[2018] JMCA Civ 32

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 61/2016

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE P WILLIAMS JA

BETWEEN	**JADE HOLLIS**	**APPELLANT**
AND	**GREGORY DUNCAN**	**1ST RESPONDENT**
AND	**GLOBAL DESIGNS & BUILDERS LIMITED**	**2ND RESPONDENT**

Mrs Denise Kitson QC, Miss Regina Wong, Miss Anna-Kay Brown instructed by Grant, Stewart, Phillips & Co for the appellant

Leonard Green instructed by Chen, Green & Co for the respondents

25, 26 September and 20 December 2018

BROOKS JA

[1] I have had the privilege of reading, in draft, the reasons for judgment prepared by my learned sister, P Williams JA, in respect of allowing the appeal. Those reasons accord with mine. I have nothing to add.

F WILLIAMS JA

[2] I too have read the draft reasons for judgment of my sister P Williams JA and agree with her reasoning and conclusion.

P WILLIAMS JA

[3] This is an appeal brought by Jade Hollis, the appellant, from an order of Sykes J, as he then was, which was made in the Commercial Division of the Supreme Court on 31 May 2016. By that order, Sykes J had dismissed an application brought by the appellant for directions to be given to the Registrar of Titles, relating to properties owned by her. The properties had been made the subject of an injunction, which had been granted on an application by Gregory Duncan and Global Designs and Builders Limited, the first and second respondents, respectively.

[4] On 26 September 2018, having heard and considered the submissions made by both counsel, we allowed the appeal. We amended the terms of the directions sought and granted the order, awarding costs here and in the court below to the appellant, to be agreed or taxed. The order made was as follows:

> "The application for an order directing the Registrar of Titles to note on the Certificate of Titles for property registered at Volume 1461 Folio 813 of the Registrar Book of Titles (The Belmont Property), property registered at Volume 1028 Folio 500 of the Register Book of Titles (the 23 Caribbean Close Property) and property registered at Volume 1318 Folio 158 of the Register Book of Titles (The Windsor Avenue Property) that the injunction granted on 24 March 2015 and extended on 15 April 2015 to 2nd June 2015 has been discharged, is granted, and the Registrar of Titles is so ordered."

[5] At the time we announced our decision, we promised to put our reasons into writing. These are my reasons for concurring with the decision.

The background

[6] The appellant is a businesswoman and attorney-at-law. The first respondent is a businessman and a land developer who carries out his development activity through the second respondent. He is also the managing director and sole shareholder of the second respondent.

[7] In 2012, the first respondent engaged the services of the appellant as an attorney-at-law for the purposes of handling real estate transactions involving the second respondent. Among the several documents exhibited by the parties is a letter of engagement that was signed by them and dated 8 June 2012. It provides some information as to when the attorney/client relationship between the parties commenced.

[8] This attorney/client relationship developed into a business relationship and the appellant became more involved in the business of the respondents. The appellant said that she began to advance sums of money to acquire property for development and to finance the property developments undertaken, whenever it was required.

[9] The relationship began to unravel by 2013. The first respondent alleged that the appellant was failing to hand over monies she had collected on behalf of the business from the sale of some of the developments. The appellant alleged that the first

respondent failed to honour his promises to repay her sums she had advanced for his business.

[10] On 7 March 2014, the appellant commenced proceedings in the Supreme Court to recover sums she said were advanced to the respondents. At the same time, she filed an application for an ex parte interim injunction prohibiting and/or restraining the respondents, until the determination of the claim, from transferring or otherwise dealing with four properties belonging to them, namely: property located at Rose Garden situated at 1 Hillside Drive, Belvedere in the parish of Saint Andrew; property being 121 and 122 Barbican Road in the parish of Saint Andrew; property being that parcel of land located at Sandhurst in the parish of Saint Andrew being the lot numbered 9 Block B situated at Sandhurst Place; and property located at 62 Grants Pen Road in the parish of Saint Andrew.

[11] In her application for the injunction, the appellant gave her undertaking as to damages. In her affidavit in support of her application she sought to prove her ability to honour any orders made in relation to damages by pointing to her ownership of three properties that together valued over $100,000,000.00.

[12] She secured an interim injunction on 11 March 2014. On 26 March 2014 after an inter partes hearing, Edwards J discharged the interim injunction. An order was made for an interlocutory injunction prohibiting or restraining the respondents from transferring or otherwise dealing with two properties until the determination of this claim or further order.

[13] On 28 March 2014, after further consideration of the matter, the order was varied and all the caveats imposed on all the respondents' several properties were discharged, with the exception of the property at Rose Garden and at 62 Grants Pen Road. These properties are still the subject of the injunction.

[14] The orders did not make mention of the appellant giving the usual undertaking as to damages. However, it was this undertaking she had expressed a willingness to abide by, if so ordered, that is the genesis of this matter.

[15] On 20 March 2015, the respondents filed an ex parte notice of application for court orders for injunctive relief seeking to restrain the appellant from disposing of the properties she had referred to when indicating her willingness and ability to abide by any order made in relation to damages.

[16] Among the grounds the respondents gave for seeking the order were the following: -

> "3. In the Claimant's 'Affidavit of Jade Hollis in Support of Application or [sic] Interim Injunctions and Affidavit of Urgency' filed on March 7, 2014 in support of the Claimant's Application for the above interim injunction, the Claimant undertook to abide by any Order for damages caused by the granting of the interim injunction and submitted properties located at; (a) Lot No 39 Belmont & Haining Road, (b) 23 Caribbean Close, Trafalgar Park, Kingston 10 where she resides and, (c) property located at 8 Windsor Avenue, in support of this undertaking.
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> 4. Subsequent to filing the above Affidavit and the granting of the Order for Interlocutory Injunction against transferring the said properties the Defendant

has taken steps to dispose of property located Lot No 39, Belmont in the parish of Saint Andrew.

5. The potential injustice if this Application is denied is significant, as the Claimant has left the jurisdiction and to date has not returned. Further there is a real and imminent damage that if the Defendants obtain a judgment in their favour, it may be rendered nugatory if the Injunction is not granted."

[17] This application was set for hearing on 23 March 2015 at 2:00 pm. There were two applications, one for the appellant and the other for the respondents, previously set for that date. However, when all the applications came on for hearing, Edwards J before whom they were fixed to be heard, was not able to hear the matters. The parties were invited to canvass a date during the remainder of that week for Edwards J to hear the applications.

[18] The respondents, through their attorneys-at-law at the time, Mr Zavia Mayne and Mrs Sherene Golding Campbell, still however, proceeded to have the application for the injunction heard ex parte by Laing J on 24 March 2015. The learned judge granted this order: -

"1 An Interim Injunction is granted prohibiting and/or restraining the claimant until the 15th day of April 2015 at 10:00 a.m., whether by the Claimants, the Claimant's nominee(s), appointee(s), agent(s), assignee (s) or otherwise, from transferring or in any way disposing of or otherwise dealing with or causing or permitted to be transferred, dealt with or disposed of the following properties:

a. Property located at Lot No 39 part of Belmont in the parish of Saint

Andrew comprised in Certificate of Title registered at Volume 1461 Folio 813 of the Registrar Book of Titles also referred to as the Haining Road Property,

b. Property located 23 Caribbean Close, Trafalgar Par, Kingston 10 in the parish of St. Andrew comprised in the certificate of title registered at Volume 1038 Folio 500 if the Register Book of titles and,

c. Property located at 8 Windsor Avenue, in the parish of Saint Andrew comprised in the Certificate of Title Registered at Volume 1318 Folio 158 of the Register Book of Titles."

[19] The inter partes hearing was fixed for 15 April 2015 at 10:00 am. The interim order was served on the appellant's attorneys-at-law on 25 March 2015. By the next day, 26 March, the appellant filed and served a notice of application to set aside the interim injunction. Her main contention for making this application was that there was material non-disclosure of pertinent facts by the respondents.

[20] On 15 April 2015, the matter came on for hearing before Batts J. He adjourned the matter to 2 June 2015 and extended the interim injunction granted on 25 March 2015 to 2 June 2015.

[21] On 2 June 2015, after hearing the parties, Laing J made the following order:

> "The injunction granted by Laing J, on Wednesday the 25th day of May 2015 [sic] is discharged on the claimant's undertaking until 12 June 2015, not to take any steps to dispose of the properties which were previously the subject of the Injunction."

[22] On 12 June 2015, Laing J considered other applications, re-visited this issue and made several orders. The one made relating to any of the claimant's properties was as follows: -

> "The claimant undertakes not to take any steps to encumber or dispose of 23 Caribbean Close, Trafalgar Park, Kingston 10 registered at Volume 1038 Folio 500 of the Register Book of Title, until further order of the Court."

[23] The appellant subsequently entered into an agreement with her tenant of the premises at Windsor Avenue to sell the premises. She formed the view that the injunction was "substituted/replaced" by her undertaking not to take any steps to encumber or dispose of her property at Caribbean Close. She, however, learnt that the interim injunction which had been previously endorsed on the title, continued to constrain the Registrar of Titles who was unable to note that the injunction had expired without an order from the court. This information led to the application made for the direction to the Registrar of Titles, which was heard by Sykes J on 26 May 2016. In effect, the claimant was seeking an order directing the Registrar to note on the titles for the properties that the injunction had "lapsed/expired and had not been renewed or further extended by the Court."

The findings of Sykes J

[24] In his judgment delivered on 31 May 2016 Sykes J, in recognising that what was being sought was an interpretation of the order made by Laing J on 2 June 2015, referred to what he described as Lord Hoffmann's influential speech in **Investor Compensation Scheme Ltd v West Bromwich Building Society** [1998] 1 WLR

896. He acknowledged that that speech contains the principles applicable to the interpretation of business documents but concluded that there was no reason for not applying the principles to other legal documents.

[25] The learned judge expressed the view that the starting point for interpreting any document is the words used. These words were to be understood in their conventional sense at the time they were used. He went on to state that the interpreter is expected to apply the rules of grammar. He opined "it may be that as the process of understanding the document continues it becomes apparent that a nuanced meaning of the word fits the context more appropriately than the prima facie meaning" (see paragraph [28]).

[26] The learned judge further recognised the importance of background information. This, he said, may enable the court to say that something has gone wrong with the language used or the syntax (see paragraph [31]).

[27] The learned judge then embarked on his interpretation of the order, which included discussing the meanings of a sentence, a predicative word, a gerund and a prepositional phrase. The learned judge conducted what he himself described as a detailed and semantic analysis, which he concluded did not lead to an absurd result.

[28] The learned judge reasoned that "since 'is discharged' is a verb, it means that it can be modified by an adverb or an adverb phrase" and 'until the 12th day of June' was an adverb phrase (see paragraph [40]).

[29] At paragraphs [41]- [42] and [44] the learned judge had this to say:

> "[41] Because the adverb is not a companion of nouns, even if they are located immediately beside each other that does not mean they are connected. They are just neighbours but really don't belong beside each other. In this sentence the adverb phrase 'until the 12th day of June 2015' was placed immediately after 'on the claimant's undertaking' but was not meant to be. The phrase 'on the claimant's undertaking' is a prepositional phrase with a participle playing the role of a noun and so well has he played the role he has his own adjective 'claimant's'. Since nouns and adverbs don't go together then it means that the adverbial phrase 'until the 12th day of June 2015' should really be beside the verb 'is discharged.'
>
> [42] If that is understood then it would tell us how long the injunction was discharged, that is the duration of time the injunction is in the state of being discharged. It was never the intention to discharge the injunction completely but only for a specific period of time and the adverbial phrase 'until the 12th day of June 2015' speaks to the duration of the discharge…
>
> [44] Part of the relevant background is that the defendant secured an injunction against the claimant preventing her from disposing of or dealing with the three properties. The applicant applied to have the injunction discharged. It is clear that the judge was not granting an unconditional discharge of the injunction."

[30] Thus, Sykes J concluded that what was meant by the order was that the injunction was discharged until 12 June 2015 on the appellant's undertaking not to take steps to dispose of the properties that were previously the subject of the injunction. He found that this interpretation made sense because the injunction was in place but it was replaced by an undertaking that would permit dealings with the property other than

disposing of them. He questioned the point of granting a complete discharge and replacing it with an undertaking that would only last ten days. He reasoned that that would only make sense "if the [respondents] were to do or not to do something in that time frame."

[31] At paragraph [46] the learned judge had this to say:

> "What the [respondents] would undoubtedly have done is to oppose the unconditional discharge. Laing J clearly took both sides into account and whatever it is that [the appellant] wanted to do his Lordship decided that that could be accomplished by lifting the injunction for a limited period and during that time period the defendants would be protected by [the appellant's] undertaking."

[32] It is to be noted that the learned judge indicated that he was initially inclined to agree with Mrs Kitson QC that it was the appellant's undertaking that would last until 12 June but felt that that interpretation would read like an unless order. At paragraph [47] he stated:

> "In other words Mrs Kitson's submission would mean this: that the [respondents] wish to do some specified act in relation to the properties and in order to do so the injunction is completely discharged and the only thing preventing disposition of the property is [the appellant's] undertaking and unless the [respondents] act within the 10 days then the [appellant] would be relieved of her undertaking. Respectfully, this could not be the meaning when it was [the appellant] who wanted to deal with the properties that were the subject of the injunction. There is nothing revealed in the affidavits that would permit this understanding of what Laing J had ordered."

[33] The learned judge considered the significance of the subsequent order made on 12 June 2015 where the appellant gave an undertaking not to take steps to encumber

or dispose of one of the properties he was now finding was still subject to an injunction.

At paragraph [50] he had this to say:

> "What of the order made on June 12, referred to at paragraph 23 above? It can be argued that unless the injunction was discharged on June 2, 2015, then the undertaking given on June 12 would not have been necessary. That is a strong argument but it pales in the face of the argument that we are dealing with court orders. Litigants should know exactly where they stand in relation to a court order. Since there was no explicit reference to the injunction being discharged then this court will not conclude that it was so discharged. The result is that [the appellant] is still bound by the order of June 2, 2015."

[34] Thus, the learned judge declined to give directions to the Registrar of Titles that the injunctions had lapsed or expired.

The appeal

In the amended notice and grounds of procedural appeal filed 12 August 2016, the following are the grounds stated:

> "a. That the Learned Judge fell into error when he held that on the facts and on the material before him the injunction granted on March 24, 2015 and which was on April 15, 2015, extended to June 2, 2015 has not lapsed or expired and has not been renewed or further extended."
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> b. That the Learned Judge erred in applying a nuanced meaning rather than the prima facie meaning of the Orders of June 2, 2015 and June 12, 2015.
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> c. The Learned Judge erred as a matter of law and of fact when he failed to consider that on June 12, 2015 the Claimant was no longer subject to the March 24, 2015 injunction since she had given an undertaking in lieu thereof.

d. The Learned Judge erred when he found as a matter of fact that the Claimant was of the view that the undertaking to the Defendants expired on June 12, 2016 [sic]. This in circumstances where on June 12, 2015 the Claimant gave an undertaking to the Defendants in respect of the 23 Caribbean Close property.

e. That the Learned Judge erred as a matter of law and as a matter of fact when he failed to consider and have due regard to the fact that the June 12, 2015 Order did not speak to an extension of the March 24, 2015 injunction but instead stated that "the claimant undertakes not to take any steps to encumber or dispose of 23 Caribbean Close, Trafalgar Park, Kingston 10 registered at volume 1038 folio 500 of the Register Book of Titles until further Order of the court.

f. That the Learned Judge erred when he failed to consider that the Claimant's undertaking of June 12, 2015 was limited only to one property namely, 23 Caribbean Close whereas the Claimant's undertaking of June 2, 2015 encompassed the Belmont Property, the 23 Caribbean Close property and the Windsor Avenue property.

g. That the learned judge erred when he failed to acknowledge and have due regard to the June 12, 2015 Order which makes no mention of the March 24, 2015 injunction and which shows that the Claimant's undertaking as at June 12, 2015 was limited to the 23 Caribbean Close property.

h. That the learned judge erred in finding that the learned judge was not granting an unconditional discharge when the June 2, 2015 Order was made and then also find that the undertaking given by the Claimant on June 12, 2015 was unnecessary.

i. That the learned judge's decision to refuse the Claimant's application is unreasonable for the reason that the relief sought by the Claimant is in keeping with the fact that on the face of the June 12,2015 the injunction granted on March 24, 2015 was

> substituted/replaced by an undertaking Order in respect of the Belmont property, to the 23 Caribbean Close property and the Windsor Avenue property (in the June 2, 2015 orders) which undertaking was later limited to the 23 Caribbean Close property (in the June 12, 2015 order)."

The submissions

[35] Mrs Kitson began her submissions by recognising the basis on which this court can interfere with the decision of a judge in the court below as pronounced by Lord Diplock in the decision of **Hadmor Productions Limited & Anor v Hamilton & Others** [1982] 1 All ER 1042. It was therefore submitted that the decision of Sykes J should be set aside because the learned judge:

> "a. misapplied the law as it related to construing the Order of the Hon. Mr. Justice Laing which was before him for consideration; and
>
> b. exceeded the ambit within which reasonable disagreement is possible, in that His Lordship's reasoning is so erroneous that he ought not to have reached that conclusion."

[36] She submitted that the learned judge incorrectly interpreted the orders made on 2 and 12 June 2015 because he misapplied the principles of interpretation as established in a number of cases. She referred to a decision from the Court of Appeal of South Africa **Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Limited** (363/11) [2012] ZASCA 49 (30 March 2012) along with a decision of this court, **Dalfel Weir v Beverly Tree** [2016] JMCA App 6 and a decision from the Privy Council in **Sans Souci Limited v VRL Services Ltd** [2012] UKPC 6.

[37] She contended that the ratio from those authorities provides that when interpreting a judicial order the court must be mindful of the following:

> "a. the intention and purpose of the court and the judges who made the order in question;
>
> b. the rules of interpretation for documents generally; and
>
> c. the entire circumstances in which the order was made."

[38] Mrs Kitson accepted that the dicta of Lord Hoffmann in **Investor Compensation Scheme Limited v West Bromwich Building Society** could correctly be viewed as the seminal authority on the interpretation of documents. She also referred to cases that have expounded on and clarified the principles identified by Lord Hoffmann namely **John Roberts Architects Limited v Parkcare Homes (No. 2) Limited** [2006] EWCA Civ 64 and **Carib Ocho Rios Apartment v Proprietors Strata Plan No 73 and Trevor Carby** [2013] JMCA Civ 33.

[39] Two older authorities buttressed her contention as to the significance of the role of grammar in construing the meaning of a document: **In the matter of Norman's Trust, and of the 10 & 11 Vict c 96,** 43 ER 378 (1853) and **In the Eastern Counties and the London and Blackwall Railway Companies v Francis Marriage** (1860) 9 HL Cas 32.

[40] Ultimately, it became Mrs Kitson's submission that the learned judge erred in his interpretation when he used grammar to dictate the meaning of the order. In doing so,

she submitted, he completely disregarded the intention of Laing J and disregarded the circumstances in which the order was made, including the reason why the order was sought. Further, she submitted that the learned judge ought not to have rearranged the words in the order unless they produced an absurd meaning in the circumstances of the case.

[41] She submitted that pursuant to the principles of interpretation, the plain and ordinary meaning of the orders was that the injunctions granted by Laing J on 24 March on the respondent's ex parte notice of application for injunctive relief was discharged on 2 June 2015 upon the appellant's undertaking not to deal with the properties until 12 June 2015, when Laing J would consider whether an injunction on any of the properties was necessary.

[42] Mr Green in response agreed that the authorities cited by counsel for the appellant do reflect the true position of the learning in the area of the law as it relates to statutory interpretation and the court's role in determining the true meaning and intention of an unclear order. He opined that **Dalfel Weir v Beverly Tree** is authority for the court's power to not just interpret but to go as far as making an anomaly clear.

[43] Counsel submitted that the learned judge did make a somewhat extensive analysis of the grammatical effect of the wording of Laing J's order, which is of little assistance in determining the outcome. He, however, contended that regardless of the findings he made in interpreting the order after applying the test of grammar and the ordinary rules of construction, the learned judge made a critical finding of fact, which

had nothing to do with interpretation. The critical finding, Mr Green submitted, was that the phrase 'is discharged until the 12 of June 2015' meant the duration for which the injunction was discharged and not the duration of the appellant's undertaking.

[44] Mr Green submitted that this critical finding of fact is predicated on the subsequent factual finding that, considering all the circumstances, Laing J was not granting an unconditional discharge of the injunction. Thus, Mr Green contended, the judge's analysis was as a result of a detailed and careful analysis of all the circumstances to arrive at a conclusion that was consistent with common sense and a just finding that Laing J could not have intended an unconditional discharge of the injunction.

[45] Mr Green noted that the learned judge correctly reasoned that the injunction was in place but was replaced by an undertaking with the limited scope to deal with the property but not to dispose of it. Mr Green also noted that the judge had correctly concluded from the facts that the only person who wanted to deal with the property was the appellant and the undertaking given was intended to allow this to be done within that short space of 10 days. Thus, he submitted it could not have been intended as a "complete discharge" with respect to all three properties.

[46] Mr Green ultimately submitted that the most critical finding of fact that the learned trial judge made was when he made the statement that "it must be noted that if the judicial response was to discharge the injunction completely then the order would have simply stopped at discharged." This finding of fact, he contended, has nothing to

do with an issue of interpretation but proves that Laing J never made nor intended to make an unconditional or complete discharge.

Discussion and analysis

[47] Lord Hoffmann in **Investor Compensation Scheme Limited v West Bromwich Building Society** at pages 912-913 summarised the principles by which contractual documents may be construed as follows:

> "(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
>
> (2) The background was famously referred to by Lord Wilberforce as the 'matrix of fact' but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything, which would have affected the way in which the language of the document would have been understood by a reasonable man.
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> (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect, only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
>
> (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not

the same thing as the meaning of its words. The meaning of the words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason have used the wrong words or syntax.

(5) The 'rule' that words should be given their 'natural and ordinary meaning', reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes particularly in formal documents on the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

[48] It is appreciated that these principles were pronounced in relation to the interpretation of contractual documents but will provide useful guidance for the interpretation of other documents, including judicial orders, as far as they are relevant.

[49] The Privy Council, in a matter on appeal from this court, did consider the appropriate manner in which a judicial order should be interpreted. In **Sans Souci Limited v VRL Services Limited**, Lord Sumption had this to say at paragraphs 13 - 14:

"13 … The construction of a judicial order, like that of any legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made

> it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the court in its judgment are an overt and authoritative statement of the circumstances which it regarded are relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the court considered to be the issue which its order was supposed to resolve.
>
> 14. It is generally unhelpful to look for an 'ambiguity', if by that is meant an expression capable of more than one meaning simply as a matter of language. True linguistic ambiguities are comparatively rare. The real issue is whether the meaning of the language is open to question. There are many reasons why it may be open to question, which are not limited to cases of ambiguity."

[50] It would, to my mind, first be the best course when a judicial order is to be construed, that the judge who made it be asked to construe it, if that judge is available. This would especially be necessary, whereas here, the judge who made the order did not provide reasons for so doing.

[51] In the absence of reasons, the task of interpreting the judicial order must necessitate a consideration of the intention of the court for making the order. In **Weir v Tree** Morrison P (Ag), as he then was, had this to say at paragraph [17]:

> "[17] …In order to determine what was the intention of the court which made the original order, the court must have regard to the language of the order, taken in its context and against the background of all the relevant circumstances, including (but not limited to) (i) the issues which the court which made the original order was called upon to resolve; and (ii) the court's

> reasons for making the original order. While ambiguity will often be the ground upon which the court is asked to amend or clarify its previous order (as in this case), the real issue for the court's consideration is whether there is anything to suggest that the actual language of the original order is open to question."

[52] The appellant had applied to have the injunctions on her properties discharged. In the background information and material that she placed before Laing J, she answered the assertions made by the first respondent that she would dissipate her assets by having the Haining Road property placed on the market for sale, and the Windsor Avenue property being under a contract for sale. She explained that the Haining property had to be sold as a matter of necessity due to the mortgage, which she could no longer afford. In relation to the Windsor property, she explained that she no longer was deriving an income from rental of it and was unable to repair it to secure another tenant. She further explained that she had an offer for purchase of the property but had not proceeded further. She sought to highlight that there had been a failure of the respondents to disclose all the material facts in the matter when they had the matter heard ex parte.

[53] The appellant felt obliged to state that the property at Caribbean Close would be available to support any order for damages since it was her home and was free of debt and the least likely property to be disposed of. There was nothing in her affidavit to suggest that what she wanted to do would be accomplished by the lifting of the injunction for a limited period.

[54] The primary concern of the first respondent, as expressed in his affidavit in support of the application for the injunction, was that he was fearful that unless restrained the appellant would dissipate her assets and thus he would be unable to reap the benefits of success at trial.

[55] Against that background, the issue was whether the order of Laing J would have been sufficient to resolve the application before him if given its natural and ordinary meaning. It seems to me that it would. Laing J had granted the application by discharging the injunction. He was however mindful of the concerns of the respondents and thus held the appellant to an undertaking not to take steps to dispose of the property previously, but now no longer the subject of the injunction, until the matter was next before him.

[56] The matter was next before him on 12 June, at which time Laing J accepted the appellant's offer of her home at Caribbean Close to support any order for damages. Thus, she was now bound by an undertaking not to take steps to encumber or dispose of that property until further order of the court.

[57] It seems to me that Sykes J fell into error when he became concerned with the placement of the phrase 'until the 12th day of June 2015'. He in effect then sought to rearrange the sentence based on his semantic and syntactical analysis. He concluded that the phrase "was not meant to be" placed immediately after 'on the claimant's undertaking' and that it "should really be beside the verb 'is discharged'."

[58] The manner in which Laing J had expressed the intention to discharge the injunction for the reason that the appellant had given an undertaking not to dispose of the properties until 12 June required no further analysis. Indeed, if this judge had intended that there be a conditional discharge he could have said so. The injunction was discharged on all the properties and remained so on 12 June when the undertaking in relation to all the properties was replaced by one in relation to one property alone.

Disposal

[59] The order made by Laing J did not require the analysis done by the learned judge. There was nothing so amiss with the language of the first order that required an exercise, which resulted in the re-arranging of the words that led to a result that could not be said to have been intended by the judge, given the background and context in which it was made.

[60] It is for the foregoing reasons that I concurred with the order of this court as set out in paragraph [4] above.