

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. CV 2005-00793**

**BETWEEN**

**SAGICOR LIFE INC.**

**AND**

**DHANRAJ DASS  
MALA ROOPNARINE-DASS**

**Before the Honourable Justice R. Narine**

**Appearances**

Mr. S. Maharaj S.C. , Mr. F. Hosein, Mr. R. Kawalsingh and Mr. Thomas for Claimant

Mr. G. Delzin and Ms. R. Sookhai for Defendants

**REASONS FOR DECISION**

On 5<sup>th</sup> January 2006 I granted an Order restraining the Defendants from disposing of their assets within the jurisdiction below the sum of \$2 million. I further ordered the Defendants to provide information concerning their assets. That application was heard ex parte.

On 11<sup>th</sup> and 12<sup>th</sup> January 2005, I heard both sides. On 17<sup>th</sup> January 2006, I ordered that the injunction should continue, and that the Defendants do file an affidavit within 7 days disclosing their assets.

The basic facts are not in dispute. On 2<sup>nd</sup> July 2004 the first Defendant applied to the Claimant for a loan of \$1.5 million, using the Defendants' property at Lot 1 Waterbridge Road, Blue Range, Diego Martin (hereinafter called the "The Waterbridge Property") as security. On the application form, the first Defendant answered "NO" , in response to the question as to whether the property

was subject to any mortgage. On 26th October 2004, the Defendants signed a Statutory Declaration declaring that they were the owners of the Waerbridge Property and they had not mortgaged the property except for a mortgage to Scotiabank.

The Claimant instructed one Kowlessar Rampersad to search the title of the Waterbridge Property. The search revealed only the Scotiabank mortgage. However, in November 2005 Mr. Kowlessar received copies of five Deeds of Mortgage relating to the same property, encumbering the property for a further \$2.5 million. These Deeds were not revealed by the search, due to subtle changes of spelling in the names of the Defendants, and changes in the description of the property in the computer records of the Registrar General's Office.

By letter dated 13<sup>th</sup> December 2005, the Claimant demanded repayment of the amount outstanding under the mortgage in the sum of approximately \$1.85 million. There followed without prejudice negotiations between the parties which broke down on 22<sup>nd</sup> December 2005.

At the inter partes hearing, Mr. Delzin argued that the injunction ought to be discharged on the following grounds:

- (1) The Claimant committed a material non-disclosure in failing to disclose that during the without prejudice negotiations, the Defendants had offered to sell another property to liquidate the debt and had offered the Claimants a further mortgage on this property situated at Springflow Road, Diego Martin.
- (2) The alleged misrepresentation of the Defendants made in the application form and on the statutory declaration, did not operate as an inducement to contract. The Claimant relied on the title search conducted by Kowlessar Rampersad and not on any false statement made by the Defendants.
- (3) The loan was granted to the Defendants as a result of the negligence of its Attorneys and their servants or agents in searching the title to the property.
- (4) There is no real risk, threat or likelihood of the dissipation of the assets.

- (5) The Claimant's true purpose in seeking a freezing order, is to obtain security for the debt. Accordingly the application is an abuse of process.

Having considered the submissions of both Counsel, I ordered that the injunction should continue until the trial and determination of the action or until further order. My reasons for doing so were as follows:

- (1) I refused to discharge the injunction on the ground of material non-disclosure.

According to paragraph 10 of the Affidavit of Ravi Heffers-Doon, negotiations broke down between the parties on or about 22<sup>nd</sup> December 2005 when the Claimant's Attorney communicated to the Defendants' Attorneys that the Claimant was not willing to waive his right to litigation. The parties had not come to any agreement in the course of their negotiations. Having regard to the conduct of the Defendants it was not unreasonable for the Claimant to insist on retaining his right to litigation.

In those circumstances, I held that the contents of the without prejudice communications and contents of the discussions during negotiations were inadmissible.

Accordingly, I granted the Claimant's application to strike out the paragraphs of the affidavits filed in opposition by the Defendant, which referred to the contents of the without prejudice negotiations between the parties.

In case I am wrong on this issue, even if the Claimant had disclosed the negotiations between the parties, having regard to all the circumstances of this case, with particular regard to the evidence of the falsification of the General Index of Deeds at the Registrar General's Office, I would still have exercised my discretion to grant the ex parte order.

- (2) I rejected the submission of Mr. Delzin that the misrepresentation of the Defendants did not operate as an inducement to contract. Mr. Delzin based his submission exclusively

on the Statutory Declaration signed by the Defendants on the day that the Mortgage Deed was executed. It ignores the fact that the Defendants stated in their application for the loan that the property was not subject to any mortgage. If the Defendants had disclosed that the property was mortgaged for a sum in excess of the value of the property, it is highly improbable that the Claimant would have advanced any sum to the Defendants.

- (3) Likewise, I rejected the submissions that the Claimant relied on the title search rather than the false statement made by the Defendants, as an inducement to contract.

On the evidence before me, the records at the Registrar General's Office were falsified in such a way as to mislead any reasonably competent title clerk. An examination of the records reveals a deliberate intention to conceal the prior mortgages on the property.

It is significant that in their affidavits filed in opposition, no attempt has been made by the Defendants to deny the existence of these mortgages, and that they have received loans to the extent of some \$4.8 million on a property that was valued in January 2004 at \$1.9 million.

The clear inference to be made from the falsification of the records, is that someone wished to conceal the existence of the prior mortgages. If these mortgages were not concealed as they were, clearly the searches would have revealed the prior mortgages and the Claimant would not have entered into the loan transaction.

For similar reasons, I reject Mr. Delzin's submission that the loan was granted as a result of the negligence of the Claimant, its servants or agents.

- (4) On the evidence I held that there is a real risk that the assets of the Defendants will be dissipated, and that any judgment in the Claimant's favour may remain unsatisfied. There was clear evidence before me that:

- (1) The records at the Registrar General's Office have been falsified to conceal the existence of prior mortgages granted to the Defendants.
- (2) The persons who derive a benefit from these alterations of the records are the Defendants.
- (3) The Defendants have not denied that they have indeed entered into these mortgage transactions.
- (4) The Defendants have not denied that as a result of these concealed transactions they obtained sums from financial institutions, which are more than double the value of the property.
- (5) The Defendants have not denied that they failed to disclose the prior mortgages to the Claimant. The coincidence of this failure to disclose the prior mortgages and the deliberate falsification of the General Index of Deeds to conceal these very same mortgages, in my view, provides strong circumstantial evidence of the Defendants' complicity in the falsification of the records.
- (6) The Defendants have provided no information whatsoever to the Court of what they have done with the sums obtained through these transactions which they have not denied. In their affidavits, the Defendants have made mention of the Waterbridge Road property which they have encumbered for more than twice its value, and the Springflow Road Property, which they were in the process of selling at the time that the Claimant applied for the injunction. The Defendants have not condescended to provide any other information of their assets. Nor have they attempted to show that there are assets sufficient to satisfy any judgment that the Claimants may receive.

Having regard to the conduct of the Defendants in this case, there is clear evidence from which a reasonable inference may be made that there is a real

risk that the Defendants may dissipate their assets, or put them out of the reach of the Claimant so as to leave unsatisfied any judgment that the Claimant may receive in this matter. With respect to this issue I found the reasoning of **Patten J. in Jarvis Field Press Limited vs. Chelton & Others 2003 WL 22656583, (2003) EWHC 2674** to be quite helpful.

- (5) I agree with Mr. Delzin that a freezing order ought not to be granted merely for the purpose of providing a Claimant with security for a claim, even when it appears likely to succeed.

However on the evidence in this case, I hold that the Claimant has shown a good arguable case. A refusal of the order would involve a real risk that any judgment obtained by the Claimant would remain unsatisfied, as a result of the dissipation of assets within the jurisdiction or removal of assets outside of the jurisdiction. See **Ninemia Maritime Corp vs Trave (1984) 1 AER 398.**

It appeared to me, after considering the whole of the evidence, that it was just and convenient to continue the order granted on 5<sup>th</sup> January 2006 until the trial and determination of the action or until further order. Costs of the application were reserved certified fit for Senior and one Junior Counsel.

**Dated the 17<sup>th</sup> day of January, 2006.**

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**RAJENDRA NARINE**  
**Judge.**