THE SUPREME COURT OF JUDICATURE OF JAMAICA

LIST OF DOCUMENTS # 5
SUPREME COURT JUDGEMENT

IN THE HIGH COURT

IN EQUITY

BETWEEN	NEW FALMOUTH RESORTS LIMITED	PLAINTIFF
A N D	CHISHOLM & COMPANY LIMITED	1ST DEFENDANT
A N D	J. HENRY CHISHOLM	2ND DEFENDANT

Mr. Patrick Foster and Miss Catherine Francis instructed by Messrs. Clinton Hart & Company for the Plaintiff.

Mr. Norman Wright and Mr. Enos Grant instructed by Wright Dunkley & Company for the Defendants.

Heard: 20th October, 1989; 16th, 18th, 19th July, 1991; 18th & 22nd November, 1991; 3rd April, 1992; 25th May, 1993; 24th January, 1994; 17th October, 1995; 16th, 20th, 25th; 26th February, 1997; 31st July, 1997 & 18th December, 1998

EDWARDS, J.

First of all, I must apologise for the delay in delivering this judgment; a very complicated case; it has been listed for many years. And I am glad that I am able to deliver it now. This is a matter between New Falmouth Resorts Limited, the Plaintiff and Chisholm and Company Limited, the First Defendant and J. Henry Chisholm, the Second Defendant.

In this action the Plaintiff on the 2nd March, 1983 filed a Writ of Summons seeking to recover as against the Second Defendant:

1) Damages for fraud and/or misfeasance and/or breach of trust as Managing

Director of the Plaintiff.

As against both Defendants:

An injunction to restrain the Defendants or either of them until after judgment in this action or until further order, by themselves, their servants or agents or otherwise from selling, transferring, or otherwise disposing of any any of the parcels of land referred to at paragraphs 1(a) and 1(b) below viz:

(a) all those parcels of land known as part of New Court formerly Roslin Castle in the parish of Trelawny and comprised in Certicate of Title registered at Volume 1066 Folio 929 which is legally and beneficially owned by the Plaintiff.

(b) all those parcels of land known as part of New Court formerly Roslin Castle in the parish of Trelawny and comprised in Certificate of Title registered at Volume 1066 Folio 830 which are legally owned by the Plaintiff.

The Plaintiff also seeks a declaration that:

i) the mortgage dated the 1st July, 1978 and purportedly made between the Plaintiff and the First Defendant is void and/or illegal.

ii) the First Defendant is not entitled to exercise powers of sale contained in the said mortgage dated 1st July, 1976; or

iii) alternatively, a declaration that no monies are owed by the Plaintiff to the First Defendant on or by virtue of the said mortgage dated 1st July, 1976.

iv) a refund of any monies paid by the Plaintiff to the First Defendant under the alleged mortgage.

The First Defendant has admitted that on or about the 1st July, 1976 it endorsed a mortgage on Certificate of Title registered at Volume 1066 Folio 929, to land known as Roslin Castle, Trelawny, owned by the Plaintiff and also on Certificate of Title registered at Volume 1066 Folio 930, known as New Court formerly Roslin Castle in Trelawny also owned by the Plaintiff to secure the sum of $50,000.00 but denies it was done without authority as is stated in paragraph 4 of the Statement of Claim.

It also denies that no consideration was given for the

mortgage and that it had no authority to mortgage the property or to sign the said mortgage and that in doing so it acted ultra vires and illegally.

The Second Defendant also denies that in doing so it acted fraudulently and illegally.

The First Defendant admits giving the Plaintiff one month's Notice on the 8th December, 1982 to pay the sum of $502,562.80 allegedly owing on the said mortgage in default of which the First Defendant would sell the mortgaged premises in exercise of its alleged Powers of Sale contained in the Registration of Titles Act.

At this stage it is necessary to supply some factual information. The Plaintiff is a Jamaican company whose principal shareholders are foreigners. The Phelan family from the United States of America. At all material times the Chairman of the plaintiff company was Mr. David Phelan.

The company owned large tracts of land in Western Jamaica, Trelawny in particular. The Trelawny Beach Hotel is built on land which was once owned by the Plaintiff. The company wished to further develop its land and for this purpose it sub-divided them into lots for sale but to finance this it required additional funds to put in roads water and other infra-structure. To facilitate development of these lots it employed a Managing Director to expedite the sale of the lots. It employed a Mr. Swan a foreigner as

Managing Director but the sale was not going fast enough.

The Phelans heard of the Second Defendant who was an established realtor in Jamaica, with connections in the U.S.A., in particular in Florida where he had a licence to engage in real estate business.

The Plaintiff required one million dollars ($1,000,000.00) to help it to put in the necessary infra-structure and approached the Second Defendant who said he would raise a loan from a United States Financial institution in Florida with offices in Jamaica, i.e Walter Heller and Company. As an inducement to do so the Plaintiff's company agreed by letter dated 26th October, 1972 also signed by the Second Defendant, that it would offer the Second Defendant on receipt of $10,000.00 (Ja.) which represented the full payment for 51% shares in New Falmouth Resorts Limited, 51% of its share upon his providing New Falmouth Resorts with a Loan Commitment, for the one million dollars ($1,000,000.00) to complete the purchase of Forida (a local property) and provide them with working capital for development of the lots in the first phase.

It was further negotiated and agreed that on payment of the sum of $10,000.00 the Second Defendant, would take over management of the project as Managing Director and proceed with the negotiation to complete the arrangements for the said loan commitment for the finance of the $1M. And that

the full capability and goodwill of the Second Defendant's associated company namely Chisholm and Company Limited and Chisholm V. Pitter also would be used to further develop the project.

Pursuant to this agreement, the Second Defendant approached Walter Heller and Company Jamaica Limited; visited their Florida head office and he obtained a loan commitment from Walter Heller and Company Jamaica Limited for a loan of $1M.

The loan commitment was subject to certain terms and conditions outlined in their letter dated 10th December, 1972 e.g., the loan would be evidenced by a first mortgage on the unencumbered marketable fee simple absolute Title to the real property and all easements and appurtenances thereto, if any and to all improvements to 1400 acres in the vicinity of New Falmouth Jamaica (hereinafter referred to as the mortgage) and shall be in the principal sum of $1 million.

The loan would bear interest at 14% per annum and should not be pre-paid within the first two years and should be disbursed in two traunches of Jamaican $500,000.00 each. The first to repay the existing first mortgage on its said 1400 acres and the balance of $500,000.00 to develop the 360 lots.

Heller required at Paragraph ten (10) of the letter of Commitment, among other things, that the mortgage and any

auxillary documents executed in connection with the matter are valid, legal and binding obligations and do not violate the laws of Jamaica.

The loan was also conditional upon site inspections approval of the site by a representative of Heller and approval of the credit of the borrower. The commitment fee was $10,000.00 and the letter stated that in the event that Heller does not approve the site or credit of the client then the entire commitment fee shall be returned.

On the 10th January, 1972 Walter Heller and company wrote to Nation Lord and DeLisser Attorney-at-Law of Montego Bay confirming that they had made a commitment to New Falmouth Resorts Limited for the loan. They also advised Nation Lord and DeLisser that they would require an additional week or ten days to close the matter and that subject to completion of documentation, Nation Lord and DeLisser's client would be paid in full.

On the 12th Jun, 1972 Heller and Company wrote New Falmouth Resorts Limited saying that their commitment letter was subject to site inspection and that "an inspection of the site had been made and found unsatisfactory."

The letter also stated that Heller and Company would refund the $10,000.00 commitment fee and that upon execution of a copy of the letter the commitment letter is cancelled and of no effect.

There is much argument as to whether the commitment letter

was received by the Plaintiff, the suggestion being made that such a letter, since the loan was not received, the commitment letter was ineffective.

I do not accept that argument.

Commitment letters usually contain conditions and the Second Defendant was not required to provide an unconditional loan commitment. In my opinion he provided a valid loan commitment and the Plaintiff satisfied the conditions under which they required the Second Defendant to seek the loan, namely the issue of the 51% shares in New Falmouth Resorts Limited to him and his appointment as Managing Director.

More will be said about that.

The Second Defendant in paragraph 9 of the Defence stated that the Plaintiff had failed to take up the loan. That is not so. The loan commitment was withdrawn by Heller and Company. The Second Defendant says he was not given the 51% shares and there is no evidence that he was given the shares.

The Second Defendant was appointed Managing Director of the Plaintiff at a meeting of the Directors on the 31st January, 1973 chaired by Mr. Hugh Hart. Charles Swan was relieved of his post as Managing Director.

At the meeting of the Board of Directors of New Falmouth on the 22nd February, 1973 with the Second Defendant present and David Phelan, as Chairman, it was resolved that Phelan be elected

Chairman of the Board and he was given power to dismiss the Managing Director without prior notice, if the Managing Director fails to carry out satisfactorily his duty as Managing Director.

The meeting also resolved that the Defendant, Mr. Chisholm had absolute authority to sign contracts and transfers

(a) For the purchase of real estate for the company, that is for the plaintiff and for the sale of real estate owned by the company.

(b) to sign cheques, drafts and Bills of Exchange, promissiory notes on behalf of the company.

(c) shall have absolute authority to appoint Bankers, Auditiors, Counsel, Attorneys-at-Law, Consultant, Realtors, Architects, Quantitity Surveyors, Land Surveyors and others on behalf of the company and to revoke their appointments.

It was also resolved in paragraph 10 of the Minutes that the registered office of the Plaintiff should be removed to No. 4 Caledonia Crescent in Kingston, that is the Defendant's office.

It was resolved that Mr. J. Henry Chisholm shall have absolute authority from the date of that meeting to conduct negotiations for the sale of real estate and other assets owned by the Company to determine sale prices and to pay commissions thereon on behalf of the company.

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It was also resolved that Mr. J. Henry Chisholm, the Managing Director and his other companies, shall be the absolute representives in Jamaica for New Falmouth Resorts Limited as of the date of the meeting. It was also resolved that Mr. Chisholm shall have absolute authority to use his best efforts and judgment to do everything possible to manage the company effectively and profitably for the benefit of the other shareholders and himself.

It was resolved that the Managing Director of New Falmouth Resorts Limited does not have the authority expressly or implicidly to buy and sell or dispose of any major asset of the company without the expressed written approval of the Board of Directors of New Falmouth Resorts Limited.

It was resolved that Chisholm and Company should be absolute realtors and broker for New Falmouth Resorts Limited.

By letter dated 23rd February, 1973 the Second Defendant advised the First Defendant of the contents of the resolutions of the 22nd February, 1973. But expanded on them and provided details which were not expressly included in the resolutions for example, the appointment of the First Defendant as Managing Agent of the Plaintiff when no such appoinment was in the Resolution.

The Second Defendant also agreed to pay the First Defendant for performing real estate service and for supervision as Managing agent and absolute representatives for a fee of $200.00 per week as from 1st January, 1973.

He also advised that all funds advanced by them for services on behalf of New Falmouth Resorts Limited by way of fees and commissions earned due and not paid, shall accrue interest at the rate of 10% per annum and that as security for the said advances, commission and fees earned due and payable, New Falmouth Resorts Limited agreed to give mortgages on real estate any time the First Defendant desires same to cover all or part of the monies due to them. He also authorised the First Defendant to enter into liens against any or all of the real estate holdings registered in the name of New Falmouth Resorts Limited.

The Resolutions clearly did not give the First Defendant that power.

In appointing his company as Manager Agent and in giving his company the right to mortgage the Plaintiff's property, the Second Defendant was clearly embarking on a course of action that was fraught with conflict of interest and would be in breach of his fiduciary duty to the Plaintiff.

Directors owe fiduciary duties and certain duties of skill and care to their companies, not to individual shareholders or to anyone else.

As a company has no physical but only a legal existence the Management of its affairs must necessarily be entrusted to human instruments who are called Directors whose exact position in relation to the company is hard to define.

Directors as such are not servants of the company but are rather managers who in some respects may be said to be quasi trustees and agents for the company.

Directors are quasi trustees because (1) a company's money and property are not vested in them but in the company.

(2) Their duties are not as serious as those of trustees.

The Fiduciary duties of Directors are:

1) to exercise their powers bona fide for the purposes for which they were conferred for the benefit of the company as a whole.

2) They should not put themselves in a position in which their duty and their personal interest may conflict.

One consequence of the duty not to permit conflict between duty and personal interest is that a Director must not be interested in a contract with his company unless the Articles of Association permit it and he discloses his interest, as is required under Section 188 of the Companies Act.

This Section provides in part that:

"Subject to the provisions of this section it shall be the duty of a director of a company who is in any way, whether directly or indirectly interested in a contract or proposed

contract with the company to declare the nature and extent of his interest at a meeting of the directors of the company."

As regards the mortgages which were given by the plaintiff to the First Defendant of which the Second Defendant is a principal shareholder, there is no evidence that these mortgages were considered at any meeting of the Plaintiff prior to their being endorsed on the Plaintiff's Titles. The Second Defendant was clearly in conflict and in breach of the law.

Apart from that aspect, the mortgage itself is questionable. It is stated to be in respect of a loan of $50,000.00 but there is no loan - no clear loan - of $50,000.00. The sum of $50,000.00 is arrived at by the Second Defendant using his inside/going through the records knowledge as a Director and of the Plaintiff's company and picking out several small items on which he said the First Defendant made payments on behalf of the Plaintiff and adding these up. In other words the consideration for the mortgage of $50,000.00 appears to have been past - unless a contract was found to be in the form of a deed which does not require consideration; the contract would be invalid.

The items used to make up the $50,000.00 as stated include:

a) Loans made for payment of rent.

b) direct loans to various persons;

c) monies owed to the First Defendant for commission;

(d) monies owed to the First Defendant for payment to typists;

(e) monies owed for management services.

If a director does not disclose his interest in any contract with his company, the contract is voidable by the company and the director must account for any profit which he has made from the contract.

See Hely-Hutchinson v. Brayhead Ltd. & Another (1968) 1 Q.B. 1949 C.A.

Another consequence arising from the fiduciary duties of a director is that a director must not put himself in a position in which his duties and personal interest may conflict; in that the director must not without the consent of the company make any profit out of his position in the company beyond the agreed remuneration.

See Regal Hastings Ltd vs. Gulliver Co. (1967) 2 A.C. page 134.

Here Regal Hastings owned one cinema and wanted to buy two others with a view to selling the three together and make a profit. Regal Limited formed a subsidiary company to buy the two cinemas, but was unable to provide all the capital required so the Directors of Regal Limited subscribed for some of the shares in the subsidiary themselves. The cinemas were acquired and the shares in Regal Limited and the subsidiary sold at a profit.

It was held that the former directors must account to Regal Limited for the profit they made because it was only through the knowledge and apportunity they gained as Directors of Regal Limited that they were able to obtain the shares.

In the same way it was only through the knowledge the Second Defendant gained as managing Director of the Plaintiff, that he was able to put together bits and pieces and construct the loan of $50,000.00 and then go through all the Plaintiff's assets and select which of them he would use as security for the purported loan.

There is a clear conflict of interest and I hold that there was no loan of $50,000.00 and so the mortgages are invalid.

Also see Boston Deep See Fising Company vs. Amsell Chancery Division, (1888) 39 P. 339 C.A.

In that case A was a director of Boston Deep Sea Fishing Company Limited and on behalf of the company contracted for the construction of certain fishing smacks and unknown to the company he was paid a commission on the contract by the shipbuilders and was also paid as a shareholder in an ice company which in addition to the ordinary dividends, paid bonuses to share holders who were owners of fishing smacks which employed the ice company to supply ice to the fishing smacks.

"A" employed the ice company in respect of Boston Deep Sea Company's Fishing smacks and received bonuses as if the smacks

were his own.

It was held that "A" must account to Boston Deep Sea Fishing Company for both the commission and the bonuses although the bonuses could never have been received by Boston Deep Sea Fishing Company as it was not a shareholder of the ice company.

As regards the appointment by the Second Defendant of the First Defendant as Managing Agent of the Plaintiff, that is in conflict with Resolution 14 passed on the 22nd February, 1973 when it was resolved that Mr. J. Henry Chisholm shall have absolute authority of his co-directors and the company as from the date of this meeting to use his best efforts and judgment and to do everything possible to manage the company efficiently and profitably for the benefit of the other shareholders and himself.

The company must act through managing agents and it is clear that the Plaintiff expected the new Managing Director to manage the company himself. The Second Defendant appears quite competent to do so. He described himself in his evidence as a person with considerable experience in real estate matters, a realtor, mortgage consultant; he also negotiates mortgages on behalf of companies and others. He has been in the real estate business since 1960 i.e. selling and developing as well as appraising. Prior to that he was Assistant Secretary and Chief Accountant to the Northern United Building Society, Montego Bay.

He has experience not only locally. In 1970 he was licensed in New York to do all the functions of real estate, sales, appraisals

and management.

In 1979 he was licensed in Florida to carry on the business of real estate, appraisals and marketing.

He also obtained a license as a mortgage broker and consultant in the state of Florida and received the designation as a certified mortgage consultant throughout the United States.

Since 1960 Real Estate business has been his mainstay and career. In 1960 he established Chisholm and Company i.e. the First Defendant and other companies; Chisholm and Company (Realty) Limited and Chisholm and company (Development) Limited and was associated for a limited time in the partnership, as Chisholm, Pitter and Company.

No evidence is given that anyone else in the First Defendant's Company beside the Second Defendant its principal shareholder possessed any experience in management so that to appoint him as Managing Director of the Plaintiff and pay him for performing those services and at the same time appoint his Company/the First Defendant as Managing Agent and paying them also for the same services, would be, to use an accounting expression, amount to double accounting.

I therefore reject the claim that the First Defendant was Managing Agent and entitled to receive payment for such services. This appointment of the First Defendant by the Second Defendant would also amount to conflict of interest.

The Defendants, the First Defendant in his counterclaim is seeking a 10% commission on the sale of Florence Hall during

during 1973 and compound interest - to June 1, 1982.

The claim is for $34,800.00 plus compound interest of $46,785.00 to June, 1982 making a total of $81,585.00.

Evidence was given that this property was not in fact sold but was the subject of a trade or exchange of land. No monies passed.

Evidence was also given that the Defendants role in this trade or exchange was minimal. The Defendants sought to amend the Particulars of Claim by deleting the word "sale" and substituting therefor the words "Commission on trade/ exchange of land at Florence Hall during 1973." The Defendants abandoned their attempted amendment in light of the evidence given at the trial.

The Court holds that there was no sale of Florence Hall and no monies passed and therefore the Defendant is not entitled to receive the $81,585.00 claimed.

The Defendants are claiming rent for office space from 1973 to 1976 totalling $14,000.00 with interest compounded for four years totalling $ 1,307.00.

Evidence is that the Plaintiff's office was moved from its Falmouth location in Trelawny to Duke Street Kingston and then by resolution to No. 4 Caledonia Crescent, a building owned and occupied by the First Defendant.

Some items of furniture were also moved to Caledonia Crescent.

A letter from New Falmouth Resorts Limited signed by the Second Defendant as the managing Director showed that the First Defendant would be paid $300.00 per month for office space, electricity and telephone services. I hold that this claim is justified and should be paid by the Plaintiff. This includes the sum claimed for rental from January 19, 1977 to June 19, 1982 i.e. $9,900.00 and also $14,400.00 - 1973, 1974, 1975 and 1976 totalling $14,400.00. Interest should be paid on these outstanding amounts at 10% per annum from the date of its counterclaim the date of the Judgment.

Salaries for the period January 1973 to December 1976 of $150.00 per week amounting to $20,800.00 is also justified.

The claim from management services plus compound interest, interest- in the light of what I have said about the First Defendant not being entitled to obtain management services fee, this claim is disallowed.

The sum of $35,147.^{10}/100 claimed as loans made by the First Defendant to the Plaintiff from the period, has not been proved to my satisfaction and that therefore is disallowed.

As regards the claim for 10% commission on sale of Dry Valley Land, this is disallowed for reasons similar to those given for disallowing commission on the Florence Hall transaction.

As regard the claim in respect of the 51% of the shares promised to the Second Defendant for negotiating a loan commitment the Second Defendant claims that it was an implied term of the agreement between the First Defendant and the Plaintiff that in consideration of the Second Defendant obtaining the commitment for the loan, that the Plaintiff would pay to the First Defendant a negotiation fee. The First Defendant is claiming $25,000.00 as commission or fee or such other reasonable sum with interest thereon at 10% from 1973.

The Documents before the Court do not remotely suggest that in return for the Second Defendant negotiating the loan commitment of $1 million dollars the First Defendant would be paid $25,000.00 as commission.

This claim is therefore disallowed.

The letter dated 26th October, 1972 from the Second Defendant to the New Falmouth Resorts Limited and signed as having been accepted and agreed by them shows that the Second Defendant paid $10,000.00 as full payment for 51% of the shares in New Falmouth Resorts Limited, upon providing New Falmouth Resorts Limited with a loan commitment of J$1 million dollars on the 22nd December, 1972.

An Agreement was signed on the 22nd December, 1972 between David Phelan trustee of P.M. Phelan Trust NOI, the then controlling shareholder of 85% of New Falmouth Resorts Limited and James Chisholm President of Chisholm and Company.

That agreement was said to repalce any and all previous agreements between New Falmouth Resorts Limited and Mr. J. Henry Chisholm. It was signed by Jim Chisholm in acceptance and by Mr. David Phelan the trustee for P.M. Pheland Trust NOI the

controlling shareholders.

would be paid $300 per month for office space, electricity and telephone service et cetera.

I hald that this claim is justified and should be paid by the Plaintiff. This include the sum claimed for the rental from January 19, 1977 to June 19, 1982, i.e. $9,900.00 and also $14,400.00 for rental 1973, 1974 and 1976 totalling $14,400.00/ Interest should be paid on these outstanding amount at 10% per annum from the date of the counter-claim to date of judgment.

Salaries for the period January 1973 to December 1976 of $150.00 per week amounting to $20,800.00 is also justified.

The claim for Management Services plus compound interest- in the light of what I have said about the First Defendant not being entitled to obtain management services fee, the claim is disallowed.

The sum of $35,147.00 claimed as loans made by the First Defendant to the Plaintiff for the period, has not been proved to my satisfaction and that, therefore, is disallowed.

As regards the claim for 10% commission on sale of Dry Valley Land. This is disallowed for the reasons stated in regard to the sale of Florence Hall. I hold there is no sale and the Defendants effort to amend their Pleadings to show that there was a trade on exchange was and also abandoned and this claim is disallowed.

As regards the claim in respect of the 51% of the shares promised to the Second Defendant for negotiating a loan commitment,

Chisholm. It was signed by J. H. Chisholm in acceptance and agreement and by Mr. David Phelan trustee for P.M. Phelan Trust MOI/controlling shareholder and/Mr. Charles A. Swan the Managing Director. That agreement provided that New Falmouth Resorts Limited will sell to J. Henry Chisholm for $10,000.00 an amount of common stock, such amount shall be equal to 51% of the issued common shares of New Falmouth Resorts Limited.

The allocation of the common shares would be as follows:

Chisholm & Company	51%
P.M. Phelan Trust MOI	42%
Charles Swan	4.72%
Von Hagge	2.28%

making a total of 100%.

The 51% of the shares to Chisholm and Company would be held in trust by a mutually agreeable Attorney until such time as the above notes totalling $339710.100 are paid off.

Paragraph 5 the letter of commitment also stated that in the event that Walter Heller & Co. failed to provide the funds described in their letter of December 19, 1972 and or any other lenders then the preceding paragraph 5 in this agreement would be null and void and the following would apply.

It then sets out (a) Chisholm and Company will be allotted 25% of the shares

(b) Chisholm and Company and J. Henry Chisholm individually hereby guarantee

the following:

(i) Chisholm and Company and J. Henry Chisholm hereby guarantees that allotment of the 360 lots be divided into two phases of 200 and 160 and will remain intact by the various govermental agencies.

(ii) Also that at least 200 lots will be sold by December 31, 1975.

(iii) That the roads and water - mains for these lots approved for sale, will be completed by December 31, 1975.

If these conditions are not met then Chisholm and Company and J. Henry Chisholm individually agree to guarantee the loans of $339,710. 21/100 or return the 25% shares to New Falmouth Resorts Limited at the option of New Falmouth Resorts Limited

As it turned out then, Walter Heller & Co. failed to provide the One Million Dollars so that Chisholm and Company would be allotted 25% instead of the shares of New Falmouth Resorts Limited of 51% as is claimed.

No evidence was conclusively given as to whether the conditions mentioned at b (i), (ii) and (iii) above have been satisfied so the Court is not in a position to pronounce on the status of the 25% shares which should be allotted to the Defendant by New Falmouth Resorts Limited.

The Second Defendant claims an allowance for house or insurance of $100.00 per week or $5,200.00 per annum with effect from 1st January, 1973. Evidence was given re this allowance of - $49,000.00 plus 10% interest and a claim was made for $49,400.00 plus $27,341.50 for interest compounded at 10%. The claim for $49,400,00 is allowed with interest at 10% thereon from the date of the filing of the counter-claim, to date of Judgment.

The Second Defendant also claimed salary - $18,000.00 per annum - from January 1, 1973 to June 1982 or such other sum as is fair and just as is found on the quantum merit basis.

The Second Defendant did perform the duty of Manager Director - the other directors resided abroad.

The Articles of Association of the Plaintiff provided for payment to the Manager Director for his services.

Article 117 provides that the Managing Director shall receive such remuneration whether by way of salary, commission or participation in profits or partly in on way and partly in another way as the directors may determine.

It has also been generally decided that the obligation to pay reasonable remuneration for work done when there is no binding contract between

the parties is imposed by a rule of law and not by an inference of fact arising from the acceptance of goods and services. It is one of the class of cases referred to in Books and contract as obligations arising quasi ex contractu .

See Greer L. J. in case at 1926 2K. B. at page 412.

See also Cheshire v. Fifoot Law of Contract 8th Edition C.L. p. 654.

At the trial the Plaintiff was careful to explain that it was not saying that the Second Defendant did not perform his duties as managing director but that he did not do so satisfactorily. The office of managing director is not one of friendship. It is a business appointment. And the Second Defendant, if he performed his duties of managing director, at all, should be paid.

His salary was not expressly stated. A remuneration of $18,000.00 p. annum does not seem unreasonable having regard to the size of the estate, and I agree tha he is entitled to be paid $18,000.00 per annum for 9½ years; that is $171,000.00 plus interest at 10% per annum as from the date of the filing of the counter-claim. That is on a quantum meruit basis; not on contract.

The Second Defendant is also claiming damages for wrongful dismissal. In the light of my findings that he was in breach of his fiduciary duties and that there was also conflict of interest on his part, I cannot support the view that he is entitled to damages for wrongful dismissal.

As regards the First Defendant's claim, the Court rules that:

(i) No damages to be awarded for breach of contract.

Payment of sums due to it by the Plaintiff as set out below

(ii) rental for office space for the years 1973, 1974, 1975 and 1976 at $3,600.00 per annum - = $14,400.00

(iii) rental for office space January 1977 to June 1982 - $9,900.00 as claimed plus 10% interest as from the date of the filing of the counter-claim to date of Judgment. That comes to $24,300.00 plus interest.

(iv) Salary for typist at $100.00 per week at $5,200.00 per annum from January 1973 to December 1976, i.e. $20,800.00 as claimed plus 10% interest as from the date of the filing of the counter-claim to date of Judgment.

(v) The managing director's salary of $18,000.00 from 30th June, 1973 to 1982 - 9½ years - that is $171,000.00 plus interest at 10% per annum from the date of the filing of the counter-claim to the date of Judgment. This is on a quantum meruit basis not on contract.

The Court also rules that the mortgages endorsed on Titles at Volume 1066 Folio 929 and at Volume 1066 Folio 930 are null and void.

The Court declares that the First Defendant is not entitled to 51% of the Plaintiff's shares.

The Court also declares that the termination of the Second Defendant's appointment as Managing Director is valid and he is not entitled to damages in respect of wrongful dismissal.

The Court rules that any monies paid by the Plaintiff to the First Defendant under this mortgage, be refunded.

It is not clear why the mortgages were listed two times on different dates, that is, on July 6, 1976 and also on March 16, 1982 but in any event, those mortgages are null and void.

As stated, the Court grants an injunction to restrain the Defendants or either of them by themselves, their servants or agents or otherwishe from selling, transferring or otherwise disposing of any of the parcels of land referred to at paragraph (1) above.

The Plaintiff also claims damages for fraud and/or misfeasance and/or breach of trust; no evidence or authorities were cited on this aspect of damages.

The Court therefore declines to grant that claim.

The Court observes that the trial has been a long and hard one lasting many years.

No party has got all that is claimed.

In all the circumstances, I think each party should bear

its own costs and I rule accordingly.

I should also express my appreciation to Counsel on both sides for the great assistance they gave to the Court in their preparation and presentation of the facts and law in this very long, difficult and complicated matter.

Some of the legal minds, including Judges who have been associated with this case, are no longer on this terrestrial plain and that is regretted.

The person who filed the Statement of Claim was Mr. Ronald H. Williams and he passed on; then Mr. Hines who was struck off, he left the case. Then lastly to our great regret, Mr. Enos Grant who worked so hard on this matter passed on. The Plaintiff have also suffered loss in that one of the Phela's brothers died.

It is a tough case.

To complete the matter the Court also declares that "all those parcels of land known as part of New Court formerly Roslin Castle in the parish of Trelawny and comprised in Certificate of Title registered Volume 1066 Folio 929 are legally and beneficially owned by the Plaintiff."

And (b)

"All those parcels of land known as part of New Court formerly Roslin Castle in the parish of Trelawny and comprised in certificate of Title registered at Volume 1066 Folio 930 are legally and beneficially owned by Plaintiff."

Liberty to apply.