[2025] JMCA Civ 10

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE BROWN JA
THE HON MR JUSTICE LAING JA

SUPREME COURT CIVIL APPEAL NO COA2024CV00056

BETWEEN	**A & A LIME HALL DEVELOPMENT COMPANY LIMITED**	**APPELLANT**
AND	**MB DEVELOPMENT & INVESTMENT LIMITED**	**RESPONDENT**

Ms Arlene Gaynor, director of the appellant company, present

Keith Bishop, Raoul Lindo and Janoi Pinnock instructed by Bishop & Partners for the respondent

25, 26, 28 February and 11 April 2025

Civil practice and procedure – Summary judgment – Refusal of appellant's summary judgment application – Whether the respondent had a real prospect of success on the claim/issue – Civil Procedure Rules, Part 15

Contract for sale – Interpretation of contract – Interpretation to be applied to special condition of contract – Whether special condition ambiguous

Contract – Rescission of contract – Specific performance – Whether respondent is entitled to an order of specific performance

STRAW JA

[1] I have read, in draft, the reasons for judgment of Laing JA which accords with my own reasons for concurring in the decision of the court. I have nothing to add.

BROWN JA

[2] I too have read the draft judgment of Laing JA and agree with his reasoning.

LAING JA

[3] This is an appeal against the order of Jackson Haisley J ('the learned judge') dated 8 February 2023 ('the order'), in which she refused to grant the order sought by A & A Lime Hall Development Company Limited ('the appellant'), in its notice of application for court orders filed on 18 January 2023, for summary judgment to be entered in favour of the appellant ('the application').

[4] On 28 February 2025, we made the following orders:

> "1. The appeal is dismissed.
>
> 2. The matter is remitted to the Supreme Court for a date for the hearing of the case management conference to be fixed by the Registrar on the earliest possible date.
>
> 3. Costs of the appeal to the respondent to be agreed or taxed.
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> 4. The respondent's attorneys-at-law to prepare, file and serve these orders."

We promised to give our reasons in writing, and this is in fulfilment of that promise.

The background

[5] The appellant and the respondent are both limited liability companies duly incorporated under the laws of Jamaica. The appellant is the owner of a parcel of land, part of Cherry Hill in the parish of Saint Andrew, registered at Volume 1284 Folio 162 of the Register Book of Titles ('the property').

[6] The parties entered into an agreement for sale, pursuant to which the appellant agreed to sell, and the respondent agreed to purchase, the property at the price of $40,000,000.00 ('the agreement'). The agreement provided that the sale of the property would be completed within 60 days and required the respondent to pay a deposit of 5% of the consideration, with the balance payable on completion. The deposit was duly paid by the respondent.

[7] The agreement contained special condition 3, which provides as follows:

> "It is understood and agreed that if the Transfer Tax and Stamp Duty are assessed by the Stamp Commissioner on a value in excess of the purchase price herein, the Vendor shall be entitled to treat this Agreement as rescinded and to serve the Purchasers [sic] with a Notice of Rescission within 14 days of the said assessment in which event this Agreement shall automatically be rescinded, SAVE THAT, the Purchaser may within fourteen (14) days of the said assessment, pay to the Vendor' [sic], any additional increase in assessment."

[8] On or about 10 December 2021, the appellant's attorney-at-law advised the respondent's attorney-at-law by telephone that the Stamp Commissioner had assessed the transfer tax on a market value of $65,000,000.00 for the property. The effect of the Stamp Commissioner using this value was that the transfer tax payable was increased by the sum of $500,000.00 ('the additional transfer tax').

[9] The respondent's attorney-at-law transmitted a copy of a manager's cheque for the additional transfer tax to the appellant's attorney-at-law at 3:12 pm on 10 December 2021. At approximately 3:41 pm, the respondents' attorney-at-law received an email from the appellant's attorney-at-law, attaching a notice of rescission dated the same day, which indicated that on the instructions of the appellant, the notice was issued rescinding the agreement pursuant to special condition 3. The respondent's attorney-at-law, by a bearer, delivered the physical cheque, the copy of which was previously sent, to the appellant's attorney-at-law, on 13 December 2021, and it was returned to the respondent's attorney-at-law on 14 December 2021.

[10] Through its attorney-at-law, the appellant asserted that the agreement had been validly terminated. On 9 February 2022, the respondent filed a claim in the Supreme Court against the appellant, claiming a number of reliefs, including specific performance of the agreement and damages for unjust enrichment. The respondent also obtained an interim injunction on 5 April 2022, from Palmer Hamilton J, restraining "… [the appellant] and/or its nominee/s, its agent/s and/or its servant/s… from selling, transferring,

mortgaging, or otherwise disposing of or otherwise dealing in any matter whatsoever in respect of the [property]". Following an *inter partes* hearing on 28 and 29 June 2022, on 21 October 2022, the injunction was granted on the same terms until the claim is determined or until further orders of the court.

[11] On 18 January 2023, the appellant filed a notice of application seeking an order that summary judgment be entered in its favour and that the respondent's claim be dismissed. The appellant stated in its grounds that the application was pursuant to Part 15 of the Civil Procedure Rules 2002 ('the CPR') and that the respondent had no real prospect of succeeding on the claim. The appellant also relied on the following two grounds:

> "3. It is a matter of settled law that the parties are not at liberty to contract outside of a statute. The relevant statute here being the Transfer Tax Act of Jamaica [sic], and any such purported provision in a contract is invalid, void and unenforceable. Special Condition 3, in so far as the section purports to give permission to the purchaser/Claimant to pay Transfer Tax is outside of the Transfer Tax Act and should be stricken from the Agreement dated October 12th, 2021 between the parties.
>
> 4. Having [r]egard to grounds 3 above the only legal interpretation of special condition 3 of the said agreement dated October 12, 2021, between the Claimant and the Defendant, is that the Defendant/Vendor is entitled to rescind and [treat] the said Agreement as rescinded and to serve the purchaser with a notice of Rescission. Which Notice of Rescission was validly sent by the defendant through its Attorney at-law on December 10th, 2021. The contract was validly rescinded."

[12] On 8 February 2023, the learned judge denied the appellant's application for summary judgment. On 10 June 2023, the appellant filed an application for leave to appeal in the Supreme Court, which was heard and refused on 16 November 2023. The appellant then filed an application before this court for leave to appeal, which was granted

on 10 April 2024. The appellant filed its notice of appeal and grounds of appeal on 24 April 2024.

The grounds of appeal

[13] The grounds of appeal filed by the appellant were as follows:

> "a) That at the hearing of the application for Summary Judgement made on February, 8th 2023 the Learned Judge failed to accept the submission of the Appellant that the proceedings could be determined by the legal interpretation of special condition (3) of the Agreement for sale contracted between the Appellant and the Respondent. Which legal interpretation precluded the Respondent from paying the increased assessed amount for Transfer Tax. That the Learned Judge erred in not accepting the interpretation of Special condition 3 of the Agreement for Sale proffered by the Appellant and unchallenged by the Respondent. Had the Judge not erred, the proceedings would have ended and Summary Judgement granted in favour of the appellant and the Claim dismissed.
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> b) The Learned Judged erred when she accepted the [Respondent's] contention that they *could* have a claim to Specific performance of the contract between the parties.
>
> c) The Learned Judge erred, in that she failed to examine the ultimate outcome of the Claim upon hearing the application for Summary Judgement, as she is required to do.
>
> d) The learned Judge at the hearing for Summary Judgement erred when she followed the approach taken by the Honourable Mrs. Justice Lisa Hamilton-Palmer when granting the Interlocutory Injunction and applied the same standard as Mrs. Justice Lisa Hamilton-Palmer. The standard required by the Judge upon an application for an Interlocutory Injunction 'good and arguable case' or 'serious question to be tried' is different from the standard required to be used by the Judge upon the hearing of a Summary Judgement application. The latter test being 'an

assessment of the ultimate result'. The learned Judge at the hearing for the application for Summary Judgement applied the wrong standard and therefore erred.

e) There is no dispute as to the facts, and Summary Judgement is an appropriate remedy.

f) Part 15 of **Civil Procedure Rules 2002** allows the court to determine any issue of law on a Summary application and grant Summary Judgement where the Claimant has no real prospect of succeeding on the Claim. The interpretation of Special condition 3 of the Agreement for sale between the parties is an issue of law.

g) The Respondent/Claimant has no real prospect of succeeding on its Claim.

h) The learned Judged [sic] failed to give her reasons in writing when denying the [appellant's] application for Summary Judgement on February 8th, 2023.

i) It is just and equitable that the appeal should be allowed" (Emphasis as in the original)

However, in the appellant's oral presentation on the appeal, it was submitted that these grounds could be subsumed under three main issues, and that was the approach adopted in the submissions to the court.

The appellant's submissions

[14] The appellant argued that the grounds of appeal could conveniently be addressed by considering three issues framed as follows:

(1) Whether the increased transfer tax assessed could be paid by the respondent by virtue of the agreement or at law;

(2) If it is not permissible for the respondent to make the payments, whether specific performance could avail the respondent; and

(3) Whether summary judgment is appropriate in the circumstances.

[15] In addressing the first issue, the position was advanced that the portion of special condition 3 beginning with "save that" (for convenience this will be referred to herein as 'the proviso') was unenforceable on two bases. Firstly, it was a gratuitous benefit conferred by the appellant, and secondly, it was in breach of the Transfer Tax Act ('the Act'), which provides that the vendor, in this case, the appellant, is required to pay transfer tax.

[16] The appellant relied on section 3 of the Act and argued that it imposed an obligation on the appellant to pay the transfer tax, preventing the respondent from assuming the liability to pay the additional transfer tax. It was further suggested that because the obligation to pay the additional transfer tax was an obligation imposed by the Act, that liability at all times remained on the appellant. This obligation, it was argued, could not be transferred to the respondent by contractual agreement in the form of special condition 3 and, for that reason, a court could not enforce the proviso which purported to transfer that obligation to the respondent.

[17] It was further submitted that the only manner in which the respondent could legally assume the liability to pay the additional transfer tax without breaching the Act was if the agreement provided that the respondent should pay the additional transfer tax to the appellant as vendor "by way of an increase in the purchase price".

[18] In para. 33 of its written submissions, the appellant submitted that special condition 3 can be interpreted to read as follows:

> "The vendor reserves unto himself the right to rescind the agreement in the event of an increased assessed amount payable for transfer tax and, provided the vendor does not rescind, then the purchaser may pay the increased assessed amount."

It was advanced that the effect of this construction, if applied, was that the respondent would not be able to pay the additional transfer tax unless the appellant advised the

respondent that it would not be exercising its right to rescind the agreement. Therefore, the 14-day window of opportunity within which the respondent could make the payment ('the payment window') would only be activated if the appellant gave notice to the respondent that it would not be rescinding the agreement. It was emphasised by the appellant that, in this case, the appellant did not issue such a notice of non-rescission to the respondent, but to the contrary, the appellant issued a notice of rescission of the agreement.

[19] It was posited on behalf of the appellant that the rescission clause, being the portion of special condition 3 that precedes the proviso, and the proviso, cannot both be valid; accordingly, since the proviso is void and unenforceable, the rescission clause stands as the only valid portion of special condition 3. Consequently, it was maintained that the right of the appellant to unilaterally rescind the agreement was unaffected by the actions of the respondent in attempting to pay the additional transfer tax without the appellant having advised the respondent that the appellant would not be exercising its right to rescind.

[20] It was submitted that the appellant, having validly exercised its right to rescind the agreement pursuant to the rescission clause, was entitled to summary judgment in its favour.

[21] The appellant also argued that the claim could be resolved by the determination of a single issue, which was an interpretation of special condition 3, and that this would not require any additional evidence since the material facts were not in dispute. On this premise, the appellant criticised the learned judge's decision on the basis that, by refusing to grant the appellant summary judgment, the learned judge must have necessarily concluded that there were issues of fact that needed resolution in a trial and, accordingly, she erred in this regard.

[22] In respect of the second issue, the position advanced by the appellant was founded on the assumption that its submissions on the first issue found favour with the court. It

was contended that specific performance is a discretionary remedy that is subject to certain bars. It is not available in a situation such as this in which it was maintained that the contract is unenforceable or where the appellant was entitled to terminate the contract. It was contended that both these bars were present in this case, and accordingly, specific performance as a remedy was not available to the respondent.

[23] In relation to the third issue, it was submitted that this was an appropriate case for the court to grant summary judgment in favour of the appellant. The appellant reasoned that the issue of the interpretation of special condition 3 was a matter purely of construction. It was advanced that the claim could be determined on a summary application without the need for a court to hear any evidence related to facts since the facts were not in dispute. Furthermore, it was argued that evidence could not be utilised to determine the meaning of special condition 3.

[24] The appellant submitted that because the learned judge's reasons for her decision were not available, this court should exercise its powers and conduct a rehearing of the appellant's application utilising all the material that the learned judge had before her, which would lead to a grant of judgment in favour of the appellant.

The respondent's submissions

[25] Mr Raoul Lindo, counsel who made submissions for the respondent, addressed the issues as proposed by the appellant, except that the response to the first issue was framed to include a response to ground 1 of the grounds of appeal, and counsel examined the issue more generally under the heading "The interpretation of Special Condition 3."

[26] Counsel argued that the proviso was not contrary to the Act because the effect of sections 3 and 18 of the Act, when read together, is that although the transfer tax is payable by the vendor/transferor in an agreement for the sale of land, pursuant to section 18, it is collected by the transferor from the purchaser/transferee. Counsel relied on the case of **Workers Trust and Merchant Bank Limited v Dojap Investments Limited** [1993] AC 573 ('**Dojap**') as judicial recognition of the practice whereby the transfer tax

is paid by the purchaser to the vendor as part of the deposit on the purchase price. Counsel also noted that Barnaby J, in **George Miller and Ralston Smith v Sean Smith** [2023] JMCC Comm 42, acknowledged the observation of the court in **Dojap** on this point. On the foundation of this position, counsel argued that the respondent could pay the additional transfer tax to the appellant without paying it as a part of the deposit under the agreement and not be in breach of the Act. Therefore, counsel argued that there was no support for the contention by the appellant that the proviso is void because it infringes the Act.

[27] Mr Lindo submitted that the proviso created an exception to the appellant/vendor's right to rescind the agreement and made that right conditional and subject to the respondent's payment of the additional transfer tax within the payment window. Counsel conceded that special condition 3, if read literally, contained an inherent conflict in that it provided the appellant with the right to rescind the agreement within 14 days but conferred a simultaneous right to the respondent to pay the additional transfer tax within the payment window. Both the rescission period and the payment window were within the same 14-day period, and consequently, they overlapped. It was submitted that such a literal construction would result in a commercial absurdity because if the appellant exhausted the 14 days before issuing a notice of termination, then there would be no time remaining in the payment window, and the opportunity for the respondent to pay the additional transfer tax would be lost.

[28] Counsel argued that this conflict could be resolved by the court applying a construction to special condition 3 that would avoid commercial absurdity. This involved construing special condition 3 to provide a mechanism for the respondent to pay the additional transfer tax within the payment window. In the event that the respondent failed to do so, then the appellant would have the opportunity to rescind the agreement by issuing a notice of rescission within 14 days of the expiration of the payment window.

[29] Counsel conceded that there was merit in the submission of the appellant that this was a claim that could have been determined by a summary judgment but strenuously

argued that, for the reasons he presented and applying the construction to be placed on special condition 3 he advanced, the appellant's application for summary judgment could not have been decided in the appellant's favour, and the learned judge was correct in refusing the application. Counsel also posited that it was open to the learned judge to have exercised her powers under Part 23 of the CPR to grant summary judgment on her own initiative in favour of the respondent instead, and she did not choose to do so. However, counsel did not pursue this point with any vigour.

Analysis

[30] This court was asked to set aside the learned judge's exercise of her discretion. The principles to be applied have been repeated in numerous decisions of this court, including **Winsome Brown v Cleveland Scarlett** [2019] JMCA Civ 41, in which Straw JA outlined the relevant principles at para. [13]:

> "The grant or refusal of an application for summary judgment is discretionary, as such, this court must not interfere with the exercise of a judge's discretion merely on the ground that the members of this court would have exercised the discretion differently. It is settled that this court will only set aside the exercise of a judge's discretion where it was (i) based on a misunderstanding of the law or evidence; or (ii) based on an inference which can be shown to be demonstrably wrong; or (iii) so aberrant that no judge regardful of his duty to act judicially, could have reached it (see **Hadmor Productions Ltd and others v Hamilton and another** [[1982] 1 All ER 1042, 1046] and **The Attorney General of Jamaica v John Mackay** [[2012] JMCA App 1 at paras [19] and [20]])."

[31] The application by the appellant was for summary judgment. Rule 15.2 of the CPR provides as follows:

> "**Grounds for summary judgment:**
>
> 15.2 The court may give summary judgment on the claim or on a particular issue if it considers that –
>
> (a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue." (Bold as in the original)

[32] In the absence of reasons for the learned judge's decision, it was necessary for this court to determine whether the learned judge erred in the manner submitted by the appellant, or otherwise erred in a manner that would require this court to set aside her decision.

A. The first issue - Whether the increased transfer tax assessed could be paid by the respondent by virtue of the agreement or at law

[33] The appellant's characterisation of the proviso as being a privilege given gratuitously by the appellant to the respondent was unsupported and did not buttress the argument against the validity of the proviso. It is settled law that for there to be a valid and enforceable contract, consideration must be given by both parties to the contract, and that consideration can take the form of mutual promises (see Chitty on Contracts 34th edition, Chapter 3). In this case, there was no assertion by the appellant that the parties did not each provide consideration for the agreement as a whole. It would, therefore, be artificial and impermissible to view special condition 3 (and/or the proviso, in particular) in isolation divorced from the agreement, as being an independent provision in respect of which the respondent was required to provide separate consideration. Accordingly, we were unconvinced that there was a legal basis on which this court could find that the proviso was void and should be struck from the agreement as being gratuitous because the respondent provided no consideration.

[34] As it relates to the submission that the proviso was contrary to the Act and, consequently, void, it is necessary to examine section 3(1) of the Act (which reflects the terms as effected by the Transfer Tax (Amendment) Act, 2019). Section 3(1) reads as follows:

"3— (1) Subject to and in conformity with the provisions of this Act, tax shall be charged at the rate of two *per centum* of the amount or value of such money or money's worth as is,

> or may be treated under this Act as being, the consideration for each transfer after the 1st day of April, 2019, of any property, and tax charged in respect of any such transfer shall be borne by the transferor."

It is not disputed that this section applies to transactions involving the sale of land. Section 18(1) of the Act is also material and is in the following terms:

> "18.— (1) Subject to the provisions of this Act, all tax imposed on a transferor in respect of any transfer shall be paid to the Commissioner of Inland Revenue by the transferee, who shall, notwithstanding anything to the contrary provided or agreed, be entitled to recover the amount of the tax by way of deduction from any consideration for the transfer, or by way of suit against the transferor as for a simple contract debt in the sum so paid, or by any other lawful means at the transferee's disposal after such payment by him. Every such suit as aforesaid for any sum whatsoever shall be cognizable in the Resident Magistrate's Court."

[35] We considered the position of the appellant that the additional transfer tax could not lawfully have been paid by the respondent unless it was paid to the appellant "by way of an increase in the purchase price". However, the case of **Dojap** suggests that this is not correct. The appellant was correct that **Dojap** was a case concerning the forfeiture of a deposit that had been paid pursuant to an agreement for sale, but we did not accept the submission that it was not relevant for that reason.

[36] The applicable transfer tax at the time of **Dojap** was 7½%, which was reduced by the Transfer Tax (Amendment) Act, 2019 to 2%, but the relevant percentages were not critical for the purposes of my analysis. The case was of assistance because in determining the composition of the deposit, the court was required to consider the effect of sections 3 and 18 of the Act and the practice in Jamaica relating to the payment of the transfer tax to the Commissioner of Taxes. We agreed with the submissions of Mr Lindo that the practice remains the same in Jamaica.

[37] It was advanced by the parties before the Board that transfer tax was ultimately payable by the vendor/transferor, but in the event that it was paid by the purchaser, he

was entitled to recover it from the vendor and could do so by way of a deduction from the purchase price. Their Lordships were also advised that the practice of the vendor collecting the transfer tax from the purchaser as a part of the deposit was a mechanism to ensure that the transfer tax was paid promptly. At page 580, their Lordships made the following observations relating to the law as they understood it:

> "As their Lordships understood from the submissions made in argument, formerly the normal practice in Jamaica was to require a deposit of 10 per cent. This was changed by the introduction in 1971 of a transfer tax by the Transfer Tax Act. Under that Act, a transfer tax of 7½ per cent. is payable on a transfer of land on sale. Although the tax is ultimately payable by the transferor (section 3), under section 18 it is collected from the transferee, i.e. the purchaser. As from 3 April 1984, any contract for the sale of land must contain a requirement for the payment of a deposit of at least 7½ per cent. and the purchaser is required to pay this sum to the Commissioner of Stamp Duty and Transfer Tax: section 18(4). The purchaser is entitled to recover from the vendor the amount of the tax so paid either by way of deduction from the purchase price or by action: section 18(1)."

Their Lordships further explained as follows:

> "Their Lordships were told that in practice this statutory machinery is not followed. Since the tax has to be paid within 30 days of the date of contract (failing which interest is payable by the vendor), a vendor is concerned to see that the tax is paid promptly. Accordingly what happens in practice is that the contractual deposit is increased to at least 17½ per cent. and is paid by the purchaser to the vendor. The vendor then pays the tax. It is apparently this practice that has caused the departure from the previously customary deposit of 10 per cent."

[38] Having examined and construed sections 3 and 18 of the Act, we concluded that the contention of the appellant that the proviso was contrary to the regime established by the Act is one that raises a triable issue in respect of which it cannot be concluded that the respondent has no real prospect of succeeding. We were fortified in our conclusion by the observation of the Board in **Dojap**, to which reference has been made,

although it may be considered to not strictly be a part of the *ratio decidendi* of the case. On the basis of this conclusion, we were unable to agree with the submission of the appellant that the judge erred in refusing the application for summary judgment.

B. The second issue - If it is not permissible for the respondent to make the payments, whether specific performance could avail the respondent

[39] As it relates to the second issue, the issue of whether specific performance could avail the respondent was premised on the assumption by the appellant that it was not permissible for the respondent to make the payment of the additional transfer tax. For the reasons demonstrated above, we concluded that the respondent has a real prospect of success in its contention that there was no statutory restriction on the respondent making the payment. However, in any event, the respondent had claimed damages, and even if specific performance was not a remedy open to it, that in and of itself would not have been a proper basis for the learned judge to grant summary judgment to the appellant.

C. The third issue - Whether summary judgment is appropriate in the circumstances

[40] In the Privy Council decision of **Sagicor Bank Jamaica Limited v Taylor-Wright** [2018] 93 WIR 573, Lord Briggs observed, at para. [16], that Part 15 of the CPR provides a valuable opportunity, if invoked by either party, for the court to decide whether a trial is required to determine whether the claimant is entitled to the relief sought by him. His Lordship observed, at para. [17], that a trial on issues that are in dispute will be "nothing more than an unnecessary waste of time and expense" if their outcome does not affect the claimant's entitlement to the relief sought.

[41] The benefits of summary judgment in appropriate circumstances could not be gainsaid. However, as framed by the appellant, the third issue is unnecessarily wide. The ultimate issue to be determined by this court was not a general one of whether summary judgment was appropriate in the circumstances but whether it was appropriate for the learned judge to have granted summary judgment in favour of the appellant specifically. It must be highlighted that the respondent did not make a similar application to that of

the appellant for summary judgment in the court below, and there was no cross-appeal asserting that the learned judge should have entered summary judgment in favour of the respondent. Therefore, although Mr Lindo tangentially raised the question of whether the learned judge should have, of her own volition, granted summary judgment in favour of the respondents, it was our view that it was not necessary or prudent for this court to consider that issue.

[42] The appellant suggested that implicit in the learned judge's refusal of the application for summary judgment was support for its argument that the learned judge must have concluded that there were disputed matters of fact that can only be determined on a trial and, in so finding, she erred. We did not agree that arriving at this conclusion as advanced by the appellant was reasonable. The order of the learned judge must be viewed in the context of the precise terms of the application for summary judgment. The application, in order to succeed, required the learned judge to have found that the respondent had no real prospect of succeeding on the claim or issue determinative of the claim. The appellant argued that the construction to be placed on special condition 3 was a determinative issue of the claim. We were firmly of the opinion that the only reasonable inference that could be deduced from the learned judge's order was that the learned judge did not find that the claim had no real prospect of succeeding. In that regard, the learned judge did not err.

Conclusion and disposal

[43] For the reasons contained herein, we concluded that the learned judge was correct in refusing the appellant's application for summary judgment and, accordingly, we made the orders contained in para. [4] herein.

[44] In para. [10] we referred to the injunction granted by Palmer Hamilton J restraining "… [the appellant] and/or its nominee/s, its agent/s and/or its servant/s… from selling, transferring, mortgaging, or otherwise disposing of or otherwise dealing in any matter whatsoever in respect of the [property]" until the claim is determined or until further orders of the court. For the avoidance of any doubt, it should be noted that we

did not make any order disturbing the injunction and, accordingly, it remains in effect on the same terms.