ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CIVIL)
A.D. 2017

Claim No. AXAHCV 2017/0034

IN THE MATTER OF THE ARBITRATION ACT CHAPTER A105 OF THE REVISED LAWS OF ANGUILLA

AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPEAL THE AWARD OF JOHN BASSIE SOLE ARBITRATOR, ISSUED ON THE 11TH OF NOVEMBER 2016 AND CORRECTED ON THE 9TH OF MAY 2017;

PALMAVON WEBSTER

RESPONDENT/APPLICANT

AND

JOHN DYRUD

CLAIMANT/RESPONDENT

Appearances on Paper:

Ms. Rayana Dowden holding for John Carrington QC for the Applicant
Ms. Jean Dyer instructed by Keithley Lake and Associates for the Respondent

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2017: November 21;
2018: March 29;
April 6.

RULING ON PAPER SUBMISSIONS

[1] **TAYLOR-ALEXANDER, J.:** The Applicant seeks leave to appeal the award of the Arbitrator John Bassie issued on the 9th of May 2017. The grounds of appeal are contained in the application filed on the 2nd of June 2017, and are reflected thus:—

i. *"The application is brought pursuant to the court's authority under the Arbitration Act 1996 Section 69(2) to grant a party to arbital proceedings leave to appeal to the court on a question of law arising out of an award made in the proceedings.*

ii. *The questions of law set out in the schedule hereto were questions which the Arbitrator was asked to determine in consideration of his award.*

iii. *The Determination of these questions will substantially affect the rights of the parties to the Arbitration.*

iv. *Despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine these questions*

v. *The Applicant has already asked the Arbitrator to correct the date of the award in accordance with the powers granted under Section 70 of the Arbitration Act.*

vi. *The Applicant has also applied for a review by the Arbitrator of the award under S57 of the Arbitration Act.*

vii. *The Applicant has therefore exhausted all available arbital processes, appeal or review and any available recourse under the Arbitration Act."*

Appeal on a point of Law

[2] Appeals from an award made on Arbitration are governed by Arbitration Act Chapter A105 of the Revised Laws of Anguilla which applies the Arbitration Act of the UK as amended from time to time and all the provisions of the Act, so far as the same are applicable, mutatis mutandis apply to all proceedings relating to arbitration within Anguilla. Any application for leave to appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process. The Applicant has met the time requirements.

[3] The court's Jurisdiction on an application for leave to appeal under Section 69(3) of the Arbitration Act 1996 of the United Kingdom, is engaged thus:—

> *" Leave to appeal shall be given only if the court is satisfied—*
> *(a) that the determination of the question will substantially affect the rights of one or more of the parties,*
> *(b) that the question is one which the tribunal was asked to determine,*
> *(c) that, on the basis of the findings of fact in the award—*
> *(i)the decision of the tribunal on the question is obviously wrong, or*
> *(ii)the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and*

(d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.
(4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.
(5)The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.
(6)The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal."

[4] The court's general approach to appeals in awards at arbitration is as expressed in the dicta of Bingham J in **Zermatt Holdings SA v Nu-Life Repairs Ltd** (1985) EGLR 14. He said:—

'as a matter of general approach the courts strive to uphold arbitration awards. They do not approach them with a meticulous legal eye endeavouring to pick holes, inconsistencies and faults in awards and with the objective of upsetting or frustrating the process of arbitration. Far from it. The approach is to read an arbitration award in a reasonable and commercial way expecting, as is usually the case, that there will be no substantial fault that can be found with it.'

[5] It is on the statutory authority and this general guidance, that I now assess the application filed.

The question of law is one that the tribunal was asked to determine;

[6] The Appellant has listed the questions of law under challenge as follows:-

(i) Whether the Partnership Withdrawal Agreement had been concluded between the parties in May 2007;

(ii) Whether Cause 2.1 of the Partnership Withdrawal Agreement which required the Applicant to pay to the Respondent such sums which the account of the firm, when agreed, show as the amount of outstanding loans made by the Respondent to the firm is specifically enforceable;

(iii) Whether Under Anguillan Law Specific Performance is available for an agreement to pay a debt.

(iv) Whether the Arbitrator had the jurisdiction in enforcing clause 2.1, to dispense with the requirement that the parties should agree the accounts and determine himself the amounts due from the Applicant to the Respondent based on unaudited financial statements which the parties had not agreed.

(v) Whether in light of the finding of the Arbitrator that the Partnership Withdrawal Agreement created an obligation on the part of the Applicant to pay the Respondent, a specific sum of money, the recovery of such debt and the recovery of interest thereon

under the Partnership Act should be subject to the Limitation Act Chapter L60 on the basis that such debt would have accrued no later than May 2007, the date on which the Arbitrator found that the agreement was concluded and any liability to pay interest under the Partnership would have accrued prior to December 2006 when the Partnership was dissolved.

(vi) Whether the Arbitrator correctly characterised the payment of $118,165 as a loan to WDM and whether the Arbitrator was justified in piercing the corporate veil of Norwego Ltd, which the evidence disclosed paid this sum so as to conclude that this was a sum due from the Applicant to the Respondent.

[7] I have had regard to the List of Issues Agreed and Not Agreed included at Tab 5 of the Index of Documents, and which was relied on by the Arbitrator to structure his award. I have also had regard to the Claim made and the Counterclaim, and the submissions of the parties. I have assessed each ground referred to as a question of law, asked to be determined by the tribunal. I am satisfied that although not characterised in the same language used in the List of Issues Agreed and not Agreed, all of the issues with the exception of one was placed before the Tribunal for determination. The exception being Specific Performance as a remedy available under the law of Anguilla. I agree, and accept the Submission of the Respondent, that this issue was not placed before the tribunal. What in fact the tribunal was asked to determine was whether the Respondent was entitled to Specific Performance of the PWA. The two issues are wholly separate, one being of the availability of the remedy and the other being whether a party has established a right to the remedy. It is the latter issue which was placed before the tribunal.

[8] I note however, that the Applicant, in her submissions, addressed the latter issue, and it is therefore the latter issue to which I have addressed my mind.

The determination of the question will substantially affect the rights of one or more of the parties.

[9] This ground is primarily directed at how important the point is in determining the rights of the parties. In the **Northern Pioneer** case, Lord Phillips opined that for a question of law to substantially affect the rights of one or more of the parties would involve that point of law affecting the entire outcome of the arbitration, not a small part of the award.

[10] The broad terms of the referral to arbitration was to determine whether the Partnership Withdrawal Agreement (PWA), was a binding and enforceable Agreement. The Agreement in effect sought to dissolve a partnership and to secure the settlement of sums due and owing under the PWA. The finding of the Arbitrator that the Partnership was dissolved and that the Appellant is required to pay US$887,436.40 together with interest and the sum of US$118,165.25 is at the heart of the award.

[11] I accept the Appellant submission that her success on appeal would result in her not having to pay US$887,436.40 together with interest and the sum of US$118,165.25, and concomitantly, her success on appeal would result in the loss to the Respondent of the receipt of a substantial sum of money, and that issue is at the core of the award and must therefore be of significance to the paying and to the receiving party.

[12] The Applicant has therefore satisfied me that the determination of the question will substantially affect the rights of one or more of the parties.

On the basis of the findings of fact in the award; (i)the decision of the tribunal on the question is obviously wrong, or (ii)the question is one of general public importance and the decision of the tribunal is at least open to serious doubt,

[13] The Applicant has premised her appeal on the former. ***The Northern Pioneer*** *[2003] 1AER (comm) 2004 para 9-11* establishes that a party seeking to challenge an award on that ground must demonstrate a prima facie case that the arbitrator's decision was obviously wrong on the question of law.

[14] The 'obviously wrong' test fixes a high threshold. In **AMEC v Secretary of State for Defence** [2013] EWHC 110, Colman J offered some guidance on how the test it is to be applied which could be termed the 'Chablis test':

> *"What is obviously wrong? Is the obviousness something which one arrives at…on first reading over a good bottle of Chablis and some pleasant smoked salmon, or is 'obviously wrong' the conclusion one reaches at the twelfth reading of the clauses and with great difficulty where it is finely balanced. I think it is obviously not the latter."*

Recent case law provides a sense of the Courts' continuing strict approach in assessing what is obviously wrong: see **HMV v Propinvest Friar Limited Partnership** [2011] EWCA Civ 1708, per Arden LJ:

> *"It will be apparent from section 69 that rights of appeal from an arbitration award are severely restricted. It is not enough, therefore, simply to show that there is an arguable error on a point of law. Nor is it enough that the judge to whom the application for leave is made might himself or herself have come to a different answer. The required quality of the accepted error is that it must be "obviously wrong". Thus the alleged error must be transparent. It must also, at the least, be clear. The word "obvious" is a word of emphasis which means that the courts must not whittle away the restriction on rights of appeal in subsection (c)(i) by being over generous in their determination of the clarity of the wrong.*
> *… Therefore I take the view that the interpretation to which the arbitrator came in this case was one which did not meet the test of being unarguable or making a false leap in logic or reaching a result for which there was no reasonable explanation. I am not, therefore, able to conclude that this conclusion was "obviously wrong"*

[15] The following are the grounds adumbrated in the Application for leave to appeal:—

I. *"The Arbitrator failed to apply the correct principles in law in determining whether the Partnership Withdrawal Agreement (Agreement) had been concluded between the parties;*

II. *The Arbitrator erred in applying incorrect principles of law in his determination that the agreement could be specifically enforceable notwithstanding that it was an agreement to agree the accounts and the Agreement could only create a debt;*

III. *The Arbitrator having found that the Agreement had been concluded in May 2007 by the Claimant/Respondent's acceptance of the counteroffer and having determined that the amount due from the Applicant to the Respondent under the Agreement was as stated in the Partnership Reconciliation Account prepared in November 2006 and that the Partnership between the Claimant and the Respondent had been dissolved on 31st December 2006 in reliance on the Agreement erred in his failure to apply the Limitation Act Chapter L60 correctly to the claims made by the Claimant/Respondent for repayment of loans under the agreement and to determine that such claims had become statute barred prior to the commencement of the arbitration proceedings.*

IV. *The Arbitrator in finding that Norwego Ltd's payment of $118,165 into the account of Factl was a loan to Webster Dyrud Mitchell by the Respondent erred in his application of the principles of restitution and erred in the application of the principles in relation to piercing the corporate veil;*

V. *It is just and proper in the circumstances for the court to determine these questions of law."*

[16] The Claimant/Respondent in his submissions in response to the Application criticized the Applicant for the allegation that the Arbitrator failed to apply correct principles without shedding light on the principles which the Arbitrator erred in applying. This is a justified criticism, especially in light of the Arbitration Act Section 69 (3) *(4) which provides that it is the* ***application*** *for leave to appeal which* ***shall identify*** *the question of law to be determined* ***and state*** *the grounds on which it is alleged that leave to appeal should be granted".*

[17] The Grounds stated in the Application are hollow and in view of the body of jurisprudence that has defined the stringency of the threshold test before a person can violate an award of the Arbitrator, It is my view that the Application has fallen far short of the statutory requirements of Section 69(3) (4).

[18] The Applicant has sought instead to articulate in her submissions what are the principles she submits were wrongly applied by the Arbitrator. She submits that the remedy of Specific Performance, is given in "comparatively rare cases"[1], and is not given where the remedy at law suffices[2], nor is it available for a contract to pay money[3]. Additionally the remedy is only available where the Claimant comes with clean hands. In explaining the "clean hands" doctrine the Applicant states that the Claimant wrongly transferred unto himself shares in Sea Island Realties, in consideration of payments he was claiming in the Arbitration. She submits that it is clear from the face of the award that the tribunal did not consider the above factors that were relevant to the grant of specific performance, thereby erring in the exercise of its discretion. These submissions buttress the pleadings of the Applicant in her Defence statement at paragraph 35, 40 and 41 where she averred that the Claimant/ Respondent was not entitled to specific performance as a matter of law, and the exercise of the tribunal's discretion. She submitted that as ultimately the claim is one for the payment of money, damages would be an adequate remedy, additionally that relief of Specific Performance is not consonant with the orders sought and there are circumstances under the PWA which arise only conditionally.

Discussion

[1] Per Lord Diplock in **Photo Production Ltd v Securicor** [1980] 1AER 556, 556e
[2] **Co-operative Insurance Society Ltd v Argyllstores (holdings) Ltd** [1998] AC1, 11 F-G
[3] **Crampton v Varna Rly Co** (1872) 7 ChApp 562, 567, and 568.

[19] The Agreement, marked in the proceedings as JOD-1, was the subject of the arbitration. Paragraph 2.1 provides for Arbitration as follows:—

> *"In the absence of agreement by the close of business on the 30th of August 2013, or such later date as may be agreed, both parties agree to appoint a Mediator by 30th August 2013, to whom they will refer for resolution any and all disputes between the parties, in connection with FACTL, Webster, (formally WDM) and related entities. In the event that mediation is unsuccessful then JOD and PWJ agree to refer the disputes figures to arbitration by an independent accountant at the expense of FACTL, immediately following Mediation."*

[20] Mediation was unsuccessful, and the Claimant on the 1st of December 2014, served the Respondent, with written notice of his intention to submit the disputes and differences between the parties which had not been resolved by mediation, to arbitration, pursuant to clause 2.1 of the Agreement. John Bassie was finally agreed upon as the Arbitrator, after being proposed by the Applicant as being a better fit for Arbitrator, given his experience in valuing businesses and his background as a lawyer trained in the English Common Law. The Applicant was of the view that John Bassie would be better able to interpret the terms and scope of the Agreement, and the underlying agreements governing the former partnership and governance of FACTL.

[21] The parties were directed to file pleadings to identify the issues for determination. The Statement of Claim served by the Claimant/Respondent contended that the PWA had been consummated by the parties, and sought specific performance of the Partnership Withdrawal Agreement as to the withdrawal of the Claimant/Respondent from the partnership and the determination of the sums due to him upon that retirement.

[22] The Claimant/Respondent further submitted, in support of his contention that the PWA had been consummated, that the Applicant had begun making certain payments to the Claimant/Respondent on account, as was contemplated by the unexecuted promissory note which formed part of the PWA.

[23] The Claimant/Respondent specifically sought specific performance of the PWA and through the Arbitrator sought:-

(a) The settling of the accounts of WDM as at 31st December 2006

(b) The determination of the issue of the additional loan to WDM Partnership of US$118,165.00

(c) a determination of the total amounts owing to the Claimant

The Claimant/Respondent also sought an order directing the Applicant to make payment of such sums found to be due, and to secure such amount by a charge over property.

[24] The Applicant in her Defence and Counterclaim denied that the PWA was consummated in principle or fact; neither did the parties operate under the agreement, except she contended that the Respondent may have relied on it to withdraw from the partnership. She further contended that in so far as the agreement was consummated, the rights of the Respondent were prescribed or had expired, time having run, from the 31st December 2006. The Applicant also contended that that she never made any payments to the Respondent in settlement of the promissory note or the PWA as alleged. She alleged that she was unaware, not being in management of FACTL that she had been entitled to any dividend payments, which had been withheld and paid over to the Respondent. She contended that these dividend payments are being unlawfully withheld from her.

[25] In the List of Agreed and Not Agreed issues settled by the parties, both parties agreed as issues for the determination of the Arbitrator, the consummation of the PWA, whether the Respondent is entitled to specific performance and the quantum if any owed to the Respondent by the Applicant. The parties also agreed that the issue for determination by the adjudicator was whether the Statute of Limitation barred any right of recovery of the Respondent.

[26] Both parties closing submissions were put before the Arbitrator, and the case law relied on either side was also adequately referenced in the submissions. In adjudicating on the issue on whether the PWA is in effect and binding upon the parties, John Bassie at page 122 to 149, of the award assessed the factual evidence supporting the contentions, and applied the English common law cases in reasoning his conclusion on what constituted a fully executed transaction. John Bassie found that the Respondent made a compelling case and provided strong evidence which went unchallenged or at best was weakly contested. I accept the case law relied on by the John Bassie supporting the Claimant's case as being an adequate statement of the applicable law in Anguilla. I accept that his conclusion was based on his acceptance of the statement of fact and law as presented by the Claimant.

[27] I am of the view that the Arbitrator fully considered the position advance by the Applicant/Respondent and concluded that the PWA constituted a valid and binding agreement, which consonantly created legally enforceable rights and obligations. The Arbitrator also fully considered the availability of the remedy of Specific Performance. The decision of the tribunal is contained from Paragraph 268-271. It states thus:—

> "*The tribunal has already accepted and determined that the PWA is a valid and enforceable and as such there is no bar to the grant of the remedy of Specific Performance. The Tribunal has reviewed the case of* ***Sudbrook Trading Estate Ltd v Eggleton and others.*** *The Tribunal does not view clause 2.1 as uncertain. It is accepted that the clause provides a mechanism for determining the amounts on any outstanding loans made by Mr. Dyrud to the firm.*
> *The tribunal recognizes that in the instant matter the amounts of the outstanding loans are capable of being ascertained. It is agreed that it is for the tribunal to determine this amount by the use of the documents evidencing the loans and payments*
>
> *The tribunal accepts the figures in the Accounts as stated in the WDM Partnership Accounts Reconciliation which Mrs Kumara testified that she prepared with the Respondent."*

[28] The tribunal no doubt had recourse to the decision of Lord Diplock as I do now in **Sudbrook Trading Estate Ltd v Eggleton and others** (Supra) where on the issue of whether the court has jurisdiction to enforce the lessors' primary obligation under the contract to convey the fee simple by decreeing specific performance of that primary obligation he stated:—

> *"but the real issue is whether the court has jurisdiction to enforce the lessors' primary obligation under the contract to convey the fee simple by decreeing specific performance of that primary obligation, or whether its jurisdiction is limited to enforcing the secondary obligation arising on failure to fulfil that primary obligation, by awarding the lessees damages to an amount equivalent to the monetary loss they have sustained by their inability to acquire the fee simple at a fair and reasonable price, ie for what the fee simple was worth. Since if they do not acquire the fee simple they will not have to pay that price, the damages for loss of such a bargain would be negligible and, as in most cases of breach of contract for the sale of land at a market price by refusal to convey it, would constitute a wholly inadequate and unjust remedy for the breach. That is why the normal remedy is by a decree for specific performance by the vendor of his primary obligation to convey, on the purchaser's performing or being willing to perform his own primary obligations under the contract"*

[29] Specific performance is equitable relief, given by the court to enforce against a Defendant the duty of doing what he agreed by contract to do. [4]. Halsbury's Laws of England paragraph 540 provides that to enforce specific performance of a contract[1], the court must be satisfied:

(1) that there is a concluded contract[2] which is binding at law[3], and in particular that the parties have agreed, expressly or impliedly[4], on all the essential terms of the contract; and

(2) that the terms are sufficiently certain and precise that the court can order and supervise the exact performance of the contract[5].

[30] The grounds on which specific performance will be refused do not fall into rigid categories. There is a general jurisdiction to deny specific performance if the court, on the particular facts, considers it just to do so. Usually specific performance will not be granted in circumstances where a contract is illegal or oppressive,or if the claimant has failed to perform conditions of the contract or done acts amounting to a repudiation of the contract or been guilty of undue delay in performing his part of the contract, if it has become impossible for the defendant to perform the contract, if the contract has been rescinded or varied, it is contrary to public policy to order specific performance or if the parties have contracted out of the right to Specific Performance.[5] It is customary to refuse the remedy of Specific Performance where damages would be an adequate remedy, however the more current test is whether it is just, in all the circumstances, that a claimant should be confined to his remedy in damages

[31] In **CONLON v MURRAY & ANOTHER - [1958] NI 17 Black LJ** reasoned the approach of the court to the treatment of the equitable principle of Specific Performance.

> *"It was argued on behalf of the plaintiff that cases in which equity refuses the remedy of specific performance fall within one or other of certain defined categories. I cannot accept this view. Certainly equity acts on certain broad and ascertained principles but it has always refused to be forced into rigid categories. This is, I think, well stated in Story's Equity Jurisprudence 10th ed. (1870), vol. 1, p. 739: "In truth the exercise of this whole branch of equity jurisprudence respecting the rescission and specific performance of contracts is not a matter of right in either party; but it is a matter in the discretion of the Court, not indeed of arbitrary or capricious discretion, dependent upon the mere pleasure of the judge, but of that sound and reasonable discretion which governs itself so far as it may by general principles; but at the same time which withholds or grants*

[4] 4 *Evans Marshall & Co Ltd v Bertola SA* [1973] 1 All ER 992 at 1005, [1973] 1 WLR 349 at 379, CA, per Sachs LJ; revsd on the question of assessment of damages [1976] 2 Lloyd's Rep 17, HL. See also *Coulls v Bagot's Executor and Trustee Co Ltd* (1967) 119 CLR 460 at 503 (Aust HC), per Windeyer J; *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL; *Sudbrook Trading Estate Ltd v Eggleton* [1982] 3 All ER 1 at 6, [1982] 3 WLR 315 at 321, HL, per Lord Diplock; *CN Marine Inc v Stena Line A/B and Regie Voor Maritiem Transport, The Stena Nautica (No 2)* [1982] 2 Lloyd's Rep 336, CA; *Chiswell Shipping Ltd v State Bank of India, The World Symphony* [1987] 1 Lloyd's Rep 165.

[5] See Halsbury's lawsofEngland Para 541

relief according to the circumstances of each particular case, when these rules and principles will not furnish any exact measure of justice between the parties. On this account it is not possible to lay down any rules and principles which are of absolute obligation and authority in all cases; and, therefore, it would be a waste of time to attempt to limit the principles, or the exceptions, which the complicated transactions of the parties and the ever changing habits of society may at different times and under different circumstances require the Court to recognize or consider." A good instance of a case which it would be found difficult to fit into any of the suggested categories in which specific performance will be refused in the case ***Twining v. Morrice*** *((1788) 2 Bro. C.C. 326) referred to in the course of the hearing.*
If the contract is within the category of contracts of which specific performance is ordinarily granted, is valid in form, has been made between competent parties and is unobjectionable in its nature and circumstances, specific performance is in effect granted as a matter of course[6]

*Halsbury's Laws of England t**he availability of the remedy of specific performance does not of itself import the existence of some equitable interest; all it imports is the inadequacy of the common law remedy of damages in the particular circumstances*[7]*."*

[32] The Applicant has not explained how in the circumstances of this case, damages would be an adequate remedy. Conversely, It seems clear to me the arbitrator was satisfied, that the amounts to be paid were capable of being discerned, he reasoned that the Claimant/ Respondent was entitled to specific performance and the relief could not be denied. In the circumstances he proceeded to direct the performance of the contractual duties as contemplated by Section 2.1.

[33] Relying on the above referenced caselaw and on the reasons of the Arbitrator above, I am satisfied that the Tribunal's reasoning of the question that was in fact put, cannot be faulted as being so obviously wrong. In any event I am not convinced that the order for Specific Performance would in the circumstances of this case have achieved an economic outcome any different to what an award of damages would. In the circumstances, I am satisfied that the Tribunal reasoning of the question that was in fact put, cannot be faulted as being a false leap in logic or as being so obviously wrong.

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6 ***Hall v Warren*** (1804) 9 Ves 605 at 608; ***Sudbrook Trading Estates Ltd v Eggleton*** [1983] 1 AC 444 at 478, [1982] 3 All ER 1 at 6 per Lord Diplock; *Patel v Ali* [1984] Ch 283, [1984] 1 All ER 978 at 981 per Goulding J; *Mungalsingh v Juman* [2015] UKPC 38; [2016] 1 P & CR 128, [2016] 1 P & CR D7 at [32] per Lord Neuberger.

7 ***Re Stapylton Fletcher Ltd*** *(in administrative receivership),* ***Re Ellis, Son & Vidler Ltd*** *(in administrative receivership)* [1995] 1 All ER 192 at 213, [1994] 1 WLR 1181 at 1203 per Paul Baker J.

The Application of the Limitation Act Chapter L60

[34] The Applicant states that the tribunal failed to apply the principles of the Limitation Act correctly for the repayment of loans under the Agreement, and to determine that such claims had become statute barred prior to the commencement of Arbitration. In her submissions the Applicant further states that the tribunal having accepted that the amounts due from her were contained in the figures prepared by Mrs. Kumara on the 17th of November 2006; and having accepted that the PWA concluded on 20th May 2007, it must follow that the debt crystallised and any obligation to pay a sum certain in debt arose under clause 2.1. The Arbitration was commenced more than 6 years after this date.

[35] She further submits, that as regards the application of interest, the tribunal found that the Claimant was entitled to interest under the Partnership Act Chap p5 Section 25(c). The tribunal did so ignoring that the cause of action with respect to such interest would have accrued prior to 31st December 2006, the date when it was determined that the Partnership ended. That according to the Partnership Act Section 46 which states that "subject to any agreement of the partners, the amount due from surviving or continuing partners to an outgoing partner, is a debt accruing at the date respectively of the dissolution. The tribunal made the finding of dissolution occurring on 31st December 2006.

[36] These issues were in fact canvassed before the tribunal. At issue 19, paragraphs 308-310, the Arbitrator had regard to the authority of **Edwin Hughes v La Baia** [2010] ECSCJ No.7, and placed reliance on the submissions of the Claimant, that as the Claimant's action was one for equitable relief, it is not subject to the provisions of the Limitation Act. Having found that the Claimant's action is grounded in equitable relief, disapplied the Limitation Act.

[37] The Anguilla provision is identical to the English statutory provision. Halsbury's Laws of England Vol 4 para 261 provides that certain specified time limits under the Limitation Act 1980 do not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation

Act 1939 was applied before 1 July 1940; and nothing in the Limitation Act 1980 affects any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise[8]

[38] As regards the payment of interest on the sums due, the Applicant submits that the tribunal under the guise of granting specific performance of the PWA could not disapply the statutory provision of the Partnership Act, and the acknowledgment that the cause of action accrued as of 31st December 2006.

[39] Having reviewed the submissions presented before the tribunal by both parties and having read the award of the Arbitrator, I do not accept that there was any quantum leap in logic in the application of the interest at the rate provided in the Partnership Act. In the very least the Arbitrator would have been entitled to apply interest at the Judicial rate. The guidance on the relevant rate provided by the Claimant was in keeping with the nature of the transaction, on which the Arbitrator had to preside. This issue therefore suffers the same fate as the previous two issues and must fall.

[40] on the issue of the loan of $118,165.25 made to WDM, the Applicant submits that the ruling of the Arbitrator on this issue was blatantly wrong. She submits that the loan was made by Norwego Ltd to Factl to make up a shortfall in the Factl client account. To date there has been no claim by Norwego for the repayment of the loan.

[41] On my review of the submissions, documentary evidence and the result of the decision on the award, It would seem that quite appropriately, the Arbitrator relied on both documentary and viva voce, to follow the trial of the loan. I do not fault his assessment that the sum was a loan paid by the Claimant to WDM.

[42] Regarding the piercing the Corporate veil, the principle of separate corporate personality has been established for over a century. In the leading case of **Salomon -v- Salomon & Co.** (1897), the House of Lords held that, regardless of the extent of a particular shareholder's interest in the company, and notwithstanding that such shareholder had sole control of the company's affairs as its governing director, the company's acts were not his acts; nor were

[8] See Halsbury'Laws of England Vol 4 para261

its liabilities his liabilities. Thus, the fact that one shareholder controls all, or virtually all, the shares in a company is not a sufficient reason for ignoring the legal personality of the company; on the contrary, the "veil of incorporation" will not be lifted so as to attribute the rights or liabilities of a company to its shareholders.

Under the basic Salomon Principle a company cannot be characterized as an agent for its shareholders or vise versa, unless there is clear evidence to show that it was. The evidence before the Arbitrator is of a company facilitating a transaction for its shareholder.

[43] Additionally the defence of the Corporate veil is a defence usually available to the Company and its shareholders, and not to a third party who has benefitted from that structural set up. For these reasons I am also of the conclusion that the Arbitrator did not make a false leap in logic or reaching a result for which there was no reasonable explanation.

For these reasons the Application is unsuccessful and must be dismissed, with the costs on Application to be assessed if not agreed.

V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT

REGISTRAR