JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 58/09

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MRS. JUSTICE McINTOSH, J.A. (Ag.)

BETWEEN	**QUICK SIGNS LIMITED**	**APPELLANT**
AND	**E Z CASH LOANS SERVICES LIMITED**	**1ST RESPONDENT**
	CAMBRIDGE PALMS ESTATE LIMITED	**2ND RESPONDENT**
	WAYNE EBANKS	**3RD RESPONDENT**

Mrs. Georgia Gibson-Henlin, instructed by Henlin Gibson Henlin for the appellant

Gordon Robinson & Ms. Avrine Bernard, instructed by Brady & Company for the 1st & 3rd respondents

2nd respondent unrepresented

29th June and 2nd July 2009

ORAL JUDGMENT

PANTON, P.

1. On the 6th of March 2009 Mr. Justice Williams (Ag.) made orders restraining movements or dealings in respect of the assets of the respondents to this claim filed by the appellant Quick Signs Limited. The respondents were also to disclose the nature and full value of their assets, wherever located and specifically they were to identify all bank accounts and state the sums therein.

2. The order made by Mr. Justice Williams (Ag.) was based on an affidavit, signed by Ainsley Lowe, Businessman and Director of the appellant's company (page 15 of the record). Page 16 paragraph 8, of the record states that during the period the appellant paid a total of $343,142.45 to the respondents and according to that statement in paragraph 8 the sum was supposed to be paid back on demand to the appellant, with interest at the rate of 5% variable per month.

3. The 3rd respondent, according to this affidavit, instructed the appellant as to whom the sums were to be payable. On page 17 of the record paragraphs 12, 14 and 15 indicate that the appellant has recovered a portion of the sums but claim that the respondents currently owe the appellant upwards of US$149,899.19 plus interest and there is the claim that the respondents have failed, refused or neglected to pay to the said appellant the full balance which has been due.

4. On the 8th of May, 2009 Mr. Justice Jones set aside this order made by Mr. Justice Williams (Ag.) on the basis of material non-disclosure. Mr. Justice Jones had before him an affidavit by the 3rd respondent which sets out the respondents' version of the facts and in short what the respondents are saying is that the appellant has no contract, arrangement or agreement with any of the respondents and that all payments that came from the appellant were made to

the second respondent and on behalf of a disclosed principal namely, Mr. Ainsley Lowe himself. The only contract governing the relationships was made between Mr. Lowe and the second respondent.

5. In applying for the ex parte injunction, which was granted in March, the appellant gave the impression that there was a simple transaction between it and the respondent whereby it advanced sums of money to the respondents who were obliged to refund same at 5% interest on demand variable monthly. In this court, learned Counsel Mrs. Gibson-Henlin for the appellant, has described the action as one for monies had and received. However, the evidence that has been put before the court by the third respondent, Mr. Wayne Ebanks has given a completely different picture. The affidavit to which I referred earlier, from Mr. Ebanks indicates that the appellant and/or Mr. Lowe, participated in what was really an investment scheme run by the second respondent, which happens to be a company based in Anguilla and which, from my assessment of all the documentation placed before us, does not appear to have been properly served with these proceedings. So, given the appeal that is before us, which challenges the discharge of the injunction by Mr. Justice Jones, it seems that Mr. Justice Williams was not given the full picture and was clearly led to believe that the situation was other than what it appears to be. In that situation, the decision to discharge the injunction was, in my view, perfectly correct.

6. The learned Judge Mr. Justice Jones was then faced with the question of whether, in all that was before him, he should then grant a fresh injunction. He declined to do so and that seems to be justified, from the fact that arrangements seem to have been put in place or at least were being discussed, with a view to dealing with what appeared to be an investment scheme, with the question of making returns to those who have contributed. It seems that the appellant may well be attempting to steal a march on other individuals who may be in the same position that it is in, in that they have contributed to the scheme and so would be entitled to returns. So then, the question of making an order which would give the appellant full sway and say over what happens with the assets seems to be not in keeping with the facts as disclosed here. It would seem that the learned judge was right in the exercise of his discretion in not granting an injunction.

7. Learned Counsel for the appellant did put before the court, a letter from First Caribbean Bank with a wish that it be considered as fresh evidence. Given the statement in the letter, that it is referring to the position of the state of the accounts at the time the freezing order was served it would seem to me that it could not qualify as fresh evidence in that it was clearly not the state of affairs on the date that the hearing was taking place.

8. Therefore, the application to adduce fresh evidence should be refused and I would be in favour of the dismissal of the appeal and the awarding of costs to

the two respondents who are before the court they being the 1st and 3rd respondents.

MORRISON, J.A.

I entirely agree with all that has been said by the learned President. I only wish to emphasize that on an appeal of this nature, it is indeed trite that where it is an appeal from an exercise by the judge in the court below of his discretion, unless that it can be shown in this court that the judge acted according to some wrong principles or took into account matters that he ought not to have taken into account, the decision ought not to be disturbed for the reasons so fully outlined by the President. I believe that the judge took into consideration all the matters that were relevant and was fully entitled to exercise his discretion in the way in which he did. I entirely agree.

McINTOSH, J.A. (Ag.)

I too am in full agreement with the learned President and Justice Morrison, that this appeal should be dismissed for reasons given by the President.

ORDER

PANTON, P.

Appeal dismissed.

Costs to the 1st and 3rd respondents to be agreed or taxed.