

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO 362 OF 2004

BETWEEN:

GRAHAM FERGUSON LACEY

Claimant

And

ABRAHAM ZION
SEA SHELLS REEFS LTD

Defendants

Appearances:

Dr. Richard Cheltenham QC with Mrs. Nelleen Rogers-Murdoch for the Claimant
Mr. Anthony Astaphan SC with Mr. Kendrickson Kentish for the First Defendant
Ms. E. Ann Henry and Ms. C Debra Burnette for the Second Defendant

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2006: May 17th
June 19
August 17th
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JUDGMENT

[1] **Blenman: J;** This is a ruling on a preliminary issue as to whether or not an Agreement is admissible in evidence.

Background facts

[2] Sea Shells Reefs Limited (Sea Shells) is a company that owns freehold title to land (the Property) situate in Antigua and Barbuda. The property that is held by the Company is referable to shares.

[3] Mr. Graham Ferguson Lacey (Mr. Lacey) entered into an Agreement on 5th March 2004 (the Agreement) with Mr. Abraham Zion (Mr. Zion) to purchase shares in the Company. Mr. Zion is alleged to have acted on behalf of Sea Shells.

- [4] By virtue of Clause 2 of the Agreement, Mr. Zion, agreed to sell the shares to Mr. Lacey for a purchase price of seven million five hundred thousand United States Dollars (USD\$7,500,000.00) (the purchase price).
- [5] Clause 3 of the Agreement states that:
- "the purchase price will be payable in full on completion by way of a 12 – month Purchase Money Mortgage" (the Purchase Money Mortgage") denominated in United States dollars guaranteed by vendors and secured over the shares but without any personal guarantee, carrying interest at the rate of 10% per annum payable monthly in advance. Completion shall take place no later than 10th June 2004."
- [6] Clause 1 of the Agreement required Mr. Lacey to pay Mr. Zion a non refundable deposit of US\$100,000.00 and in consideration Mr. Zion was required to grant Mr. Lacey the right, for a period of 90 days to expire on 3rd June, 2004, to conduct a due diligence study.
- [7] There is no dispute of the fact that on 5th March 2004 Mr. Lacey paid Mr. Zion the sum of US\$100,000.00
- [8] A series of difficulties ensued between the parties and several attempts were made with a view of resolving them. One of the recommended methods of resolving the disputes resulted in Mr. Lacey giving Mr. Zion a memorandum proposing an Agreement to complete the transaction by the direct purchase of Sea Shells' property instead of the purchase of the shares that were referable to the property. The dispute, however, remained unresolved.
- [9] On 10th June 2004, Mr. Lacey sent a cheque in the sum of US\$62,500.00 to Mr. Zion towards the first interest payment.
- [10] As a consequence, the issue arose as to whether the Agreement contemplated that Mr. Lacey should pay only US\$62,500.00 as an interest payment or whether Clause 3 of the Agreement required Mr. Lacey to effect payments equivalent to one twelfth of the agreed purchase price.

[11] It is alleged that by the 10th June 2004, Mr. Lacey did not pay Mr. Zion one twelfth of the purchase price and by letter dated June 10, 2004 Mr. Zion wrote Mr. Lacey terminating the Agreement. Mr. Zion replied that “the due diligence period” expired on June 3, 2004, since the purchaser was required to issue 12 notes payable on a monthly basis in advance and being a proportion of the purchase price. Subsequent correspondence between Mr. Zion and Mr. Lacey continued in relation to the termination of the agreement and with no resolution in sight, on June 11, 2004 Mr. Lacey caused a caution to be placed on the property owned by Sea Shells.

[12] On 16th September 2006, Mr. Lacey filed a claim against Mr. Zion and Sea Shells in which he sought among other reliefs specific performance of the Agreement. Pleadings were exchanged and directions were given by the Court. On the 9th May 2006, Mr. Lacey filed a core trial bundle which contained the pleadings and other documents including an unstamped copy of the Agreement. Later, Mr. Lacey applied for summary judgment and after a hearing the Master refused his application.

[13] Subsequently, Thomas J, gave directions for trial and ordered submissions to be filed and exchanged.

[14] On 17th May 2006, thereafter, the trial came up for the hearing of the substantive matter.

The Hearing

[15] On the morning of the trial Learned Senior Counsel Mr. Anthony Astaphan, appearing on behalf of Mr. Zion, indicated to the Court that he had filed on the previous afternoon supplementary submissions on points of law, on behalf of Mr. Zion. He was of the view that the Court may have wished to have sight of the submissions since they addressed preliminary issues of law that should be determined before embarking on hearing of the substantive matter.

[16] Learned Queen’s Counsel, Dr. Cheltenham appearing on behalf of Mr. Lacy, acknowledged that he had received the supplementary submissions.

- [17] Learned Queen's Counsel both agreed that the issues before the court were:
- (a) Whether the agreement was admissible in evidence;
 - (b) What is the proper interpretation of Clause 3 of the Agreement?
- [18] Mr. Astaphan submitted that should the Court rule that the Agreement is inadmissible the matter should not go further. Dr. Cheltenham was of the contrary view.
- [19] The Court not having a sight of the supplemental submissions rose for a few minutes in order to peruse the submissions. On resumption of the Court, having read the submissions, I ruled that the issue of the admissibility of the Agreement should be ventilated as a preliminary issue.
- [20] During the resumed hearing Mr. Astaphan indicated to the Court that during the rising of the Court for a few minutes, Dr. Cheltenham had given him a copy of the Agreement that had an Inland Revenue Stamp and written below the stamp was the date May 17, 2006. Attached to the copy of the Agreement was a letter which Senior Counsel described "*as strange and unlawful.*" The letter is dated 16th May 2006 and addressed to the Commissioner Inland Revenue. The caption of the letter is "Solicitors' Undertaking" and was written to the Commissioner of Inland Revenue by Mrs. Neleen Rogers-Murdoch counsel appearing on behalf of Mr. Lacey. It states thus:
- "Further to our discussion with your regarding the stamping of the agreement attached hereto we hereby undertake to pay the sum of \$1,518,750.00 being stamp duty assessed thereon, within 5 days of the letter.**
- [21] Mr. Astaphan complained that the letter is highly irregular and that the Court should not take any cognizance of the copy of the Agreement which purports to bear the Inland Revenue's Stamp since it is unlawful in so far as the Agreement had now been stamped but no duty was expressly referred to. The duty was referred to in the attached undertaking by Mr. Lacey's solicitor which indicated her commitment to pay the Commissioner the sum of \$1,518,750.00.

[22] The Court heard arguments and reserved its ruling. By letter dated May 29th 2006 and copied to Mr. Astaphan, Dr. Cheltenham wrote the Registrar and requested that the parties be invited to further address the Court due to new developments in the matter since the last hearing which would necessitate such a course being taken.

[23] It is undisputed that subsequently to the hearing of the matter on 17th May 2006, the Commissioner of Inland Revenue again assessed the Agreement and further stamped the Agreement in the sum of EC\$20,000.00 as opposed to EC\$1,518,750.00 Mr. Lacey paid the duty in the sum of \$20,000.00 A copy with the Agreement with the Commissioner of Inland Revenue's further stamp was delivered to the Court on the 29th May 2006.

[24] The Court was of the view that it was necessary to hear further arguments as requested and fixed the 19th June 2006 for further hearing. On that date, the parties requested and were granted leave to place further submissions before the Court.

[25] The parties have dutifully complied with the Court's order and submitted additional written arguments. The additional submissions addressed the effect of this new assessment.

Issue

[26] The issue that arises for the Court's determination is whether or not the agreement is inadmissible in evidence. In addressing that issue the Court of necessity has to resolve the following sub-issues namely:

- (a) Whether the Agreement breaches the Stamp Duty Act Cap 410 of the Laws of Antigua and Barbuda (the Stamp Duty Act) and or,
- (b) Whether it violates the Registration and Records Act, (the Registration Act) Cap 373 Laws of Antigua and Barbuda.

Law

[27] At this juncture, I would refer to the Registration and Records Act Cap 373 Laws of Antigua and Barbuda (the Registration Act).

Section 2 of the registration Act defines:

“Deed” to include every document in writing affecting or relating to lands, tenements, or hereditaments in Antigua and Barbuda.”

[28] Section 4 of the Registration Act states that:

“No deed shall be received in evidence in any proceeding whatever, whether at law or equity, in Antigua and Barbuda unless such deed shall have been duly registered.”

[29] Section 6 of the Registration Act states that:

“Every deed shall be lodged in the Record Office of Antigua and Barbuda, for registration, within the time hereinafter limited, that is to say –

If executed within Antigua and Barbuda, within three months after execution:

If executed anywhere out of Antigua and Barbuda, within twelve months after execution:

Provided that any Judge may, on cause shown, order any deed to be registered notwithstanding its not having been presented for registration within the time hereinbefore limited; and, in such case, a copy of the order of the court shall be attached to the deed and registered therewith. In the case of deeds executed before the coming into operation of this Act, the same shall be received for registration without the Judge’s order required by this section.”

[30] Section 8 of the Registration Act states that:

“All deeds executed in Antigua and Barbuda and intended for registration therein shall be proved by the oath or affirmation of one of the witnesses, or acknowledged by the grantor, before the Registrar, and such proof or acknowledgement shall be indorsed, on the deed, and attested by the Registrar.”

[31] Section 12 of the Registration Act states that:

“All deeds intended for registration in Antigua and Barbuda which shall be executed in any foreign State whatsoever, shall be proved by the oath or affirmation of one of the witnesses, or shall be acknowledged by the grantor, before Her Majesty’s ambassador, Envoy, minister, Charge d’ Affaires, or Secretary of Embassy or Legation, exercising his functions in such foreign state, or before her Majesty’s consul General, Consul, or any Vice

Consul, or Acting Consul or Consular Agent of her Majesty, exercising his functions in such foreign state, and certified under the hand and seal of such ambassador or other officer, used in his said public capacity, or under the hand and private seal of such functionary if there be no public seal, the absence of which shall be certified."

[32] The Stamp Duty Act is also relevant to the matter.

[33] Section 3 of the Stamp Act defines "Commissioner" to mean the officer for the time being performing the duties of Commissioner of Inland Revenue and includes any officer duly authorized to act on his behalf.

[34] "Executed" and "execution" with reference to instruments not under seal mean signed and signature.

"Instrument" means every written document.

"Stamp" means as well a stamp impressed by means of a die, as an adhesive stamp, and make and issued under the authority of this Act.

"Stamp duties" means duties charged and imposed under this act and set forth in the Schedule and any other stamp duties that may by an Act be charged and imposed.

"Stamped" with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die, as to instruments and material having adhesive stamps affixed thereto.

[35] Section 13 of the Stamp duty Act states that:

"All the facts and circumstances affecting the liability of any instrument to *ad valorem* duty, or the amount of the *ad valorem* duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud Her Majesty, or Her Heirs or Successors:-

(a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth;

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances;

shall forfeit the sum of five hundred dollars.”

[36] Section 18 of the Stamp Duty Act provides that:

“Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and penalty of five hundred dollars, and also by way of further penalty, where the unpaid duty exceeds fifty dollars, of interest on such duty, at the rate of eight per centum per annum, from the day on which the instrument was first executed, up to the time when such interest is equal in amount to the unpaid duty; and the payment of any penalty or penalties, is to be denoted on the instrument by a particular stamp.

Provided that any unstamped or insufficiently stamped instrument which has been first executed at any place out of Antigua and Barbuda may be stamped, at any time within two months after it has been first received in Antigua and Barbuda, on payment of the unpaid duty only.”

[37] Section 20 (1), of the Stamp Duty Act “states that upon the production of any instrument chargeable with any duty as evidence in any Court of Civil judicature in Antigua and Barbuda, the officer whose duty it is to read the instrument shall call the attention of the Judge to any omission or insufficiency of the stamp thereon and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the amount of the unpaid duty and the penalty payable by law on stamping the same, as aforesaid, and of a further sum of one dollar and twenty cents, be received in evidence, saving all just exceptions on other grounds.”

(2) The officer receiving the said duty and penalty shall give a receipt for the same; and make any entry, in a book kept for the purpose, of the payment and of the amount thereof, and shall communicate to the commissioner the name or title of the cause or proceeding in which, and of the party from whom, he received the said duty and penalty, and the date and description of the instrument, and shall pay over to the said Commissioner, or to such other person as the said commissioner may appoint, the money received by him for the said duty and penalty.

(3) Upon production to the said Commissioner of any instrument in respect of which any duty or penalty has been paid

as aforesaid, together with the receipt of the said officer, the payment of such duty and penalty shall be denoted on such instrument accordingly.”

[38] Section 21 of the Stamp duty Act states that:

“Save and except as aforesaid, no instrument executed in any part of Antigua and Barbuda, or relating wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of Antigua and Barbuda, shall except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.”

Mr. Zion’s Submissions

[39] Learned Senior Counsel Mr. Astaphan submitted that a perusal of the claim form would reveal that the matter “affects” or “relates” to sale of freehold properties. He adverted the Court’s attention to paragraphs 5 of the claim form and also paragraph 7 of the claim form in support of his argument that the matter before the Court is one that affects land and/or relates to land in Antigua and Barbuda. In effect the substantive claim before the Court is for the specific performance of the Agreement for the sale of land.

[40] Mr. Astaphan further submitted that the Agreement is a contract in writing affecting or relating to lands in Antigua and Barbuda. Mr. Lacey was required to register the Agreement and pay stamp duty under the Registration Act and section 4 of the Stamp Act respectively.

[41] Section 4 of the Registration Records Act clearly prohibits the Court from receiving into any proceedings and deed whether at law or equity unless such deed shall have been duly registered.

[42] Section 4 above read together with section 21 of the Stamp Act, Mr. Astaphan stated, clearly prevented the Court from admitting the Agreement into evidence. I restate that Section 21 of the Stamp Act states that:

“Save and except as aforesaid, no instrument executed in any part of Antigua and Barbuda, or relating, whosesoever executed,

to any property situate, or to any matter of thing done or to be done, in any part of Antigua and Barbuda shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed."

- [43] Mr. Astaphan reinforced that the Agreement was one for the sale of real property referable by shares. Mr. Lacey in his original submissions had stated that in substance the Agreement was one for the sale of real property, albeit through the sale of shares in the company owning such property. Further, Mr. Astaphan said that Mr. Lacey in his submissions said that "the transaction was akin to a contract for the sale of property where time is not usually of the essence." This was clear concession on behalf of Mr. Lacey as to the true nature of the Agreement. The Court should not allow the Agreement to be placed in evidence since it violates both the Registration Act and the Stamp Act.
- [44] In support of his contention on the inadmissibility of the Agreement Mr. Astaphan relied on the judgment of **Sengupta v. Woods Development Limited CA No 20 of 2003** in which Mr. Justice of Appeal Gordon at paragraph 7 said *"Let it be said at first that the law is clear that even where parties choose not to take the point of the inadmissibility of an unstamped document that requires stamping, there is a duty on the court not to admit such a document. Undoubtedly, the thinking behind such a rule is that the Court should not lend itself to be part of an action that is a fraud on the revenue of the State."*
- [45] And, in **King's Casino Limited v Pizza House Limited CA No 3 of 2005** Mr. Justice of Appeal Barrow after referring to the relevant provisions of law stated in paragraph [3] of his judgment, that at paragraph [4] that *"Mr. Watt Q.C. Counsel for the respondent, conceded that the judge erred in receiving the unregistered and unstamped lease into evidence and in allowing the respondent to place any reliance on it."*
- [46] Mr. Astaphan advocated that under the law of Antigua and Barbuda therefore is that unless a written agreement "affecting or relating to land" registered and stamp duty paid that Agreement cannot be admitted into evidence in any proceeding.

[47] For the reasons mentioned above, Mr. Astaphan argued that Mr. Lacey is not entitled to any relief since the admission of the Agreement it is essential to his claim and Mr. Astaphan maintained that in accordance with Section 21 of the Stamp Act, the Agreement shall not be pleaded or given in evidence unless duly stamped.

Commissioner's Assessment

[48] Mr. Astaphan further argued that the Commissioner has no power to reassess the duty payable on the Agreement in so far as it was already assessed at EC\$1,518,750

[49] Mr. Astaphan relied on **Cape Brandy Syndicate v IRC (1921) 1 KB 64** and **Reynolds v Income Tax Commissioner (1964) 7 WIR** in support of his submission that tax statutes must be strictly interpreted and given the meaning expressed. The language of statute is clear and unambiguous and the Court must give effect to the ordinary meaning of the words.

Sea Shells' Submissions

[50] Learned counsel Ms. E. Ann Henry on behalf of Sea Shells rose in support of the submissions advanced by Mr. Astaphan and also submitted that the Agreement is inadmissible in evidence.

Mr. Lacey's submissions

[51] Dr. Cheltenham urged the Court to admit the Agreement into evidence since there could be no doubt that it was stamped by the Commissioner and the duty assessed was paid. The Agreement is clearly one for the sale of shares and the Court ought not to be concerned with the result of the transaction.

[52] Dr. Cheltenham disagreed that Mr. Lacey in his skeleton submissions conceded that the Agreement was one for the sale of land. At all times the matter was ventilated on the basis that the Agreement was one for the sale of shares and not for the sale of real property.

- [53] Learned Queens Counsel ,Dr. Cheltenham initially submitted on behalf of Mr. Lacey that the Agreement is admissible in evidence in its present form. There is no breach of the Stamp Act on the face of the Agreement. He argued that the Agreement has been stamped by the Commissioner and is therefore admissible in evidence. The Agreement was then stamped and the sum of \$1,518,750.00 was stated as the assessed duty in the letter of undertaking by Counsel Mrs. Rogers-Murdoch.
- [54] The Court has no jurisdiction to go behind the Commissioner's Stamp and to seek to determine whether the duty has been paid or not or whether the duty charged has been lawfully done. Dr. Cheltenham further advocated section 18 of the Stamp Act has no relevance to the matter before the Court for the reason that the Court now has in its possession a stamped Agreement.
- [55] Dr. Cheltenham maintained that the Agreement is admissible in evidence in so far as there has been no breach of section 21 of the Stamp Duty Act which provides that "*no instrument relating wheresoever executed to any property situate, or to any matter or things done or to be done, in any part of Antigua shall be pleaded or given in evidence or admitted to be good, useful or available in loss or equity, unless it is duly stamped in accordance with the law in force at the time when it is executed.*"
- [56] Dr. Cheltenham further submitted that the Court should not concern itself with alleged matters of ultra vires in relation to the Commissioner of Inland Revenue. He posited that it would be wrong for the Court to seek to go behind the stamp once the Court is satisfied that the Agreement has been duly stamped by the Commissioner.
- [57] Later, the Agreement having been stamped and duty in the sum of \$20,000.00 having being paid Dr. Cheltenham then argued that since the Commissioner had now stamped the Agreement and assessed the duty as EC\$20,000 which duty was paid, the Agreement was admissible in evidence.

Court's Analyses and Findings

- [58] The cardinal rule of statutory interpretation is that the words in a statute must be given their literal meaning unless there is a specific reason to do otherwise. I agree with Mr. Astaphan that taxing legislation must be given their expressed meaning unless there is good reason for doing otherwise.
- [59] I am guided in my determination of this matter by the principles very helpfully enunciated in **Sengupta v Woods Limited** *ibid* together with those stated in **King's Casino Limited v Pizza House Limited**.
- [60] I have further reviewed the legislation together with the very helpful submissions of both Senior Counsel and am of the considered view that it is no part of my function to go behind the Commissioner or Inland's Revenue's stamping in this preliminary application. The situation would have been very different if what was being called into question is the propriety of the Commissioner's action for example by way of review of his decision. This is not such a case.
- [61] In the case at Bar, the Court is required to ensure that the Agreement is stamped before it can be admitted into evidence and even though Mr. Astaphan's argument is very attractive with respect, I am not persuaded that I should in the case at Bar seek to determine whether the Commissioner has stamped the correct duty on the Agreement. The Court is only concerned to ensure that any document that is admitted into evidence is stamped by the Commissioner with the duty he has assessed. Once there is compliance in this regard the Court can go no further and seek to determine whether the assessment is accurate. In my view there is nothing before the Court on which I can properly conclude that there appears to be a fraud on the revenue.
- [62] On the face of the Agreement it is been stamped by the Commissioner of Inland Revenue. I respectfully disagree with Mr. Astaphan that I should seek to prevent the Agreement from being admitted into evidence since the Commissioner has no power to reassess under the Stamp Act.

[63] I am not prepared to make any findings in the absence of the evidential basis for doing so and in this matter there is no evidence before the Court to show the Agreement has not now been stamped by the Commissioner with the correct duty and Mr. Lacey that the duty assessed paid.

[64] Accordingly, I am not of the view that the Agreement violates the Stamp Duty Act.

Mr. Zion's Submissions on the Registration Act

[65] Mr. Astaphan stated that section 4 of the Registration Act is clear and that "*no deed shall be received in evidence in Antigua and Barbuda unless such deed shall have been duly registered.*"

[66] Senior Counsel argued that the Agreement is a deed in accordance with Registration Act and states that "deed" includes every document in writing affecting or relating to land in Antigua and Barbuda. He said that the Court should have no doubt that the Agreement "affected" or "related" to lands in Antigua and Barbuda even though it was through the sale of the shares owned by Sea Shells. The shares were directly referable to the property.

[67] Further, Mr. Astaphan said that Dr. Cheltenham in his written submissions filed on behalf of Mr. Lacey had conceded that the issue before the court relates to the sale of land. Mr. Astaphan said that it would not be proper to allow Queen's counsel to resile from that position.

Mr. Lacey's submissions on Registration and Records Act

[68] Dr. Cheltenham countered that the Court in seeking to determine whether the Agreement is a deed in accordance with definition of "deed" the Registration Act must ask itself what is the nature of the transaction and not concern itself with the purpose of the transaction. He stated that the pleaded transaction before the Court has to do with a claim for specific performance in relation to the purchases of shares in a company. The Court should not

"leap frog" and say that since the ultimate aim of the transaction is secure real estate therefore the Agreement is a deed.

- [69] For his part, Dr. Cheltenham was adamant that the transaction relates to personalty and does not fall within the definition of "deed" in the Act. He further argued that the Agreement does not "affect land" as is required by the Registration Act. In so contending, Dr. Cheltenham relied on **Re Bluston, Bluston v Davis and Another [1966] 3 ALL ER 22** for the interpretation of "affecting land."
- [70] Dr. Cheltenham submitted that section 4 of the Registration Act has no application or relevance to the matter engaging the Court's attention. The Agreement ought to be admitted in evidence since it was not required to be registered.
- [71] Dr. Cheltenham said "relating to "land means directly related and not indirectly related. The purchase of shares does not affect the ownership of the land. The interest in the land would have had to be altered in order for the Agreement to be construed as a deed in accordance with the Registration Act.
- [72] Dr. Cheltenham said that the sale of shares in the company has no effect on the ownership of the land. The ownership of the land remains in the company. He maintained that the Agreement does not "relate to" land or "affect" land.
- [73] Further, he argued that the failure to register the deed is not fatal. The Agreement need not have been registered. He maintained that it is admissible in evidence.
- [74] Further, Dr Cheltenham advocated that the words "affecting land" and/or "relating to" land must be given restrictive interpretations. They must not be construed as being applicable or concerned with the recording or registration of share transactions rather the words ought to be given a restrictive interpretation. In support of his contentions he relied on the following cases namely **Half Moon Bay Ltd v Crown Eagle Hotels Ltd (2002) UKPC 24**; **Heywood v BDC Properties Ltd (No. 2) [1964] 1 WLR 267**; **Regan and Blackburn Ltd v**

Rogers [1985] 1 WLR 870; Haslemere Estates Ltd v Baker [1982] 1 WLR 1109 and Federated Homes Ltd v Mill Lodge Ltd [1980] 1 WLR. In Heywood v BDC Properties Ltd (No.2) [1964 1 WLR 267, Plowman J, had to consider the words “relating to land” in section 2(1) of the Land Charges Act 1925 which defined a pending action, which was registrable as a land charge, as any action, information or proceeding pending in Court relating to land or any interest in or charge on land. The judge reviewed various early authorities and concluded that the words “relating to land” were confined to an action in which a claim to land or an interest in land is asserted. In doing so, he adopted a restrictive interpretation of the words “relating to land”. Thus if there had been a claim to shares in a company whose sole asset was land (which was not the situation in that case but is the situation in the present case), that would not in the mind of the Judge have constituted an action relating to land or an interest in land.

- [75] In **Regan & Blackburn Ltd v Rogers [1985] 1 WLR 870**, Scott J. (as he then was) held that an action for damages for breach of a repairing covenant in a lease did not come within the definition of an action relating to land or any interest in land; and he also emphasized at p.873 that those words were very broad and could not be given their full literal meaning but that there had to be some restriction on the type of action which came within the proper meaning for registration purposes.
- [76] In **Haslemere Estates Ltd v Baker [1982] 1 WLR 1109**, Sir Robert Megarry V.-C. again had to decide whether the claim in question came within the definition of an action relating to land or any interest in or charge on land. He held at p.1119 that a claim to money did not become a claim to an interest in land just because when the claim to the money was launched the plaintiffs sought an order that until payment the money should be a charge on the site. Again this shows a restrictive interpretation to the proper construction of the expression “relating to land or any interest in or charge over land” in the context of a statute regulating registration of land transactions.
- [77] In **Federated Homes Ltd v Mill Lodge Ltd [1980] 1 WLR 594**, a decision of the English Court of Appeal, consideration was given to section 78 of the Law of Property Act 1925

which deals with restrictive covenants and subsection (1) of which refers to “A covenant relating to any land of the covenantee”. At page 604, Brightman L.J paraphrased this expression as equivalent to “the old-fashioned expression, that it touched and concerned the land”. The fact that the Court in that case treated the expression “relating to the land” as equivalent to “touching and concerning the land” confirms that the expression refers to a direct connection with the land itself rather than, for example, a direct connection with a company which in turn owns the land in question.

[78] Alternatively, Dr. Cheltenham argued that section 6 of the Registration of Records Act provides that any judge may order such document to be registered notwithstanding it has not been presented for registration within twelve months after execution. He stated that the just and proper course is for the Court to order such registration so that by the time of the hearing of the substantive issue the Agreement will have been registered.

Court’s Analyses and Findings

[79] I have carefully considered the parties respective submissions in relation to whether or not the Agreement in question “affects” or “relates to” land and ultimately ought to have been registered. I have also reviewed the authorities cited in relation to the issue. I find Plowman J’s reasoning in **Heywood v BDC Properties Ltd No. (2)** is very instructive. I can do more than adopt the approach he took.

[80] While I find Mr. Astaphan’s arguments very attractive I am not persuaded that the Court should give the words “affecting” or “relating to land” the meaning he has advanced. I have no doubt that the proper construction to be given to the Agreement is that it was one for the sale of shares. I am not of the view that because the shares were referable to land that the Agreement should be construed as one for the sale of land. It seems clear to me that an agreement relating to land or affecting land is one in which there is a claim or interest in land, this is not the case in the matter before the Court. To put it another way there is no doubt that the words “affecting” or “relating to land” must be given a restrictive meaning. I do not accept that they should be given the expansive meaning so as to

include shares referable to land. As stated earlier, I have no doubt that the Agreement is for the sale of shares.

[81] Accordingly, I am of the respectful view that the words “affecting” or “relating” to land must mean circumstances analogous to touching and concern land. See **Federated Homes Ltd v Mills Lodge Ltd** *ibid*.

[82] I am therefore satisfied that there was no need to register the Agreement.

Conclusion

[83] In view of the foregoing and for the above reasons, I am of the considered opinion that the Agreement is admissible in evidence and I so hold.

[84] Cost in this matter shall be costs in the cause.

[85] I gratefully acknowledge the assistance of all learned counsel.

Louise Esther Blenman
Resident High Court Judge

P.S This matter is to proceed to trial of the substantive issues.