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Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

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SUIT NO. C.L. of 1995/B-253

BETWEEN	BLAISE BUILDING SOCIETY	PLAINTIFF
A N D	WINSTON DWYER AND OTHERS	DEFENDANTS

Gordon Robinson and Winsome Marsh instructed by
Nunes, Scholefield, DeLeon & Co for plaintiff

Dr. Lloyd Barnett and Hilary Phillips instructed
by Grant, Stewart, Phillips & Co. for defendants

Heard: July 20, 21 and 25 1995

PANTON J

There is evidence that the first defendant was a director of the plaintiff society. He, as Chairman, along with the Secretary signed a certificate dated 30th July, 1993, addressed and sent to Century National Bank, that there had been a meeting of the Board of Directors of the plaintiff and that a resolution had been passed at that meeting authorising the opening of an account at that bank, and naming the officers authorised to sign on that account.

There is also a document dated 16th September, 1993, in which the said Secretary referred to above indicated that the first defendant was then a director of the plaintiff. This document was also sent to Century National Bank.

Both documents bore the seal of the plaintiff.

There is evidence that the plaintiff society had rules and regulations that were signed in February, 1993, by three directors and the Secretary.

The plaintiff was incorporated on the 26th March 1993.

There is evidence that the first defendant was Chairman of the thirteenth defendant's Board of directors, and that the thirteenth defendant managed the affairs of the plaintiff prior to August, 1994. This position of Chairman was held from the incorporation of the thirteenth defendant in 1991 until either March or September 1994.

The first defendant is therefore linked with the management and directorship of the affairs of the plaintiff in two respects for a minimum

period of eight months, that is, from July 1993 to March, 1994.

The affairs of the plaintiff were conducted in a manner that, if true, the directors would be personally liable for negligence and breach of trust.

Important documents are missing. There is no evidence of meeting. There are no statutory records. There has been transfer of liabilities to the plaintiff without any corresponding transfer of assets. Records and accounts have been falsified. Loans to directors have been unearthed. Some of them have been repaid. Investigations are continuing.

From all appearances the picture is incomplete so far. To date, there is no evidence of unjust enrichment as far as the first defendant is concerned. Nor is there any evidence of fraud implicating him specifically. There is evidence, however, of gross mismanagement and abuse of power by the directors as a body. All these factors indicate that there is more than an arguable case against the first defendant in relation to mismanagement and breach of trust.

So far as the disposition of assets to defeat any likely judgment of the Court is concerned, the Court has to be guided by the fact that records have apparently been disposed of in this situation so far. As a result, it seems that there is a real risk of the disposition of assets by individuals such as the first defendant. Accordingly, there is good reason for the preservation of the Mareva injunction that is in force. The extent of the order that is in force is, however, open to question in that it is too wide.

The result is that the Court hereby refuses the application that is sought. The injunction remains in force in relation to the first defendant. However, the order made by Walker, J. on the 10th July, 1995, is varied by deleting the last two words in paragraph (a) thereof and adding the following words:

"and proper living and business expenses, legal expenses in relation to this action, and servicing or repayment of outstanding personal liabilities".