

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NUMBER ANUHCV 2005/0163

BETWEEN: BRIDGETTE ROSEMARIE NEIPP Claimant

And

GLORIA WATT
OVERSEAS PROPERTY BOND MANAGEMENT LIMITED

Defendant

Appearances:

Mr. Vere Bird Jr. for the claimant

Dr. David Dorsett for the defendants

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2008 June 18th
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JUDGEMENT

[1] **Blenman J:** These are a claim and a counterclaim for several remedies in relation to a company.

Factual Background

[2] Overseas Property Bond Management Ltd (Overseas Property) is a private company limited by shares. Overseas Property's objects include carrying on

the business of hotel, villa, condominiums and apartment – house keepers and to carry on the business of time share operators.

[3] The company was owned by Mr. Simon McCauley who later sold his 100 shares (which represents the total issued shareholding in the company) to Mr. Dirk Huber. Mr. Huber died on the 27th September 2002. Mr. Huber borrowed money from the Antigua Commercial Bank in order to purchase the company's shares. Mr. Charles Watt, deceased who at the time was the company's secretary signed the agreement in that capacity.

[4] Mr. Huber, who was also a director of Overseas Property later became the sole shareholder of the company. Subsequently, he entered into an agreement, on the 15th August 2001, with Mr. Charles Watt (Mr. Watt) to sell the latter 30% of the shares in the company; the consideration for the shares was Mr. Watt's experience and skill. It does not appear as though the shares were ever transferred into Mr. Watt's name but he assumed the responsibility of the general manager of the Overseas Property with the concurrence of Mr. Huber. Mr. Watt also was appointed as a director of the company with Mr. Huber as its managing director. It is clear that, the parties having agreed to transfer 30% of the shares in the company to Mr. Watt, Mr. Huber treated Mr. Watt as the holder of 30% of the shares.

[5] Upon the death of Mr. Huber, Mr. Watt sought to take control over Overseas Property and apparently alleged that Mr. Huber had committed several acts of fraud against the company. Thereafter, Mr. Watt had effective control over Overseas Property and managed the company until his death whereupon his

wife Mrs. Gloria Watt (Mrs. Watt) assumed the position of the managing director of the company.

[6] Ms. Neipp who is the mother of Mr. Huber and his personal representative made several efforts to have Mr. Watt convene a shareholders meeting all to no avail; she also requested that the shares that were in her son's name be transferred into her name but her requests were not complied with. Upon the death of Mr. Watt, Ms. Neipp persisted in her efforts to have Mrs. Watt transfer the shares that were registered in her son's name into her name as the personal representative of Mr. Huber. Ms. Neipp also requested Mrs. Watt, who eventually became a "director" of the company (and this unbeknown to Ms. Neipp, since any annual general meeting was convened without the notice of Ms. Neipp), to convene an annual general meeting; these requests also fell on deaf ears.

[7] Even though it appears that after the death of Mr. Watt that meetings were convened and resolutions were passed and various persons were appointed as directors of the company from time to time while others have been removed as directors, Ms. Neipp, in her capacity as the personal representative of the major shareholder, was never notified of any of the meetings and therefore has not attended any of the meetings. Since assuming the role of director of the company, Mrs. Watt has failed to convene any annual general meetings and this despite Ms. Neipp's repeated requests. This is accepted by both sides to be so. Ms. Neipp has been effectively excluded from Overseas Property.

[8] Meanwhile, Mrs. Watt and Overseas Property have sought to have investigations carried out into the dealings of Mr. Huber and they contend that he had committed several acts of fraud.

[9] It is against that background that the claim was instituted by Ms. Neipp in her capacity as the personal representative of the Estate of Mr. Huber (deceased) against Mrs. Watt and the Overseas Property. In the claim Ms. Neipp contends that Mrs. Watt has acted in breach of the fiduciary duty and in breach of trust since she has failed to convene general meetings of Overseas Property and to transfer shares owned by Mr. Huber into her name. She seeks the following declarations:

- (a) a declaration that all of the shares in Overseas property are owned by Ms. Neipp and an order that they be transferred to her
- (b) a declaration that Ms. Neipp is the secretary of overseas property and that all of the resolutions that have been passed since 27th September 2002 are null and void.
- (c) an order that a shareholders meeting be convened as soon as practicable.

[10] In their defence and counterclaim both Mrs. Watt and Overseas Property dispute that Mrs. Watt has acted in breach of her duties or in breach of trust as alleged or at all. Further, they contend that Mrs. Watt never stood in any fiduciary position to Ms. Neipp. Both Overseas Property and Mrs. Watt deny that at the date of his death Mr. Huber owned 100% of the shares in Overseas Property. To the contrary, they argue that at the date of Mr. Huber's

death he owned, if any, 70% of the shares in the Overseas Property but they say that the personal representative of his estate should not have the 70% shares transferred into her name since he allegedly committed a fraud on the company. However, Mrs. Watt admits that she has acted in breach of her statutory duty in so far as she has failed to convene a meeting.

[11] Overseas Property and Mrs. Watt have counterclaimed against Ms. Neipp, in her capacity mentioned above alleging that Mr. Huber in his capacity as a director breached several duties that he owed to Overseas Property. They also contend that Mr. Huber acted in breach of his fiduciary duty and in breach of trust and statute, obtained a loan from the Antigua Commercial Bank and utilized the proceeds of the loan to acquire the shareholding from one Simon McCauley in Overseas Property.

[12] Both defendants also contend that Mr. Huber acted fraudulently in the above mentioned capacity when he opened and utilized an overdraft account in the name of Overseas Property at the Antigua Commercial Bank; he directed customers of the Overseas Property to remit sums due and owing to his personal account in Florida. He unlawfully implemented a charge back scheme through which he improperly debited customers credit cards and finally that he improperly and unauthorisedly utilized funds that belong to Overseas Property in order to liquidate his personal debts.

[13] Accordingly, the defendants allege that as a consequence of the wrongful and unlawful acts of Dirk Huber deceased Overseas Property has suffered loss and damages.

- [14] Accordingly they seek a number of reliefs including the following:
- (a) A declaration that Ms. Neipp is a trustee of the Overseas Development of all funds, property or assets acquired by Dirk Huber in breach of his fiduciary duties and/or in breach of trust.
 - (b) Damages from Ms. Neipp as a consequence of the alleged indebtedness incurred by Mr. Huber in relation to the loan and the overdraft.
- [15] Even though Ms. Neipp admits that Mr. Huber obtained a loan from ACB the proceeds of which he used to purchase the shares in the Overseas Property she disputes that Mr. Huber acted fraudulently or dishonestly, as alleged. She contends that Mr. Watt, through whom Mrs. Watt claims was privy to the loan transaction and was also a signatory to the loan.
- [16] Further she denies that Overseas Property has suffered any loss or damage and therefore maintains that it is not entitled to any form of redress against her in her capacity stated above.
- [17] **Issues**
- The parties have raised several issues but, with no disrespect intended, I have sought to crystallise the issues that arise for determination as follows:
- (a) Whether Ms. Neipp is entitled to a declaration that Mr. Huber's estate is the owner of 100% of the shares in Overseas Property

- (b) Whether Ms. Neipp is entitled to an order of court compelling Mrs. Watt and/or Overseas Property to convene a meeting of the company.
- (c) What other remedies, if any, are available to Ms. Neipp in her capacity as the personal representative of the Estate of Mr. Dirk Huber.
- (d) Whether the defendants can properly initiate their counterclaim against Ms. Neipp in her capacity as the personal representative.
- (e) Whether the defendants are entitled to the declarations they seek against Ms. Neipp in her capacity as the legal representative of Mr. Dirk Huber.

[18] **Law**

In the case at bar, the relevant law is the Companies Act No. 18 of 1995 of the Laws of Antigua and Barbuda.

[19] Section 26 (1) of the Companies Act states as follows:

“Shares in a company are personal estate and are not of the nature of real estate; and a share is transferable in the manner provided by this Act”.

[20] Section 53 of the Companies Act provides:

“When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, except as permitted by section 54, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise,

- (a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purpose, or
- (b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated”.

[21] Section 105 of the Companies Act states:

- (1) “The following persons are shareholders in a company, namely –
 - (a) a person who is a member of the company under subsection (3) of section 371;
 - (b) the personal representative of a deceased shareholder and the trustee in bankruptcy of a bankrupt shareholder;
 - (c) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if two or more such transfers have been executed, the person in whose favour the most recent transfer has been made.

(2) In this Act any reference to holders of shares is a reference to persons who are shareholders in respect of the shares and any reference to holding shares shall be construed accordingly.

(3) For the purposes of this Act shares shall be considered as having been issued if any person is a shareholder in respect of them.

(4) Meetings of shareholders of a company shall be held at the place within Antigua and Barbuda provided in the by-laws, or, in the absence of any such provision, at the place within Antigua and Barbuda that the directors determine.

(5) Notwithstanding subsection (4), a meeting of shareholders of a company may be held outside Antigua and Barbuda if all the shareholders entitled to vote at the meeting so agree.

(6) A shareholder who attends a meeting of shareholders held outside Antigua and Barbuda agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

[22] Section 107 of the Companies Act states:

“The directors of a company

- (a) shall call an annual meeting of shareholders not later than 18 months after the company comes into existence, and subsequently not later than 15 months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders”.

[23] Section 132 (1) of the Companies Act states:

“(1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may,

(a) when for any reason it is impracticable

(i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or

(ii) to conduct the meeting in the manner prescribed by the by-laws and this Act, or

(b) when the directors fail to call a meeting of the shareholders in contravention of section 131, or

(c) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a company called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the company duly called, held and conducted”.

[24] Section 195 of the Companies Act states:

“(1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument shall be used to transfer the shares or debentures of the company.

(3) Subject to subsection(2) and to any enactment, no particular form or words are necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to the transferee

(a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor’s share certificate or debenture, as the case may be, or

(b) on the delivery to him of an instrument or transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of the Antigua and Barbuda Stock Exchange or a stock exchange approved by the Minister by Order published in the Gazette.

(5) If the transferor concerned is not registered with the company in respect of the shares, or, as the case may be, the debentures, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by the person so registered and all holders of the shares or debentures intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a company, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered or until the court orders the registration of the transfer to him; and until the transfer is presented to the company for registration, the company is not to be treated as having notice of the transferee's interest there under or of the fact that the transfer has been made.

(7) This section applies notwithstanding anything contained in the articles or by-laws of a company, and notwithstanding anything contained in any trust deed or debentures or any contract or instrument".

[25] Section 200 of the Companies Act states:

“(1) A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company are held by any person is prima facie proof of the title of that person to the shares or debentures.

(2) The registration of a person as a member or debenture holder of a company, or the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture; and the company may not deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein in good faith and for money or money’s worth.

(3) It is no defence for a company to show for the purposes of subsection (2) that a registration or issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document”.

[26] Section 243 of the Companies Act says:

“In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and

disbursements; but the complainant may be held accountable for those interim costs upon the final disposition of the application or action”.

[27] Equally of importance are the Articles of Association (hereafter referred to as the “Articles”).

[28] Section 26 of the Articles states:

“The instrument of transfer of any share in the Company shall be in writing, and shall be signed by or on behalf of the transferor and the transferee, and duly attested, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof”.

[29] Section 32 of the Articles provides that:

“On the death of any member (not being one of two or more joint holders of a share) the legal personal representatives of such deceased, shall be the only person recognized by the Company as having any title to the share or shares registered in his name”.

[30] Section 33 of the Articles provides:

“Any person becoming entitled to a share by reason of the death or bankruptcy of a member may upon such evidence being produced as may from time to time be required by the Directors, elect either to be registered as a member in respect of such share or to make and execute such transfer of the share as the deceased or bankrupt person could have made. If the person so becoming entitled shall elect to be registered himself he shall give to the Company a notice in

writing signed by him that he so elects. The Directors shall in either case have the same right to refuse or suspend registration as they would have had if the death or bankruptcy of the member had not occurred and the notice of election or transfer were a transfer executed by that member”.

[31] Section 34 of the Articles provides:

“Any person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, unless and until he is registered as a member in respect of the share, be entitled in respect of it to receive a notice of, or to exercise any right conferred by membership in relation to, meeting of the Company; provided always that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to make such transfer as aforesaid, and if such notice is not complied with within ninety days after service thereof the Directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of such shares until the requirement of the notice has been complied with”.

[32] Section 47 of the Articles states:

“The first ordinary general meeting shall be held at such time (within a period of not more than eighteen months from the date of the Company’s incorporation) and at such place as the Directors may determine”

[33] Section 48 of the Articles states:

“The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next. The annual general meeting shall be held at such time and place as the Directors shall appoint. All general meetings other than annual general meeting shall be called “extra-ordinary general meetings.”

[34] Section 49 of the Articles states:

“The Directors may whenever they think fit and they shall on the requisition of members of the Company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid capital of the Company as at the date of the deposit carries the right of voting at general meetings of the Company convene an extra-ordinary general meeting. The requisition shall state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists. If the Directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting the requisitionists or any of them representing more than one-half of the total voting rights of all of them may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from the said date. A meeting convened under this

article by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by Directors. Any reasonable expenses incurred by the requisitionists by reason of the failure of the Directors duly to convene a meeting shall be repaid to the requisitionists by the Company and any sums so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the Directors as were in default. If at any time there are not within the State sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extra-ordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors”.

[35] Section 51 of the Articles provides:

“An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days notice in writing at the least, and a meeting of the Company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day of which it is given, and shall specify the place, and the day and hours of meeting and in the case of special business, the general nature of that business, and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as

are, under these articles entitled to receive such notices from the Company”.

[36] Section 54 of the Articles states:

“The business of an ordinary general meeting shall be to receive and consider the accounts and balance sheets, the reports of the Directors and auditors, and any other documents required by law to be attached or annexed to the balance sheets, to elect Directors in place of those retiring, to elect auditors and fix their remuneration and to declare a dividend. All other business transacted at an ordinary general meeting, and all business (save as above) transacted at an ordinary general meeting, shall be deemed special”

[37] Section 79 of the Articles states:

“At the third annual general meeting of the Company all the Directors shall retire from office and thereafter Directors shall retire in every year. Any retiring Director shall be eligible for re-election. The vacant offices shall be filled by the Company in general meeting, and if at such meeting the places of the retiring Directors are not filled up, the vacating directors or such of them as have not had their places filled up, shall be deemed to have been re-elected unless at such meeting or adjourned meeting it is expressly resolved not to fill such vacated office or unless a resolution for re-election of such Director shall have been put to the meeting and lost”.

[38] **Defendant's Submissions**

Learned counsel Dr. David Dorsett submitted that Ms. Neipp seeks to rely on an unstamped share transfer agreement in support of her claim that Mr. Huber owned the shares in Overseas Property. The law is that such an agreement is inadmissible in evidence and that the court should not allow Ms. Neipp to place any reliance on the unstamped share transfer agreement purportedly executed by Simon McCauley and Dirk Huber, dated 17th July 2001, through which it is alleged that Mr. Huber acquired ownership of the 100 shares in Overseas Property. In support of his argument, Dr. Dorsett referred the court to section 20 of the Stamp Act of the Laws of Antigua and Barbuda.

[39] Dr. David Dorsett learned counsel next stated Ms. Neipp's case hinges on the court finding that Mr. Huber was a shareholder. He argued that if the court cannot recognize Mr. Huber as a shareholder of the company then Ms. Neipp has no locus standi to institute the present action and the claim must be dismissed.

[40] Dr. Dorsett referred the court to the decisions of **Soumitra Sengupta v Woods Development Ltd** Civil Appeal No. 20 of 2003 Antigua and Barbuda; together with **King's Casino Ltd v Pizza House Ltd**. Civil Appeal No. 5 of 2005 in support of his arguments that Ms. Neipp's claim cannot be proceeded with since the purported share transfer agreement through which Mr. Huber is alleged to have acquired title is inadmissible into evidence.

[41] In relation to the counterclaim Dr. Dorsett argued that since the defendants were sued by Ms. Neipp in her representative capacity, they were entitled to

counterclaim against her in the same capacity based on the alleged wrong doings of Mr. Huber. Counsel maintained that Overseas Property has the ‘locus standi’ to bring a counterclaim against Ms. Neipp who stands in the stead of a former director, Mr. Huber for his alleged wrong doings.

[42] Next, learned counsel Dr. Dorsett said that Overseas Property has suffered loss and damage as a consequence of alleged wrongful acts of Mr. Huber deceased and therefore the company ought to be able to recover damages from Ms. Neipp, in her capacity stated above.

[43] Finally, Dr. Dorsett argued that Mrs. Watt’s conduct can in no way be said to be prejudicial to Ms. Neipp’s interest since among other reasons that as a director of the company Mrs. Watt has never and does not hold any property that belongs to Ms. Neipp; neither does she owe Ms. Neipp any contractual, statutory or fiduciary duties. Accordingly, learned counsel Dr. Dorsett submitted that Ms. Neipp’s claim against the defendants ought to be dismissed and judgment should be entered for the defendants on their counterclaim.

[44] **Claimant’s submissions**

Learned counsel Mr. Vere Bird Jr. argued that Mr. Huber (deceased) was the owner of 100% of the shares in Overseas Property. Counsel conceded that Ms. Neipp could not properly rely on the unstamped purchase agreement purportedly made between Mr. Simon McCauley and Mr. Huber in order to establish her claim that her son was the owner of the shares having bought the shares from Mr. McCauley. Nevertheless, he maintained that the court had before it substantial credible evidence through which it could properly

conclude that Mr. Huber did indeed own 100% of the shares in Overseas Property at the date of his death. He adverted the court's attention to the share certificates which indicate that the 100 shares were owned by Mr. Huber. Learned counsel Mr. Bird Jnr. further argued that in accordance with section 200 of the Companies Act, the share certificates are prima facie proof of the title of Mr. Huber to the shares since the shares numbered 0-1; and 2-100 in the Overseas Property are registered in the name of Mr. Huber.

[45] Next Mr. Bird Jr. took issue with Mr. Watt alleged entitlement to 30% of the shares in the company. He contended that the agreement made, between Mr. Dirk Huber and Mr. Watt, on 15th August 2001, through which it is alleged that the latter obtained 30% of the shares in the company was void, for a variety of reasons including that the consideration was too vague.

[46] Further, Mr. Bird Jr. argued that Mrs. Watt cannot rely on the above mentioned agreement in so far as it is unstamped and is therefore not admissible in evidence. He too relied on the cases of **Soumitra Sengupta v Woods Development Ltd** *ibid* and **Kings Casino v Pizza House Ltd** *ibid*.

[47] Alternatively, Mr. Bird Jnr. contended that the resolution dated 1st September 2001 cannot suffice to effect any transfer of shares to Mr. Watt in so far as it infringes section 195(2) of the Companies Act in that the appropriate instrument of transfer was not utilized to effect the purported transfer. Further, learned counsel Mr. Bird Jnr. submitted that section 26 of the Articles of Association stipulate that the instrument of transfer shall be in writing and shall be signed by or on behalf of the transferor and the transferee and that the transferor shall be deemed to remain the holder of such share until the

name of the transferee is entered into the register. In relation to the shares allegedly transferred to Mr. Watt, Mr. Bird Jnr. maintained that in so far as neither section 195(2) of the Companies Act or section 26 of the Articles of Association have not been complied with the purported transfer is ineffectual.

[48] Further, learned counsel Mr. Bird Jnr. posited that while Mrs. Watt asserts that she is a shareholder of the company and also its managing director however she has failed to produce any proof in support of her assertions. The directors are appointed at the annual general meetings and Ms. Neipp has never received any notice of the annual general meeting. Further, Mr. Bird Jnr. underscored the fact that Mrs. Watt has conceded that she has not convened an annual general meeting.

[49] Therefore, Mr. Bird Jr. argued that Mrs. Watt's appointment as a director of the company was not valid. He said his position is supported by the fact that Ms. Noella Watt who purports to act as the new secretary of the company admitted in evidence that she has never sent out any notice for the convening of an annual general meeting. Accordingly, Mr. Bird Jnr. maintained that the last and only lawful annual general meeting of Overseas Property that was convened was that held on the 1st September, 2001, at which Mr. Watt and Mr. Huber were appointed as directors. Their appointments having expired 15 months thereafter, with no annual general meetings being convened, any purported appointment of any other persons, including Mrs. Watt, as director is invalid.

[50] Next, Mr. Bird Jnr. submitted that in so far as the Board of Directors of the company were not validly appointed, they have no authority to act for and on

behalf of the company and accordingly Mrs. Watt has no “locus standi” to bring a counterclaim on behalf of the company. Counsel referred the court to **Morris v Kanseen [1946] AC 459** in support of his contention. Accordingly, Mr. Bird argued that the defendants’ claim and counterclaim ought to be struck out.

[51] Alternatively, Mr. Bird Jr. complained that the defendants should not be heard in relation to their defence and counterclaim in so far as they have failed to comply with the order of court, dated 18th November 2005 in which among other things, the court had directed the defendants to cause an annual general meeting to be convened within 21 days of the order. The court also ordered the defendants to present accounts of the company and they have breached the court’s order since they have not convened the meeting as ordered.

[52] Finally, Mr. Bird Jr. argued the defendants have acted unfairly, oppressively or prejudicially in relation to Ms. Neipp’s interest and this is in breach of section 241 of the Companies Act. He points to the following circumstances though not exhaustive of the complaints namely: failure to hold annual general meetings and thereby depriving the members of their right to know and consider the state of the company’s affairs; unreasonable delay in convening a requisitioned meeting and excluding Ms. Neipp from the management of the company.

[53] Accordingly, he submitted that the court ought to grant Ms. Neipp the reliefs that she seeks.

[54] **Court's analyses and conclusions**

It bears stating that I find the approach taken by both learned counsel in seeking to have the issues, which have been raised and crystallized, resolved quite novel. In passing, I state that one may have expected that Ms. Neipp would have sought some interim measures against the alleged offenders including but not limited to, the provision of accounts; this was not to be. It is particularly noteworthy that Ms. Neipp did not seek to have the court appoint a receiver to take control or monitor the affairs of the company in the interim, particularly since she has been excluded from the business of the company altogether and I dare say she has no knowledge of the state of the company.

[55] I digress to state that it is interesting that the defendants appear not to have complied with a previous order made by the court in this matter and it does not appear that any steps have been taken by Ms. Neipp to have them comply with the court's order or bring any actions for the alleged contumacious conduct of the defendants.

[56] I am reluctant to state and do so with much respect, that Ms. Neipp's counsel has approached this matter in a manner which shows less than an adequate appreciation of the rights of majority shareholder who alleges that he/she is excluded from the workings/management of the company. The relevant legal principles of oppression and prejudice are formulated to protect the minority shareholders and not the other way around as seems to be the complaints of Ms. Neipp, who for all intents and purposes would be, if at all, the majority shareholder.

[57] In my respectful view, Ms. Neipp has failed to have recourse to the legal remedies that are available to her in her capacity as the personal representative of the majority shareholder and it is clear to me that a court of law can only go so far in protecting the interest of someone who has been wronged, provided that the correct legal procedures are utilized. Be that as it may, I nevertheless proceed to seek to bring about a just resolution to this unhappy impasse between the parties in spite of the approach adopted by Ms. Neipp.

[58] **Issue No. 1**

Whether Ms. Neipp is entitled to a declaration that Mr. Huber's estate is the owner of 100% of the shares in Overseas Property

In order to determine the first issue, I have to examine in some detail a bit of the history of the matter, not least because of the fact that at the trial and for the first time learned counsel Dr. David Dorsett took issue with the share transfer agreement, that was allegedly entered into between Simon McCauley and Dirk Huber, being admitted into evidence in order to prove that initially Dirk Huber owned all of the shares in Overseas Property. In support of his contention that any unstamped share transfer agreement not be admitted, counsel referred the court to the judgment of **Gordon JA in Soumitra Sengupta v Woods Development Ltd. Antigua and Barbuda Civil Appeal No. 20 of 2003** in which his Lordship 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 a part of an

action that is a fraud on the revenue of the state". This principle was reinforced in **King's Casino Ltd. v Pizza House Ltd. Civil Appeal 5 of 2005**, a decision of our Court of Appeal. I accept the principles enunciated above in so far as they hold it is impermissible to allow a claimant to rely on an unstamped agreement, which cannot be admitted into evidence, in order to prove his case.

[59] However, the facts of this case are different from those in the two mentioned cases and I am of the considered opinion that there is an abundance of evidence before the court on which Ms. Neipp can rely in order to establish Mr. Huber's initial ownership of the 100% shares in the Overseas Property. I do not share the view that she has to rely on the unstamped share transfer agreement in order to establish Mr. Huber's ownership of the shares.

[60] I am therefore not of the view that the fact that Ms. Neipp is prohibited from adducing into evidence the unstamped agreement is fatal to her claim. I refer to the share certificates which are registered in Mr. Huber's name and are prima facie proof of his ownership of the shares (see Section 200 of the Companies Act) together with the course of dealings between Mr. Huber, Mr. Watt and the company.

[61] In view of the totality of evidence produced to the court, it is clear to me that Mr. Huber became the holder/owner of 100% of the issued shares having bought the same from Mr. Simon McCauley.

[62] It has been suggested that Mr. Huber has committed a fraud on the company in obtaining a loan from the bank to purchase the shares in the company. I

am not prepared to make any comment on that submission save as to say that Mr. Watt, through whom Mrs. Watt claims to be entitled to the shares, was a signatory to the loan and the other related transactions. I therefore fail to see how Mrs. Watt could be properly heard to complain about an alleged fraud when, if at all her deceased husband through whose estate she claims would have been very complicit in any alleged wrong doing by Mr. Huber in relation to the shares. In view of the totality of the evidence, I refrain from making any comment or decision on whether Mr. Huber may have misled the Antigua Commercial Bank as distinct from committing a fraud on the company in obtaining a loan. The main reasons for my so doing will become very apparent very shortly.

[63] The matter does not end there since it is clear to me that Mr. Huber having purchased the 100% shares agreed with Mr. Watt that the latter would have a 30% shareholding in the company and that based on that agreement the parties managed the business of the company accordingly. It would be unjust for me to deny Mr. Watt's estate 30% interest/shareholding in the company on the basis that the shares have or have not been transferred into Mr. Watt's name in breach of the provisions of the **Company Act** and/or the **Articles of Association**. Accordingly, I decline to do so. Similarly, I am of the view that the unstamped share transfer agreement is not fatal to Mrs. Watt establishing that her deceased husband was the holder of 30% of the shares in Overseas Property.

[64] In view of the totality of circumstances and in order to do justice between the parties, I therefore have no reservations in stating that Mr. Huber was the holder of 70% of the shares in the company whereas Mr. Watt was the holder

of 30% of the shares. It is undisputed that Mr. Huber has died and Ms. Neipp has obtained letters of administration of his estate; I have no doubt that Mr. Watt has died based on the evidence provided, but there has been no attempt by Mrs. Watt to prove that she has obtained letters of administration of Mr. Watt's estate. This, however, does not appear to be a live issue in the matter (since it seems to me that whether or not Mrs. Watt has obtained letters of administration of the estate of Mr. Watt has not received any consideration by Ms. Neipp).

[65] Be that as it may, it is clear that there has been no effort to regularise the situation in order to have the shares registered in the names of their lawful owner nor has there been any instrument of transfer effected in accordance with section 26 of the **Articles of Association**. It is the law that on the death of a holder of a share the personal representative is entitled to have shares registered in the name of the legal personal representative. See section **32 of the Articles of Association**. Due to the difficulties that beset the company it does not appear that any steps have been taken to have either the shares that belong to Mr. Huber or Mr. Watt registered and/or transferred into the name of their legal personal representative. Therefore, I am required to do what is just in circumstances in order to give effect to my declaration of shareholdings as stated above.

[66] In my respectful opinion the justice of the matter requires that I make the following order namely: that Ms. Neipp in her capacity as the personal representative of the estate of Mr. Dirk is entitled to have shares numbered 1-70 (in Overseas Property) registered in her name and the register should be amended to so reflect. There should be no difficulty in having share

certificates issued to Ms. Neipp to reflect the order of the court. Further, in view of the totality of the circumstances of the case, I am similarly of the view that the personal representative of Mr. Watt, in this case that person seems to be Mrs. Watt, is entitled to have shares No. 71-100 held in Overseas Property company, registered in the name of the legal personal representative of Mr. Watt.

[67] **Issue No. 2**

Whether Ms. Neipp is entitled to an order from the court compelling Mrs. Watt and/or Overseas Property to convene a meeting of the company

[68] It is clear to me that the business of the company has not been scrutinized by the shareholders of the company as is required by the **Company Act** or the **Articles of Association** due to the fact that after the death of Mr. Huber, it does not appear that there has been any serious effort to convene an annual general meeting. I am also satisfied that since the death of Mr. Huber, Mrs. Watt eventually became the “managing director” of the company on the death of her husband, in circumstances that are in breach of the **Articles of Association**. While several meetings were purportedly held by persons who referred to themselves as the Board of Directors of the company and apparently decisions were taken, no attempt was made to properly notify the holders of 70% of the shares- Ms. Neipp. Recently, the defendants have treated Mrs. Watt and her two children as the sole shareholders and officers of the company and together they have excluded Ms. Neipp from all of the dealings of the company. In addition, Mrs. Watt has refused to convene an annual general meeting (as she has conceded).

[69] Based on the totality of evidence, I am unable to conclude that the appointment of Mrs. Watt as director is in accordance with the **Companies Act**. It is usual also for the **Articles of Association**, as is the case at bar, to provide for the holding of annual general meetings and the opportunity to hold an extra ordinary general meeting, both of these are to be convened by the directors whenever they think fit. See **Section 49 of the Articles of Association**. Further, **Section 49 of the Article of Association** also enables the holders of not less than one tenth of the shareholders of the company to requisition the holdings of a meeting and should the directors fail to convene a meeting, the requisitioners can convene a meeting themselves.

[70] In my respectful view, I am equally satisfied that Ms. Neipp has proven on a balance of probabilities that when meetings were convened that neither she nor her representative, Dr. Patrick Matthew was notified of the meeting. Further, I have no doubt that every effort was made to effectively oust Ms. Neipp and/or her agent from attending any of the meetings that were convened. This is consistent in my respectful view, with attempts by Mr. Watt and later his wife Mrs. Watt to wrest the control of the company from the majority shareholder. No proper notice of the annual general meeting was ever given to Ms. Neipp and/or her agent. I am also of the view that any annual general meeting, that may have been convened, was done in breach of the **Companies Act** and section 51 of the **Articles of Association**. The end result of this is that any decision including the appointment of any director, including the purported appointment of Mrs. Watt as a director of the company is invalid and of no effect.

[71] In my respectful view, and as alluded to earlier, while there is no doubt that the entire claim has been prosecuted and defended on bases which do not altogether lend themselves to resolutions in accordance with well established legal principles, by way of emphasis I am far from satisfied that Mrs. Watt was appointed as a director of Overseas Property in accordance with the provisions of the Companies Act or the constituent documents of the company; that being said it escapes me as to the basis on which Mrs. Watt can properly claim to be the company's director. This does not negate the fact that I have already accepted that Mr. Watt (deceased) was a director of the company up to the date of his death. Mrs. Watt cannot seek to stand in the place of her husband, without more, and any resolution purporting to appoint her as a director which was passed at the annual general meeting of which Ms. Neipp was not notified is a nullity. Yet, it is clear to me that Mrs. Watt operates as "the de facto" director and managing director of the company.

[72] While there is no doubt that Mrs. Watt has effectively taken over the company and has sought to install her children in several offices of the company, this in my respectful view is clearly wrong and unlawful in so far as there have been serious breaches both of the relevant statutory provisions and the constituent documents of the company. Further, I am of the considered view that the resolutions that were purported to have been passed appointing the directors are invalid. I am therefore of the view, as stated earlier, and so hold that Mrs. Watt has not been validly appointed as a director of the company.

[73] Let me at once say that I do not take the view that learned counsel Mr. Bird Jnr. can properly contend that Mrs. Watt is not a director of the company, yet seek to have the court grant reliefs against her in her capacity as a director of

the company. One should not be allowed reprobate and approbate. That having been said, in my respectful opinion, it is rather unfortunate that Mrs. Watt in her capacity as the “de facto director” of Overseas Property has chosen to not convene an annual general meeting and therefore has prevented the majority shareholder from meeting with the directors and questioning them on the workings of the company. There has therefore been no reporting or accounting, as is the norm, to the shareholders at the annual general meeting. It is also clear to me that Mrs. Watt and her children have the “de facto control” over the company and continues this exclusion of Mrs. Neipp.

[74] The law requires that a company holds an annual general meeting after the appropriate notice convening it, are given. The usual business conducted at the annual general meeting includes the presentation of accounts and reports, and the appointment of directors in the case of either death of a director or the resignation of the director. It seems to me that the law, in its wisdom, requires that annual general meetings be convened in order to ensure that members are able to partake in the decision making process of the company and also to make resolutions on their own account. Also, it is the law that the annual general meetings must be held by the directors whether they want to or not.

[75] This leaves me with the unhappy task of seeking to do justice between the parties with very little assistance of learned counsel in this regard, in the case at bar.

[76] In view of the totality of circumstances, and seeking to be fair to the parties, I am of the view that there is the urgent need to convene an annual general meeting and that for the purpose of so doing, I will direct that an annual general meeting of Overseas Property be convened before the 28th August 2008, and that Ms. Noella Watt who performs the functions as the Secretary of the company sends out the proper notice, giving 21 days notice in writing together with the Notice of Agenda to Ms. Neipp and Dr. Patrick Matthews, her agent. The notice should state the place in Antigua, the day and hour of the meeting. At the meeting, the directors of the company shall be appointed.

[77] For the sole purpose of taking the matter forward, Mrs. Gloria Watt will preside as the chair of the meeting until the directors of the company are selected based on the votes of the members, each member exercising the number of votes in accordance with their shareholding. Based on the evidence presented to me, in order to ensure that Ms. Neipp and/or her agent is able to properly participate in the annual general meeting, I state that no business shall be transacted at the annual general meeting unless Ms. Neipp and/or her agent are present. It is also prudent that I state that no step should be taken by Mrs. Gloria Watt or Ms. Noella Watt to prevent Ms. Neipp's counsel from attending the meeting for the sole purpose of giving his client legal advice, if necessary. This has become necessary based on the history between the parties, which was brought to the court's attention.

[78] **Issue No. 3**

What remedies, if any, are available to Ms. Neipp in her capacity as the personal representative of the estate of Mr. Dirk Huber?

[79] It seems to me that it is right and just based on my previous rulings, in relation to both the first and second issue, that the court hereby declares that all of the resolutions that were passed since 27th September 2002 are null and void. I so hold.

[80] Further, and in order to move the business of the company forward, it may be necessary that the audited accounts of the company, if available, be presented at the annual general meeting. I am of the view that at the court ordered annual general meeting, the accounts or reports, if they are available, be presented by Mrs. Watt. Also, it seems to be that Ms. Neipp and/or her agent are entitled to scrutinize the company books at its registered office.

[81] **Issue No. 4**

Whether or not the defendants can properly institute a counterclaim before the court

[82] In view of my previous rulings that the Overseas Property has not held any lawful or proper annual general meeting, neither is Mrs. Watt a lawful director of the company, I am of the respectful view that neither Mrs. Watt nor Overseas Property can properly institute any counterclaim against Ms. Neipp in her representative capacity. Any resolutions, as there may have been, are nullities in so far as they would have been passed in an unlawful manner. I therefore accept Mr. Bird Jnr. submissions that Mrs. Watt has no authority to institute any claim on behalf of Overseas Property. For the above reasons, I dismiss the counterclaim filed by Mrs. Watt and Overseas Property against Ms. Neipp.

[83] **Issue No. 5**

Whether the defendants are entitled to the declarations that they seek against Ms. Neipp in the capacity mentioned above.

[84] In view of my ruling in relation to issue number four (4), it is therefore otiose for me to address the fifth issue. I therefore decline to do so.

[85] **Conclusion**

In conclusion and for the foregoing reasons I give judgment in favour of Ms. Bridgette Rosemarie Neipp against Mrs. Gloria Watt and Overseas Property Bond Management Limited jointly and severally.

(a) I dismiss the counterclaim brought by Overseas Property Bond Management Limited and Mrs. Gloria Watt against Ms. Bridgette Rosemarie Neipp.

(b) I declare that Ms. Bridgette Rosemarie Neipp, in her capacity as the personal representative of the estate of Mr. Dirk Huber is the holder of 70% of the shares in Overseas Property Bond Management Limited.

(c) I declare that the personal representative of Mr. Charles Watt is entitled to 30% of shares in Overseas Property Bond Management Limited.

(d) I further declare that the personal representative of Mr. Dirk Huber, Ms. Bridgette Rosemarie Neipp is entitled to have shares numbered 1-70 in the Overseas Property Bond Management Limited transferred into her name

in her capacity as foresaid the relevant documents be amended forthwith to reflect the order herein.

(e) I hereby declare and order the shares numbered 71-100 by the Overseas Property Bond Management Limited be forthwith registered in the name of the personal representative of Mr. Charles Watt.

(f) I hereby order that an annual general meeting of the Overseas Property Bond Management Limited be convened no later than 28th August 2008.

(g) I hereby declare and order that Ms. Noella Watt gives 21 days prior notice to Ms. Bridgette Rosemarie Neipp and her agent Dr. Matthews of the date and place in Antigua of the meeting together with the agenda for the meeting which shall include the appointment of the directors of the company.

(h) I hereby declare that the resolutions that were passed since 27th September 2002 are a nullity.

(i) For the sole purpose of complying with this order, in relation to the annual general meeting, Mrs. Gloria Watt shall serve as the chairman of the meeting or in her absence Ms. Bridgette Rosemarie Neipp or her agent. The accounts of the company, if available, together with any reports should be made available at the annual general meeting and should be on the agenda.

(j) I hereby order Overseas Property Bond Management Limited and/or Mrs. Gloria Watt jointly and severally do pay Ms. Bridgette Rosemarie Neipp cost in the sum of \$14000.00

I thank both learned counsel for their assistance.

Louise Esther Blenman
High Court Judge

The court apologises for the delay in finalising this judgment, which is due to administrative difficulties with which all concerned are aware.