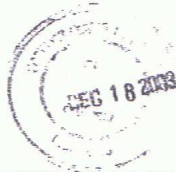


BARBADOS

No 2240 of 2002



DRAWN & PREPARED BY
Alair Shepherd
ALAIR SHEPHERD
ATTORNEY-AT-LAW
LUCAS STREET
BRIDGETOWN
BARBADOS

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

BETWEEN

ERIC IAIN STEWART DEANE

PLAINTIFF

AND

MARJORIE ILMA KNOX

DEFENDANT

AFFIDAVIT

I, **JANE GODDARD** of Hanson Plantation in the parish of Saint George
MAKE OATH AND SAY as follows:

1. I am the daughter of the Defendant in this action. I make this Affidavit in answer to the plaintiff's application for (inter alia) a charging order charging my mother's shareholding in Kingsland Estates Limited.
2. I am shown a true copy of a mortgage which I executed a security for the loan of funds to enable me to lend money to my mother to prosecute the action in the High Court Action No. 1805 of 1998. I append this copy of the mortgage hereto and mark it **Exhibit "JG 1"**.
3. That as I was lending these funds which were well over the value of the shareholding according to the agreement which the other shareholders have entered into to sell their shares I asked my mother and she agreed to make the Declaration of Trust which is exhibited to her affidavit.
4. I make this affidavit in support of an application that this application be dismissed with costs.

This affidavit is filed on behalf of the defendant.

SWORN TO by the Deponent the)
said **JANE GODDARD** at the)
Registry Office, Coleridge)
Street, Bridgetown on the)
day of December, 2003)

Jane Goddard
.....

Before me:

[Signature]
Legal Assistant/Senior Clerk

This Affidavit was drawn and prepared by Alair P Shepherd QC Attorney-at-Law for the Appellant/Applicant of and whose address for service is Inn Chambers, Lucas Street, in the City of Bridgetown.

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EXHIBIT PAGE

This is a true copy of the Mortgage referred to in paragraph 2 of my Affidavit marked **Exhibit "JG 1"** for identification.


.....
Legal Assistant

LAND REGISTRY
Recording Page

Return To:

ALAIR SHEPHERD

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Instrument FURTHER_CHARGE

Date : 10/30/2003

Time : 12:20:11

Control # 200310300049

INST# RD 2003 007130

ADJ #

Employee ID TACHAW

GODDARD
LARRY KENT ET UX
ALLARD
PETER ANDREW

RECORDING	\$	44.00
STAMP DUTY	\$	780.00 E
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
Total:	\$	44.00

ST. MICHAEL BARBADOS
LAND REGISTRY

Timothy .O. Maynard
REGISTRAR OF TITLES



200310300049

GREENIDGE DECISION

The Transfer of Shares

- V. Mr. V. Smith for the applicant grounded his application on Order 50 rule 2 of the Rules of the Supreme Court and his supporting affidavit deposing to a sum of \$378102.00 being the taxed costs awarded to the applicant plaintiff/Judgment creditor and in respect of which he is seeking a charging order against the defendant/Judgment debtor's shares in Kingsland Estates Limited. He refers to the purported disposition by the defendant/judgment debtor of her shares in a declaration of Trust allegedly made on the 28th November 2002 and referred to in her affidavit (exhibit MK8) filed on the 8th October 2003 and he contends that the defendant/judgment debtor had notice of these proceedings as evidenced by her acknowledgement on the 23rd October 2003. He contends that this was a voluntary disposition of property contrary to section 193 of the Law of Property Act CAP 236 and is therefore voidable at the instance of the plaintiff/judgment creditor who is prejudiced by the defendant/judgment debtor's action. He contends that the purported Declaration of Trust was done with intent to defraud the plaintiff/judgment creditor.
- VI. Mr. Shepherd objects to the allegation that the defendant/judgment debtor entered into the Declaration of Trust with intent to defraud and alludes to a mortgage exhibited to the affidavit of Jane Goddard the daughter of the defendant/judgment debtor in which it is mentioned that the said shares were charged to the same mortgagee who also had a charge on a property at Hanson entered into by her and her husband Larry Goddard, the charge on the shares being supplemental to her own charge.

SHAUGHNESSY REASONS

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against the "Country of Barbados" that it is insolvent and the Plaintiff is unable "to enforce or collect any judgment payable by Barbados in Barbados because of the facts stated herein [in the statement of claim] including that some of the co-conspirators are members of the judiciary and governing party".

[3] There are 37 defendants who have moved to challenge the jurisdiction of the Ontario Superior Court of Justice over this action. They move by way of 9 separate motions. Eight individuals resident in the Barbados have sworn affidavits on behalf of 33 of the defendants located in the Barbados. There are 3 other affiants who are not located in Barbados and therefore do not seek to be examined in that jurisdiction.

[4] There are 3 contested motions which are argued before this Court:

- (a) The Plaintiff's motion for directions respecting the location of the cross examinations of the defendant affiants who are resident in Barbados or alternatively an order that the defendants pay for personal security for the cross-examinations.
- (b) The Plaintiff's motion for an Order to compel Cable & Wireless (Barbados) Ltd. to collect and produce information found on the internet.
- (c) The Defendant Price Waterhouse Coopers (Barbados) motion which is supported by most of the defendants for an order for directions relating to the conduct of the cross-examinations.

OVERVIEW

[5] The affidavit material filed by the Plaintiff provides lengthy and detailed background information relating to the genesis of this lawsuit. In summary form I will outline briefly the relevant background information.

[6] John Knox is the Plaintiff's principal affiant however he is not a party to the proceeding. Mr. Knox relates that his grandfather Estwick Ebenezer Deane and his wife Ilma Kathleen Ashby made a series of land acquisitions in Barbados. The Deans had 7 children one of whom is the defendant Marjorie Knox, who is the mother of John Knox.

[7] In 1949 Estwick Ebenezer Deane made all seven of his children and his wife tenants in common with him in all lands which he owned which was approximately 700 acres. Subsequently more land was acquired by the family as tenants in common including valuable beachfront property.

[8] In 1958 the family, as tenants in common, incorporated Kingsland Estates Limited and which purportedly had land holdings in excess of 1100 acres at that time.

[9] The affiant, John Knox states that the shares of Kingsland Estates Limited are physically located in Canada "as part of security arrangements." I interpret this to mean that the shares of

SHAUGHNESSY REASONS

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his mother Marjorie Knox are lodged in Canada. He further alleges in his affidavit that the conspiracy alleged in the amended statement of claim includes "the persons and companies that had the intention and plan to take control of the lands and develop them in such a way that the value would be stripped from the company and the shares would be rendered worthless while others benefited."

[10] It is the contention of John Knox that on the death of his grandparents, three of their sons, the siblings of his mother Marjorie Knox sold off and disposed of lands in a manner that did not provide compensation to Kingsland Estates Limited. Further, the alleged conspiracy that is the subject matter of this action involves a number of transactions whereby the various defendants have transferred shares of Kingsland Estates Limited to themselves or others.

[11] A corporate search of the Plaintiff Corporation indicates that it was incorporated in Ontario on November 15 2005. The director of the corporation is Donald Best and the head office is given as the same address as the Plaintiff Counsel's law firm in Orillia, Ontario.

History of the Litigation

[12] Following service of the Statement of Claim, various defense counsel forwarded correspondence to advise Plaintiff's Counsel that they would be bringing a preliminary motion pursuant to Rules 21.01(3) and 17.06 to stay the action on the basis that Ontario does not have jurisdiction over the proceedings or alternatively, it is not a convenient forum for the action. Counsel for the defendant Sir David Simmons served a motion record on May 17/07 to dispute the jurisdiction. Counsel for the Plaintiff proceeded unilaterally to arrange cross-examinations in Barbados for June 6 & 7 2007. Counsel for the defendant advised that he was not available to attend cross-examinations in Barbados on June 6 & 7 2007. Counsel for the Plaintiff then proceeded to serve a Notice of Motion which inter alia sought an Order striking out the affidavit sworn by Sir David Simmons in support of the jurisdiction challenge as well as an Order that Sir David Simmons attend in Toronto on June 6 & 7 2007 for cross-examination on his affidavit. The motions judge sitting on May 29, 2007 vacated the Notice of Examination served on Sir David Simmons.

[13] On August 10, 2007, at the direction of the Regional Senior Judge, a number of counsel for the parties attended before me at which time orders respecting service were made and the date of the substantive motion concerning jurisdiction was set to be heard on January 14 & 15 2008.

[14] On August 14, 2007 Mr. McKenzie, Counsel for the Plaintiff forwarded correspondence to all defense counsel advising that:

Vicious and specific threats have been communicated to me about my participation as counsel in this action. Of more concern is that similar threats have been made regarding the participation of the affiant John Knox.

SHAUGHNESSY REASONS

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angry about that and but you know, nothing is stopping him (McKenzie) from coming to Barbados, but what happens after he gets here is another matter. Nobody can declare him a prohibitive (sic) immigrant, if they could they would.

[57] Later in the same conversation Stuart Heaslet comments on the relationship between Bill McKenzie and Peter Allard and states: "I asked Allard yesterday again about the relationship and he reiterated that he had sold his upside to McKenzie's firm." (See Footnote #1)

The August 13 2007 Recorded Telephone Conversation between Stuart Heaslet and Peter Simmons.

[58] Stuart Heaslet makes yet another recorded telephone call to Peter Simmons on August 13, 2007. This conversation was recorded at a premise owned by Peter Allard in Vancouver B.C. Peter Simmons again is unaware that the conversation is being recorded.

[59] In this August 13, 2007 telephone conversation Stuart Heaslet advises that over the weekend he had an opportunity to meet with Peter Allard and that he had "delivered the message to him .I also delivered the message to Bill McKenzie." Mr. Heaslet goes on to state:

I wish you would all get into a room and just solve this thing because it has put a tremendous agenda at risk meaning the National Park agenda and I'm just sorry to see it happen. It's also affected my involvement in Barbados."

(Footnote #1.) Exhibit "E" to the affidavit of Stacey Ball sworn November 7, 2007 is an e-mail from Stuart Heaslet to Bill McKenzie dated September 13, 2007 which states: "Some time ago I mentioned to Peter Simmons and Harry Roberts that I had heard that Peter Allard had sold his "upside" benefit in the Kingsland affair. Not knowing any details of the case, I assumed the "upside" had been sold to your firm and passed my assumptions on to Simmons and Roberts. In any case, I wanted to let you know this and I will be letting Simmons and Roberts know of this."

Reference is made in these Reasons to the unsolicited correspondence sent to all Counsel by Mr. McKenzie dated November 7, 2007 in which he states that "in order to dispel rumours and set the record straight" he advises that he has no direct or indirect interest in the Plaintiff or in the outcome of the lawsuit. As detailed in these reasons, defense counsel state that this correspondence came "out of the blue." As of Nov. 7/07 defense counsel had only received the August 14/07 correspondence from Mr. McKenzie about "serious and specific threats" made towards him and John Knox. Despite repeated requests Plaintiff's counsel did not provide particulars. Ms. Jessica Duncan on behalf of the Plaintiff advised on September 4, 2007 that an expert had been retained and that particulars would be provided once the expert had completed his review. Not surprisingly, several defense counsel responded that without particulars of the alleged threats they were unable to address the actual facts and concerns. They also inquired as to whether the matter had been reported to the police.)

Goodridge Decision

THE ISSUE OF TACKING

[22] In her affidavit of May 3, 2006 Mrs Knox says that she has a right to tack on amounts for pensions and perquisites due to her advances and fees for the appointment of a Receiver. If this is the case, then Mrs Knox would have priority over other creditors. – See Fisher and Lightwood’s Law of Mortgage 10th Edition pg. 484. It is clear from the evidence that monies are owed to the shareholders and directors, including Mrs Knox. However, Mrs Knox’s share of these monies is not a further advance on the security of the estate and they cannot be tacked.

[23] In para 20 of her affidavit of May 3, 2006 Mrs Knox speaks of advances made pursuant to para 7 (b) of the mortgage. Mention is made of the sum of **\$4,322,400** which according to exhibit MK2 **represents the amount owed to Mr. Peter Allard by Mrs Knox** and I quote “re Kingsland and its properties and mortgage”.

[24] But in her affidavit of 12 May 2006, Mrs Knox at para 14 states:

“I have had to borrow and expend considerable resources from Peter Allard in order to carry out my right and duties as shareholder and director of Kingsland over the last 15 years to deal with matters involving the management of Kingsland...”

[25] It is not necessary for me to quote the paragraph in its entirety but it is clear that the moneys which were lent to Mrs Knox by Mr. Allard were for her own use and benefit and do not constitute, in my view, advances pursuant to para 7 (b) of the mortgage.