BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. BVIHCV2007/0151

IN THE MATTER of the Stamp Act (Cap 212)

AND

IN THE MATTER of an Application by BEBO INVESTMENTS LIMITED pursuant to section 23 of the said Act for an appeal against the assessment of the Financial Secretary of the Government of the British Virgin Islands

BEBO INVESTMENTS LIMITED

Applicant/ Claimant

-and-

THE FINANCIAL SECRETARY

Respondent/Defendant

Appearances:

Ms Keisha Durham of Harney Westwood & Riegels for the Appellant/Claimant
Mr Arden G. Warner, Solicitor-General of the Attorney General's Chambers for the Respondent/Defendant

---

2007: November 06
2008: January 17

JUDGMENT

Introduction

[1] **HARIPRASHAD-CHARLES J:** The Appellant/Claimant, Bebo Investments Limited ("the Appellant") is a company incorporated in the British Virgin Islands ("BVI") as an International Business Company. It is a non-belonger by virtue of section 6 of the Non-Belongers Land Holding Regulation Act ("the NBLHR Act"). This is not in dispute. The Respondent/Defendant is the Financial Secretary of the BVI whose decision is under appeal in these proceedings.

[2] On 22 June 2007, the Appellant filed a fixed date claim form in accordance with Part 60 of the Civil Procedure Rules ("the CPR") for an appeal from the decision/assessment of the Financial Secretary pursuant to section 23 of the Stamp Act. On 12 July 2007, the Court ordered the Financial Secretary to provide a case stated pursuant to section 23(2) of the said Stamp Act. This was filed on 27 July 2007. He identified the sole question of law for the decision of the Court as:

> "Whether on the true and proper construction of sections 3 and 21 of the Non-Belongers Land Holding Regulation Act (Cap 122), in the context of the purpose of the said Act, the rate of the stamp duty chargeable in respect of an instrument of transfer of land from a Bank to a non-belonger purchaser of the said land from a Bank's power of sale under a mortgage or charge, is the higher rate of 12% contained in Cap 122 or the lower rate of 4% stipulated in the Stamp Act (Cap 212)."

Background facts

[3] The background facts are not in dispute. They are well summarized by Ms Keisha Durham, Learned Counsel for the Appellant. For present purposes, I can do no better than to gratefully adopt them. The Appellant purchased Parcel 58 Block 2235B of the West End Registration Section from First Bank Puerto Rico which sold the property in exercise of the bank's power of sale as a mortgagee under a registered charge bearing number No. 181 of 2006. This transaction was evidenced by an executed Instrument of Transfer dated 13 April 2006 ("the Instrument").

[4] Previously, on 16 March 2007, the legal practitioners for the Appellant wrote to the Acting Commissioner of Inland Revenue ("the CIR") for guidance as to the stamp duty payable in the circumstances. The CIR responded by letter dated 12 April 2007 in which she stated that "the applicable rate for a non-belonger whether licensed or unlicensed and whether transferred from a bank or otherwise to a non-belonger attracts stamp duty at the rate of 12% under the NBLHR Act". She added that "there is no provision in the Stamp Act or the NBLHR Act which exempts a non-belonger from the non-belonger stamp duty rate of 12%".

[5] On assessment, the Instrument attracted a stamp duty of $92,400 which meant that the CIR applied the rate of 12% of the market price as prescribed by the NBLHR Act as opposed to an amount of $30,800 were it assessed pursuant to the Stamp Act. By virtue of the assessment, the legal practitioners for the Appellant's bank wrote to the Financial Secretary on 17 April 2007 requesting his opinion pursuant to section 22 of the Stamp Act as to the duty chargeable on an Instrument of Transfer in these circumstances. In the interim, the Appellant paid the stamp duty under protest contending that the applicable rate in respect of the Instrument should be at the lower rate of 4% pursuant to the Stamp Act.

[6] By letter dated 24 May 2007, the Financial Secretary responded and confirmed the position adopted by the CIR. He stated that he had been legally advised by the Attorney General that, upon a true and proper interpretation of sections 3 and 21 of the NBLHR Act, the CIR was correct in her assessment of the stamp duty.

[7] The following is a summary of the opinion set out in the CIR's letter which was adopted by the Financial Secretary.

1. That the stamp duty on transfers to non-belonger transferees from a bank in exercise of its power of sale under a charge is at the 12% stamp duty rate on the market value or consideration whichever is higher as specified for non-belongers under the NBLHR Act;

2. The NBLHR Act [section 3 (c) (ii)] does not exempt a non-belonger from the applicable stamp duty rate which applies to a non-belonger but rather allows and gives permission for the bank to exercise its right as mortgagee under a mortgage;

3. There is no provision in the Stamp Act or the NBLHR Act which exempts a non-belonger from the non-belonger stamp duty rate of 12% as set out in the NBLHR Act.

[8] The Appellant is dissatisfied with the assessment of the Financial Secretary and has appealed against it. In the grounds of appeal, it contended that: (i) the Financial Secretary

simply adopted the position held by the Ministry of Finance without considering the issues arising and thus did not conduct a proper assessment as contemplated by section 22 of the Stamp Act and (ii) the assessment of the Financial Secretary is wrong in law and erroneous as it fails to construe the proviso as set out in section 3 (c) of the NBLHR Act in its clear and proper context.

Jurisdiction of the High Court to hear the appeal

[9] Part 61 of the CPR deals with the manner in which the High Court determines a case stated or a question of law referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person.

[10] Section 22 (2) of the Stamp Act states:

> "Subject to such regulations as the Governor may think fit to make, the Financial Secretary may be required by any person to express his opinion with reference to any executed instrument upon the following questions-
>
> (a) whether it is chargeable with any duty;
>
> (b) with what amount of duty it is chargeable.

[11] Section 23 of the said Act deals with appeals by a person who is dissatisfied with the assessment of the Financial Secretary. It provides:

> "(1) Any person who is dissatisfied with the assessment of the Financial Secretary, made in pursuance of the last preceding section, may within thirty days after the date of such assessment, and on payment of duty in conformity therewith, appeal against such assessment to the High Court, and may, for that purpose, require the Financial Secretary to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.
>
> (2) The Financial Secretary shall thereupon state and sign a case accordingly, and deliver the same to the person by whom it is required, and, on his application, such case may be set down for hearing before the High Court and shall be heard by the Court or before any Judge of the High Court sitting in Chambers."

[12] Unquestionably, the Stamp Act and the CPR confer jurisdiction on the High Court to hear this appeal from the decision of the Financial Secretary by the Appellant who is dissatisfied

with the assessment of stamp duty that was payable on its instrument. In addition, the Appellant has complied with the law as stated in that section in that it paid the stamp duty in conformity with the Financial Secretary's assessment.

Submissions by Counsel

[13] Briefly put, the Appellant's case is that it is only liable to pay 4% stamp duty instead of 12% on the Instrument by virtue of the proviso set out in section 3 (c) of the NBLHR Act in reference to land sold by a bank to a non-belonger in the exercise of the bank's power of sale, i.e. "shall not be subject to the provisions of that Act" and that section 21 of the NBLHR Act does not apply to such land as it falls within the exception created by the former section thus taking it outside the ambit or application of this section. Accordingly, by virtue of this land not falling within the application of the NBLHR Act, the Instrument would not be subject to section 21 of the said Act. Instead, section 53 of the Stamp Act would apply thereto.

[14] The Financial Secretary holds a contrary view. The thrust of his argument is that the rationale of section 3 is to establish that land or a mortgage in land held by an unlicensed alien shall be forfeited to the Crown save that the exceptions set out at (a) to (h) shall not be liable to forfeiture. According to the Financial Secretary, section 3 is intended to deal exclusively with the issues of ownership and forfeiture, as distinct from the liability to pay stamp duty. He contended further that the Instrument is subject to the provisions of the NBLHR Act by virtue of the use made in section 3 of the words "Subject to the provisions of this Act" and the supremacy clause contained in section 21 of "Notwithstanding the provisions of the Stamp Act."

[15] According to Ms Durham, a good starting point is that of the first or cardinal rule for the construction of legislation: the literal rule which provides that legislation should be construed according to the intention of the Legislature which is expressed in the language of the statute. She submitted further that the Court should be engaged in an objective exercise of determining the meaning to be ascribed to the words in the sections under consideration and if the language of the statute is plain and suggests only one meaning, it

is this meaning that is construed to be the intention of the Legislature and be given effect to by the Court notwithstanding the fact that it may result in harshness or absurdities[1]. She qualified this submission by recognising the fact that such does not prevent a construction which does more justice or appears more desirable from being preferred to be an unjust or undesirable construction, where both are equally supported by the words used.

[16] In respect of the interpretation of a proviso, Ms Durham submitted that a proviso is to carve out an explanation to the main enactment and excludes something which otherwise would have been under the section. She next submitted that if the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provisions which it immediately follows; it must be given such wider effect.

[17] Learned Counsel further added that by virtue of section 12 of the Interpretation Act, marginal notes should not be considered as part of the enactment and as such, should not be used for construction purposes. This is trite law. I must however point out it is regrettable that the Act does not have a long title or a preamble which usually provides an overview of its objectives. However, there is a short title and it is quite unequivocal: the intention of the Act was to provide a regime for the holding of lands by non-belongers in this territory.

[18] The Learned Solicitor General, Mr Warner submitted that the Act was intended to displace and oust the application of the Stamp Act as section 21 set up an independent and separate regime for non-belongers distinct from the Stamp Act. He next argued that if one applies the literal interpretation to the concluding words of section 3(c), the end result will lead to absurdity and illogicality in that not only would this category be exempt from liability to forfeiture but it would not be liable to pay stamp duty under the NBLHR Act or under the Stamp Act by virtue of section 21 which oust the applicability of the Stamp Act to the imposition of stamp duty. He contended that in light of this absurdity, the Court should resort to the purposive rule such that the interpretation to be applied to the wording "*shall*

[1] Cartledge v E. Jopling & Sons Ltd [1963] A.C. 758, per Lord Pearce.

not be subject to the provisions of this Act" in the context of the purpose of the section ought to be "*shall not be liable to forfeiture."*

[19] Mr Warner relied on the fact that section 9 of the NBLHR (Amendment) Act 1994 amends section 21 by creating a category of transfers of property or interests in property that are exempt from the requirements of that section and the category created by section 3 (c) is not mentioned. He argued that had the Legislature intended to extend the category of section 21 to include the category in section 3 (c) it would have been included in this listing. According to him, the omission was deliberate and meaningful.

[20] Incontrovertibly, the dispute herein turns upon the proper meaning of some simple phrases contained in section 3 and 21 of the NBLHR Act and consequently, their effect [s] [if any] on the Instrument in question.

Principles of statutory interpretation

[21] Before I focus on the principles of statutory interpretation, it is worthy to note that the making of law is a matter for the Legislature and not for the Court. It is apposite to quote Byron CJ as he then was, in **Universal Caribbean Establishment v James Harrison**[2] where he states:

> "The first principle to affirm is to recognise the separation of power between the Legislature and the Judiciary. It is the province of Parliament to make the law and for the Court to interpret, without basing its construction of the Statute on a perception of its wisdom or propriety or a view of what Parliament ought to have done."

[22] There can be no doubt that in the present case, the primary issue for determination is one of statutory interpretation. It is therefore necessary to remind ourselves of the principles which a court should apply in order to decide on the meaning and effect of the statute. In **Charles Savarin v John Williams**[3] Sir Vincent Floissac C.J. expressed the principles thus:

---

[2] Court of Appeal No. 21 of 1993 (Antigua and Barbuda)
[3] (1995) 51 W.I.R. 75 at 78-79.

> "In order to resolve the fundamental issue of this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention."

[23] The dominant purpose in construing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole and in its context. The intention is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.[4] It is only where the words of the Statute are not clear and ambiguous that it is necessary to enlist aids for interpretation.[5]

[24] In **Pinner v Everett**[6], Lord Reid stated this principle in the following terms:

> **"**In determining the meaning of any word or phrase in a statute the first question is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other permissible meaning of the word or phrase."

[25] In **Abel v Lee**[7] Willes J stated that:

> "No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice…. But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable."

---

[4] Halsbury's Laws of England, 4th edition Volume 44, paragraph 856.
[5] Per Byron C.J. in Universal Caribbean Establishment v James Harrison.
[6] [1969] 3 All E.R. 257 at 258.
[7] (1871) L.R. 6 C.P. 365 at 371.

[26] It is obvious from the above authorities that if the language of the statute is plain and suggests only one meaning, the court should give effect to those words in light of the legislative intent notwithstanding the fact that such may result in a harsh result. The Court is allowed to apply the rules of construction where an anomaly exists. But, the Court has to be wary in doing so as not to modify the language of the statute. On this, Lord Simon of Glaisdale in **Stock v Frank Jones (Tipton Ltd.)**[8] articulated:

> "…a court would only be justified in departing from the plain words of the statute were it satisfied that:(1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

[27] It appears that the Court would only look to the rules of statutory interpretation when it is demonstrated that the anomalies are such that they produce absurdity or injustice which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat.[9] It is not enough that the words though clear, lead to a manifest absurdity.[10]

[28] Lord Scarman in **Stock v Frank Jones (Tipton Ltd)** stated:

> "If the words used by Parliament are plain, there is no room for the 'anomalies' test unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words 'have been inadvertently used', it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated: per MacKinnon LJ in *Sutherland Publishing Co. Ltd v Caxton Publishing Co. Ltd (No.2)*[11].This is an acceptable exception to the general rule that plain language excludes a consideration of anomalies, i.e. mischievous or absurd consequences. If a study of the statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, e.g. used 'and' when 'or' was clearly intended, the courts can, and must, eliminate the error by interpretation. But mere 'manifest absurdity'

[8] [1978] ALL ER 948 at 954.
[9] Stock v Frank Jones (Tipton Ltd) 1978] ALL ER 948 at 954.
[10] Per Lord Esher MR in R v City of London Court Judge [1892] 1 QB 273.
[11] [1937] 4 All ER 405 at 421.

is not enough: it must be an error (of commission or omission) which in its context defeats the intention of the Act."

[29] However, there may be situations where strict reliance on the literal rule will produce ambiguities or absurdities. In such cases, the Court will have to resort to other aids of interpretation namely, the purposive or mischief rule. These rules are addressed under the sub-heading "What rule is applicable: literal or purposive?"[12]

A statute is to be read as a whole

[30] Another general principle of statutory interpretation is that every clause within a statute or act must be construed in the context of and with reference to the other clauses or sections of that statute. One section or sections should not be interpreted without reference to the other sections. In **Case of Lincoln College**[13], it was held that in interpreting an act of Parliament one must "make construction on all the parts together and not of one part only by itself".

Construction of provisos

[31] It is important to refer to the principles applicable to the construction of provisos. Generally, a proviso is held to restrict the section which it qualifies. In **CIT v Indo Mercantile Bank**[14] it was held:

> "The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum of dealing with a subject which is foreign to the main enactment. A proviso must be, therefore, considered in relation to principal matter to which it stands as a proviso and it should not be read as if providing something by way of addition to the main provision, which is foreign to the main provision itself.
>
> Cardinal rule of interpretation is that a proviso to a particular provision of a statute embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

[12] See paragraphs 32 et seq
[13] (1595) 3 Co. Rep. 58b, at page 59b.
[14] [2004] 137 Taxman 201 (RAJ).

What rule is applicable: literal or purposive?

[32] Ms Durham submitted that in applying the principles of statutory construction to the relevant sections of the NBLHR Act, it is important to note that the words "shall not be subject to the provisions of this Act," are clear and unambiguous. Accordingly, says Learned Counsel, they are incapable of supporting an alternative construction, thus effect must be given as far as possible to the words used, unless it can be shown that an anomaly arises which produces such an absurdity that the Legislature could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act was designed to prevent. She asserted that the Financial Secretary is unable to demonstrate such an anomaly and consequently, there is no room for the "anomalies test" to be invoked since what the Court is dealing with is the construction of a proviso which by its very nature excludes something which otherwise would have been under the section. Such circumstances are not anomalous or absurd but falls simply within the "territory of the proviso".

[33] Mr Warner argued that the Court should adopt a purposive approach which seeks to give effect to the true purpose of the legislation since there are ambiguities and uncertainties involved in the interpretation of section 3(c).

[34] The purposive rule arises in instances of ambiguity where the literal rule is of necessity, displaced from application. Under the rule, words are interpreted not only in their ordinary sense but with reference to their context and purpose. It is often resorted to where strict reliance on the literal meaning would produce an absurdity.[15]

[35] A third rule of statutory construction, the mischief rule, when properly applied, involves the use of an aspect of the statutory context to indicate the statutory intention. It is of old vintage and was succinctly explained by Lindley MR in **Barlette v Mayfair Property Company**[16]:

> "In order properly to interpret any statute, it is as necessary now as it was when Lord Cooke reported Heydon's case to consider how the law stood when the

[15] Kammins Ballrooms Co. Ltd v Zenith Investment (Torquay) Ltd [1970] 2 All ER 871at pages 892-893.
[16] [1898] 2 Ch. 28 at 35.

> statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief."

[36] The rule is an important aid to construction when there is lack of lucidity or ambiguity to the language in which the statute was expressed. In some regard, the purposive rule is a rephrasing of the mischief rule.

[37] I turn to section 3(c) of the NBLHR Act. On a proper reading of that section, it has posed a dilemma for interpretation. As rightly asserted by Mr Warner, on the one hand, the section commences with the wording " Subject to the provisions of this Act", which imports subservience to section 21 yet continues somewhat paradoxically with the exception at section 3(c) which concludes with the words "shall not be subject to the provisions of this Act". He next submitted that if one applies a literal interpretation to the concluding words of section 3(c), the end result will lead to absurdity in that not only would this category be exempt from liability to forfeiture but also from the payment of stamp duty under the NBLHR Act or the Stamp Act by virtue of section 21 which oust the applicability of the Stamp Act to the imposition of stamp duty.

[38] I agree with Mr Warner that in the light of such seeming absurdity, the Court should resort to the purposive rule. Recent judicial authorities have affirmed that the Courts are prepared to adopt a purposive approach which seeks to give effect to the true purpose of legislation. It is a more liberal approach. The Courts are prepared even to look at extraneous material that bears on the background against which the statute was passed. The Courts will review the historical context of the statute and give effect to it. These very points were explicated by Lord Bridge of Harwich in **Pepper v Hart**[17]where he said:

> "The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted."

[17] [1993] 1 All ER 42 at page 50.

Intention of Parliament

[39] It is important to ascertain the object or purpose of the Act. What was the intention of the Legislature in enacting this legislation? Although there is no long title, there is a short one which captures the spirit of the Act namely: "Non-Belonger Land Holding Regulation Act". The name is clear and unambiguous and patently identifies that the Act intended to deal with the regulation of the holding of lands by non-belongers in this Territory. The NBLHR Act was first enacted in 1923, some 36 years after the preceding Stamp Act (enacted in 1887). There is merit in the argument of Mr Warner that the Act was intended to replace the Stamp Act in so far as it applied to non-belongers by providing a wholly new and separate regulatory regime. Section 21 reinforces such an interpretation.

[40] Section 3 makes it clear that if a non-belonger holds land in this territory, after the commencement of the Act without a licence, then such land will be liable to be forfeited to the Crown. Section 3, however created exception to forfeiture of land held by unlicensed non-belonger and these exceptions are found in section 3(a) to (h). I must point out that the words "shall not be subject to the provisions of this Act" are only placed after section 3 (c) and 3 (f) (ii). Be that as it may, it is demonstrably plain is that nothing in the section speaks to the payment of stamp duty.

Analysis of section 3(c) and section 21

[41] In order to establish the proper meaning to be ascribed to section 3 (c) of the NBLHR Act, it is necessary to spell out some other relevant provisions contained in section 3 of the said Act specifically sections 3(a) and 3(b). Section 3 provides:

> **"Subject to the provisions of this Act,** neither land in the Territory nor a mortgage on land in the Territory shall, after the commencement of this Act, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to Her Majesty:
>
> Provided that-
>
> a. land may be acquired and held by on an annual tenancy or for any less interest for the purposes of his residence, trade, or business, but an unlicensed non-belonger shall not so hold more than five acres of land in all;

b. land or any interest therein acquired by a banker in the exercise of any right of foreclosure of a mortgage held by such banker shall not be forfeited to Her Majesty while such land or interest therein is held by such banker within a period of five years from the date of such acquisition or within such extended time (if any) as the Governor may decide to be reasonable;

c. land or any interest therein acquired by an unlicensed non-belonger by sale from a banker who-

(i) holds such land or interest therein under the preceding paragraph (b); or

(ii) sells such land or interest therein in the exercise of any right or power as mortgagee under a mortgage held by such banker,

shall not be subject to the provisions of this Act; [emphasis added].

[42] The heading/marginal note of section 3 reads: "*Forfeiture of land and mortgages held by unlicensed aliens"* First of all, I acknowledge that marginal notes should not be used for construction purposes but I confess that they are quick and useful guides. Having said that, in my judgment, the *raison d'être* of section 3 is to ascertain that land or a mortgage on land held by an unlicensed alien is forfeited to the Crown save that the exceptions set out at (a) to (h) shall not be liable to forfeiture. The section is intended to deal exclusively with the issues of ownership and forfeiture, as distinct from the liability to pay stamp duty.

[43] But, that is not the end of the matter. The controversial words "shall not be subject to the provisions of this Act" which concludes section 3(c) incite a miscellany of contentions. At first blush, they appear to be clear and unambiguous words which should be given their plain meaning. Indeed, this is the submission advanced by the Appellant. Ms Durham attractively argued that the Appellant's case is that it is only liable to pay stamp duty in accordance with the Stamp Act by virtue of the proviso set out in section 3(c) and that section 21 does not apply to the land in question as it falls within the exception created by the former section thus taking it outside the ambit or application of the NBLHR Act. She next argued that the Legislature not only excluded subparagraphs (a) to (g) from the application of section 3 and from liability to forfeiture but went further and created another

exception in respect of subparagraphs (c), (f) and I will add (g) and (h) by excluding these (and only these subparagraphs) from the provisions of the Act.

[44] In my opinion, if those words are read in isolation, that is precisely the meaning that could be ascribed to them. But, a cardinal principle of statutory interpretation is that a statute must be read as a whole. Section 3 must be read in conjunction with section 21. There is an obvious inter-relationship between these two sections. As I have already alluded to, section 3 commences with the wording "Subject to the provision of this Act" which means that it is to be read and interpreted subservient to other provisions in the Act that may have bearing on the subject matter in section 3.

[45] Section 21 is explicit and unequivocal. It provides:

> "**Notwithstanding the provisions of the Stamp Act** [emphasis added], every instrument executed conveying any right, title or interest of any property, to a non-belonger shall be liable to stamp duty at the rate specified in the Schedule hereto, in lieu of such duty under the Stamp Act."

[46] The clear purpose of section 21 is firstly, to displace the application of the Stamp Act in respect of duties paid by non-belongers and secondly, to mandate the payment of stamp duty in respect of **all** instruments executed conveying rights or title in property to non-belongers.

[47] In addition, a statute must also be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice. If these words are given their literal meaning, it means that unlicensed non-belongers who bought land or any interest therein will (i) be exempt from liability to forfeiture and (ii) not be liable to pay stamp duty under section 21 of the NBLHR Act or the Stamp Act by virtue of section 21 which take away the application of the Stamp Act to the imposition of stamp duty. This could not have been the intention of the Legislature. Lord Simon of Glaisdale in **Stock v Frank Jones (Tipton Ltd.)** made it clear that a court would be vindicated in departing from the plain words of the statute where, inter alia, there is clear and gross balance of anomaly and Parliament, the legislative promoters and the draftsman could not have envisaged

such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective. Furthermore, it is justifiable for the court to substitute what is appropriate to avoid the intention of the Legislature being defeated. As such, I am in agreement with Mr Warner that the concluding words of section 3(c) should have been "shall not be liable to forfeiture" instead of "shall not be subject to the provisions of this Act."

Conclusion

[48] In the premises, I will conclude that the assessment of the Financial Secretary was not erroneous in law. As a matter of fact, he used the correct and applicable legislation to determine the amount of stamp duty that the Appellant had to pay. In the circumstances, I will dismiss the appeal with Costs to the Financial Secretary. The parties could agree on Costs.

[49] Last but not least, I am grateful to both Ms Durham and the Learned Solicitor General for their enlightening arguments.

Indra Hariprashad-Charles
High Court Judge