

IN THE COURT OF APPEAL OF BELIZE AD 2022
CIVIL APPEAL NO 34 OF 2018

CMB MANAGEMENT LIMITED

Appellant

v

STEM LLC

1st Respondent

RANDAL PAUL

2nd Respondent

FALAH TABAHI

3rd Respondent

BENJAMIN MASON

4th Respondent

PROPRIETORS OF STRATA PLAN 54

5th Respondent

PROPRIETORS OF STRATA PLAN 42

6th Respondent

Before:

The Hon Madam Justice Hafiz-Bertram
The Hon Madam Justice Woodstock-Riley
The Hon Madam Justice Minott-Phillips

President (Ag.)
Justice of Appeal
Justice of Appeal

E A Marshalleck, SC, E Perera with P Ghanwani for the appellant.
D Vernon for the 1st, 2nd, 3rd, & 4th respondents.
P Banner for the 5th & 6th respondents.

21 March 2022 and 26 May 2022

REASONS FOR JUDGMENT

HAFIZ BERTRAM, P (AG.)

[1] I have read, in draft, the judgment of my learned sister, Minott Phillips, JA, and concur in the reasons for judgment given on 21 March 2022, to dismiss the appeal and award costs to the Respondents to be agreed or taxed.

HAFIZ BERTRAM, P (AG.)

WOODSTOCK-RILEY, JA

[2] I have read the draft reasons of Minott-Phillips, JA for our dismissal of the Appeal and orders for costs. I concur.

WOODSTOCK-RILEY, JA

MINOTT-PHILLIPS, JA

[3] In the action subject of this appeal the Appellant, CMB Management Limited (**CMB**) was the Claimant in the court below. CMB claimed entitlement to a beneficial interest in the common property of two developments that were legally owned by Respondents 5 & 6, Proprietors of Strata Plans 54 (**PSP 54**) and the Proprietors of Strata Plan 42 (**PSP 42**), respectively, being Defendants 5 & 6 to the claim below. The developments together comprised a resort known colloquially as the “Belize Ocean Club”. CMB claimed it provided property management (including rental management for some condo owners in the development, restaurant, and dive shop) services to PSPs 54 and 42 for a number of years for the purpose of which it occupied an office in the main building, a restaurant and bar, spa and dive shop, all of which were part of the resort’s common property. (The common property is situated in the common area which is land outside of where the buildings for the condominiums are located). CMB’s assertion that it had a beneficial ownership interest in the structures built on that common property, and the businesses conducted within those structures, was anchored in the doctrine of proprietary estoppel.

CMB claimed that doctrine operated to give it a right to occupy the Bar, Office, Restaurant and Spa locations and to recoup its investment made in the Bar, Office, Restaurant and Spa.

[4] The 1st Defendant, Stem, LLC (**Stem**) is a hotel management service provider that was engaged by the PSPs to provide those services CMB claimed it was entitled to provide to Belize Ocean Club condo owners and resort guests. The Respondents' position was that, at the time the action was brought, CMB only provided property management and agency services to some of the condo owners of Belize Ocean Club. The 2nd 3rd & 4th Defendants, Randal Paul, Falah Tabahi and Ben Mason, respectively, were the agents of PSP 54 and 42 who evicted CMB from its occupation of the common property of the premises known and marketed as the Belize Ocean Club, and installed Stem.

[5] Having initiated the action after receiving a notice dated 28 March 2018 from the legal owners, PSP 54 and 42, to vacate and remove all personal possessions from the common property it occupied at the Belize Ocean Club, and thereafter been evicted, CMB immediately sought to protect its claim by, on 3 April 2018, applying for and, on 4 April 2018, obtaining from the Hon Chief Justice, Kenneth A Benjamin, *ex-parte* interim injunction orders (effective until 3 May 2018 or further order), that:

- a) Compelled the Defendants to return the office building, restaurant and dive shop to CMB;
- b) Restrained the Defendants from interfering with the operations of CMB in providing its rental management services to the owners of condos within the developments marketed as the Belize Ocean Club;
- c) Restrained the Defendants from interfering with the Restaurant, Dive shop and Office location and operations;

- d) Restrained the Defendants from collecting funds or monies from CMB's clients and guests;
- e) Compelled the Defendants to return CMB's vehicles and equipment;
- f) Restrained the Defendants from infringing certain registered trademarks and passing off their business as CMB's business by using in connection with the Defendants' business the trade name 'Belize Ocean Club' or 'Belize Ocean Club Adventure Resort';
- g) Compelled the Defendants to forthwith remove all specified trademarks used by the Defendant or on or in relation to anything in their custody or control.

Underpinning this *ex-parte* order was CMB's undertaking to "*comply with any other Order the Court may make*" in the event of the Court finding that the order, or the carrying out of it, caused loss to the Defendants and deciding the Defendants should be compensated for that loss.

[6] That order of the Hon Chief Justice made *ex-parte* was set for reconsideration by him on an *inter partes* basis. The reconsideration came before him on 25 April 2018 on which date CMB filed an Amended Claim Form and an Amended Statement of Claim. Having heard counsel for all parties, the Hon Chief Justice on that day ordered that the following three preliminary issues be tried before the substantive trial of the Claim:

- i) Whether the Claimant (CMB) is entitled to a beneficial interest in those developments located within the common properties of Strata Plans No 42 and 54 comprising the office, the restaurant, the dive shop and the spa operated by the Claimant in the conduct of the business of Belize Ocean Club;
- ii) Whether the Claimant has the right, legal or equitable, to possess, occupy and operate the office, the restaurant, the dive shop and the spa free from interference from the Defendants;

- iii) Whether the Claimant is the beneficial owner of the resort business known as Belize Ocean Club operated from premises located within the common properties of Strata Plans numbered 42 and 54 and the legal and beneficial owner of all assets acquired and used in the course of that business including all goodwill, intellectual property, vehicles, plant equipment and vehicles.

[7] Defendants 1-4 were separately represented from Defendants 5 & 6 throughout. The Defences of all Defendants were filed on 28 May 2018.

[8] The trial of the preliminary issues identified by the Hon Chief Justice in his order made on 25 April 2018 commenced on 24 May, and continued on 25 May, 2018 before the Defences were in, with the receipt of evidence and submissions concluding on 7 June 2018, after the Defences had been filed on 28 May. The Hon Chief Justice was clearly cognizant of the urgent need for certainty in relation to the operations that continued providing uninterrupted services to guests and condo owners of the Belize Ocean Club which, all the while, was functioning as an ongoing business that was the backdrop to the litigation.

[9] On 19 October 2018 (around the time of the onset of a high season for tourism in Belize) the Chief Justice made his primary order for the discharge of interim injunction orders that he had granted to the Appellant, CMB, on 4 April 2018 (with costs awarded against CMB), and restored possession of the common properties of Strata Plans 42 and 54 to the 5th and 6th Respondents, PSP 54 and PSP 42, respectively. In his primary order that flowed from his decision on the preliminary issues he held that CMB:

- i. Was not entitled to a beneficial interest in the developments located within the common properties of Strata Plans 42 & 54 comprising the restaurants, office, dive shop and spa in the conduct of the business of the Belize Ocean Club;

- ii. Did not have any legal or equitable right to possess, occupy and operate the office, restaurant, the dive shop and spa free from interference by the Defendants; and
- iii. Was not the beneficial owner of the resort business known as the Belize Ocean Club operated from premises located within common properties of Strata Plans 42 and 54 nor was it the legal and beneficial owner of the assets used in the course of the business including the goodwill, intellectual property, vehicles, plant and equipment.

[10] On 22 October 2018, the Hon Chief Justice issued other orders that were consequential to his primary order and directed at restoring the *status quo ante* of PSP 54 and PSP 42 prior to them being deprived of their possession of the common property by the interim injunction that issued on 4 April 2018.

[11] CMB, in this appeal filed on 9 November 2018, sought, *inter alia*, an order:

- i. Setting aside the order of the Honourable Chief Justice, Kenneth Benjamin, made on the 19 day of October 2018; and
- ii. Setting aside the consequential orders of the Honourable Chief Justice, Kenneth Benjamin, made on the 22 day of October 2018.

[12] The Court heard CMB's appeal on 21 March 2022 and dismissed it, awarding costs of the appeal to the Respondents to be agreed or taxed. We indicated our written reasons for doing so would follow. These are those reasons.

[13] The reasons of the Hon Chief Justice for the primary and consequential orders he made on 19 and 22 October 2018, respectively, appear in the transcript of his orally delivered decisions. Although in the transcript he refers to a '*judgment still in draft*', that written judgment did not form part of the Record of Appeal. The result is that all references by this court to his reasons are to those reasons as set out in the transcript.

[14] The first three grounds of appeal of the primary order made by the Hon Chief Justice asserted that he erred in finding that CMB:

- a. was not entitled to a beneficial interest in the developments located within the common properties of Strata Plans 54 and 42 comprising the restaurant, office dive shop and spa;
- b. does not have any legal or equitable right to possess and occupy those properties free from interference by the Respondents; and
- c. is not the beneficial owner of the resort business known as Belize Ocean Club operated from those premises nor is it the legal and beneficial owner of the assets used in the course of that business.

The remaining (fourth) ground of appeal was that he erred in making the consequential orders flowing from his primary order.

[15] The Appellant's submission was that its claimed ownership of the common property businesses derived from a written sale/purchase agreement dated 1 November 2016 (although evidence was adduced and accepted that it was actually not executed until 15 November 2016) and the operation of the doctrine of proprietary estoppel.

[16] I can find no better recent definition of the doctrine of proprietary estoppel than that set out by Lord Scott of Foscote in the unanimous decision of the House of Lords in **Yeoman's Row Management Ltd & Anr v Cobbe** [2008] 4 ALL ER 713 where (at 724 letters e-f) he said:

"... I want ... to consider as a matter of principle the nature of a proprietary estoppel. An 'estoppel' bars the object of it from asserting some fact or facts, or, sometimes, something that is a mixture of fact and law, that stands in the way of some right claimed by the person entitled to the benefit of the estoppel. The estoppel becomes a 'proprietary' estoppel – a sub-

species of a promissory estoppel—if the right claimed is a proprietary right, usually a right to or over land but, in principle, equally available in relation to chattels or choses in action.”

In that case the House of Lords, in finding that the Claimant did not have a remedy on the basis of proprietary estoppel, applied two of the authorities relied upon by CMB before us, namely, the old case of **Ramsden v Dyson** (1866) LR 1 HL 129, and the more recent one of **Taylor Fashions Ltd et al v Liverpool Victoria Trustees Co Ltd** [1981] 1 All ER 897. The House of Lords also took the time to consider most, if not all, of the authorities on the doctrine of proprietary estoppel.

[17] In this case the Hon Chief Justice, in effect, found that the Appellant, CMB, fell short of establishing something that could bar the PSPs from asserting their legal proprietary rights over the common property and the businesses operated on it. Simultaneously, CMB fell equally short of establishing its claim to a proprietary right in relation to the common areas and the businesses operated there on the basis of an alleged representation by the PSPs to it that it was entitled to possession of the common property and to operate the businesses located there (namely the office, spa, restaurant and Dive Shop).

[18] Notably, the Agreement at the heart of CMB’s proprietary estoppel claim was not one to which either PSP 42 or 54 (the accepted legal owners of the common property) was a party. It was dated 1 November 2016 and was entered into by Belize Ocean Club Limited as the Transferor, Ben Mason as the Guarantor, Kianalei Capital LLC as the Lender, and CMB Management Limited (the Claimant/Appellant) as the Manager. Clause 3 of the Agreement, on which the Appellant placed particular emphasis, states:

“The Transferor is also the owner of the rights and interest in the investments and improvements made on the common areas of Strata Plan No 42 & 54 located on Parcels 272 and Parcels No 274. These investments were made by the Transferor and it has the right

to the return of the value invested on the properties of the respective Strata Plan owners. It is this right to collect the returns on or the value of the investment from the respective home owner associations that is also being transferred to the Purchaser.”

[19] Having read the documentary evidence and heard the *viva voce* evidence of the various witnesses on the preliminary issues, the Hon Chief Justice found that CMB’s claim to an equitable interest in the property and businesses operated in the common areas on the basis of the operation of the doctrine of proprietary estoppel was not made out. I agree with him. In coming to his decision this is what he said,

“Turning to the first issue. The Claimant relied upon the doctrine of proprietary estoppel. In this regard, certain factual matters were put forward in support of the assertion that the purchase and sale of the assets of Belize Ocean Club conferred on the Claimant a beneficial interest in the commercial developments located within the common property of the resort called the Belize Ocean Club.

It is noticeable that while the written submissions dealt with the Claimant’s asserted ownership of the commercial developments constituting beneficial interest in Parcels 272 [registered as Strata Plan 54] and 274 [registered as Strata Plan 42] by virtue of November 1st, 2016, the Court accepts that there is nothing in the November 2016 agreement that confers upon the Claimant the right to possession. The Court does not accept as it is not borne out on the evidence that the Belize Ocean Club was acting with actual or ostensible authority on behalf of the Strata Corporations. Indeed, up to June-July 2016, Belize Ocean Club considered itself the proprietor of the common areas of Parcels 272 and 274.

...

It was conceded as plainly provided for in the said November 2016 agreement that what was contracted was the right to collect the returns or the value of the investment.

The Court therefore finds upon a reading of the Sale Agreement of November 2016 that there is nothing to support the assertion that Belize Ocean Club had transferred ownership of the commercial development, i.e. office, restaurants,

dive shop and spa to the Claimant. The Claimant did not fulfil any of the payment obligations set out in the Agreement.

*As to proprietary estoppel, applying **Ramsden v Dyson** and **Walsh v Ward**, there was no encouragement, statement or representation made by the Proprietors of Strata Plans 54 and 42 which the Claimant could have relied upon. The individual unit owners of Strata Lots do not represent the whole. The Strata Corporation is represented by its Executive Committee which was not shown to have made any representation or statement or exhibited any encouragement.*

The November 2016 Agreement was an attempt by CMB to enter into a commercial arrangement to take over the assets of Belize Ocean Club Limited. Further there is no evidence of CMB acting to its detriment. Proprietary estoppel has therefore not been established. CMB entered into a commercial transaction with the Belize Ocean Club being fully aware that the common property was owned by the Strata Plan Corporation. Hence that could not have been intended by the Agreement.

...

I therefore hold that the issues must be answered in the negative.”

[20] With that, all three preliminary issues were determined against CMB. I detect no flaw in the reasoning of the Hon Chief Justice. I find it additionally telling, as did he, that:

- a. CMB was registered in 2016 as a Belizean company the same year it entered into the Agreement dated 1 November 2016 referred to previously.
- b. There was an agreement in place from 1 June 2015 between Belize Ocean Club Limited (having all rights of use and possession of the resort known as the Belize Ocean Club) and a company called Muy-Ono Management Limited to manage and operate the resort for a period of 4 years from that date, which agreement was still in place when CMB entered into the 1 November 2016 Agreement with Belize Ocean Club Limited *et al.*

- c. The belief of the parties to that Agreement that Belize Ocean Club Limited was the proprietor of the common areas of the resort, was discovered by them to be a mistaken belief more than 5 months before that Agreement anchoring CMB's claim was executed. The discovery came by way of a letter dated 4 July 2016 sent by The Zimmerman (law) Firm, under hand of Ben Zimmerman ('Zimmerman'), acting on behalf of Kianalei (the Lender) to Belize Ocean Club Limited (the Transferor), in which Zimmerman expressed his view that Belize Ocean Club did not own the common property.
- d. The Appellant's witness, Bill Poston, CMB's sole manager and beneficial owner, in cross-examination, admitted that Zimmerman told him this on or about 4 July 2016 and that, from that date he (and thereby CMB) had reason to doubt Belize Ocean Club Limited's claimed ownership of the common property.

[21] Quite likely it is that awareness of the common property not being owned by Belize Ocean Club Limited, but by PSPs 42 and 54, that informed the peculiar wording of clause 3 of the Agreement dated 1 November 2016 (already set out above). The wording seems to be an attempt at crafting a factual foundation for a claim by Belize Ocean Club Limited to a beneficial interest in the common property arising by way of an application of the doctrine of proprietary estoppel; which beneficial interest it purported to be transferring to CMB under the Agreement.

[22] In **Yeoman's Row Management Ltd & Anr v Cobbe**, the House of Lords decision that I referred to previously, Lord Walker of Gestinghope (at 737 letter j- 738 letter a) issued the following cautionary words:

"My Lords, equitable estoppel is a flexible doctrine which the court can use, in appropriate circumstances, to prevent injustice caused by the vagaries and inconstancy of human nature. But it is not a sort of joker or wild card to be used

whenever the court disapproves of the conduct of a litigant who seems to have the law on his side. Flexible though it is, the doctrine must be formulated and applied in a disciplined and principled way. Certainty is important in property transactions.”

So it is that there are limits to which the doctrine of proprietary estoppel can extend, even in circumstances where the court disapproves of the conduct of a litigant who seems to have the law on his side. Those limits do not extend to the circumstances of this case where, not only is there is no evidence of any questionable conduct on the part of the two PSP common property owners that have the law on their side, but there is no evidence of the existence of elements that can constitute a proprietary interest on the part of CMB and an estoppel of the PSPs asserting theirs.

[23] The crafting of the wording of clause 3 by the parties to the 1 November 2016 Agreement (subsequent to their realization, some 5 months previously, that the PSPs owned the common property) in a way that allows the doctrine of proprietary estoppel to be introduced so as to anchor a claim by CMB to equitable ownership of the common property, causes me the same disquiet it appears to have caused the Hon Chief Justice.

[24] The witness on behalf of the PSPs, Tariq Choudry, testified that, not only was CMB's Bill Poston aware of the PSPs' ownership of the common property, but he even sought (by way of emails of 14 July and 9 August 2017 to Executive Committee member Lisa Lagana) to have the Strata Corporations enter into a leasing and management agreement with CMB in relation to that property subsequent to the 1 November 2016 agreement to which CMB was a party. Those agreements, sent in draft, were never executed. The importance of that evidence is that CMB's attempt to enter into those agreements is consistent with its recognition, at all material times that the legal and equitable interest in the common property vested in the PSPs. Instead of entering into those agreements with CMB for managing the common property of the resort known as the Belize Ocean Club, the PSPs chose to do so with Stem.

[25] Belize Ocean Club Limited (notwithstanding purporting to do so *via* clause 3 of the 1 November 2016 Agreement) could not transfer an equitable right in the common property to CMB because it did not have any such equitable right. The words in clause 3 do not, without more, establish its claimed proprietary interest in the common areas such as to enable CMB to, in turn, claim its succession to that claimed proprietary interest as against the Defendants/Respondents. Furthermore, Belize Ocean Club Limited, not being a party to the action, was not available for challenge by any of the Respondents on its purported claim to the rights and interests it asserted in clause 3.

[26] Even if there had been unconscionable behavior on the part of the individual owners comprising the PSPs, as was urged on us by CMB (but which I do not accept), that would, by itself, have been insufficient to establish CMB's claim to a proprietary interest in the common property. To further quote Lord Scott in the Yeoman's Row case (at page 725 letters e-f):

“To treat a ‘proprietary estoppel equity’ as requiring neither a proprietary claim by the claimant nor an estoppel against the defendant but simply unconscionable behaviour is, in my respectful opinion, a recipe for confusion.”

[27] Summed up, the effect of the Hon Chief Justice's conclusions was that there was nothing unconscionable in the owners of the common property asserting their legal rights of ownership and demanding that CMB vacate their property, as they had done in their Notice to Vacate dated 28 March 2018 that they sent to CMB and acted upon. The mistake about the identity of the legal owner of the common property was not, as the Appellant asserted:

- a. A mistake under which the parties to the 1 November 2016 Agreement still laboured at the time that agreement was entered into by Belize Ocean Club Limited and CMB; nor even

- b. A mistake made by the legal owners of the common property against whom the Appellant sought to assert a beneficial interest in the property by means of proprietary estoppel.

In fact, such evidence as there is points the other way (e.g. (i) the draft agreements for managing the common areas presented by the Appellant to the PSPs in 2017; and (ii) the PSPs entry into an agreement with Stem for the management of the common areas, both of which recognize the PSPs ownership of the common property).

[28] I agree with the finding of the Judge below that there was no encouragement, statement or representation made by PSPs 54 and 42 which the Claimant could have relied upon to establish its claimed beneficial interest grounded in the doctrine of proprietary estoppel. I also agree with his finding that there was no evidence (beyond its bare assertion) of CMB having acted to its detriment as there was no documentary evidence of CMB having fulfilled any of its payment obligations under the 1 November 2016 Agreement. It was, in fact, that failure that contributed to the calling of the loan referenced in the agreement and the realizing of the underlying security.

[29] Having determined that the Appellant, CMB, failed to establish proprietary estoppel on the facts before the court, the Hon Chief Justice's determination of all three preliminary issues in favour of the Respondents cannot be faulted, as all of the preliminary issues were flags pinned to the mast of that doctrine. When the mast fell, all the flags came down with it.

[30] The Appellant submitted briefly to us at the hearing of this appeal that it had an overriding interest derived from possession in the common areas of the resort known as the Belize Ocean Club. A claim to an interest on that basis ought to have been specifically pleaded and I have not been able to find any such pleading in the Appellant's Amended Statement of Claim. In response to the Appellant, the PSPs submitted that the interests asserted by the Appellant were not pleaded on the basis of them constituting overriding interests, but only on the basis of the doctrine of proprietary estoppel. I have picked up no reference to a claim to an overriding interest in the transcript of the orally delivered

reasons of the Hon Chief Justice. As such a claim does not appear to have been an issue in the proceedings below, nor is it the subject of a ground of appeal, it could not, without more, arise for determination in this appeal and I say no more on it.

[31] The last ground of appeal concerned the consequential orders made by the Hon Chief Justice on 22 October 2018, following his primary order made three days before, on the 19th. Those orders were that:

1) *The Claimant shall provide to the 5th and 6th Defendants:*

- a) *Forthwith, a detailed list of all current and future bookings/guests of the resort including future event contracts. These are to include the names and contact details for the guests/events plus copies of all bookings/events documentation and contracts;*
- b) *Forthwith, a list of all deposits and credits taken for present and future bookings at the resort.*
- c) *List of all staff members on site and written proof that staff salaries are paid up to and including 19th October 2018;*
- d) *List of all Accounts showing suppliers of goods and services to the resort and confirmation that all such accounts, including utilities and any taxes, tips, service charges etc, are paid up or not paid to and including 19th October 2018 with a zero balance. These are to include all third party contracts/agreements;*
- e) *List of and passwords for all social media pages in the name of Belize Ocean Club;*

- f) *A list of all access codes (PMS) for the key system and WIFI and the date from the Property Management System and Quickbooks relevant to the operation of the resort transferred to the 5th and 6th defendants.*
- 2) *An inventory shall be taken of all movable assets belonging to the resort and a list thereof shall be prepared by a representative of the Claimant, the 1st Defendant, the 3rd Defendant and the 5th and 6th Defendants no later than 14th November 2018;*
- 3) *Any assets belonging to the resort that were removed by the Claimant prior to the Court's decision on 19th October 2018 are to be returned no later than 30th October 2018. All documentation relating to resort assets to be returned i.e. purchase invoices, lease agreements, operating manuals, warranties, etc.;*
- 4) *The 5th and 6th Defendants shall be entitled to continue the use of the name "Belize Ocean Club" and associated intellectual property, to the exclusion of the Claimant, for the conduct of the business of the resort;*
- 5) *The Claimant shall forthwith provide to the 5th and 6th Defendants control of the Belize Ocean Club website with booking engines for reservations as well as copies of all agreements with marketing sites such as booking.com, hotels.com, expedia.com and tripadvisor.com etc. as well as historic data with respect to same.*
- 6) *Liberty to the parties to apply.*

[32] CMB submitted that he erred in law and misdirected himself in making those consequential orders because they related to *"matters which were not grounded on any claim or application before the Court or on any findings or judgments made by the Court"*. I cannot accept that submission because it ignores the purpose of the consequential orders being the restoration of the *status quo* prior to the Respondents being compelled by the *ex-parte* injunction CMB obtained on 4 April 2018, to return the office building,

restaurant, Dive Shop, vehicles and equipment to the Claimant and preventing and restraining them from taking any action in connection with the operations being conducted by the Appellant on the property of the 5th and 6th Respondents. It seems to me that, in making the consequential orders, the Hon Chief Justice (his efforts at getting the parties to agree the steps that should follow from his primary order having come to naught) was, at the request of those entitled to ownership and possession of the property, seeking to undo their deprivation of possession and control occasioned by the injunctions he granted to CMB *ex-parte* on 4 April that remained in force until he made his primary order. At the time he made the consequential orders the Hon Chief Justice was requested by the Respondents to bear in mind that possession of the common property was being handed over to them pursuant to his primary order made 3 days previously in circumstances where the operations of the resort required as seamless a transition as possible if disruption and confusion were to be avoided. At the time it got its *ex-parte* injunctions on 4 April 2018, CMB gave the court its undertaking to comply with any other Order the court may make in the event of the Court finding that the order, or the carrying out of it, caused loss to the Defendants, and deciding that they should be compensated for that loss. That finding is implied from the court's primary order and the ensuing concession by CMB that summary judgment against it on various aspects of its claim would inevitably follow from the primary order. Given its undertaking to the court I think CMB is bound to accept and comply with the consequential order. For those reasons that ground of appeal also fails.

[33] These are the reasons that informed the decision of the Court given on 21 March 2022 dismissing the appeal, with costs awarded to the Respondents to be agreed or taxed.

MINOTT-PHILLIPS, JA