

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2015-03212

BETWEEN

BINDRA MAHARAJ

(Administrator Ad Litem of the Estate of Mahindra Maharaj)

CLAIMANT

AND

RONALD AQUI

FIRST DEFENDANT

RICHARD CORNWALL

SECOND DEFENDANT

MEDIA EXTRA LIMITED

THIRD DEFENDANT

BRIAN ASTOR

(Trading as NETLINK COMPUTER SERVICES)

FOURTH DEFENDANT

Appearances: Ms. Reah Sookhai instructed by Ms. Reza Ramjohn for
the Claimant
Mr. Anthony V. Manwah for the First, Second and Third
Defendants
Mr. Nigel Trancoso for the Fourth Defendant

Date of Delivery: 8th July 2019

JUDGMENT

The Claimant's Case

1. The instant proceedings were commenced by Bindra Maharaj on behalf of the estate of his son Mahindra Maharaj (hereinafter referred to as "the deceased"). The claimant was appointed Administrator ad Litem by virtue of an order of the Honourable Mr. Justice Rajkumar (as he then was) dated the 29th September 2015 for the purpose of commencing this action.
2. The circumstances of the claim surround monies alleged to be due and owing related to an advertising signboard located at the Eastern Main Road ("the signboard"). It is the claimant's case that the signboard forms part of the estate of the deceased. The claimant purports that the deceased obtained a loan from Republic Bank in September 2007 to purchase electronic signboards, inclusive of the one in dispute.
3. On the 1st June 2010 a written agreement for lease and demise of the signboard was executed between the deceased and the first defendant for a period of two years from the 1st July 2010 to the 30th June 2012 ("the 2010 agreement"). It was agreed that rent for the signboard would be payable by the first defendant to the deceased in the amount of \$20,000.00 per month. Rent was due on the first day of each month, in default of which, a late fee amounting to \$4,000.00 representing 20% of the monthly rent, would be imposed.
4. The claimant alleged that use of the signboard after the expiration of the two year period would be subject, by implication, to the same terms and conditions as the 2010 agreement.
5. The deceased departed this life on the 19th September 2011. The claimant avers that from October 2011 to the 26th November 2013, the first defendant failed to pay any rent to the estate of the deceased. Accordingly, the rent that fell due on the signboard is owing to the

deceased's estate. The elapsed period, the claimant alleged, of non-payment amounted to 26 months. As a result, the outstanding rental payment of \$520,000.00, along with corresponding late fees of \$104,000.00 is due. Several attempts to retrieve the outstanding payments were made by the claimant's attorney at law with the first defendant's attorney at law via written correspondence. However, these proved futile as no payments were ever received by the estate of the deceased.

6. Apart from the business of signboard rentals, the deceased was a director of Advanced Biometrics Limited - providing services relating to biometrics and related technologies. The claimant avers that at no point in time did the deceased assign his rights, duties and/or obligations of the 2010 agreement to Advanced Biometrics Limited. During the course of the agreement, the first defendant was the person contractually obligated to pay the rent and/or late fees to the deceased. In so doing, the deceased received cheques in the names either of the first defendant, the third defendant, Graphics Extra Limited or Graphics Extra 2006 Limited. The claimant affirms that at no point did the deceased consent, permit and/or authorise the burdens, duties and/or obligations of the 2010 agreement to the third defendant company and/or any other person or company.
7. The first defendant and second defendant are the directors of the third defendant company. The first defendant and second defendant acting as the servants and/or agents of the third defendant, entered into an agreement for sale to transfer ownership of the signboard to the fourth defendant. The agreement for sale to the fourth defendant was executed on the 27th November 2013. The Bill of Sale was signed by the first defendant and the second defendant on behalf of the third defendant; the purported vendor for the sale of the signboard.

8. On the 30th September 2015 when the claim was filed, the sale of the signboard was unknown to the claimant. Such sale was only discovered by the claimant during the course of these proceedings in or around June 2016, whilst obtaining information to file a Reply in this matter. On the 18th January 2016 an application to dismiss the claim was filed by the first defendant. Furthermore, on the 3rd May 2016 the first defendant filed his defence in this matter which was subsequently struck out by the Honourable Mr. Justice Des Vignes. The claimant avers that at no point in time was the sale of the signboard disclosed by the first defendant in either the application or the defence.
9. Subsequently, another defence on behalf of the first defendant, second defendant and third defendant was filed the 11th April 2017. The sale of the signboard by the third defendant to the fourth defendant was pleaded in this defence.
10. It is also the claimant's case that due to the fraudulent acts of the first defendant, second defendant and/or third defendant, the estate of the deceased has suffered economic loss. It was unable to rent the signboard to a third party of its choosing and collect rent for same after the 27th November 2013.

The First, Second and Third Defendants' case

11. The first defendant avers that in or around May 2010, it was his understanding that the deceased had a signboard for sale. As a result, the first defendant agreed to purchase the signboard through the payment of several instalments. In effecting this arrangement, the 2010 agreement was prepared by the deceased's attorney at law. The deceased confirmed that despite the said agreement resembling that of a rental agreement, upon payment of all the instalments, ownership of the signboard would be assigned to the first defendant.

12. It is the first, second and third defendants' case that in or around January 2011 due to the first defendant's difficulty in paying the instalments, the agreement dated the 1st June 2010 was orally terminated. Upon said termination, a new agreement was orally created between Advanced Biometrics Limited (through the deceased) and Media Extra Limited (through the first defendant), ("the oral agreement"). Pursuant to the oral agreement, Advanced Biometrics Limited sold the signboard to Media Extra Limited at a price of \$480,000.00 less what was already paid as rent under the 2010 agreement. The remainder of the sale price was to be paid to Advanced Biometrics Limited in monthly instalments of \$20,000.00. Consequently, on the 27th November 2013, the third defendant caused the signboard to be sold to the fourth defendant.

The Fourth Defendant's Case

13. The fourth defendant purports to be a stranger of the 2010 agreement and is therefore unaware of any lease or demise of the signboard between the deceased and the first defendant.

14. On the 27th November 2013, the fourth defendant confirms that he purchased the signboard from the third defendant in the amount of \$230,000.00. Upon the purchase of the signboard, the fourth defendant enquired from the first defendant and second defendant as agents of the third defendant, whether it had a good and marketable title of the signboard. As a result of their positive assertions as to title, a Bill of Sale was executed by the first defendant and second defendant as agents of the vendor namely, the third defendant company.

15. In consideration for the signboard, the fourth defendant states that he paid the third defendant the sum of \$130,000.00 along with five post-dated cheques. Each cheque was in the amount of \$20,000.00 with post-dated dates commencing from the 27th January 2014 and ending

on the 27th May 2014. The fourth defendant confirms that each cheque was cashed by the third defendant.

16. Accordingly, it is the fourth defendant's case that he is a bona fide purchaser for value without notice as he purchased the signboard from the third defendant in good faith for the sum of \$230,000.00.

Issues

17. The issues for the courts determination are whether:

- i. the claimant has the locus standi to bring this action;
- ii. the first defendant and second defendant as agents for the third defendant company had the authority to pass ownership to the fourth defendant;
- iii. the corporate veil of the third defendant ought to be pierced; and
- iv. the estate of the deceased is entitled to special and general damages as a result of the third defendant's sale.

Summary of Court's Findings

18. The court is satisfied on a balance of probabilities, that there was one agreement that pertained to the signboard. That was the written agreement for the lease and demise of the signboard made between the deceased and the first defendant and executed on the 1st July 2010. The signboard was rented for a monthly rent of \$20,000.00 per month, with the imposition of a penalty in the amount of \$4000.00 for late payment of the monthly rental sum. The terms of that written agreement were subsequently modified, in writing, by consent of the deceased and the first defendant. After the deceased's death in September 2011, the first defendant has not paid any rent for the signboard. The second and third defendants were never parties to any agreement with the deceased for the sale of the signboard. The court is also satisfied that the fourth defendant is a purchaser for value

without notice of the agreement between the deceased and the first defendant.

Law and Analysis

i. The claimant's locus standi to bring this action

19. The first, second and third defendants submitted that the claimant in this matter has no locus standi to bring and prosecute this action. This allegation is based on their evidence that the 2010 agreement between the claimant and the first defendant was terminated and a new oral agreement was created in or around January 2011. The oral agreement was made between Advanced Biometrics Limited of which the deceased was the managing director and Media Extra Limited of which the first and second defendants were directors.
20. This allegation is of fundamental importance. There is no dispute that the agreement dated the 1st June 2010 for the lease and demise of the signboard was made between the deceased and Ronald Aqui. There is also no dispute that this agreement was modified in writing.
21. The question is whether the modified written agreement was replaced by an oral agreement and whether the oral agreement was made between Advanced Biometrics Limited.
22. The court considered the 2010 agreement and the modifications thereto made in writing by the letter dated 11th October 2010. That letter is written on Advanced Biometrics Limited's letterhead and it states, "This agreement has been authorized and the terms have been agreed to by: Mr Ronald Aqui Manager Graphics and Mahindra Maharaj Managing Director Advanced Biometrics Ltd."

23. The terms modifying the 2010 Agreement were explicit and itemized in the October 2010 letter. The modifications were listed:

- a. a reduced rent in the sum of \$12,000.00 per month for four months ending February 2011 and thereafter the original rent of \$20,000.00 will resume;
- b. the difference between the original rent and the reduced rent for the four months totalling \$32,000.00 was to be repaid over four months from March 2011 to June 2011;
- c. the payments were due on the first three days, instead of the first day of every month. The original late fee of 20% will be enforced in the event of late payments; and
- d. the monies due for the months of September 2010 and October 2010 were to be paid before October 2010 in a manner as agreed between the parties.

24. The October letter does not leave any room for implication on what terms of the 2010 Agreement were modified. Nothing in the letter modifies or implies a modification of the parties to the 2010 Agreement. The fact that the letter was placed on the letter head of Advanced Biometrics Limited and signed by the deceased in his position in the company is not sufficient to displace the clear and explicit terms of the modifications agreed between the parties.

25. The court is fortified in its opinion by two factors. Firstly, there is no evidence that the ownership of the signboard, the subject of this claim, changed from Mahindra Maharaj to Advanced Biometrics Limited. Udesh Maharaj, the deceased's brother and a director of Advanced Biometrics Limited gave evidence that the company was not involved in the rental of signboards – they were involved in a different type of business. Udesh Maharaj was however aware that the deceased did rent signboards. Advanced Biometrics Limited could not be party to

the modified 2010 Agreement if they did not own the property that was devised by that agreement. Similarly, Advanced Biometrics Limited also could not and was not a party to any oral agreement for the sale of the signboard to the third defendant.

26. The court is satisfied that the deceased carelessly used the letterhead of Advanced Biometrics Limited while he engaged in his signboard business. The use of Advanced Biometrics Limited's letterhead, without more, is not sufficient to make Advance Biometrics Limited a party to an agreement with the third defendant. The first, second and third defendants have not provided any other evidence to satisfy the court of their assertion of an oral agreement between Advanced Biometrics Limited and the third defendant.

27. Secondly, the parties to the 2010 Agreement were confirmed by correspondence written on behalf of Ronald Aqui to the representative of the Estate of Mahindra Maharaj by letter dated 5th December 2011. The claimant notes that while the letter refers to a "Ravindra Maharaj", he avers that this was the deceased's middle name and he was commonly known by such. In any event, the said letter was addressed to "Mahindra Maharaj"¹ so reference was made to the same person being the deceased. The letter states "Regarding the contract between Ronald Aqui and Ravindra Maharaj...I advise that Mr. Aqui is prepared to engage with the duly appointed executors or administrators of the estate of the said Ravindra Maharaj...".

28. There is also the letter dated 25th January 2012 again on behalf of Mr. Aqui to the estate of Mahindra Maharaj. In that letter the attorney at law writes that he has advised his client Mr. Aqui, that he has the rent payable, ready and available to the "designated Administrator or Executor on presentation of the grant or probate as the case may be".

¹ Witness statement of Bindra Maharaj filed 18 June 2018 at paragraph 17

29. By contrast, the evidence of the oral agreement is contained in the witness statement of the first defendant. The first defendant states²

“I had some difficulty in paying the instalments in January, 2011 we both agreed to end this agreement and instead a new agreement was entered whereby Advance Biometrics Limited sold the signboard to Media Extra Limited for \$480,000.00 less what was already paid under the previous agreement. The balance was to be paid by Media Extra Limited to Advance Biometrics Limited by monthly payments of \$20,000.00. In this sale, Mahindra Maharaj acted for an on behalf of Advance Biometrics Limited and I acted for and on behalf of Media Extra Limited. A letter from Advance Biometrics Limited dated 11th October, 2010 to Media Extra Limited is document No. 2 of my List and Bundle of Documents filed on the 28th February, 2018.”

30. This court cannot find that the parties would have agreed to terminate a written agreement – one which they modified in writing, by an oral one. This is irreconcilable with accepted legal principles. Further it is also irreconcilable with the manner in which the parties to the agreement had previously acted. They entered an agreement in writing and they modified it in writing. It makes sense that given the history of how they transacted business, they would have ended their agreement in writing and entered a new agreement in writing.

31. Further, Ronald AQUI's evidence is not clear as to the terms of this alleged new agreement. He alleged that the balance was to be paid in monthly instalments – yet he does not state what the balance was. The court is not able to determine, on AQUI's account of the oral agreement, the sale price of the signboard.

32. Further the first defendant also seems to rely on a letter written before the oral agreement as proof of the oral agreement. This court has already decided that the letter of 11th October 2010, modified the 2010

² Witness statement of Ronald AQUI, paragraph 4

agreement. Even on the first defendant's account, it is illogical for said letter to support an oral agreement which was not in existence at the date of the letter.

33. To support the claim of the oral agreement, the first defendant relies on a letter written on Media Extra Limited's letterhead to Mr. Maharaj dated 1st March 2011. That letter responds to a letter from the deceased of the same date indicating that the account was past due in the amount of \$52,000.00. The first defendant's response referred to and relied on the modification to the 2010 agreement and the temporary reduction of the rental sums. The first defendant asked for a further modification by extending the reduction of the rental payable for "an additional 3 months". There is no evidence there was any further modification to the 2010 agreement.

34. Like the deceased, the court is satisfied that the use of Media Extra Limited's letterhead, without more, cannot amount to evidence that Media Extra Limited was a party to any agreement. There was no more evidence provided by the first, second or third defendants to satisfy the court that the first defendant was acting on behalf of the third defendant and not in his own right.

35. There is nothing in either letter dated 1st March 2011 which suggest that the parties were referring to an oral agreement entered in January 2011. On the contrary, the reference was to the modifications made to the 2010 agreement.

36. The deceased and first defendant, the parties to the agreement for the lease and demise of the signboard did at various times use letterheads for the companies where they held different positions. However, that evidence was not sufficient in the courts view, to find that those companies replaced either the deceased or the first defendant as the

parties to the agreement for the signboard. This fact is clear by the invoice dated 7th January, 2011. While this invoice was on Advanced Biometrics Limited's letterhead, it noted as a reminder that the cheques were to be payable to Mahindra Maharaj and any questions concerning the invoice were to be directed to Mahindra Ravin Maharaj.

37. From the pleadings and evidence, there is no doubt that the parties to the 2010 agreement were Mahindra Maharaj and Ronald Aqui. Those parties remained unmodified and that fact was known to Ronald Aqui. Further, there is no evidence that satisfied the court on a balance of probabilities that there was any oral agreement made in January 2011. The court is therefore satisfied on a balance of probabilities that Bindra Maharaj by virtue of the appointment as Administrator Ad Litem of the Estate of Mahindra Maharaj has locus standi to bring this claim.

ii. Whether the first defendant and second defendant as agents for the third defendant company had the authority to pass ownership to the fourth defendant

38. The court has already decided that there was no oral agreement between the deceased and the third defendant for the sale of the signboard.

39. The claimant in cross-examination, stated that he was of the belief that had the first defendant made all 48 payments of \$20,000.00 then at the end of the contract, the signboard would be turned over to the first defendant. The claimant's opinion of the terms of the agreement between the deceased and the first defendant cannot displace the written agreement between the parties. The claimant's evidence is that he became aware of the 2010 agreement after the death of the deceased. His opinions about the terms and the agreement are only his opinions and are not factual. The 2010 agreement in its original as well

as its modified form, made no mention of the passing of the signboard's ownership to the first defendant. The court is also of the view that when the representatives of the deceased's estate communicated with the first defendant, he would have given instructions that the estate was to be informed or reminded that upon the payment of the balance owed on the signboard it would be owned by him (the first defendant).

40. The first, second and third defendants all concede and acknowledge that on their version, the full sale price amounting to \$480,000.00 has not been paid. They aver that part of the payment was paid to the deceased in his personal capacity and part to his company Advanced Biometrics Limited. However, despite that fact that there are monies due and owing in relation to the sale of the signboard, they contend that Media Extra Limited nevertheless owned the signboard. They stated that title in the signboard passed from Advanced Biometrics Limited to Media Extra Limited right away upon the creation of the oral agreement for sale. In so doing, they relied on the provisions of section 20(a) of the Sale of Goods Act Chapter 82:20 which provides:

“20. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in goods is to pass to the buyer:

(a) where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, is postponed;”

41. On the first, second and third defendants' account, section 20 of the Sale of Goods Act would not apply as there was a different intention according to the oral agreement on which they rely. According to the first, second and third defendants, the agreement for sale was conditional upon the payment of all the instalments. The court understands the first, second and third defendants to be saying, if all the instalments were not paid, then the agreement was not one for

sale of the signboard and the ownership of the signboard would not pass to them.

42. In any event, the court being satisfied on a balance of probabilities, that there was no oral agreement, consequently, section 20 of the Sale of Goods Act would not be applicable to the agreement for the lease and demise of the signboard.

43. Therefore, the third defendant not being a party to the 2010 agreement, did not have the capacity nor the authority to transfer title in the signboard which it did not possess to the fourth defendant.

iii. The corporate veil

44. Amongst the reliefs sought by the claimant in its amended claim form filed on the 13th February 2017 is an order asking the court to pierce the corporate veil of the third defendant, and a declaration that the first and/or second defendant as directors of same be held liable for fraud and/or conversion as the alter egos and controlling minds of the third defendant company due to the unlawful disposition and/or sale of the signboard.

45. It is trite law that a company is a separate legal entity with its own personality from its directors³ despite being the controlling minds. There are instances where the directors were found to be acting unlawfully and not in good faith using companies to perpetrate wrongs. In such circumstances, it may be necessary to pierce the company's corporate veil thereby disregarding the separate legal personality of the company.

³ *Salomon -v- Salomon* [1897] AC 22

46. It is important to note from the outset the court's approach to such a relief. The authorities suggest that the piercing of the corporate veil is only justified in very rare circumstances⁴. If it is not necessary to pierce the corporate veil then it will not be appropriate. The principle is a limited one because in almost every case, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil⁵.

47. The court will now consider the submissions and the evidence adduced by the parties in the determination of whether it is necessary to pierce the corporate veil of the third defendant company.

48. In the case of *Prest -v- Petrodel Resources Limited and others* [2013] UKSC 34, Lord Sumption deciphers when a company's separate legal personality ought to be disregarded by use of the evasion principle:

“[35] I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. Like Munby J in *Ben Hashem v Al Shayif* [2008] EWHC 2380 (Fam), [2009] 1 FLR 115, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course. I therefore disagree with the Court of Appeal in *VTB Capital plc v Nutritek International Corp* [2012] 2 BCLC 437 who suggested otherwise at [79]. For all of these reasons, the principle has been recognised far more often than it has been applied. But the recognition of a small

⁴ *VTB Capital Plc -v- Nutritek International Corpn* [2013] 2 AC 337 at paragraphs 127, 128 and 147

⁵ *Prest -v- Prest and others* [2013] UKSC 34 at paragraph 35 per Lord Sumption

residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy.”

49. The court agrees with the claimant’s submissions that the requirements of the evasion principle as outlined above were met. Firstly, there was an existing legal obligation of the first defendant with the deceased, by virtue of the 2010 agreement for the lease and demise of the signboard, independent of the company’s involvement. The third defendant company was used by both the first and second defendants to create an arrangement that was wholly unlawful. They both knew that the company did not own the signboard at the time that the company entered into the agreement and executed the Bill of Sale with the fourth defendant.

50. They used the company in an effort that the company’s legal and separate personality would insulate both of them individually for the unlawful conversion of the signboard. They are to be held personally liable for the conversion of the signboard.

51. The court is of the view that sometime in or around September 2010, the first defendant had difficulties meeting his financial obligations. Subsequently, modified terms of payment were agreed to by the deceased and the first defendant. By the 3rd January 2011 pursuant to the Past Due Reminder⁶ issued by Advanced Biometrics Limited to Media Extra Limited, the amount of \$52,000.00 was due and owing. The unagreed document of the first, second and third defendant (which appears to be issued from the first defendant) illustrates that reduced payments were issued from February 2011 to March 2011⁷. This is the

⁶ Page 117 of the Trial Bundle

⁷ Page 113 of the Trial Bundle

only evidence documenting payment before the court. Apart from that, is the witness statement of the claimant who stated that after the death of Mahindra Maharaj on the 19th September 2011, sums have been due and accruing since October 2011⁸.

52. Based on the evidence before the court, it is of the view that the first defendant was unable to fulfil his financial obligations. After the death of the deceased, he the first defendant took advantage of what he construed to be an opportunity to effectively steal the signboard. He knew that it belonged to the estate of the deceased. This tale of the oral agreement, assigning these duties and obligations to the third defendant was a means of personally avoiding liability. In this scheme the second defendant participated.

53. The letter dated 5th December 2011 from the first defendant's attorney at law, eleven months after the alleged oral agreement admits liability to the estate of the deceased. This fact was also reiterated in the first defendant's attorney at law's reply letter dated the 25th January 2012⁹.

54. To distance himself and hide the unlawful sale of the signboard, the first defendant decided to use the third defendant company of which he was a director, to sell the signboard to a third party who could not have had any knowledge of the ownership of the signboard and agreement for its lease and demise. The second defendant, a director of the company also knew that he was not a party of the agreement for lease and demise of the signboard.

55. Therefore, the court is satisfied that the corporate veil of the third defendant company be pierced to reveal the unlawful actions of the first defendant and second defendant. Those defendants, perpetrated wrongs under the guise of the third defendant, when they sold the

⁸ Witness statement of Bindra Maharaj filed 13 June 2018 at paragraphs 8 and 9

⁹ Page 327 of the Trial Bundle

signboard to the fourth defendant, knowing that ownership of same was still vested in the deceased.

iv. The estate of the deceased's entitlement to general and special damages

56. The claimant in its amended claim form claimed inter alia the following sums:

a. Arrears for the rental of the signboard	\$520,000.00
b. Late fees on unpaid rental	\$104,000.00
c. Damages for economic loss (\$20,000.00 per month from November 2013 to date 66 months (as at April 2019)	\$1,320,000.00
d. Damages for Fraud (1 st , 2 nd , 3 rd Defendants)	To be assessed
e. Damages for Conversion (1 st , 2 nd , 3 rd Defendants)	To be assessed

57. It is trite law that special damages has to be pleaded, particularized and strictly proved¹⁰. In *Bonham Carter v Hyde Park Hotel* [1948] 64 TLR Lord Goddard CJ stated that parties

“must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘this is what I have lost; I ask you to give me these damages’. They have to prove it.”

58. The claimant has given the defendant the benefit of payments up to the time of the death of the deceased. The claimant is able to prove

¹⁰ *Charmaine Bernard (Legal Representative of the Estate of Regan Nicky Bernard) v Ramesh Seebalack* [2010] UKPC 15 at paragraph 16 Sir John Dyson SCJ

that no payments were made for the signboard after the death of the deceased. Consequently the claimant is able to prove special damages consistent with the terms of the 2010 agreement from the date of death of the deceased to the end of the written agreement in 2012.

59. The first defendant did not return the signboard upon the expiration 2010 agreement for the lease and demise of the signboard. It is reasonable for the court to find that the first defendant retained the signboard on the same terms and conditions of the written agreement; a rent of \$20,000.00 per month and late payment of \$4000.00. These terms and conditions would continue until the signboard was sold.

60. The first defendant and second defendants sold the signboard and are therefore liable for its conversion. The court finds that a reasonable amount for conversion is the amount that the signboard was sold for. There is no evidence that the signboard was sold for an amount over or below its market value. By Bill of Sale dated the 27th November 2013 made between Media Extra Limited and Brian Astor, the purchaser agreed to purchase the signboard for the sum of \$230,000.00.

61. The court is not satisfied of the claim for economic loss after the date of the conversion. Economic loss after that date is inconsistent with an award for conversion and in any event, by that date the alleged economic loss is too remote to the agreement between the deceased and the first defendant.

Disposition

62. It is HEREBY ORDERED that there be judgment for the claimant against the first defendant and second defendant. The first defendant shall pay damages to the claimant as follows:

- a. Arrears for the rental of the signboard at \$20,000.00 from the 1st October 2011 until the end of the contract on 30th June 2012 in the amount of \$20,000.00 x 9 Months = \$180,000.00
- b. Late fees of \$4000.00 per month from the 1st October 2011 to 30th June 2012 on unpaid rental – \$4000.00 x 9= \$36,000.00
- c. Arrears of rent on the same terms as the written agreement, \$20,000.00 per month from 1st July 2012 to the date of conversion 27th November 2013 \$20,000.00 x 17 =\$340,000.00
- d. Late fees of \$4000.00 per month from 1st July 2012 to the date of conversion 27th November 2013 – \$4000.00 x 17 =\$68,000.00

63. The first and second defendants shall pay damages to the claimant for conversion in the sum \$230,000.00.

64. The first defendant shall pay the claimant's Costs as prescribed in the sum of \$98,050.00.

65. The claimant's claim against the fourth defendant is dismissed, there are no orders as to costs.

66. The courts grants a stay of execution to the first and second defendants for 28 days.

Avason Quinlan-Williams

JRC: Romela Ramberran