THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2016/0565

BETWEEN:

KENNETH MEADE .
HILDA MEADE

Claimants/ Ap.plicants

AND

CLEVELAND SEAFORTH
BRIAN GLASGOW as Joint Receivers of
ANTIGUA OVERSEAS BANK LIMITED (In Receivership)

Defendants/R spondents

Appearances:

Mr. Hugh C. Marshall Jr. and with him Ms. Kema Benjamin for the Claimants/Applicants

Mr. Anthony Astaphan S.C and with him Mr. Kendrickson Kentish and Ms. Amaya Athill for the Defendants/Respondents

---

2017: February 15th

March 22nd

ORAL JUDGEMENT

[1] **Wilkinson, J.:** On November 16th 2016, Mr. and Mrs. Meade, husband and wife, filed their claim form and statement of claim. An amended claim form and amended statement of claim were filed on December 5th 2016. The amended documents were served on December 6th 2016. By the

ameQded claim form and amended statement of claim Mr. and Mrs. Meade sought the following relief:

i. "A declaration that the commercial transaction entered into by the Bank and Emerald Springs Villas Ltd. in or about June 2007, with Mr. Meade as guarantor was unlawful and in direct contravention of its then banking licence and remains unenforceable and void ab ignition.

ii. A declaration that the deed of guarantee between Mr. and Mrs. Meade and the Bank to secure the loan facility agreed on or around June 19th 2007, between Emerald Springs Villas Ltd. and the Bank in the amount of US$650,000.00, is void and unenforceable against either Mr. or Mrs. Meade because the said deed of guarantee was not executed by both Mr. and Mrs. Meade in addition to the representative of the Bank.

iii. A declaration that the Bank is not entitled to sell the charged land pursuant to section 72 of the **Registered Land Act Cap. 374** having failed to issue any demand in writing of Mr. Meade[1] which demand has been in default for 30 days, amount to, and vesting a right in the Bank as Chargee to issue a notice under section 72 of the **Registered Land Act Cap. 374** of the Laws of Antigua and Barbuda as revised.

iv. A declaration that Mrs. Hilda Meade is not a party to the commercial transaction between Emerald Springs Villas Ltd. and the Bank and has issued no guarantee, and is under no commitment to the Bank in respect of any sums and that the notice issued to her dated August 29th 2016, is unlawful.

v. An injunction to restrain the Bank, its agents and/or servants from acting upon the charges registered on the land more particularly described in the Land Registry as **Registration Section: St. Philip South Block: 32 3286A Parcel 210** dated March 8th 2007, August 27th 2007 and April 17th 2009 and entered on the land register as entries or otherwise interfering with Mr. and Mrs. Meade's quiet enjoyment of their said property.

vi. An order to direct the Bank to cause the removal of the charges.

vii. Costs

viii. Any further relief this Honourable Court deems fit."

[1] **As guarantor**

[2] On November 16th 2016, Mr. and Mrs. Meade filed their application supported by the affidavit of Mr. Meade. The application sought the following orders:

i. "By injunction the Bank's Receivers (Liquidators), its agents and/or servants be restrained from acting upon the charges registered on land more particularly described in the Land Registry as **Registration Section: St. PHilip's South; Block:32 3286A, Parcel 210** dated March 8th 2007, August 27th 2007 and April 17th 2009 and entered on the land register in the incumbrance section as entries nos. 1,2, and 3 or from otherwise interfering with ML and Mrs. Meade's qqiet enjoyment of their said property by reason of advances made to Emerald Sprirgs Villas Ltd. under a commercial banking arrangement dated June, 19th 2007 until the determination of the substantive matter before the Court.

ii. Such further and other relief as this Honourable Court deems fit.

iii. The costs of the application be borne by the Bank."

[3] The grounds of the application were:

i. "CPR 17.42

ii. The commercial transaction entered into by the Bank and Emerald springs Villas Ltd. in or about June 2007, with Mr. Kenneth Meade as guarantor, was unlawful and in direct contravention of the Bank's then banking licence fand remains unenforceable and void ab initio.

iii. The Bank is not entitled to sell the charged land pursuant to section 72 of the **Registered Land Act Cap. 374** having failed to issue any demand itj writing under the deed of guarantee, and secured by the charges of Mr. Meade i.,yhich demand has been in default for one month. .

iv. Mrs. Meade is not a party to the commercial transaction between Emerald Springs Villas Ltd. and the Bank and has issuedno guarantee, and is under no commitment to the Respondent in respect of any sums and that the notice issue to her dated August 29th 2016, is unlawful.

[2] **Interim injunction and similar orders.**

v. Mrs. Meade did not have the benefit of independent legal advice prior to the execution of the charges."

[4] The Court observes that (i} the front of the application does not state that it is a "without notice" applipation however, the description at the back of the document describes the application as being one made 'without notice'; (ii) the application bears no date of hearing contrary to Part 11.10 of the **CivifProcedure Rules 2000** ("CPR 2000").

[5] The Court further observes that the draft order attached to the application filed on even date with the application, November, 16th 2016, sets out the names of Counsel as being Mr. Marshall for Mr. and fylrs. Meade and Mr. Kentish for Mr. Seaforth and Mr. Glasgow.

[6] An a idavit of service was deposed to by Mr. Eustace Gordon and filed on November, 29th 2016, by Cqunsel for Mr. and Mrs. Meade. Therein, Mr. Gordon deposed that the statement of claim and appliqation filed on November 16th 2016, were served on the Chambers of Counsel for Mr. Seaforth and f0r. Glasgow and not personally on Mr. Seaforth or Mr. Glasgow. At paragraph 5 he also deposed that he was advised by Counsel Ms. Kema Benjamin that by letter dated November 17th 2016/and addressed to Mr. Kendrickson Kentish an agreement was sought from Messrs. Lake & Kentish to accept service of the documents on behalf of Mr. Seaforth, Mr. Glasgow and the Bank and the Firm received oral confirmation from Mr. Kentish that his Firm would accept service of the docurhents.

[7] On November 29th 2016, a notice of hearing was filed fixing the date of hearing of the application befor Justice Lanns (Ag;) on December, 6th 2016.

[8] The ourt went into this detail on service because at the hearing the issue of full and frank disclo ure was raised in connection with an 'application without notice'. Against the facts about servic set out above, it would appear to the Court that there was no move to have the application heard "withoutnotice" to the Liquidators, Mr. Seaforth and Mr. Glasgow.

The evidence

[91 The Court has observed that in both the affidavit of Mr. Meade and in that of Mr. Seafprth there are submissions on law. The Court reminds Counsel of **CPR 2000** Rule 30.3 which provides that affidavits are only to contain such facts as a deponent is able to prove from his own ktjowledge and statements based on information and belief are only acceptable in a limited numbe;rof instances. All matters of law or drawing of conclusions of law are ignored.

[1O] At the hearing, the Court inquired of Counsel for Mr. and Mrs. Meade as to why Mrs. lyleade did not file an affidavit of her own in the proceedings given the pleadings set out on her be9alf. Counsel responded that this was his fault. The Court observed at that time that Mrs. Mead 's allegations against the Bank were part of the matters for consideration by the Court on the inte;rim injunction application and observed that it may have been Mr. Meade or Emerald Springs Villas Ltd. (hereinafter "ESVL") who or which had exercised undue influence on Mrs. Meade to bring her to the point of executing documents for the Bank. The case law is littered with c ses such as **Barclays Bank pie v. O'Brien and Anr.** [1993] 4 All.ER 417 which supports the Gourt's line of thinking and indeed so too does Mr. and Mrs. Meade's case referred to the Court - **Lodys Bank Limited v. Herbert James Bundy** where the pressure to execute further commitme6ts for a Bank came about by the emotional connection between a father and son.

[11] Against the background of the Court's line of thinking in regard to Mrs. Meade, and without direct evidence from Mrs. Meade, the Court is not prepared to accept matters deposed to y Mr. Meade on Mrs. Meade's behalf and same will not be referred to in the evidence cited.

[12] Referring to the documents exhibited to the affidavit in support of the application 8hd affidavit in opposition to the application, the evidence is largely uncontested. The Bank is in liquidation with Court appointed liquidators Mr. Seaforth and Mr. Glasgow, disbursement of the loan is not denied and the sum alleged as still outstanding and due, is not denied.

[13] At June 30th 2004, there was incorporated under the **International Business Corporation Act** (hereinafter "the IBC Act") the international company ESVL. Mr. Meade deposed that e is a director of ESVL. The Court observes that there was not the usual disclosure to the Court of any

doctJments/filings pursuant to the Act disclosing such matters as . who all the directors, sec/etary and so forth were of ESVL.

[14] At or about January 12th 2006, Mr. and Mrs. Meade purchased a parcel of land and which land measures .73 acre. The purchase is recorded in the Land Register as **Registration Section St. Phil!PS South, Block and Parcel No. 32 3286A 210** (hereinafter referred to as "the land").

[15] There existed the Antigua Overseas Bank Ltd. (hereinafter "the Bank") and which according to Mr. Sea(orth is now in liquidation[3]. It appears that it is agreed between the Parties that this Bank was regi tered under the **IBC Act** and held a licence for the carrying on the business of international banking.

[16] It a pears that not all of the documents executed between. the Bank and the Meades were discl sed. According to the documents disclosed and **prior to** the commitment letter disclosed date July 19th 2007, on January 17th 2007, Mr. and Mrs. Meade executed a charge which was filed pt March 8th 2007. In the first charge at clause 14 (n reference is made to a commitment letter date July 20th 2006, and being wherein details of the security requirements were outlined. In relatipn to the execution of the first charge there is a "certificate of verification of the execution" for both)Mr. and Mrs. Meade and therein it was stated by Ms. Eleanor R. Solomon, attorney-at-law, befor whom Mr. and Mrs. Meade appeared that they "acknowledged the subscribed signature to be hi /hers and that he/she had freely and voluntarily executed the within-named instrument (the first charge) and understood its contents." There was a similar certificate in relation to Mr. Meade as m naging director of ESVL.

[17] By th first charge, the borrowers were identified as Mr. Meade, Mrs. Meade and ESVL and therein Mr. ahd Mrs. Meade jointly and severally charged their respective interest in their land to secure the r payment by ESVI of a loan in the sum of US$500,000.00. The charge provided that (a) the charg'e was given as a form of security to the Bank for a loan made to the Borrowers", (b) the loan was fpr US$500,000.00 with interest and was subject to section 67 of the **Registered Land Act, Cap. 74.** There was set out what were described as "Special Terms and Provisions" in the charge

[3] It appears tha,t reciting in the title of suit as the Bank being in receivership is an error.

and which provided that (a) the Borrowers" were to on demand pay to the Bank the principal sum together with interest at the stated rate, (b) the Bank mai from time to time during the continuance of the charge make further advances or give further cred;it to "the Borrowers" on a current or credit facilities and tack on such further advances to the chare in accordance with section 81(1) of the **Registered Land Act,** (c) clause 14 (c) stated that not ithstanding th provisions in; section 72 of the **Registered Land Act** the whole of the principle iand interest would becom immediately due in described circumstaflces and amongst them was that if the borrowers failed to make when due whether on demand or at a fixed payment date, by 6cceleration or otherwise, a6y payment of interest, principal or other amounts payable to the Bank. plauses 15 and 18 provided:,

> "15(a) If the monies hereby secured or any part t ereof or any interest thereop shall not be paid as herein provided or if any stip lations or any agreements dn the part of the Chargors or the Borrowers herein con:tained or impli d by the o1 **Registered Land Act Cap 374** shall not be obs rved or performed then and.in such case immediately upon such non-payment r such non-observance or non-performance the Bank may notwithstanding the rovision of th **Registered Land Act Cap 374** at any time after the Bank shall ha e demanded payment of any monies hereby secured or upon the expiration of fifteen days' notice to the Chargors pr the Borrowers to remedy any breach or non-obsevance or non-performance of apy of the said stipulations or agreements sell the land hereby charged either with or without any special conditions or stipulations rel tive to title or otherwise with' power to buy in at any sale by auction and resci d contracts for sale and res II without being answerable for any loss or diminution in price with power also t([) execute assurances and to give effectual receipt for the purchase monies and to do all acts and things for completing the sale which the Bank shall think prop r and shall out of the sale monies first pay the cost and expenses in relation to Jhis security secondly pay the monies which shall th n be owing on thjs security ,md shall pay the surplus (if any) to the Chargors.
>
> 16....
>
> 17....

18. Notwithstanding the provisions of Section 151 of the **Registered Land Act Cap. 374** a demand for payment or any other demand under this security may be made or any notice under this security may be given by the Bank or by the Bank's Solicitors by letter left for or sent by prepaid post addressed to the Chargors or the Borrowers at their address as given in this Charge or at the Chargors, or the Borrowers last know place of business or abode and every demand so made and every notice so given shall be deemed to have been made or given on the day such letter was left or posted."

[18] Ones again, **prior to** the commitment letter dated July 19th 2007, on July 4th 2007, Mr. and Mrs. Mea9e executed a further charge in favour of the Bank upon their land for the sum of US$1:50,000.00. Like the first charge there were signed certificates of verification of execution in likeI nguage by and for both Mr. and Mrs. Meade and ESVL. The further charge provided that the Specal Terms and Provisions set out in clauses 2 to 19 inclusive of the first charge were to apply to th further charge and have effect in like manner as if the same had been expressly incorporated therein with such adaptations and modifications only as were necessary. There was also the provision:

"AND WE the above-mentioned Chargors hereby acknowledge that WE understand the effect of Section 72 of the **Registered Land Act, 1975."**

(19] At JUiy 19th 2007, the Bank issued a commitment letter to "The Directors" of ESVL. The Court obseryes that the directors were at the address - 65 Strathearn Avenue, Richmond, Ontario, Canada. For the purpose of this decision, the pertinent terms of the commitment letter were (a) that the Bank was prepared to make available to the ESVL a facility, (b) the borrower was to be ESVL; (c) the facility would be by way of overdraft, (d) the amount of the facility was to be US$650,000.00, (e) the purpose was that of a bridging facility between construction and sale of the villa pfoperties, (D the interest rate was 9 percent with the Bank reserving the right to alter· the rate depending on economic factors, (g) the facility was repayable. on demand, (h) the term of the facility was 1 year from for the date of the letter or once the full drawdown had occurred and at which[time of either event the overdraft facility was to be converted to a loan with terms and

conditions to be determined (i) collateral was to be: (i) the personal guarantee of K nneth Meade for US$650,000.00 supported by a first demand charge and caution up-stamped anct; registered to cover US$650,000.00 over Mr. and Mrs. Meade's land, (ii) construction insurance w,hich covered fire, hurricane and earthquake assigned to the Bank, 0) the agreement between the arties was to be governed and construed in accordance with the laws of Antigua and Barbuda. Th commitment letter also provided for "Events of Default" and such events included failure to pay an principal and interest on the due date, and breach of any covenant or failure to abide by any cQndition of the commitment letter amongst others. The offer in the commitment letter was to be accepted by July 31st 2007. The final paragraph of the letter stated:

> "Prior to accepting our offer, you have the right to request and obtain an explanation of any matter pertaining/relating to the offer, which may not be clear to you, from a representative of the Bank. You also have the right (at your expense) to consult with an Attorney/Solicitor of your choice prior to accepting our offer."

[20] Mr. Kenneth Meade signed the commitment letter on behalf of ESVL on what appears to be "June" 19th 2007 (the letter was issued at July 19th 2007). Mr. Meade also signed off a statement whereby he confirmed that he understood all of the terms and conditions of the credit facility a,nd he agreed to provide his personal guarantee in support of the credit facility to ESVL.

[21] At February 2nd 2009, the Bank issued another commitment letter addressed to th,e directors of ESVL. At this juncture there were three commitment letters, that of July 20th 2006, kreferredto in the first charge (but not disclosed), that of July 19th 2007, and the present being adgressed. The Borrower at February 2nd 2009, was identified as "ESVL", thefacilitywas described a being that of an overdraft, and the amount of the facility was to be US$690,000.00. The purpose of the loan was stated to be that of refinancing the existing facility with the Bank and to assist with related fees, insurance payment and implementing of a repayment program. Repayment of the loan was to be by 120 equal monthly instalments of US$8741,00 and they were tci commence dne month from the date of the letter. The collateral was (a) the Bank was to continue to maintain the existing charge for USD$500,000, and a further charge of USD$150,000.00 over the land, (b) joint and several guarantees by Mr. and Mrs. Meade for US$690,000.00, (c) a further charge for

US$40,000.00 over the land, and (d) homeowners - comprehensive insurance for the full value of the property, assigned to the Bank. It provided for events of default and amongst them being (i) failut,e to pay any principal and interest on the due date, (ii) breach of any covenant or failure to abid by any condition of the commitment letter, (iii) failure to settle any indebtedness becoming imm diately due or payable by the Borrower. The offer in the letter was to be accepted by Febr ary 28th 2009. There was like the letter of July 19th 2007, stated therein, that there was a rigbt to request and obtain an explanation of any matter pertaining or relating to the offer and a right;to seek legal advice. Mr. Meade signed off the letter as a director of ESVL. Mr. Meade and Mrs. ;Meade also on the commitment letter signed off a statement whereby they confirmed that they understood all of the terms and conditions of the credit facility and they agreed to provide their joint nd several guarantees in support of the credit facility to ESVL.

[22) Ther was disclosed an undated guarantee in the sum of US$690,000.00in favour of the Bank. The ;court observes that the first incomplete copy of the said guarantee disclosed under the affid vit of Mr. Meade and filed at November 16th 2016, only had the signature of Mr. Meade. A secobd full copy of the said guarantee was disclosed under the affidavit of Ms. Juliette Dunnah of Mr. {eaforth and Mr. Glasgow's Counsel's Chambers and which was filed on December, 8th 2016. This guarantee appears to have been made in support of the commitment letter dated February 2nd 2009{because (a) it was for the sum stated in that commitment letter i.e. US$690,000.00, and (b) that dcimmitment letter called for the joint and several guarantee of Mr. and Mrs. Meade and it was signe'.'d by both Mr. and Mrs. Meade and both also signed at the bottom of the guarantee to acknqwledge receipt of a copy of the guarantee. The guarantee was stated to be given in consideration of the Bank giving time credit and or banking facilities and accommodation to ESVL. A provision pertinentto the issue at hand is:

> "5. The Guarantee is to be in addition to and is not to prejudice or be prejudiced by any other securities or guarantees (including any guarantee signed by the undersigned) which you may now or hereafter hold from or on account of the Principal and is to be binding on the undersigned as a continuing security notwithstanding any payments from time to time made to or any settlement of account or disability or incapacity affecting the undersigned or the death of the undersigned or any other thing whatsoever."

[23] At August 29th 2016, the Chambers of Lake & Kentish issued separate but identical :otices to Mr. and Mrs. Meade and which notices were stated to be pursuant to the **Registered La d Act** with a request to pay off the loan in full. The notice was copied to Mr. Glasgow and Mr. S aforth. The notices read:

> "We LAKE & KENTISH of .... Attorneys-at-Law for ANTIGUA OVERSEAS BA K LTD (AOB) in Liquidation of ... Antigua, aforesaid, HEREBY GIVE YOU NOTI E pursuant to Section 72 of the **Registered Land Act, Cap.372,** that you are reguired to pay to us on behalf of the said ANTIGUA OVERSEAS BANK:-
>
> 1. The principal sum of US$586,818.00 being the amount due ani owing upon default in payment by you under Legal Charges on the land Jmd property comprised in the above-mentioned titled dated 08th day of Marfh 2007, 27th August 2007 and 17th April 2009.
> 2. Interest in the sum of US$271,470.00 as at the 17th day of August 2016.
> 3. Further interest accruing at the rate of 9% per annum for the tlme being.
> 4. All other costs charges and expenses accruing in respect of t e said charge.
>
> In the event that you fail to pay the required sums before the expiration of thref (3) months from the date hereof we will on behalf of the said ANTIGUA OVERSEAS BAN Ltd. proceed to sell the charged property without further notice to you." (My empha§is)
>
> Dated ...
>
> (Signed - LAKE & KENTISH)

[24] Mr. Meade deposed that it was the intention of ESVL to sell the villas to third parties and pending sales the villas would be rented as vacation units at premium rates. All busines's in relation to the villas was to be confined to Antigua and Barbuda-.

[25] There was no disclosure that ESVL had any assets such as land in its own name or other and so it appears that the intention was for ESVL to construct the villas on the land owned and registered in the names of Mr. and Mrs. Meade. The land charged.

[26] In regard to his guarantee, Mr. Meade deposed that at no time was a demand for payment made of him pursuant to the guarantee and that being the case, there could therefore be no demand under the charge. There was therefore no default of 1 month under the charge and so the Bank's right had not accrued which would have entitled it to issue the notice to pay off the debt as was done.

[27] Mr. Cleveland Seaforth filed an affidavit on behalf of the defendants in response to Mr. Meade's. He deposed that the Bank was on July 24th 2015, by order of the Court put into liquidation. The order was appealed but the appeal was unsuccessful. Pursuant to order of the Court, Mr. Seaforth and Mr. Glasgow were appointed the liquidators for the Bank.

[28] Mr. Seaforth deposed that according to the records of the Bank, both Mr. and Mrs. Meade acting for and on behalf of ESVL, owned and controlled ESVL or had a beneficial interest in ESVL and applied for and received 3 loans in the sums of US$500,000.00, US$150,000.00 and us 40,ooo.oo. The loans were secured by the charges referred earlier.

[29] According to Mr. Seaforth, he and Mr. Glasgow held the view that the "Special Terms and Provisions" in the charge entitled the Bank and them to give notice to pay off the loan pursuant to the charge independent of any rights that the Bank had under the guarantee. They consulted their attorneys-at-law, and were advised that they were at liberty to issue a notice to pay off. On their instructions, their attorneys-at-law issued the notice to pay off to Mr. and Mrs. Meade.

[30] Mr. Seaforth deposed that the credit facility letters were addressed to "The Directors" because there was nothing on the record to suggest that anyone other than Mr. and Mrs. Meade owned, and controlled or had a direct financial or beneficial interest in ESVL.

[31] Mr. Seaforth further deposed that Mr. a.nd Mrs. Meade had not made full and frank 9isclosure to the Court and he cited as examples of this failure that (a) Mr. Meade had represented Jo the Court that ESVL was registered under the local **Companies Act** as a local company when it like the Bank was registered as an international company, and (b) Mr. Meade failed to disclose the full document of the guarantee which showed that both Mr. and Mrs. Meade had signed the g:uarantee for US$650,000.00, he had only disclosed a partial of the guarantee.

Issues

[32] 1. Whether there is a serious issue to be tried, namely whether the contract between the Bank and ESVL was legal and so could give the Liquidators a right to pursue any or all of tre remedies pursuant to the contract and security documents.

2. If the answer to the first issue is "Yes" then whether to avoid the interim injunctiqh the Bank's Liquidators had complied with the **Registered Land Act,** charge and agreements onlh e matter of notice in case of default as found in the various documents executed between the Parties.

The Law

[33] **CPR 2000** rule 17.1(b)provides the Court with the authority to grant an interim injunqfion. Despite Counsel for the Liquidators' urging it is the Court's view that where an application is being heard with notice to the other side then the applicable principles to be applied in granting J=In interim or interlocutory injunction are still to be found in the case of **American Cyanamid Co. v. Ethicon Ltd.** [1975] 1 ALL E.R.504. At this juncture the Court is not justified in embarking on anything resembling a trial of the action on conflicting affidavits in order to evaluate the strength of either Party's case. The matters to which the Court is to have regard in determining whether to grant the interim injunction sought and which must be satisfied are:

a) the applicant has established a serious issue to be tried;
b) damages are not an adequate remedy;
c) the balance of convenience lies in favour of granting such relief (thatis, the grant of an injunction will do more good than harm); and

d) the applicant is able to compensate the respondent for any loss which such injunction may cause him in the event that it is later adjudged that the injunction ought not to have been granted.

In **Francome v Mirror Group Newspapers Ltd.** [1984] 2 ALL E.R.408 at 413 ... Sir John Donaldson MR, stated that "the balance of convenience' might be more properly called "the balance of justice".

[34] Looking at the first consideration, a serious issue to be tried, Mr. and Mrs. Meade challenge the very legality of the loan which has led to the enforcement measures being pursued by the Bank's Liqyldators, Mr. Seaforth and Mr. Glasgow upon ESVL's failure to repay the loan. They hold the vie\V that the Bank being registered as an international bank and which was only to deal with entiJies and persons who were registered as international entities or person's resident outside of Antigua and Barbuda that the Bank could not therefore lawfully make the initial loan and sub equent advances which it did and tack them on This submission was largely before disclbsure by the Liquidators that ESVL was registered as an international company. Mr. and Mrs Meade then submitted that with the proceeds of the loan being disbursed for use within Antigua and Barbuda, this was unlawful as there could be no lending for local use and thus the loan was unlawful and the Bank's Liquidators could not be allowed to pursue any remedy for default of the j6an.

[35] The Bank's Liquidators, Mr. Seaforth and Mr. Glasgow on the other hand hold the view that ESVL havi g been incorporated as an international company, the Bank was dealing with a like international entity and further on a review of the legislation governing the Bank there is no decl ration that such transactions are illegal and no prescribed event to follow where the funds disbdrsed were used at Antigua.

[36] ESVL and the Bank are corporations as described at section 2 (c) of the **IBC Act** and section 3(1) of the **ct** states that no association, partnership, society, body or other group may be formed for the purpdse of carrying on any international trade or business from within or outside Antigua and BarbQda unless it is a corporation under this Act.

[37] Section 4(1) states that international trade or business includes international banking a d at section 4(2) it is stated that international banking is the carrying on from within Antigua an , Barbuda of banking in any currency that is foreign in every country of the Caricom Region; butt keeping of external accounts for residents in any foreign currency under exchange control licencepi r regulation is not carrying international banking by virtue of that activity alone.

[38] There appears to be no dispute as to whether or not the Bank held a licence as requ ed pursuant to Part III Division A Licensing Requirements of the Act. Sections 227 (1) and (2) proJide that it is only in instances where a corporation wished to conduct the business of international qanking, trust or insurance that a licence was required.

[39] Section 227(4) states that an international corporation shall not carry on, within Antigu and Barbuda, any business activity that is not necessary or incidental to the internati nal trade or business for which is it licenced under this Part. Section 227(5) states that in this secti pn "business activity" means any trade, business, nature or concern for profit or gain.

[40] At section 227(6) there is an exception to an international bank, insurance an trust doing business at Antigua and Barbuda as it is provided that nothing in the Act or any otber Act shall prevent a corporation commenced to carry on an international banking, trust or insurarice business from lending money to the Government of Antigua and Barbuda.

[41] A review of the Act finds that in regards to any wrongdoing or unlawful or illegal 4ttivity by an international corporation or international bank, there is firstly, section 261 which)provides for remedial actions and sections 354 thru 358 which provides for prosecution at the summary jurisdiction level.

[42] Section 261 provides that where the "appropriate official" is of the opinion that an examination of a corporation pursuant to this Part indicates that the corporation is carrying on its business in an unlawful manner or is in unsound financial condition that (a) the appropriate official may require the corporation immediately to take such remedial measures as that official considers necessary, (b) the appropriate official may, in order to advise the corporation on the action to be taken bydt to remedy

th$ 'Situation, appoint for that purpose a person, who in the opinion of the appropriate official, has hap'trainingand experience in the same business that the corporation carries on.

[43] SecUons354 to 358 identifies various offences pursuant to various sections of the Act and which inc,lude offences in regards to records, registration, directors required attendance, director's error, co9fidentiai matters and security certificate and in each instance the person is guilty of an offence an \liable on summary conviction to pay a maximum fine of US$5000.00. The Court also observes thagprosecution for an offence under the Act or the regulations may be instituted anytime within 2 yea s fromthe time the subject matter of prosecution arose.

[44] Moving onto the common law position on the issue of the illegality of the contract between ESVL and the Bank, Mr. and Mrs. Meade relied on the authority **Claim No. ANUHCV2002/0074 Am rican International Bank v. Woods Estates Holding Co. Ltd. & Anr.** There the Claimant sought amongst other declarations and orders, a declaration that the First Defendant was not a law@ lender of money and was not licenced to do so under the laws of Antigua and Barbuda. The Def ndants in their defence pleaded that neither the Claimant nor the FirstDefendant were licenced to c rry on banking business in Antigua and Barbuda. **Thomas J.** reviewed several sections of the **IBC]Act** and concluded after reviewing the evidence that (a) there was no evidence that the FirsDefendant was licenced to engage in international banking, and (b) it was restricted or prohibited from carrying on business at Antigua and Barbuda. He found the loan between the Parties to be illegal and dismissed the action against the First Defendant. Relying on the long stan ingconventional position at paragraph 31 he said:

> "[31] the entire position is well summarized by **Cheshire and Fifoot, THE LAW OF CONTRACT** at page 325 in the following terms:
>
> A contract that is illegal in itself...is void and unenforceable by neither party. It is contaminated by turpis causa, and the rule long established that ex turpi causa oritur non action. This maxim means that no person can claim any right or remedy whatever under an illegal transaction in which he has participated.

(32) The learned authors continue "The effect of the two maxims ex turpi, oritur non actio and in pari delicto potior est conditio defendantis is that neither can maintain an action against the other if he requires any aid from the illegal transaction to establish his case."

[45] The Court was referred to the cases of **Hughes and Others v. Asset Managers Pie** [1995] 3 AER 669 and **Patel v. Mirza** [2016] 3WLR 399, which demonstrate to the Court the "changing winds" at common law on the issue of interpretation of contracts which appear to not be permitted by a specific Act.

[46] In **Hughes and Others v. Asset Managers Pie** here the challenge was pursuant to the **Prevention of Fraud (Investments) Act 1958** section 1 which provided that no person shall carry on or purport to carry on the business of dealing in securities except under the authority of a principal's licence, a licence pursuant to the Act, and in the capacity of a servant or agent of any person except with the authority of the representative's licence that is to say holding a licence authorising him to deal in securities as a servant or agent of his principal's licence. Section 2 of the Act provided that on contravention **the person was liable** on conviction on indictment to imprisonment or a fine. At October 1987, the appellants remitted £3m to the respondent for the purchase Of shares on its behalf pursuant to various investment management agreements concluded between the parties. The respondent sold the shares at the direction of the appellants and loss under £1m. The appellants filed suit seeking to recover their loss and alleged that although the respondent was licence to conduct the transaction the particular individual who actioned the appellant's request was not licenced pursuant to section 1 of the Act and so was prohibited from dealing with securities and this therefore rendered void the contract made by the individual. Lord Saville said at page 672 j thru 673 j:

"To my mind this argument contains within it the assumption that by prohibiting the unlicensed representative from dealing in securities the legislature was, in effect, rendering it legally impossible for such a representative to make deals in securities: that is to say, legally binding contracts between third parties on the one hand, and his principals on the other. This in not expressly spelt out by the **1958 Act,** so that the question is whether this is the true meaning and intent of the Act.

As Devlin Jput it in **St. John Shipping Corp v. Joseph Rank Ltd** [1956] 3 AER 683 to 690 [1957]1 QB 267 at 287 '... does the statute mean to prohibit contracts at all?' in the sense of rendering any purported contract void.

As a matter of pure construction, the language used by Parliament does not, to put it at its lowest, clearly indicate that the statue meant to prohibit (that is to say make void) contracts made by unlicensed representatives, for the subsection prohibits such a representative both from making deals (which ex hypothesi he could not do) and purported deals in securities. Indeed as a matter of language, this could be said to indicate that Parliament was not seeking to render unlicensed dealings a nullity, but instead was confining itself to imposing criminal sanctions on those who engaged in such activities....

I readily accept that the purpose of the 1958 Act was to protect the investing public by imposing criminal sanctions on those who, as principals or agents, engaged in the business of dealing in securities without being duly licensed. Parliament clearly intended to provide the investing public with the safeguard of the approval and licensing of professional dealers by the Board of Trade. However, I can see no basis in either the words the legislature has used or the type of prohibition under discussion, or in considerations of public policy (including the mischief against which this part of the 1958 Act was directed), for the assertion that Parliament must be taken to have intended that such protection required (over and above criminal sanction) that any deals effected through the agency of unlicensed persons should automatically be struck down and rendered ineffective. On the contrary, it seems to me that not only is there really no good reason why Parliament should have taken up this stance, but good reason why Parliament should have held the contrary view."

[47] While **Hughes and Others v. Asset Managers Pie** dealt with the lack of a licence owned by a representative of a principal to conduct the business described therein, **Patel v. Mirza** dealt with an agreement which was made contrary to and was prohibited by the **Criminal Justice Act 1993.** Section 52 of that Act provided:

"The offence of insider dealing

52. The offence.

. (1) An individual who has information as an insider is guilty of insider ealing if, in the circumstances mentioned in subsection (3), he deals in securfUes that are price-affected securities in relation to the information.

(2) An individual who has information as an insider is also guilty of ins/,?er dealing if-

a) he encourages another person to deal in securities that ar (whether or not that other knows it) price-affected securitie:s in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or

b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(3) The circumstances referred to above are that the acquisition or di5:posal in question occurs on a regulated market, or that the person dealigg relies on a professional intermediary or is himself acting as aprofession ! intermediary

(4) This section has effect subject to section 53."

Here, the facts were not complex. Adopting them as set out by Lord Toulson JSC, Mr. Patel transferred various sums of money totalling £620,000 to Mr. Mirza for the purpose of betting on the price of the Royal Bank of Scotland (RBC) shares, using advance insider information which Mr. Mirza expected to obtain from an RBC contact regarding an anticipated government announcement and which announcement would affect the price of the Bank's shares; Mr. Mirza's expectation was mistaken and so the intended betting did not take.place and Mr. Mirza failed to repay Mr. Patel his money despite promises to do so. Mr. Patel brought suit to recover his money and based his claim on amongst other grounds that of contract and unjust enrichment. In order to establish his claim, Mr. Patel was called upon to explain the nature of the agreemenfbetween the parties.

[48] **Patel** saw their Lordships address the issues of illegality, the public policy rational for the Co,urt's prior approach, enforcement of purported illegal contracts and the weighing of uniust enrichment amongst others. In conclusion all of their Lordships though at times appearing to use different routes of unjust enrichment, 'the Rule' and so forth all came to the conclusion as stated in the head note that:

> "The two broad policy reasons for the common law doctrine of illegality as a defence to a civil claim are that (i) a person should not be allowed to profit from his own wrongdoing and (ii) the law should be coherent and not self-defeating. The essential rationale of the doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or possibly, certain aspects of public morality). The rule that a party to an illegal agreement cannot enforce a claim against the other party to the agreement if he has to rely on his own illegal conduct in order to establish the claim does not satisfy the requirements of coherence and integrity of the legal system and should no longer be followed. **Instead the court should assess whether the public interest would be harmed by enforcement of the illegal agreement, which required it to consider (a) the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) any other relevant public policy on which the denial of the claim may have an impact and (c) Whether denial of the claim would be proportionate a response to the illegality, bearing in mind that punishment is a matter for criminal courts.** Within that framework various factors may be relevant but the court is not free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of those considerations, rather than by the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate."(My emphasis)

[49] The Court finds instructive the following statements from the Supreme Court. Lord Toulson said:

"107. In considering whether it would be disproportionate to refuse relief to wh.lch the claimant would otherwise be entitled, as a matter of public policy, various factors may be relevant. Professor Burrow's list is helpful but I would not atterrjpt to lay down a prescriptive or definitive list because of the infinite possible vari ty of cases. Potentially relevant factors include the seriousness of conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability.

108. The integrity and harmony of the law permit - and I would say required such flexibility. Part of the harmony of the law is its division of responsibility between the criminal and the civil courts and tribunals. Punishment for wrongqoing is the responsibility of the criminal courts and, in some instances, statutory regulators..... Punishment is not generally the function of the civil courts, whicp are concerned with determining private rights and obligations. **The broad principle is not in doubt that the public interest requires that the civil courts should hot undermine the effectiveness of the criminal law; but nor should they imdose what would amount in substance to an additional penalty disproportionate to the nature and seriousness of any wrongdoing. The Parking Eye** case/ [2013] Q.B is a good example of a case where denial of claim would be disproportionate. The claimant did not set out to break the law. It if had realised that the letters which it was proposing to send were legally objectionable, the text would have been changed. The illegality did not affect '. the main performance of the contract. Denial of the claim would have given the defendant a very substantial unjust reward. Respect for the integrity of the. Justice system is not enhanced if it appears to produce results which are arbitrary, unjust and disproportionate.

109. The courts must obviously abide by the terms of any statute, but I conclude that it is right for a court which is considering the application of the common law doctrine of illegality to have regard to the policy factors involved and to the nature and circumstances of the illegal conduct in determining whether the public interest

in preserving the integrity of the justice system should result in denial of the relief claimed....

Unless a statue provides otherwise {expressly or by necessary implication), property can pass under a transaction which is illegal as a contract....

115. In the present case I would endorse the approach and conclusion of Gloster LJ. She correctly asked herself whether the policy underlying the rule which made the contract between Mr. Patel and Mr. Mirza illegal would be stultified if Mr. Patel's claim in unjust enrichment were allowed. After examining the policy underlying the statutory provision about insider dealing, she concluded that there was no logical basis why considerations of public policy should require Mr. Patel to forfeit the moneys which he paid into Mr. Mirza's account, and which were never used for the purpose for which they were paid. She said that such a result would not be a just and proportionate response to the illegality. I agree." (My emphasis)

[50] Lord Neuberger of Abbotsbury PSC:-

"146. In such a case, the general rule should in my view be that the claimant is entitled to the return of the money which he has paid. In the first place, such a rule ("the Rule") is consistent with the law as laid down in the 18th century by two eminent judges, one of who is regarded as the founder of many aspects of the common law, including illegality; in addition it has support from some more modern cases. Secondly, the Rule appears to me to accord with policy, which is particularly important when illegality arises in the context of a civil claim. Thirdly, the Rule renders the outcome in cases in one of a very difficult topic, that of contracts involving illegality, and the maxim ex turpi causa non oritur actio (i.e. that no claim can be based on an illegal or immoral arrangement), relatively clear and certain.

167. The first general point I should make is that, in my view, even where the contemplated illegal activity had been performed in part or in whole, it would be

right to apply the Rule in appropriate case. Thus, in the case of an illegal contract where money is paid by the claimant to the defendant, and the contract is then partly or wholly performed by the defendant paying a lesser sum to the claimart, I do not see why, at least in the absence of good reason to the contrary, the court should not order that the claimant should recover the money that he paid the defendant, albeit reduced by the lesser sum which the claimant subsequently received from the defendant. Similarly, where the contract is wholly performed....

170. Secondly, it may be argued that, once the contract has been partly performed, the basis for restitutio in integrum has gone. But that argument is only right if the basis of the Rule is total failure of consideration.... Indeed, in the end, the correct analysis is not the centrally important issue, given that the question as to how the court deals with illegal contracts is ultimately based on policy. The ultimate function of the courts in common law and equity is to formulate and develop rules of a clear and practical nature....

171. Thirdly, it may be said that application of the Rule would result in the court sometimes getting precious close to enforcing an illegal contract - a course which the court most certainly cannot take, as already mentioned. I accept that application of the Rule would sometimes involve the court making an order whose effect in practice is similar to performance of the illegal contract. But there is nothing in that point. If a particular outcome is correct, then the mere fact that the same outcome could have been arrived at on a wrong basis does not make it the wrong outcome....

174. I have come to the conclusion that the approach suggested by Lord Toulson JSC in para 101 above provides as reliable and helpful guidance as it is possible to give in this difficult field. When faced with a claim based on a contract which involves illegal activity (whether or not the illegal activity has been wholly, partly or not at all undertaken), the court should, when deciding how to take into account the impact of the illegality on the claim, bear in mind the need for integrity and ·

consistency in the justice system, and in particular (a) the policy behind the illegality, (b) any other public policy issues, and (c) the need for proportionality."

[51] The security of the charge and further charges dated March 8th 2007, August 27th 2007, and April 17th 2009 (the latter was not disclosed but recorded on the land register disclosed for the land) are go\(rned by the **Registered Land Act Cap.374.** Indirectly the charges were challenged by Mr. and Mrs. Meade, they being the security for the loan which it was sought to have declared as unlawful. The Act provides:

"64. (1) A proprietor, may, by instrument in prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, **and the instrument shall contain a special acknowledgement that the charger understands the effect of section 72 of this Act** and the acknowledgment shall be signed by the charger or, where the charger is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified **the money shall be deemed to be repayable the three months after the service of a demand in writing by the chargee.**

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as it proprietor and by filing the instrument.

67.... (agreements implied on the part of the chargor in charges.)

72. (1) If **default is made in payment of the principal sum or any interest or any other periodical payment or of any part thereof,** or in the performance or observance of any agreement expressed or implied in any charge, **and continues for one month, the chargee may serve on**

the charger notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

(2) If the chatgor does not comply with a notice served on him under subsection (1) within three months of the date of such service, the char ee may

a) appoint a rece,iver of the income of the charged property; or

b) sell the charged property.

75. (1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the chargee thinks fit, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.

(1a) A chargee exercising his power of sale may, with the approval of the court, sell the charged land by private treaty subject to such terms and conditions ofsale as the court may order.

81. (1) Provisions may be made in the charge for a chargee to make furthe advances or give credit to the chargor on a current or continuing account, but, unless th provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

(2) Except as provided in this section, there is no right to tack.

82. A chargee has no right to consolidate his charge with any other charge u·nless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

151. A notice under this Act shall be deemed to have been served on or given to any person -

a) if served on him personally, or

b) if served on an attorney holding a power of attorney where under such attorney is authorised to accept such service; or

c) if sent by registered post to him at his last known postal address in Antigua and Barbuda or elsewhere and a receipt purporting to have been signed by him has been received in return; or

d) if service cannot be effected in one of .the above mentioned ways by displaying it in a prominent place on the land affected for a period of three weeks and by two publications in a local newspaper." (My emphasis) .

Findings and analysis

[52] It strikes the Court as odd that the loan in issue and which legality is being challenged was made to ESVL and yet ESVL was not made a party to this suit. Perhaps that will be an issue arising at a later tJate. For the moment the Court confines itself.

[53] The Court would have found it helpful if ESVL had disclosed copies of filed documents which discldsed who the directors of ESVL were, they were after all referred to as "The Directors" in both comm,itment letters disclosed. Only Mr. Meade identified himself as a director. It was the duty of ESVU and Mr. and Mrs. Meade to disclose such information for the consideration of the Court espe&ially in light of submissions initially sought to be made on behalf of Mrs. Meade i.e. that she had 110 dealings with ESVL. In passing the Court would state that such a fine line cannot be drawn beca se according to Mr. Meade the money borrowed from the Bank was to build villas on the land jointl½ owned by Mr. and Mrs. Meade. ESVL and the Meades were therefore inextricably intertwined.

[54] As observed by the Court above, both the first charge (January 17th 2007) and the first of the furthe:r charges (July 4th 2007) were made prior to the commitment letter dated July 19th 2007. That being so, it appears to the Court that the collateral referred in the commitment letter of July

19th 2007, was but a mere repetition of something that already existed, not new; at least the charge was not. The Court also observes that there was no disclosure of a guarantee in the sum of US$650,000.00.

.[55] As stated prior there was no denying that the Bank had disbursed the loan proceeds to ESVL and there was no denying that ESVL had failed to repay the loan.

[56] This brings the Court to the first consideration under **American Cyanamide** - is there a serious question to be tried. On the facts, that translates to since there is no denyin9 of the loan disbursement and failure to repay, to whether in all the circumstances of the moneyJoaned by an international bank to an international company but disbursed and used locally at Antigua, was the contract illegal in the first instance and unenforceable or enforceable in the second in tance.

[57] In addressing this consideration, the Court looks to and adopts the principles in **Pat,1** and therein Lord Toulson at paragraph 107 sets out the considerations to be applied. They were;(a) the Court must look at the seriousness of the conduct, (b) the conduct as it impacts the contract, (c) whether conduct was intentional, (d) whether there was a marked disparity in the Parti s respective culpability.

[58] Looking at the **IBC Act,** there is no provision addressing a situation where a loan is made by an international bank to an international company and the proceeds of the loan are u.sed locally at Antigua and Barbuda. Further, the Court observes with interest that there is no ab$olute ban on local dealings as the **Act** indeed provides that an international bank can lend money locally to the Government of Antigua and Barbuda.

[59] At its highest in both the civil and criminal jurisdictions, the **IBC Act** in the civil jurisdiction provides for remedial action and none of which in particular are described and in relation to the criminal jurisdiction, as seen in the Act, it provides for offences described in the Act but none of the offences cover a situation where the a bank either lends money to a locally incorporated entity for use at Antigua and Barbuda or lends money to an international company which uses the money locally at Antigua and Barbuda.

[60) Relying on the reasoning on **Hughes** and **Patel** it appears that Parliament did not think such action as. occurred between the Parties was sufficiently serious or grave enough to offend public policy and so warrant either a civil remedy or criminal offence.

[61) Looking at Lord Toulson's second consideration, the conduct as it impacts the contract. At this juncture, the contract is fully executed by disbursement of the loan as far as the Bank is concerned, and It is ESVL that has failed to repay the loan and so failed to execute its part of the contract and ESV is clearly holding the advantage over the Bank. It is the Court's view that it is the conduct of ESV that is negatively impacting the contract between the Parties.

(62] The third consideration is whether the conduct of the Bank, but the Court adds ESVL here too as beneficiary of the loan was intentional. The Bank lent the money to another international entity no doutit knowing that it would be applied locally hence the charge on the local property. It appears to the Court that both Parties if there is to be culpability are equally culpable.

(63] The fourth consideration is whether either the Bank or ESVL was more responsible and deserving of blame for the situation. There was no evidence on the facts. The Bank disbursed the loan, ESV benefitted from the loan and continues to benefit from the loan having not repaid the loan.

(64] Applying the **Hughes** and **Patel** principles to the facts before the Court, the Court is of the view that '.it cannot declare and deem the contract between the Bank and ESVL illegal and unen orceable because then. ESVL would be unjustly enriched as it would have had the full benefit of the loan.overthe course of several years with no repayment.

[65] The qourt therefore holds that pursuant to the terms of the commitment letters and security arising therefrom that the Bank is entitled enforce the contract to secure repayment of the loan.

(66] Movir,g along, Counsel for Mr. Meade submitted that in relation to the Bank's approach to entor&ement, the Liquidators were wrong to start at the charge and that they should have pursued entorqement first under the guarantee. He relied on the commitment letter of July 19th 2007, where

it is stated that a personal guarantee was to be given by Mr. Meade for US$650,000;00 supported by a first demand charge. His emphasis being on the words "supported by a first iharge". The problem with this submission is that as shown above, the first charge was for US$5QO,OOO.OO and was executed prior to the commitment letter of July 19th 2007, it was executed at January 17th 2007, and in pursuance as stated therein, of a commitment letter dated July 20th 2Q06. In effect what happened at July 19th 2007, was only that a further charge of US$150,000.0p was tacked onto the loan of US$500,000.00 and covered by the first charge. There was not goiqg to be a first charge issued pursuant to the July 19th 2007, commitment letter. The Court is su ported in this position by the matters set out in the incumbrance section of the land register. Th.e first charge having been created before the guarantee, then any requirement for recovery of payment to start with a request under the guarantee is not acceptable.

[67] These matters so far addressed show that the issues between the Parties are irideed serious issues. The first hurdle of **American Cyanamid** has been crossed.

[68) At this juncture however, the Court is not of the view that because it has identified ierious issues between the Parties, that it must necessarily grant the interim injunction sought by Mr. and Mrs. Meade. This is because the 2 major pillars of Mr. and Mrs. Meade's argument, *qne* being that contract for the loan was unlawful but the Court relying on **Hughes** and **Patel** has; found that to deem it unlawful would be to leave ESVL unjustly enriched, and secondly, the matter of enforcement first by way of a call under the guarantee followed by the charge must fail because indeed the first charge was.registered for some time prior to the guarantee being requested by the Bank and provided, and so it was not possible for the guarantee to be supported by the first charge. The serious issues have therefore evolved against Mr. and Mrs. Meade. They therefore are not deserving of the interim relief of an interim injunction.

[69) The Court does not believe that it needs to go any further having found as it has about the enforceability of the loan however, for completeness the Court will address the matter of the notice issued in the letters i.e. whether the notices were in compliance with the Act which they were stated to have been issued pursuant to.

[70] The **Registration of Land Act** is strict at to what must be included in every charge. Section 64 (1) requjres a special acknowledgment and the same is seen and acknowledged in the charges executed by the Meades on January 17th 2007 and further charge executed by the Meades on July **41h2Q07.**

(71) Pursuant to the final commitment letter of February 2nd 2009, there was a fixed date when repayment was to start - one month from the date of the letter, and the loan was amortized over a period of 10 years.

[72] Bothfsections 64 and 72 of the **Registration. of Land Act** make provision for 3 months' notice to be give for repayment. Counsel for the Defendant on August 29th 2016, issued the letters complained about on the instructions of the Liquidators and therein specifically state that the demand was being made pursuant to section 72. The section calls for the giving of three (3) months' notic , the letters gave 3 months' notice. The Court observes that the application for interim relief was filed 21/2 months into the 3 months. That being the case, Mr. and Mrs. Meade are not allowed to say that they did not receive proper notice.

[73] Finally, the Court apologises for the delay in delivering this interlocutory decision. This was due to som unforeseen personal circumstances suffered by the Court and of which the Hon. Chief Justide is aware.

[74] Courfs orders:

1. The application for an interim injunction is denied.
2. Costs to the Liquidators in the sum of $3000.00.
3. The matter is adjourned for hearing before the Master where it shall take its usual course pursuant to **CPR 2000.**

Rosalyn E. Wilkinson
High Court Judge