SAINT LUCIA

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

SLUHCV2009/0465

BETWEEN

PATRICIA YORKSTON

Claimant

AND

TAMARIND VILLAGE INC.

Defendant/Ancillary Claimant

AND

STEVE MEADE

Ancillary Defendant

APPEARANCES:

Mr. Tonjaka E. Hinkson for the Claimant
Ms. Diana Thomas for the Defendant

2011: January 24th
April 6th

JUDGMENT

[1] WILKINSON, J: Cross applications came on for hearing, one for security for costs filed 10th December 2010, by the Defendant, and the other filed 20th December 2010, by the Claimant for an inhibition to prevent the Defendant and other Parties from dealing with the Defendant's property or in the alternative a freezing order of the proceeds of sale of the property.

[2] The Defendant's application filed at 10th December 2010, sought the following:

1. The Claimant be ordered to pay into Court the sum of fifty-four thousand dollars ($54,000.00) representing security for the costs of the claim within 14 days of the date of the order.

2. Unless the Claimant pays the said sum into Court as ordered the claim is struck out on the expiration of the 14th day after the date of the order with prescribed costs to the Defendant.

The grounds of the application were as follows:

1. The Claimant is ordinarily resident out of the jurisdiction.

2. The Claimant has filed this claim and has further sought to inhibit any dealings with the property registered as Block and Parcel 1456B 864, and/or the proceeds of the said property which said property belongs to the Defendant.

3. The Defendant is not aware of any property which the Claimant has or may have in Saint Lucia in order to enforce any order for costs which the Defendant may get in the event that the Defendant is successful in this suit.

4. The Court has power pursuant to CPR Rule 24 to order a Claimant to pay security for costs of a claim.

[3] The Claimant's application filed 20th December 2010 sought the following orders:

1. An inhibition order to prevent or prohibit the Defendant, or any other interested parties in dealing with Block and Parcel 1456B 864 and in particular prohibiting the registration of any transfer or sale in respect of the said Parcel.

2. In the alternative, a freezing order, freezing the proceeds of the sale of the said Parcel in an amount equivalent to the value of the Claim filed by the Claimant in the substantive matter.

The grounds of the application were as follows:

1 By a Reservation Contract and Condominium Purchase Agreement made on 6th March 2008, and 3rd July 2008, respectively between the Claimant and the Defendant, the Parties contracted and agreed that the Claimant would purchase a condominium from the Defendant at the Tamarind Village Development.

2 In reliance on the said agreements, the Claimant duly paid to the Defendant the sum of five thousand United States dollars (USD$5,000.00) with respect to the Reservation Contract and the sum of eighty five thousand United States dollars (USD$85,000.00) pursuant to the deposit requirement under the Condominium Purchase Agreement.

3 The Claimant has now discovered that the Defendant has removed a caution previously placed on the Parcel, by the Claimant without the Claimant having had the opportunity to object to the removal of the caution or ever being served with the Notice of Removal of Caution or ever having signed the notice as being received by the Claimant in accordance with section 109 of the Land Registration Act. The Claimant has further discovered that the Defendant is in the process of or on the verge of selling the only property or asset of the Defendant being the parcel of land known as Block and Parcel 1456B 864.

4 The Claimant therefore is at risk of having no assets against which her judgment could be enforced should she be successful at trial. The Claimant's claim is for the return of her deposit and reservation fee and therefore the Claimant has an interest in the proceeds of the sale. An urgent inhibition is the only way the Claimant can secure the return of her deposit and reservation fee upon the sale being executed.

5 Should the sale take place it is likely the directors of the Defendant will return to Europe to whereabouts unknown to the Claimant further frustrating her claim. If the property is sold and the Claimant is denied the inhibition order being sought, the Claimant's claim would be rendered nugatory as the Defendant will dissipate the proceeds leaving no assets remaining within this jurisdiction in the name of the Defendant.

[4] The Defendant filed one affidavit deposed to by Mrs. Cathy Walker at 10th December 2010, and which affidavit sought to address both applications although the Claimant's application was filed subsequent. For the record, the Claimant had filed an earlier identical application at 8th November 2010, to that file 20th December 2010, but when neither Counsel nor the Claimant appeared at the time fixed for the hearing on 17th December 2010, the application was struck out. The Claimant filed two affidavits, one on 20th December 2010, to support her application for an inhibition order and or in the alternative a freezing order, and one on 13th January, 2011 in rebuttal to the Defendant's application for security costs.

[5] The Defendant is a company incorporated at Saint Lucia. At December 2008, its only shareholders were Mr. Martin Walker and Mrs. Cathy Walker, husband and wife, and they hold 50 common shares each. Its only directors are also Mr. Martin Walker and Mrs. Cathy Walker. The Defendant purchased for one million three hundred thousand dollars (EC$1,300,000.00) and with the assistance of a mortgage in the sum of one million, sixty-nine thousand, one hundred and thirty-six dollars (EC$1,069,136.00) from the Bank of Nova Scotia a lot of land registered in the Land Registry as Block and Parcel 1456B 864 and situate at Cas-En-Bas in the Quarter of Gros Islet. The balance due on the mortgage for payoff at 8th December 2010, was one million, two hundred and two thousand, two hundred and eighty-one dollars and seventy-five cents

(EC$1,202,281.75). Interest is being calculated at the daily interest factor of $274.7070. Upon the Parcel the Defendant had proposed to construct condominiums. This proposal has now been abandoned.

[6] A second company, Consolidated Design Services Ltd.(CDS) was also incorporated at Saint Lucia, and the shareholders of the company are Mrs. Cathy Walker with 60 common shares, Mr. Juan Charlemagne with 20 common shares, and Ms. Carmen Taylor with 20 common shares. The Defendant engaged CDS to prepare architectural drawings for a 32 unit condominium development on its Parcel, prepare interior design concepts, market and offer for sale the condominiums.

[7] CDS hired a third company, East Caribbean Real Estate Limited to market and find purchasers of the condominiums. East Caribbean Real Estate Limited acted through a number of persons including its director Mr. Steve Meade and manager, Ms. Anne Dickinson. There was exhibited an email dated 4th December 2008, between Mrs. Walker and Mr. Steve Meade which shows Mr. Steve Meade at the web address of "stluciarealestate.co.uk" and email address of steve@stluciarealestate.co.uk. This is noted as the Claimant refers to St. Lucia Real Estate Limited as being the entity with which she interacted and not East Caribbean Real Estate Limited.

[8] The Court was given sight of an email exchange from an investigating officer DC 4152 Steve Conroy at England which suggests that there is a trial ongoing in the Reading Crown Court at the United Kingdom and which trial involves Mr. Steve Meade. The email spoke of a court appearance by him at 28th September 2010, and an adjournment to 10th November 2010. No further details were provided as to what the case might be about in the email.

[9] Purchase of the condominiums was to occur by way of firstly a Reservation Contract where upon execution a proposed purchaser such as the Claimant was to pay a non refundable reservation fee of five thousand United States dollars (USD$5,000.00). Secondly, the Reservation Contract was to be followed up by execution of a Condominium Purchase Agreement. At execution of the Condominium Purchase Agreement a purchaser was required to pay 20 percent of the purchase price, in this instance the Claimant was required to pay eighty-five thousand United States dollars (US$85,000.00). A purchaser was given a credit of the reservation fee. The additional payment terms are of no moment here as the transaction before the Court went no further than this.

[10] There was no evidence that the Defendant received the payments made on the Condominium Purchase Agreement. Indeed the Claimant said that it was not until 6 months later that the Defendant communicated with her directly and informed her that the deposit was not receive. There had never been communication between the Parties before.

[11] The Claimant acted through Saint Lucia Real Estate Limited and according to her exhibit at 12th March 2008, executed a Reservation Contract and paid via a debit to her credit card the reservation fee of five thousand United States dollars (US$5,000.00). The Reservation Contract stated the Parties to it were Consolidated Designs Services Ltd. and Claimant. The copy exhibited by the Claimant bore only her signature. The Reservation Contract provided banking details for CDS at the Bank of Saint Lucia, Castries, Saint Lucia.

[12] CDS between March and April 2008, received the Reservation Contract signed by the Claimant from East Caribbean Real Estate Limited without the reservation fee of five thousand United States dollars (US$5,000.00) and it took the decision not to sign the Reservation Contract. The reservation fee was received at September 2008, and at this time Mrs. Walker says CDS sent by mail a package containing an unsigned Condominium Purchase Agreement to the Claimant for her signature.

[13] Curiously, three months earlier, at 3rd July 2008, there was executed a Condominium Purchase Agreement which stated the Parties to it were the Defendant as "the Developer", and the Claimant. It was executed by Mr. Steve Meade for 'The Developer" and the Claimant. There was at 10th July 2008, paid via Lloyds TSB transfer twenty three thousand four hundred and seventy- eight pounds sterling (£23,478.00) to Barclays Bank for the benefit of St. Lucia Real Estate Ltd. There was also exhibited a Bank of Ireland statement which was partially legible and the Court noted thereon an inconclusive date of 1 August 200?, the name of Mr. Lawrence Kennedy, and another partially legible date and year at July 200? with transaction details description of St. Lucia Real Estate for an illegible sum, and "commission tx telex trans" of £ 21.

[14] The Claimant's payments on the Condominium Purchase Agreement were made to St. Lucia Real Estate Ltd. notwithstanding that clauses 1 and 3 of the agreement provided the following:

> "1. DIFINITIONS
>
> "Escrow Account" shall mean:
> The Bank of Nova Scotia, William Peter Blvd, Castries, St. Lucia
> Account Name: McNamara & Co. – US$ Client's Account
> Account No. ….
> Swift Address:….
>
> PAYMENT
>
> 3.1 The Price shall be paid to The Developer by the Purchaser by way of staged payments as follows:
>
> a) Upon the signing of this Agreement:20 % of the Purchase Price less the Reservation Fee ($5,000.00) already paid, being $85,000…..
>
> 2.2 All Instalments payable hereunder shall be paid by the Purchaser to the Developer within 30

days of demand being made for same save and except for the payment due under 3.1(a) above which shall be held in Escrow subject to the terms of Escrow Agreement (herewith attached as Schedule D)…"

[15] The Claimant asserts that she having made the payment on the Reservation Contract to Saint Lucia Real Estate Limited without objection from the Defendant, she had no reason to believe that she had done anything incorrect by paying the deposit on the Condominium Purchase Agreement to Saint Lucia Real Estate Limited. Further, since the Defendant had put forward Saint Lucia Real Estate Limited as its real estate agent the Defendant ought not to be heard to say that the company had no authority to execute the condominium's purchase agreement. To her knowledge it was common place for a real estate agent to accept reservation fees to secure a sale.

[16] The Court was given sight of an email exchange dated 3rd and 4th December 2008, between Mr. Steve Meade and Mrs. Cathy Walker. The gist of which contents reveal that (a) there was an ongoing discussion between Mr. Meade and Mrs. Walker about him collecting funds which he was not authorized to do, save for the reservation fee, (b) his failure to forward the funds after collection to the Defendant or CDS, (c) his failure to disclose the names of purchasers who had paid deposits and which resulted in embarrassment when one of the purchasers arrived at Saint Lucia and informed the Defendant that she had paid a deposit, (d) Mr. Meade defending his position by asserting that he was seeking to protect purchasers' interest by holding onto the deposits, and his assertion that he was not going to disclose to the Defendant's counsel any notwithstanding demand, any monies received either at the United Kingdom or at Saint Lucia for the Defendant.

[17] The Defendant asserts that the Condominium Purchase Agreement exhibited by the Claimant is unknown to it and not in the form of the Defendant's Condominium Agreement as it does not bear its logo and although it makes reference to Schedules, it does not contain Schedules A (Design Plan of Development and Design Plan of the Unit), Schedule B (the Condominium Declaration), Schedule C (Management Agreement which was not attached but referred to in the Agreement as being provided at a later date) and Schedule D (the Escrow Agreement).

[18] A caution was put on the Defendant's property by the Claimant. The caution was removed and there is a dispute as to how the caution was removed without notice to the Claimant.

[19] The Defendant has deposed that due to the caution on its property, it has lost the opportunity of a sale. The Defendant exhibited a share option agreement executed at 22nd July 2010, and made between Mrs. Cathy Walker and Mr. Martin Walker as sellers and Mr. Jeremy Hudson as purchaser. It provided that for the consideration of £1. the sellers granted the purchaser the option to acquire from the sellers the shares of the

Defendant on two (2) conditions: (a) the purchaser or his nominees would redeem the debts of the Defendant at completion for EC$1.5 million, and (b) Mrs. Cathy Walker and Mr. Martin Walker would be granted a 10 percent share of the net development project known as Tamarind Village Development, Cas-en-Bas. The option was to remain open for 2 months after which it would be void.

[20] The Claimant states that she had no attorney-at-law acting on her behalf and she simply followed the instructions of Mr. Steve Meade. She had no reason to believe that Mr. Meade was not acting in an authorized manner as he appeared professional, credible, he had a registered company and an office at Rodney Bay.

[21] Since the aborted transaction between Claimant and the Defendant, the Claimant has been granted by the Government of Saint Lucia an alien landholding licence to purchase a two bedroom condominium at another development knows as "Bougainvillea Condominium" Gatepark, Cap Estate. The Court was given sight of the registered alien landholding licence for this purchase. The Court was also given sight of an unregistered deed of sale for this purchase.

Law:

[22] On the issue of security of costs, the Civil Procedure Rules 2000 Rule 24 provides the following:

> "24.2 (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
>
> (2) Where practicable such an application must be made at a case management conference or pre-trial review.
>
> (3) An application for security for costs must be supported by evidence on affidavit.
>
> (4) The amount and nature of the security shall be such as the court thinks fit.
>
> 24.3 The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –
>
> (a) …
>
> (g) the claimant is ordinarily resident out of the jurisdiction.

[23] On the issue of what weight ought to be given to a Claimant being resident out of state a staring point is Apollinaris Company's Trade-Marks[1] where Lord Halsbury L.C. said:

> "There is no such hard and fast rule as has been suggested, that because a person is resident abroad he must necessarily give security for costs. His being so resident makes a prima facie case

[1] (1891) 1 Ch. 1 at 3, quoted from Civil Appeal No.7 of 1996 Kinsley Bowman v. Hansraj Matadial

for requiring him to give security: but it is subject to a well-known and ordinary exception that if there are goods and chattels of his in this country which are sufficient to answer the possible claim of the other litigant, and which would be available to execution, the Court will not order him to give security for costs."

[24] In our Courts in Deborah Stoltz v. Bethy Lucas[2] Master Lann cited Baptiste J:

" [12] In Richard Rowe v. Mark Secrist et al[3] Baptiste J reviewed several cases on the issue of security for costs and stated at paragraph 12 that the power to order security for costs should be exercised only where residence abroad presented special obstacles to enforcement. He then said:

"… the authorities seem to establish the following:

1. The fact of the claimant being ordinarily resident abroad engages the court's jurisdiction but is not in and of itself a ground for making an order for security for costs.

2. Ordinarily resident outside the jurisdiction assumes moment in the context of grounds relating to the difficulties of enforcement. The court has to consider the relevance of the foreign residence in terms of ability of a successful defendant to enforce an award against the foreign claimant.

3. The discretion to award costs against a claimant ordinarily resident out of the jurisdiction is to be exercised on objectively justified grounds relating to obstacles to the burden of enforcement in the context of a particular individual or country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify inference that enforcement would not be possible.

4. It behoves an applicant to show some basis for concluding that enforcement would be impossible, or would face substantial obstacles or extra burden. (My emphasis)

[25] Having regard to the considerations distilled by Justice Baptiste reference was made to the Enforcement of Foreign Judgments Act Cap.2.09 and it provides:

"3. POWER TO EXTEND PART 1 TO FOREIGN COUNTRIES GIVING RECIPROCAL TREATMENT

(1) The Governor General, if he or she is satisfied that in the event of the benefits conferred by this Part being extended to judgements given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the superior courts of Saint Lucia, may by order direct—

(a) that this Part shall extend to that foreign country; and

(b) that the courts of that foreign country specified in the order are superior courts of that country for the purposes of this Part."

[2] Saint Vincent & The Grenadines Claim No.2008/315

[3] Claim No. SKBHC2003/0222

[26] In Surfside Trading Ltd. v. Landsome Inc.[4] George-Creque J. said the considerations on a security for costs application were:

> "7. ….
>
> (a) The risk of not being able to enforce a costs order and/or the difficulty or expense in doing so;
>
> (b) The merits of the claim where this can be investigated without holding a mini trial; this has an impact on the risk of needing to enforce a costs order against Claimant.
>
> (c) Whether the Defendant may be able to recover costs against someone other than the Claimant.
>
> (d) The impact on the Claimant having to give security. Will an order for security effectively deprive the Claimant of the ability to take the claim to trial? Where the Claimant is sheltering in a tax haven the court is unlikely to be very sympathetic, but where the Claimant's inability to pay has been caused by the Defendants' conduct complained of in the claim, a substantial order may unjustly stifle the claim.
>
> (e) Delay in making the application. Generally, the application should be made shortly after the proceedings are commenced and delay may be reflected either in refusing the application or reducing the amount of security ordered."

[27] On the issue of a freezing order, pursuant to CPR 2000 Rule 17 the Court has the power to grant the interim remedy of a freezing order. It provides:

> "17.1 (1) The court may grant interim remedies including –
>
> (a)…;
>
> (j) an order (referred to as a "freezing order") restraining a party from –
>
> (i) dealing with any asset whether located within the jurisdiction or not:
>
> (ii) removing from the jurisdiction assets located there;

[28] As to the matters to which the Court must have regard on an application for a freezing order, reference is made to National Insurance Corporation v. Rochamel Development Company Limited[5] where Edwards J said:

> "[32] It is important to note however that a freezing order is not an ordinary interim injunction which must satisfy "the serious question to the tried" test. The freezing order requires more than that, it requires a good arguable case against Rochamel, and a reasonable apprehension that Rochamel is in the process of dissipating its assets which will prevent N.I.C from enforcing its judgment….

[4] Claim No. AXA2005/0016

[5] Saint Lucia Claim No. SLUHCV2006/0638.

[37] Learned Counsel Ms. Albertini lost sight of the fact that the freezing order remedy, is designed not to preserve the status quo, but to prevent, a judgment for debt from becoming worthless and to prevent frustration of the Court's process.

[38] The evidence need not be direct evidence to prove dissipation of assets. The authorities show that the Court is entitled to assume a risk of dissipation of assets from any dishonest or discreditable conduct of Rochamel's directors/incorporators. At paragraph 38.8 in Blackstones Civil Practice 2000, the factors relevant to the question of risk of dissipation have been stated to include:-

(a) Whether the Defendant is domiciled or incorporated in a tax haven or country with tax company law;

(b)…

(c) Whether the evidence supporting the substantive cause of action discloses dishonesty or a suspicion of dishonesty on the part of the Defendant. This is a weighty factor when it is present, and that is so whether or not it is pleaded as fraud.

(d) Whether there is evidence that the Defendant has been dishonest outside the actual cause of action, this includes contrivances designed to generate an appearance of wealth.

(e) Past incidents of debt default by the Defendant, although it is not essential for the Claimant to have such evidence.

(f) Evidence that the Defendant has taken steps to remove or dissipate assets." (My emphasis)

[29] The Caribbean Civil Court Practice NOTE 14.33[6] is instructive on the duty of the Claimant to make full and frank disclosure when making her application for interim relief such as the freezing order. Note 14.33 states:

"The obligation to make full and frank disclosure is of long standing …. The primary duty is to make full and frank disclosure of the material fact ….. The principles were revisited and restated by the Court of Appeal in *Brinks's Mat Ltd. v. Elcombe* [1988] 1 WLR 1350 ….:

' (1) The duty of the applicant is to make "a full and fair disclosure of all the material facts":see R. v. Kensington Income Tax General Comrs, ex p. Princess de Polignac [1917]1 KB 486, 515 PER Scrutton LJ.

(2) The material facts are those which it is material for the judge to know in dealing with the application as made: materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers: see *R. v. Kensington Income Tax General Comrs General, ex p. Princess de Polignac*, per Lord Cozens-Hardy MR, at p. 504, citing Dalgliesh v. Jarvie (1859) 2 Marc & G 231, 238 and Browne-Wilkinson J in *Thermax v. Schott Industrial Glass Ltd*. [1981] FSR 289,295.

(3) The applicant must make proper inquiries before making the application: see *Bank Mellat v. Nikpour* [1985] FSR 87. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries.

[6] P.162

(4) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application, (b) the order for which application is being made and the probable effect of the order on the defendant:… see for example, the examination by Scott J of the possible effect of the Anton Piller order in *Columbia Picture Industries Inc. v. Robinson [1987] Ch. 38;* and (c) the degree of legitimate urgency and the time available for the making of inquiries: see per Slade J in *Bank Mellat v. Nikpour* [1985] FSR 87, 92-93…." (My emphasis)

On the issue of dissipation of assets in Hurrell v. Fitness Holdings Europe Ltd.[7] Cooke J said at page 20 said[8]:

" In assessing the risk of dissipation, the Court is concerned with the risk of dissipation which is unjustifiable, not with the use of assets to pay genuine indebtedness to others. The way in which this is expressed in Mr. Gee's textbook; to which I already referred is this:

In assessing the risk of dissipation, the Court is concerned with the risk of dissipation which if it were to take place would be unjustifiable, not the overall risk of whether the asset will be preserved in tact until judgment in the action, including the risk of proper expenditure."

[30] Authority is given to the Court by the Land Registration Act Cap. 5.01 to grant an inhibition as it provides:

"83. POWER OF COURT TO INHIBIT REGISTERED DEALINGS

(1) The Court may make an order, in this Division referred to as an inhibition, inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or hypothec.

(2) A copy of the inhibition under the seal of the Court, with particulars of the land, lease or hypothec affected thereby, shall be sent to the Registrar who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or hypothec until it has been registered.

84. EFFECT OF INHIBITION

So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered."

Findings

[31] On perusal of the Condominium Purchase Agreements exhibited by the Defendant and the Claimant, the Court found that the numbering of the paragraphs, the lining up of the text, and the text to be identical save for (a) a few instances where semi-colons were replaced by full stops, (b) the dollar value for the full purchase price, and other payments to be made in the Defendant's exhibit were highlighted by being set out in bold format, (c) under description of "The Unit' the Design Plan bears an additional designation of 'DSO1', (d) under payment at 3.1(a) there is the additional provision that the 20 percent should be paid not later than

[7] Q.B.D. (unreported 15/3/02)

[8] Extracted from SLUHVC 2006/0638 National Insurance Corporation v. Rochamel Development Company Limited, Edwards,J p.19 para.[44]

30 days after the issue of the contract, and (e) paragraph 5.1 in the Claimant's contract provided that the Defendant's United States dollar account details would be provided at a later date, whereas the Defendant's contract provided that the bank details were to be provided at the time when invoices were issued. While the Defendant has stated that the Claimant's Purchase Agreement does not contain Schedules A, B, C and D, it is noted that the Defendant's own exhibit only had attached the Escrow Agreement and it did not bear any identification markings identifying it as Schedule B or otherwise.

[32] Dealing first with the Defendant's application for security for costs, and which application was hinged firstly on the Claimant being resident outside of Saint Lucia, and secondly on she being without assets at Saint Lucia, the guidelines to which the Court must have regard and in particular those distilled by Justice Baptiste (as he then was) from several cases, and section 3 of the Enforcement of Foreign Judgments Act Cap. 2.09, show that the Defendant has not aptly demonstrated that even if the Claimant did not complete the purchase of the two bedroom Condominium at "Bourganvillea Condominium" Gatepark, Cap Estate that it would have any difficulty enforcing an order for costs at the United Kingdom. Pursuant to the Enforcement of Foreign Judgments Act it is common place for judgments obtained at the United Kingdom to be registered at Saint Lucia, and this could only be done because there is reciprocity .

[33] In regards to the Claimant's application, firstly given the nature of the alternative orders sought in the Claimant's application, it was according to the authorities cited mandatory for the Claimant to make full disclosure of not only matters pertinent to her, but of all the matters that she could have found out with a search at the Land Registry and so, there was indeed a major failure on her part to disclose the substantial mortgage held by the Bank of Nova Scotia and which mortgage is secured by the very property against which she seeks an inhibition order. That the mortgage will rank first in time is not in doubt. Indeed if one were to measure the sum due to the Bank $1,202,281.75 with a daily interest factor of $274.7070 for payoff of the mortgage at 8th December 2010, against the sum under discussion in the share option agreement i.e. $1,500,000.00, it becomes immediately clear that there is not a significant sum remaining for the benefit to anyone.

[34] Secondly, on the issue of risk of dissipation, having regard to the dictum of Edward J and Cooke J, I do not find that the Claimant has shown any dishonesty or fraud or discreditable conduct on the part of the Defendant or Mrs. Walker nor has she shown any action taken to remove or dissipate the assets.

[35] Thirdly, while the Court accepts that there was no evidence from the Defendant that at any point in dealing with the Claimant that she was informed of what now transpires to have been a multi-layered arrangement for the sale of the Defendant's condominiums, the Court is not convinced that the Claimant is as naïve as she would have the Court believe in her failure to retain an attorney-at-law either at Saint Lucia or the United

Kingdom to act on her behalf and that she acted by putting sole reliance in Mr. Meade, the Defendant's agent. It is clear to the Court that the Claimant is a person of some means as notwithstanding her investment which is the subject of this suit, she has according to her now purchased another condominium for ninety-seven thousand sterling pounds (£97,000.). Being a person of some means, this Court believes that there were other considerations that influenced the Claimant not to retain counsel in this matter. Perhaps it was the assurance of Mr. Meade as demonstrated in his email exchange with Mrs. Walker that he was not going to release purchasers' funds and details until he had certain assurances from the Defendant as to construction of the condominium units. The Court's observation in these matters is that unless it is stated in writing or the parties agree orally, a real estate agent may be selected as sole agent or one of several agents to sell a vendor's property, however, once a purchaser is located the matter then passes from the real estate agent to the attorneys-at-law for the parties to carry on with the transaction. If the Claimant opted to take the risk of proceeding without the assistance of Counsel either at the United Kingdom or Saint Lucia then surely that was her risk and she cannot be heard to say she was depending on the Defendant's agent. Caveat emptor.

[36] Neither the Reservation Contract or the Condominium Purchase Agreement executed by the Claimant provided that St. Lucia Real Estate Limited was to be a party and both provided information as to banking details none of which were adhered to. It was in blatant disregard to these banking details that the Claimant made her payments to St. Lucia Real Estate Limited, a company not referred to in any of the documents. The Claimant has not exhibited any document from the Defendant or CDS which gave Mr. Meade in his personal capacity, or St. Lucia Real Estate Limited permission to receive monies on its behalf.

Orders

[37] The Defendant's application for security for costs is dismissed.

[38] The Claimant's application for an inhibition order or in the alternative a freezing order is dismissed.

[40] No order as to costs

ROSALYN E. WILKINSON
High Court Judge