

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0136

BETWEEN:

PAUL BONGIORNO

Claimant

And

[1] LAURENCIAGO LIMITED
[2] MURILLO LIMITED
[3] JOSEPH F. GATT
[4] THE REGISTRAR OF LANDS

Defendants

Appearances:

Mr. Jomokie Phillips for the Claimant
Mr. Kevon Benjamin for the Third Defendant
Ms. Joy Dublin-Baptiste for the Fourth Defendant
No appearance for or by the First and Second Defendants

2024: April 24, May 9;
2025: February 14

JUDGMENT

[1] **WILLIAMS, J.:** This claim concerns the claimant's purported right to sell properties in Antigua owned by the first and second defendants pursuant to a specific power of attorney. However, this power of attorney was purportedly revoked by the defendants by an instrument registered in the Land Registry. This has prompted the claimant to commence these proceedings.

Background

[2] The claimant Mr. Paul Bongiorno is a businessman of Venice, Florida who through a series of agreements lent various sums of money to the third defendant Mr. Joseph Gatt. These agreements will be described in greater

detail later in this judgment. The claimant alleges that the third defendant has breached these agreements by failing to repay the said loans.

[3] The third defendant Mr. Joseph Gatt was a businessman who resided in the state of Virginia. As previously stated, he borrowed various sums of money from the claimant pursuant to a series of loan agreements. At all material times, the third defendant was the sole director and shareholder of the first and second defendant companies. Unfortunately, shortly after judgment was reserved in this matter, the third defendant (who had been suffering from health issues) died.

[4] The first and second defendants Laurenciango Ltd. and Murillo Ltd. respectively, are companies incorporated in Panama but with registered offices in the state of Nevada. The companies are owners of lands in Antigua and Barbuda. The first defendant is the registered proprietor of land registered in the Land Registry as Falmouth & Bethesda; 34 2780A; Parcel 89 whilst the second defendant is the registered proprietor of land described as Falmouth & Bethesda; 34 2780A; Parcel 93.

[5] In summary, the claimant is alleging that as part of the loan transactions with the third defendant, he was granted an irrevocable power of attorney by the first and second defendants which permitted him to sell the properties in Antigua described above if the loan was in default. This specific power of attorney was executed on 18th May 2022 and registered in the Land Registry on 19th July 2022.

[6] The claimant's case is that as a result of the third defendant's default, as authorized by the specific power of attorney he has entered into a Sale and Purchase agreement dated 4th February 2023 with prospective purchasers Michael and Claire Shipley. However, the first and second defendants by notice of revocation of power of attorney registered on 18th April 2023, purported to revoke the said power of attorney. The first and second defendants by letter dated 3rd April 2023 from the Chambers of May Knight Law also purported to rescind the Sale and Purchase Agreement. Further by

letter also dated 3rd April 2023 May Knight Law also gave Michael and Clair Shipley who are in occupation of the properties notice to quit.

- [7] The fourth defendant is the Registrar of Lands who on 27th February 2023 registered the notice of revocation of the power of attorney granted to the claimant by the first and second defendants. The claimant seeks cancellation of the registration of this document or alternatively requests that the Registrar take all steps to nullify its legal effect.

The Claim

- [8] The claimant by Fixed Date Claim Form filed on 11th April 2023 seeks the following relief:

1. A declaration that the Specific Power of Attorney entered into by the claimant and the first and second defendants on 18 May 2022 and registered on 19 July 2022 has been given as valuable consideration and or as security for the repayment of valid and continuing debts owed by the third defendant to the claimant; such debts accruing under the following agreements:
 - i. Secured Convertible Loan Agreement with Promissory Note dated 22 January 2013;
 - ii. Supplemental Convertible Loan Agreement with Promissory Note dated 14 October 2013;
 - iii. Debt Resolution and Discharge Agreement dated 15 March 2016;
 - iv. Supplemental Agreement on or about 3 October 2019;
 - v. Additional Supplemental Agreement on or about 25 February 2020; and
 - vi. Supplemental Agreement for Additional Loan and Sale of Property on or about 17 May 2022.
2. A declaration that, pursuant to section 114 of the Registered Land Act, the said Specific Power of Attorney remains valid and is irrevocable without the consent of the claimant.
3. A declaration that the Notice of Revocation issued by the first and second defendants and purportedly registered on 27 February 2023 is

null and void and of no legal effect, the same having been lodged without the consent of the claimant.

4. An order that the fourth defendant forthwith cancel the registration of the Notice of Revocation or, alternatively, take any and all steps which may be necessary to nullify its legal effect and to do so within seven (7) days or within such period as the Court may otherwise order.
5. A permanent injunction restraining the first, second, and third defendants, their agents and servants, directors or otherwise, from rescinding, cancelling, or otherwise repudiating the Purchase and Sale Agreement entered into with Michael and Claire Shipley on 4 February 2023.
6. Prescribed costs to be paid by the first, second and third defendants.
7. Such further order and relief as this Honourable Court may deem fit.

Procedural Background

- [9] In light of some significant findings which will be made later, it is necessary to outline the procedural history of this matter in some detail. As previously noted, the Fixed Date Claim Form supported by an affidavit sworn to by Mr. Bongiorno was filed on 11th April 2023.
- [10] The claimant together with the claim filed an application for interim declarations and other relief which was heard on 21st July 2023 after previous adjournments and a decision was reserved. The first, second and third defendants were also directed to file a defence to the claim but failed to do so by the date specified.
- [11] The claimant by application filed on 28th September 2023 then sought an application for an expedited trial. An order for an expedited trial was made on 3rd November 2023 and trial was set for 15th December 2023. Pursuant to that order, the first, second and third defendants filed a joint defence in the form of an affidavit in response sworn to by Mr. Joseph Gatt on 10th November 2023.
- [12] However, on 8th December 2023 then counsel for the first, second and third defendants filed an application to be removed as counsel. This was granted and the trial date of 15th December 2023 had to be vacated to permit these

defendants to retain new counsel. These Defendants were ordered to pay the costs thrown away by reason of the vacated trial date.

- [13] On 7th March 2024 Mr. Benjamin filed a Notice of Acting on behalf of the third defendant only. No further documents have been filed on behalf of the first or second defendants, leaving the affidavit filed on 10th November 2023 as the only substantive pleadings or evidence filed on behalf of these defendants.

Trial

- [14] Trial took place on 24th April and 9th May 2024. The claimant gave evidence and was cross-examined on 24th April 2024. The third defendant gave evidence via video-link on 9th May 2024 due to illness. By agreement of the parties, the Fourth Defendant was not required to attend trial.

Non-Attendance of the First and Second Defendants at Trial

- [15] At trial, the third defendant through his counsel reiterated that he was not representing the first and second defendants and no Notice of Acting was filed on their behalf. However, I am satisfied that the first and second defendants have had adequate notice of the proceedings. This is due to the fact that Mr. Gatt in his affidavit of 10th November 2023 indicated that he was sole shareholder and director of the first and second defendants. At no point subsequent to 10th November 2023 did Mr. Gatt indicate to the court that this was no longer the case. In fact, under cross-examination, he accepted that he was the sole shareholder and director of the first and second defendants. Thus, I find that the first and second defendants could have taken steps to participate in the proceedings.
- [16] Accordingly, the court proceeded pursuant to **CPR Rule 39.4(b)** which provides that “if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.” The court will also pay no regard to the parts of the affidavit of 10th November 2023 where Mr. Gatt purports to give evidence on behalf of the first and second defendants. The claim is therefore undefended in respect of these defendants.

[17] However, the claimant is still required to provide evidence proving his entitlement to the relief claimed. The Court of Appeal has so stated in the decisions of **Travis Augustin v. Choc Estates**¹ and in this jurisdiction in the case of **Edson Lewis v. Hilary Ghansah**.² Accordingly, even though the first and second defendants have not led any evidence, the Court is still required to determine whether the Claimant has proven his claim.

The Claimant's Evidence-Paul Bongiorno

[18] The Claimant asserts that the executed Purchase and Sale Agreement with the prospective purchasers Michael and Claire Shipley should be declared valid. He is adamant that the specific power of attorney was given in consideration and as part of a series of loan agreements between himself and the third defendant. Further, he submits that the breach and default on the part of the third defendant triggered the exercise of his rights pursuant to the power of attorney to sell the subject properties. The claimant alleges that his power to sell the property was properly and legitimately granted to him that the power of attorney was to be irrevocable without his consent.

[19] The claimant states as follows:

- I. "Mr. Gatt and I have had a debtor and creditor relationship since at least January 2013;*
- II. In breach of the First through Fifth Agreements, Mr. Gatt has consistently failed to honour his contractual obligations to me despite him having the legal responsibility to do so;*
- III. The assets of the First and Second Defendants, which companies are solely owned and managed by Mr. Gatt, have formed a critical part of the broader series of transactions as they have provided valuable security against which Mr. Gatt's repayment obligations can be enforced;*

¹ SLUHCVP2014/0002 (delivered 9th June 2015, unreported)

² ANUVAP2014/0002 (delivered 20th October 2022, unreported)

- IV. *The use of those assets has at all times been authorised by the companies through Mr. Gatt as their President, Managing Director, Secretary and Sole Shareholder (i.e., Member);*
- V. *The SPA granted to me was in furtherance of the overall transactions and was designed to act as further security in the event of Mr. Gatt's default as it would allow me to deal with the Antigua property in a manner necessary to recover the loan funds advanced;*
- VI. *It was intended that revocation of the SPA would only occur with my consent as the SPA has no termination clause and by its terms was to grant authority to consummate a sale as expeditiously as possible through actions I decide in my sole discretion.”³*

[20] The abbreviation SPA above refers to the specific power of attorney.

[21] Under cross-examination, counsel for the third defendant repeatedly suggested that the first and second defendants had not been parties to the various agreements. The claimant accepted that the transactions were commercial in nature and that the signatories to the relevant documents had been himself and the third defendant. Further, he accepted that all monies had been lent to Mr. Gatt and not the first and second defendants. However, he was adamant that Mr. Gatt and the Defendant Companies were deemed to be “one and the same.”

[22] Counsel for the questioned the Claimant as to whether the specific power of attorney made reference as to what would happen in the event of a breach by the third defendant. The claimant answered in the affirmative that the specific power of attorney referenced the original loan agreement and all subsequent agreements.

[23] Under further cross examination, the claimant stated that the remedy which he seeks from the court proceedings is that the power of attorney be enforced to permit the sale. He was asked to specify what relief was sought against the

³ First Affidavit of Paul Bongiorno dated 11th April, 2023, para 28.

third defendant. The claimant replied that to his knowledge the third defendant and the first and second defendant were essentially the same. The claimant was also adamant that the first and second defendants were parties to the first agreement made on January 22nd, 2013. However, he was unable to identify a signature on behalf of the First and Second Defendants on the said document.

- [24] Under re-examination, Mr. Bongiorno reaffirmed that in his dealings with the Third Defendant, he always understood him to act not only in his personal capacity but as director and sole shareholder of the first and second defendants.

Third Defendant's Evidence

Mr. Joseph Gatt

- [25] In his affidavit of 10th November 2023 which stood as his evidence-in-chief, the third defendant primarily argued that the first and second defendants were not party to the loan agreements between himself and the claimant. He also stated the properties in Antigua were subject to third party rights in respect of his wife but did not elaborate on the nature of these alleged rights.
- [26] Under cross-examination, it was put to him that his statements that there were third-party interests in the properties was calculated to avoid liability to the claimant. He adamantly denied this, though he did not present evidence of it being the contrary. He also accepted that there were no third-party interests stated on the land register in relation to the property. Finally, he reluctantly admitted that he remained sole shareholder and director of the first and second defendants.
- [27] Under re-examination, Mr. Gatt reiterated that he signed the loan agreements in his personal capacity and that the company was not a party at all to the loan agreements.

Findings

- [28] It appears that the claimant and the third defendant entered into six agreements. The initial agreement was a Secured Convertible Loan

Agreement with Promissory Note entered into on 22nd January, 2013. The terms of that agreement were that the sum of US\$300,000.00 was to be repaid in twenty-four months with interest.

[29] The second agreement was entered into on 14th October 2013, that agreement was a supplemental secured convertible loan agreement with a promissory note stating that the claimant had provided a loan amount of US\$360,000.00. It appears that the third defendant defaulted on the terms of that agreement which prompted a third agreement entered into on March, 11th 2016 by the parties entitled “Debt Resolution and Discharge Agreement’. The intended purpose of that said agreement was to modify and adjust timelines for repayment. This agreement provided that the total loan amounted to US\$550,000.00.

[30] The fourth agreement was entered into in April 2019 to specify steps for the sale of the properties owned by the first and second defendants in Antigua. This document further confirmed the third defendant being indebted to the claimant stating that only four payments which totalled US\$310,000.00 had been made and that sums continued to accrue with interest.

[31] A fifth agreement was entered into by the claimant and the third defendant in February 2020 confirming that the loan and applicable interest remained secured by the real property in Antigua and that these properties would be placed publicly for sale on 15th of April, 2020.

[32] On 28th, March 2022 the Claimant obtained two charges over the Antigua property owned by the Defendant Companies. To date, those charges have not been discharged. The parties then in May, 2022 entered into a comprehensive Supplemental Agreement for Additional Loan and Sale of Antigua property known as the sixth agreement. This agreement acknowledged that the Third Defendant was in default on his loan and that a further loan in the sum of US\$425,000.00 was to be made to him, and that the new loan was to be secured by the property in Antigua.

[33] Furthermore, this agreement stated that the new loan would be interest-free until December 1, 2022. Clause 9 of the sixth agreement, also indicated that in an event that the Claimant was not paid in full by September 1, 2022, then the Claimant had the authority to arrange for the sale of the Antiguan Property. It also declared that the agreement supplemented the prior executed agreements between the parties concerning the original loan of US\$360,000.00.

[34] The Third Defendant failed to honour his contractual arrangement with the Claimant and defaulted in the repayment of the loan by the stipulated date of September 1, 2022. Thus, as submitted by the Claimant, he entered into a purchase and sale agreement with Claire and Michael Shipley on February 4th 2023 as per the terms of the sixth agreement and the SPA.

[35] This course of action led to the First and Second Defendants issuing a Notice of Revocation of the power of attorney which was registered on 27th February 2023.

Issue

[36] The issue for determination is whether the purported revocation of the specific power of attorney by the first and second defendant was valid?

Discussion and Analysis

[37] **Section 114** of the **Registered Land Act**⁴ provides as follows:

“**114.** (1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.

⁴ Cap. 374 of the Revised Laws of Antigua and Barbuda

(2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve and shall be executed and verified in accordance with sections 107 and 108.

(3) The donor of a power of attorney filed in accordance with the provisions of sub-section (1) may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.”

[38] It is undisputed that in purporting to revoke the specific power attorney the first and second defendants were acting pursuant to **section 114(3)** of the **Registered Land Act** quoted above. However, the claimant is arguing that the power of attorney was given for valuable consideration and was expressly stated to be irrevocable in accordance with **section 114(5)** of the **Registered Land Act** also reproduced above.

[39] **Section 114(5)** reflects the position at common law with respect to the revocation of agency. In **Bailey v. Agove's Pty Limited** Lord Sumption giving the judgment of the Privy Council stated as follows⁵:

“The general rule is that the authority of an agent may be revoked by the principal, even if it is agreed by their contract to be irrevocable. The revocation is effective to terminate the agent’s authority but gives rise to a claim for damages. Powers of attorney were said by Lord Kenyon to be “revocable from their nature.”

[40] Having outlined the general principle quoted above, the court highlighted an important exception:

“The main exception to the general rule is the case where the agent has a relevant interest of his own in the exercise of his authority. The exception applies if two conditions are satisfied. First, there must be an agreement that the agent’s authority shall be irrevocable. Secondly, the authority must be given to secure an interest of the agent, being either a proprietary interest (for example a power of attorney given to enable the holder of an equitable interest to perfect it) or a liability (generally in debt) owed to him personally. In these cases, the agent’s authority is irrevocable while the interest subsists.”⁶

[41] The court in **Bailey** further proceeded to examine the decided cases for applications of the principle that the authority must be given to secure the interest of the agent. The court stated:

“At one extreme lie cases such as *Walsh v Whitcomb*, supra, where a power of attorney was granted solely to enable the grantee to satisfy a pre-existing debt owed to the agent, or *Gausson v Morton* (1830) 10 B&C 731, where an owner of land gave a power of attorney to a creditor to sell the land to satisfy the debt. No one doubts that the exception applies in such cases. At the opposite extreme, it does not apply where

⁵ [2016] UKSC 47 delivered July 27th, 2016 at paragraph 7

⁶ op. cit paragraph 7

the agent's only interest is a commercial interest in being able to earn his commission."⁷

[42] A determination must therefore be made as to whether the specific power of attorney was made for valuable consideration. This will involve an examination of the power of attorney itself. Clause 3 of the recitals to the power of attorney specifically lists the previous loan agreements with the exception of the sixth agreement which had been executed on 17th May 2022. Clause 4 of the recitals further states that the power of attorney is duly approved by resolution of the third defendant in his capacity as director and shareholder. Clause 1 of the power of attorney permits the claimant at his sole discretion to sell the lands owned by the first and second defendants at such price as he "in his absolute discretion thinks proper"

[43] The Claimant submits that the power of attorney was designed to act as security in the event of the Third Defendant's default in repaying the loan amount paid to him as set out in the various agreements. In this regard clauses 9 and 10 of the sixth agreement dated 17th May 2022 state as follows:

"9. In the event Lender is not paid the full amount due by September 1, 2022, Lender shall have the right to assume all legal right and authority to act on behalf of Borrower as attorney-in-fact concerning the marketing, offer for sale or otherwise in accordance with the following..."

10. Without limiting but in further clarification and amplification of Lender's rights, Lender shall have full authority in accordance with the executed power of attorney attached hereto and made an integral part of this agreement."

[44] It is not disputed that the power of attorney was executed on the day after the sixth agreement and was not attached to the agreement as contemplated by clause 10 quoted above. Further, the power of attorney does not refer to the

⁷ [2016] UKSC 47 delivered July 27th, 2016 at para 6

sixth agreement. These facts were pointed out to the claimant in cross-examination. The claimant responded that the power of attorney was supposed to be signed together with the sixth agreement of 17th May 2022. However, the power of attorney had not been printed on the proper size of paper, thus the third defendant (sole director and shareholder of the first and second defendants) had to go back to the lawyer's office to sign it.

[45] The claimant is in effect inviting the court to treat the power of attorney as a part of the overall dealings between the claimant and third defendant rather than a standalone document. Guidance has been provided by the House of Lords in the **Investors Compensation Scheme v. West Bromwich Building Society**⁸ 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.

(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.

⁸ [1998] 1 W.L.R 896 at pg 912- 913

(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 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: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749.

(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.”

[46] It is undisputed that the Third Defendant was in default of his obligations under the loan agreements, although he disputed the actual extent of his indebtedness. Further, as of 18th May 2022 the sixth agreement between the Claimant and the Third Defendant had already been executed. Clause 10 of that agreement specifically provided for the execution of a power of attorney. Thus, it is more likely than not that the said power of attorney was executed in order to crystallize the claimant’s security as contemplated by clause 10 of the sixth agreement.

[47] In terms of any argument that valuable consideration has not been provided, the claimant has pointed out several acts which he says constitute valuable consideration. In my view, many of these acts benefited the third defendant Mr. Gatt and not the first and second defendants. For example, the additional sum of US\$425,000.00 advanced pursuant to the sixth agreement was used

to prevent foreclosure of Mr. Gatt's residence in Virginia and not related to the properties in Antigua.

[48] However, the claimant held a charge over the lands owned by the first and second defendant and could have exercised his powers of sale pursuant to **section 72** of the **Registered Land Act** since the loans were in default. The Claimant agreeing not to do so constituted forbearance on the enforcement of a legal right that he possessed. The claimant relies on the House of Lords **Fullerton v. Provincial Bank of Ireland**⁹ where it was held that forbearance in enforcing a legal right may be considered valuable consideration.

[49] The principle is also outlined in **Halsbury's Laws of England**¹⁰ as follows:

“Where a party agrees to forbear from suing on a good claim, or to abandon a good defence, or to abandon a particular remedy that may be valuable consideration for a promise whether he agrees to forbear absolutely or for a certain time or for no specific time at all.”

[50] Although Mr. Gatt gave evidence at trial it was made clear by Mr. Benjamin his attorney-at-law that he was only appearing in his personal capacity and not representing the first and second defendants. Thus, there is no evidence on the part of these defendants to refute the claimant's proven assertion that the power of attorney was given for valuable consideration. I am therefore satisfied that pursuant to **section 114(5)** of the **Registered Land Act** the power of attorney was irrevocable and that the purported notice of revocation of the said power of attorney registered on 27th February 2023 is to be declared void.

[51] Mr. Benjamin both at trial and in written closing submissions argues that Mr. Gatt signed the loan agreements in his personal capacity. In this regard he relies on the case of **Salomon v Salomon & Co Ltd.**¹¹ where the House of Lords established the separate legal personality of a company as an

⁹ [1903] AC 309

¹⁰ Halsbury's Laws of England Vol. para 122

¹¹ [1897] AC 22

implication of incorporation under the existing 1862 English Companies Act. Lord Macnaughten stated:

“The company is at law a different person altogether from the subscribers...and though it may be that after the incorporation the business is precisely the same as it was before, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”

[52] Mr. Benjamin also relies on another well-known case of **Macaure v Northern Assurance Co Ltd**.¹² where it was held that the sole owner and controller of a company did not even have an insurable interest in property of the company, although economically he was liable to suffer by its destruction. Lord Buckmaster stated:

“No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.”

[53] There can be no doubt that the principles relied upon by Mr. Benjamin are correct. In the context of this case, it is clear that the first and second defendants never executed the loan agreements, although they are mentioned in some of them. It is also clear that the claimant is not seeking in these proceedings to sue Mr. Gatt for the balance of monies due under the loans. In fact, the claimant is only seeking to confirm his right to exercise his powers under the power of attorney executed on 18th May 2022 and registered on 19th July 2022.

[54] The only relief sought against the third defendant in the Fixed Date Claim was an injunction restraining him along with the first and second defendants from

¹² [1925] AC 619 at pg 626 to 627

rescinding and or cancelling the purchase and sale agreement entered into with Michael and Claire Shipley on 4th February 2023. In light of the orders which will be made against the first and second defendants and the fact that Mr. Gatt is now dead there is no useful purpose to be served by making any orders against his estate. Therefore, the claim against the third defendant must accordingly be dismissed.

Costs

[55] The Claimant is entitled to prescribed costs as against the first and second defendants pursuant to CPR Rule 65.4 and Appendix B. This being a claim with no stated value, the default value of \$50,000.00 will be used as the value of the claim leading to costs of \$10,000.00.

[56] Although the claim against the third defendant has been dismissed, I will exercise my discretion pursuant to CPR Rule 64.6(2) and make no order as to costs in respect of the third defendant. This is as the third defendant's conduct of this litigation has significantly contributed to the delay in these proceedings and increased costs. Similarly, no costs will be ordered against the fourth defendant who at all times was exercising her duties pursuant to the Registered Land Act in good faith.

Order

[57] It is hereby ordered as follows:

1. It is hereby declared that the Specific Power of Attorney executed by the first and second defendants on 18 May 2022 and registered on 19 July 2022 was given for valuable consideration and remains in effect.
2. It is hereby declared that the Notice of Revocation issued by the first and second defendants and registered on 27 February 2023 is null and void and of no legal effect, the same having been lodged without the consent of the Claimant.
3. The fourth defendant- the Registrar of Lands shall forthwith cancel the registration of the notice of revocation executed by the first and second defendants and registered in the Land Registry on 27th February 2023.

4. A permanent injunction is hereby granted restraining the first and second defendants, their agents and servants, directors or otherwise, from rescinding, cancelling, or otherwise repudiating the Purchase and Sale Agreement entered into with Michael and Claire Shipley on 4 February 2023.
5. The claim against the third defendant is dismissed with no order as to costs.
6. Prescribed costs of EC\$10,000.00 to be paid by the first and second defendants.
7. No order as to costs in respect of the fourth defendant.

Rene Williams

High Court Judge



By the Court

Registrar