

IN THE SUPREME COURT OF BELIZE, A. D. 2020

CLAIM NO. 625 OF 2020

BETWEEN:

(BELLA GROUP, LLC	1st CLAIMANT
(BRENT BORLAND	2nd CLAIMANT
(ALANA LATORRA BORLAND	3rd CLAIMANT
(COPPER LEAF, LLC	4th CLAIMANT
(
(AND	
(
(MARCO CARUSO	1st DEFENDANT
(MICHELA BARDINI	2nd DEFENDANT
(AMSOUTH INVESTMENTS LTD	3rd DEFENDANT
(RENDEZVOUS ISLAND LTD	4th DEFENDANT
(REGISTRAR OF COMPANIES	1st INTERESTED PARTY
(REGISTRAR OF LANDS	2nd INTERESTED PARTY

BEFORE THE HONOURABLE MADAM CHIEF JUSTICE MICHELLE ARANA (Ag.)

Mr. Dean O. Barrow, S.C., along with Mr. Adler Waight of Barrow & Williams for the Defendants/Applicants

Mr. Edmund Marshalleck, S.C., of Barrow & Co. and Mr. Alistair Jenkins of Magali Marin Young and Co for the Claimants/Respondents

J U D G M E N T

[1] This is an Application to Strike out a Claim. The substantive claim is for declarations and other relief brought by the Second and Third Claimants as former

Directors of the Fourth Defendant Company on the basis of fraud. The Defendants have brought the present Application seeking to strike out the substantive claim on the basis that the statement of case is prolix, and on the basis of the absence of a legal nexus between the Fourth Claimant company and the Defendants. The Claimants resist the Application saying that the Statement of Case is not prolix, it is detailed in an effort to provide context to the allegations of fraud levied against the Defendants and even if it were prolix, the court should not strike out this claim as that is a draconian measure of last resort. The court should instead give the Defendant leave to amend their pleadings. The court now considers the arguments for and against this application and gives its decision.

Legal Submissions on behalf of the Defendants/Applicants

[2] These submissions are made in support of the Defendants' Notice of Application to Strike Out a Statement of Case filed on March 3rd, 2021. Principally, the Defendants seek to have the entire claim struck out as against them.

Defendants, in summary, submit that:

- a. the Statement of Claim (**Statement**) is prolix;
- b. the Statement lacks "particulars" on the unlawful conspiracy and dishonest assistance alleged;
- c. the Statement discloses no cause of action known to law between Copper Leaf LLC and Rendezvous Island Ltd;

- d. the claim by Bella Group is one for reflexive loss; and
- e. the Statement discloses no cause of action known to law between Copper Leaf LLC, Marco Caruso, Michela Caruso, and AMSouth Investments Ltd.

Pursuant to Rule 11.8(3), the Defendants have not filed any affidavit in support of their application to strike out seeking only to make legal submissions in support of the application.

[3] It is fundamental to frame the narrow case before the Court.

The 1st Claimant (**Bella Group**) as a “former” member of the 4th Defendant (**RIL**) seeks, on **behalf of RIL**, the cancellation of a conveyance dated July 31st, 2019 between RIL and the 3rd Defendant (**AMSOUTH**) LTU-201901228. The net effect of this would be that the property (**Rendezvous Island**) transferred on July 31st, 2019 from RIL to AMSOUTH would revert to RIL. This is accounted for in paragraph 4 of the reliefs claimed. Bella Group also seeks the cancellation of the forfeiture of its shares in RIL. This is accounted for in paragraph 2 of the reliefs claimed.

The 2nd Claimant (**Brent**) and 3rd Claimant (**Alana**) as former directors of RIL, allege that they had not resigned as directors of RIL and seek a declaration avoiding the notices of resignation. This is accounted for in paragraph 1 of the reliefs claimed. In the round, Bella Group and Brent and Alana seek to be restored as shareholder

and directors of RIL, respectively. This is accounted for in paragraph 3 of the reliefs claimed.

Bella Group's, Brent's, and Alana's claims are succinctly expressed as follows:

- a. *“the case against Marco and Michela is for fraud, breach of fiduciary duty in relation to Rendezvous [Island Ltd.], the unlawful removal of Brent and Alana as directors, and the unlawful forfeiture of Bella Group's shares...[in Rendezvous Island Ltd.]”*
- b. *The case against AMSOUTH is for fraud and a declaration that AMSOUTH holds Rendezvous Caye in constructive trust for Rendezvous [Island Ltd.]”¹.*

The 4th Claimant (**Copper Leaf**) alleges in an unstructured way that there was some conspiracy to harm it.

The Claimant's Case – Prolix

[4] Rule 8.7 enjoins the Claimants to include in the Statement all the facts on which they intend to rely in support of their claim; such facts must be relevant and shortly stated. In other words, the “fundamental rule is that pleadings must contain the statement of the **material facts** upon which the claim rests but not the evidence which is to be relied upon. Therefore, it can be discerned that only relevant facts

¹ Paragraph 24 of the Claimant's Skeleton Arguments

must be pleaded.”² Generalities, assumptions, scurrilous arguments, evidence, repetitions, and conclusions violate the fundamental rules of pleadings. The Defendants ought not be forced to deal with unwieldy arguments. The Defendants must only be called upon to respond to material facts. The Defendants attack the pleadings contained in paragraphs 11 to 68 of the Statement of Claim on several bases, including lack of relevancy to the Claim, matters of conclusion versus matters of fact, repetitive arguments, unnecessary matters of evidence, legal arguments versus material facts, and facts already pleaded.

Alleging and using pejorative language in a Statement of Claim does not strengthen or make a legal claim any clearer. In fact, it obscures and embarrasses a defendant responding to the claim. So too does repetition as is the case at bar.

Duty of the Claimant – Fraudulent Conduct - Pleading Conspiracy – Pleading Dishonest Assistance – Breach of Fiduciary Duty

[5] A claim has a general duty to plead only material facts. That duty is heightened, as is the case at bar, where the Claimants allege fraudulent conduct³. When pleading dishonest assistance, “the pleading[s] must be clear and unequivocal

² Kinlock v McFarlane et. al [2019] JMSC Civ 20 at paragraphs 26-35 [Tab 1]

³ Three Rivers District Council and others v Bank of England (No 3) - [2001] 2 All ER 513 at para. 183-190 [Tab 2]

and it is not enough to plead that the... [Defendant] **was aware or ought to have been** aware of actions to establish dishonest assistance.”⁴

[6] The Claimant must plead with particularity:

- a. What the particular defendant did to assist in the breaches of fiduciary duty or trust;
- b. How the assistance caused, contributed or resulted in the Claimants’ loss; and
- c. How the defendant is alleged to have acted dishonestly in assisting the main perpetrator⁵.

[7] It is not enough to use a so-called 'rolled-up plea' and claim that the corporate defendant **was or should have been aware of fraudulent actions** by the main perpetrator to establish dishonest assistance; only the actual knowledge of the defendant will suffice⁶. The Claimants must identify the particular officer within the corporate defendant that assists⁷.

[8] Similarly, a claimant alleging unlawful conspiracy must carefully and specifically plead the allegations⁸. The Claimants must plead with particularity:

⁴ Cause No. G 224 of 2015 *William Ritter and Geneva Insurance SPC Limited (In Voluntary Liquidation) v Butterfield Bank (Cayman) Limited* at paragraph 183 & 188 [Tab 3]

⁵ [Tab 3] at paragraph 175

⁶ Civil Fraud: Law, Practice and Procedure (1st Edn.) at pg. 396 [Tab 4]

⁷ [Tab 3] at paragraph 176 and 198

⁸ *Elite Property Holdings Ltd v Barclays Bank PLC* [2019] EWCA Civ 204 at paragraphs 56, 57, 72, 73 [Tab 5]

- d. That there was a combination;
- e. The combination must be to use unlawful means;
- f. there must be an intention to injure a claimant by the use of those unlawful means; and
- g. the use of the unlawful means must cause a claimant to suffer loss or damage as a result⁹.

Director's Duties owed to Company and Reflexive Loss

[9] It is trite law that the directors owe fiduciary duties to the company only and not individual shareholders¹⁰ unless there are exceptional circumstances such as agency or some special relationship between the shareholder and directors¹¹. It is trite law that a shareholder “*cannot...recover damages merely because the company in which he is interested has suffered damage. [It] cannot recover a sum equal to the diminution in the market value of his shares, or equal to the likely diminution in dividend, because such a 'loss' is merely a reflection of the loss suffered by the company. The shareholder does not suffer any personal loss.*”¹² Paragraphs 19, 31, 50, and 52, in so far as they suggest that the Bella Group has a freestanding claim, ought to be struck out as having no basis in law.

⁹ [Tab 5] at paragraph 71

¹⁰ Commonwealth Caribbean Company Law (1st Edn.) at pg. 233 [Tab 6]

¹¹ Ibid. at pg. 234-235

¹² Prudential Assurance Co. Ltd v Newman [1982] 1 All ER 354 at pg. 16 [Tab 7]

No Cause of Action between Copper Leaf LLC and the Defendants

[10] Copper Leaf alleges that it has an interest in the assets of RIL on account of a default judgment it has against Brent. It is trite law that a shareholder is not entitled to treat the assets of the company as its own¹³. It begs the following question on Copper's Leaf pleaded case : how can it, a stranger to RIL, claim to be interested in the assets of the RIL when not even RIL's directors and shareholders can make such a claim? Copper Leaf has no claim to Rendezvous Island. On these bases, the Defendants seek to have the pleadings as against them struck out.

Court's Approach to Striking-Out

[11] The Defendants accept that the power to strike out is a matter of last resort. The Defendants also concede that the Court may grant any party faced with an application to strike out permission to amend its statement of case to cure any technical defects where that party makes such an application. However, it is submitted that where the defect is one of law the Court should not be so readily inclined to allow such an amendment. The Defendants submit that the case ought to be struck out as the Claimants had ample notice and opportunity to correct any defects and have failed to do so. The Claimants have made no application of any

¹³ Salomon v A Salomon and Co Ltd [1897] AC 22 [Tab 8]

sort to amend their Claim. In the premises, the Defendants pray that paragraphs identified above be struck out with costs. The Defendants further pray that, since the striking out of the multiple specified paragraphs would gut the Claim, the entire Claim be struck out.

Legal Submissions on behalf of the Claimants/Applicants in Response

[12] Rendezvous Island Ltd. (“**Rendezvous**”) was incorporated on the 13th April, 2007, and on the 15th October, 2009, Brent Borland (“**Brent**”), Alana Borland (“**Alana**”), Marco Caruso (“**Marco**”) and Michela Bardini (“**Michela**”) were appointed as directors of Rendezvous. On the 19th October, 2009, 4,999 shares were each allotted to Romax Development Ltd. and Bella Group, LLC (“**Bella Group**”) and one share was each allotted to Michela and Belize Corporate Services Ltd. Rendezvous acquired Rendezvous Caye on the 2nd October, 2008, for the sum of US\$1,800,000.00 under a Deed of Conveyance recorded at the Land Titles Unit at Deeds Book Volume 35 of 2008 at folios 1249 to 1258. Rendezvous Caye was appraised at US\$72,400,000.00 as at the 28th June, 2011.

[13] Marco and Michela caused forged Notices of Resignation of Directors, purported to be signed by Alana and Brent, to be registered at the Belize Companies and Corporate Affairs Registry.

[14] On the 21st August, 2018, without notice of any meeting of directors of Rendezvous, Marco and Michela also registered, at the Belize Companies and Corporate Affairs Registry, a purported directors' resolution signed by them, purporting to issue a first call on Bella Group's shares. On the 21st August, 2018, Marco and Michela caused another purported directors' resolution dated one month after the first one, entitled "Second and Final Call", to be registered at the Belize Companies and Corporate Affairs Registry. By this second directors' resolution, Marco and Michela made a second call on Bella Group's shares, without notice having been given to Bella Group, Alana or Brent. Thereafter, without any notice of the purported call on shares being sent to Bella Group, Marco and Michela purported to resolve to forfeit Bella Group's 4,999 ordinary shares in Rendezvous with immediate effect. No notice of the meetings at which the call on shares were purportedly issued and no consent of the Group No. 2 directors of Rendezvous had been given in accordance with the Rendezvous' Articles of Association.

[15] Marco and Michela then executed a Deed of Conveyance transferring title to Rendezvous Caye to AMSOUTH Investment Ltd. ("**AMSOUTH**"), a company owned by employees and associates of Marco and Michela. The Defendants' actions, and the subsequent transfer of the Airport Property to RIA Ltd was carried out after the 4th Claimant ("**Copper Leaf**") commenced a claim ("**Claim No. 1:18-cv-06377-JFk**") against Belize Infrastructure Fund I LLC, Marco and Brent in the Southern

District of New York on the 13th July, 2018, and thereafter, obtained a default judgement against both Marco and Brent in the sum of US\$10,235,711.93 plus attorneys costs.

[16] The default judgments obtained in Claim No. 1:18-cv-06377-JFk were used to file *in personam* claims in the Supreme Court of Belize in *Claim No. 141 of 2019 Copper Leaf LLC v Belize Infrastructure Fund 1, LLC, Brent Borland and Marco Caruso* (“**Claim No. 141 of 2019**”). A default judgment was obtained against Brent in Claim No. 141 of 2019, but Marco is defending the said claim. The Court granted an interim injunction herein on an *ex parte* basis and subsequently discharged it on the ground of material non-disclosure. In so doing the court had accepted that the Claimants had an arguable case.

Submissions

[17] The Defendants’ application to strike is being made pursuant to rules 26.3(1)(c) and (d) of the *Supreme Court (Civil Procedure) Rules, 2005* (“**CPR**”)[**TAB 1**] which provide:

In addition to any powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court-
(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

Statement of Claim not prolix/pleadings point

[18] The Defendants vacillate in their grounds and submissions by asserting that the Claimants' Statement of Claim is prolix and simultaneously asserting that the Claimants did not particularize the pleaded causes of action sufficiently. The prolixity of the statements, if any, is indeed reflective of the extent of the particulars in fact provided. The Claimants say that this claim is quite complex and required detailed pleadings to be put before the Court, which are all relevant to the claims for declarations and causes of action pleaded. The paragraphs in the Statement of Claim which the Defendants say are prolix, provide the particulars necessary to put this complex claim, largely based in fraud and breach of fiduciary duty, before the Court. Even if the Court were to accept that certain paragraphs of the Statement of Claim are prolix, this is not a basis to strike out the claim (as distinct from striking unnecessary paragraphs) which is otherwise sufficiently pleaded and particularized. Further, and in any event, the failure to provide particulars is not a basis for strike out but rather a basis for making a request for further and better particulars under the relevant rules. Strike out is the nuclear option and before resorting to it the Court should always consider instead allowing full opportunity for the claim to be

amended particularly where the proceedings have not yet progressed to case management conference.

[19] The Claimants say that the approach of the Court in *Dominica Agricultural and Industrial Development Bank v Jeemie Vier Lockhart et al* Claim No. DOMHCV 2017/0041 [TAB 2] on such an application to strike out on the basis that the Statement of Claim is prolix is appropriate. While the Court noted that a statement of case must be concise and must only include material facts, the Court declined to strike out the statement of case, noting that the purpose of the pleadings is so that a defendant is aware of the case that is being made against him. At paragraph 29 of the decision, the Supreme Court of Dominica referred to rule 8.7 of the Dominican CPR, *in pari materia* with rule 8.7 of the Belizean CPR, on which the Defendants also rely, and extensively explained the approach to the pleadings and striking out at paragraphs 31 to 38, which can be summarized as follows:

Striking out a claim deprives a party of his right to a trial and the ability to strengthen his case. As such, the Court must be persuaded that the party is unable to prove the allegations made or that the statement of case is incurably bad for the court to exercise this jurisdiction, which said jurisdiction should only be used in plain and obvious cases;

The purpose of the pleadings is to identify the issue or issues that will arise at trial, and to avoid the opposing parties and the court from being surprised. The opposing party should know what case he has to meet; and

The pleadings should be precise, specific, and unambiguous and disclose a cause of action. The statement should be in a summary form of the material facts.

[20] Relying on these principles, the Court in *Dominica Agricultural and Industrial Development Bank* found that the statement of case, although lengthy and awkward, did not disclose that the claim was unmeritorious or hopeless. The Court therefore declined to strike out the statement of case.

[21] The Claimants maintain that the Statement of Claim herein is entirely in order, and that while it is indeed lengthy, they seek to advance complex claims grounded in part on fraud and breach of fiduciary duty. Undoubtedly, a good claim for the declarations sought and multiple causes of action have been made out, as will be outlined below.

[22] As a secondary position the Claimants say that if the Court agrees with the Defendants that the Statement of Claim is prolix and/or discloses no reasonable cause of action, then in keeping with the overriding objective, the Court ought to allow full opportunity for amendment rather than to strike out the claim.

[23] As is readily disclosed, the Claimants claim some three declarations and consequential orders flowing therefrom. The declarations seek to have the Court pronounce upon the legal validity of the notices of resignation, the forfeiture of Bella Group shares, and the deed of conveyance in favour of AMSOUTH Investments Ltd (“**AMSOUTH**”). The claims for declarations are claims for formal statements from the Court upon the existence or non-existence of a legal state of affairs. It is trite law that a Claimant does not need to have an existing cause of action to bring a claim for a declaration. A Claimant need only demonstrate a sufficient interest in making the claim for the declaration or the outcome of the proceedings.

[24] This flexible approach in claims for declarations was outlined by the learned authors of *Zamir & Woolf The Declaratory Judgment* at paragraphs 5-21 to 5-30 [TAB 3]. The learned authors referred to the judicial authorities on this point of law in relation to standing or interest in declaratory judgments, and noted that a party who seeks a declaratory judgment has standing if there is a real dispute as to the extent of legal rights between the parties, even though there may not be a contract or direct legal relationship between them. It is sufficient to claim relief if the acts of the defendant affect or may affect the claimant in his private rights, and so it is not necessary that their relations should fall within the framework of a specific legal category such as contract or trust.

[25] In the instant case the Claimants are all directly interested in the pronouncements as owner, beneficial owners and creditor, respectively. They each have private rights likely to be affected by each of the declarations. In claims for declarations the proper Defendants are any and all persons who may be affected by the declarations sought or who may have an interest in defending against the same. The Court looks with favour upon joining all parties whose legal or equitable interests may be affected by the grant of the declarations sought. The Claimants say that each of the paragraphs pleaded materially relate to one or more of the declarations being sought against the Defendants and provide sufficient details so that there are no qualms as to what claim the Defendants must answer including material facts to establish unlawful filing of notices of resignation of the Claimant directors, and establishment of the Copper Leaf interest in the Claim. Each of the paragraphs relate and are material to the claims that are pleaded and/or the interests of one or more of the parties in affected properties.

[26] The Defendants again inconsistently assert, on the one hand, that the Claimants have failed to specifically and particularly plead the claim for fraud, breach of fiduciary duty and dishonest assistance, but complain that the paragraphs of the Statement of Claim referred to at paragraph 34 of these submissions are lengthy and unnecessary. The Claimants repeat paragraph 34 of these submissions.

The Claimants' pleadings sufficiently set out the claims that are being pursued against the Defendants.

[27] The Defendants rely on the *William Ritter and Geneva Insurance SPC Limited* case to establish what must be pleaded in a Statement of Claim where the claim is for dishonest assistance. In that case, the Court emphasized that all the material facts which are necessary to prove a case had to be included in the Statement of Claim and that it is not enough to plead that a particular defendant was "*aware or ought to have been aware of DS's actions to establish dishonest assistance.*"

[28] What is pleaded by the Claimants alternatively, however, are dishonest assistance and notice. Dishonest assistance/notice as pleaded in the Statement of Claim is relevant to the claim in fraud and to invalidate the sale of Rendezvous Caye. These facts show that AMSOUTH is no innocent purchaser, whether it be by notice or its dishonest assistance. That part of the claim will therefore not be of any surprise to any of the Defendants. The Claimants did not make a general allegation of dishonest assistance/ notice of AMSOUTH. Those particulars are set out at paragraphs 54 to 57 of the Statement of Claim.

"54. AMSOUTH acted dishonestly in assisting Marco and Michela in their dishonest scheme and in breach of their fiduciary duty/ breach of trust in the dishonest transfer by Rendezvous of Rendezvous Caye to

AMSOUTH dishonestly is apparent or alternatively is to be inferred from the followings facts and matter:

- (1) AMSOUTH did not pay any sum or US\$2,850,000.00 for the purchase of Rendezvous Caye;*
- (2) An inspection of Rendezvous records at the Belize Companies and Corporate Affairs Registry would have disclosed that Marco did not own nor did he control Rendezvous and that no decisions could be taken in relation to M.E.L. without approval of Group No. 2, Brent and Alana;*
- (3) AMSOUTH shareholders and directors were employees and close associates of Marco and Michela and their companies and knew or ought to have known that the sale and transfer of title to Rendezvous Caye was not an arms-length transaction and was part of Marco's scheme to denude Rendezvous and its shareholders of its valuable asset;*
- (4) AMSOUT's officers, Alfredo and Angelique Acosta, had full notice of the investments made on Rendezvous Caye, and its value thereof, with Angelique having knowledge and access to Rendezvous' financials and the value of investments made by*

*virtue of her employment, association and friendship with Marco;
and/or*

(5) AMSOUTH officers knew or ought to have known that the stated value on the Deed of Conveyance was a gross undervalue thereof, so as to put anyone on notice of the Marco and Michela's dishonest.

55. At all material times, AMSOUTH's officers had actual and/or constructive notice of Bella Group's investments and interest in Rendezvous and that the directors of Group No. 2, Brent and Alana, needed to have approved any disposition of Rendezvous' assets. AMSOUTH therefore is no innocent third party purchase without notice.

56. In fact, AMSOUTH with intent to cause the Claimants harm wrongfully and by unlawful means conspired and combined with Marco and Michela to defraud Rendezvous and its shareholders of its most valuable asset, Rendezvous Caye.

57. At all material times, Alfredo and Angelique knew or ought to have known and had actual and/or constructive notice of the aforesaid.

[29] The Claimants say that it has sufficiently particularized each of the claims as set out in the Statement of Claim and that further particulars in relation to this aspect

of the claim is not required to be pleaded, especially since witness statements will be filed and documents will be disclosed, as was accepted by the Court of Appeal of Belize in *Anthony Rath et al v Birdsall Voss & Associates Inc* Civil Appeal No. 1 of 2014.

[30] What is very clear is that the Defendants are fully aware of all the allegations and the claims being made against them. The Defendants have failed to show that any part of the Statement of Claim is so incurably defective that it ought to be struck out.

[31] Contrary to the Defendants' assertion, the Claimant's claim is not for unlawful conspiracy or for damages for conspiracy to injure by unlawful means and/or unlawful interference with business in relation to which the Defendants have relied on *Elite Property Holdings Ltd v Barclays Bank PLC* at Tab 5 of the Defendants' Legal Submissions. The Defendants' arguments as contained at paragraphs 43 and 44 are therefore irrelevant. They are designed to re-characterize the claims of the Claimants in a defective way and to rely on the very defects they introduce to found the arguments to strike. The effort may indeed be regarded as a ruse.

Statement of Claim discloses cause of action

[32] The Defendants also seek to strike out the claim on the alleged basis that the Statement of Claim discloses no cause of action. As already indicated above, claims for declarations need not be grounded in any existing cause of action. In any event, the Claimants say that they have demonstrated multiple causes of action including breach of fiduciary duties and dishonest assistance apart from providing a proper basis for making the declarations sought.

[33] The Court of Appeal of Belize in the consolidated appeals of *Channel Overseas Investment Ltd. et al v Belize Telemedia Limited et al and Keith Arnold v Belize Telemedia Limited* Civil Appeal Nos. 14 and 15 of 2012 referred to and accepted the principles for the Court's consideration in determining an application to strike out on this basis as set out by Conteh CJ, as he then was, in *Action No. 695 of 2008 Belize Telemedia Limited et al v Usher et al (unreported)*.

[34] In light of the foregoing, the Defendants' application to strike out ought to be dismissed.

Legal Submissions of the Defendants/Applicants in Reply

[35] These submissions are made in reply to the Claimants' Arguments filed on April 29th, 2021.

Ambit of Strike Out – Pleadings Only

[36] It is important to reiterate that a strike out under the rule 26.3(1)(c) & (d) assumes all facts in the pleaded statement to be true. Moreover, the Court is only concerned with the Claimants' pleaded case in the Statement of Case before it¹⁴. The fact of the Court's earlier grant of an interim injunction, and reasons for so doing, is thus immaterial to the present application. What is in issue now is the Defendants' contention that the pleaded case is so defective by way of prolixity, material omissions of necessary particulars and all else alleged, that the Statement of Case as currently drafted is unsustainable. The Defendants so urge and for that reason seek the strike.

Claimants – Grudging Concession

[37] The Claimants fail to address any of the pointed and specific complaints made by the Claimants. The Claimants similarly do not dispute the law as cited by the Defendants. The Claimants therefore circumlocutorily concede that the pleadings are defective. No length can justify imprecision especially where allegations of fraud are being made - as is the case at bar. The claim is lengthy but unprincipled being akin to an unhappy fusion of a witness statement and closing submissions.

Claimants' Declaratory Orders – Need for Standing to Seek Declarations – Copper Leaf

¹⁴ SLUHCVP2014/0024 Didier et. al. v Royal Caribbean Cruises Ltd. at paragraphs 24 and 28 [Tab 1]

[38] The Claimants fundamentally misstate the position of locus standi¹⁵. The text in *Zamir & Woolf* relies on *Rolls-Royce plc v Unite the Union* [2010] 1 WLR 318 to bolster its position. It is important to review the actual terms of the judgment so as to rebut the Claimants' gloss on matters. The position, which has been adopted in the Caribbean, can be properly put thus:

- h. The power of the court to grant declaratory relief is discretionary.
- i. There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
- j. Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
- k. The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue; (in this respect the cases have undoubtedly "moved on" from *Meadows*).
- l. The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it

¹⁵ Paragraph 32 of the Claimants' Skeleton Arguments

is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.

- m. However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
- n. In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue."¹⁶

[39] As it relates to Copper Leaf, the Defendants submit that there is no real and present dispute between the parties before the court as to the existence or extent of a legal right between them. Copper Leaf states that it is a creditor and interested in the Rendezvous Island but a review of its own pleadings will detail that it has separately brought an *in personam* suit against Marco Caruso in Belize; and it is not herein suing as a direct creditor of any of the corporate defendants. It is therefore not entitled to declaratory or any other reliefs against the corporate Defendants. Copper Leaf is similarly not entitled to seek any rescission of the transfer under the Law of Property Act and has put forward no authority to support its startling submission. On

¹⁶ [2017] 2 BHS J. No. 107 Cottis v Leopold at paragraph 15 [Tab 2]

the contrary the CCJ determined that intent to defraud refers to “depriving creditors of timely recourse to property which would otherwise be available for their benefit”¹⁷.

[40] The matter becomes clear when one considers that only assets which would be available and realizable by creditors are caught within the provision¹⁸. Copper Leaf cannot lay any claim whatever against Rendezvous Island and is not sufficiently affected by the transfer of Rendezvous Island. Copper Leaf’s position is too remote even after giving the provision the widest interpretation¹⁹.

[41] In the result, all reliefs which it prays can only relate to and be subsumed within, its extant in personam Claim against Marco Caruso **singly**. They have no proper place in the instant Claim of the (other) Claimants against Marco and the corporate Defendants.

[42] For clarity, the Defendants now produce a graphical representation of the “relationship” between Copper Leaf and Rendezvous Island, the transfer of which it claims has prejudiced it as a judgement creditor of (Brent and) Marco. For the sake of completeness, this diagram includes information as to the ownership of the Romax Development Ltd., a matter the claimants completely failed to address.

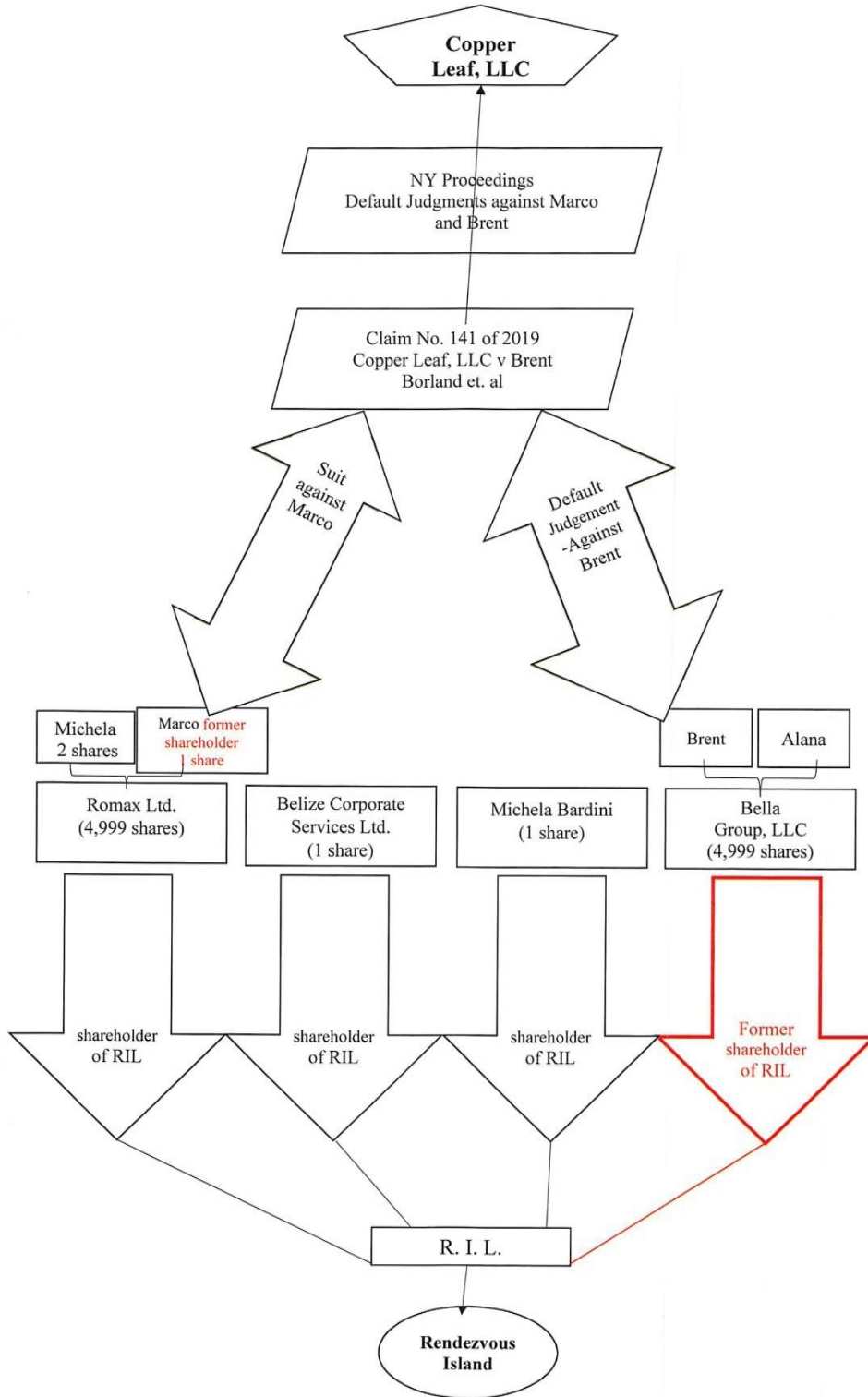
¹⁷ Atlantic Corporation Ltd v Development Finance Corporation [2012] CCJ 6 (AJ) at paragraph 45 [**Tab 3**]

¹⁸ Hilger Analytical Ltd v Rank Precision Industries Ltd and others ; Rank Precision Industries Ltd and others v Hilger Analytical Ltd [1984] BCLC 301 [1984] BCLC 301 at 305 [**Tab 4**]

¹⁹ Cadogan v Cadogan [1977] 3 All ER 831 [**Tab 5**]

[43] And altogether, the chart demonstrates conclusively, the Defendants submit, Copper Leaf's remoteness from Rendezvous Island and Copper Leaf's legal non-interest in, and lack of standing to be part of, the instant Claim impugning the transfer of Rendezvous.

Relationship between Copperleaf and Rendezvous Island



Dishonest Assistance – Needs to be Pleaded Separately – Need for Identification of Relevant Person

[44] The Claimants concede that dishonest assistance is not pleaded properly and is wound up with other arguments of notice²⁰. Dishonest assistance must be pleaded specifically and expressly. It must be made clear to the Defendants what facts ground the dishonest assistance. This was not done.

Claimants did Poorly allege Unlawful Conspiracy

[45] Contrary to the Claimants’ suggestion²¹, the Claimants poorly, without particulars, pleaded conspiracy. For ease of reference the paragraph in the Statement of Claim complained of is reproduced:

- o. *“In fact, AMSouth with intent to cause the Claimants harm **wrongfully** and by **unlawful means conspired** and combined with Marco and Michela to defraud Rendezvous and its shareholders of its most valuable asset, Rendezvous Caye.”*

The Claimants must bear the responsibility for their poor pleadings.

Discretion Strike Out

[46] The Defendants conceded from the onset and readily again concede that the Court may allow a party to amend its Statement of Case. However, the gloss on that

²⁰ Paragraph 41 of the Claimants’ Skeleton Arguments

²¹ Paragraph 44-45 of the Claimants’ Skeleton Arguments

is that the Court would give such a party an “*opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right.*”²² Accordingly, the Defendants repeat their primary submissions that where, as here, the defect is one of law that can’t be put right, then-unless it is a developing area of law-the matter must be struck out.

[47] In view of the foregoing, the Defendants submit that the claim brought by Copper Leaf must be struck out and the claims for reflexive loss by Bella Group must also be struck out.

Conclusion

[48] In the premises, the Defendants pray that reliefs sought be granted.

Ruling

[49] I wish to thank all counsel for these comprehensive arguments which have greatly assisted this court in determining this Application. Having carefully reviewed the submissions for and against this Application, I am of the view that the Application must be upheld solely in relation to Copper Leaf Ltd. I find the arguments of the Defendants highly persuasive that Copper Leaf as a mere creditor has no standing in this claim and no basis upon which to seek a declaration. I agree with the submission that since neither Brent nor Marco is a shareholder of

Rendezvous Ltd., Copper Leaf is a stranger to this claim. However, I find in favor of the Claimant on the issue of prolixity. In my respectful view, the details provided in the Statement of Claim, while they may have been more elegantly and precisely phrased, are necessary for the Defendants to understand the nature of the claim they are to meet. Grave allegations of fraud warrant detailed particulars to be articulated so that the Defendants are left in no doubt as to the claim they are required to answer. I therefore allow the remaining Claimants to proceed with the balance of the claim against the Defendants. As rightly argued by the Claimants, the witness statements once filed should provide more specific information on the nature of the dishonest assistance claimed. In oral arguments before me on this application, the Claimant clarified that there is no claim for reflexive loss; there is therefore no need to address that issue raised by the Defendants. For these reasons, the claim is struck out only in relation to Copper Leaf. The claim is to proceed against the Defendants with the remaining Claimants.

[50] Each party is to bear own costs.

Dated this 12th day of April, 2022

Michelle Arana
Chief Justice (Ag)
Supreme Court of Belize