IN THE COURT OF APPEAL OF BELIZE, A.D. 2024

CIVIL APPEAL NO. 11 OF 2023

BETWEEN:

GREEN DEVELOPMENT PARTNERS LTD

Appellant/
1ST Cross Respondent

and

LCW INVESTMENTS LLC

Respondent/
Cross Appellant

BETH CLIFFORD

2nd Cross Respondent

BELTWAY INVESTMENT GROUP INC

3rd Cross Respondent

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Before:

The Hon Madam Justice Hafiz-Bertram — President
The Hon Mr. Justice Peter Foster KC — Justice of Appeal
The Hon Mr. Justice Bulkan — Justice of Appeal

Appearances:

Ms. Priscilla Banner for the appellant and cross respondents
Mr. Andrew Marshalleck SC and Mr Jarad Ysaguirre for the respondent/cross appellant

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2023: October 16
2024: June 20

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JUDGMENT

[1] **BULKAN, JA:** Beth Clifford, an American businesswoman at the centre of this dispute, perches atop a real estate empire in Belize and beyond. Or it may be a house of cards over which she hovers, the reality is not easy to discern. What Beth Clifford did reveal in evidence is that she is

the director of over forty-five (45) companies, and of those featuring in this case, she is the sole director and shareholder.[1] There are companies which broker land sales, construct houses, manage properties, companies just to receive and disburse funds, companies that simply execute and sign deeds, companies based in Belize, in Anguilla, in St. Lucia, in the USA; such a plethora of companies in fact, that as the evidence revealed, it was sometimes confusing to know which company or whose employee was responsible for which transaction. Steve Williams, a real estate investor and director of the respondent, LCW Investments, became entangled in this web, investing close to a million US dollars in a property which, by the time he rescinded the agreement more than two years after signing it, he still did not own, nor had he even seen. That non-performance is the crux of this dispute, and the resulting litigation essentially seeks to resolve whether Steve Williams was justified in rescinding or whether he should be compelled to complete the agreement.

[2] The property in question is a parcel of land numbered 259 in a development called Mahogany Bay Village Resort in San Pedro, on which a building (referred to as a 'Keeping Suite') was to be constructed by the appellant. The agreement between the parties was contained in a document called a 'Lot Purchase and House Construction Summary Order Form', signed by Steve Williams as buyer on April 3, 2017 and Beth Clifford as 'President' for the other party. The agreement provided that within 10 days of its execution, the buyer "shall" enter into a land purchase agreement for the land with the land company, which was named as Corporate Investments Holding Company Ltd, a company incorporated in Anguilla. Still yet another company was listed as owner of the land, this one also incorporated in Anguilla and mysteriously named 5801GOA210 Inc.

[3] The land price was agreed at US$135,000.00 and the house price at $645,000.00. Together with closing costs, the total cost of this venture came up to US$788,709.00, of which the buyer paid a deposit of US$78,090.00 while electing to pay the balance in a lump sum by August 1st, 2017. Pursuant to their arrangement, all payments due from the buyer were directed to be wired to yet another company owned by Beth Clifford, Beltway Investment Group Inc, the third cross respondent herein.

[1] Record of Appeal, Vol. IV, p. 1426/1685.

[4] The second page of the Order Form was headed prominently with an 'Important Notice', which read in part that "This House Construction Agreement has no relevance with regard to the land purchase or Land Purchase Agreement and House Construction Company is not obligated in any way with regard to the Land Purchase." In spite of this proclaimed separation, clause A2 (appearing under a section headed 'Land Purchase') obligated the buyer to place the deposit for the land purchase with the House Construction Company within 3 business days of its execution, failing which said Agreement would be rendered null and void. Pursuant to clause A4 in this same section, the buyer agreed that the House Construction Company (none other than the same entity that supposedly had no relevance to the land purchase) would be responsible for disbursing the land deposit.

[5] In short order the buyer completed his side of the bargain. He sought and obtained an extension for the payment of the balance, and by October 31, 2017 he had paid in full. Things did not progress as smoothly (or at all) on the other side. About a year after paying off completely, when the buyer had still not obtained the land purchase agreement much less ownership of lot 259, he began to ask questions in earnest. As can be gleaned from the Record, what followed for more than a year after that was an exercise of maximum frustration for the buyer, as he sent email after email but without any result.

[6] According to the evidence, including the exhibits admitted, the buyer contacted a number of persons associated with the house construction company. In successive emails to Scott Fuson, Robert Helms, Ashley Keating, and Beth Clifford herself, he repeatedly asked when he would be getting his title deed, asked for progress reports, and requested meetings with anyone who could help to get things done. Nothing positive resulted from these emails and phone calls except apologies, excuses, and more broken promises.

[7] By early 2019, despite his initial trust and patience, the buyer became so alarmed that he visited Belize to see for himself what was going on. There, on March 2nd, he met with Beth Clifford, who smoothly assuaged his concerns with more promises, crucially this time that the issue of title would be resolved within 60 days. And after some follow-up emails from the buyer, he did eventually receive documents in the mail which he signed.

[8] It is important to note that the documents received in mid-April 2019 and signed by the buyer were for the transfer of shares in a company which allegedly owned lot 259, and not

conveyancing documents for transfer of the actual title to the land. In his surprise, the buyer sought clarification from Ashley Keating, one of Beth Clifford's employees who worked for multiple companies, asking pointedly whether he would get "clear fee simple title to Lot 259" after signing. To this query, Ms. Keating replied: "Correct". After that Steve Williams waited and waited, and when no title deed materialised, he began another round of emails to Beth Clifford. Instead, however, what he received next was a notification from DocuSign that the documents he signed three weeks earlier had been voided, allegedly because of a date change. No explanation was given to him by Beth Clifford or any of her employees or associates as to why the documents had been voided.

[9] This turn of events proved to be too much for the buyer to bear. According to him, by this point there had been so many breaches, not least of which in the trust that he had placed in Beth Clifford, that he decided to seek legal advice. By letter dated 5 August 2019, the buyer rescinded the agreement. Although Robert Helms – another employee/contractor of Beth Clifford's – subsequently sought to negotiate a settlement in which the buyer would sell his interest, he would not be reimbursed the full sum paid nor would he obtain repayment in one sum. Fearful of being strung along yet again, the buyer felt unable to accept these terms and so informed Mr. Helms.

[10] In the claim eventually filed by LCW Investments, which as amended was brought against Beth Clifford, Green Development Partners and Beltway Investment Group Inc., LCW Investments (now the respondent) sought rescission of the Order Form and House Construction Agreement, return of the money expended which was US$788,709.00, and damages for breach of contract. In the alternative, LCW Investments sought a declaration that the defendants hold the said sum in trust for it and an account thereof, along with damages for fraudulent misrepresentation. In turn, the defendants counterclaimed for specific performance of the agreement and/or damages for breach of contract, together with interest thereon and costs.

[11] The trial judge, Young J, dismissed the claim against Beth Clifford and Beltway Investment Group Inc, while granting judgment against Green Development Partners, the House Construction Company (hereafter, 'the appellant'), on the basis that the August 5th letter validly accepted the appellant's renunciation as a breach. In her analysis of the evidence, the learned trial judge pointed out the contradictions in the agreement and the disconnect between its terms and what it actually required, aspects of which are highlighted below.

[12] Although the Order Form purported that the land transaction had no relation to the house construction and that the House Construction Company had no relation to the land company, the reality was starkly different. For instance, once executed, the construction agreement is incorporated into the Order Form; moreover, it was the appellant – the supposedly unrelated entity – which agreed on the purchase price for the land and then insisted on payment within three days (failing which the agreement would be voided). The evidently bemused judge asked, "How could the 2nd defendant be said to have no responsibilities with regard to purchase of the land when that company under the construction agreement was responsible for receipt and disbursement of the purchase price and gave instructions for which account the purchase price should be deposited into? This incidentally was the same account the construction price was to be deposited into."

[13] The learned trial judge also noted the serious anomalies that occurred – for instance that it was the appellant (the supposedly unrelated entity) which agreed to disburse the deposit according to the land purchase agreement – which it then went ahead and somehow disbursed, despite the fact that no land purchase agreement existed. Based on these and other factors, the trial judge concluded that the Order Form and the House Construction Agreement revealed the appellant to be much more than a mere House Construction Company.

[14] From the totality of the evidence the learned judge concluded that the claimant could not be expected to go seeking out the lot owner to make arrangements for the sale, when the claimant had no arrangement with said owner and had negotiated only with the appellant and Beth Clifford. Acting on the substance of the agreement between the parties, the judge therefore implied a term in the Order Form imposing an obligation on the appellant to present the land purchase agreement to the claimant within 10 days. Its failure to do so, she held, constituted a fundamental breach of the agreement, which allowed the claimant to rescind the agreement and treat the contract as discharged. The learned judge also found that the claimant did not fail to mitigate his losses. As reasoned succinctly by her, the claimant was asked to sell property for which he was not the legal owner, and he declined.

[15] The trial judge largely dismissed the remaining claims. She found that no fraudulent misrepresentation was made out in the evidence, nor could she find any fraud perpetrated to enable her to pierce the corporate veil and hold Beth Clifford personally liable. Likewise, she also

dismissed the claim by the second defendant for specific performance and/or damages for breach of contract.

[16] For the breach by the appellant, the judge ordered that the entire purchase price be returned to the respondent, including the closing costs, as that represented the loss as at the date the buyer accepted the appellant's renunciation.

[17] Both parties were dissatisfied with this outcome. Green Development Partners appealed, identifying four grounds, all of which alleged that the trial judge erred in law: first, because her finding that the appellant breached the Order Form was against the weight of the evidence and a proper construction of the relevant agreements; second, because the appellant did not commit any fundamental breach of the agreement entitling the respondent to rescind it; third, by finding that the respondent did not fail to mitigate its loss, and fourth, by dismissing the appellant's counterclaim for specific performance and/or damages in lieu for breach of contract.

[18] Meanwhile, the respondent for its part filed a Notice of Intention to contend that the judgment below be varied, seeking additional relief – namely: (i) a declaration that Beth Clifford and the defendant companies hold the sum of $788,709.00 in trust for the respondent, (ii) a declaration that Beth Clifford and the defendant companies are liable to account to the respondent for the said sum, and (iii) damages for fraudulent misrepresentation.

[19] Based on the above, the following issues arise for determination:

A. whether the trial judge misconstrued the agreements by finding that the appellant breached the Order Form and House Construction Agreement ('breach of contract');
B. whether the Order Form and House Construction agreement were validly rescinded by the respondent ('rescission');
C. whether the respondent failed to mitigate its losses ('mitigation');
D. whether the trial judge erred by dismissing the counterclaim for specific performance and/or damages for breach of contract ('specific performance');
E. whether a constructive trust was created, rendering the appellant and other defendants liable to account to the respondent for the sums paid pursuant to the agreements ('constructive trust');
F. whether the corporate veil should be pierced, rendering Beth Clifford personally liable for the return of the sums expended by the respondent ('liability of Beth Clifford'); and

G. whether the trial judge erred by finding that no claim of fraudulent misrepresentation was made out against the respondent and other defendants ('fraudulent misrepresentation')?

(A) Breach of Contract

[20] In support of its contention that the learned trial judge erred in law and misdirected herself in finding that the appellant breached the Order Form and House Construction Agreement, the appellant denied having any obligations under the agreement. The appellant pointed to the notice on the 'Summary Page', which stated that the House Construction Agreement "has no relevance" to the land purchase or the land purchase agreement, as well as the aforementioned clause in the Order Form which expressly stated that the land company and the house construction company are "unrelated entities" and that the latter "shall have no responsibilities or obligations whatsoever with regard to the purchase of the land". In light of these clauses, the appellant submitted that it had no legal obligation to produce the land purchase agreement and the trial judge misconstrued the relevant agreements by so finding.

[21] The appellant also noted that LCW proceeded at all times as if it were the owner of Lot 259, "going so far as to enquire as to construction on the said land". Ultimately, the appellant noted that the rescission letter was sent in August 2019, more than two years after the agreement was to be signed. This time period, the appellant contended, was a delay which disentitled the respondent from the equitable remedy of rescission, and in fact constituted affirmation of the agreements by the respondent.

[22] The appellant submitted further that there was no breach of the agreement by the failure to transfer title to the Lot 259 Keeping Suite to the respondent, though for reasons which are fairly difficult to unravel, aside the arguments recounted above which were repeated in support of this limb. The appellant pointed to the fact that the property was paid for while admitting that there was a delay in furnishing both the agreement and the title. However, the appellant continued, the respondent's beneficial ownership of the lot was never in doubt and once it was discovered that title to the lot had not been transferred, the appellant took steps to rectify the situation. Moreover, the appellant submitted that the respondent contributed to any alleged delay, since the balance was only paid in full on October 30, 2017, "long after" the lump sum was to be paid.

[23] In response, the respondent defended the judge's findings and reasoning, submitting that she was correct both in rejecting the purported separation of the agreements and in implying a term into the Order Form obliging the appellant to deliver the land purchase agreement within the stipulated time period for execution. As to the former, the respondent noted that the essence of the transaction was for the respondent to purchase a house and lot, and not to pay to build a house on a lot which it did not own. Belying the purported separation, the respondent pointed to the fact that the appellant expressly required payment of, was paid and retained, the full value of the purchase price. The Order Form, executed by the appellant and respondent, was the only document made for the purchase of the land. While it was to be superseded by a land purchase agreement, nothing of the kind ever materialised.

[24] Relying on *Marks & Spencer v BNP Paribas Securities Trust Co [2015] UKSC 72*, the respondent submitted that the trial judge was justified in implying the term that she did into the parties' agreement, as doing so was necessary for the arrangement to make commercial sense and be efficacious. In support, the respondent noted that while the appellant collected the full value of the purchase price, the respondent had no interaction with the land company or the land owner and at all times the responsibility for the sale lay with the appellant, which Beth Clifford explicitly acknowledged in her testimony. Given this context, the respondent argued that it was illogical to contend that the appellant had no responsibility with regard to the purchase of the land, and the trial judge was therefore justified in implying an obligation on the appellant to procure the land purchase agreement and deliver same to the respondent for execution. Its failure to do so constituted a breach of the Order Form, the respondent submitted.

[25] As to the issue of transferring the title, the respondent submitted that the trial judge was correct in finding that the appellant breached the House Construction agreement by not doing so. In support, the respondent argued that the process by which it was sought to transfer shares in a company that owned the land contradicted the terms of the respective agreements which contemplate a transfer of title to the land. The respondent noted the inconsistencies of the appellant's position, including the doubtful claim that the land had been paid for in 2017, whereas in 2019 it was revealed that the price had gone up by $15,000.00 – in other words, how could a purchaser be liable for an increase in price after the transaction is concluded?

[26] Finally, the respondent noted that the appellant had acquired ownership of the company that supposedly owned the lot in question, at which point it became the only entity that could transfer title to the respondent and rendering its failure to do so a breach of contract.

[27] Given this background, the first issue to be determined is whether the trial judge misconstrued the agreement as alleged by the appellant, or whether she was in fact correct in implying the term therein, breach of which constituted a fundamental breach of contract. A good place to start is with the learning as it relates to implied contractual terms.

[28] Traditionally, common law courts have adopted a 'highly restrictive approach'[2] to implying terms into a contract. Possibly reflecting the ethos of sanctity of contract, courts have "no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means."[3]

[29] Where the need for implication arises, invariably because the document in question has not made express provision for some eventuality, the test is not a subjective one in which the court seeks to discover what the parties would have intended. Instead, the settled approach is to ascertain what "notional reasonable people in the position of the parties at the time at which they were contracting"[4] must have agreed upon. As it was put by Lord Hoffman, the "question for the court is whether such a provision [that is, the one to be implied] would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean."[5]

[30] As an aid to discerning that meaning, various courts have provided detailed guidance,[6] but it is fair to say that of the multiplicity of criteria advanced, there is broad agreement that these can be distilled as one main prerequisite. Essentially, for a term to be applied, courts have repeatedly held that it must be necessary to give the contract "commercial or practical coherence".[7] Lord

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[2] *Marks and Spencer plc v BNP Paribas Securities Services Trust Co.* [2015] UKSC 72, per Lord Carnwath at [66].
[3] *AG v Belize Telecom Ltd and anor* (2009) 74 WIR 203 (PC Bel), per Lord Hoffman at [16].
[4] *Marks and Spencer*, note 1, per Lord Neuberger at [21].
[5] *Belize Telecom*, note 2 above, per Lord Hoffman at [21].
[6] See, for example, the 5 conditions identified by Lord Simon in *BP Refinery v Hastings (1977) 52 ALJR 20 at 26*.
[7] *Marks and Spencer*, note 1, per Lord Neuberger at [21].

Clarke expressed this succinctly by saying: "Another way of putting the test of necessity is to ask whether it is necessary to do so in order to make the contract work."[8]

[31] Nonetheless, despite the general agreement that there is essentially one test – that of necessity – it is important to note Lord Simon's first condition, namely, that any term to be implied must be both reasonable and equitable. Commenting on this criterion, Lord Neuberger observed that once the other conditions are satisfied, in the sense that the implied term is necessary to ensure business efficacy, it would also inevitably be both reasonable and equitable. Still, it is worth noting that even as a court may imply a term into a contract to clarify its meaning, it must also meet this standard, qualifying as something that the reasonable bystander would have taken as a given in the context of the entire transaction.

[32] Bearing these principles in mind, can it be said that the learned judge erred by implying an obligation on the part of the appellant to deliver, within the stipulated time period, the required land purchase agreement to the respondent for execution? In advancing the argument that the judge misconstrued the contractual arrangements, counsel for the appellant stressed some of the clauses in the Order Form and the House Construction Agreement, specifically those that sought to maintain a separation between the house construction and the land purchase. Counsel highlighted, for instance, the so-called 'Important Notice' on the Order Form informing that the house construction agreement has 'no relevance' to the land purchase or the land purchase agreement. This notice is in turn buttressed by clause A5, which maintains that the land company and the house construction company are unrelated entities and that the house construction company has no obligation with regard to the land purchase. However, despite these protestations, the overall picture – both the contracts read in their entirety as well as the conduct of the parties – tell a different story.

[33] According to the transaction, the respondent agreed to buy a lot of land, but the owner of that land was not a party to any of the executed agreements. Instead, it was the appellant – the house construction company – which required payment of the purchase price for the land. Moreover, clause A2 of the Order Form required the buyer to lodge the *land* deposit with the House Construction company within three business days, failing which the agreement would become null and void. This was odd (and seemingly inconsistent), because if these transactions were

[8] Ibid at [77].

truly separate and distinct, why then would the failure to lodge the land deposit invalidate the house construction agreement?

[34] Once the land deposit was paid over to the house construction company (that is, the appellant), the latter agreed to disburse it according to the terms of the land purchase agreement. As the judge observed wryly, no land purchase agreement ever materialised, but the appellant received the deposit, retained it, and claimed to have disbursed it anyway. So much, then, for any purported separation.

[35] Scrutiny of both the documents and the history of the transaction reveals that the buyer never had any dealings with either the land company or the purported owner of the land – and I am forced to say 'purported' because no evidence ever emerged as to the ownership of the lot in question. Indeed, the owner of the lot was identified on the document by an unpronounceable name consisting of a mix of numbers and letters, like some entity out of a dystopian science fiction novel. How on earth does one go about contacting a company known as 5801GOA2105? Certainly not by checking the Yellow Pages, and the only point of contact for the buyer would have been through the appellant. In other words, since the buyer had no relationship with any entity other than the appellant – represented in person by Beth Clifford and various of her employees and contractors – it is clear that the latter acted as the agents for the land company and/or the owner of the land. *For this contract to work, it could only be through the appellant performing the necessary actions*.

[36] Consistent with what appears on paper, the respondent dealt at all times with the appellant. Crucially, it was the appellant which collected the entire sum of $780,900.00 – amounting to both the cost of the house *and* the land (and this via another of Beth Clifford's companies). Having collected the money, Beth Clifford, the sole shareholder and director of the appellant, testified that all the funds – for the land and the house – *belonged* to the appellant.[9]

[37] Under cross-examination by counsel for the respondent, Beth Clifford accepted that the appellant was the *exclusive* sales agent for the land company. It is worth reproducing the words of this witness herself:

[9] Record of Appeal, Vol IV, page 1553 of 1685.

> *"We were authorized to be the exclusive sales for – excuse me, as the Director of Green Development Partners, we had a contract to be the exclusive sales [sic] for Corporate Investment Holdings Company.*
> *…*
> *"Actually, the contract contemplated more than just sales agent.*
> *…*
> *"We were authorized yes to sell and to develop that land, have architectural controls, etc. The contract was extensive."*[10]

[38] As can be clearly seen, despite clause A5 which stated that the house construction company had no obligation with regard to the land purchase, the role played by the former was integral to the entire transaction. Beth Clifford herself accepted that the contract with the appellant was "extensive" and that the house construction company had significant obligations with regard to the land extending beyond its purchase. Clause A5, therefore, along with the so-called important notice, are misleading cannot be taken at face value. Both are contradicted by other provisions of the agreement and, significantly, do not reflect how the parties themselves operated.

[39] When Mr. Marshalleck S.C. attempted to point out this contradiction to Beth Clifford, he was met with evasions and claimed confusion – as the record graphically shows[11] – but this was understandable, for there is really no way that anyone could sensibly reconcile these misleading clauses with the reality. By now, the picture that emerges is of a contract which purports in some clauses to encapsulate two separate transactions concerning 'unrelated' entities, but which in other terms and its overall effect reveals itself to be one interlocking arrangement.

[40] The history of the parties' dealings with each other reinforces this picture. From start to finish, the buyer dealt only with Beth Clifford, her employees/contractors or other persons associated with the appellant. According to the evidence, no official from the land company or the owner of the land ever made an appearance. When the delays started and the buyer began to ask questions, those questions were directed to Beth Clifford and the appellant's representatives. Belying the claimed separation of the transactions, none of those persons ever responded that they were not the ones to ask, nor did they direct the buyer to the land company. Instead, they accepted responsibility for the land sale and, however sluggishly, answered the buyer's emails with continued promises to complete the other side of the agreement.

[10] Record of Appeal, Vol IV, page 1515 of 1685.
[11] See, for instance, Record of Appeal, Vol IV, pp. 1516-1519/1685.

[41] In these circumstances, finding an implied obligation on the part of the appellant to deliver the land purchase agreement to the respondent within the time period stipulated, as the learned judge did, is the only way in which the contract makes commercial sense. Implying such an obligation is *necessary for this contract to work* (to adopt Lord Clarke's approach), given that the respondent never dealt with the lot owner and was required to pay over all sums to the appellant. Not only did the appellant undertake this crucial role in the transaction, but its representatives at all times assumed the responsibility of facilitating the land purchase. As the learned judge found, the Order Form and the House Construction agreement revealed the appellant company to be much more than a house construction company.

[42] The other limb of the appellant's submission on this ground was that the trial judge also misdirected herself by finding that the appellant breached the Order Form and House Construction Agreement by not transferring title to the Lot 259 Keeping Suite to the respondent. In support, the appellant repeated some of the arguments made above as well as advanced new ones. As already noted, the latter are not entirely clear, but I will nonetheless consider them to the extent possible.

[43] Admitting that there was a delay in furnishing both the agreement and the title, the appellant submitted that the respondent's beneficial ownership of the lot was never in doubt. However, this can hardly provide any comfort to the respondent who never obtained formal ownership even after expending hundreds of thousands of dollars. The buyer agreed to and paid for *legal* ownership, and during the year-long exchanges between him and various of Beth Clifford's employees, his inquiries were about obtaining title. When he was eventually presented with a document purporting to transfer the shareholding in an Anguillan IBC, in evident consternation he asked Ashley Keating directly whether he would obtain "clear fee simple title to Lot 259", to which she replied, "correct".[12]

[44] Counsel for the appellant submitted further that once it was discovered that the property had not been transferred, steps were taken to rectify the situation. This too is incorrect. The buyer was sent documents to transfer the shareholding in an Anguillan IBC, which he duly executed, but three weeks after he was notified by DocuSign that the documents were voided. To this day, he has not been provided with any explanation as to how that happened. Worse, accusations were

[12] Email exchange between Steve Williams and Ashley Keating, in evidence and marked 'Exhibit SW41'.

levelled at him, including during cross-examination, that they were voided by Ms. Keating at his request, because of some confusion regarding the date. However, no evidence was ever produced of any request by the buyer for the documents to be voided, even though it was established that all communications between them were by email. In any case, as the judge asked incredulously, did the appellant expect anyone to believe that these official documents were voided at the buyer's request when he was the one who had been badgering them for over a year to obtain ownership? Moreover, the judge further noted, how could the buyer instruct someone else's employee, who would in turn simply do what he asked? The sheer audacity of the suggestion led the trial judge to reject it. Indeed, as the evidence unfolded it emerged that the voiding of the document was occasioned because of a change in Anguillan law,[13] but even with such foreknowledge the appellant's case was built on this unfounded attack on the buyer's integrity.

[45] Ultimately, no evidence was provided as to the ownership of the lot in question – as distinct from shareholding in a company. All that remains are the appellant's claims as to who was the land company and the lot owner, and to date, nothing has been transferred to the buyer (not even the shares in the company that purportedly owned the lot).

[46] Further, as the learned judge found, the buyer never ordered the shares in a company, and the transaction between the parties concerned the purchase of a lot of land. The buyer never obtained title, and the failure of the appellant to effect the transfer was a material breach of the agreement, entitling the respondent to rescind.

[47] Having regard to the foregoing, I therefore find that the learned judge did not misconstrue the agreements. On the contrary, it is the appellant's contentions which, as eloquently expressed by Mr. Marshalleck S.C., "are divorced from the evidence and make a mockery of the transaction as accepted and performed by the parties." The only reasonable way to interpret the agreement, in which it would be commercially efficacious, is that it was the appellant's responsibility to deliver the land purchase agreement to the respondent for execution. The appellant's failure to do so constituted a material breach of the Order Form, which was the only extant contract between the parties, for which the respondent was entitled to rescind the contract and treat it as discharged, as the judge correctly held.

[13] Record of Appeal, Vol IV, pp. 1526-7/1685.

(B) Rescission

[48] The appellant's second ground of appeal is that the trial judge erred by finding that the Order Form and House Construction agreement were validly rescinded by the respondent. In support, counsel for the appellant raised two arguments.

[49] First, Ms. Banner submitted that rescission is not available where specific restitution is impossible, relying on the authority of Halsbury's Laws of England.[14] In the instant case, according to counsel, the funds paid by the respondent were used for the purchase of the land and construction of the building, so restitution was no longer possible.

[50] Second, counsel advanced the distinction between rescission *ab initio*, arising in cases of mistake or fraud, and an accepted repudiatory breach, where the contract is ended because of some default by one party. Citing ***Johnson v Agnew*** *[1980] AC 367* (UK HL) and ***Howard-Jones v Tate*** *[2012] 2 All ER 369* (EW CA), counsel submitted that only in the former case is the contract treated as never having come into existence, entitling the parties to be restored to their original positions. Where there is an accepted repudiatory breach, however, rights are not discharged so far as they have been unconditionally acquired, and the injured party is only relieved from further performance. In this case, counsel argued that the respondent is not entitled to the return of the sums paid by him, as that would restore him to his initial position – unjustifiably so as the contract is not void *ab initio*. In fact, counsel went so far as to submit that the respondent has not proven any losses and is thus not entitled to any damages.

[51] The respondent disputed both of these contentions. Mr. Marshalleck S.C. disagreed that specific restitution is impossible in this case, noting that no evidence has been led that the funds paid by the respondent were used according to the agreement or at all. Nor was any evidence led as to the start date of the construction. Despite the promises made to him, the respondent never received title to the lot nor was he informed even of any construction before he rescinded. According to senior counsel, given what unfolded, the appellant was relying on its own wrongdoing to claim that specific restitution was not possible.

[14] Halsbury's Laws of England (4th edn), Vol. 31, para 829.

[52] Mr. Marshalleck S.C. also disputed the relevance of the appellant's second argument, noting that the respondent received nothing under the agreements. Senior counsel argued that the principle in *Howard-Jones,* which deals with post-completion obligations, is inapplicable on the facts of this case, where no obligations – past, pending or future – were performed by the appellant.

[53] At the outset I will indicate that respondent's position on this point is unassailable. There is no dispute as to correctness of the principles cited by the appellant; the difficulty is that the evidence does not remotely support any of the contentions advanced by them.

[54] As to the alleged impossibility of restitution, there is indeed no evidence that the funds paid by the buyer were applied according to the agreements. To this date, ownership of the lot remains shrouded in mystery. Leaving aside the confusion following upon the buyer's execution of the documents sent to him, what he was presented with were documents for the transfer of shares in an Anguillan company. Not then or at any time thereafter was any proof provided that that company owned the lot in question.

[55] The appellant purported that it had paid for the lot in 2017. But as the emails later revealed, the buyer discovered in April 2019 that the land price had increased by $15,000.00. When he questioned Ms. Keating about this, she assured him that Mahogany Bay (another of Beth Clifford's companies) would pay the difference.[15] This attempted transfer did not succeed, as discussed above, but the fact of the increase in price demonstrates that as late as April 2019, the land had not yet been purchased from the original owner, as purchasers are not responsible for increases of price *after* the fact of purchase. Contrary to the impression created by counsel, even up to two years after the initial agreement was signed and the deposit paid, the lot had not yet been purchased, much less transferred to the buyer.

[56] Further, examination of the correspondence between the parties reveals the months-long struggle by the buyer to secure fulfilment of the transaction. There are multiple emails back and forth between the buyer and various employees of Beth Clifford, where he repeatedly asks for the "title deed", construction updates, and answers from representatives of the appellant. The growing disquiet of the buyer is unmistakeable from these written exchanges, fluctuating from

[15] Email from Ashley Keating to Steve Williams sent on 10/4/2019 at 1:40 pm, tendered & admitted into evidence, Record of Appeal, Vol I, pages 385-6/425.

flattery (telling Beth Clifford how much he likes the development) to despair (plaintively admitting that he's "not important") to demands (asking to meet, reminding them that time is of the essence of the agreement, demanding information about title and the progress on construction). Significantly, at no point during these exchanges – which started in late 2017 and continued until 2019, all tendered and admitted into evidence – did Beth Clifford or any of her representatives inform the buyer that construction had started on his 'Keeping Suite'. Instead, he was answered with excuses, apologies and promises.[16]

[57] The email exchanges and evidence described above was that of Steve Williams, the buyer. For its part, the appellant tendered nothing in response which contradicts this narrative or even which establishes when construction began. Instead, when Beth Clifford was asked about this, as reflected clearly in the record, she simply evaded the questions.

[58] The state of the evidence, therefore, is overwhelmingly in the respondent's favour. To date, there remains no evidence that the funds paid by the respondent were applied according to the agreement – there is no proof as to who owns Lot 259 far less it being transferred to the respondent; nor is there any evidence that construction on the Keeping Suite had begun before the buyer rescinded. If the appellant chose to use the funds to start or continue with construction *after* the buyer accepted their repudiation of the contract, that was ill-advised and such purported performance following rescission of the contract is no bar to restitution.

[59] The appellant's other argument in support of this ground is equally without merit. While the judge's order that the respondent be refunded the entire purchase price expended by him may appear to be rescission *ab initio*, that was in fact the compensation the respondent was entitled to for losses suffered by him. The reason why said losses were equal to the entire purchase price is because at the point when the respondent accepted the appellant's repudiation of the contract and became discharged from further performance, the appellant had not fulfilled any of its obligations. The email correspondence and the testimonies of witnesses on both sides demonstrate this quite clearly, for by the time the respondent rescinded, title to Lot 259 had not been transferred to him nor had any of the appellant's representatives provided him with any proof that construction had even started – despite more than a year of his begging and pleading.

[16] Note in particular the exhibits appended to the buyer's witness statement.

[60] The situation in *Howard-Jones v Tate*, one of the authorities cited by the appellant, is materially different. In that case, which concerned the sale of a property, the vendor agreed to provide the property with an independent electricity and water supply within 6 months of completion of the sale. The sale was duly completed but the vendor never did provide separate access to water and electricity as agreed. For the breach of this obligation, it was held that the purchaser was indeed entitled to treat the contract as at an end when the 6 months expired. What he became entitled to was damages for the losses he had suffered at that point, but not to treat the contract as void *ab initio*. The purchaser was discharged from further performance because the vendor failed to complete a material term of the contract, but he could not be restored to his original position as if the contract was void because there had been substantial completion.

[61] Kitchin LJ in the court of appeal of England and Wales explains the outcome on those facts quite clearly:

> "After discharge, [the purchaser] was no longer bound to accept the further performance by Mr Tate of his obligations. But he was not entitled to recover all the moneys he had paid under the contract unless he could say that ***the consideration for his payment had wholly failed***. That he has not sought to do. Nor, in my judgment, could he properly have done so."[17]

[62] By comparison, in the case before us, there was no performance of the agreements (much less substantial performance) by the time the respondent accepted the appellant's breach. One could accurately say here, indeed, that the consideration for the respondent's payment had wholly failed. As the evidence establishes, the appellant did not perform any of its obligations, much less post-completion ones. The sum awarded as damages, therefore, represents the losses sustained by the respondent for those unperformed obligations.

[63] Accordingly, having regard to the facts, the trial judge was perfectly correct to make the award that she did. This was not a situation of the contract being treated as void *ab initio*, but rather, one where the respondent validly accepted the appellant's repudiatory breaches. For that, the respondent was entitled to compensation for the losses sustained for the unperformed obligations. Those latter amounted to the entire sum advanced because at the time of rescission, the respondent had received neither title nor keeping suite. For these reasons, this ground of appeal fails.

[17] *Howard-Jones v Tate* [2012] 2 All ER 369, per Kitchin J at [30] (my emphasis).

(C) Mitigation

[64] The appellant submitted next that the learned trial judge erred in law by finding that the respondent did not fail to mitigate its loss. In support, the appellant contends that the evidence shows that at the date the respondent purportedly rescinded, "the funds had been substantially spent with respect to the purchase of Lot 259" and the construction of the Keeping Suite – meaning that the contract had been substantially performed by the appellant. Any damages the respondent was entitled to had to be calculated as from that date.

[65] The appellant cited Chitty on Contracts in support of the respondent's duty to mitigate, namely that a claimant cannot recover damages for losses that he could have avoided by taking reasonable steps, and that if he unreasonably refuses to accept an offer then he breaches his duty to mitigate.[18] In this case, the appellant contends that Mr. Helms tried to obtain a solution for the respondent, namely a buyout by another investor which would have allowed the respondent to recoup the money paid save for $7,808.00, over a period of 60 days. By not accepting this proposal, the respondent should be disentitled to any damages.

[66] In answer, counsel for the respondent rejected the characterisation of the respondent's behaviour as unreasonable in light of the fact that at the time the respondent rescinded, the appellant claimed to have acquired legal title to Lot 259 and could have sold it pursuant to the proposal devised by Mr Helms without the consent or involvement of the respondent. It was thus the appellant's behaviour which was unreasonable, given that the Keeping Suite had not been built by the time of the respondent's rescission, but it went ahead and expended the purchase price anyway.

[67] The trial judge disposed of this contention in the court below with enviable brevity, finding: "The claimant did not fail to mitigate his losses. He was asked to sell property for which he was not the legal owner and he declined." Any attempt to improve on her assessment risks unnecessarily prolonging these reasons. But since the appellant has persisted with this argument on appeal, it is owed a further review.

[18] *Chitty on Contracts*, 33rd ed. (Sweet & Maxwell, 2018), Vol 1, para. 26-101.

[68] A common requirement of the authorities cited by the appellant concerns the reasonableness of the conduct of the injured party. Without factoring in the legal position of the parties and considering only the evidence as to the history of the dealings between the parties, it would be perverse to describe the respondent's conduct as unreasonable. Not only did the buyer pay in full within the time specified between the parties, but as clearly demonstrated by the tortured email exchanges between them, he tried for more than a year to obtain title to the lot ("clear freehold title" was how he put it at one point) along with updates on construction of the Keeping Suite. This evidence has been recounted already, and I repeat only to emphasise how patient and reasonable the buyer was.

[69] Counsel for the appellant submitted in their written arguments that by the time of the purported rescission, "the funds had been substantially spent with respect to the purchase of Lot 259 and the construction of the Lot 259 Keeping Suite."[19] This is so smoothly presented it is easy to miss how irrelevant (and incorrect) the statement is. As to the first assertion, the agreement between the parties was for conveyance of title to the respondent. The funds spent by the buyer were for Lot 259 and a building thereon, but to date it remains unclear in whose name the lot is conveyed. When the appellant asserts that Lot 259 is 'purchased', what is left unsaid is that it was (perhaps) purchased by someone else but not conveyed to the buyer, in breach of the agreement. As for the second assertion, that the Keeping Suite was constructed – well, the evidence was equally absent that construction had in fact occurred.

[70] By the time the buyer's patience was exhausted and he wrote formally to the appellant, the scheme presented to him by Robert Helms did not involve full or timely reparation. Given that up to that point – more than a year after he had paid in full and had not even obtained title much less a building – he can hardly be described as unreasonable for wanting to be fully compensated or for not agreeing to wait for 2 months for repayment. If an agreement promised within 10 days did not materialise even after 2 years, how long might he have to wait where the promised period was 2 months? In other words, the history of the parties' dealings naturally failed to inspire any confidence in the respondent, who in the circumstances cannot be fairly criticised for distrusting any scheme presented by the appellant's representatives.

[19] Appellant's Submissions dated 1st September 2023, para. [50].

[71] But all this obscures the real weakness of the appellant's argument, so concisely assessed by the trial judge and bluntly described by the respondent's counsel as "nonsensical". By the time the respondent rescinded the contract, the lot was purportedly owned by the appellant and the keeping suite had not been constructed. As the legal owner, the appellant was obviously at liberty to sell the lot (and any building once constructed) to whomever it pleased, without the consent or involvement of the respondent. Moreover, since the appellant was in possession of a formal letter of rescission from the respondent, there could be no danger of the appellant being liable for breach of any obligation under the initial agreements if at that stage it then disposed of the property to someone other than the respondent.

[72] Thus for all these reasons, the Respondent did not fail to mitigate its losses, as the trial judge correctly found, and this ground of appeal fails.

(D) Specific Performance

[73] The appellant's final ground of appeal was that the trial judge erred by dismissing its counterclaim for specific performance and/or damages for breach of contract, together with interests and costs. The crux of this submission is that specific performance is the most appropriate outcome as the respondent failed to establish any breach or misrepresentation as alleged. The appellant added that it is ready, willing and able to "cause the transfer" of the lot and Keeping Suite to the respondent, which have been paid for by the respondent's funds.

[74] The respondent answered this ground at length, relying on the fact that specific performance is a discretionary remedy which may be denied depending on the conduct of the parties.[20] Here, counsel for the respondent argued, the conduct of the appellant was such that it was not entitled to the court's aid as gleaned from a multiplicity of reasons. Among these were the appellant's obfuscation as to the ownership and control of the companies, the materially different method of transferring ownership in the land, the wrongful manner in which the appellant tried to blame the buyer for voiding the documents, the long delay in fulfilling its obligations, and ultimately by proceeding to build the Keeping Suite even after formal rescission of the agreement by the respondent. The respondent argued that the court's equitable jurisdiction should not be used to

[20] *Conlan v Murray* [1958] NI 17

countenance one party's breach of essential contractual terms, and because of which the appellant was not entitled to specific performance.

[75] I find this to be a very odd ground of appeal, in all the circumstances of the case. The appellant repeatedly referred to its entitlement to this remedy, submitting that the trial judge erred by denying it and urging this court to grant it. What strikes me as odd, however, is that remedies are only granted to successful parties at trial, which the appellant was not. Since the trial judge found against the appellant, how could she have granted it any remedy, whether specific performance or something else? To do so would have contradicted her finding that the respondent properly rescinded the contract and was discharged from further performance.

[76] The trial judge expressed this point with characteristic clarity. It is useful to quote in full what she said at para [29] of her decision:

> "The claimant is entitled to the entire purchase price and construction price back including closing costs because that is in fact his loss as at the date he accepted the renunciation. He is not the legal owner of the lot so he can lay no claim to the Keeping Suite which was to be built on it. It is reminded that that Keeping Suite ought not to have been built until the claimant furnished his title which he has never been able to do. The 2nd defendant's counterclaim for specific performance or damages for breach of contract is accordingly dismissed."

In other words, since the breach was committed by the appellant, the respondent was entitled to damages and could not be compelled to perform the contract.

[77] It is true that the appellant's conduct was unsavoury in all the ways described by the respondent. There was, first and foremost, the excessive delay in performance, during which time the respondent unsuccessfully tried to get the appellant to honour its commitments. There were all the companies through which obligations were diffused, making it impossible to discern who was responsible for what; the blatant manner in which the appellant and Beth Clifford tried to blame the buyer for voiding the documents – even as they later revealed that it may have been at the instance of the Anguillan lawyers. And there was the unexplained act of proceeding with construction, even after the respondent formally notified them of their position. However, in my view, none of this is dispositive.

[78] As discussed above, based on the oral and documentary evidence on record, I find that the respondent was justified in accepting the appellant's repudiation and therefore entitled to treat the contract as discharged, thereafter absolved from further performance. In light of this conclusion, it would be contradictory and illogical to order the respondent to complete the very contract found to be discharged. In the circumstances, I completely agree with the trial judge's decision to reject this counterclaim and the appeal therefrom is dismissed.

(E) Constructive Trust & Liability to Account

[79] For its part, the respondent was dissatisfied with the economy of the judge's findings and sought a variation of her order to include additional relief as claimed in the action. The first two of the additional reliefs claimed by the respondent are declarations that Beltway Investment Group (hereafter 'BIG') along with the appellant and Beth Clifford hold the sum of US$788,709.00 in trust for the respondent and are liable to account for it. I propose to deal with the personal liability of Beth Clifford, if any, in the following section of this judgment, as it involves the issue of the separate legal personality of companies. I thus turn now to the issue of whether a constructive trust exists and whether BIG (and by extension, the other defendants) are liable to account for the funds paid by the respondent.

[80] In support of this contention, the respondent noted that pursuant to the agreement, the funds were required to be deposited to BIG's account, which obligation was duly discharged in full. Simply by way of receiving the respondent's funds, Mr. Marshalleck SC noted, BIG became a custodian of those funds and held them as constructive trustee for the benefit of the parties to the contract.

[81] Further, senior counsel argued that having knowingly received the respondent's funds, BIG became liable to account for it and to return the said funds upon rescission of the contract. Counsel relied on ***Belmont Finance Corp v Williams Furniture Ltd (No. 2)*** *[1980] 1 All ER 393*, where it was established that knowing receipt of funds together with knowledge that they were being applied otherwise than in accordance with the contract under which they were paid creates a constructive trust, in which the person receiving the funds is thereupon liable to account for it.

[82] The appellant disputed this contention, submitting that the mere fact that BIG received the purchase price is not sufficient in and of itself to give rise to a constructive trust. In support of its

rival contention, counsel for the appellant argued first that since the payment in question was disbursed by BIG for the purchase of the lot and construction of the keeping suite, BIG was no longer in possession of any of it and so the court cannot act in vain by ordering its return. Moreover, Ms. Banner contended that there was no evidence to rebut their position that the funds were used for their purpose or that said funds were channelled to some other activity, and thus the respondent did not meet the test for proving the existence of a constructive trust.

[83] The transaction between the parties was a commercial one for the sale and purchase of land and the construction of a building thereon. To this end, the buyer wired the purchase price to BIG, which was in turn required to transfer the said funds to the appellant. The transaction does seem convoluted, but that *by itself* does not necessarily mean it was fraudulent. Its stated purpose was simply that of convenience, since the appellant did not have a US bank account.

[84] Further, there is no evidence that the funds were misapplied or misappropriated, or that there was some form of impropriety in its use. The respondent advanced various allegations at trial, such as that monies of investors were being used for other purposes, that Beth Clifford did not pay off for the land, and so on, but these remained allegations. Ultimately, no proof of any of this was provided. As such, no constructive trust arose on the evidence as established below, and the learned judge cannot be faulted for rejecting this contention.

[85] I would also observe in passing that the initial claim for an accounting of the funds arising from the creation of a constructive trust was sought as an alternative to the claim for damages for breach of contract. Since the trial judge in fact found a breach and awarded the respondent damages amounting to the full sum paid by the respondent, it seems to me wholly unnecessary to determine whether a constructive trust exists and order the appellant to account for the sums received. Ultimately, according to the judge's order as already upheld, the appellant is required to refund the respondent in full.

[86] That said, there is equally no evidence of what has become of the respondent's payment. The appellant claims that lot 259 was duly purchased and the keeping suite constructed, but there is no proof that any of this happened. As discussed above, the appellant attempted to transfer shares in an Anguillan company to the respondent, but that collapsed through no fault of the respondent. Astonishingly, no title deed was ever tendered in evidence, nor any photographs of

the keeping suite, and we have only the appellant's word that it has since acquired the lot and constructed the building.

[87] In the circumstances, I find that having been wired the full purchase price from the buyer, who in turn did not receive either title to the lot and/or the building he was promised, BIG is liable jointly and severally along with the appellant house construction company for the return of the entire sum received. To this extent, therefore, the order of the trial judge is varied to include BIG along with Green Development Partners.

(F) Liability of Beth Clifford

[88] In the court below, the learned judge dismissed the respondent's claim against Beth Clifford. She reasoned as follows: "Beth Clifford indeed seems to be the common denominator in this entire matter, but this Court could not find that there was a fraud perpetrated which would allow the corporate veil of the 2nd and/or 3rd defendants to be pierced to make her personally liable."

[89] The respondent, dissatisfied with this ruling, sought a variation of the Order so as to hold Beth Clifford personally liable for breach of contract along with the other, original defendants. Senior counsel on behalf of the respondent argued that the companies in question – the appellant along with BIG – were used as a façade, or devices in a fraudulent scheme devised and executed by her. As such, he submitted, it was necessary in the interests of justice to pierce the corporate veil and assign liability personally to Beth Clifford.

[90] In support of this submission, Mr. Marshalleck S.C. relied upon ***Ben Hashem v Al Shayif***, distilling the applicable principles as those of control combined with the existence of impropriety – though not just any impropriety, but impropriety linked to the use of the company structure to avoid or conceal liability.[21] Applied to this case, Mr. Marshalleck noted first the amorphous nature of the companies and their structure, arguing that the distinction between Beth Clifford the individual and Beth Clifford the company director has always been vague. Her control over the companies involved was total, so that funds were comingled and misapplied, all on her instructions as she simultaneously acted in a multiplicity of capacities for a variety of companies.

[21] *Ben Hashem v Al Shayif* [2008] EWHC 2380 at [159]-[164].

[91] Crucially, the respondent argued, there were multiple failures on the part of the appellant to adhere to what was agreed, but no responsibility was taken for any of it on the basis that the neglect was that of another entity with separate legal personality. However, those other entities were also owned and controlled by Beth Clifford, the end result being an elaborate scheme in which responsibility was obscured so as to conceal the wrongdoing and serial improprieties that occurred. Given this reality, it was necessary to pierce the corporate veil in the interests of justice.

[92] In response, counsel for the appellant raised both procedural and substantive arguments. Ms. Banner submitted first, on the authority of ***Supaul v Lalchand***[22] (SC, Belize) and ***Todd v Price***[23] (CCJ, Guyana), that there was no specific pleading below that the respondent was seeking an order to lift the corporate veil. She added that the respondent failed to meet the test for doing so, based on the evidence led at trial.

[93] Regarding her substantive objection, counsel for the appellant contended that the respondent's contentions were both speculative and unproven. Counsel noted with regard to the structure of the companies that there was no evidence that they were a device or sham; on the contrary, they were duly established by law. The fact that there are several companies conducting different functions does not mean the enterprise is fraudulent, as this is a reality of commerce.

[94] As for the allegations of impropriety, Ms. Banner contended that the evidence was "plain" that the funds were used for the purposes specified, and no evidence was tendered by the respondent to displace that fact. The appellant was entitled to comingle investors' funds as there was nothing in the contract to oblige it to escrow the funds paid until the building was constructed. Ultimately, the funds were used to purchase the lot and build the Keeping Suite and there was no breach of the agreement or other impropriety. In the circumstances, counsel submitted, there was no justification to pierce the corporate veil.

[95] It would be convenient to begin with the respondent's procedural argument. Neither of the authorities cited by counsel lay down any requirement that there must be some specific pleading that an order is being sought to lift the corporate veil. *Supaul v Lalchand* is a matrimonial dispute involving the division of property, where one party sought to attach the property of a company

[22] *Supaul v Lalchand*, Civ. Action #17 of 2016, SC of Belize (decision dated 29/1/2018), per Griffith J at [24]-[29].
[23] *Todd v Price et al* [2021] CCJ 2 (AJ) GY at [38].

owned by the other party. The attempt failed because the substantive test for lifting the veil was not met, and not because of any deficiency in the pleadings. The same is true of *Todd v Price*. The latter case in fact deals with fraud in a land transaction, and it reiterates the longstanding principle that where a party alleges fraud, this must be specified in the claim along with sufficient particulars of the allegedly fraudulent acts (such as names, dates, and places involved).[24] However, fraud in this context does not extend to any and all actions where impropriety may be involved. In this case, what is alleged is not fraud in that classic sense, but impropriety in the use of corporate structure to evade legal liability. I could find no requirement imposing a formal rule of pleading for claims seeking to pierce the corporate veil, and none was cited.

[96] Having said this, it is an elementary rule of fairness that a claimant must specify the cause of action and provide sufficient detail to put the other party on notice of the case it has to meet. Indeed, as can be inferred from the judgment of Barrow JCCJ in *Todd v Price*, any case must be pleaded with such particularity so that the opposing party is given the opportunity to respond to the claim as appropriate. And having regard to what was pleaded in this case, I am satisfied that the respondent fully met this obligation.

[97] To begin with, the action was brought against Beth Clifford in her personal capacity along with two of her companies which featured in the transaction. The accompanying statement of claim articulated clearly the basis upon which Beth Clifford was being sued personally, stating as follows:

> "23. The 1st defendant was at all material times the managing director of the 2nd and 3rd defendants and in full control of those companies and used them as her agents in the furtherance of her scheme to sell lots and build houses within Mahogany Bay Village Resort. The said scheme was a sham designed to permit the 1st defendant to access and deal with the proceeds of sale of the said lots and construction for her own private purposes."

[98] The following paragraph of the Claim continues in the same vein, detailing other aspects being relied upon by the respondent/claimant to establish that the companies were being used a vehicle to further Beth Clifford's alleged schemes. In these paragraphs, the respondent's attorneys were unambiguous in their claim that the companies were being used as a front for impropriety, hence their claim against Beth Clifford in her personal capacity. There was no room for surprise here.

[24] See also *Ramdeo v Heralall* [2009] CCJ 3 (AJ) per Hayton JCCJ at [3].

[99] Removing any doubt as to the defendants' awareness of the case they had to meet, one of the agreed issues arising for determination, as reproduced by the trial judge in her decision, was precisely that "whether the 1st defendant used the 2nd and 3rd as her agents or as a façade or as her devices in a scheme devised and executed by the 1st defendant to market and sell land and build Keeping Suites within a resort complex called Mahogany Bay Village Resort thereby making her personally liable on the House Construction Agreement and Order Form?" One could not be more direct than this, and there is thus no doubt that not only did the respondent's pleaded case give clear notice of its claim to make Beth Clifford personally liable, but that the appellants were well aware of this and, by extension, the case they had to meet.

[100] This brings me to the substantive rejoinder made by Ms. Banner, namely that the respondent's allegations were pure speculation and that no impropriety was proved, leaving no basis for the trial judge to pierce the corporate veil and hold Beth Clifford personally liable. In addressing this argument, it would be important to acknowledge at the outset that the separate legal personality of companies is a longstanding and foundational principle of English company law. In ***Salomon v Salomon*** *[1897] AC 22* (UK HL), Aron Salomon set up a company with himself and members of his family as shareholders to conduct his leather and boot-making business. The action against him sought to circumvent the separate legal personality of the company and sue Aron Salomon personally for a liability that was legally that of the company. The action was successful at first instance and in the Court of Appeal on the basis that the principle of limited liability of companies did not extend to sole traders. But the House of Lords disagreed: the company was a separate person from Mr Salomon and he was not personally liable for its debts. Lord Halsbury LC said that a "legally incorporated" company "must be treated like any other independent person with its rights and liabilities appropriate to itself …, whatever may have been the ideas or schemes of those who brought it into existence".[25]

[101] When discussing this principle, judges and scholars routinely stress its importance in the world of commerce. The *Salomon* principle does not only constitute high and established legal authority, it is also credited as ushering in the modern business model and facilitating smooth commercial transactions. At the same time, however, English law recognises the problem raised by the use of legal concepts to defeat mandatory rules of law, and out of that concern the doctrine

[25] *Salomon v Salomon* [1897] AC 22 at pp. 30-31.

of 'lifting' or 'piercing' the corporate veil has developed as a limited exception to the principle of a company's separate legal personality.

[102] That said, the ability to pierce the corporate veil is not without its controversy and considerable judicial and scholarly criticism exists as to its existence and scope. Although instances of its application are rare – courts tend to acknowledge rather than actually apply it – the UK Supreme Court expressly refused to overrule it when the issue came up in ***Prest v Petrodel Resources Ltd***. In that case, the panel acknowledged the doctrine's controversial status and limited application, but nonetheless refused to overrule it. As expressed by the President of the Court, Lord Neuberger:

> "…it would be wrong to discard a doctrine which, while it has been criticised by judges and academics, has been generally assumed to exist in all common law jurisdictions, and represents a potentially valuable judicial tool to undo wrongdoing in some cases, where no other principle is available."[26]

[103] In *Prest*, Lord Sumption who delivered the leading judgment provided a comprehensive and learned discussion of the doctrine, concluding as did his colleagues that it has considerable value. He described it as "well-established" and explained that piercing the corporate veil is justified where the feature of separate legal personality is abused for the purpose of some "relevant wrongdoing".[27] Lord Sumption explained that 'relevant wrongdoing' could take one of two forms, which he identified as the 'concealment' principle and the 'evasion' principle. In the former, not strictly a situation of piercing the veil, the court goes behind the 'façade' of the corporate structure to discover its true identity. In the evasion scenario, there is impropriety involved insofar as the principle of separate legal personality is used to evade a legal liability.[28] After conducting a thorough review of the cases, Lord Sumption summarised:

> "…the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement. It is not an abuse to cause a legal liability to be incurred by the company in the first place."[29]

[26] *Prest v Petrodel Resources Ltd* [2013] UKSC 34, per Lord Neuberger at [80].
[27] Ibid, per Lord Sumption at [27].
[28] Ibid at [28].
[29] Ibid at [34].

[104] These principles provide the necessary framework in order to assess the respondent's claim in this case that Beth Clifford be held personally liable along with the appellant for the breaches that occurred. In conducting this analysis, I think it would be clearer to focus first on certain aspects related to the actors involved and then to examine the transaction in question.

[105] The logical starting point lies with Beth Clifford herself, the person described by the learned trial judge as the "common denominator" in the entire matter. Beth Clifford presides over an impressive number of companies, registered in several different jurisdictions. There were conflicting statements as to the actual number, but at one point in the cross-examination she declared that "I have more than 100 companies."[30] Naturally, there is nothing illegal or improper in having such vast holdings, which can simply be an indication of her business acumen and industry. What must be noted, however, is how blurred the lines are between these supposedly separate legal entities – not just between Beth Clifford vis-à-vis her companies, but as between the companies themselves. As emerged during the cross-examination, Beth Clifford acts in multiple capacities, sometimes simultaneously so. She frequently referred to the companies themselves and their employees in the possessive: "my manager", "our facilities", and so on, calling into question how independent or separate they actually are. She has several signature blocks containing multiple designations, and sometimes it is unclear in which capacity she is acting. It was difficult to get straightforward answers from her on these matters, as the record reveals, and exposing the apparent opacity of her dealings.

[106] Another feature of note which emerged from the evidence was the personal control exerted by Beth Clifford over the companies in question, which raises a question as to whether the latter were just a 'cloak' or 'sham' for her personal dealings. It calls to mind an assessment of Lord Denning MR in in ***Wallersteiner v Moir***, where he described the companies in that case as clearly "just the puppets of Dr Wallersteiner. … Transformed into legal language, they were his agents to do as he commanded. He was the principal behind them."[31] This image of puppetry certainly came to mind when examining the events in this case, such as the ease with which Beth Clifford made decisions and gave directions, unbeholden to anyone. Consider, for example, when she purportedly discovered that the buyer had still not obtained title to Lot 259 – she was able to acquire the holding company with great ease. What is surprising to me about this is not

[30] Record of Appeal, Vol IV, p. 1586.
[31] *Wallersteiner v Moir* [1974] 1 WLR 991 at 1013.

the fact of acquisition, but the fact that the company so seamlessly acquired was the other contracting party to the agreement! Staff apparently worked fluidly between different companies and funds were admittedly comingled (though initially this was denied). When the price of the land increased, the buyer was blithely told that Mahogany Bay Village would absorb the increase – this being not just a separate legal entity but also one that was not mentioned on any of the agreements. All this legitimately raises the question of how independent and separate these various entities are, notwithstanding the cloak of separate legal personality.

[107] Adding to the doubt in this case is the status of one of the central players, the appellant Green Development Partners (GDP). From what emerged during the cross-examination, GDP is solely owned by Beth Clifford who is also the sole director. This company appears to have no employees or place of business in Belize, even though it clearly conducts business in Belize. It was unclear whether it even has a bank account, as the evidence on this fluctuated. GDP is listed on the relevant documents as the house construction company, but during cross-examination Beth Clifford made the astonishing revelation that it is *not* a house construction company[32] nor is it even involved in house construction![33] Although GDP obviously engages in the purchase and re-sale of real estate in Belize for profit, Beth Clifford obstinately denied that it does business in Belize. What sort of company is this, which has no discernible identity independent of Beth Clifford, is misleadingly characterised on the contracts, buys and sells property in Belize but is said to conduct no business there? With no address, no employees, no directors or shareholders other than Beth Clifford, no clearly identified purpose, how is it to be held accountable or responsible for any liabilities it incurs? Is such a shadowy and indistinct structure innocent? Or is it deliberately engineered as such to shield wrongdoing?

[108] Most revealing of all is the actual transaction. The contract imposed obligations on entities which were not parties to the contract. Thus GDP, while purporting to be a house construction company, agreed that lot 259 would be sold to the buyer and a Keeping Suite constructed thereon for a stated price. GDP, however, was neither the owner of the land nor, it was eventually revealed, a house construction company. The contract mandated that the deposit be paid to GDP for both land and house, failing which the entire agreement would be void. In fact, the entire price (land and building) was eventually paid over to GDP, whom Beth Clifford testified (after much

[32] Record of Appeal, Vol IV, p. 1408/1685.
[33] Ibid, p. 1414/1685.

prevarication) was the exclusive sales agent for the land company and the owner of the funds.[34] The contract also stated that the so-called house construction company (that is, GDP) would be responsible for disbursing the land deposit. Later, Beth Clifford admitted that they felt "responsible" for ensuring that ownership of the land was in fact transferred, and they took steps to do so, albeit unsuccessful. But, belying its integral role in the collection of funds and attempting to facilitate the land transfer and its position as exclusive sales agent for the land company, GDP inserted on the contract several clauses in which it sought to (misleadingly) distance itself from the land transaction. Plainly put, clause A5 of the Order Form which stated in part that "the house construction company shall have no responsibilities or obligations whatsoever with regard to the purchase of the land" was utterly disingenuous. Ultimately, the terms of the transaction were murky, with identities obscured and mischaracterised and roles, even consequential ones, omitted and denied. I can think of no way to describe all this other than an elaborate subterfuge.

[109] Any residual doubt about the impropriety involved in this transaction vanishes when one considers the conduct of the parties. I found to be particularly instructive the way in which Beth Clifford sought to blame the buyer for voiding the share transfer documents, and the persistence with which this line was pursued in cross-examination of the buyer, even as Beth Clifford eventually admitted that the share certificate was probably voided at the instance of the Anguillan attorneys. If true, that was surely known to them long before trial. Why then persist in the outrageous claim that it was Steve Williams who instructed the document be voided? The trial judge rejected this out of hand and reasoned why that was a wholly unbelievable suggestion, but in my view the fact that the buyer was initially blamed was itself quite revealing.

[110] Other red flags arose in the evidence. Beth Clifford stated that she did not know who owned the lot 259 at the time she signed the Order Form, but that did not stop her from making statements as to ownership on the very form. And even though at the outset the respondent's claim that the funds were comingled was denied, Beth Clifford eventually admitted this under cross-examination. GDP, which said that it had no obligations under the contract, was free to use these funds as its own, and in fact there is no evidence as to how the buyer's payments were actually used.

[34] Ibid, pp. 1474-1478/1685.

[111] Most serious of all, Beth Clifford could give no straight answer regarding the construction of the Keeping Suite. When asked about completion, she answered evasively that it was "substantially" completed as of December 2019. But if true, not only would this have been 5 months after the respondent had given written notice of rescission, the answer itself failed to shed any light on the status of construction at the time of said rescission. It is even less clear when construction *started*, and the evidence on this important point is wholly lacking. I need give only the following example of the obfuscation that characterised Beth Clifford's evidence on this point, the material portion is reproduced in counsel's written submissions, as follows:

> "Ultimately, Mrs. Clifford testified that GDP commenced construction of the Lot 259 Keeping Suite in May 2017 by installing the seawall, preparing the site, ran (sic) utilities from the main road to the lot, ordered the long lead time items such as furniture, fixtures and equipment, ordered wood and construction materials, ordered the landscape team to begin to grow the necessary landscape materials in the nursery and put the Keeping Suite in the queue for construction."[35]

If we exclude all the actions that had to do with the land itself, this is what we are left with: "Ultimately, Mrs. Clifford testified that GDP commenced construction of the Lot 259 Keeping Suite in May 2017 by…put[ting] the Keeping Suite in the queue for construction." This explanation is, if nothing else, a masterpiece of obfuscation, that leaves one no clearer by the end as to when construction actually commenced – only that it was in the queue by May 2017!

[112] In my view, the combination of all these factors more than meets the test for piercing the corporate veil and imposing personal liability on Beth Clifford for the proven breach of contract. In her written submissions, counsel for the appellant referred to the *Salomon* principle and stated that "ownership and control of a company are not of themselves sufficient to pierce the corporate veil, but this is exactly what LCW Investments is contending."[36] In fact, this was most certainly not the case for the respondent. As discussed above, it is the ownership and control of the companies (in ways that themselves obscure their individual identities) *combined with* the nature of the transaction itself that establishes the impropriety necessary for piercing the corporate veil. Although supposedly separate entities, GDP contracted with the buyer for obligations to be carried out by other companies. How would this be enforced, unless there was no real separation between them, and GDP (or some puppet master behind the scenes) was confident that it could

[35] Cross Respondents' Submissions in Reply, 25th September 2023, para. [38].
[36] Ibid at para [51].

ensure performance? Given this convoluted structure and the absence of relevant players from the agreement, what would happen in the case of non-performance, exactly as it turned out here? Were these intricate arrangements where obligations were diffused and overlapping, together with patently false clauses which denied it altogether, simply a way to avoid liability if that arose?

[113] Having regard to all the circumstances as discussed, both the structure of the companies involved and the nature of the transaction itself, I am fully convinced that the breach which occurred during this arrangement was obscured by the tangled corporate structure comprising Beth Clifford's empire. In other words, I am satisfied that the principle of separate legal personality of companies was deliberately used in the context of this transaction as a shield for liability. In the event of a breach, GDP could point to the clauses in which it asserted its lack of obligations, while other companies could simply rely on their separate identity and absence from the agreement to themselves deny any responsibility. However, to allow this would be to allow Beth Clifford – the common denominator – to misuse the law to evade the obligations and liability necessarily arising in her enterprise. That, in my view, is precisely what the law does not permit and in the circumstances of this case as described, the court is fully entitled to pierce the corporate veil and hold Beth Clifford personally liable for the breach of contract.

[114] In this regard, it is important to note that this conclusion does not mean that the companies were themselves set up with a fraudulent intent, or that the corporate veil is pierced for all purposes. Rather, as the *Ben Hashem* case makes clear, this course can be particular to the dispute in question. On this, it is instructive to quote Munby J's words in full:

> "…a company can be a façade even though it was not originally incorporated with any deceptive intent. ***The question is whether it is being used as a façade at the time of the relevant transaction(s)***. And the court will pierce the veil only so far as is necessary to provide a remedy for the particular wrong which those controlling the company have done. In other words, the fact that the court pierces the veil for one purpose does not mean that it will necessarily be pierced for all purposes."[37]

For these reasons, I would accordingly uphold the respondent's application to vary the judge's conclusion on this point and find Beth Clifford personally liable, jointly and severally with the other defendants, for the breach of contract.

[37] *Ben Hashem v Al Shayif* [2008] EWHC 2380 at [164] (my emphasis).

(G) Fraudulent Misrepresentation

[115] The final issue that remains to be decided is whether the respondent was induced to enter into this contract because of false representations held out by Beth Clifford and/or her agents. The trial judge dealt with this issue summarily, noting only in her decision that "The Court having considered the evidence finds that no fraudulent misrepresentation whatsoever has been made out." Dissatisfied, the respondent complained that the trial judge failed to conduct any analysis of the evidence rendering this conclusion contradictory both in relation to the evidence and her other findings. Consequently, the respondent seeks a variation in order to obtain damages for fraudulent misrepresentations.

[116] At the outset it must be noted that while the claim listed 8 misrepresentations allegedly held out by Beth Clifford personally and through her employees and agents, both the written submissions and the case for the respondent on appeal were focused on only one, namely that of a promised timeline for construction. Accordingly, this judgment will follow the submission and address only that specific allegation.

[117] The respondent insists that contrary to the evidence of Beth Clifford, broad timelines were given to him, insofar as he was promised that units were built according to product type and that since his was the last lot in the current phase of development, construction would start quickly. In fact, according to the buyer, he was explicitly given a promised timeline that construction would begin by the 4th quarter of 2017 and completed no later than the 1st quarter of 2018. These representations were known by the appellant and other defendants to be false, but they were what induced the buyer to enter into the transaction.

[118] Counsel for the appellant meticulously disputed this contention, addressing all the representations alleged to have been made by the respondent. On the matter of the timeline for construction, the appellant contended that no evidence was led to substantiate the buyer's claim, as the Order Form clearly gave the timeline as 'Next available' and the respondent led no written evidence to prove otherwise. Ms. Banner pointed to the evidence that established that there were no conversations between the buyer and Beth Clifford prior to execution of the contract as well as denials by the other material witness – namely, Mike Fields – that any such representation was made to the buyer.

[119] Ms. Banner cited *Halsbury's Laws of England* to explain the legal parameters of misrepresentation, the relevant elements being that to establish fraudulent misrepresentation, it must be proven that a false statement of fact was made by one party to a contract, which was intended to and in fact induced another to enter into the contract.[38] The law governing this issue is fairly settled, and what requires greater reflection and analysis is the evidence, for it is on this that the parties differ as to their interpretation of what happened.

[120] In his witness statement, the buyer outlined in detail the history of the transaction, starting from the very beginning of his interest in the Mahogany Bay Village (MBV) in Belize. According to him, while on vacation with his family in Belize, on March 22nd, 2017 he visited MBV upon the recommendation of a real estate developer. The buyer did not name this person, revealing only that it was someone he knew from Denver, Colorado. He met with Mike Fields, described as the Sales Manager of MBV, along with several other representatives, during which they toured the property and discussed construction timelines. On the buyer's return to Denver, Mike Fields followed up by email, informing him that "it was the last lot in Phase 2 versus a Phase 3 of the Development." Events moved swiftly thereafter, for by April 3 – less than 2 weeks after his initial visit to Belize – the buyer signed the Order Form.

[121] What happened after that has already been outlined above in some detail. The buyer sought and obtained a short extension to pay the balance of the purchase price for the land and building, which he dutifully paid in full and within the extended time. Not much happened thereafter, and by late 2018 he began to write to various representatives of MBV in earnest, seeking updates on his promised title and the construction of the building. By early 2019 the buyer visited Belize and during that visit he had his first conversation with Beth Clifford, who promised to move things along. And for a while, it seemed as if progress was taking place, but that all unravelled when the documents for the transfer of shares were voided without explanation. It was shortly after that the buyer wrote rescinding the contract. Up to that time, in August 2019, title to the property had not been transferred to the buyer nor was any evidence provided to him affirming that the building was built or substantially built, whether on or off-site. In fact, no evidence has ever been tendered which substantiates ownership of the lot or that the Keeping Suite was constructed before the buyer rescinded in August 2019.

[38] *Halsbury's Laws of England*, 4th ed. (2003 Reissue), Vol. 31, para. 701.

[122] In addition to this narrative as presented by the respondent, some other relevant facts emerged during the trial. For one, Mike Fields stated categorically under cross-examination that he did not make any representations to the respondent as outlined in paragraph 10 of the statement of claim. Material among what is listed in para. 10 is that the defendants held out that construction would begin in the 4th quarter of 2017 and be completed by the 1st quarter of 2018. It was also established that Beth Clifford did not bring down any investors to Belize, nor did she have any discussions with the buyer prior to the execution of the contract. In fact, the first time the two met and had a meaningful conversation was in March 2019, during the buyer's impromptu visit to MBV seeking answers. Ultimately, there was no documentation to support the buyer's claim that any promises were made to him about construction timelines, and the only uncontested evidence on this matter was what was stated on the Order Form, namely "Next Available".

[123] On the totality of the evidence, including that highlighted above, it is my considered view that the claim of fraudulent misrepresentation has not been made out. In the first place, it is contested whether any promises as to the timeline were initially made to the buyer as alleged, especially in light of what is actually stated on the document he signed. And what is undisputed is that the buyer was introduced to this scheme not by any agent of Beth Clifford or the companies, but by someone whom he knew but whose identity he did not disclose. Further, while he did produce evidence as to the promises and updates he obtained from others like Mike Helms, those conversations and email exchanges took place long after he executed the contract.

[124] In the circumstances, doubts exist as to two essential elements of fraudulent misrepresentation – whether any representations were held out to him contradicting the terms of the Order Form as to timeline, and if so, whether these representations induced him to enter into the contract. On the latter, what evidence there is suggests that the buyer had a prior interest in MBV, and any representations held out to him during his exchanges with representatives of the companies occurred after and so did not induce him to sign. As for the specific claim made in the statement of claim, since the material witness expressly denied making any such representation under cross-examination, this element has not been proven.

[125] Of course, it was always open to the judge to reject what Mike Fields said about making no representations to the buyer, but having declined to do so after hearing all the witnesses and seeing them testify, this court would be hard pressed to overturn that evaluation of the evidence by the trial judge. As stated by my brother Foster JA in ***Selgado v Broaster***, "there is a strong

stream of jurisprudence which establishes that an appellate court is reluctant to interfere with the findings of primary fact of a trial judge which are based on the credibility or reliability of witnesses and the evaluation of those facts and inferences drawn from them by the trial judge."[39]

[126] Accordingly, I conclude that the trial judge was justified in rejecting the claim of fraudulent misrepresentation. While she ought to have explained the basis upon which she arrived at this finding, my own independent examination of the evidence leads to the same conclusion. Moreover, I should note that this finding does not contradict the other conclusions in this case, as counsel for the respondent charged, because the breach of contract is predicated on other factors. As such, I would uphold the judge's finding on this limb.

(H) Conclusion and Disposition

[127] In this case, the respondent entered into an agreement with GDP for the sale and purchase of a lot of land and construction of a building thereon, located in a tourist resort known as Mahogany Bay Village. The latter was an enterprise of American businesswoman Beth Clifford, many of whose companies featured in this transaction. Some were named in the contract, others not; some had roles to play but denied that on the documents; others were not named at all but over the course of the dealings became involved. It was all a tangled maze of companies with differentiated and overlapping roles. When after more than two years the respondent rescinded the contract, he was entitled to do so by reason of the appellant's non-performance of a material term, as the trial judge held. What must be stressed is that by the time the respondent rescinded, title to the property had not yet been transferred to him nor had he ever been given any satisfactory proof that the building had been constructed, whether substantially or otherwise, and so the trial judge ordered that he be refunded all sums paid by him, together with interest thereon. This was not because the contract was voided *ab initio*, it was because there had no performance by the appellant, and the sum awarded by way of damages represented the amount of the respondent's losses at the time of rescission.

[128] The appellant's claim that the respondent failed to mitigate his losses by not agreeing to the sale proposed by one of Beth Clifford's agents has no merit, as the trial judge correctly concluded. As she stated succinctly, the respondent was asked to sell property for which he was not the legal

[39] *Selgado v Broaster* (2023) 103 WIR 142 (CA Bel) at [15], and note authorities cited therein.

owner and he declined. Equally unmeritorious was the claim by the appellant for specific performance. As the losing party it was not entitled any remedy; put another way, the trial judge having found that the contract was properly rescinded, it would have been contradictory to then order its specific performance. The appellant's appeal is thus dismissed in its entirety.

[129] The respondent's claim that the judge's ruling be varied is partially successful. On the facts, there is no justification for finding that a constructive trust was created by the mere acceptance of the funds. Moreover, in light of the damages awarded to the respondent amounting to the full amount he expended, there was no need for the trial judge to grant in addition what was a claim in the alternative. Similarly, the evidence does not support that any fraudulent misrepresentations were made to the buyer inducing him to enter into the contract, and the trial judge's rejection of this claim is upheld.

[130] However, the trial judge was wrong to absolve the other two defendants to the claim – Beth Clifford and BIG – of any and all liability. The latter was paid a vast amount of money by the buyer, who received nothing in return. BIG must therefore be liable, jointly and severally along with GDP, for the return of said funds. As for Beth Clifford, my examination of the evidence leads me to the conclusion that she is personally liable for the breach of contract. As discussed above, the principle of separate legal personality of companies was deliberately used in the context of this transaction as a shield for liability, which satisfies the test for piercing the corporate veil. To this extent, therefore, the ruling of the trial judge is varied so as to hold both Beth Clifford and BIG liable, jointly and severally along with GDP, for the breach of contract.

[131] In the premises, the appeal is dismissed and the judgment varied in part. As a result, I hold that GDP, together with BIG and Beth Clifford in her personal capacity, are jointly and severally liable to the respondent for damages in the sum of US$788,709.00 together with interest thereon at 6% per annum from the 5th August 2019 to the date of payment in full. Costs of the appeal are awarded to the respondent, as agreed or assessed if there is no agreement.

Arif Bulkan
Justice of Appeal

[132] I concur.

Minnet Hafiz-Bertram
President

[133] I concur.

Peter Foster K.C.
Justice of Appeal