

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2006/0293

IN THE MATTER OF THE WINDING-UP ORDER OF  
CARIBBEAN VENTURES INTERNATIONAL LTD (IN  
LIQUIDATION) BY THE HIGH COURT OF JUSTICE OF  
DOMINICA ON THE 29<sup>TH</sup> DAY OF JULY 2005

AND

IN THE MATTER OF THE COMPULSORY  
LIQUIDATION ORDER OF BANK CARIBE LIMITED (IN  
LIQUIDATION) BY THE HIGH COURT OF JUSTICE OF  
DOMINICA ON THE 2<sup>ND</sup> JULY 2004

BETWEEN:

CARIBBEAN VENTURES INT'L LTD (In Liquidation)  
MARCUS A. WIDE, Liquidator of Caribbean Ventures  
Ltd

Claimant

AND

CAROSSELLO ESTABLISHMENT  
DAVID ALAN POLLOCK  
KELLY IVERSON POLLOCK

Defendants

Appearances :

Mr. B. Mc Namara for Claimant  
Mrs. Kim St Rose for Defendants 2 & 3

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2007: June 4, 5;  
August 13.

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JUDGMENT

- [1] **COTTLE, J.:** The first Claimant is an International Business Company incorporated in 1998 in the Commonwealth of Dominica. I will refer to it as **CVIL**. By order of this Court, sitting in the Commonwealth of Dominica, it was ordered that **CVIL** be wound up. The second Claimant has been appointed liquidator of **CVIL** by the High Court. **CVIL** functioned as a holding company for Banc Caribe Ltd, (the Bank) an offshore bank operating under license in Dominica. The Government of Dominica cancelled the licence of the Bank and applied for and obtained a Court order that the Bank be wound up. The second Claimant was appointed liquidator of the Bank.
- [2] The first Defendant is an artificial person organized and existing under the laws of Leichtenstein. For the purposes of this claim the Claimants have already obtained judgment in default against the first Defendant (Carosello). The second and third Defendants are the principal beneficiaries of the first Defendant and have been the beneficiaries since 2000.
- [3] The second Defendant (David) is the husband of the third Defendant (Kelly). At the times material to this claim, David was a Director of **CVIL**. In fact he was the directing mind of **CVIL**. David also was Managing Director of the Bank as well as its Chief Financial Officer.
- [4] Carosello owned an undeveloped parcel of land at Rodney Bay, St. Lucia. Upon becoming principals and beneficiaries of Carosello David and Kelly became the beneficial owners of this parcel. They then caused Carosello to acquire an adjoining parcel of land. On these parcels has now been constructed a dwelling house, Villa Caribe, in which David and Kelly reside.
- [5] From March 2000, when David and Kelly acquired control and beneficial ownership of Carosello, loans were made to Carosello by the Bank to construct Villa Caribe. These loans were substantial. These loans were repaid on behalf of Carosello by **CVIL** and totaled more than \$1 million US. The expenditure by **CVIL**

on behalf of Carosello to discharge the latter's indebtedness to the Bank are expressed to be loans by **CVIL** to Carosello. This indebtedness to **CVIL** remains outstanding.

[6] The Claimants further aver that David caused additional sums to be withdrawn from **CVIL's accounts** and paid to third parties. The total expended by **CVIL** on behalf of Carosello, David and Kelly is put at more than \$1,875,000.00 US.

[7] In addition to monies advanced by **CVIL** for the building of Villa Caribe, various other transfers were made by **CVIL** for the benefit of David and Kelly. Some disbursements were even made to David's personal account at Royal Bank of Canada in St. Lucia. The Claimant's aver that as a result of these many transactions **CVIL** has been defrauded of its money and David and Kelly have been unjustly enriched. The total amount alleged have been obtained by David and Kelly is said to exceed \$3.4 million US. The Claimants demand:

- (1) An accounting
- (2) Tracing of all funds into the hands of the Defendants
- (3) Repayment of all monies owed among other relief

[8] Kelly in her defence denies all wrongdoing. She says that she was never employed by the Bank or **CVIL**. She had no control over the actions of **CVIL**. Any benefits she enjoyed resulted only because of the provision of such benefits by her husband David.

[9] David in his defence avers that all loans by **CVIL** have been repaid save one. That one loan is secured by way of collateral in the form of an employment contract as the Claimants well know.

- [10] The second and third Defendants counterclaim for damages, both general and exemplary, as the Claimants **“have wrongfully commenced this suit against them and have committed trespass to property.”**
- [11] It is undisputed that **CVIL** advanced large sums of money to Carosello. David and Kelly are the sole principals and beneficiaries of Carosello. David was at all material times the sole directing mind of Carosello. Mr. Reginald Shillingford who gave evidence, said he was the sole shareholder of **CVIL** and he knew nothing of the way in which **CVIL** was run. He simply put complete trust in David to run **CVIL**.
- [12] Despite the apparently complicated set of facts in this case the issues are relatively simple and can be put thus
- [13] Have the Defendants, benefited from large sums of money, admittedly the property of **CVIL**? The answer is yes they have. Did they come by those substantial benefits honestly? The Claimants say that the Defendants have been dishonest. The Defendants deny this. Crucial to the determination of the bona fides or otherwise of the Defendants is an examination of the way in which the funds admittedly expended for the benefit of the Defendants, are meant to be repaid.
- [14] David produced two employment contracts D.P.2, dated 1<sup>st</sup> February 2003 and D.P.3 dated 1<sup>st</sup> February 2005. He also exhibited DP4, a resolution adopted on 31<sup>st</sup> January 2005 by **CVIL**. Present at that meeting were Reginald Shillingford and David the second Defendant.

#### **Exhibit D.P.2**

- [15] This exhibit is a written contract between **CVIL** and David. It is expressed to be for an **“initial term”** of 20 years and thereafter from year to year.

- [16] Under this contract David is to be paid \$US 150,000.00 per year. This amounts to 3 million over the 20 year term of the contract. Under Clause 3 (iv) the company is obligated to loan funds to David, secured by the employment agreement, at his request.
- [17] Under clause 4 of the agreement it can be terminated by:
- (i) death
  - (ii) disability
  - (iii) by the company for cause
  - (iv) by either party without cause
- [18] However upon termination – for whatever reason - the company is obliged to pay to David (or his estate), the full amount of \$150,000.00 per year for the unexpired term of the initial 20 year period or for one year, whichever is the longer. He appeared to the Court to have already reached an age at which most persons retire although no evidence of David's age was led. Thus if he were to resign one day after signing the contract the company would be obligated to pay 3 million US to David.
- [19] Exhibit D.P.3 is identical in terms of D.P.2 except that the initial term is expressed to be for 10 years.
- [20] Exhibit D.P.4 deserves to be reproduced in full.

**"CARIBBEAN VENTURES INTERNATIONAL, LTD.  
BOARD OF DIRECTORS MEETING  
JANUARY 31, 2005**

**Present at the meeting are the following Directors:**

**Reginald Shillingford  
David A. Pollock**

WHEREAS, the company has entered into an employment agreement with David A. Pollock for a period of twenty years commencing on February 1, 2003.

WHEREAS, the company has loaned funds to Carosello Establishment evidenced by a promissory note.

RESOLVED, the Caribbean Ventures International, Ltd has approved the full repayment of said loan to Carosello Establishment in consideration of the reduction in term of aforesaid employment agreement from twenty years to ten years effective on February 1, 2005.

RESOLVED, that the annual payment of services of David A. Pollock shall be paid as a reduction of funds previously loaned to David A. Pollock. Further payments shall be treated the same until such time the company has sufficient funds to afford payment.

There being no further business, meeting was adjourned.

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Reginald Shillingford

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David A. Pollock"

- [21] The intended effect of this document is to 'repay' CVIL for money it had advanced to Carosello by reducing the initial term of D.P.2 from 20 years to 10 years. The loans to David by CVIL are to be repaid by the annual payments due under D.P.3, that is the new ten year employment contract.
- [22] In short David's position is that all funds expended by him and by Carosello on his behalf are his own funds. It is money which CVIL is bound to pay him in any event. He is entitled to borrow from CVIL under his contract and allow his indebtedness to be liquidated by the funds which CVIL must pay him come hell or high water.
- [23] This argument by the Defendants founders when the evidence in this case is considered.

- [24] David was President of **CVIL**. He was its Chief Operating Officer. The sole shareholder allowed him to do as he liked with the company and its funds. He arranged the employment contracts for his own benefit. It was instructive when in open court he derided Counsel for the Claimant as being too “**pea brained**” to secure a similar contract of employment himself. This evidenced the arrogance of the second Defendant.
- [25] I find that the contracts are a barefaced fraud on **CVIL**. The resolution D.P. 4 is a similarly fraudulent device. The confused shareholder could not even explain to the Court its purport. All he could say is that he trusted David.
- [26] I do not deal with any issues concerning the propriety of the liquidation of either Banc Caribe or **CVIL** as this is not germane to the case before me.
- [27] I hold that both David and Kelly knowingly benefited from David’s sinister financial machinations. Both have been unjustly enriched. I do not consider there to be any need to have an accounting or tracing order made in this case. I am content to order that the Defendants David and Kelly repay to **CVIL** the sum of US 3.4 million.
- [28] I find no merit in the counterclaim. I dismiss it.
- [29] I award the Claimant costs. The value of this claim is approximately \$9.2 million. The amount of prescribed costs is fixed at \$162,500.

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**BRIAN S. COTTLE**  
**HIGH COURT JUDGE**