

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 774 of 2008

BETWEEN: HANSRAJ BHOJWANI CLAIMANTS  
NANDINI BHOJWANI

AND

JAGWISH PUNJABI 1<sup>st</sup> DEFENDANT  
VIJAY PUNJABI 2<sup>nd</sup> DEFENDANT  
VINOD PUNJABI 3<sup>rd</sup> DEFENDANT  
RAJ PUNJABI 4<sup>th</sup> DEFENDANT

Hearings

2009

4<sup>th</sup> November

13<sup>th</sup> November

7<sup>th</sup> December

2010

21<sup>st</sup> January

Mrs. Liesje Barrow-Chung for the Claimants

Dr. Elson Kaseke for the Defendants

LEGALL J.

JUDGMENT

**The Oral Agreement**

1. This is a claim by the claimants against the defendants for breach of an oral agreement made in December, 2007 by the claimants and the

defendants. It is important to quote the relevant parts of the claim so that the nature of the claim can be fully appreciated at the outset. The claim form states that the claimants are claiming damages for “breach of a joint venture agreement made Orally in December, 2007 between the claimants and defendants whereby it was agreed that the claimants and defendants would in partnership, purchase all that piece or parcel of land being Parcel No. 27 Block 1 in Santa Elena Registration Section and develop the property.” (emphasis mine) The purchase of the property is one of the terms of the oral agreement. This claim is not a specific claim for breach of a written contract made on 17<sup>th</sup> January, 2008 for the purchase of the property.

2. The facts that form the basis of the claim ought to be stated. By a lease dated 20<sup>th</sup> December, 2008, between a limited liability company registered in Belize, named Joint Ventures Limited, (JVL) and Arsenio Witz of Punta Gorda, Belize, the company became tenant of the property situated at Parcel No. 27 Block 1 Santa Elena Registration Section, Corozal Belize (the property). Arsenio Witz, the owner of the property, signed the lease on his own behalf, and James Gegg, General Manager of the company signed for the company. All the defendants were directors and shareholders of the company.
3. The period of the lease was for twelve years from the date of the lease. Clause 2 of the lease states that if the tenant (the company) is desirous of purchasing the property, the tenant should give not less than two months notice in writing of its desire, to the owner of the property, not later than the expiration date of the lease; and the owner

upon the notice and upon payment of an agreed purchase price shall convey the property to the tenant (option to purchase).

4. The claimants – husband and wife – who are normally resident in Miami, Florida, U.S.A., claim that they made in December, 2007 an oral agreement with the defendants, who had control of JVL, to purchase the property and develop it by constructing a shopping plaza thereon, and to rent out stores and stalls located in the plaza. The claimants contend that by making that oral agreement the defendants impliedly agreed not to cause JVL to exercise its option to purchase the property. It was also orally agreed, according to the claimants, that profits derived from the development and establishment of the shopping plaza, would be divided equally between the claimants and the defendants – the claimants 50% and the defendants 50%. A new company would also be established, says the claimants, the shares in which would be divided equally – the claimants 50% and the defendants 50%. Evidence in support of the claimants claim of the oral agreement comes from the No. 3 defendant, who in his first witness statement at paragraph 10 states:

“10. It was clearly understood by Hansraj Bhojwani and the defendants that as a financial partner to JVL, Hansraj Bhojwani would get a loan from a bank or financial institution to purchase the property and to construct a shopping plaza thereon, and that a company limited by shares would also be incorporated with Hansraj Bhojwani and his wife Nandini Bhojwani and all the defendants holding shares; the Bhojwanis

holding 50% of the shares and the Punjabis holding 50% of the shares.”

**The Written Agreement**

5. In pursuance of the oral agreement to purchase the property and develop it by constructing a shopping plaza thereon, the No. 1 claimant and No. 3 defendant made a written agreement dated 17<sup>th</sup> January, 2008 with Arsenio Witz, the owner of the property, to purchase the property for \$3,500,000 BZ. The No. 1 claimant and the No. 3 defendant made a deposit of \$10,000 BZ each to Arsenio Witz towards the purchase price of the property.
6. The written agreement describes the purchasers as the No. 1 claimant and No. 3 defendant “or their duly nominated company,” to use the words of the agreement. There is no evidence as to the specific identity of the duly nominated company, and the No. 1 claimant stated frankly in cross-examination that he did not know the nominee company referred to in the agreement. Since the identity of the nominee company was not specifically disclosed by the evidence, I consider that the identified parties to the written agreement were the No. 1 claimant and the No. 3 defendant. This is consistent with the evidence of the No. 1 claimant who said in cross-examination that the parties to the agreement were him and the No. 3 defendant.
7. The written agreement of 17<sup>th</sup> January, 2008 clearly states the parties thereto and the No. 2 claimant and the numbers 1, 2 & 4 defendants’

names do not appear therein. But I think the intention of the claimants and the defendants was that the written agreement to purchase the property, was to be executed by the parties who did in fact execute the agreement; and that the property itself, once acquired, would be used, in accordance with the oral agreement. Paragraph 18 of the No. 3 defendant's witness statement indicates that the No. 1 claimant and No. 3 defendant were a front for the acquisition of the property –:

“18 In order not to slow down work, both Hansraj Bhojwani and the defendants agreed that Hansraj Bhojwani and myself would front in equal halves all start-up money and petty expenses like legal fees, costs of demolition of buildings on the property site, costs of valuation of the property, and so on and later that money would be reimbursed to us from the loan which was to be obtained by Hansraj Bhojwani for the property.”

8. It is well settled that the doctrine of privity of contract provides that “persons not a party to a contract could not sue and be sued” under that contract: see *Capital Insurance Ltd. v. Guichand* 2005 67 *W.I.R.* 321 at page 328, per *Sharma CJ*. The named parties to the written agreement dated 17<sup>th</sup> January, 2008 were the No. 1 claimant and the No. 3 defendant, so that only they could sue or be sued under the written agreement, though the claim in this case is with respect to the oral agreement. In that written agreement, it was not stated that the said parties were acting as agents for the No. 2 claimant and the other defendants, or that they were acting on behalf of the No. 2

claimant or the other defendants. If it was the intention, that the No. 1 claimant and the No. 3 defendant were to so act, then they could have easily inserted that in the written agreement. They did not do so; and in my judgment, it was not intended that they should so act.

9. But, on the evidence above, I am of the view that it was the intention of the claimants and the defendants, that the No. 1 claimant and the No. 3 defendant would sign and be the parties to the written agreement of sale; after which a new company would be established to take title for the property. In that company, all the claimants and the defendants would take assigned number of shares, and share in the profits of the project.

#### **The New Company**

10. On the 11<sup>th</sup> February, 2008, in accordance with the oral agreement, a new private company limited by shares, named Venus Towers Limited, was incorporated in Belize with registered offices at Commercial Free Zone, Santa Elena, Corozal District, Belize. The share capital of the new company was \$10,000, divided into 10,000 shares of \$1.00 each. The 10,000 shares in the company were taken as follows:

No. 1 claimant	- 2500 shares
No. 2 claimant	- 2500 shares
Nos. 1, 2, 3 & 4 defendants	- 1250 shares each

11. The objects of the new company were wide enough to include the establishment of a shopping plaza. The objects include the right to purchase, sell, and develop lands in Belize and to establish shops and stores and to purchase and sell articles and goods of every description. The cost of incorporation of the new company was paid equally by the No. 1 claimant and No. 3 defendant.
  
12. On the property there were buildings; and the parties decided to demolish the buildings and to commence construction of the foundation for the new shopping plaza. The No. 1 claimant retained on behalf of the new company, Venus Towers Limited, a construction company named Hoare Free Zone Construction Limited to undertake the demolition and construction. The No. 1 claimant and the No. 3 defendant paid to the construction company about \$113,000 BZ towards the demolition and construction costs of the shopping plaza, each paying half of the amount. The said parties also paid \$1650.00 BZ each to Mitchell Moody, valuers, as the cost for valuation of the property. I also believe that the claimants paid \$7,500 BZ as half of the brokerage fees for the purchase of the property, and the No. 3 defendant paid the other half. These expenses would be repaid by monies generated by the new company as the No. 3 defendant states in paragraph 12 of his witness statement as follows:

“12. .... The monies realized by the new company from the rental of shops within the newly constructed shopping plaza would be used first to pay off the loan which Hansraj Bhojwani would have obtained from the

bank or financial institution and other upfront capital which the partners would have advanced in the initial stages, if these monies had not been paid from the loan proceeds, then after the loan was paid off, would be used to pay dividends to the shareholders.”

### **Finance For The Development**

13. By April 2008, the agreement to purchase the property was signed, the new company to take title to the property and to manage the project was incorporated, and measures to implement construction on the property had begun. As we saw above, the agreement to purchase the property was made on 17<sup>th</sup> January, 2008. A deposit of \$20,000 was paid. By end of April, 2008 the balance of the purchase price of \$3,480,000 was not paid, and title for the property remained in the name of the owner Arsenio Witz. The agreement of sale did not state that time was of the essence, nor did it state a specific date to pass title, or a date to pay the balance of the purchase price.
  
14. On 5<sup>th</sup> May, 2008 the attorney-at-law for the owner of the property wrote a letter addressed to the No. 1 claimant and No. 3 defendant giving them 30 days from the date of the letter to pay the balance of the purchase price, and to complete the sale of the property. The letter stated that failure to comply would result in the automatic termination of the written agreement of sale.

15. In order to complete the sale, finance in the amount of the balance of the purchase price had to be obtained. There is a dispute as to who was responsible for securing or obtaining finance to purchase the property and for the development of the project. There was also a dispute as to whether the purchase price for the property, and the cost of the construction of the shopping plaza were to be paid for in the proportions of half by the claimants and half by the defendants. The claimants swore that the oral agreement was that they would pay half of the cost of the property and construction and the defendants would pay the other half.
  
16. The defendants, on the other hand, claim that the oral agreement was that the No. 1 claimant would get a loan from a bank or financial institution to purchase the property, to construct the shopping plaza, and would get financing for the entire development project. In return for doing this, the defendants claimed that Joint Venture Limited, would not exercise the option to purchase the property, and would allow the new company, Venus Towers Ltd., access to the property to commence construction of the shopping plaza. In addition, say the defendants, in return for the claimants acquiring the financing, the claimants would own 50% of the shares in the new company and the monies derived from shopping plaza business would be first used to pay off the loan or financing acquired by the No. 1 claimant, and after the repayment of the loan, the profits or dividends would be paid to the shareholders.

17. The evidence reveals that the parties paid half of each of the following: the deposit, the incorporation of the new company, the monies paid for the demolition of the buildings and the construction of the foundation for the shopping plaza, and the cost of the valuation of the property. This shows a consistent pattern of each party paying half of the costs, and therefore, it may be argued that the claimants did not deviate from this pattern with respect to the purchase price of the property and the construction costs of the plaza.
  
18. The claimants pointed out in paragraph 25 of their witness statements that on 4<sup>th</sup> June, 2008 they obtained approval for a loan from First Caribbean International Bank to provide for the payment of their half share of purchase price of the property and for the construction of the shopping plaza. The claimants state that it was the defendants who breached the oral agreement to purchase and develop the property by not securing their half share of the finance for the project. The claimants further submitted that the defendants were in further breach of the agreement, when the defendants exercised the option to purchase the property, and did purchase the property, through a company named Yash International Limited, in whose name, title for the property was issued on 24<sup>th</sup> June, 2008. The claimants therefore state that the defendant breached the oral agreement, and the claimants are entitled to general and special damages claimed in their statement of case for the breach.
  
19. The important question is this: Was it a term of the oral agreement that the No. 1 claimant was responsible for raising finance for the

whole project, or was it the responsibility of the claimants and all the defendants under the agreement to raise the finance for the project? As we saw above the No. 1 claimant denied that he was responsible for raising all the finances for the project; and according to him all the parties were responsible for raising finances for the project based on their shares in Venus Towers Ltd. Let us examine the evidence.

20. The No. 1 claimant testified as follows. “When” he testified, “I approached the banks, I requested the full amount of the \$3500,000 to purchase the property.” This witness also testified that “before 5<sup>th</sup> June, 2008 I had all the money to pay Mr. Witz for the property - \$3,500.000.” From this evidence it seems that the No. 1 claimant made a request to banks for finance and got by himself, the full amount to purchase the property. Moreover, the claimant admitted writing the following email dated 17<sup>th</sup> April, 2008 to Vinod Punjabi the 3<sup>rd</sup> defendant. The email states inter alia –

“Regarding the banks, they have refused to finance our project. It was my comment to Vijay that I will try to get finance for this project – **but clearly I have failed** .....” (emphasis mine)

21. The No. 1 claimant also admitted in evidence that he did say he failed to get finance for the project. The said claimant also admitted in re-examination that he did say that he would arrange financing. The No. 1 claimant explained what he meant:

“By arrange financing, I mean by being the eldest and Punjabis being my employees, it was just courtesy to help all of them. That is what I mean by arrange financing.”

In addition to the above, there is the evidence of Gulab Sharma, a witness called by the claimants. Sharma testified that “Mr. Bhojwani told me that he was responsible for financing the project.”

22. I believe it was a term of the oral agreement that the No. 1 claimant would arrange financing for the whole project. I do not believe, as claimed by the No. 1 claimant, that he, his wife and the four defendants were responsible for raising finance to purchase the property according to the share held by them in Venus Towers Ltd. Moreover the No. 1 claimant’s wife made it clear that she had no role in raising finance. “I was, “she testified,” given some shares in Venus Towers Ltd. This is the only thing I did in this matter. I did no financing, nothing. I do not even know the bank managers.”.

### **Credit Facilities**

23. But the No. 1 claimant testified that he had before 5<sup>th</sup> June, 2008, the money to pay Mr. Witz for the property – \$3,500,000. To prove he had the finances to pay, he produced a letter dated 4<sup>th</sup> June, 2008, from First Caribbean International Bank. He said this letter was an offer from the bank to him. The letter is addressed to the “Managing

Director, Waters Investment Ltd., attention Mr. Hans Bhojwani.”  
The letter states, in the first paragraph:

“Dear Sir,

We, First Caribbean International Bank (Barbados) Limited (“First Caribbean International”), and/or First Caribbean International Bank (Bahamas) Limited &/or First Caribbean International Bank (Cayman) Limited are pleased to establish the following credit for Waters Investment Limited:

Credit A: Demand Installment Loan

Credit Limit: US\$2,550,000.00

Purpose: To assist with land acquisition and the construction of a 28-unit shopping plaza within the Corozal Free Zone.”

24. The credit is for Waters Investment Limited, and the letter speaks of a credit limit of US \$2,550,000 for the acquisition of the shopping plaza. The letter requires security, including, according to the letter, a “guarantee from Hans and Nandini Bhojwani in an amount that is unlimited.” The letter also requires insurance as security. It states:

“Insurance: A acknowledged assignment of fire and other perils insurance on all the business assets for full replacement value, with loss payable to First Caribbean

International firstly as Mortgagees and evidenced by way of mortgage Clause Endorsement.”.

25. The letter goes on to enumerate conditions precedent for obtaining the credit facility. It is important to state verbatim the conditions precedent stated in the letter. The conditions precedent are:-

**“Conditions Precedent**

1. Security is to be perfected prior to commencement of loan drawings.
2. Properties over which charge is to be taken is to be transferred into the name of the business.
3. Certificate issued by Legal Counsel to First Caribbean confirming that all documentation have been completed and represents valid security and is enforceable on behalf of either or both primary lenders.
4. Prior to commencement of loan drawings we are to have sight of the approved plans for construction.
5. Confirmation from Jordan Castellon Ricardo P.L. that cash income of US\$368,000 was received by Hans and Nandini Bhojwani from real estate investments during 2007.
6. Construction is to be by way of fixed price contracts.

7. Drawings are to be against Architect/Q.S. Certificates approved by Mitchell-Moody Associate who will be acting as First Caribbean's consultants at the cost of the borrower. Certificates are to be presented at least 2 days prior to, proposed drawing.
8. All legal and regulatory approvals (inclusive of Foreign Exchange Approval from Central bank of Belize) to be in place.
9. All of First Caribbean's "know your customer" due diligence to be satisfied, inclusive of references.
10. Cost overruns are to be met from proprietor's own resources.

26. These conditions have to be satisfied before the funds would be accessible. The No. 1 claimant admitted that some of these conditions were not satisfied "I did not," he said, "satisfy all ten conditions referred to on page 2 of the letter." He also said in cross-examination that he had to satisfy the conditions before the loan would be available. He also, on the other hand, testified that he satisfied all the conditions mentioned in the letter.

27. There is no evidence before me that the guarantee and insurance requirements mentioned above were satisfied. The No. 1 claimant admitted that condition No. 1 above was not satisfied. This condition, according to the No. 1 claimant, cannot be satisfied, until

the vendor, Mr. Witz produces his title for the property to the bank. According to the said claimant, before the bank would make the money available, the vendor had to produce his said title to the bank. The claimant also admitted that conditions 2 and 3 were not satisfied, because the said title was not produced to the bank. It was for the claimants to make adequate arrangements with the vendor for the handing over to the bank of the title, and there is no evidence that such adequate arrangements were made. The obligations to satisfy the conditions precedent in the letter are not on Mr. Witz the vendor, but on the claimants or the person on whose behalf the credit was established by the bank.

28. The fact of the matter is that conditions 1, 2 & 3 were not satisfied. The claimant gave reasons for not satisfying the conditions, but that does not change the reality or the fact that the said conditions were not satisfied. Moreover, there is no evidence before me that conditions 4, 5 and 6 were satisfied. In my judgment, the No. 1 claimant has failed to prove that the conditions precedent mentioned in the letter for accessing the credit were satisfied. As the No. 1 claimant stated in his evidence, he had to satisfy the conditions before the loan would be available. The conditions were not satisfied, and therefore the loan was not available to purchase the property and for the project.
29. As I said above, I believe that the No. 1 claimant orally agreed to obtain the financing for the project and purchase of the property. By not satisfying the conditions for the loan, he has failed to obtain, as he

orally agreed to do, finance for purchase of the property and for the project and thus breached the oral agreement.

30. The owner of the property caused, as we saw above, a lawyer's letter to be sent to No. 1 claimant and No. 3 defendant. There was no response to this letter. In the meantime, the said Gulab Sharma, who was manager of Hoare Free Zone Construction Limited, the company retained by the No. 1 claimant to carry out construction works at the property, claimed that the No. 1 claimant contacted him to do the construction work on the property. Sharma said he received \$50,000 from the No. 1 claimant for the construction work and another \$50,000 paid by the said claimant through the 1<sup>st</sup> defendant. Sharma said he started the construction work in April, 2008, and he said the No. 1 claimant promised him more money in the month of May. He said the said claimant came to Belize in April, 2008 and said he could not raise the finances. Sharma said he borrowed US \$300,000 from Atlantic Bank for purposes of the construction and that he found out that the No. 1 claimant did not pay for the property on which the construction work was in progress.
  
31. Sharma said he knew that Arsenio Witz owned the property and that he knew him for more than twenty years. Sharma said he had borrowed over \$700,000 BZ to do the construction works on the property on behalf of the No. 1 claimant who failed to repay him this amount. He said when he enquired about the finance from the No. 1 claimant, he the No. 1 claimant said he could not raise the money. This witness testified that it was because he was not repaid by the No.

1 claimant the \$700,000 BZ, he spent for the construction works, that he offered Arsenio Witz to purchase the property in May, 2008. He said his offer was accepted and the property was bought for \$3,750,000 BZ. He said that none of the defendants assisted him in completing the sale.

### **The Sale of the Property**

32. The property was in fact sold on 24<sup>th</sup> June, 2008 to YASH International Ltd., a company incorporated in Belize on 30<sup>th</sup> April, 2008. The share capital of the company is \$10,000 divided into 10,000 ordinary shares at \$1.00 each. The sole shareholders are the said Gulab Sharma and his wife Artie Gulab Sharma, each holding 5000 shares.
  
33. It was therefore contended by the claimants, that the defendants, in breach of the oral agreement, caused YASH International Ltd., to purchase the property on the defendants behalf and for their own benefit; and that the Sharmas are holding the shares and positions in YASH International Ltd. for and on behalf of the defendants. It was submitted that it was the defendants who paid the vendor Mr. Witz the purchase price of the property. The defendants, it was submitted by the claimants, breached the oral agreement with the claimants to purchase and develop the property, by purchasing it themselves, using the medium of the Sharmas and YASH International Ltd., for the purpose.

34. In support of this submission, the claimants disclosed three bankers cheques dated 5<sup>th</sup> June, 2008 payable to the vendor Arsenio Witz in the total amount of \$3,575,000 BZ. These bankers cheques state that they were purchased by the No. 1 defendant Jagwish Punjabi. Moreover, the cheques were paid to the lawyer for Mr. Witz by Jagwish Punjabi. Moreover, say the claimants, the No. 1 and 3 defendants were present when the bank drafts were paid to Mr. Witz. The claimants therefore submitted that the real purchasers of the property were the defendants and not YASH International Ltd. and the Sharmas.
35. Gulab Sharma, a witness called by the claimants, testified that he asked the No. 1 defendant Jagwish Punjabi to purchase the bank drafts on his behalf, because the No. 1 defendant was going to Belize City. Sharma testified that he asked him to give the drafts to his lawyer Fred Lumor SC who was supposed to pay or give the drafts to the vendor Arsenio Witz.
36. Gulab Sharma disclosed a document entitled Checking Account Statement from Atlantic Bank Limited. The statement mentions the name Gulab Sharma, P.O. Box No. 249 and address at Corozal Town, Belize. The statement also has the account number as 100204265 which is an account held by Gulab Sharma in Atlantic Bank Ltd. The statement shows that on 5<sup>th</sup> June, 2008, the amount of \$4,000,000 was credited to the account of Gulab Sharma. There is no evidence as to who gave this amount of money to Gulab Sharma for deposit in his account. The bank statement also shows that on the said

5<sup>th</sup> June, 2008 the amount of \$3,575,000 was debited from Gulab Sharma's said account, in the form of the bank drafts, in favour of Mr. Witz.

37. On 13<sup>th</sup> June, 2008, according to the same bank statement, the amount of \$175,000 was debited from Gulab Sharma's said account in favour of Mr. Witz. A letter dated 3<sup>rd</sup> November, 2009 from Atlantic Bank supports the above withdrawals from Gulab Sharma's said account in favour of Mr. Witz. The total debit or withdrawals from Gulab Sharma account is \$3,750,000 in favour of Mr. Witz.
38. From all this evidence, it is clear to me that the amount of \$3,750,000 paid to Mr. Witz was withdrawn from the account of Gulab Sharma at Atlantic Bank. Though there is cause for some suspicion as to who paid the \$4000,000 into the account of Sharma, the same day that the withdrawals were made, the evidence overwhelmingly shows that the amount was paid from Sharma's account to the vendor, Mr. Witz. The bank might have been of some assistance to allay any suspicion, but this was not explored by the claimants.
39. The burden is on the claimants, and in my view, they have failed to prove, on a balance of probabilities, that the defendants, breached the oral agreement. In particular the claimants have failed to prove, on a balance of probabilities, that the defendants breached the agreement by causing YASH International Ltd. through the Sharmas, to purchase the property. Moreover, the claimants have failed to prove, on a balance of probabilities, that the Sharmas held the shares and

positions in YASH International Ltd. for the benefit and on behalf of the defendants. For the reasons given above, the claimants breached the oral agreement. But the defendants did not make a counterclaim against the claimants for damages for breach of the agreement.

### **Repudiation**

40. The defendants had argued that the claimants repudiated the said oral agreement when the No. 1 claimant offered the vendor Mr. Witz to purchase the property at a higher price than that offered by Joint Ventures Ltd., in exercise of the option to purchase. Joint Ventures Ltd. had offered \$3,500,000 to Mr. Witz for the property. Mr. Witz testified that he got a better offer from the No. 1 claimant of \$3,775,000. Witz testified that if Joint Ventures Ltd. did not exercise its option, he would have gone for the higher price. However, in the light of the fact, that there is no counterclaim and based on my findings above, a decision of the repudiation point is not necessary.

### **A Refund**

41. The evidence of the No. 3 defendant discloses that the money paid by the claimants and himself to demolish the buildings on the property, and to construct the foundation, and moneys paid to an attorney-at-law – a total amount of \$133,152 BZ – could be refunded to both of them if a joint request is made to the recipient parties. It is to the benefit of the said claimants and the defendant that such a joint request be made.

## **Conclusion**

42. There was an oral agreement between the claimants and defendants to purchase and develop the property. The parties intended that the No. 1 claimant and No. 3 defendant would sign the written agreement to purchase the property and title to the property would be vested in a new company. The company was established and was the vehicle through which the development would take place. A term of the oral agreement was that the No. 1 claimant would secure financing for the purchase and development of the property; but he failed to do so and therefore breached the agreement.
  
43. Because of the failure to get financing, that written agreement was not implemented. The vendor, named in the written agreement, as a result, terminated the said agreement. The vendor agreed to and sold the said property to YASH International Ltd., a company controlled by Gulab and Artie Sharma. The claimants have failed to prove, on a balance of probabilities, that YASH International Ltd., and the Sharmas bought the property on behalf of and for the benefit of the defendants. The claimants have failed to prove, on a balance of probabilities, that the defendants breached any agreement.
  
44. I therefore make the following orders:

1. The claim in this matter is dismissed.
2. Costs to the defendants to be agreed or taxed.

Oswell Legall  
JUDGE OF THE SUPREME COURT  
21<sup>st</sup> January, 2010

