

**THE REPUBLIC OF TRINIDAD & TOBAGO  
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. CV2018-00852**

**IN THE MATTER OF THE PROPERTIES COMPRISED IN THE DEED OF  
MORTGAGE DATED 4<sup>TH</sup> APRIL 2014 AND REGISTERED AS DEED NO.  
DE201401754286D001 MADE BETWEEN MICH TECH COMPANY LIMITED OF  
THE FIRST PART, CHAI-CHEN CHANG OF THE SECOND PART AND FIRST  
LINE SECURITIES LIMITED OF THE THIRD PART**

**AND  
IN THE MATTER OF THE CONVEYANCING AND LAW OF PROPERTY ACT  
CHAP. 56:01**

**BETWEEN**

**BANKERS INSURANCE COMPANY OF TRINIDAD AND TOBAGO LIMITED  
CLAIMANT**

**AND**

**CHIA-CHEN CHANG  
(ALSO CALLED CHUN LUNG CHANG, AND  
THROUGH HIS LAWFUL ATTORNEY, MITRA CHANDOO)  
FIRST DEFENDANT**

**AND**

**FIRSTLINE SECURITIES LIMITED  
SECOND DEFENDANT**

**Before the Honourable Mr. Justice Frank Seepersad**

Date: 21 July, 2021.

Appearances:

1. Mr Kirk Bengochea and Ms Jewel-Ann Troja, Attorneys-at-law for the Claimant.
2. Mr Jeevan Rampersad, Attorney-at-law for the First Defendant.
3. Mr Mervyn Campbell and Mr Marc Campbell, Attorneys-at-law for the Second Defendant.

**DECISION**

1. Before the Court for its determination is the Claimant's Notice of Application dated 12 November 2020 by virtue of which the following orders are sought:
  - i. Pursuant to Part 15.2(a) of the Civil Proceedings Rules 1998 (as amended) for summary judgment against the First Defendant on the basis that the First Defendant has not brought forward the required primary evidence to support his defences; and/or
  - ii. For an order that the expert witness statement and report of Glen Parmassar be struck out pursuant to Part 29.1 and 29.5(2) of the CPR on the basis that it lacks evidential foundation and is more prejudicial than probative.
  
2. The grounds upon which the application are based are as follows:
  - i. The Claimant is a limited liability company, specializing in the business of insurance. The First Defendant, a foreign national residing in this Republic, was the owner of the property situate at No. 56 Gooding Village, San Fernando, Trinidad ("the subject premises").
  - ii. By Claim Form and Statement of Case dated 13 March 2018 the Claimant sought an order for, *inter alia*, specific performance of an agreement for sale dated 30 December 2016 ("the Agreement") which was made between the First Defendant and the Claimant.
  - iii. The First Defendant filed its defence on 13 July 2018 wherein he alleged he was a victim of fraud, forgery and/or deception. The Claimant's claim was denied on the basis that the signature on the Agreement did not belong to him nor was it executed by himself and that the Agreement was falsely concocted.
  - iv. On two occasions, i.e. 30 October 2019 and 8 November 2019, the Claimant sought an extension of time (by consent) for parties to file and exchange witness statements.
  - v. The First Defendant sought permission and filed a witness statement on behalf of Mr Glen Parmassar on 11 November 2019.
  - vi. By order dated 6 January 2020 the First Defendant was granted further permission to file and serve witness statements however no other witness statement was filed.

- vii. As at the date of filing of the instant application, neither the First Defendant nor his appointed attorney filed witness statement nor have they attended any hearings.
- viii. The First Defendant has failed to sufficiently plead the particulars of fraud, forgery or deception.
- ix. Apart from the witness statement of Mr Glen Parmassar which alone cannot be determinable in these circumstances, the First Defendant has failed to file a witness statement in this matter.
- x. Due to the limited evidence before the Court the First Defendant is unable to prove the defence raised in his pleadings and the First Defendant's defence has no realistic prospect of success.

**Claimant's facts:**

- 3. The Claimant is a limited liability company engaged in the business of insurance and the First Defendant is a foreign national and owner of the subject premises.
- 4. On 4 April 2014 a power of attorney was executed by the First Defendant appointing Mr Mitra Chandoo as his lawful attorney. The power of attorney conferred upon Mr Chandoo the authority to, *inter alia*, sell, surrender, give up or assign the subject premises and do such things as shall be requisite or may be deemed necessary or proper for the sale of the subject premises.
- 5. On the same date via a Deed of Mortgage between Mitch Tech Company Ltd of the first part, the First Defendant of the second part and the Second Defendant of the third part, the subject premises was mortgaged to the Second Defendant for \$5,600,000.00.
- 6. The Court in CV2016-03596 Firstline Securities Limited v Mitch Tech Company Limited, ordered on 11 January 2017, *inter alia*, that Mitch Tech Company Limited and the First Defendant had to pay to the Second Defendant the sum of \$4,800,000.00 on or before 31 March 2017.
- 7. By agreement for sale on 30 September 2016 between the First Defendant of one part and the Claimant of the other part, the First Defendant agreed to sell to the Claimant

the subject premises for \$7,000,000.00. Some of the express terms of the agreement included, *inter alia*, 1) that the Claimant would pay to Mr Chandoo on or before 31 March 2017 at which time the First Defendant would execute and deliver a proper deed of conveyance as well as a refund, to the purchaser, of the deposit in the event there is a defect in title.

8. On 3 May 2017 the Claimant requested documentation relevant to the sale of the subject premises from the First Defendant's lawful attorney and was only furnished with same on 5 October 2017.
9. Between 27 July 2016 and 9 August 2017 the sum of \$575,000.00 was paid to the First Defendant's lawful attorney and the First Defendant acknowledged part of the payment from the Claimant in the sum of \$205,000.00.
10. On 3 October 2017, the Claimant wrote to the First Defendant and enclosed a draft of the deed of conveyance and proposed a closing date of 5 October 2017. On 15 December 2017 the Claimant's attorney wrote to the First Defendant and indicated that it was ready, willing and able to complete the transaction on or before 28 December 2017. The First Defendant did not respond to this letter, breached the agreement for sale and failed to complete the conveyance of the subject premises.

**First Defendant's facts:**

11. The First Defendant denied that he executed an agreement for sale dated 30 December 2016 and denied that the signature on the agreement is his genuine signature. In addition, the First Defendant denies knowledge of the payments made in the sum of \$575,000.00 with reference to any sale of the property.
12. He pleaded that he gave a general power of attorney to Mr Chandoo but denied giving Mr. Chandoo any written permission or authority to receive monies on his behalf in relation to any agreement for sale with the Claimant.
13. The First Defendant also denied that he owes a balance of \$898,853.00 under the agreement for sale.

14. By way of counterclaim the First Defendant claimed against the Claimant, *inter alia*, a declaration that the agreement for sale dated 30 September 2016 was not executed by him and that same is null, void and of no effect.

**Law:**

15. The law in relation to summary judgment is settled in this jurisdiction. The principles to be applied in an application for summary judgment were summarised by Lewison J in **Nigeria v Santolina Investment [2007] EWHC 437 (Ch)** as follows:

- i. The court must consider whether the Defendant has a “realistic” as opposed to a “fanciful” prospect of success.
- ii. A “realistic” defence is one that carries some degree of conviction. This means a defence that is more than merely arguable.
- iii. In reaching its conclusion the court must not conduct a “mini-trial”.
- iv. This does not mean that the court must take a face value and without analysis everything that a Defendant says. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
- v. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.
- vi. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without a fuller investigation into the facts at trial than is possible or permissible on an application for summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

16. In its determination as to whether the defence has a real prospect of success the Court also considered the established guidance articulated in **Swain .v. Hillman [2001] 1 All**

**E.R. 91 and Three Rivers District Council v. Governor and Company and Bank of England No. 3 [2001] UKHL, 16.**

**Resolution of the Application:**

17. In determining whether the Court ought to grant the application for summary judgment it has to consider the issue as to whether the First Defendant has a realistic prospect of success given the fact that he did not adduce any primary evidence, to this Court, in support of his version of the pleaded material events or to counteract the Claimant's version of events save for the Parmassar witness statement.
18. The First Defendant relies on his defence and counterclaim upon an assertion that the signature on the agreement for sale of the subject premises is a forgery.
19. Casting allegations of fraud or forgery must be specifically pleaded and proved by the one who alleges. Narine J (as he then was) underscored this and referred to several English cases in his judgment in **Singh v Singh and Tai Chew HCA No. 530 of 1991.** The Judge at page 24, said as follows:

““The burden of proving fraud lies on the person who alleges it. It must be distinctly alleged and distinctly proved. The standard of proof is on a balance of probabilities. However, the standard is flexible, and requires a degree of probability commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities.”

20. In **CV2012-00120 Winston Woods v Lionel Woods** and another the Court at paragraph 6 stated:

“6... However, forgery is a serious allegation and in considering whether or not the burden of proof has been discharged, it is necessary and important not to

rely solely on the demeanour of the witnesses at the trial but also to compare their viva voce evidence with (a) contemporary documents, if available; (b) the pleaded cases; and (c) to weigh up the inherent probability or improbability of something as serious as forgery having been procured...

7. I have also borne in mind that the evidence of the expert witness, Ms. Koppenhaver, is not determinative of the issue in this matter. Her evidence is an expression of her opinion based on her comparison of the questioned signature on the deed with many sample signatures supplied to her by the parties. The Court is required to consider the grounds on which her opinion is based as well as such other evidence as may have any bearing on the issue and come to its own conclusion, based on its own careful visual examination of the questioned signature, as to whether the Claimant has proved that the questioned signature was forged.”

21. The First Defendant failed to adduce on his own behalf any direct evidence, either in the form of a witness statement or witness summary. The Court however has the witness statement of Mr Glen Parmassar, the handwriting expert who opined that the signatures on the agreement and the letter were not signed by the First Defendant.

22. Based on the factual matrix of this case, Mr Chandoo, who was lawfully appointed attorney for the First Defendant, had the authority to, *inter alia*, act on the First Defendant’s behalf regarding the sale of the subject premises. He would have been an ideal person to give evidence on the First Defendant’s behalf in this case. **In CV2019-00068 Sheridan Abraham and another v Kenrick Burke and others** this Court at paragraph 41 stated:

“41. ... although there were many available avenues which could have been explored so as to demonstrate on a balance of probabilities that the first deed was fraudulently executed those avenues were not explored. Consequently, the Claimants did not put before the Court the required evidence so as to discharge the requisite burden of proof for the Court to conclude on a balance of probabilities that the deed of conveyance dated 15 May 2013 was fraudulently executed...”

23. The First Defendant, having pleaded fraud, was expected to adduce all possible evidence so as to prove the pleaded allegations. The Court considered the dicta of Rajnauth-Lee J (as she then was) in **HCA 2387 of 2000 Ian Sieunarine and Doc's Engineering Works (1992) Limited** wherein it was stated, *inter alia*, that a court may be entitled to draw adverse inferences from the absence of a witness who might be expected to have material evidence to give on an issue in an action.
24. Mr. Parmassar's evidence stands in isolation and is unsupported by any evidence adduced by the First Defendant so as to dispute the authenticity of the disputed signature. Pleadings are not evidence and the Court has no evidence emanating from the First Defendant in support of the pleaded allegations. In the circumstances there are no adduced material facts as to the assertions of fraud and or forgery which require any fuller investigation at trial. Consequently the Court cannot accept Mr Parmassar's evidence as it stands in isolation and is unconnected to any other evidence before the Court. Accordingly that evidence standing alone, is insufficient to satisfy the burden of proof placed upon the First Defendant. In *Woods v Woods* (supra) the Court considered the evidence of an expert witness but also other evidence which had any bearing on the issues of the case and arrived at its conclusion. In the circumstances of this case, it would be improper, of the Court, to accept the sole evidence adduced by Mr Parmassar in the absence of any other direct supporting evidence advanced by the First Defendant.
25. The First Defendant also submitted that the Claimant failed to file a hearsay notice with regard to the agreement for sale document. The Claimant, is a limited liability company and it is capable of entering into agreements in its own name and it can act through its officers. Agreements are executed by its officers on its behalf but do not bind the officers personally, when they are so executed. Although the Agreement for sale was executed by Mr Vance Gabriel it was not his document. The Claimant company bound itself to the agreement acting through him. In **CV2011-03476 United Engineering Services Limited v Hafeez Karamath Limited** Boodoosingh J (as he then was) at paragraphs 3 to 7 stated:

“3. Companies act through directors, officers and employees. It is clear that Mr Maharaj is being called as the company's representative in this claim.



4. Mr Maharaj, as the company's representative, can give evidence of matters within his personal knowledge or based on statements within the records of the company. Some of the statements made in his witness statement can be from his own knowledge from the time he was employed while other evidence can be from the records. He is not required to have been an employee at the material time.

5. This witness can also give a supplemental witness statement or amplify his oral evidence in chief to indicate how he comes to give the evidence. He can be cross-examined on how he has come to know of the evidence. The court cannot presume he cannot give the evidence because he does not say if it is from his personal knowledge or if it is obtained from an examination of the records of the company or both. Of course, it would be better to ensure clarity that witnesses specify these matters in their witness statements. This will place the evidence in its proper context without the court having to wait on cross examination to discover the true source of the evidence and to be able to ascribe the requisite weight to it.

6. Further, since a company acts through its directors, officers and employees the evidence of the company's representative must necessarily to an extent be considered in different terms from an ordinary witness who gives evidence of things seen, heard or done.

7. The evidence he has given in his witness statement is therefore admissible. It is ultimately a matter for the court if it will accept the evidence being given or what weight it will attach to the statements considering any cross-examination which is made."

26. Given the attendant circumstances, this Court holds the view that the current Managing Director, Mr Richard Gittens, is in a position to adduce the challenged evidence on the Claimant's behalf without the need for a hearsay notice.

27. For the reasons outlined and in the absence of any material and direct evidence adduced by the First Defendant, the Court also holds the view that there is no reasonable prospect for the defence filed herein to succeed and the Court makes the following orders:

- i. The Claimant is granted against the First Defendant, specific performance of the Agreement for Sale dated 30th of December 2016 (“the Agreement for Sale”), between the Chai-Chen Chang of the One Part, and Bankers Insurance Company of Trinidad and Tobago of the Second Part for the sale of the premises comprising All and Singular that parcel of land known as No. 56 Gooding Village, in the City of Port of San Fernando in the Island of Trinidad and bound on the North by Lot known and assessed as No. 54 belonging to A. Scanterbuty and others on the South by Lot No. 58 belonging to Theodosia Moore on the East by lands formerly of Usine Ste Madeleine Sugar Company Limited and on the West by Southern Main Road or howsoever otherwise the same may be known abutted bounded or described together with the building thereon and all appurtenances thereto belonging thereon and all appurtenances thereto belonging being the same property described in the schedules to Deeds registered as No. 16953 of 1984 and No. 3506 and 1985;
- ii. The First Defendant or his lawfully appointed Attorney Mitra Chandoo do execute the subject conveyance within forty (40) days from the date of this order and convey the Subject Premises as per the Agreement for Sale;
- iii. The Second Defendant do execute and have registered with Registrar General’s Department a Deed of Release by which it releases its mortgage over the Subject Premises within forty (40) days from the date of this order;
- iv. The costs occasioned by the preparation, execution and registration of the Deed of Release be verified in an affidavit sworn to by the Second Defendant’s representative and filed with the Court;
- v. In the event the First Defendant or his lawfully appointed Attorney fails to execute the said conveyance within forty (40) days from the date of this order, the Registrar of the Supreme Court be empowered to and do effect the said conveyance on behalf of the First Defendant to the Claimant;
- vi. The Claimant to pay the Second Defendant the sum of Fifty-Five Thousand, Eight Hundred Dollars (\$55,800.00) representing the costs of this litigation and

a further sum representing the costs occasioned by the preparation, execution and registration of the Deed of Release as verified by affidavit, which sums are to be deducted from the balance of the purchase price which comprises Eight Hundred and Ninety Eight Thousand, Eight Hundred and Fifty Three Dollars (\$898,853.00) as per the Agreement for Sale;

- vii. There be a stay of execution of forty (40) days for the payment of the sums described in paragraph 6 hereof from the Claimant to the Second Defendant;
- viii. The Claimant to subtract the prescribed costs of this litigation in the sum of Two Hundred and Five Thousand, Eleven Dollars and Forty-Seven cents (\$205,011.47) from the balance of the purchase price to be paid by the Claimant to the First Defendant;
- ix. The remainder of the purchase price as per the Agreement for Sale to be paid by the Claimant to the First Defendant or his nominee upon execution of the subject conveyance subject to clauses 6 and 8 hereof;
- x. Liberty to Apply.

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**FRANK SEEPERSAD**

**JUDGE**