

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 800 OF 2023

BETWEEN:

JOSE ARMANDO GARCIA
(RECEIVER OF COROZAL TIMBER COMPANY LIMITED)

Claimant

and

DIRECTOR GENERAL AND REGISTRAR OF COMPANIES
(CLAUDE B. HAYLOCK)

Defendant

Appearances:

Mrs. Magali Marin Young, SC, and Mr. Allister T. Jenkins for the Claimant

Mr. Eamon Courtenay, SC, Ms. Pricilla Banner and Ms. Stacey Castillo for the Defendant

2024: July 22;

November 26

JUDGMENT

[1] **Nabie, J.:** The claimant seeks by way of Judicial Review and under the Constitution of Belize relief as a consequence of the decisions and actions of the defendant. The Belize Companies Act , 2022, (BCA 2022) repealed, replaced and consolidated the

International Business Companies Act, Chapter 270 (IBCA); and the Companies Act, Chapter 250 and further established and facilitated a modernized framework for the registration, operation and regulation of companies; and provided for matters connected therewith and incidental thereto. This Act created a new register of companies and, therefore existing companies were required to satisfy certain requirements to be placed on the new register. The claimant, the receiver of a company registered under the domestic laws of Belize, Corozal Timber Company Limited (CTC) sought through his agent to have the company placed on the new register or re-registered. Upon attempts to do so they were informed by the defendant by letter dated 19th September 2023, that the shares in Shipstern Holding Company, a company which held 99.9% of the CTC's shareholding was now vested in the Crown by virtue of the principle of *bona vacantia*.

[2] The claimant therefore challenges the decision of the defendant to (1) declare and determine that the shares in Shipstern Holding Company, a shareholder of CTC now vest in the Crown by operation of the doctrine of *bona vacantia*; (2) to inform the claimant that any further attempt to have CTC placed on the register, the holder of the shares in CTC should reflect the Government of Belize and not Shipstern; thereby, the Registered Agent was required by the defendant to acknowledge the declaration as to ownership made by the Defendant.

[3] I hereby refuse the reliefs sought by the claimant. The letter dated 19th September, 2023, did not relay a decision to the Claimant but instead relayed the factual and legal circumstances of the company given the dissolution of Shipstern Holding Company. The decision really being challenged is the decision of the defendant to stay the registration of CTC for the reasons mentioned. Interestingly a challenge to this was not directly featured in the reliefs sought. The claimant's case in that aspect therefore fails. Consequently, the claimant's claim for constitutional relief also fails as there has been no breach of his right to protection of the law based on the factual matrix. I wish to thank counsel on both sides for their very helpful and insightful submissions.

BACKGROUND

- [4] The facts of this claim are largely not in dispute.
- [5] The claimant is the receiver of CTC, a company duly incorporated under the Laws of Belize with its registered office situate at 40A Central American Boulevard, Belize City.
- [6] The defendant is responsible for the administration of the Belize Companies and Corporate Affairs Registry (BCCAR), pursuant to the Belize Companies Act, 2022 (BCA 2022).
- [7] The BCA 2022 introduced a new legal regime governing companies, including CTC. Under the BCA 2022 and amendments made thereto, companies already incorporated including the CTC had 12 months from the 22nd November, 2022, which was extended to the 31st December, 2023 to re-register itself under the new legal regime. This was a mandatory requirement and failure to comply with such could result in the company being struck off the register by the defendant.
- [8] The claimant instructed the registered agent of CTC, Apex Trust Corporation Limited ("Apex Trust"), to take steps to re-register CTC and to change the directors of the said company. Apex Trust duly took steps to re-register CTC. On the 19th September, 2023, however the Defendant wrote to Apex Trust informing Apex Trust:
1. That the defendant would stay his hands in registering any documents in relation to CTC until the Attorney General's Ministry completed its review of the matter regarding CTC's re-registration and filing of company documents;
 2. That the shares in Shipstern now vests in the Crown by operation of the doctrine of *bona vacantia*; and
 3. That if there is any further attempt in re-registering CTC, the holder of the shares in Shipstern should reflect the Government of Belize; thereby, the Registered Agent was required by the defendant to acknowledge same.

[9] This is the decision which the claimant challenges by way of these proceedings. He has brought a mixed judicial review and constitutional claim challenging the decision of the defendant to stay the re-registration of CTC unless it acknowledges that the Crown is now the owner of 99.99% shares in CTC instead of Shipstern. The claimant seeks:

“(1) A declaration that the decision of the Defendant contained in his letter of the 19th of September, 2023 (FSC/55/147/23) is (1) unlawful and without jurisdiction in the Registrar lacks the power under the Belize Companies Act, 2022 to make any judicial pronouncement as to the ownership of the shares of CTC without due process, and (2) is in breach of the Claimant’s, as receiver of CTC, right to protection of the law as guaranteed under section 3 of the Belize Constitution;

(2) A declaration that the decision of the Defendant contained in his letter of the 19th September, 2023 (FSC/55/147/23) requiring the Claimant, as Receiver of CTC, to acknowledge that the Crown is the owner of the 99.9% shares which Shipstern Holding Company Ltd holds in CTC, before it can take any steps to re-register CTC under the Belize Companies Act, 2022, is unlawful, and arbitrary;

(3) An order quashing the decision of the Defendant contained in his letter of the 19th September, 2023 (FSC/55/147/23) on the basis that it is unlawful, arbitrary, and unconstitutional as aforesaid;

(4) An order of mandamus that the Defendant take such steps to permit the Claimant to re-register CTC under the Belize Companies Act, 2022, without any alteration as to its membership or any particulars as to charges entered into by the said company and the appointment of the Claimant as receiver without an order of the High Court;

(5) Costs; and

(6) Such further or other relief as the Court thinks fit.”

HISTORY BETWEEN CTC AND SHIPSTERN HOLDING COMPANY

[10] Much of the facts of these proceedings are intertwined with a history of transactions which are not relevant to the resolution of this claim. However, it is worthy of mention that CTC was incorporated in 1994 as a domestic company under the former Companies Act, CAP 250 of the Laws of Belize. Shipstern Holding Company Limited

("Shipstern") was registered as the holder of 9,999 of the issued shares of CTC, and Attolene Lennon registered as the holder of 1 share.

[11] Shipstern was incorporated under the International Business Companies Act (CAP 270 of the Laws of Belize) ("the **IBCA**") which is now repealed and replaced by the BCA 2022. Under the IBCA, a company which did not pay its annual fees was liable to be struck off the register of International Business Companies ("**IBCs**") by the Registrar of IBCs after being notified. Shipstern was struck off the IBC Register on the 3rd of January 2008 for non-payment of annual fees.

[12] Under section 111 of the IBCA, if a company has been struck off for non-payment of fees and fails to pay fees for a further three years, "*the company shall be deemed to have been dissolved*". Therefore, by operation of law, Shipstern was deemed to be dissolved from January 2011.

ISSUES TO BE DETERMINED

- i. Whether the decision of the defendant was unlawful and without jurisdiction.
 - a. Whether the Registrar has the power under the BCA to make any judicial pronouncement as to the ownership of the shares of CTC without due process
- ii. Whether the decision of the defendant which requires the Claimant, to acknowledge that the Crown is the owner of the 99.9% shares which Shipstern holds in CTC, before it can take any steps to re-register CTC under the BCA, is unlawful, and arbitrary
- iii. Whether the decision of the Defendant breaches the Claimant's right to protection of the law.
- iv. Is there an alternative remedy?

DISCUSSION

Whether the decision of the Defendant was unlawful and without jurisdiction

- [13] It is the claimant's case that the defendant does not have the power to make any judicial pronouncement as to the ownership of the shares in CTC. They proffer that there is no provision under the BCA 2022 nor under the Belize Constitution that vests the defendant with judicial powers to determine and declare ownership of shares in any company, whether previously registered under the IBCA or under the BCA 2022. Thus, the claimant states that any determination and/or declaration as to the ownership of the shareholding formerly owned by Shipstern is unlawful and without jurisdiction.
- [14] The defendant's position is that Shipstern was incorporated under the International Business Companies Act (CAP 270 of the Laws of Belize) ("the **IBCA**"). Shipstern failed to pay its annual fees and was therefore struck off the register. These facts have not been disputed by the claimant.
- [15] The IBCA has since been repealed and replaced by the BCA 2022, however, given the undisputed timeline of events, the IBCA would have been the law in operation at the time of Shipstern's dissolution.
- [16] The IBCA stated:

"107.-(1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an international business company under section 5 of this Act, the Registrar shall serve on the company a notice that the name of the company shall be struck off the register, unless the company or another person satisfies the Registrar within 30 days immediately following the date thereof that the name of the company should not be struck off.

111.-(1) If the name of a company has been struck off the Register under section 107 and remains struck off continuously for a period of three years, the company shall be deemed to have been dissolved, but the Registrar may apply to the court on or before the expiration of the period of three years, to have the company put into liquidation, and a person appointed by the court shall be the official liquidator thereof."

[17] **The Halsbury Laws of England (5th Edn) (2019) paragraph 154** states:

*“The term 'bona vacantia' is now applied to (1) the residuary estate of persons dying wholly or partially intestate and without husband or wife or relatives within the statutory classes; (2) **property and rights of a dissolved company and certain other corporations**; (3) certain other interests including certain interests in trust property. Originally the term applied only to personal property but it now includes freeholds. At one time it may not have included equitable interests (which passed to the legal owner) but it was subsequently extended to an equity of redemption of leaseholds. **The property in bona vacantia is vested in the Crown to prevent the strife and contention to which title by occupancy might otherwise give rise.**”* (Emphasis supplied)

[18] Whilst, this Court acknowledges that the claimant challenges the decision communicated via letter dated 19th September, 2023. The issues regarding this claim surrounds the dissolution of Shipstern which occurred in 2011. This Court further takes judicial notice of the fact that all companies registries are public records and available for the information of all members of the public. This is also so, for any occurrence of a company being struck off the register. This Court is of the view that CTC ought to have knowledge of the fact that Shipstern was struck off the register in 2008 and dissolved by operation of law in 2011.

[19] It is also accepted that the introduction of the BCA 2022 required all existing companies that wished to continue as companies to be registered using an electronic database. This was the process of re-registration as referred to by the claimant. It was only when the claimant engaged this process they were informed of the status of the ownership of the Shipstern shares.

[20] This Court is however of the view that the defendant has not acted unlawfully or without his jurisdiction in stating that the shares in Shipstern now vests in the Crown by operation of the doctrine of *bona vacantia*. I agree with the submissions of Counsel for the defendant that the letter dated 19th September, 2023 conveyed the legal and factual position relative to the dissolution of Shipstern, the effect of the dissolution on the shares held by Shipstern in CTC and the fact said shares are held by the Government of Belize.

[21] Notably, there has neither been a challenge to Shipstern's dissolution by any litigant nor has the claimant challenged the decision to dissolve/ the dissolution of Shipstern as a company registered under the IBCA. The claimant is however challenging the effect of said dissolution. I find that the only decision made in this context was the decision of the Registrar of the International Business Companies to exercise the power under section 107 of the now repealed IBCA and have Shipstern struck off the register. All other occurrences flowing from this decision was by operation of the law. I find that there has been no judicial pronouncement by the defendant rather the defendant informed the claimant of the factual and legal reality that the shareholding of CTC now found itself. I also find that the defendant acted lawfully and within his jurisdiction in staying the re-registration of the CTC unless and until the documents presented reflected the current status of its shareholding.

[22] Counsel for the claimant argues that the Shipstern shares could not vest in the Crown unless and until the Registrar of the International Business Companies applied to the High Court under the IBCA for the appointment of an official liquidator and Shipstern was put into liquidation.

[23] ***Craies on Legislation*** at paragraph 17.1.1 **states:**

"The cardinal rule for the construction of legislation is that it should be construed according to the intention expressed in the language used. So the function of the court is to interpret the legislation "according to the intent of them that made it" and that intent is to be deduced from the language used.

Ideally, as stated above, the words of the legislation will be precise and unambiguous; and wherever they are they are the best and only true means of declaring the intention of the legislature. As Tindal CJ said in Warburton v Loveland- "Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

[24] This Court does not agree with the interpretation of section 111 of the IBCA advanced by the claimant. This section states that should a company's name be struck off the Register under section 107 and remains struck off for an uninterrupted period of three years, the company shall be deemed to have been dissolved "*...but the Registrar may apply to the court on or before the expiration of the period of three years, to have the company put into liquidation, and a person appointed by the court shall be the official liquidator thereof...*" Upon a literal interpretation of this provision read in the context of the other provisions, it is this Court's view that it was National Assembly's intention to vest with the Registrar a positive alternative power. Thus, if a company was struck off the register and nothing was done by them to be reinstated then by effluxion of time, this company was deemed to be dissolved. However, the Registrar was also vested with a discretionary power to approach the Court to have said company put into liquidation and an official liquidator appointed before 3 years had elapsed. I therefore agree with the advancement of the defendant that liquidation is a separate process utilized to dispose of the company's assets upon its dissolution. Section 111 empowers the defendant to proceed to have the dissolved company's assets and liabilities administered leading to the liquidation of the assets and by virtue of subsection (5) and any asset not disposed of vests in the Crown and the company is dissolved. Thus, if the defendant did not liquidate the assets, the company is dissolved as a matter of fact and law, but the assets cannot be ownerless and thus by operation of law it would vest in the Crown.

[25] With regard to the arguments regarding "dissolved" and "deemed to be dissolved", I agree with the defendant that the matter relied on **Campillo v. Registrar of Companies** [2001] CILR 547 does not assist the claimant in his case because of its factual scenario and legislative provisions which differ from this matter. For the avoidance of doubt, I find that Shipstern has been dissolved. I therefore find that the dissolution of Shipstern occurred by operation of law without any decision by the defendant and the vesting of the shares held by Shipstern in the Government of Belize happened by operation of law without any decision by the defendant.

Whether the decision of the Defendant which requires the Claimant, to acknowledge that the Crown is the owner of the 99.9% shares which Shipstern holds in CTC, before it can take any steps to re-register CTC under the BCA, is unlawful, and arbitrary

- [26] By reason of the above analysis, this Court also finds that there was no decision which required the claimant, to acknowledge that the Crown is the owner of the 99.9% shares which Shipstern holds in CTC.
- [27] This Court maintains that the letter dated 19th September, 2023 informed the claimant of the ownership of the shares and the requirements that must be fulfilled by law due to the change in status of the Shipstern shares.
- [28] Notably, it is undisputed that Shipstern is a company which was struck off the then IBC Register. The claimant has failed to advance who is now in fact the owner of the said shares. The claimant wishes to re-register the CTC with Shipstern as the holder of 9,999 shares. This, this Court finds to be a legal impracticality. Shipstern no longer exists under the substantive laws of Belize and it is no longer a legal entity.
- [29] This Court finds that under the new BCA 2022, the defendant is vested with certain obligations to ensure that the registers kept by him accurately reflects the legal and factual reality of each company.

“Section 87A (1) of the BCA 2022 provides:

87A.–(1) A company shall–

(a) update company records and other relevant information required under this Act and Regulations to ensure that they are accurate, up to date and updated; and

(b) retain company records and provide the Registrar with information that is accurate and up-to date.”.

[30] I find that the defendant being the keeper of the Register under the BCA 2022 can stay the re-registration of an existing company. I therefore find that it is not unlawful or arbitrary for the defendant to stay the re-registration of the CTC until the required documents reflect an accurate depiction of its shareholding.

[31] Heavy weather has been made by the claimant on this requirement of re-registration. The claimant states that the requirement to re-register was simply a policy decision made by the defendant because there is no legal requirement under the BCA 2022 or the Belize Companies Regulation, 2022 for companies to re-register. The claimant submits that there is no statutory requirement to re-register a company that was formerly incorporated under the repealed Companies Act and the IBCA as the transitional provisions contained in the BCA 2022 expressly recognize the incorporation and registration of companies under the repealed Companies Act and the IBCA. CTC's incorporation and registration were therefore recognized and were continued by operation of law pursuant to the very provisions of the BCA 2022, without the need for "re-registration."

[32] In response, the defendant states that the long title of the BCA 2022 provides that it was enacted to establish and facilitate a modernized framework for the registration, operation and regulation of companies; and to provide for matters concerned therewith and incidental thereto. Furthermore, the defendant proffers that section 295 of the BCA 2022 allows the defendant to create a new register. It states that:

*"(1) The Registrar shall maintain—
a Register of Companies incorporated or continued under this
Act;*

....

*(2) The Registers maintained by the Registrar and the information
contained in any document filed may be kept in such manner as the
Registrar considers fit including, either wholly or partly, by means of a
device or facility—*

*(a) that records or stores information magnetically, electronically
or by other means; and*

*(b) that permits the information recorded or stored to be inspected
and reproduced in legible and usable form."*

[33] Notably, this Court finds that the claimant has not challenged by his Fixed Date Claim the requirement of re-registration simpliciter though this challenge came out in the arguments. However, the decision which is challenged is the stay of the re-registration of the CTC until the Attorney General's Ministry completed its review of the matter regarding CTC's re-registration (that Shipstern's shares are now vested in the Government of Belize) and that any further attempt in re-registering CTC, must reflect that the Crown is the owner of the shares formerly vested in Shipstern.

[34] I have already found that the defendant can lawfully stay the re-registration of a company until the production of accurate documents or documents containing accurate information. I also find that section 313 of the BCA 2022 provides that all Companies incorporated under enactments which have been repealed and replaced by the BCA 2022 have been continued under the BCA 2022. This includes their initial incorporation and registration. This Court however is mindful that the spirit of the enactment that is the BCA 2022 seeks to establish and facilitate a modernized framework for the registration, operation and regulation of companies and to provide for matters connected therewith and incidental thereto. The defendant now being the keeper of the Register not being barred by any written law can exercise a discretion to have all companies continued under this BCA 2022 to re-register in order to allow for an accurate Register of Companies. As such section 296 is instructive to the extent that it empowers the Registrar to refuse any document which contains matters which are contrary to law. It states:

“296.–(1) The Registrar may refuse to receive or register a document filed under this Act if the Registrar is of the opinion that the document–
(a) contains matter contrary to the law;
(b) by reason of any omission or error in description, has not been duly completed;
(c) does not comply with the requirements of this Act;
(d) contains an error, alteration or erasure;
(e) is not sufficiently legible;
(f) is not sufficiently permanent for the purposes of the records; or
(g) contains any information contrary to what has been previously filed.”

(2) The Registrar may request that a document refused under sub-section (1) be amended or completed and re- submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at- law that the document does not contain any matter that is contrary to law and has been duly completed in accordance with the requirements of this Act or any other relevant law, the Registrar may accept the declaration as sufficient proof of the facts declared in it.”

[35] The defendant was briefly cross examined on this issue in this matter. The cross examination mainly concerned the issue of re registration and/ inputting of data. It was made clear that the companies incorporated under the repealed Acts were required to input the data onto the new system that is the OBRS system. While it is clear that companies were transitioned under the BCA 2022, there were requirements under the BCA 2022. In light of the fierce arguments by the claimant concerning re-registration, section 313 (transitional and savings provisions) and Act no. 27 of 2023 which amended the said section 313 of the BCA 2022 supports this course of action. It is provided as follows:

“Section 313 (7):

Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.”

Section 313(8):

Any company referred to in sub-section (7) which is compliant with the requirements under the relevant enactment hereby repealed, shall be issued a new company number.

Amended Section 313 (10):

10. A company that immediately prior to the commencement of this Act was registered under the Companies Act or the International Business Companies Act, shall have 12 months from the commencement of this Act within which to comply with the requirements of this Act.”

[36] Thus although CTC retains its incorporation status it must still comply with the requirements of the BCA 2022. For example, section 43 of the BCA 2022 states that there must be a register of members with information relative to the members of the company. How is the claimant able to comply given that Shipstern is dissolved and

no longer a legal entity. In my view it is necessary to reproduce the defendant's evidence in his affidavit dated 26th March 2024 in this regard:

“13. By virtue of section 313(10) of the Companies Act, it became mandatory for companies formerly registered under Chapter 250 or the IBCA to re-register within 6 months from the date of commencement (28th November 2022) of the Companies Act using the Online Business Registration System (“OBRS”) provided by the BCCAR. This deadline was later extended for another six months pursuant to Belize Companies (Amendment) Act, 2023, Act No 27 of 2023, with the result that such re-registration was to be completed by 28th November 2023. If a company was not re-registered by 28th November 2023, that company would be struck off the registry for the BCCAR.

14. For clarity, 31st December 2023 was not an absolute deadline for re-registration; that date is simply the date by which a company, which had not re-registered by 28th November 2023, could re-register without attracting any penalties and fees that would obtain in the normal course of restoration of a company to the register. As a matter of policy, the re-registration was allowed up to 31st December 2023 without any additional prescribed fees for re-registration. However, for re-registration as of 1st January 2024 and thereafter, the prescribed fees applied.”

.....

He further stated:

“28. The Applicant is wrong to suggest that the re-registration if companies only entails data entry.

29. The re-registration process of the BCCAR also involves the necessary correction of inaccurate and incomplete records since at the time the Financial Services Commission was given the responsibility for the domestic companies registry and there was an uncertainty about the accuracy of the records. The re-registration entails:

- (a) The inputting of information regarding a company based on the last documents filed at the registry. The obligation of a company to provide information regarding all directors and shareholders, including the date of birth for natural person(s)/ corporate shareholder(s) info/allotment date /number of shares / types of shares.*
- (b) The verification of information by the registry staff, and if the shareholder / director is a business entity. The registry staff would also verify whether the company was active or stuck (sic)*

off or dissolved or if the company was engaged in activity but was inactive, struck off or dissolved.

(c) *Correction of the records for companies since over the course of the re-registration exercise it was discovered that directors / shareholders were not properly removed, for example some were deceased, and agents have always provided us with proper documents in order for the BCCAR to re-register a company.”*

[37] This claim concerns the powers of the Registrar of Companies under the BCA 2022. I have no doubt and it is made clear under the legislation that there is a duty to keep an accurate and up to date register. Having considered the facts and sections 87A and 296 of BCA 2022, I find that the defendant has the power to require companies which were previously registered under the repealed Acts to re-register under the BCCA 2022. This is in keeping with his statutory powers under the BCCA 2022. I therefore find that the decision of the defendant which requires the claimant, to acknowledge that the Crown is the owner of the 99.9% shares which Shipstern held in CTC, before it can take any steps to re-register CTC under the BCA, is not arbitrary but is in fact a lawful exercise of power.

Whether the decision of the Defendant breaches the Claimant’s right to protection of the law.

[38] **Section 3 of the Belize Constitution states:**

“Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

(a) life, liberty, security of the person and the protection of the law.”

[39] The case law in the region have sought to define this concept of protection of the law. Instructive in this regard is the authority of **The Maya Leader’s Alliance v Attorney General of Belize [2015] CCJ 15**, at paragraph 47 of the judgment of the Caribbean Court of Justice, it is concluded after a full discourse of the jurisprudence surrounding this right:

“...The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded ‘adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power’ [Attorney General v Joseph and Boyce at para 20]. The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”

[40] The claimant states that his right to protection of the law has been infringed by reason of the defendant’s decision being irrational, not based on statute and made without notice to the claimant who was the duly appointed receiver. He advances that the defendant’s decision has ultimately deprived him from exercising his powers of sale under the Mortgage, Supplemental Mortgage and Mortgage Debenture, and directly affects the claimant.

[41] This Court notes that in the submissions of the claimant there seems to be a conflation of the decisions made by the defendant and his predecessor, the Registrar of IBCs. It is the decision of the defendant which is challenged by way of these proceedings and not the decision of the former Registrar of IBCs. Thus, this Court does not entertain the claimant’s submission of not being notified of the decision that Shipstern was struck off the Register until these proceedings. Further, it was Shipstern that needed to be notified and not CTC. I am of the view that the presumption of regularity on the part of government officials applies in this circumstance. This Court has taken judicial notice of the fact that these registers are public records and the claimant is therefore deemed to be constructively notified.

[42] The claimant also advances that the decision of the defendant is irrational, unfair and an arbitrary exercise of power by virtue of the fact that fact that the Registry accepted the 2022 Annual Summary which reflected that Shipstern was still the owner of the 9,999 shares in CTC, and even issued a Letter of Incumbency in 2022. This Court however finds that such an occurrence does not now bar the defendant from requesting the correct shareholding be reflected in CTC's documents in the Registry. In the case of **Sahadeo Maharaj v. Teaching Service Commission** Civil Appeal No. 26 of 2003, an authority emanating out of Trinidad Tobago. The Court of Appeal examined the ability of a public body to reverse a decision taken in error when a person affected has relied upon and enjoyed the benefit of that decision. Archie J.A. (as he then was) stated at paragraph 10 of the judgment that:

“Neither reliance nor effluxion of time can alter the nature of an illegal act so as to confer a permanent substantive benefit or legitimate expectation. A public body cannot, by mistaking its own powers, enlarge them beyond what is conferred by statute. The Commission has an overriding duty to obey the statute. The doctrine of estoppel must give way to the principle of ultra vires. The fact that that a decision of a public authority may remain effective until declared to be a nullity by the Court does not estop the authority from asserting lack of vires.”

[43] This Court finds that the acceptance of the 2022 Annual Summary was clearly an error on the part of the defendant and as such, the defendant is not estopped from rectifying same. It has already been found above that Shipstern no longer exists as a company registered in this jurisdiction. This is not a fact in dispute. Therefore, I find that the reliance of this occurrence by the claimant is without merit.

[44] The claimant has right to be protected against arbitrary deprivation of property and the right to be protected against irrationality, unreasonableness, unfairness or arbitrary exercise of power. However, it is my finding that there has been no arbitrary exercise of power by the defendant. Based on the foregoing discussion the defendant has acted in a rational, lawful, reasonable and fair manner in all the circumstances of the case.

ALTERNATIVE REMEDY

[45] The defendant suggested that CTC could have applied to have Shipstern restored to the register.

[46] I do not find that this is an alternative remedy for the claimant. The legislation limits those application to 10 years after the dissolution. Such an application would therefore be out of time. Further, there seems to be a divergence of opinion on making such an application under the inherent jurisdiction of the court. The defendant relies on Claim no. 43 of 2018, a decision of CJ Benjamin (as he then was) in **International Liquidator Services Limited v. Registrar of International Business Companies** which conflicts with the recent judgment of Hondora J. in Claim no. Civ. 181 of 2024 **Olivier Azoulay v. Registrar of the Belize Companies and Corporate Affairs Registry**. A decision of an appellate court has not been cited on this issue.

CONCLUSION

[47] I bear in mind that Shipstern is not before me for any relief. I am in agreement with counsel for the defendant that even if I were to grant reliefs 1 and 2 that would not change the status of Shipstern. Having heard senior counsel for both parties I refuse the relief sought by the claimant brought by way of his Fixed Date Claim dated 7th March 2024. I find that:

- i. There was no decision made by the defendant to dissolve Shipstern, this was done by operation of law.
- ii. There was also no decision to have the shares of the dissolved shares held by the Shipstern to be vested in the Crown by virtue of the principle of bona vacantia.
- iii. The defendant can lawfully stay the re-registration of the CTC unless and until documents containing accurate information are presented.

DISPOSITION:

[48] I hereby make the following orders:

- i. The application for judicial review is dismissed.
- ii. The claimant to pay the defendant's cost to be assessed in default of agreement for senior counsel and one junior counsel.

Nadine Nabie
High Court Judge