

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

CLAIM NO. 278 OF 2007

(SOUTHERN AQUACULTURE LIMITED CLAIMANT  
(  
BETWEEN( AND  
(  
(INTERNATIONAL FINANCE CORPORATION DEFENDANTS  
(NEDERLANDSE FINANCIERINGS- MAATSCHAPPIJ  
(VOOR ONTWIKKELINGSLANDEN N.V.  
(NOVA COMPANIES (BELIZE) LIMITED  
( (In Recievership)  
(ROBERT S. GARCIA (As receiver of  
((Nova Companies Belize Limited)

Before: Hon Justice Sir John Muria

30 October 2009

Mr. M. Young S.C. and Mr. R. Williams S.C. for Claimant  
Mr. D. Courtenay S.C. with Ms V. Retreage for First and Second Defendants  
Mr. A. Marshalleck for Third and Fourth Defendants

**J U D G M E N T**

*CLAIM – land – declaration and injunction orders – freehold title – deed of conveyance – required to be lodged for record – time limit of one month from date of execution – section 71, General Registry Act (cap. 327) – lodged for record nine (9) months after execution – whether deed valid or not – whether land conveyed to claimant – whether vendor hold land on trust for purchaser – non-compliance with section 71 invalidates and render deed ineffective – Registrar’s Certificate under section 82 not save invalidity of deed*

1. **Muria J.:** By its claim filed on 21<sup>st</sup> June 2007, the claimant seeks a number of declaratory and injunctive orders against the defendants.

These are enumerated as follows:

- “1. *A Declaration that the Claimant is the beneficial and legal owner of the Property described below.*

***PROPERTY***

*ALL THAT piece or parcel of land comprising 100 + acres situate at 13 miles north of San Pedro Town Centre Ambergris Caye Belize District bounded and described as shown on Plan No. 74 of 1998 attached to Ministers Fiat Grant No. 74 of 1998 TOGETHER with all buildings and erections standing and being thereon.*

2. *A Declaration that the Claimant owns the Property free of the Debenture dated the 25<sup>th</sup> of June 1998 executed by the Third Defendant in favour of the First and Second defendants recorded at the land Titles Unit in deeds Book Volume 24 of 1998 at Folios 923 to 960 [hereinafter referred to as “the Debenture”]*
3. *Alternatively, a Declaration that the Claimant is the beneficial owner of the Property and the Third Defendant holds the legal fee simple estate in the property as nominee or trustee of the Claimant*

4. *A Declaration that the Claimant is entitled to possession of the Property*
5. *An Injunction restraining the Defendants whether by themselves or by their servants or agents from selling the Property*
6. *An interim injunction restraining the defendants from selling the property pending the trial of this Claim or until further Order of the Court*
7. *Damages*
8. *Costs*

2. At the centre of the dispute is the status of the 100 acres of land (“the Land”) described in paragraph (1) above.

***Background***

3. By way of background to the dispute, the Land in question was originally owned by the Government of Belize who in 1997 agreed to grant it to the third defendant. Under the Minister’s Fiat issued on 20<sup>th</sup> January 1998, the Land was granted to the third defendant who holds the freehold interest in the said Land.

4. On 24<sup>th</sup> February 1998, a Deed of Conveyance was purportedly executed by the third defendant to vest the Land in the name of the Claimant. In addition to the fact that the Deed was never lodged for recording, the claimant could not have entered into the Deed since it did not yet exist then. The claimant came into existence on 29<sup>th</sup> April 1998. (*See Certificate of Incorporation dated 29<sup>th</sup> April 1998*)
  
5. In June 1998 the first defendant (“IFC”) granted a loan of US \$5.5 million and the second defendant (“FMO”) granted a loan of US \$4 million to the third defendant, Nova Companies (Belize) Limited (“Nova”) and a related company called Ambergris Aquaculture Limited. As a security for the loan, on 25<sup>th</sup> June 1998, a Debenture was executed by Nova and Ambergris Aquaculture Limited in favour of IFC and FMO charging “all freehold and leasehold property” and assets of both Companies both present and future including (but not limited to) the properties specified in the first schedule. The Land in question was not mentioned in that first schedule.
  
6. On 5<sup>th</sup> August 2005, a Mining Licence was granted to James Hyde on

behalf of Nova by the Government of Belize. The Mining Licence covered 5 acres of the Land in question.

7. On 14<sup>th</sup> December 2005, Deed of Conveyance was executed by Nova as beneficial owner of the Land in favour of the claimant as purchaser for the price of \$50,000.00 (Belize currency).
8. Sometime later, Nova and Ambergris Aquaculture had financial problems and defaulted in their loan repayment. The first and second defendants commenced foreclosure proceedings and appointed a Receiver [the fourth defendant] on the 5<sup>th</sup> of January 2007.
9. The Fourth defendant, in the exercise of his power as Receiver, offered to sell the Land, as well as the properties expressly listed in the Debenture. As a consequence of the fourth defendant's action, the claimant filed this Claim and applied for an injunction to restrain any sale in the interim. The defendants agreed to await the outcome of the claimant's claim.

*The issues*

10. The issues, are identified and set out in the claimant's skeleton argument at paragraph 6 and they are as follows:
  - 6.1 Is the claimant the beneficial and legal owner of the Property?
  - 6.2 If so, from what date?
  - 6.3 If the claimant is not the Legal owner of the Property, is it the beneficial owner of the Property?
  - 6.4 If the claimant is the beneficial owner, then from what date?
  - 6.5 Did the Mortgage Debenture create a charge on the Property?
  - 6.6 If it did create a charge, was it a legal or equitable charge?
  - 6.7 If it created a charge, what date was that charge created?
  - 6.8 Are the First and Second Defendants entitled to sell the property?
  
11. As correctly alluded to by Counsel for the claimant in their skeleton arguments, the essence of this claim is for a declaration of ownership of the 100 acres parcel of land at 13 miles north of San Pedro Town Centre, Ambergris Caye. Thus, if the court finds that the claimant is the legal or equitable owner of the Land, then the Court will proceed

further to consider the issues relating to the Debenture and the charges over the assets and properties of the third defendant (“Nova”) as they affect the claimant. If the claimant is found not to have any legal or equitable interest in the property, then that is the end of the matter, since the right, ownership and interest in the Land still remains in Nova, who is not challenging the rights of the first and second defendants to enforce their rights under the Debenture.

The court will therefore first turn to the issues relating to the ownership of the Land in question.

***Deed of Conveyance dated 24<sup>th</sup> February 1998***

12. The Deed of Conveyance dated 24<sup>th</sup> February 1998 between the third defendant and the claimant was said to have been executed by the parties to convey the property to the claimant. The consideration stated in the deed was BZ\$50,000.00.
  
13. Three comments should be made of this Deed. First, the claimant did not exist in law on 24<sup>th</sup> February 1998 and could not have legally entered into such transaction with Nova, the third defendant. Secondly,

there was, and is, no evidence that the consideration of BZ\$50,000.00 was ever paid; and thirdly, this Deed was never lodged for recording. The Deed is therefore without legal effect.

Quite properly, Counsel in their skeleton and oral submissions conceded that the claimant cannot claim any legal title to the Land under the Deed of 24<sup>th</sup> February 1998.

***Deed of Conveyance 14<sup>th</sup> December 2005***

14. It is this Deed of Conveyance dated 14<sup>th</sup> December 2005 that the claimant contended to be valid and properly constitutes the legal fee simple title in the claimant over the Land in question. Although executed on 14<sup>th</sup> December 2005, it was not until 4<sup>th</sup> September 2006 when it was lodged for recording in the Deeds Book Volume 32 of 2006 at Folios 317 to 326.
  
15. Nevertheless Mr. Young SC with his usual acumen firmly submitted that the deed having been lodged for recording and endorsed with the Registrar's Certificate it must be treated by the court as duly recorded and as such it is valid constituting legal fee simple title in the claimant. The Registrar's Certificate is a shield that the court cannot

go behind, learned Counsel further submitted. Mr. Young SC found support for his submissions on sections 79(1) 81(2), 82(1) and (2), and 85 of the *General Registry Act* (Cap. 327) (“GRA”).

16. For the first and second defendants on the other hand, Mr. Derek Courtenay SC firmly urged the court to find that the Deed of 14<sup>th</sup> December 2005 is not valid and has no effect for the reason that it was not lodged for recording within one month after the date of execution of the Deed. Learned Counsel fortifies his submission under section 71 of the GRA.
17. Mr. Courtenay SC argued that the deed, executed on 14<sup>th</sup> December 2005, took nine (9) months before it was lodged for recording. That, says Counsel, was a direct contravention of Section 71 of the Act.
18. As regards, the claimant’s argument that the Registrar’s Certificate is a shield which the Court ought not to go behind, Mr. Courtenay SC submitted that the conclusiveness of the Registrar’s Certificate is qualified when one reads section 90 of the Act which permits a challenge to any document recorded under the Act where a person is

injuriously affected by any such document. Thus Counsel submitted the court can examine the validity of the Deed in this case despite the existence of the Registrar's Certificate.

19. Mr. Andrew Marshalleck of Counsel for the third and Fourth defendants also briefly and forcefully supports the defendant's case that the Deeds of conveyances dated 24<sup>th</sup> February 1998 and 14<sup>th</sup> December 2005 are invalid and of no effect for the same reasons as advanced by Counsel for the first and second defendants. Counsel maintains that the legal title to the Property remains with his client, the third defendant.

20. A point of significance, in my view, is raised by Mr. Marshalleck regarding the application of Part VI of the GRA. Counsel contends that there is no express prohibition against the Registrar registering a deed outside the time limits mentioned in section 71 of the Act. However, Counsel maintains that the Registrar's Certificate evidencing that the deed as duly recorded cannot override the requirements under section 71 for the deed to be valid.

21. Before proceeding further, I feel it would be helpful to set out the provisions of the law referred to by Counsel in their submissions. Sections 71, 79(1), 81(2), 82(1) and (2), 85 and 90(1) of the General Registry Act are as follows:

“71. No deed executed after 14<sup>th</sup> December, 1888, shall have any validity or effect unless it is lodged for record in the office of the Registrar, within one month after the date thereof if executed within Belize, and within three months after the date thereof if executed out of Belize.

.....

79(1). The Registrar shall examine every document brought to be recorded and satisfy himself-

- (a) that it has been properly executed; and
- (b) that such execution is duly proved in accordance with this Part.

.....

81(2) The Registrar shall-

(a) immediately upon any deed being presented to him for recording make an entry to the presentation if it in a book to be by him constantly kept in his office, and to be entitled 'File Book of Deeds, etc.'

.....

82(1) All documents shall be recorded in the order in which they are received by the Registrar, but no document shall be received unless the recording fee is paid.

(2) When the recording of a document is completed, the Registrar shall further indorse thereon a certificate setting forth the particular book in which such document is recorded, and the page or pages containing such record, and that such document has been proved and recorded in strict conformity with this Part, which certificate shall be dated within the day of the month and year in which the record was completed, and shall be subscribed by the Registrar in his proper handwriting, and such certificate shall be received and admitted in all courts in Belize as conclusive proof of the matter certified therein.

*[underlining added]*

.....

85. Every document, certified as aforesaid as having been proved and recorded under this Part, shall be admitted in evidence in any court without any further or other proof of the execution thereof, and every record of a document made under the authority of this Part, and all copies of records duly certified by the Registrar to be true copies, shall be admitted as evidence in any court, as aforesaid, in the same manner as the deed of which it purports to be a record, or copy of a record, is hereinbefore directed to be admitted, as aforesaid as having been proved and recorded under this Part.

.....

90(1) Any person injuriously affected by any document recorded under this Part may bring an action in the Supreme Court claiming to have the record of such document cancelled.”

22. Having set out the above provisions of the GRA relied upon by Counsel, I shall now deal with the issue of the validity of the Deed of Conveyance dated 14<sup>th</sup> December 2005.

***Whether deed of Conveyance dated 14<sup>th</sup> December 2005 valid***

23. The declaratory orders sought by the claimant are in respect of its alleged rights over the Land. The validity of the Deed of Conveyance dated 14<sup>th</sup> December 2005 is therefore crucial to the claimant's case in these proceedings.

24. In his submissions, Mr. Young SC relied on two points to support the claimant's case that the Deed of Conveyance dated 14<sup>th</sup> December 2005 is valid. First, Counsel submitted that the Deed, having been lodged for recording and endorsed with the Registrar's Certificate, must be treated by the Court as duly recorded and as such it is valid, constituting legal fee simple title in the Land in the claimant.

25. The claimant did not dispute that the Deed of Conveyance dated 14<sup>th</sup> December 2005 was not lodged for recording until 4<sup>th</sup> September, 2006, almost nine (9) months after it was executed. Mr. Young SC

did not seek to contend otherwise. However, Counsel submitted that the Deed having been lodged for recording, it was within the jurisdiction of the Registrar to examine and determine whether the Deed was properly executed and whether it complied with the law. That, says Counsel, was done by the Registrar pursuant to his power under section 79(1) of the Act.

26. Having done so and having been satisfied, the Registrar proceeded to record the Deed and indorsed on it with the Registrar's Certification that the Deed had been "*proved and recorded in strict conformity with the provisions of the general Registry Act.*" Those actions on the part of the Registrar, says Counsel, were in conformity with sections 81(2) and 82(1) and (2) of the Act, and as such the Deed is valid.

27. I have to say that on my reading of section 71 of the Act, the invalidity of a deed does not precede the compliance with the requirements of section 71, rather, the invalidity of a deed shall ensue from non-compliance with the requirement of section 71. In other words, until there has been a failure to record a deed within the time fixed by section 71, the validity of such deed is not affected. It was at

the expiration of the time limited by section 71 that a deed becomes invalid for non-compliance with the section.

28. This interpretation is consistent with the proviso to section 71 which permits an application for extension of time to lodge the document for recording. There would be no sense in seeking an extension of time to comply with requirements of section 71, if a deed was invalid before the need for compliance with the requirements of the section.

29. In *Armstrong -v- Williams (1940) 63 CLR 489*, a similar construction was given to section 193 of the Bankruptcy Act 1924 – 1933 which provides that a deed of arrangement has no validity unless the requirements of that section are complied with, by the registering of the deed and assenting to it within twenty eight days from the date of execution. The Supreme Court of NSW consisting of Jordan CJ, and Halse Rogers J., Davidson J (dissenting) held that section 193 (1) of the Act must be construed as meaning that a deed of arrangement should not become operative until section 193 had been complied with. Davidson J in his dissenting opinion construed the section as allowing validity to a deed of arrangement until the times limited by

section 193 (1) expired, and then avoiding the deed for non-compliance. On appeal to the High Court of Australia, the dissenting opinion of Davidson J was affirmed. In the joint opinion of Rich and Dixon JJ, the learned Justices said:

“We are of the opinion that this construction of the statute is correct and that, until there has been a failure to register a deed of arrangement within the time fixed by par. a, or to obtain the assent of a majority of creditors within the time fixed by par. b of sec. 193 (1), its operation is not affected by sec. 193.

The section says that a deed of arrangement shall be void unless it is registered within twenty-eight days and before, or within twenty-eight days after, its registration it receives the required assent of creditors. The prima-facie meaning of this language is that invalidity shall ensue from non-compliance, not that before compliance there shall be no validity; that is to say, ‘unless’ is equivalent to ‘if not.’

It follows that Section 193 should receive the construction which its language naturally bears and be understood as invalidating a deed only after a failure to fulfill its requirements has occurred.”

30. McTiernan J, agreed with the opinion of Rich and Dixon JJ and added:

“The respondent’s first contention, which is based on sec. 193 (1), is that the deed of assignment was wholly void during the time it was unregistered. This sub-section says that a deed of arrangement to which Part XII. Applies “shall be void unless” it is registered and assented to in the manner and within the times prescribed by the sub-section. In my opinion, this contention is not supported by the sub-section. Its meaning is that if the deed is not registered within the prescribed period it will become void at the end of the period. The sub-section does not mean that the deed is void from the time it is executed until it is registered and that it can only become a valid instrument when the requirements of the sub-section are satisfied. This

construction of the sub-section is supported by forms of expression employed in secs. 193 and 221.”

31. In the above cited case, the deed was registered (on 31 July 1939) within the time prescribed by Section 193. The decision of the Court, however, turns on the issue as to who had the right to the property after the date of execution (12 July 1939) but before the delivery of the Writ of Execution (on 15 July 1939) to the bailiff. It was held that since the deed was registered within the time required by Section 193(1), it was valid and effective to convey and did vest the debtor’s property in the goods in the appellant (trustee under the deed of assignment) before the writ of execution was delivered to the bailiff.

32. I must say, with respect, that despite the firm argument advanced by Counsel for the claimant on the application of sections 71, 79(1), 81(2) and 82(1) and (2) of the Act, I am inclined to agree to the views urged by Counsel for the defendants on the application of the said provisions dealing with recording of certain documents. Provided that the Registrar is satisfied that the requirements of the law for a deed to be recorded have been complied with, the Registrar shall

record the same and certifies it to that effect. That was what happened in this case.

33. Sections 79 to 82 of the Act set out the duties of the Registrar with respect to Deeds and other documents lodged for recording. Whilst the provisions referred to by Counsel for the claimant are necessarily complied with for the purpose of recording the deed of the 14<sup>th</sup> December 2005, non-compliance with section 71 is fatal to the validity of that Deed in this case. A Certificate issued under section 82(2) cannot override the legal requirement of section 71. Such certificate is only evidence that the Deed had been duly recorded. It is not proof that it has complied with the requirements for its validity as required under section 71.

34. In this case, the true position in law is that on 14<sup>th</sup> December 2005 the third defendant and claimant validly executed a Deed of Conveyance for the purpose of conveying the legal estate in the property to the claimant. That Deed, however, although validly executed, became ineffective in law to convey the legal title in the said Land due to non-compliance with section 71 of the GRA, that is, the failure by the

parties to lodge the Deed for recording within one month from the date of execution. At the expiration of the time limit specified under section 71, the Deed became void therefore ineffective to convey title to the Property to the Claimant.

35. In our present case, the deed of conveyance was executed on 14<sup>th</sup> December 2005. Had the deed been lodged for recording as required by Section 71 within one month from 14<sup>th</sup> December 2005 its validity would have survived thereafter and would have effectively vested the property concerned in the claimant. That did not happen and so, when the deed was lodged nine months later, it was much too late for the claimant to get over the limitation laid down in section 71 for the deed to have any validity or effect on 4<sup>th</sup> September, 2006 when it was presented for recording.

36. The next point relied upon by the claimant is the Registrar's Certificate issued under section 82(2) of the GRA which, Counsel says, is conclusive proof of the validity of the Deed and therefore save the non-compliance with section 71 of the Act. In support of his submission on this aspect of the claimant's case, Mr. Young SC

referred to the case of *Parker -v- QBSA* [2000] QCA 422, a decision of the Queensland Court of Appeal.

37. Quite apart from its own factual circumstances, *Parker -v- QBSA* presents a very different scenario to our case here at hand. That case concerns a certificate issued by Queensland Building Services Authority to the Parkers certifying that the work done was *covered* by a policy of insurance under the Statutory Insurance Scheme. The certificate was “*conclusive evidence*” of the fact that the work done was “*covered*” by the insurance policy. That was what MacPherson JA was referring to when he said that the effect of provisions like this is clear, “they mean what they say and must be given full force ...” There was no argument in that case that the certificate was conclusive proof of the validity of the insurance policy document or any document.

38. However, like in the *Parker -v- QBSA* case, where the certificate is conclusive evidence that the work done was “*covered*” by the insurance policy, the certificate in the present case, issued by the Registrar, is “*conclusive evidence*” of the fact that the Deed had been lodged for

recording and was recorded on 4<sup>th</sup> September 2006 in compliance with the provisions of the Act. The words set out in the Registrar's certification are:

*“Proved and recorded in strict conformity with the provisions of the general registry Act chapter 258 of the Laws of Belize Revised Edition 1980 in Deeds Book Volume 32 of 2006 at folios 317-326 this 4<sup>th</sup> day of September 2006.”*

39. Giving the above words full force of exactly what they mean, in my judgment, the certificate is not conclusive evidence of the validity of the Deed, rather it is only conclusive evidence that it was recorded pursuant to the provisions of the General Registry Act on 4<sup>th</sup> September 2006.
  
40. Further argument was advanced by Counsel for the claimant relying on section 85 of the GRA. Since the issue here is whether the Deed is valid or not, section 85, in my considered view, does not help the claimant.

41. The final thrust of the submission of Counsel for the claimant is that the Registrar's Certificate is a shield that the Court does not look behind. Despite the firm argument by Mr. Young SC, with respect, I have to agree with Mr. Courtenay SC that the court, by virtue of section 90 of the Act, can still go behind the Certificate issued by the Registrar under section 82. It is not an impenetrable shield, rather it is an armour afforded to the holder of such a certificate subject to the operation of section 90 of the Act.

42. The Deed having been recorded, should the court treat it as valid and constituting a legal fee simple title of the Property in question in the claimant? A "deed" under section 70 of the Act is a document by which estates, interests and rights in or over land may be created, transferred, charged or incumbered or otherwise affected in Belize and is required to be registered under Parts III and Part IV of the Act. It is therefore essential to ensure that the deed is valid. That, in my view, is the reason for the enactment of section 71, to ensure that a document creating, transferring, charging or encumbering or otherwise affecting land in Belize is valid.

43. Section 71 is purposely drafted to convey the meaning that a deed that has not been lodged for record within one month after it is executed shall not have any validity or effect. The word “any” in the section is, in my view, deliberately used. It is inclusive in its application rendering a deed void and of no effect for any purpose whatsoever.

44. No comparable provisions from other common law jurisdictions have been referred to by Counsel in their submissions. My limited research has, however, found a somewhat similar provision in Dominica’s Registration and Record Act (Chap. 19-04) which provides in Part I – RECORDING OF DEEDS – as follows:

“3. Every deed shall be absolutely void as against any subsequent purchaser for valuable consideration or mortgagee unless the deed has been duly registered before the registration of the deed under which the subsequent purchaser or mortgagee claims, and within the time limited for the registration of deeds after their execution.

The time limit in the Dominican provision (section 6) is three months if executed within Dominica and twelve months if executed outside of Dominica.

45. The Dominican provision preserves the validity of a Deed, but makes it only void as against purchasers for valuable consideration or mortgagee. That, in my view, is preserving the common law position whereby the Deed of Conveyance can only be avoided for fraud, undue influence or mistake, and until the Deed is avoided, it can pass good title, even if unregistered, to the innocent purchaser who has no notice of the vitiating facts. R. Megarry and H.W.R. Wade, *The Law of Real Property*, Fifth Edition, Stevens and Sons Limited, London (1984) p. 168; see also *Stanhope -v- Earl Verney* (1761) 2 Eden 81; and *McVity v Tranouth*, 36 S.C.R. 455 (26 June 1905) a case arising under s.87 of the Registry Act (cap.136) of Ontario (Canada).

46. It may well be that the conveyance dated 14<sup>th</sup> December 2005 may have created a contract between the third defendant and claimant for the conveyance or transfer of the property to the claimant. Either party may seek to enforce it by way of specific performance, for

equity looks to that as done which ought to be done. However, equity follows the law, and the law requires that the conveyance must be registered, or more specifically, to have the deed of conveyance recorded to ensure its validity. If that is not done within the time prescribed under section 71 of the GRA, as is the case here, the deed of conveyance is void and has no effect, whatsoever, that is to say, no right, or interest in the property passes to the claimant.

47. Our section 71 of the GRA makes it plain in its language that “no deed ... shall have any validity or effect” unless it is lodged for record within one month after it is executed. There is no saving provisions in Part VI of the Act for non-compliance with section 71. The proviso (a) to the section, however, permits application for extension of time for lodgment of a deed for record. That had not been shown to have been done in this case.

I feel that the argument by Mr. Young SC that the court should treat the Deed as valid and constitutes legal fee simple in the land in the claimant cannot stand.

48. I find therefore that the deed dated 14<sup>th</sup> December, 2005 was not lodged for record within the time required by section 71 of GRA and so it is invalid and of no effect.
49. That being the case, in my view, the argument that the third defendant holds the property in trust for the claimant – whether as constructive or resulting trustee – cannot be sustained. It was argued that the execution of the two Deeds of Conveyance is evidence of an intention on the part of the parties that the third defendant is to hold the Land as constructive trustee for the claimant. Reliance is placed on section 51 of the Law of Property Act (cap. 190).
50. In my judgment such an argument would only succeed if the Deeds are valid. The mere existence of the two deeds of conveyance does not and cannot constitute evidence in support of a creation of constructive or resulting trust in favour of the claimant in the face of a non-compliance with section 71 of the GRA.
51. Furthermore, the two deeds being invalid and of no effect, there is very little (if not, none), evidence left to support the claimant's

assertion of a constructive or resulting trust in this case. The evidence of Mr. Jeff Fort bears very little support to the claimant's claim of trust in this case. On the other hand the uncontradicted documentary evidence of the Mining Licence issued to the third defendant, through Mr. Hyde, stands more in favour of the defendants' case than that of the claimant.

52. I find and hold that the legal title to the property remained throughout, and still remains, in the third defendant and there is no duty to convey it to the claimant. It is therefore unnecessary for the court to venture into the arguments for or against the question of whether or not the claimant has equitable right or interest in the property. The claimant has none.

53. That is as far as the interest of the claimant goes in this case. The questions of whether the mortgage debenture create a charge on the property or whether the charge was legal or equitable or whether the first and second defendant are entitled to sell the property are issues to which the claimant has no standing to question. They are issues of

concern, if at all, for the third defendant in whose bosom the ownership, rights and interests in the Land lies.

54. The third defendant maintains that it is the legal owner of the property, and both it and fourth defendant support the proposition that the Debenture which was duly recorded as a deed under the General Registry Act created a legal mortgage over the property concerned. Both the third and fourth defendants raise no resistance to the first and second defendants enforcing their rights under the Debenture against them.

55. For all the above reasons, the claim by the claimant is dismissed and the orders sought therein are refused.

Costs to the defendants to be taxed, if not agreed.

(Sir John Muria)

Justice of Supreme Court