

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO E.565/2002

BETWEEN	MOSQUITO COVE LIMITED	CLAIMANT
AND	MUTUAL SECURITY BANK LIMITED	1 ST DEFENDANT
AND	THE NATIONAL COMMERCIAL BANK (JAMAICA) LIMITED	2 ND DEFENDANT
AND	REFIN TRUST LIMITED	3 RD DEFENDANT
AND	JAMAICA REDEVOLPMENT FOUNDATION INC.	4 TH DEFENDANT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO C.L. 2002/G086

BETWEEN	GRANGE HILL FARMS LIMITED	1 ST CLAIMANT
	KENNETH FRANCIS	2 ND CLAIMANT
AND	MUTUAL SECURITY BANK LIMITED	1 ST DEFENDANT
AND	THE NATIONAL COMMERCIAL BANK JAMAICA LIMITED	2 ND DEFENDANT
AND	REFIN TRUST LIMITED	3 RD DEFENDANT
AND	JAMAICA REDEVOLPMENT FOUNDATION INC.	4 TH DEFENDANT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.2002/F063

BETWEEN	FRANCIS AGENCIES LIMITED	1 ST CLAIMANT
AND	KENNETH FRANCIS	2 ND CLAIMANT
AND	MUTUAL SECURITY BANK LIMITED	1 ST DEFENDANT
AND	THE NATIONAL COMMERCIAL BANK (JAMAICA) LIMITED	2 ND DEFENDANT
AND	REFIN TRUST LIMITED	3 RD DEFENDANT
AND	JAMAICA REDEVOLPMENT FOUNDATION INC.	4 TH DEFENDANT

Mr. R. McPherson instructed by Ripton McPherson & Co.
for the claimant.

Miss L. George instructed by Vavianna & Whittingham
for the second defendant.

Mr. C. Piper instructed by Piper & Samuda
for third and fourth defendants.

IN CHAMBERS

Heard: 2nd, 3rd and 18 th July, 2003

M. Cole-Smith J, (Ag.)

In this application for Interlocutory Injunction the gist of the cases involve three companies namely Mosquito Cove Limited, Grange Hill Farms Limited and Kenneth Francis a Director thereof, Francis Agencies Limited and Kenneth Francis a Director.

This application at a conjoined hearing sought an interlocutory injunction against National Commercial Bank (Jamaica) Limited, Refin Trust Limited and Jamaica Redevelopment Foundation Inc. Dennis Joslin is the agent of Jamaica Redevelopment Foundation Inc.

As far as reliance is placed on Section 54 of the Companies Act it has no applicability because it is primary dealing with a company who borrows money to buy its own shares or shares in a holding company or subsidiary company.

The other phase is that Mosquito Cove Limited claims that Kenneth Francis who signed so as to procure the loan in its favour is not a Director. Even if this was true he must have had ostensible authority to act for the company in procuring a loan of such magnitude.

The basis of the claims for the other companies was that the principal stated by the bank as borrowed was more than was loaned to them. The further details put forward by the companies was that Grange Hill Farms and

Kenneth Francis claim that a manager gave them negligent advice to invest funds.

In Francis Agencies Limited and Kenneth Francis the claimants put forward that there was a defect in the service of the notice since there are two mortgages and notice was only sent in respect of the first mortgage.

In Grange Hill Farms Limited and Kenneth Francis the allegation is that the bank transferred funds from its account to International Holiday and Development Company Limited.

The essence in this proceeding is that the bank has a statutory power of sale to enforce the mortgages by virtue of section 105 of Registration of Titles Act.

Section 105 provides:

“A mortgage and charge under this Act, shall, when registered as herein before provides, have effect as a security, but shall not operate as a transfer of the land thereby mortgaged, or charged; and in case default be made in payment of the principal sum, interest or annuity secured or any part thereof respectively, or in the performance or observance of any covenant expressed in any mortgage and such default be continued for one month, or for such other period of time as may therein for that purpose be expressly fixed, the mortgage or annuitant, or his transferees, may give to the mortgagor or grantor or his transferees notice in writing to pay the money owing on such mortgage or charge, or to perform and observe the aforesaid covenants (as

the case may be) by giving such notice to him or them, or by leaving the same on some conspicuous place on the mortgaged or charged land or by sending the same through the post office by a registered letter directed to the then proprietor of the land at his address appearing in the Register Book.”

The courts have developed the practice of insisting that to prevent the sale taking place by the issue of an injunction the claimants must pay the sum claimed or such approximation of that sum into court.

It is in the light of this that the condition on which I would grant the Interlocutory Injunction is that Mosquito Cove Limited should pay \$890,000 U.S or the equivalent in Jamaican currency into Court.

Grange Hill Farms Limited and Kenneth Farms should pay \$37M Jamaican into court.

Francis Agencies Limited and Kenneth Francis should pay \$31M Jamaican into court.

The authority for my so ruling is S.C.C.A. 57/86 S.S.I. (Cayman) Limited & Ors. vs. International Club S.A.

In order to facilitate the applicants I would order that these sums are to be paid within thirty (30) days hereof and failure to do so pay there will be no award of the Interlocutory Injunction sought.

Costs to be cost in the claim and usual under taking as to damages.

Leave to appeal granted.