[2024] JMSC Civ 103

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2024CV00285

BETWEEN MARVIN WONG 1ST CLAIMANT/APPLICANT

A N D FREEWILL DEVELOPMENT LIMITED 2ND CLAIMANT/APPLICANT

A N D TREVOR BAILEY 1ST DEFENDANT/RESPONDENT

A N D CARL BLISSETT 2ND DEFENDANT/RESPONDENT

A N D EARTH CURVE HOLDINGS LIMITED 3RD DEFENDANT/RESPONDENT

IN CHAMBERS (VIA VIDEOCONFERENCE – ZOOM PLATFORM)

Mr. Peter Champagnie KC., with Ms. Shanique Scott and Mr. Neco Pagon instructed by McLeod Scott Law for the Claimants

Dr. Christopher Malcolm instructed by Malcolm Gordon for the 1st Defendant

Ms. Nathalya Heywood Blake instructed by Heywood Blake for the 2nd Defendant

HEARD: August 13, 2024 and August 28, 2024.

Civil Practice and Procedure – Inter-Partes Hearing on Application for Extension of Interim Injunction – Whether or not the Claimants have a case with a real prospect of success – Whether Claimants have put sufficient evidence before the Court that they have a real prospect of success in establishing a beneficial interest in the property.

STAPLE J

BACKGROUND

[1] The Claimants have found themselves in a difficult position. They are trying to close the barn door after, the 1st and 2nd Defendants argue, the horse has already bolted.

[2] The 1st Claimant and the 1st Defendant are the only two shareholders in the 2nd Claimant company. The 1st Claimant asserted in his affidavit filed on the 23rd January 2024 that the 2nd Claimant is the full beneficial owner of property registered at Volume 1557 Folio 627 of the Register Book of Titles.

[3] That assertion is heavily disputed by the 1st and 2nd Defendants. They contend that the 2nd Claimant has no such beneficial interest in the said property and that the property has already been lawfully transferred to the 1st Defendant after the failure of the 2nd Claimant to lawfully acquire the said property pursuant to an agreement for sale dated the 8th September 2006.

[4] The story of this matter is filled with many twists, turns, intrigue, allegations of deception and dishonesty. But at it's core, the question to be resolved in this application turns on whether or not this agreement for sale, entered into between the 2nd Claimant and the 2nd Defendant and his former wife on the 8th September 2006, was effective, valid and enforceable thereby conferring a beneficial interest on the 2nd Claimant.

THE BACKGROUND FACTS

[5] Having read the affidavits filed in this Claim, I realise that there are a number of peripheral facts that the disputants no doubt think pivotal to the ultimate resolution of the Claim at trial.

[6] The 2nd Claimant was a limited liability company duly incorporated in the island of Jamaica. The 1st Claimant and the 1st Defendant are both the shareholders in the company. The evidence before me is that they are equal shareholders in the

company.[1] The company had 3 directors; the 1st Claimant, the 1st Defendant and another person known as Ian Williams. Mr. Williams has not given any evidence in this matter to date.

[7] The 2nd Claimant and the 2nd Defendant and the ex-wife of the 2nd Defendant entered into an agreement for sale dated the 8th September 2006. The agreement was duly executed by the parties. The 2nd Claimant was the purchaser and it was a purchaser and/or nominee sale. The 2nd Claimant was represented in the transaction by former attorney-at-law Mr. Harold Brady.

[8] The 2nd Defendant and his ex-wife were represented by Mr. Lawton C. Heywood.

[9] Years passed and there is a dispute as to whether this agreement was completed. But what is not disputed is that the title was never transferred into the name of the 2nd Claimant.

[10] Eventually in or around December of 2023, the fact of the sale of the property by the 1st Defendant to the 3rd Defendant came to the attention of the 1st Claimant. As a consequence, this action was filed.

[11] The Claimant then filed the Claim and the Application for Injunction. The injunction was granted and extended to his hearing.

THE GENERAL LAW ON INJUNCTIONS

[12] As this is an application for an interim injunction, the Court had regard to the well-established guidelines from the celebrated cases of ***American Cyanamid Co v Ethicon Limited***[2] and the judgment of Lord Diplock. This was further affirmed in

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[1] See the Articles of Association for Freewill Development Company which is exhibit 3 to the Affidavit of the 1st Claimant filed on the 26th July 2024.
[2] [1975] 1 All ER 504

the local Privy Council decision of ***NCB Limited v Olint Corporation***[3] (hereinafter *Olint*). These considerations are:

(i) Is the Claimant's case frivolous or vexatious? Meaning, is there a serious issue to be tried?
(ii) If the answer to the above is no, then the injunction ought not to be granted. If the answer is yes, then I must next consider whether or not damages would be an adequate remedy.
(iii) If there is no clear answer to the question of whether or not damages would be an adequate remedy to compensate either the Plaintiff or the Defendant, then I will go on to examine the balance of convenience generally;
(iv) If, after considering the balance of convenience generally, the Court is still unable to come to a definitive conclusion, and there are no special factors, it is advisable to have the status quo remain.

[13] In the case of ***Tapper v Watkis-Porter***[4] Phillps JA stated that, "An analysis of the balance of convenience entails an examination of the actual or perceived risk of injustice to each party by the grant or refusal of the injunction"

[14] Earlier in the said judgment at paragraph 36, she adumbrated and distilled the principles on the concept of the balance of convenience from the ***American Cyanamid*** **and the** ***Olint*** cases. I can do no better than to quote from the eminent jurist:

> *In considering where the balance of convenience lies, the court must have regard to the following:*
>
> *(i) Whether damages would be an adequate remedy for either party. If damages would be an adequate remedy for the appellant and the defendant can fulfil an undertaking as to damages, then an interim injunction should not be granted. However, if damages would be an adequate remedy for the respondent and the appellant could satisfy an undertaking as to damages, then an interim injunction should be granted.*

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[3] Privy Council Appeal No. 61/2008, April 28, 2009.
[4] [2016] JMCA Civ 11 at para 37

(ii) *If damages would not be an adequate remedy for either party, then the court should go on to examine a number of other factors to include the risk of prejudice to each party that would be occasioned by the grant or refusal of the injunction; the likelihood of such prejudice occurring; and the relative strength of each party's case.*

[15] At the end of the day though, the Court should try to take the course that will result in the least irremediable prejudice to either party[5].

ISSUES

[16] In keeping with the principles as set out in the cases above, the Court considers the following to be the issues surrounding whether or not to allow the injunction to remain until the outcome of the trial:

(i) Is the Claimants' case frivolous or vexatious? Meaning, is there a serious issue to be tried?
(ii) If the answer to the above is no, then the injunction ought not to be granted. If the answer is yes, then I must next consider the balance of convenience generally;
(iii) If, after considering the balance of convenience generally, the Court is still unable to come to a definitive conclusion, and there are no special factors, it is advisable to have the status quo remain.

ISSUE 1 – IS THE CLAIMANTS' CLAIM FRIVOLOUS OR VEXATIOUS?

[17] At this stage it is difficult to say that there is a serious issue to be tried. I say this for a few reasons.

[18] It is important to remember that the 2nd Claimant is, at this stage, seeking (among other things), a declaration that it is the lawful and full beneficial owner of the property. It is relying on the beneficial owner claim on the basis of the signed and executed agreement for sale and the principle in ***Lysaught v Edwards***. To ground

[5] Id

this claim, it is paramount that they produce evidence that there was a **valid and enforceable** agreement for sale.

No Stamped Agreement, No Enforceable Agreement.

[19] Firstly, there is presently no stamped agreement for sale before the Court. Section 36 of the **Stamp Duty Act** prohibits the entry into evidence of any such unstamped agreement for sale as being valid and effectual for its enforcement.

[20] The Court acknowledges that ss. 43 and 44 of the same **Stamp Duty Act** provides a mechanism by which the Agreement for Sale may eventually be admitted into evidence, but until this is done, then there is no enforceable agreement for sale before the Court. If there is nothing to enforce, then there+ can be no injunction.

[21] My position in this is fortified by the recent decision of the Court of Appeal in ***Vinayaka Management Limited v Genesis Distribution Network Limited***[6]. The Court of Appeal upheld a decision of this Court to refuse to continue an interim injunction for, among other things, the fact that there was no stamped agreement for sale presented to the Court hence there was no enforceable agreement for sale making it that there was no serious issue to be tried.

[22] Ms. Scott fought valiantly against this position. She argued that the letter from Mr. Lawson, sending to the Purchaser's Attorney-at-Law the Agreement for Sale, Instrument of Transfer and the Duplicate Certificate of Title were sufficient proof of the completion of the sale in accordance with s. 38 of the **Registration of Titles Act.**

[23] I will set out the relevant provision here:

> **38 The production by a Solicitor –**
>
> **(a)….**

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[6] [2024] JMCA Civ 11

(b) of an instrument having in the body thereof or endorsed thereon a receipt for consideration money, or other consideration, the instrument being executed or the endorsed receipt being signed by the person entitled to give a receipt for that consideration; or

(c)…

Shall be sufficient authority to the person liable to pay or deliver the same for the payment or delivery of the consideration money, or other consideration, to the Solicitor, notwithstanding that the solicitor does not produce any separate or other direction or authority in that behalf from the person who is entitled to receive the consideration money, or other consideration, for the land mentioned in the certificate of title or from the person who signed the instrument or receipt.

[24] The problem for Ms. Scott is an evidential one. The instrument of transfer mentioned in the letter from Mr. Heywood dated the 24th January 2007 was never shown to the Court. So I have no evidence that the instrument was endorsed with the receipt or contained in its body the receipt for consideration money as required by 38(b).

[25] The agreement for sale, after execution, was sent by Mr. Heywood to Mr. Brady under cover of letter dated the 24th January 2007. The letter is pivotal and made the subject of strong argument by Ms. Scott as to its implication. I will therefore set out it's contents below:

January 24, 2007

Brady & Co.
Attorneys at Law
30-34 Knutsford Boulevard
Kingston 5

Attention: Mr. Harold Brady

Dear Sirs

Re: Sale of 9, Montrose Road, Kingston 6
Carl Blissett et ux to Freewill Development Ltd.

On the instructions of Mr. Carl Blissett I send you herewith the following:

1. Agreement for Sale with Requisition and Notice of Assessment.
2. Duplicate Certificate of Title registered at Volume 375 Folio 75.
3. Instrument of Transfer duly executed by the parties.
4. BNS cheque # 003709 in the sum of $492,195.00

Kindly acknowledge receipt hereof by signing and returning the enclosed copy letter.

Yours faithfully

.....

[26] What is significant about this document is that it does not purport to send the **stamped** (emphasis mine) agreement for sale. That is, stamped with stamp duty. There is no evidence that it was as the letter specifically mentions that the Agreement for Sale is accompanied by a requisition as well as the Notice of Assessment.

[27] In an extremely late affidavit of Mr. Harold Brady filed on August 21, 2024 (after the Court expressly reserved its ruling and without even seeking the consent of the other parties so to do), Mr. Brady acknowledged, as the former purchaser's attorney, receiving this correspondence and the documents contained therein. However, even in this affidavit Mr. Brady fails to provide any context to the document. There is nothing from him concerning the requisition and assessment and if he did anything about them and there is no explanation from him as to why he was receiving the sum of $492,195.00 from the vendor's lawyer.

[28] It is clear to me that the statement by Mr. Blisset, in his affidavit, provides strong evidence of what truly happened. The evidence may lead a reasonable tribunal to infer that the stamp office, in their assessment, chose to use a significantly higher valuation than the $5m in the agreement for sale as the basis for assessing the stamp duty and transfer tax. Hence the likely reason for the requisition and the assessment that accompanied them in Mr. Heywood's letter to Mr. Brady. This combined assessment was $3,279,000.00.

[29] The Claimants' attorneys-at-law knew from the discourse at the hearing that this was an issue for concern. But then they failed to use their affidavit from Mr. Brady to explain this bit of the correspondence.

[30] So I am not satisfied that sufficient has been put before me to convince me on the balance of probabilities that the stamp duty had indeed been paid by the Claimants before 2020 and the return of the documents to the vendor in 2019.

Is There a Case with a Real Prospect of Success that the Sale Was Completed?

[31] Some 12 years passed and there is a dispute as to whether or not the sale was in fact completed. The 2nd Claimant, through Mr. Wong at paragraph 12 of his affidavit filed on the 23rd January 2024, says that the sale was completed. The 2nd Defendant insists that the sale was not completed and the 1st Defendant supports him and himself says that the entire process was aborted due to the inability of the 2nd Claimant or the 1st Claimant to finance the purchase of the property.

[32] Let me address here some of the contentions in the Claimants' submissions at paragraph 7. In 7(b) counsel argue that it is common ground that the entire purchase price was paid. Yes. But paid by whom, by what mechanism and on whose behalf? The evidence strongly suggests a strong and compelling case that the likely source of the "payment" was indeed Mr. Bailey through the house exchange between himself and the Blissets as stated by the 1st and 2nd Defendants.

[33] The Claimants want us to believe that the subject property was being sold for the measly sum of $5,000,000.00. There is no evidence as to why, for a property development, a vendor would have sold this land (in a very highly sought after part of St. Andrew), with a house on it, for just $5,000,000.00. It is evident that the stamp office did not buy this argument either, hence the increased assessment. So the evidence strongly points in the direction that the true purchase price wasn't the $5,000,000.00.

[34] The 1st Claimant denied that there was any such arrangement between the Blissets and Mr. Bailey, but he failed to put in evidence an alternate explanation as to why the Blissets would have sold the property to the company for just $5,000,000.00. This is in the further context where the 1st Claimant said that he was involved in the negotiations for the land. If so, he has failed to put forward any contrary evidence of alternate terms of negotiations. This default is in clear breach of his requirement to put forward his evidence as set out in rule 8.8(2)(a) bearing in mind that the claim started by Fixed Date Claim. This is all the more glaring in light of the multiple affidavits filed by the Claimants.

[35] It is an incomplete truth, as asserted in paragraph 7(d), that the delivery of the instrument of transfer and the title were unqualified. The qualification to the delivery was in the context of Mr. Heywood submitting the assessment and the requisition attached to the agreement for sale. The understanding would have been clear.

[36] Paragraphs 7(f)-(i) must be understood in the context of what I have discussed above concerning the arrangement between the Blissets and Mr. Bailey. There is no evidence from the 1st Claimant that the 2nd Claimant was a going concern or had the capacity to pay any sum of money at all at the material time. The 1st Defendant gave evidence that the 2nd Claimant was not operating and did not have the capacity to pay any sums of money. The Claimants have submitted not one single solitary return since the company's existence to bolster their position that the 2nd Claimant could have paid the money.

[37] Further, after the Court raised the concern about the capacity of the company to sue due to it deregistration, they quickly got the proof from the Registrar of Companies that she had restored the company. Part of that restoration required the submission of outstanding returns. This the Registrar said they did. Yet, these returns have not been exhibited to the affidavit of the 1st Claimant. So it is not that they didn't have the evidence to support their contention that they could or could not have put up the capital. They just haven't showed it.

[38] Therefore, when Mr. Blisset said in his statutory declaration that the purchase price was paid, taken in the context of his explanation, he may likely be found to be correct. But the evidence suggests that it was based on his arrangement with Mr. Bailey and the house exchange.

[39] The Court observes that simply because the purchase price may have been paid, does not equate to the sale being complete in the context of this particular case. Section 33 of the **Transfer Tax Act** mandates that unless and until transfer tax is paid in accordance with that Act, the transfer cannot be registered under the Registration of Titles Act. Section 18 of the **Transfer Tax Act** also mandates the transferee to pay the transfer tax due and get it reimbursed from the transferor.

[40] Concerning paragraphs 7(j)-(l), the context is missing from the submissions. These taxes were paid **after** Mr. Brady had returned the documents to the vendor's attorney-at-law at the request of the vendor's attorney-at-law in 2019. The transfer tax was certified paid in October of 2020 as was the stamp duty.

[41] Mr. Brady's affidavit contains an assertion that he received the documents in 2007 from Mr. Heywood to facilitate the purchaser's being able to apply for modification of the restrictive covenant and issue splinter titles once the development was completed. He said the delay was due to a breakdown in the relationship between the 1st Claimant and the 1st Defendant. But there is no firm supported evidence from Mr. Brady or the Claimants that it was they that paid the stamp duty and the transfer tax during this delay period. In the absence of such proof, coupled with the

return of the documents by Mr. Brady to the vendor, render it is highly unlikely that the Claimants can make out a case that the sale was completed in law or equity.

[42] By letter dated the 24th May 2019, the Purchaser's Attorneys-at-Law returned to the 2nd Defendant's Attorney-at-Law, at the request of Mr. Heywood, the Agreement for Sale, the Instrument of Transfer and a Power of Attorney. It was noted in that same letter from Mr. Brady that the Duplicate Certificate of Title had been misplaced when Mr. Brady was moving office. Mr. Brady undertook to search for same and, if it still could not be found, facilitate a lost title application.

[43] Ms. Scott urged upon the Court that the endorsing of the Instrument of Transfer with the notation of the 2006 Agreement for Sale suggests that the agreement for sale was indeed stamped. She argued that this is "usually" the case in the written submissions. She relied on the decision of Barnaby J in the case of ***George Miller v Ralston Smith et al***[7] wherein the learned Judge took judicial notice of the usual practice in conveyancing transactions involving registered property. I agree that this is the usual practice. Whilst this is usually the case, in a matter where the **fact** of the stamping is being challenged, the evidence to support the stamping needs to be presented.

[44] The Claimants submitted in writing that s. 10 of the **Transfer Tax Act** requires that a nominee transfer be by contract. But I do not agree with that interpretation. All section 10(2) seems to say, in my view, is that where a person (or their nominee) makes an assignment of their right to the transfer or enters into an agreement to assign their right to the transfer, then the assignment or the agreement to assign is deemed to be the transfer from the 1st named person to the person(s) named in the assignment or the agreement to assign.

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[7] [2023] JMCC Comm 42

[45] So a transferee can make an outright assignment of their right to the transfer of the property without entering into any agreement for same. For example, a father buying a property may nominate their child/children as the assignee of his right for "love and affection". Such an assignment, under s. 10(2) does not mean that the assessment of the value of the property, for the purposes of determining the transfer tax to be paid, cannot be done.

[46] I do note that there was a reference to the 2006 agreement for sale on the instrument of transfer. I would also agree with Dr. Malcolm's speaking notes that the circumstances of the transfer from the Blissets to Mr. Bailey were "untidy" to say the least. But in my view, this does not help the 2nd Claimant establish any beneficial interest in the property that is protectable by equity.

[47] Therefore, it is my finding that there is no objective evidence to suggest that the 2006 agreement for sale was in fact completed. The return of the documents by Mr. Brady in 2019, at the request of Mr. Heywood, undermines that position. In particular, the return of the Instrument of Transfer. Further, to date, there is no evidence of the agreement for sale having been stamped at all. Mr. Brady's vague recollection is not sufficient. In addition, there is absolutely no evidence presented that the 2nd Claimant would have paid over the deposit and further payment to the Vendor's Attorneys-at-Law in accordance with special condition 1 of the agreement for sale. At best there was verbal evidence, unsupported by documentary evidence, that Mr. Brady received the purchase price from his client and the context of this has already been explained above.

[48] The evidence presented here tends to suggest that the 1st Defendant and the 2nd Defendant (along with the 2nd Defendant's ex-wife) caused the said property to be transferred to the 1st Defendant who then sold the property to the 3rd Defendant. How this was done was that the 2nd Defendant made an application to the Registrar of Titles for the issuance of a new title for the property as the title was lost. He then caused the new title to be issued directly in the name of the 1st Defendant.

[49] It is important to note that during the intervening period between 2006 and the date of the transfer to the 1st Defendant by the 2nd Defendant and his spouse, the 2nd Claimant had ceased operations and, according to the 1st Defendant, was struck from the register of companies in or around March of 2019[8].

[50] Counsel cannot rely on s. 38 as proof that the transaction was completed. What is more, there is no evidence of a stamped agreement for sale in any event.

[51] She pressed hard and mentioned the BNS cheque that was included in the letter from Mr. Heywood dated January 24, 2007. But, as I pointed out to her, this means nothing as there is no reference in the letter as to the purpose of the money and, there was a requisition accompanying the Agreement for Sale in addition to the Notice of Assessment. Again, Mr. Brady provided no explanation for this payment in circumstances where he could have and should have. So it seems to me that more needed to have been done to say that there was a completed agreement.

Was there sufficient acts of part performance/detriment on reliance on the agreement for sale?

[52] I had already discussed the question of the payment of the purchase price in significant detail above. So there was no evidence of part performance/detriment incurred by the 2nd Claimant in this regard.

[53] Mr. Wong contends, in the same Affidavit filed on the 26th July 2024, that he was given possession of the property. He also asserted that he demolished a structure on the property, dumped $20m worth of lumber on same and sought an architect to draw up plans for the development. There is no evidence to support this purchase of $20m worth of lumber by the 2nd Claimant or even the 1st Claimant. It was just a figure plucked from the air. Given the recency of the purchase, one

[8] See paragraph 6 of his Affidavit filed on the 12th July 2024.

would have expected him to be able to support such a massive purchase with at least an invoice.

[54] These facts were disputed by the 1st Defendant in his affidavit filed on the 7th August 2024. But, what I found curious is that in his first affidavit filed on the 23rd January 2024, the 1st Claimant said at paragraph 25 (among other things) that in or about December of 2023, he contacted the 1st Defendant as **he** (emphasis mine) had material to store on the land. There was no prior mention of him independently dumping material on the property or that he had been put into possession by the Blissets (the original owners of the land) in this first affidavit. Indeed, it was in those circumstances that he came to find out that the property had been sold. Indeed, one gets the impression from the evidence so far presented that the 1st Claimant and the 1st Defendant were acting at cross-purposes and not as the 2nd Claimant.

[55] Further, in his first affidavit, the discussions on development did not arise until mid 2022 and then early 2023. This would have been after his attorney had returned the sale documents to the vendor's attorney-at-law upon his request for their return. There is no evidence from the Claimants that they were unaware of what their former attorney-at-law was doing. It was then, according to Mr. Wong, that the architect was engaged. There have been no other unequivocal acts of detriment suffered by the 2nd Claimant in reliance on the agreement for sale presented in evidence anywhere. I do not find that what has been presented shows a case with a real prospect of success in finding any beneficial interest.

[56] I would also point out that early possession does not mean that you have acquired the beneficial interest in the property. So even if it is true that the 2nd Claimant was given early possession, it does not mean that they had obtained any beneficial interest.

[57] Counsel for the Claimants argued that the delivery of the Instrument of Transfer, the Agreement for Sale and the Title represented the transfer of the beneficial interest to the Claimants. She relied on a decision of this Court in ***Orville Palmer***

et al v Gregory Duncan et al[9]*.* But the context of that decision was one in which the purchaser **kept** the documents and the vendor **never requested their return** (emphases mine). In fact, Mr. Duncan was relying on his delivery and non-request for return as proof of his divestment of interest. In the case at bar, the vendor's attorney-at-law made a request for the return of all the documents and the purchaser's attorney-at-law complied without demur or instruction (for example that he is awaiting the return of the duly endorsed title or some other such statement) to suggest that the purchaser's interest was being defended or continued. In those circumstances, the clear inference is likely to be drawn that the beneficial interest did not pass.

No Proof of Compliance with Special Condition 1

[58] But if I am wrong, I will move to another point of weakness. There is no proof of compliance with Special Condition 1 of the impugned agreement for sale. Assuming, I am wrong on the stamp duty issue and I can examine the agreement for sale, there is no proof of compliance with special condition 1.

[59] Special Condition 1 provides that the agreement does not come into effect unless the deposit and further payment have been made at the time of signing. I asked counsel for the Claimants whether she has proof of the payment of the deposit and further payment. None was supplied up to the date of hearing of this ruling.

[60] In the absence of this evidence, I cannot say that the agreement had come into effect.

The Standing of the 2nd Claimant to Bring the Claim

[61] One of the curiosities of this case is the standing of the Claimant to bring the Claim. I invited submissions from counsel on this point.

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[9] [2022] JMSC Civ 239.

[62] Section 337 of the **Companies Act** provides for the Registrar of Companies to strike a company off the Register of Companies for various reasons including where the Registrar is not satisfied that the company is operating. The evidence before the Court is that the 2nd Claimant was so struck off.

[63] The effect of this is stated in s. 337(5). It states as follows,

> **(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette,* and on the publication in the *Gazette* of that notice the company shall be dissolved:..**

[64] It is only the Registrar of Companies that can restore a company to the register and the aggrieved company must apply to the Registrar for this process to be engaged. If the company successfully applies to the Registrar for the company to be restored, then the company is restored and it is treated as though the company was never deregistered.

[65] Deregistration of a company basically kills the company. The company ceases to exist as an entity and can therefore conduct no form of business. Support for this position was obtained from the Supreme Court of Appeal of South Africa in the case of ***Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd***[10]. At paragraph 15 of the Judgment, Brand JA said as follows:

> ***The issues thus arising must be understood in the context of the established principle that deregistration puts an end to the existence of a company. It brings an end to its corporate personality 'in the same way that a natural person ceases to exist at death' (see Miller & others v Nafcoc Investment Holding Co Ltd & others 2010 (6) SA 390; (324/09) [2010] ZASCA 25 (SCA) para 11). All subsequent actions purportedly taken on behalf of the deregistered company are consequently void and of no effect.***

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[10] [2015] ZASCA 25

[66] The case went on to hold that when a company is restored to the register, then the effect is that all actions taken by the company between the time of de-registration and re-registration, become valid retrospectively. All counsel argued this point using authorities to similar effect from the UK and Canada[11].

[67] At this point, there is evidence before me that the Registrar has restored the 2nd Claimant to the register (regardless of the unauthorised manner in which it was presented to the Court). In light of the plethora of authorities from around the world, a restored company, as at the date of restoration, is fully restored and all actions taken during the period of deregistration are given retrospective effect and are valid.

CONCLUSION

[68] In the circumstances, I am not satisfied that the injunction granted should continue. I find that there is no serious issue to be tried as between the parties as:

a) **there is no stamped Agreement for Sale before the Court presently so it is unenforceable;**

b) **even if the agreement for sale were stamped, there is no evidence that there has been compliance with special condition 1 with the result that the agreement for sale did not come into effect;**

c) **there is no other evidence at this point which tends to suggest a case with a real prospect of success that the 2nd Claimant acquired a beneficial interest by way of detriment and reliance or otherwise.**

[69] Accordingly, the injunction will not be extended.

DISPOSITION

1 **The Application for extension of the interlocutory injunction is refused.**

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[11] See paras 37-42 of the Submissions of the Claimant filed August 21 2024 and the authorities therein as well as paragraphs 38-42 of the Speaking Notes of Dr. Malcolm filed on August 22, 2024 on behalf of Mr. Bailey.

2 **Costs to be the Defendants.**

3 **Leave to appeal refused.**

4 **Claimants' Attorneys-at-Law to prepare, file and serve this Order on or before the 13th September 2024 by 4:00 pm.**

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D. Staple, J