

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
FEDERATION OF ST CHRISTOPHER AND NEVIS  
NEVIS CIRCUIT  
A.D. 2022

CLAIM NO. NEVHCV2021/0183

BETWEEN

Tiger Holdings Inc

Claimant/Respondent

And

Petrodel Investment Advisers (Nevis) Ltd,  
Michael J Prest

Defendant/Applicant

Before: His Lordship Justice Patrick Thompson Jr.

Appearances: Mr. Michael Fay K.C. for the Applicant/Defendants  
Dr. Henry Browne K.C. for the Claimant/Respondent

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2023: May 31<sup>st</sup>  
July 31<sup>st</sup>

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JUDGMENT

- 1) Mr. Fay K.C. for Petrodel Investment Advisers (Nevis) ("Petrodel"<sup>1</sup>) claims to be entitled to summary judgment against Tiger Holdings Inc for the following reasons. The law on summary judgment does not require any detailed treatment and eminent Kings Counsel were kind enough not to trouble the Court with this aspect. Suffice it to say that the reasoning of Chief Justice Saunders in **Civil Appeal No. 14 of 2003 – Bank of Bermuda v Pentium** is entirely appropriate in this case:

*"A judge should not allow a matter to proceed to trial where the [defendant] has produced nothing to persuade the court that there is a realistic prospect that the defendant will succeed in defeating the claim brought by the claimant. In response to an application for a summary judgment a*

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<sup>1</sup> There was no evidence that the claim had been personally served on Michael J Prest and he was not present, whether physically or virtually at the hearing of this matter. For this reason it was agreed that summary judgment would not lie against Mr. Prest if it were granted.

defendant is not entitled without more merely to say in the course of time something might turn up that would render the claimant's case untenable. To proceed in that vein is to invite speculation and does not demonstrate a real prospect of successfully defending the claim."

- 2) Put another way, summary judgment is for clear and obvious cases where it would be inappropriate for there to be a trial of the claim or issue because the opposite side has no real prospect of success on the claim or the issue.
- 3) Tiger Holdings Inc ("Tiger Inc") filed a claim against Petrodel and Mr. Prest seeking:
  - (i) Specific performance of an agreement between the Tiger Inc and Petrodel in which Tiger Inc asserts that Petrodel agrees to sell 12,000 shares in The Bank of Nevis International ("BONI") in consideration of the sum of US\$85,000.00.
  - (ii) Damages for breach of contract in failing to transfer the shares in BONI
  - (iii) Damages for unjust enrichment (ostensibly because Tiger Inc says that it paid US\$85,000.00 to an escrow agent (Daniel Brantley & Co) for onward transmission to Petrodel but has not received neither the shares nor the return of its monies but more on this later)
  - (iv) Interest on any dividends which Tiger Inc may have been entitled to

Petrodel's position:

- 4) Mr. Fay K.C. for Petrodel says that Tiger's claim against Petrodel is doomed to fail because the Investment Agreement dated December 3<sup>rd</sup>, 2018 ("the Agreement") expressly speaks in its operative clause to shares in Petrodel as opposed to shares in BONI. Moreover, Mr. Fay K.C. contends that there is no reference to shares in BONI and was in any event subject to conditions precedent which were that Petrodel would:
  - (i) use commercially reasonable endeavours to obtain UHNWI<sup>2</sup> depositors for BONI
  - (ii) use reasonable endeavours to procure the necessary approvals from BONI and any other due diligence required by the Nevis Island Administration (NIA) and;
  - (iii) not enter into any agreement with any other entity which would result in Petrodel compromising the investment made by Tiger Inc or becoming liable to another entity in respect of a debt owed and acquired subsequent to the Agreement.
- 5) Those conditions have not been satisfied and crucially, according to him, Tiger Inc has not asserted that those conditions have been satisfied. Therefore, Mr. Fay's argument is that the written amendments and entire agreement clauses of the agreement (clauses 12 and 13 respectively) confirm that Tiger Inc were conclusively bound by the terms of the Agreement. As

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<sup>2</sup> Ultra High Net Worth Individuals (this is a term which was not defined in the Agreement but helpfully supplied by Mr. Fay K.C as a common term in the trade, so to speak)

a result, there is no scope for Tiger Inc to rely on parole or extrinsic evidence to indicate what the parties meant or what the Agreement meant since the Agreement is clear.

- 6) Mr. Fay K.C. argues that the burden of proving that the conditions precedent has been met falls squarely on Tiger Inc and they have failed to discharge this burden either by expressly pleading or leading evidence (as was their right) at the hearing on that issue. In his view, this failure is inimical to Tiger Inc's ability to successfully resist Petrodel's application for summary judgment.
- 7) Petrodel sought to buttress their argument for summary judgment by drawing to this Court's attention that no evidence was placed before this Court that the US\$85,000.00 was in fact paid to the escrow agent nor any claim has been filed against the escrow agent by Tiger Inc. Mr. Fay K.C. argued that any claim against the escrow agent should have included Petrodel as defendant and the failure to file or explain why no claim has been filed begs the question of whether the monies were actually paid in the first place.
- 8) Finally, Petrodel submits that Tiger Inc's claim for unjust enrichment fails for the lack of evidence as to payment of the US\$85,000.00 and that even if Tiger Inc could get over this hurdle unjust enrichment is an equitable and thus discretionary remedy. According to Petrodel, Tiger Inc do not have 'clean hands' and are not entitled to any equitable relief since among other things Tiger Inc's principal, a Mr. Rawlinson Isaac failed to disclose his interest under the Agreement to BONI although he was a director of BONI.
- 9) Simply put, Mr. Fay K.C says that Tiger Inc has no claim against Petrodel and that Petrodel is thus entitled to summary judgment thus putting an end to Tiger Inc's claim against his client.

Tiger Inc's position:

- 10) Firstly, Dr. Browne K.C's oral arguments at the hearing appeared to tiptoe up to the line of arguing mistake but in the absence of any clear argument or pleading to that effect this Court cannot of its own volition entertain any such argument. Moreover, the reasoning of Lord Romilly, Master of the Rolls as cited below puts paid to that argument.
- 11) In resisting Mr. Fay's formidable arguments, Dr. Browne K.C. submitted that as a first step in deciding whether to grant summary judgment against Tiger Inc, this court must consider the contract as a whole and determine its objective meaning. According to Dr. Browne K.C., this Court should step into the shoes of Tiger Inc, as the ordinary investor and with the assistance of parole evidence determine what is consistent with good business sense.
- 12) Dr. Browne K.C. accepts that parole evidence is admissible to identify the meaning of a descriptive term or explain the genesis or aim of a transaction where there is ambiguity. Therefore, Tiger Inc's submission is that once the court is satisfied that there is a material ambiguity or internal tension in the contract, parole evidence is thus admissible for the purposes listed above. Ambiguity is the golden thread running which underpins this argument.
- 13) Tiger Inc contend that the ambiguity lies in the following recitals.
  - Recital A says that Petrodel has a vested interest of 100% of the shares in BONI.

- Recital B states that Petrodel is the desirous of BONI being among other things a 'gateway and point of entry for UHNWI's as depositors in need of wealth management' and building strategic relationships with global financial institutions ("the Business Plan").
  - Recital C provides that Petrodel is seeking investment to execute its Business Plan and has given consideration to disposing of 12,000 of its shares in BONI on terms to be agreed upon.
  - Recital D provides that Petrodel is prepared to offer and that Tiger Inc is prepare to accept **shares in Petrodel** (my emphasis) which the parties have agreed to be bound by and enter into contractual relations ("the Proposal")
- 14) In Tiger Inc's view, the ambiguity is patently clear, the Agreement must have meant shares in BONI as opposed to Petrodel since Recital A recited Petrodel's shareholding in the Bank and that Recital C confirmed that Petrodel was disposing of its vested interest in BONI consistent with its position as stated in Recital A. Therefore, a commercially realistic reading of the Agreement could only mean that what was agreed was that Petrodel would sell its shares in BONI as opposed to its shares in itself. In Dr. Browne's view, there was no scope for any alternative position and that if this Court would be acting unreasonably if it were to proceed to enter summary judgment against his client.
- 15) More of a corollary argument as opposed to an alternative argument, Dr. Browne K.C. contended that Tiger Inc has discharged its burden of proving that its claim for unjust enrichment can successfully resist any application for summary judgment. In Dr. Browne's view, there are sufficient facts, supported by evidence, to wit, Mr. Isaac's witness statement which supports a claim for unjust enrichment.
- 16) According to Tiger Inc, Petrodel has been enriched to the tune of US\$85,000.00 by its payment of said sum to the escrow agent and it would be unjust for Petrodel to retain both the benefit of the US\$85,000.00 and the shares.
- 17) Therefore, Dr. Browne KC was of the view that his client had successfully resisted Mr. Fay K.C.'s application for summary judgment and was thus entitled to costs.

#### Court's Findings:

- 18) Dr. Browne K.C. submitted that the Recitals when read together were ambiguous. This Court does not agree. The recitals are unambiguous. They are inconsistent but those inconsistencies do not assist Dr. Browne's case. Ambiguity when given its ordinary dictionary meaning simply means multiple meanings with the possibility of confusion. That is not the case here. Recital A says one thing which is at odds with Recital C. Neither of those Recitals are ambiguous and, in any event, recitals are useful in two ways.
- 19) Firstly, recitals indicate the rationale for the agreement, the parties to the agreement and the purpose of the agreement. Secondly, recitals are an aid to interpretation when there is

contractual ambiguity. The fact that through perhaps bad draftsmanship Recital A says something different from Recital C does not mean that the contract itself is ambiguous. This Court cannot rewrite the Agreement by assuming that the parties meant one thing or the other and the operative words of the Agreement, which was signed by the parties are clear.

- 20) Mr. Fay KC submitted that the recitals to the Agreement do not determine the contract between the parties. Put another way, the recitals can perhaps assist in the interpretation of the Agreement but are not express or operative terms of the Agreement. As a result, Mr. Fay KC forcefully submitted that the operative and decisive parts of the Agreement is clause 7 which provided that Petrodel was required to submit the Proposal to BONI for approval onwards to the Ministry of Finance and NIA.
- 21) The Proposal is defined in the Agreement to mean the legally binding contractual agreement between the parties that the shares in Petrodel would be acquired by Tiger Inc. These words are clear and precise and there is no wiggle room for any alternative interpretation. There is no dispute that Mr. Isaac signed the Agreement and is thus taken to have read and understood its terms.
- 22) There was no argument advanced before this Court on whether the contractual principles governing mistake and/or rectification would have any application to this matter. Tiger Inc did not plead mistake as would have been their right in any reply to Petrodel's defence nor did they argue that it applied. In any event as long ago as 1854, Lord Romilly, Master of the Rolls in **Murray v Parker (1855) 19 Beav. 305 52 E.R. 567** opined that:
- "In matters of mistake the court undoubtedly has jurisdiction and though this jurisdiction is to be exercised with great caution and care still it is to be exercised in all cases where a deed as executed is not according to the real agreement between the parties. In all cases the real agreement must be established by evidence whether parol or written....If there be previous agreement in writing which is unambiguous, the deed will be reformed accordingly; if ambiguous parol evidence may be used to explain it in the same matter as in other cases where parol evidence is admitted to explain ambiguities in a written instrument"*
- 23) Tiger Inc has not sought rectification and this Court cannot grant rectification of its own volition. There is no ambiguity in the recitals and as such there is no scope for the admission of parol evidence and in any event Dr. Browne KC has not indicated what this parol evidence is likely to say. It was always open to Dr. Browne KC to file evidence on this point particularly since the application for summary judgment was filed and served since May 16, 2023, 15 days before the date fixed for trial in this matter.
- 24) Mr. Fay KC is right when he says that the burden of proving the conditions precedent in the Agreement fell squarely on Tiger Inc. Tiger Inc has not led any evidence that these conditions precedent have not been complied with nor have, they even argued to that effect.
- 25) A copy of a wire transfer dated February 6<sup>th</sup>, 2019 is contained in the trial bundle at page 83. This document, though not led in evidence by Tiger Inc at the summary judgment hearing, is before the Court as part of the trial bundle in this matter. There can be no real prejudice to

anyone since this Court would be entitled to consider the application for summary judgment, coming as it did on the date for trial, as part of the trial process.

- 26) That wire transfer only serves to confirm that payment in the sum of US\$85,000.00 or its Eastern Caribbean currency equivalent was paid by Tiger Inc into the account of Daniel Brantley. Even without any further evidence or explanation from Tiger Inc as to what the money was paid for, there is no evidence as to what happened to the money thereafter. At paragraph 8 of their Defence Petrodel deny receipt of the said US\$85,000.00 thus putting Tiger Inc on notice that this matter is disputed. In fact, the tenor of Petrodel's defence is to deny Tiger Inc's case and put them to proof of their allegations since Petrodel positively avers at paragraph 12 of their defence that the agreement was for the purchase of shares in Petrodel not BONI.
- 27) Tiger Inc's invidious position is not helped by the fact that Tiger Inc has not added Daniel Brantley to these proceedings, nor have they initiated any proceedings in order to seek the recovery of those monies from them. Even if this Court is satisfied that the monies were paid by Tiger Inc to the escrow agent, there is a gaping evidential chasm which Tiger Inc has not addressed. The burden of failing to address this issue can only operate to Tiger Inc's detriment.
- 28) Tiger Inc's claim for breach of contract is thus doomed to fail because there is no basis upon which Tiger Inc is entitled to specific performance of an agreement to purchase shares in BONI when the operative term of the Agreement speaks to shares in Petrodel. The viability of Tiger Inc's claim is further hampered by the fact that they have not sought rectification of the Agreement, nor have they pleaded mistake or prayed in aid any other contractual remedy.
- 29) Therefore, for all of the foregoing reasons, Petrodel is entitled to summary judgment against Tiger Inc to the extent that paragraphs 4-10 of Tiger Inc's amended statement of claim filed on November 22, 2021, is struck out. Paragraphs 4-10 deal with Tiger Inc's claim for breach of contract. Part 15 of the Civil Procedure Rules speak clearly to success on the claim or issue. It is clear that Tiger Inc's claim for breach of contract cannot succeed and summary judgment is thus entered in Petrodel's favour on this issue.

#### Unjust Enrichment:

- 30) In this Court's view, Tiger Inc's claim for unjust enrichment ought not to be struck out. It is dubious whether Rule 29.9(a), which permits amplification of witness statements if a witness has disclosed the substance of the evidence which the witness intends to give at trial will suffice to allow Tiger Inc's case to proceed much further.
- 31) There is a scarcity of legal authority in the Eastern Caribbean Supreme Court and by extension the United Kingdom on the factors which govern the exercise of the discretion to permit amplification and the limits of any such amplification.
- 32) For this reason, this Court has adverted to The White Book<sup>3</sup> [2013] at paragraph 32.5.2 provides that "if amplification is too strictly limited there is a risk that statements will become

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<sup>3</sup> The UK Civil Procedure Text Book which contains the UK Civil Procedure Rules and helpful explanatory commentary and statements of legal principles

overelaborate.....on the other hand if amplification is too readily allowed there is a risk that statements will fail to deal with important issues.....a late unjustified change of tack may be regarded as an injustice to the opponent which in light of the overriding objective should not be permitted". Moreover, the issue of unjust enrichment may possibly be tried as preliminary issue at trial if to permit amplification would go beyond the parameters of CPR 29.9(a). See Mander v Evans [2001] W.L.R. 2378

- 33) This Court is obliged to keep a firm eye on the considerations set out above at trial when Dr. Browne KC will no doubt seek leave to amplify his client's witness statement. Whether learned Kings Counsel will be seeking amplification in its strictest sense or seeking to buttress or expound on his pleaded case are all matters for the trial as opposed to the hearing of an application for summary judgment.
- 34) Additionally, prior to the trial, there is no bar to Tiger Inc filing applications for any number of reliefs, whether against the escrow agent or seeking to file further witness statements or for specific disclosure, to name but a few, in support of their case for unjust enrichment. The affidavits in support of any such applications will have to address the delay in filing such applications, which may prove to be an insurmountable hurdle but that is for another day.
- 35) On its face, Tiger Inc has demonstrated that they have made a payment to the escrow agent in the sum of US\$85,000.00. No shares in either BONI or Petrodel were issued to Tiger Inc and there is no evidence that the US\$85,000.00 has been demanded by Tiger Inc from the escrow agent or repaid to them. These are all matters for a trial of Tiger Inc's claim for unjust enrichment.
- 36) Petrodel's assertions that Mr. Isaac is guilty of 'unclean hands' could only be properly ventilated at a trial where the issue of whose hands if any are unclean and whether anyone is entitled to equitable relief can be properly decided.
- 37) Cross examination of the witnesses at trial is likely to shine a clear light on who possesses unclean hands. It is significant that Mr. Prest's witness statement joins issue with Mr. Isaac's on payments made to Tiger Inc. The trial is the proper forum for the resolution of who paid what to whom and whether anyone has been unjustly enriched by these payments. For all these reasons, to strike out Tiger Inc's claim for unjust enrichment would be contrary to the well-established principles of law on summary judgment cited above and this Court declines to strike out paragraphs 11-19 of Tiger Inc's amended statement of claim filed on November 22, 2021.

### Costs

- 38) Petrodel has enjoyed the lion's share of success on this application and is thus entitled to its costs, summarily assessed at 75%, of the successful aspect of its application for summary judgment.
- 39) Tiger Inc remains alive to pursue its claim for unjust enrichment, but should that claim ultimately fail, Tiger Inc would be liable to pay both the costs of any successful strike out application and any other applications against for instance the escrow agent or any application to amend its claim. The costs of any successful application to strike out the unjust enrichment claim are costs in the cause depending on the ultimate result of these proceedings.

- 40) The parties have 14 days from today's date to arrive at an agreed position on costs. If they are unable to arrive at an agreed position, Tiger Inc is to pay to Petrodel 75% of the prescribed costs payable, pursuant to Appendix C of the Civil Procedure Rules [2000].
- 41) This Court wishes to put on record its gratitude to counsel for the Applicant and Respondent in their conduct of this matter. It is to their credit that the issues were quickly and easily identified and argued in an engaging and helpful manner.

**Patrick Thompson Jr  
Resident High Court Judge**

**BY THE COURT**

**REGISTRAR**