COLLAS CRILL

Access Bank Plc (as successor in title and assignee of Diamond Bank plc) v Dr Ambrosie Bryant Chukwueloka Orjiako and ors BVIHCCOM2023/0282

OCTOBER 2025

Court: Eastern Caribbean Supreme Court, Territory of the Virgin Islands, High Court
Subject: Summary judgment; beneficial interest in shares; sham transaction; setting aside a conveyance of property
Judges: Mithani J

Summary

This robust decision illustrates that even in cases alleging fraud and dishonesty, it may be possible to obtain summary judgment on the merits. In particular, it demonstrates that a respondent can not simply rely on bare denials and nebulous contentions about evidence potentially emerging before trial.

Further details

The High Court in England entered judgment against Dr Orjiako, based on sums he owed pursuant to a personal guarantee. Then Claimant then obtained an order of the BVI Court, giving effect to the English judgment.

Dr Orjiako was the beneficial owner and controller of valuable shares held in one or more BVI companies (**Shares**). The Claimant alleged that, following threats of legal proceedings against Dr Orjiako, he transferred the Shares to his wife (**Share Transfers**) but:

1. Only the legal title in the Shares was transferred. The Shares remained beneficially owned by Dr Orjiako. While this was a purported gift made by Dr Orjiako to his wife, the principles underlying sham transactions were equally applicable;
2. Alternatively, the Share Transfers were made on the part of Dr Orjiako to defraud his creditors, contrary to the provisions of the Conveyancing and Law of Property Act 1961 (CLPA). This replicates the now-repealed England and Wales provision of s.172 of the Law of Property Act 1925 (which was in turn replaced in England and Wales by s.423 of the Insolvency Act 1986).

The Claimant sought summary judgment under r.15.2 of the ECSC Civil Procedure Rules (Revised Edition) 2023 (**ECSC CPR**).

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The authorities say that there is no bar to granting a summary judgment application in a fraud claim on the merits, but considerable caution is required. Indeed, the Judge accepted, as bare statements of law, the propositions that claims grounded upon allegations of reprehensible conduct, including fraud or dishonesty, are ill-suited for determination by summary judgment as they are usually fact-sensitive, relying on complex facts and involving significant questions of law and fact for determination. However, the Judge found that the written evidence adduced in these proceedings did not support those propositions:

- Mr Orjiako's evidence was largely bare denials. It did not address the allegations made by the Claimant.
- There was no basis for the Defendants to claim that their case at trial may have been improved by disclosure or in any other way.
- The only meaningful disclosure that could assist the Orjiakos at trial would be the disclosure of documents in their own possession or control. If the Orjiakos had any documents in their possession or control that supported the position they maintained in the claim, they would, or should, have disclosed these as part of their written evidence in opposition to the application. They plainly either did not have those documents, or if they did, those documents did not support but almost certainly undermined their case.
- Dr Orjiako provided different accounts relating to the Share Transfers and sought to *'bury his case in a morass of irrelevant information and documents going back many years, hoping that neither the Claimant nor the Court would be able to get to the bottom of his case at the stage of the hearing of the Application. He believed that because of the overwhelming and confusing nature of that information and documentation … it would inevitably mean that he would get unconditional leave to defend the Claim'*. However, the inconsistencies in his case would not be satisfactorily explained by an oral explanation given by them at trial.

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