive functions while the Central Executive is not in session, execute all official documents and answer correspondence, delegate powers, among others. At Article 9 A 1 g. he shall be responsible for summoning all meetings “**by giving directions to the Secretary...** for the issue of notices to members entitled to attend same and give relevant particulars of such meetings.

15. The Secretary, by Article 9 A 3, has to co-ordinate and implement decisions of the central executive, issue notices and serve as secretary of meetings of the general body and keep accurate minutes; is responsible for monitoring and keeping of official records of all aspects and activities; initiate and respond to correspondence as directed by the President; print and distribute revised or amended laws; issue

appropriate documentation to members on receipt of certified lists of applicants for membership. For elections he must circulate the agenda, reports, nominations and vacancies; has custody of all the books and papers pertaining to his office, among other duties.

16. The Treasurer has to keep accounts of all money received; issue receipts; deposit money, sign cheques, have custody and be responsible for all financial books etc.

17. Article 10 provides for elections of the Central Executive at the “triennial Special Convention”. The Secretary shall be responsible for the circulation to all members of copies of the agenda of the meeting and all nominations to vacant offices.

18. There are certain disciplinary powers to remove a member from office.

19. These Articles of the Constitution set out a framework for the organisation. Like every Constitution it cannot cater for every eventuality. It is not perfect. There are gaps. Constitutions must be interpreted with traditions and principles in mind. Underlying any democratic Constitution would be principles such as separation of powers, fairness and natural justice.

20. The document has to be read as a whole and given a purposive construction. From the provisions quoted above, the intent is that generally elections should ordinarily be held every three years. However, it does contemplate by-elections and persons being removed from office, such as by disciplinary proceedings. Elections are specifically provided for at Special Conventions or the Convention. The Constitution does not say elections are prohibited from Annual General Meetings or Extraordinary General Meetings. What, however, is noteworthy is that certain powers are specified for the Annual General Meeting. None are specified for Extraordinary General Meetings but there is a specific prohibition from dealing with disciplinary matters. The tenor of the Constitution tends to suggest that these two latter meetings are not for the election of officers.

21. However, I do not necessarily think that this would prevent the removal of members of the Central Executive if there was found to be good grounds for so doing. It would be overly restrictive to suppose that a Constitution would fetter the powers of its members in general meeting from voting to remove its officers if there is sufficient cause to do so. To hold otherwise would make the officers untouchables. No democratic organisation which depends on its constituent members for its validity could elevate its officers, who are there to serve its members, to such a pedestal that they cannot be removed for good cause. It would mean that officers who embark on rogue conduct could only be called to book at the Convention or Special Convention. Counsel for the claimants has submitted that the most the members can do is to pass a vote of no confidence. However, the members would have to remain in office until such time as a Convention is called. What is more, is that the officers in whom no confidence has been shown will now have to arrange the Convention for the election of officers. I do not think that would be a reasonable construction of the Constitution.

22. However, assuming a no confidence vote triggers vacancies by resignations, it seems to me that what would then ordinarily follow, in accordance with the Constitution, would be the holding of a Special Convention to fill the spaces by way of by-election. In a situation where the members had been accorded proper notice and there was existing the 60% quorum, there could be no objection in principle for the Extraordinary General Meeting to constitute itself as a Special Convention to facilitate the election of officers to fill the spots occasioned by the removal of members. This it would be doing out of necessity to ensure there was continuity to the operation of the organisation. There is no prejudice as such for this next step to be taken if the members have removed its Central Executive from office.

23. Removal of members from office is, of course, a drastic and extraordinary step. It deals a body blow to the organisational structure. When members are duly elected, it is normally expected that they will serve for the term of office they have been elected to. If there are requirements to be fulfilled as to how they are to be removed from office, the steps have to be followed carefully and scrupulously. While they do not have a right to office, they do have an expectation that they will not be removed except by the process as expressed in the Constitution. The validity of any meeting held is one aspect of due process.

24. The next point that arises from the Constitution concerns the powers of the respective office holders. A Constitution is often written so that power is balanced. Power is given to the Central Executive as a body with each member having one vote and the President having a casting vote. But each person has different functions. These are specified in the Constitution for the main officer holders concerned here. What is clear from the Constitution is that the Secretary has the responsibility for keeping and maintaining the records of the membership. In doing this he or she must liaise with the Treasurer who has the duty of keeping records of money received and issuing receipts. Since the by-laws provide for a membership fee for steel bands as well as an annual fee payable, there will necessarily have to be collaboration among these two office holders to certify the proper list of financial members.
25. The Constitution also provides that the President is to summon meetings by giving appropriate directions to the Secretary. The Secretary has the duty to issue notices. This makes perfect sense since he is the custodian of the membership list, this being an essential part of the records of the organisation. Thus he is also required to issue notices of agenda for elections. It is not the function of the President to do so. A critical part of issuing notices would be the duty to do so only to financially up to date members. There are several parts of the Constitution which provide for this and indicate that voting is restricted to financial members. It must be implied that they would have to be in good standing. From the records the duty of the Secretary will include to identify the correct number of members for the purpose of a requisition for an Extraordinary General Meeting.
26. It goes without saying that powers can be exercised, but it must be done in a manner that complies with the requirements of the Constitution in both the letter and spirit of it.
27. The next question is whether 14 days' notice is adequate notice for an Extraordinary General Meeting. Other meetings require 28 days' notice. It seems to me that by its very nature, special provision was made for the holding of an Extraordinary General Meeting. The notice period is patently shorter. The Article begins, "without prejudice to the foregoing..." The Article intended to convey that there must be

some urgency. There could be no point in saying the President must call the meeting within 14 days so that an additional 28 days' notice would have to be given. That would mean that for all other meetings 28 days' notice was sufficient. However, for an Extraordinary General Meeting the President could wait 14 days to then issue the directive to the Secretary to give 28 days' notice. The extraordinary would then become less than ordinary. In my view, therefore, under the relevant Article 14 days' notice is what is needed for the Extraordinary General Meeting.

28. These observations on the Constitution actually resolve some of the matters for which there is no factual disagreement.

29. This then takes me to consideration of the evidence. As indicated, there were some troubling features. I however will confine myself to reviewing those parts of the evidence which are necessary to consider in light of the findings on the law stated above.

30. Richard Forteau, the deposed Secretary, filed an affidavit on behalf of claimants 2 to 7. He stated the ordinary membership is 298 steel bands. He noted the treasury collects membership dues. They maintain an "X" list. This is electronically controlled and supplied to him on request. When a meeting is convened the staff members are deployed to verify the bona fides and register qualified attendees to the meeting. In regard to the Emergency General Meeting held on 17 April 2018, after receiving the requisition for the meeting the Central Executive, minus Mr Diaz, analysed the composition of the requisition list. This they found did not meet the 60% number. Letters were sent to members that the requisition did not meet the 60% number. Nonetheless the defendants and others went ahead with the meeting.

31. At paragraph 40 Mr Forteau set out his analysis of the composition of the members. He noted there were 298 registered members. He noted that there were 179 unsponsored steel bands who received government funding. He added to that 25 sponsored bands giving a total of at least 204 financial members. The number of requisitions needed would therefore have been 122. Based on removing: names that should not have been on the list; bands which wrote saying they did not support

the requisition; bands which appeared more than once on the list; and bands listed which were not financial; the number of bona fide requisitions was 85. This therefore fell far short of the 122 he considered necessary to call the meeting.

32. Mr Diaz gave an affidavit disputing this. In it he stated he received the requisition. He set out himself to cross-check the members and he obtained from the clerk at Pan Trinbago the register of members in good financial standing. After inspecting it he found there were 115 members registered in the clerk's book. He observed 62 financial members had signed the requisition. He said he also cross-checked this with the list of steel bands which took part in their Panorama competitions. It is the practice he said that bands which take part are considered to be "de facto financial members". Of those that took part, 79 were bands that signed the requisition.

33. Now from his count 62 would not have met the 60% requirement. However 79, counting the de facto financial members, would if his 115 number of financial members is considered.

34. There is therefore a stark issue of fact in relation to this matter. That cannot be resolved at this stage. The deponents may have to be cross-examined. Additionally, the claimants did not get an opportunity to respond to this affidavit because it was filed on the date of the injunction hearing. I note that Mr Forteau's affidavit is however supported by evidence of a letter sent to the Permanent Secretary of the Ministry of Community Development and Culture on 13 November 2017 identifying 179 unsponsored bands for funding for Carnival 2018. Presumably Pan Trinbago would advocate for its up to date financial members. Mr Forteau's number of financial members signing the requisition is also slightly higher than Mr Diaz's count. While no definitive conclusion can be made at this stage the strength of the evidence does appear to be on the side of the claimants as far as the number of members necessary for supporting a valid requisition is concerned.

35. More significantly, however, the Secretary had the responsibility for settling the number of financial members. Clearly the relations between Mr Diaz and other members of the executive were not good. But it could not have been his function

to usurp the role of the Secretary in terms of validating the requisition. He was not the person in control of the finances or the membership list. And while it was his duty to call the meeting, he was doing so as part of an executive body. He was but one member. Thus he could not act on his own without the input of the majority of the members of the executive. He also gave evidence of calling a meeting of members before this Extraordinary General Meeting on 27 March 2018. The meeting he called was not one recognised under the Constitution structure which provides for 4 types of general meetings. While he could meet with members, this could not be considered to be an official meeting of the organisation.

36. The number of financial members signing the requisition is critical to the validity of the vote that was eventually taken at the meeting to remove the Central Executive. The Constitution provided that the meeting could be called if 60% of the financial members requested it. If less than 60% requested the meeting it would not have been a valid meeting in accordance with the requirements of the Constitution. If it was not a valid meeting then the Central Executive could not be voted out. This really is the important issue in this case.

37. Further, if the injunction is granted there would be no substantial prejudice to the first defendant. The status quo would result in him remaining a member of the Executive. The other members of the interim Committee were not members of the Executive before. Thus they would return to their non-executive status. On the other hand, the claimants have been removed. The status quo would return them to office until the matter is determined. The prejudice of the injunction not being granted is greater to the second to seventh claimants than it is to the defendants. I have also considered that if the claimants succeed eventually, and the injunction is not granted, it may mean the organisation would be administered by persons who had no lawful authority to do so. If the defendants succeed, the lawfully elected officers will have to step aside, albeit this process would be delayed.

38. This also is not a case substantially about damages or compensation. An award of damages later on would not likely be an adequate remedy.

39. At this stage, therefore, the balance of justice lies in favour of granting an injunction until this matter can be determined.

40. An issue was raised by Counsel for the first defendant about whether Pan Trinbago Incorporated can be a claimant. The decisions taken at the 17 April meeting were taken in the name of Pan Trinbago. It was, therefore, notionally a decision of Pan Trinbago acting through members. I therefore agree that Pan Trinbago cannot be a claimant against itself. The action having been taken by its members it appropriately ought to be a defendant, even if a nominal one. The claim should proceed against Pan Trinbago and the members of the interim Committee assuming they continue to defend the actions taken at the 17 April meeting.

41. Under the Civil Proceedings Rules, the court has wide powers to make orders for the proper conduct of the claim to do justice among the parties. I would therefore strike out Pan Trinbago Incorporated as the first claimant and add it as the first defendant. I will grant permission to the claimants to add other defendants as necessary.

42. In respect of the application for interim relief the order will be as follows.

(i) An interim injunction is granted until the determination of this matter restraining the defendants and their agents acting together with other persons from removing or displacing the second to seventh claimants from their offices as members of the Central Executive of Pan Trinbago.

(ii) An interim injunction is granted restraining the defendants or their agents from constituting themselves as an interim Committee or Executive of Pan Trinbago Incorporated.

(iii) The status quo prior to the meeting of 17 April 2018 is to remain until further order.

43. The issue of costs is reserved until the determination of this claim.
44. In light of the matters raised above, I will hear the parties on whether an expedited trial should be ordered with respect to one critical issue which is whether there was a valid 60% requisition and 60 % quorum sufficient to validate the meeting held on 17 April 2018. I also urge the parties to sit and discuss a way forward from this point. One option may well be to bring forward the election of officers. There are ways such a special Convention can be triggered. The parties should also think about whether it may be a better option to find a way to work together in the interim leading up to the next election of officers. In this regard, the parties should consider engaging a mediator or conciliator to work through some of the issues among them. I am sure there are persons respected by the various parties who would be willing to offer their expertise to the national steel band body.
45. Finally, I note that some disturbing allegations are being raised on both sides. It has not been necessary to identify them and at this stage it is not for me to make findings of fact on them. I would hope, however, that from now on it will not be business as usual, but that some consideration will be given to the fact that a substantial number of members, whether or not they met the high 60% threshold to call the meeting, did feel sufficiently moved to express their dissatisfaction with how the organisation has been managed. The executive members might well remind themselves that they were elected to serve and they are required to do so with integrity, competence and skill.

Ronnie Boodoosingh

Judge