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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**SUPREME COURT CIVIL APPEAL NO COA2020CV00057**

<b>BETWEEN</b>	<b>JMMB MERCHANT BANK LIMITED (Now JMMB BANK (JAMAICA) LIMITED)</b>	<b>APPELLANT</b>
<b>AND</b>	<b>UNIVERSAL LEASING &amp; FINANCE LIMITED</b>	<b>1<sup>st</sup> RESPONDENT</b>
<b>AND</b>	<b>MAHOE BAY COMPANY LIMITED</b>	<b>2<sup>nd</sup> RESPONDENT</b>
<b>AND</b>	<b>SANDALS ROYAL CARIBBEAN LIMITED</b>	<b>3<sup>rd</sup> RESPONDENT</b>

**CONSOLIDATED WITH**

**SUPREME COURT CIVIL APPEAL NO COA2020CV00059**

<b>BETWEEN</b>	<b>SANDALS ROYAL CARIBBEAN LIMITED</b>	<b>APPELLANT</b>
<b>AND</b>	<b>UNIVERSAL LEASING &amp; FINANCE LIMITED</b>	<b>1<sup>st</sup> RESPONDENT</b>
<b>AND</b>	<b>MAHOE BAY COMPANY LIMITED</b>	<b>2<sup>nd</sup> RESPONDENT</b>
<b>AND</b>	<b>JMMB MERCHANT BANK LIMITED (Now JMMB BANK (JAMAICA) LIMITED)</b>	<b>3<sup>rd</sup> RESPONDENT</b>

**TAKE NOTICE** that this matter was heard by the Hon Mr F Williams JA, the Hon Miss Justice Edwards JA and the Hon Miss Justice G Fraser JA (Ag) on 29, 30 and 31 January 2024 with Michael Hylton KC and Miss Timera Mason instructed by Hylton Powell for JMMB Merchant Bank Limited (now JMMB Bank) Jamaica) Limited), Ransford Braham KC, Miss Carlene Larmond KC and Miss Giselle Campbell instructed by Patterson Mair Hamilton for Sandals Royal Caribbean Limited, Mrs Terri-Ann Guyah Tolan and Miss Aisha Thomas

instructed by Guyah Tolan and Associates for Universal Leasing & Finance Limited and Mahoe Bay Company Limited.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court by the Hon Miss Justice Edwards JA, is as follows:

[1] This is a consolidated appeal in which JMMB Merchant Bank Limited ('JMMB'), by way of notice and grounds of appeal filed 31 July 2020, and Sandals Royal Caribbean Limited ('Sandals'), by way of notice and grounds of appeal also filed 31 July 2020 (and amended 23 September 2020), have sought to challenge the decision of a judge of the Commercial Division of the Supreme Court ('the learned judge'), made on 17 July 2020, in which she granted summary judgment, in part, on an application in Claim No 2017CD00080, in favour of Universal Leasing and Finance Limited ('Universal'). The application had been made by both Universal and Mahoe Bay Company Limited ('Mahoe Bay').

[2] Sandals brought a claim in the Supreme Court, by way of fixed date claim form, filed 6 February 2017, against Universal, seeking, *inter alia*, a declaration that it was the sole beneficial owner of all those parcels of land, (known as Lot 19 part of Providence, in the parish of Saint James), registered at Volume 1257 Folio 660, of the Register Book of Titles. Sandals had purchased that land from JMMB, along with land registered at Volume 1257 Folio 659 (known as Lot 18 part of Providence, in the parish of Saint James), by agreement dated 21 April 2015. At the time it filed the claim, Sandals had already been registered as legal owner of Lot 18.

[3] Universal filed a defence to Sandals' claim, on 28 December 2017, asserting that Lots 18 and 19 were part of lands which were erroneously dually registered with Lots 2A and 3, registered to Universal in 2003, and which were first registered in 1966 (to its predecessor in title). Universal and Mahoe Bay also brought an ancillary claim for declaratory relief, that Universal was the sole owner of the lands, known as Lot 2A and

Lot 3, registered to it in 2003, for Sandals to deliver up the titles to Lots 18 and 19, and for the Registrar of Titles to cancel Sandals' titles.

[4] The parties to this appeal, therefore, are Sandals and JMMB as appellants and Universal and Mahoe Bay as respondents. Sandals is the 3<sup>rd</sup> respondent in the appeal brought by JMMB and JMMB is the 3<sup>rd</sup> respondent in the appeal brought by Sandals. Sandals was the claimant and 1<sup>st</sup> ancillary defendant in the court below. Universal was the defendant in the claim brought by Sandals, and the 1<sup>st</sup> ancillary claimant in its ancillary claim brought against Sandals and the Registrar of Titles. Mahoe Bay was the 2<sup>nd</sup> ancillary claimant in the ancillary claim. JMMB joined as an interested party to the ancillary claim.

[5] Although the subject of the appeal is the grant of summary judgment in favour of Universal, there is no written judgment, and according to the parties, no oral reasons were given. However, the parties contend that the apparent basis for the learned judge's decision was the legal principles surrounding priorities or precedence in title, that is, that the first in time prevails.

[6] To understand this case fully, however, it is necessary to venture into the history of the ownership of the relevant parcels of lands.

[7] JMMB had sold the Lots 18 and 19 to Sandals, under a power of sale, contained in a mortgage. Those two Lots, along with five others, had been pledged by Mahoe Bay in 2006, as security for a mortgage loan by JMMB to Mr Winston Finzi, who is one of two directors of Mahoe Bay. Mahoe Bay, therefore, acted as the guarantor for the loan to Mr Finzi. The guarantee was signed by Mr Finzi, as agent for the company, and was stamped with the company's seal.

[8] Mr Winston Finzi is the sole director of Universal.

[9] Universal is the owner of lands, part of Providence in the parish of Saint James, known as Lot 2A and Lot 3, registered at volume 1359 Folio 480 and Volume 1359 Folio 481, respectively, of the Register Book of Titles. Lot 2A and Lot 3 partially forms part of

the same lands as Lot 18 and 19. There is, therefore, what the parties deem to be, dual registration of the same pieces of land, to the extent that the positioning of lands known as Lot 2A and Lot 3 can be identified in the lands known as Lot 18 and 19, respectively.

[10] How this came about will take us as far back as 1958, when a deposit plan numbered 1799 was deposited in the Office of Titles, for splinter titles to be issued for multiple lots from lands part of Providence, in the parish of Saint James, the parent title to which was issued in 1953 to Mahoe Bay. No splinter titles were issued at the time in accordance with this deposit plan, and it appears that this plan was abandoned, for all intents and purposes.

[11] In 1966 a new deposit plan was prepared, numbered 2869, and deposited in the Office of Titles, for splinter titles to be issued for part of the same land, part of Providence, in the parish of Saint James. Two of those splinter titles which were issued in 1966 were Lot 2A and Lot 3. Universal later entered into an agreement, in 1982, with the then registered owner to buy those lots, and, following a claim for specific performance in the Supreme Court, was eventually, by order of the court, registered as the owner of Lots 2A and 3, in 2003. The 1966 titles to Lot 2A and Lot 3 were cancelled when the new titles were issued in 2003.

[12] Sometime in 1992, whilst Universal's claim for specific performance against the vendor for Lots 2A and 3 was still in litigation, Mr Finzi and Mahoe Bay applied to the Registrar of Titles for splinter titles to be issued according to the original deposit plan numbered 1799, which had been deposited in the Office of Titles in 1958. Splinter titles were, thereafter, issued according to that plan, the result of which was that registered titles were issued in respect of Lots 18 and 19 in 1993.

[13] Unfortunately, due to the submission, years apart, of the two separate deposit plans of the same land, with differently numbered lots apportioned for some parts of the same lands, there were overlaps involving Lots 2A with Lot 18, and Lot 3 with Lot 19 resulting in the dual registration.

[14] Whether this overlapping was known to Mr Finzi and, if so, at what juncture, is heavily disputed by the parties. What is known, as pointed out by the appellants, by virtue of contemporaneous documentation, is that the second application for splinter titles based on deposit plan number 1799 was made in 1992 by Mr Finzi and Mahoe Bay, at the time when the case brought by Universal against the vendor for specific performance of the sale agreement to buy Lots 2A and 3, had been adjourned in the court below. It was during the adjournment of that case that the titles to Lots 18 and 19 were secured based on deposit plan 1799.

[15] After Lot 18 and Lot 19 were bought by Sandals from JMMB, they sought to obtain titles. Title to Lot 18 was issued to them in 2015, but title to Lot 19 was not, as by then, the Registrar of Titles had been alerted to the dual registration. The Registrar lodged a caveat on the title and refused to register Lot 19 to Sandals. It was for this reason that Sandals brought its claim. The matter was proceeding through the courts, and a trial date had been set, when Mahoe Bay and Universal filed an application for summary judgment on 23 January 2019, on the basis that their title was first in time in the order of priority because it was derived from the original issue of title to its predecessor in title, in 1966. As stated previously, that 1966 title had been cancelled by the Registrar of Titles and a new title issued to Universal, by order of the court, in 2003, based on Universal's success in its case for specific performance against the vendor.

[16] Although, admittedly, several documents were before the learned judge on the application for summary judgment, and several arguments were made to her by both sides, in the absence of her reasons for decision, it is generally agreed by the parties that the learned judge's decision must have been made on an acceptance of Mahoe Bay and Universal's claim that the titles to Lots 2A and 3, were first in time. The learned judge, as part of her orders, declared that the lands belonged to Universal, and ordered that the titles to Lots 18 and 19 be delivered up by Sandals and be cancelled by the Registrar of Titles, and, that new titles be issued to Sandals reflecting the portion of land (evidenced

by the respective sketch plans and composite plans identifying the boundaries) which covered Lots 18 and 19, without the portions of lands which comprised Lots 2A and 3.

[17] In this appeal, the appellants filed grounds of appeal challenging the summary judgment and the consequential orders made by the learned judge. The appellants argued that summary judgment was most inappropriate in this case, as there were numerous facts in dispute, not least of which was whether, as a matter of fact and law, the relevant parcels of land could be deemed as being dually registered, those parcels of land not being exactly the same. Further, even if they were dually registered, the issue arises as to whether Lots 2A and 3, which were registered on 23 March 2003, could be treated as first in time to, or put another way, could take precedence over, Lots 18 and 19, which were registered in 1993. As a corollary to that, is the question of whether Universal could rely on the title granted in 1966 to its predecessor in title, for its claim to priority, when that title had been cancelled. There is no way for this court to know whether the learned judge, in coming to her decision, had considered the effect of the cancelled title on the question of priorities. Neither does it appear from the authorities that that is an issue which is settled law.

[18] The appellants also argued that they had several defences to the ancillary claim brought by Mahoe Bay and Universal, and that the factual disputes surrounding the case could only be determined at a trial. They argued that the case could not properly and justly be determined on the issue of priorities alone. They also argued that there were factual issues surrounding (a) the conduct of Mr Finzi as director of both companies, his knowledge of the duality in the registration, and his intention at the time of the granting of the mortgage and the pledging of Lots 18 and 19 as security; (b) whether, since Mr Finzi was the directing mind of both Universal and Mahoe Bay, the corporal veil ought to be lifted so that the facts could show that the knowledge and actions of Mr Finzi was also the knowledge and actions of both companies; (c) whether the doctrine of estoppel would apply in the circumstances of this case; and (d) whether Sandals ought to be afforded

the protection of the law as a *bona fide* purchaser for value without notice of the defects in title.

[19] The appellants, it was argued, had a reasonable prospect of success on any of these issues, regardless of the legal point surrounding the priorities in the title. The appellants further argued that even with regard to the priorities, the issue is not settled, as by virtue of the proper interpretation to be placed on section 70 of the Registration of Titles Act, the learned judge would have been wrong to find that Universal's title was first in time. It was submitted that the interpretation was not so clear as to enable the learned judge to correctly come to a conclusion on a summary judgment application.

[20] The respondents argued the opposite. They claimed that summary judgment was appropriate and that the judge was correct to make the orders she made. They claimed that the issue of priority finally determined the matter, and in the absence of any pleading that the title to Lots 2A and 3 were obtained by fraud, there was nothing to be gained from remitting the matter for trial, as the outcome would be the same.

[21] Several cases were cited to us by the parties, including cases which dealt with the principles regarding the grant of summary judgment, the doctrine of estoppel, and the court's approach to lifting the corporate veil. It is not necessary to regurgitate them here but, suffice it to say, we considered them all.

[22] Based on the decision that we have arrived at in this case, we are constrained to say very little with regards to the factual disputes in the case. We, however, agree that the learned judge was wrong to determine the matter on the summary judgment application. There are substantial disputed issues in the matter and it cannot be said that the appellants' cases are hopeless.

[23] As a result, the appeals brought by Sandals and JMMB are allowed. The judgment and the orders of the learned judge, made 17 July 2020, are set aside. The matter is remitted to the Commercial Division of the Supreme Court for a pre-trial review with a

view to setting a trial date in the matter. Costs to JMMB and Sandals in these appeals and in the court below to be agreed or taxed.