

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

CLAIM NO: ANUHCv 2011/ 0478

BETWEEN:

STANFORD INTERNATIONAL BANK LTD

Applicant

AND

ROBERT ALLEN STANFORD

1st Respondent

ANDREA STOELKER

2nd Respondent

STANFORD DEVELOPMENT COMPANY LTD

3rd Respondent

MAIDEN ISLAND HOLDINGS LTD

4th Respondent

GILBERTS RESORT DEVELOPMENT HOLDINGS

5th Respondent

STANFORD HOTEL PROPERTIES LTD

6th Respondent

Appearances:

Mr. Craig Christopher and Ms. Nicolette M Doherty for the Applicant
Mr. Hugh Marshall Jr. for the Respondents

2012: June 18

DECISION

INTRODUCTION

- [1] On the 11th April 2012, the Court made an order that Counsel file submissions for its consideration of the applications filed by the Claimant ("SIBL") on the 2nd March, 2012 and the Third named Respondent ("SDC") on the 16th March, 2012. (the Present Applications)

[2] Before dealing with the Present Applications, it is useful to set out a brief background.

Background

- a) The Claimant Stanford International Bank Ltd (SIBL) is in liquidation and acts by and through its Joint Liquidators Marcus A. Wide and Hugh Dickson.
- b) On 28th July 2011, this Court granted a freezing injunction and/or subject matter preservation order against the Respondents in respect of certain assets (the "Freezing Order".)
- c) On 30th August 2011 the Court ordered, by consent of SIBL and the Second to Sixth Respondents, that the Freezing Order be (a) discharged as against the Second Respondent; (b) continued until further order of the Court, or the trial of the action, as against the First Respondent; and (c) discharged and replaced as against the Third, Fourth, Fifth and Sixth Respondents (the "Consent Order").
- d) At the centre of the Present Applications, is the above-mentioned Order of this Court dated the 30th August 2011 ("the Consent Order"), in particular, paragraph 9 of the said Order. The relevant provisions of the Consent Order are as follows:-

"Paragraph 3 - The third to sixth Respondents are entitled to sell any of the Real properties which appear in schedules A- D (the "Real Estate") upon condition that the Respondent intending to make the sale, provide 21 days prior written notice to Counsel for the Applicant/Claimant of the terms of any such sale; for the avoidance of doubt such terms shall include the identity of the intended purchaser, the price to be paid on such sale and full particulars of the parcel of land intended to be sold.

Paragraph 7 - The Applicant will (a) provide the Third Respondent with a letter confirming that it will consent to the removal of any restriction registered upon each of the titles or the parcels of the Real Estate, at the closing of any sale of any of the parcels of lands which comprise of the Real Estate which sale is being

made pursuant to the provisions of this Order; (b) take such steps as may be necessary to procure the removal of any restriction obtained by the Applicant to allow the closing of such sales, and (c) confirm in writing that it does not pursue as against a purchaser of such lands pursuant to this Order any claims over such lands.

Paragraph 9 - The Applicant undertakes not to interfere with sales notified to it pursuant to this Order or the ordinary operations of the Third to Sixth Respondents businesses save by application to the Court.

Paragraph 12 - The Third Respondent shall within 7 days provide Government Property Valuations (Copies of Stamped transfers) of the properties under title BLOCK: 42 1894A; Parcels 1164 and 1149 within the Cedar Valley Springs Development. The Applicant shall have seven days to object in writing to these valuations and a further seven days to apply to the Court pursuant to this Order if the Applicant considers that the said sales are intended to be made at an under value. Absent such application the provision of paragraph 7 of this Order applies."

[3] The facts leading to the Present Applications, and which are to be gleaned from the Affidavits and Exhibits attached, are as follows:-

- i). On 23rd January 2012, Counsel for the Joint Liquidators received an email from Counsel for SDC advising of a proposed sale, attaching a copy of a letter from Counsel dated 19th January 2012. The letter gave notice to the Joint Liquidators' Counsel of the proposed sale by SDC of 3 properties ("the proposed properties"). The proposed properties are the three properties identified as numbers 1,4 and 5 in Schedule A of the Consent Order, namely Registration Sections Cassada Gardens & New Winthorpes, Block 42 1894 A, Parcels 1148, 1175 and 1176. This letter also included proposed lease terms in respect of another property ("the proposed letting"), being Registration Section Barnes Hill & Coolidge, Block 41 22934 A, Parcel 96.

- ii). On the 17th February, 2012, the Joint Liquidators' Counsel sent a letter dated 16th February, 2012 to SDC's Counsel objecting to the Proposed Sales on the basis that it appeared that they were intended to be made at an undervalue. Further evidence of the reasonableness of the proposed sales prices was requested. Co-operation was also sought from SDC for the purpose of permitting an inspection of the property subject of the proposed Letting by the Joint Liquidators' valuer.)
- iii). By letter dated 22nd February 2012, Counsel for SDC informed Counsel for SIBL that "by reason of the Order of the 31st August, 2011," SIBL were "under an obligation to notify of any objections to dispositions within **fourteen (14) days** (my emphasis) of receipt of notice of the same." The letter further made a "formal request" of Counsel for SIBL for confirmation under paragraph 7 of the Consent Order within 48 hours of receipt of the letter, failing receipt of such Counsel advised that "we shall apply to the Court for your clients to be so compelled and shall seek that they be condemned in cost."
- iv). By reply of the same date, Counsel for SIBL re-iterated inter alia that they were awaiting the additional information which they requested in their letter of the 16th February 2012.
- v). By letter dated 27th February 2012, Counsel for SDC contended that the Joint Liquidators did not communicate their objections within a time limited by the Consent Order. The letter also contended that the Joint Liquidators are now estopped by their conduct for raising an objection in relation to the Proposed Transactions.

The Present Applications

[4] On 2nd March 2012, SIBL filed an application before the Court for the following orders:

- a. "The Third Defendant shall within 7 days provide to the Claimant any further evidence that it relies upon demonstrating that the proposed sales terms of the properties described in the letter dated 19th January, 2012 attached Schedule A to this Order (the "Proposed Sales") are reasonable. The

Claimant shall indicate in writing to the Third Defendant within 7 days of receipt of any further evidence whether it continues to object to the proposed Sales or any of them. The Claimant shall have a further 7 days to apply to the Court should it consider that the Proposed Sales or any of them are intended to be made at an undervalue.

- b. The Third Defendant shall within 7 days allow the Claimant and its valuer to inspect the property described as Registration Section Barnes Hill and Coolidge, Block 41 2294 A, Parcel 96, being the building known as the Antigua Sun Offices and Printery and adjoining area. The claimant shall within 7 days of the said inspection taking place indicate in writing to the Third Defendant whether it objects to the proposed letting of the property on the terms set out in Schedule A to this Order (the "Proposed Letting"). The Claimant shall have a further 7 days to apply to the Court should it consider that the proposed letting is being made on uncommercial terms.
- c. In the event that the Claimant does not continue to object to the Proposed Sales and/or does not object to the Proposed Letting, the provisions of paragraph 7 of the Order of Remy J. dated 30th August 2011 shall apply.
- d. The Third Defendant be restrained from selling, disposing, leasing, parting with possession or otherwise dealing with any interest or right in or over the properties described in the letter date 19th January 2012 and proposed lease terms attached as Schedule A to this Order until:
 - i). Such time as the client has indicated in writing that it no longer objects to the proposed sales and/or the proposed Letting pursuant to the terms of this Order; or
 - ii). Further order of the Court.
- e. There be liberty to apply
- f. The Third Defendant pay the Applicant's costs of this application."

[5] The grounds of the application were stated as follows:-

- a) "This Application is supported by the Affidavit of Mark McDonald dated [] March 2012.
- b) On 28th July 2011 the Honourable Justice Remy granted a freezing injunction and/or subject matter preservation order against the Respondents in respect to certain named assets ("the Freezing Order").
- c) On 30th August 2011 the Court ordered, by the Applicant's and Second to Sixth Respondents consent, that the Freezing Order be (a) discharged as against the Second Respondent, (b) continued until further order of the Court, or the trial of the action, as

against the First Respondent; and (c) discharged and replaced as against the Third to Sixth Respondents (the "Consent order").

- d) On 23rd January 2012, the Applicant was advised pursuant to the Consent Order that the Third Respondent proposed to sell certain properties being Registration Sections Cassada Gardens & New Winthorpes, Block 42 1894 A, Parcels 1148, 1175 and 1176, and to let another property, being Registration Section Barnes Hill & Coolidge, Block 41 22934 A, Parcel 96.
- e) On 17th February 2012, the Applicant objected to the sales proposed by the Third Respondent on the basis that it appeared that there were intended to be made at an undervalue. The Applicant's belief is supported by valuations that it has obtained. It requested further evidence of the reasonableness of the proposed sales from the Third Respondent. The Applicant also requested co-operation in providing its valuer access to the property proposed to be let in order that it could consider the reasonableness of the proposed lease terms.
- f) The Third Respondent has claimed that the Applicant is estopped from objecting to the proposed transactions by having failed to notify its objections within 21 days of notification of the proposed transactions. It has refused to provide any further evidence of the reasonableness of the proposed sales unless the Applicant first takes steps under paragraph 7 of the Consent Order. The Applicant is unwilling to agree to this demand, as by taking such steps it would effectively be withdrawing its objections in circumstances where it appears that the proposed sales are intended to be made an undervalue.
- g) The Third Respondent has also failed and/or refused to provide the Applicant's valuer access to the property proposed to be let.
- h) This application is made by the Applicant pursuant to paragraph 9 of the Consent Order for the purposes of seeking directions in relations to the proposed sales and letting and to object to the proposed transactions."

[6] The application was accompanied by an affidavit filed on the 2nd March, 2012 and deposed to by Mark McDonald.

[7] The said Affidavit is headed "Fourth Affidavit of Mark McDonald". The essence of the affidavit is contained in paragraph 28 thereof, under the heading "Conclusion" and states as follows:-

- a) "The Joint Liquidators believe that the transactions proposed by SDC may constitute a disposal of assets at an undervalue. Whilst the Joint Liquidators ultimately did not object further to the first set of transactions that were subject of the Second Consent Order on commercial grounds, they are concerned that, should SDC or the other Respondents be permitted to continue to sell assets at an undervalue, the cumulative effect of those transactions will potentially cause a substantial loss to the Estate, and its approximately 21,000 creditors.
- b) As has been indicated in correspondence with Mr. Marshall, I confirm that the Joint Liquidators remain willing to reconsider their position in relation to the proposed sales should SDC provide further evidence of the reasonableness of the proposed sale prices. The Joint Liquidators will, however, only be in a position to form an opinion on the proposed lease terms after SDC has provided the Joint Liquidators' valuer access to the Printery, and once they had a reasonable opportunity to consider that valuer's opinion."

[8] SDC filed no Affidavit in Reply or in opposition to the above application.

[9] On the 16th March 2012, SDC applied to the Court "for directions upon the order of the Court given on 31st August 2011, in particular directions concerning:-

- a. The disposition of Lands of which Notice has been given to the Respondent on or about 15th January, 2012.
- b. An inquiry into damages sustained by the Applicant by reason of the acts of the Claimant in failing to comply with the terms of the Order aforesaid.
- c. That this matter be heard with the application of the Respondent filed on the 2nd March, 2012.
- d. Cost of these proceedings."

[10] The grounds of the application are stated as:-

- a) "The Order of the 31st August 2011
- b) The Applicant Stanford Development Company Ltd. served notice of dispositions upon the Respondent on or about the 19th January, 2012.

- c) The Respondent remained silent with respect to the dispositions until the 16th February, 2012.
- d) The Applicant in reliance upon the Order and the conduct of the Respondent entered into the dispositions with the third parties.
- e) The Respondent now refuses or otherwise fails to abide by the terms of the Order.
- f) The Respondent has by separate application sought time contrary to those set out in the Order of 31st August, 2011."

[11] The application was accompanied by an Affidavit of Andrea Stoelker, filed on the 16th March 2012, and headed "Fifth Affidavit of Andrea Stoelker".

[12] In paragraph 3 of the said affidavit, Ms. Stoelker deposes that:-

"The purpose of this affidavit is two fold, firstly to answer the allegations made in the Fourth Affidavit of Mark McDonald and to oppose the application made on 2nd March, 2012. This Affidavit also serves to support an application for directions made by Stanford Development Company Ltd on the transaction described below as the Fisher and Wall Transactions."

[13] No date was set for the hearing of SIBL's application filed on the 2nd March 2012. When SDC's application filed on March 16th 2012 came up before the Court on the 11th day of April 2012, the Court made an order that Counsel file submissions for its consideration of the applications filed by the Claimant (SIBL) on the 2nd March, 2012 and by the Third Respondent (SDC) on the 16th March, 2012.

SUBMISSIONS OF COUNSEL

[14] Counsel for SIBL submits that the issues to be determined by the Court are:-

- (a) The Interpretation Issue
- (b) The Estoppel Issue

Issue # 1 - THE INTERPRETATION ISSUE

Mr. Marshall's Submissions

[15] Learned Counsel for SDC, Mr. Hugh Marshall has stated the above issue in this way:-

- (a) Whether on a proper construction of the Order of this Court dated 30th August, 2011 SDC is entitled to proceed to complete the sale of two properties Cassada Gardens & New Winthorpes; Block: 42 1894A Parcels: 1175, 1176 and 1148 ("hereinafter the Properties") at the sale prices of \$107,692.00, \$106,093.00 and \$6000,000.00 respectively in accordance with the provisions of that Order;
- (b) Whether SIBL should be ordered to pay the costs of these applications before this Honourable Court in which SIBL has effectively sought both to challenge and delay the sale of these two properties.
- (c) Whether this Court should direct an inquiry regarding any loss occasioned by SDC by reason of SIBL's refusal to lift cautions placed on the properties and thus permit the completion of the properties.

[16] Mr. Marshall sets out what he contends are "the uncontested facts" as follows:-

- a) On 19th January, 2012 SDC gave notice to sell SIBL of its intention to sell two houses on the Cedar Valley Estates.
- b) SIBL accepts receiving the letter on 23rd January, 2012.
- c) SDC negotiated and settled agreements for the dispositions by sale on or about the 20th February 2012.
- d) SIBL did not give notice of any objection to the sale or any notice of any application to Court within 21 days of either 19th or 23rd January, 2012.
- e) Instead by letter dated 21st February, 2012 SIBL intimated that it objected to the completion of the sale and would not proceed to meet its obligations under paragraph 7 of the Order.
- f) The letter was sent approximately 29 days after notice was received.
- g) On 2nd March, 2012 SIBL took out a summons seeking "directions" from this Honourable Court as to the sale of these Properties.
- h) The application was made by SIBL approximately 38 days after the notice was received.
- i) SIBL will still not remove the restriction obtained by it or provide the letter of confirmation referred to in paragraph 7 of the Order.

[17] The submissions of Counsel for SDC with respect to this Interpretation Issue are as follows:-

- i). "SDC begins with its fundamental right of ownership of lands as provided for under the Registered Land Act, Section 23 thereof provides that a Registered Proprietor of lands has vested in him the Absolute Ownership of the lands. It is accepted by SIBL that SDC is the Registered Proprietor of the subject lands.
- ii). The starting point therefore, is that without some relevant restriction SDC is entitled to sell and complete the sale of the Properties.
- iii). It is accepted law that a person bringing an action may obtain a pre-judgment freezing order to prevent any judgment it may obtain being rendered nugatory. This is not the same as a freezing order obtained post judgment which seeks to ensure satisfaction of an interest already determined on its merits.
- iv). If pre-judgment freezing order is obtained then the precise terms of that Order might itself impose a limitation on the rights of the Registered Proprietor to dispose of its lands or complete such sales including the Properties.
- v). Nevertheless, in every case it is necessary to have regard to the precise terms of the Order to examine whether the Order does impose any such restriction.
- vi). In the case of a pre-judgment freezing order, the purpose of such an order is to prevent a Defendant from carrying out any intention to dissipate its assets resulting in the non –satisfaction of a judgment. Such an order does not therefore operate to prevent dissipation of the assets in the ordinary course of business.
- vii). Against this background SIBL has a substantive claim against SDC as set out in its amended Statement of Case filed on the 12th August 2011.
- viii). Prior to filing a Statement of Claim SIBL obtained the First Order being that of 28th July 2011. Under paragraph 5 iv. SDC was enjoined from "leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with all, or any part of, the properties [to include the subject properties]..." subject to certain qualifications.
- ix). It is clear from the first Order that SDC was fettered in its ownership of the subject lands. However by way of the Second Order being that of the 30th August 2011 that aspect of the Order was discharged. Indeed every part of the First Order as it related to SDC was discharged. The ultimate line of paragraph 1 thereof reads

"The Previous Order as against the Third Respondent is discharged and replaced by the Order herein".

- x). The only relevant Order therefore is that dated 30 August 2011.
- xi). It is important to note that the general principals of a pre-judgment freezing order are clearly expressed in paragraph 2 of the Order of 30th August 2011 when it reads "For the avoidance of doubt this Order does not and is not intended to restrain or affect the ordinary course of operations of the business of the Third to Sixth Respondents." This includes SDC. Thus no disposal of assets within the jurisdiction in the ordinary course of and operation of the business of the Third Respondent is restrained by the terms of the Order dated 30th August 2011.
- xii). Such a sale would include a sale made by SDC to a third party in order to generate proceeds of sale to meet ordinary business liabilities and third party debts.
- xiii). Paragraphs 3,4,5,7 and 9 are central to the operation of the Order. The Honourable Court is referred to these provisions in full:
- xiv). The structure of the Order is as follows.
 - a) Paragraphs 3 expressly provides that each Respondent is entitled to sell any of the properties identified in Schedules A – D upon the condition that 21 days prior written notice is given to SIBL's counsel in accordance with paragraph 3.
 - b) Paragraph 4 provides that proceeds of the sale are to be paid in the Designated Account.
 - c) Paragraph 5 provides that payments out can be made to pay bona fide third party debts.
 - d) Paragraph 7 provides that SIBL consents it will remove any restrictions and give confirmation that it does not pursue as against a purchaser of such lands any claims over such lands.
 - e) Paragraph 9 expressly provides that SIBL is not to interfere with the sale of such lands notified to it except by application to court.
 - f) The language of the Order in the relevant paragraphs is clear and unambiguous. The language used is "WILL" this is mandatory unlike

“may”. In furtherance of this and SDC general right of ownership of its lands as set out in the Registered Lands Act, SIBL is limited to questioning sales before the High Court.

- g) The Order therefore makes it clear beyond any reasonable doubt that SDC is entitled to sell the Properties on the condition that 21 days' notice is given of the term of that sale – paragraph 3.
- h) It is also clear beyond any doubt that once 21 days has expired not only is SDC free to proceed to complete the sale but that SIBL is obliged not to interfere with it and must provide the documentation referred to in the Order – paragraphs 3,7 and 9.
- i) SIBL is given a 21 day window to object and the only way it is entitled to object is by application to court – paragraphs 3 and 9.
- j) There is no other restriction imposed on SDC by this paragraph or any other in this Order that prevents SDC from making a disposition.
- k) This Order must be read in its entirety and placed in appropriate context. The Order makes clear that it confers a right to sell properties and does not seek to interfere with ordinary business affairs of SDC or its ownership of its' properties. Instead it provides a limited and time restrained mechanism for SIBL to monitor and safeguard against SDC dissipating its assets rendering any possible judgment it [SIBL] may obtain in the substantive matter nugatory.
- l) If SIBL acts outside those limited provisions it is a contempt of court and an unlawful interference with the ownership rights of the SDC with respect to its properties.
- m) On the clear terms of the Order dated – SIBL is in breach of its obligations. SIBL is interfering with these sales and refusing to comply with the obligations on paragraph 7 of the Order.
- n) Once 21 days' notice expired (i.e. latest 14th February) not only is SDC entirely free to sell the properties BUT in addition SIBL is obliged not to interfere with such a sale and must provide the documentation and meet its obligations in paragraph 7.

- o) SIBL contend that there is nothing in paragraph 9 which obliges them to take out an application to court within 21 days. This is entirely to misread the Order. It is looking at the Order exactly the wrong way round.
- p) There is nothing in the Order which imposes any restraint on SDC in selling a property provided 21 days' notice is given. The only way SIBL is entitled to interfere and not co-operate in the sale is by way of application to the court and that must be within 21 days otherwise it is an interference in the right conferred expressly by paragraph 3 of the Order on SDC to sell its properties provided 21 days' notice is given.

The Rival Submissions of SIBL with respect to the above Interpretation Issue are as follows:-

[18] Counsel for SIBL submit that "The Joint Liquidators' position is that the terms of the Consent Order do not require them to notify any objections within 21 days. Paragraph 3 of the Consent Order only requires that SDC give 21 days' notice of any proposed sale. It does not require that any objection by the Joint Liquidators be notified during the same period. Nor does paragraph 9 specify any time frame within which any application is to be made to the Court. These provisions can be contrasted with those in paragraph 12 which prescribe specific time frames for notifying objections and making any applications, but only in relation to the properties specifically identified in that paragraph.

[19] Counsel further submit that the Consent Order does not specify any consequences in the event that the Joint Liquidators fail to communicate objections within 21 days (or any other period of time for that matter). There is therefore no need for the Joint Liquidators to seek relief from sanctions as suggested in SDC's Counsel's letter dated 27 February 2012, as no rule or order has been breached.

FINDINGS AND ANALYSIS

[20] Based on Paragraph 3 of the Order of 30th August 2011 (the Consent Order), SDC is entitled to sell any of the Properties which appear in schedules A – D upon condition that SDC provide 21 days' prior written notice to Counsel for SIBL of the terms of any such sale. It is undisputed that SDC has complied with the requirements as stipulated in Paragraph 3. SDC's letter specified the

identity of the intended purchaser, the price to be paid on such sale and full particulars of the parcel of land intended to be sold. Counsel for SDC submits that "it is also clear beyond any doubt that once 21 days has expired not only is SDC free to proceed to complete the sale but that SIBL is obliged not to interfere with it and must provide the documentation referred to in the Order – paragraphs 3,7 & 9." I must respectfully disagree with Learned Counsel's submission. Once the 21 day period has expired, SDC is not automatically free to proceed to complete the sale. If that were so, SDC, having given notice to SIBL, paragraph 7 of the Consent Order would be otiose. There would be no requirement for SIBL to provide SDC with a letter confirming its consent to the removal of any restriction placed in the Land Registry, or give confirmation to SDC that it does not pursue as against a purchaser of such lands any claims over the lands.

- [21] Based on the above provisions, therefore, SDC's written notification to SIBL cannot be construed as giving carte blanche to SDC to proceed with a proposed sale. SDC's obligations to an intending purchaser would have to include ensuring that the property being sold is free and clear of all encumbrances before completing the sale and not after.
- [22] Counsel for SDC also submits that "SIBL is given a 21 day window to object and the only way it is entitled to object is by application to Court – paragraphs 3 & 9." Again, the Court finds that it cannot endorse this submission. Nowhere in the Consent Order does it say that SIBL "is given a 21 day window to object." Paragraph 7 stipulates no time limit. By paragraph 9, SIBL "undertakes not to interfere with sales notified to it pursuant to this Order (the Consent Order) or the ordinary operations of the Third to Sixth Respondents (which includes SDC) businesses save by application to the Court. Again, no time limit is specified for the Claimant to make application to the Court.
- [23] The Consent Order does not specify what would constitute "interference" with the sales. The Court is of the view that the application of common sense and practical reality must be applied. Black's Law Dictionary defines interference as (i) The act of meddling in another's affairs, (ii) an obstruction or hindrance. Paragraph 9 of the Consent Order allows SIBL to "interfere" only by application to the Court. It could not be outside the contemplation of the parties that SIBL would want to ensure that the properties were being sold at a fair market price and not at an undervalue. The Joint Liquidators would be failing in their fiduciary duty if they did not ensure that this was so.

- [24] While it is true that SIBL is not hampered by a time limitation to respond to the notification and no time limit is imposed under paragraph 9 of the Consent Order for SIBL to make application to the Court, the Court is of the view that commercial common sense and the reasonable expectation of the parties would favour a conclusion that SIBL would respond within a reasonable period and also make application to the Court within a reasonable period. It could not have been the intention of the parties that SIBL would be entitled to sit back and not proceed in a timely manner.
- [25] What is a reasonable period of time depends on the circumstances of each particular case.
- [26] As stated above, on 19th January 2012, SDC gave notice to SIBL of its intention to sell the proposed properties and to lease the proposed letting. SIBL accepts receiving the letter on 23rd January, 2012. By letter dated 16th February 2012 addressed to Counsel for SDC, Counsel for SIBL advised that the Joint Liquidators had obtained the necessary valuations from Mr. Wayne Martin "to enable them to consider your client's request for their consent." Counsel further requested further information from SDC. By letter dated 22nd February, 2012, Counsel for SDC advised Counsel for SIBL that they comply with paragraph 7 of the Consent Order within 48 hours failing which they would apply to the Court to compel SIBL to do so.
- [27] By application filed on the 2nd March 2012, SIBL applied to the Court seeking "directions" for the sale of the properties. The Court is of the view that, in the circumstances, SIBL filed its application within a reasonable time frame.
- [28] The Court notes that SDC's application to the Court for directions was filed on the 16th March 2012, after SIBL's application. Significantly, SDC's application for directions was made after it had not only "entered into negotiations" for the sale of the Land, but had "settled agreements" for the dispositions by sale of the said land. SDC is asking for directions ex post facto. The Court is of the view that what SDC is contending is an application for directions is in reality an attempt by SDC to get the Court to ratify its action in entering into transactions with Third Parties.

[29] Based on the above, the Court is of the view that SIBL is not in breach of the Consent Order as contended by Counsel for SDC. In particular, that SIBL is not in breach of the provisions of paragraph 7 or paragraph 9 of the said Consent Order and is in no way in breach of its obligations under paragraph 7 of the said Order. The Court therefore does not accept the interpretation of Counsel for SDC, namely that SIBL was obliged to make an application to the Court within 21 days, and/or that SDC was entirely free to sell the properties once 21 days' notice had expired (i.e. latest 14th February).

The Estoppel Issue

[30] As stated by Counsel for SIBL "SDC argue that the Joint Liquidators are estopped from objecting to the Proposed Transactions on the basis that "they remained wholly silent [following receipt of SDC's Counsel's letter dated 19th January 2012] and thereby fully conveyed their consent."

[31] It is the submission of Counsel for SIBL, that "the Joint Liquidators did not unequivocally represent by their conduct that they had no objections to the Proposed Transactions. Alternatively, if they did make such a representation (which is denied), any steps taken by SDC in reliance upon the representation were unreasonable in circumstances where the Joint Liquidators would first need to comply with paragraph 7 of the Consent Order before the Proposed transactions could complete. There is, in any event, insufficient evidence of any detriment having been suffered by SDC." Counsel relies on the authority of **Steria Ltd v Hutchison**¹ in which the elements of an estoppel by representation were summarized by Neuberger LJ.

[32] Counsel for SDC submits as follows:-

- a) SIBL further in its submissions seeks to refer to and rely upon a series of cases concerning estoppels. None of them concern applications made to the court with regard to freezing injunctions and have no relevance whatever to the present case and the construction of the Order dated 30th August 2011 where a positive obligation is imposed not to interfere with the right of sale – (i) *Steria v Ronald Hutchison* - whether the doctrine of estoppel applies to an occupational pension scheme; (ii) *Leonidas D* – whether a claim

¹ [2006] EWCA Civ 1551

in arbitration was implicitly abandoned when no steps were taken to pursue it. No obligation then (the Arbitration Act now amended) to pursue a claim. Held; no estoppel or abandonment. (iii) Greenwood v Martins Bank – action by husband against bank for recovery of monies debited against his account on a forged cheque; (iv) Gillett v Holt – estoppel applied in favour of plaintiff who had been repeatedly assured of an inheritance. It is manifestly apparent that these cases have no bearing whatever on the correct approach to the present applications

- b) In fact these applications do not really concern principles of estoppel. SDC is the owner of property. It is entitled to sell its property and SIBL has only a limited ability to object and otherwise it MUST not interfere and MUST remove cautions.
- c) The Order dated 30th August, 2011 would be completely unworkable if after the expiry of the time period SIBL could refuse to remove restrictions and interfere with the sale and then move the court many days after the expiry of 21 days and suggest that SDC has suffered no prejudice. This is not the point. SDC is entitled to sell its own land and SIBL has promised not to interfere. Its interference out of time is a breach of Court Order.
- d) Nevertheless, the delay in the sale of the land does cause prejudice. It deprives SDC of the proceeds of sale and places SDC in breach of contract.
- e) SDC is entitled to receive approximately EC \$ 800,000 from these properties. The interference of SIBL has delayed the receipt of the proceeds by approximately 3 months. Assuming that the value of money is approximately equivalent to the usual borrowing rate of SDC and that such rate is not less than 5%. The delay of three months causes a loss in the region of EC \$ 20,000.
- f) Moreover, the delay causes prejudice to SDC in that it places SDC in breach of its contractual obligation to complete the sale in accordance with its terms by 30th April 2012.
- g) It is not in dispute that the required notice as provided for under paragraph 3 of the Order was given. There is no dispute that this Notice was in full compliance with the Order. 21

days has expired since the delivery of the Notice. SIBL is refusing to carry out its obligations under paragraph 7 of the Order.

[33] The Court has already found that SIBL did not breach its obligations under the Consent Order. The Court therefore finds that it is not necessary to adjudicate on the above estoppel issue. However, In the interest of completeness, the Court further states that SDC is not entitled to an order of inquiry as against SIBL to ascertain its loss as a result of the delay to the completion.

[34] Counsel for SDC contends that SDC "negotiated and settled agreements for the dispositions by sale on or about the 20th February, 2012." The Court is of the view that it was incumbent upon SDC to await confirmation from SIBL before proceeding to complete any sale with an intending Purchaser. Any alleged loss or breach by SDC cannot therefore be laid at the feet of SIBL.

[35] Counsel for SIBL makes the following further submissions with respect to SDC's application filed on the 16th March 2012 and which is supported by the fifth affidavit of Andrea Stoelker:-

- i. The Joint Liquidators have been provided with less than 7 clear days notice of the application as required by 11.11(1)(b) of the Civil Procedure Rules. Given the serious nature of the application and the allegations made the Joint Liquidators submit that the application should be adjourned to allow sufficient time for the Joint Liquidators to respond properly to the application.
- ii. The Joint Liquidators submit that they are not in breach of the Consent Order.
- iii. The Third Defendant has surrendered possession of the printing premises despite the objections of the Joint Liquidators.
- iv. The reasons provided at paragraph 15 and 16 of the Fifth Affidavit Andrea Stoelker are not sufficiently good reasons to warrant the properties being sold at less than their fire sale value. At paragraph 15, Ms. Stoelker makes the point that one of the properties is of the same design as a property the subject of the previous application which was sold at \$50,000 less than the current property. However the Joint Liquidators respectfully submit that at the time they stated that they would consent to that application in those specific

circumstances. With respect the Joint Liquidators cannot continue to permit properties to be sold for less than fire sale value when no good reason has been provided.

- v. The Joint Liquidators reject the assertion made by Ms. Stoelker that the Joint Liquidators are in contempt of the freezing Order.
- vi. The Joint Liquidators submit that it is in fact Ms. Stoelker and Ms. Street together with the Fourth Respondent who are in contempt of Court and in breach of the Freezing Order (see paragraphs 6-13 of the Fifth Affidavit of Mark McDonald). This is particularly the case where both Ms. Stoelker and Ms. Street have sworn on oath that none of the Respondents have their own bank accounts and that all rents due to each of the Respondents are paid into the Designated Account (see paragraphs 12, 13, 35 and 39(c) of the First Affidavit of Andrea Stoelker sworn to on 24th August 2011 and paragraph 14 of the First Affidavit of Barbara Street sworn to on 24th August 2011.

[36] Counsel for SDC makes the following further submissions with respect to the application of SIBL filed on the 2nd March 2012, and in particular, with respect to the Fifth Affidavit of Mark McDonald:-

- (a) "In this affidavit Mr. Mc. Donald for SIBL appears to raise a series of complaints with regard to the conduct of Ms. Stoelker, the Second Respondent. These allegations are denied but they are simply and obviously an irrelevance. There is no freezing injunction against the Second Respondent. The complaints with regard to Maiden Island are simply mistaken and wrong but again have nothing to do with the present application which concerns the sale of property in the name of SDC the Third Respondent.
- (b) The Fifth Affidavit of Mr. Mc Donald is a desperate act of irrelevance.
- (c) SIBL also complains that the Properties could be sold for more money. This is denied, wholly unsubstantiated and any event irrelevant.
- (d) SIBL has undertaken not to interfere with the sales except in a limited manner and time frame.
- (e) SIBL brings no evidence on any other purchaser offering more money for these properties.
- (f) These properties have already been sold and SDC is legally obliged to complete the sales at this price. SIBL acts as if it is entitled to start all over again as the legal owner of the properties. It is not entitled so to act.
- (g) There is no evidence whatever of collusion or sale at an under-price.

- (h) In fact SDC is selling these properties at arm's length to third parties at the same price bracket as two previous properties at Cedar Valley were sold to which SIBL made no objection and consented. This is most telling."

[37] With respect to the previous sales of properties by SDC, Counsel for SDC submits that it is selling the proposed properties at the same price bracket as two previous properties at Cedar Valley (the same area as the proposed properties) and that SIBL made no objection and consented to these sales. It would appear to be SDC's contention that since SIBL did not object to the previous sales, that it is now "interfering" with the sale of the proposed properties. The facts relative to the sale of the two previous properties are contained in the Fourth Affidavit of Mark McDonald filed on the 2nd March 2012. In paragraphs 6 and 7 of the said Affidavit, Mr. McDonald deposed as follows:-

"Paragraph 6 - On 1 September 2011, in compliance with paragraph 12 of the Consent Order, the Third Respondent, Stanford Development Company Limited ("SDC") provided the Government Property Valuations. After having the properties in question independently valued, the Joint Liquidators formed the view that they were being sold at an aggregate undervalue of at least EC \$230,000.00.

Paragraph 7 - However, given that the agreements for the proposed sales pre-dated the Consent Order, the disproportionate costs of litigating their objection to the proposed sales, and mindful of their duty to act in the best interests of the Estate, the Joint Liquidators made a commercial decision not to object to the proposed sales. Nevertheless, given that they maintained that the properties were being sold at an undervalue, they sought the Court's sanction to allowing those sales to proceed. The Court's sanction was ultimately embodied in a further Consent Order dated 27th September 2011 ("the Second Consent Order")."

[38] The Court is of the view that the particular circumstances of the previous sales in no way preclude SIBL from making the present application. Based on the findings of the Court as stated above, the Court is of the view that the application of SIBL filed on the 2nd March 2012 should be granted. The Court does not endorse the submission of Mr. Marshall that the said application is an effort by SIBL "both to challenge and delay the sale of these two properties". In the view of the Court, SIBL's application is properly brought under the provisions of paragraph 9 of the Consent Order which authorizes SIBL so to do.

My Order is as follows:-

[39] IT IS HEREBY ORDERED:-

- i. SDC's application filed on the 16th March 2012 is hereby dismissed.
- ii. SIBL'S application is granted in the terms set out in the application, namely that :-

- (a) The Third Defendant shall within 7 days provide to the Claimant any further evidence that it relies upon as demonstrating that the proposed sales terms of the properties described in the letter dated 19th January 2012 (the "Proposed Sales") are reasonable. The Claimant shall indicate in writing to the Third Defendant within 7 days of receipt of any further evidence whether it continues to object to the Proposed Sales or any of them. The Claimant shall have a further 7 days to apply to the Court should it still consider that the Proposed Sales or any of them are intended to be made at an undervalue.
- (b) The Third Defendant shall within 7 days allow the Claimant and its valuer to inspect the property described as Registration Section Barnes Hill & Coolidge, Block 41 2294 A, Parcel 96, being the building known as the Antigua Sun Offices and Printery and adjoining area. The Claimant shall within 7 days of the said inspection taking place indicate in writing to the Third Defendant whether it objects to the Proposed Letting of the property (the "Proposed Letting.") The Claimant shall have a further 7 days to apply to the Court should it consider that the Proposed Letting is being made on uncommercial terms.
- (c) In the event that the Claimant does not continue to object to the Proposed Sales and/or does not object to the Proposed Letting, the provisions of paragraph 7 of the Order dated 30th August 2011 shall apply.
- (d) The Third Defendant is restrained from selling, disposing, leasing, parting with possession or otherwise dealing with any interest or right in or over the properties described in the letter dated 19th January 2012 and proposed lease terms until:

- (i) Such time as the Claimant has indicated in writing that it no longer objects to the Proposed Sales and/or the Proposed Letting pursuant to the terms of this Order; or
 - (ii) Further order of the Court.
- (e) There be liberty to apply.
- (f) The Third Defendant pay the Claimant's costs in the sum of \$2,500.00


JENNIFER A. REMY
High Court Judge