[2025] JMCC Comm 39.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2023CD00395

BETWEEN	**ROUND HILL DEVELOPMENTS LIMITED**	**CLAIMANT**
AND	**THE ADMINISTRATOR GENERAL (Administrator of Estate Brian Reynolds)**	**1st DEFENDANT**
	RESORT CENTRAL LIMITED	**2nd DEFENDANT**

Contract – Enforceability – Whether breach of contract – Whether repudiation of contract – Application for specific performance – Whether contract void – Whether unilateral termination – Whether frustration of contract – Whether part performance – Whether repudiatory breach – Whether variation of contract – Whether obligations end on death of a party – Whether the corporate veil should be pierced – Laches.

Michael Hylton KC, Daynia Allen and, Annay Wheatle instructed by Hylton Powell for the Claimant

Geraldine Bradford instructed by the Administrator General of Jamaica for the 1st Defendant

Emile Leiba and Allyson Mitchell instructed by DunnCox for the 2nd Defendant

Heard: 4th November 2024, 10th & 11th March, 6th October and 19th December 2025.

IN CAMERA TRIAL

Cor: Batts, J.

[1] This Claim commenced by Fixed Date Claim Form on 17 July 2023 but was converted into a Claim, by Formal Order of this Court on 15th May 2024, and has proceeded as such thereafter. At that pretrial review it was also ordered that the trial be held in private pursuant to Rule 39.2(2)(f). A privately retained stenographer was permitted to take notes at the trial. The notes provided were extremely helpful in the preparation of this judgment. Several bundles of documents were put in evidence. Exhibits 1 and 1(b) contain the same documents save that 1 (b) has more legible copies. In this judgement any reference to exhibit 1 should be taken as a reference to both 1 and 1(b).

[2] The Claimant seeks injunctive relief, specific performance and declarations with respect to certain agreements entered into with Mr Brian Reynolds. Mr Reynolds died on the 19th August 2022, see exhibit 1 page 356. His estate is represented by the 1st Defendant. The 2nd Defendant is Mr. Brian Reynolds' successor in title to the property, which is the subject matter of the said agreements. A summary of the events leading up to the dispute is appropriate.

Facts and Issues

[3] The Claimant operates a hotel and villa resort on land which it owns in Hanover, hereinafter called "the Round Hill Land". Beaches Resorts Limited, hereinafter called Beaches Resorts, is a company which is wholly owned by the Claimant and owns land referred to as "the Welcome Wharf Land". Lying between those two properties is a parcel of land hereinafter referred to as "the Reynolds Land". The Reynolds Land was owned by Mr. Brian Reynolds until, shortly before his death, he transferred it to the 2nd Defendant by way of gift. At the time of his death Mr Brian Reynolds owned all the shares in the 2nd Defendant. There are various facilities on the Welcome Wharf Land which are offered to and enjoyed by guests of the Claimant's hotel and villa resort. However, those guests can only access the Welcome Wharf Land, without leaving the Claimant's resort, by traversing the Reynolds Land.

[4] The agreements between The Claimant and Mr Brian Reynolds are:

a. Agreement for Right of First Refusal dated January 31, 2007 ("the First Refusal Agreement");
b. Agreement for Grant of Rights dated January 31, 2007 ("the Easement Agreement");
c. Supplementary Agreement dated January 31, 2007 ("the Supplementary Agreement"); and
d. Agreement for Sale of part of the Reynolds Land known as "West Rock" dated September 3, 2013 ("the West Rock Agreement").

[5] The First Refusal Agreement saw Mr Brian Reynolds agree *"on behalf of himself and all future proprietors of the Reynolds Land who are members of his Immediate Family…(hereinafter "Reynolds" which term shall include all members of his Immediate Family)"* that, among other things, he would not sell, convey or otherwise dispose of all or any part of the Reynolds Land without first offering it to the Claimant. Clause 4.1 of this agreement stipulates that before "Reynolds" (as defined above) may sell or otherwise dispose of any portion thereof, written notice must be given to the Claimant of any prospective transferee of any part of the Reynolds Land, the terms of the proposed transfer and thirty days to indicate whether the Claimant would match the proposed offer. Mr Brian Reynolds was, in return, granted certain rights.

[6] The Easement Agreement saw Mr Brian Reynolds grant the Claimant and its guests and invitees (among others) a right of way across the Reynolds Land to access the Welcome Wharf Land. In consideration for this grant of rights, the Claimant granted to him, his family, guests, invitees, successors in title (among others) a right of way over parts of the Claimant's land and the right to access and use some of the facilities on the Round Hill Land. This agreement also granted Beaches Resorts and its guests/invitees (among others) a right of way across the

Reynolds Land so as to access the Round Hill Land. Similarly, in consideration for the grant of rights, Beaches Resorts granted to Mr Brian Reynolds his family, guests, invitees, successors in title (among others) a right of way over parts of the Welcome Wharf Land.

[7] The Supplementary Agreement is supplementary to the First Refusal and Easement Agreements. This granted additional privileges to Mr Brian Reynolds as further consideration for those agreements including beach membership rights at no cost and the benefit of being notified and temporarily relocated in certain circumstances.

[8] Regarding the West Rock agreement, in April 2008 Mr Brian Reynolds gave notice to the Claimant that he intended to sell West Rock to a third party. The Claimant exercised its right of first refusal and, after some time and much correspondence, entered into an agreement to purchase West Rock from Mr Brian Reynolds for a sale price of US $400,000, see exhibit 1 page 131. The Defendants contend that the West Rock agreement was unrelated to the exercise of the option.

[9] Several disputes concerning these agreements arose between the Claimant and Mr Brian Reynolds. Mr Reynolds frequently communicated by email and hence it is not difficult to discern his several concerns. Clause 1 of the First Refusal Agreement granted Mr Brian Reynolds:

> *"voting rights and ordinary dividend rights equivalent to the average number of shares held by the owners of three bedroom villas, but not liquidating dividends…"*

At the time of the agreement no shares meeting this description were in existence. The only shares in the Claimant which existed were ordinary shares which entitled shareholders to liquidating dividends. Nevertheless, Mr Reynolds was allowed to vote at the Claimant's annual general meetings ("AGMs"), which he routinely attended. However, in or about 2017, Round Hill's auditors indicated that Mr Brian Reynolds should not vote at general meetings unless he was a shareholder. Mr

Reynolds ceased being a shareholder of the Claimant in October 2012, when he sold cottages 20 and 21, but he remained a director of the Claimant up to the time of his death. Following the indication by the auditors, the Claimant approved a resolution at its February 16, 2018, Annual General Meeting, see exhibit 1 pages 166 and 173. The resolution created 668,595 Class B Ordinary Special Rights Shares in order to provide Mr Brian Reynolds with shares consistent with that which was described in the First Refusal Agreement. He rejected these shares and indicated that he wanted ordinary shares as in his view there was no need to distinguish voting rights from other rights of a shareholder, see exhibit 1 pages 235 and 260. In January 2021 Round Hill offered Mr Reynolds ordinary shares, on the basis that he would agree to return them in the event of a sale or liquidation of Round Hill, but he rejected this proposal as he considered the agreement to be void, see exhibit 1 page 288. Mr Reynolds died on August 19, 2022 and up to that time had not accepted either the Class B or the Ordinary shares. On August 5, 2022 Mr Brian Reynolds transferred the Reynolds Land to the 2nd Defendant by way of gift. He had not provided notice to the Claimant prior to this transfer. At the time of his death, Mr Brian Reynolds was the sole shareholder of the 2nd Defendant, and his estate continues to be the sole shareholder.

[10] Issues with the Easement Agreement emerged when, in or around January 2021, part of the walkway on the Reynolds Land collapsed into the sea. An alternative route to that collapsed portion was constructed for the same purpose. It is the case for the Claimant that the Easement Agreement is being, and is still capable of being, performed despite the collapse of a portion of the original walkway. The 2nd Defendant contends that the Easement Agreement was frustrated by the destruction of the subject matter.

[11] Regarding the Supplementary Agreement, the Defendants contend that the Claimant has breached it in several respects. Clause 2.4 stipulates:

> *"In the event of Construction or other disturbance at Welcome Wharf such as a wedding party which is*

> *outside the norm for the Tranquility Area, Round Hill will give notice as early as it can and permit Reynolds to use 83B whether or not other suites in Cottage 20 are rented, or provide an equivalent alternative accommodation at Round Hill."*

The Defendants contend that on numerous occasions Mr Brian Reynolds was neither given notice nor alternative accommodation whenever there were disturbances at Welcome Wharf. The Claimant disputes this.

[12] Clause 2.5 of the Supplementary Agreement states,

> *"Round Hill hereby grants a Beach Membership to Reynolds, at no cost, such rights to be available to Reynolds and his Immediate Family in the event that he purchases another house in Jamaica."*

Shareholders were entitled to a 50% discount when using Round Hill's facilities, while beach members received a 25% discount. The Claimant alleges that Mr Brian Reynolds continued to receive the shareholder discount, after ceasing to be a shareholder and, until the error was identified in or around March 2018. The discount was then adjusted to the beach-member rate. Following complaints from Mr Brian Reynolds, the shareholder discount was restored to him and his immediate family. The Defendants say that the family was not granted these benefits as rights, and instead the benefits were only applied on a discretionary basis.

[13] Finally, the West Rock Agreement is in issue as, pursuant to that agreement, Round Hill paid Mr Brian Reynolds US$300,000, leaving a balance due and owing of US$100,000. The Defendants maintain that the agreement is void or, alternatively, that Mr Brian Reynolds terminated all the agreements, including this one, before his death. They say that in any event the agreement is unenforceable

due to laches. The Claimant contends that the agreements are all valid and enforceable.

[14] The issues broadly stated, which arise are as follows:

a. Whether the Right of First Refusal Agreement and its Supplementary Agreement are valid and enforceable or void and, in that regard, did the agreement grant shares or voting rights. In either event did the Claimant commit a repudiatory breach which Mr Brian Reynolds accepted as such.
b. Whether the Agreement for Grant of Rights is valid and enforceable. Also was it frustrated by natural events
c. Whether the Agreement for the sale of West Rock is enforceable and to be completed or was the Claimant in breach
d. To what extent are the agreements entered into with Mr.Brian Reynolds, enforceable against the 1st and 2nd Defendants.

Right of First Refusal Agreement

[15] The Defendants submit that this agreement is unenforceable primarily due to the dispute regarding the Class B Shares. The consideration stipulated in this agreement is outlined in Clause 1 and reads as follows (see exhibit 1, page 28):

> *"For so long as Reynolds or his Immediate Family (together or individually hereinafter "the Reynolds Family") owns the parent or any replacement certificate of title for that parcel of land situate at Hopewell in the parish of Hanover which is or was at any time land comprised in Certificate of Title registered at Volume 1190 Folio 363 of the Register*

> *Book of Titles (hereinafter, in whole or in part, "the Reynolds Land"), he shall be and is hereby granted by Round Hill,* ***voting rights and ordinary dividend rights*** *equivalent to the average number of shares held by the owners of three bedroom villas, but not liquidating dividends in the event Round Hill is sold. Without obligation either way, should the Reynolds Family offer and Round Hill accept more than three suites for Round Hill marketing, the voting and dividend rights would be adjusted to accord with the average number of votes and the dividend rights held by owners of cottages with the new number of suites."* [Emphasis mine].

No shares, as said before, were provided to Mr Brian Reynolds at the commencement of the contract as no such shares existed at the time. Mr Brian Reynolds was allowed to attend and vote in the shareholders' meetings. The company secretary Mrs. Andrea Scott gave evidence, which I accept, that Mr Brian Reynolds *"routinely attended and voted at Round Hill's annual general meetings as provided for in the First Refusal Agreement"* and *"in any votes that were taken by a show of hands or voice vote at AGMs prior to the February 16, 2018 AGM, Mr Reynolds' vote was included in the same manner as the votes of Round Hill's shareholders",* see witness statement of Andrea Scott filed September 30, 2024. There is documentary support for this evidence, see exhibit 1 page 160. There is also uncontradicted evidence that the Claimant has never paid a dividend and therefore ordinary dividend rights did not contemplate a payment of dividends. In any event as no dividend was paid there was no breach, in relation to Mr Brian Reynolds, in that regard, see paragraph 8 of the witness statement of Radford Kutz filed 30th September 2024 and his oral evidence.

[16] Although Mr Brian Reynolds raised complaints, regarding what he was entitled to versus what he received from the contract, the first question for the court is whether his subsequent conduct amounted to an acknowledgment that the agreement continued to exist. Alternatively, did Mr Brian Reynolds lawfully terminate the contract due to the Claimant's breach. The second question is whether the breaches of which he complained were in fact repudiatory, that is, were, they such as to give rise to a right to accept them as terminating the agreement. If not was Mr Brian Reynolds' own actions repudiatory and effective as a unilateral termination of the agreement. The court's approach to repudiation is well reflected in the following passage from the judgment of Lord Scott of Foscote in **Jagdeo Sookraj v Buddhu Samaroo [2004] 65 WIR 401 at 407 paragraph 17**, cited by the Claimant's counsel:

> ***"In any event, a repudiation does not itself determine the contract. It gives a right to the innocent party, by accepting the repudiation, to determine the contract. If the innocent party does not accept the repudiation, the contract remains in existence for the benefit of both parties. The acceptance of a repudiation requires no particular form. But it must be unequivocal, and it must be communicated to the party in breach (see Chitty on Contracts (29th Edn) vol 1, para 24013). These are all basic and well-known principles."***

It follows then that for this court to decide that Mr Brian Reynolds lawfully terminated the contract either, the Claimant's breach must have been clearly repudiatory thereby giving him a right to accept it as such or, his actions and/or statements must clearly and unequivocally indicate an intent to repudiate which the Claimant accepted. There cannot be a unilateral termination unless the contract permits it, see **White And Carter (Councils) Ltd. v McGregor [1962] A.C. 413**.

[17] Several relevant emails, reflecting the stance of each party, are in evidence. I reference, and quickly summarize, what was said. Some of these emails weigh in on the other agreements as well, those will be discussed later in this judgment. The most relevant, to the matter of repudiation of the agreement under consideration, are:

a. December 22, 2013 – Brian Reynolds sends email to Tarun Handa seeking clarification on voting rights and arrangements (Exhibit 1 page 164)

b. February 11, 2017 – Monica Ladd writes Brian Reynolds addressing issues of conflict of interest provision under the proposed Articles as well as his voting rights at general meetings. Confirms that Mr Reynolds has voting rights but there was never any agreement to issue shares to him. (Exhibit 1 page 158)

c. February 14, 2017 – Brian Reynolds writes Monica Ladd, Radford Klotz, Glenn Creamer, Josef Forstmayr and Andrea Scott highlighting issues with the wording of the First Refusal Agreement (Exhibit 1 page 144)

d. February 16, 2017 – Radford Klotz confirms Brian Reynolds' voting rights for the upcoming AGM (Exhibit 1 page 155)

e. January – February 2018 – KPMG advises Round Hill that Brian Reynolds could not vote at an AGM unless he was a shareholder (Witness statement of Glenn Creamer filed September 30, 2024, paragraph 3)

f. January 23, 2018 – Glen Creamer emails Tarun Handa confirming that Brian Reynolds is entitled to 668,595 votes pursuant to the First Refusal Agreement (Exhibit 1 page 160)

g. February 16, 2018 – Round Hill approves resolution at the AGM to create 668,595 Class B Ordinary Shares (Exhibit 1 page 173)

h. April 3, 2018 – Brian Reynolds writes Glenn Creamer about not receiving shareholder discounts (Exhibit 1 page 215)

i. April 4, 2018 – Glenn Creamer sends email to Brian Reynolds confirming that he is only entitled to Beach Membership rights (Exhibit 1 page 214)

j. December 26, 2018 – Glenn Creamer emails Brian Reynolds with draft Class B Share Rights Agreement and confirms all agreements between Brian Reynolds and Round Hill remain valid (Exhibit 1 page 221 and 227)

k. December 27, 2018 – Josef Forstmayr emails parties at Round Hill directing that Brian Reynolds' shareholder discounts be restored (Exhibt 1 page 229)

l. December 28, 2018 – Brian Reynolds emails Glenn Creamer saying that there does not need to be different share rights. Also reaffirms the agreements. (Exhibit 1 page 233)

m. January 11, 2019 – Brian Reynolds emails Glenn Creamer indicating that the First Refusal Agreement will be "*invalidated*", if Round Hill does not issue shares to him by the 31st January 2019, and that the Easement Agreement will be invalidated if there is not a mutual filing of easements (Exhibit 1 page 238)

n. January 12, 2019 – Glenn Creamer emails Brian Reynolds indicating that he does not have the authority to issue ordinary shares to him (Exhibit 1 page 243)

o. February 13, 2019 – Glenn Creamer sends email to Brian Reynolds with revised document in relation to the Class B shares and Brian Reynolds rejects proposal (Exhibit 1 page 260)

p. January 17, 2020 – Brian Reynolds sends email to Glenn Creamer inviting him to cure the breach of the First Refusal Agreement by issuing shares to him (Exhibit 1 page 277)

q. December 3, 2020 – Brian Reynolds emails Richard Lewis and Glenn Creamer saying that he will consider the agreements terminated if progress is not made (Exhibit 1 page 284)

r. January 6, 2021 – Email exchanges between Glenn Creamer and Brian Reynolds. Creamer indicates his intention to propose issuing ordinary shares to Reynolds and Reynolds indicates that he considers the agreements void. Creamer responds to say he does not consider the agreements void. (Exhibit 1 page 288)

s. February 6 & 7, 2021 – Email exchange between Brian Reynolds and Ali Wambold where Reynolds stated he was *"taking another look at this in good faith"* (Exhibit 1 page 306)

t. November 5, 2021 & December 8, 2021 – Email exchange between Andrea Scott and Brian Reynolds speaking about when a new surveyor may verify the boundaries for West Rock (Exhibit 1 page 334 – 336)

u. June 25, 2022 – Brian Reynolds emails Glenn Creamer reiterating his position that *"all prior agreements continue to be void"* (Exhibit 1 page 349)

v. July 6, 2022 – Glenn Creamer writes Brian Reynolds reiterating that Round Hill does not consider the agreements void. (Exhibit 1 page 349)

[18] Whereas the most recent correspondence from Mr Brian Reynolds does point to an intention to end the contract it is apparent that a clear and unequivocal repudiation of that contract did not take place. First, it is useful to assess the allegations of breach which prompted Mr Brian Reynolds to consider that the contract was repudiated. A breach committed that is serious enough to amount to repudiation allows the other party to accept it and regard the contract as at an end. The main clause in contention is clause 1, cited at paragraph 14 above. I do not find, from the wording of this contract, that Mr Brian Reynolds was beneficially entitled to shares. The reference to shares was a means of describing the number of votes and extent of dividend rights granted. The evidence is clear that he was allowed to attend and vote at meetings and to remain a director. His votes were not invalidated at Annual General Meetings, see exhibit 1 pages 155, 158 and 160. There is no evidence of dividends ever being paid so it cannot be said he was deprived of that benefit. After the Claimant was advised that Mr Brian Reynolds

needed to be a shareholder, to legally vote at the Annual General Meetings, steps were taken to provide him with the shares necessary to afford him that right and a resolution passed to create Class B shares, see exhibit 1 pages 166 and 173. Later, and after he refused to accept those Class B shares, Glenn Creamer, in his capacity as chairman, indicated an intention to propose the issuing of ordinary shares to Mr Reynolds with the stipulation that he would return such ordinary shares in the event of a sale or liquidation of the Claimant. This offer was also rejected as Mr Brian Reynolds was of the view the contract was at an end.

[19] I find that the Claimant acted reasonably in its efforts to ensure Mr Reynolds was able to exercise his rights pursuant to the First Refusal Agreement. In this regard I find that the email of 25th April 2018 from Klotz to Reynolds, exhibit 1 page 216, appropriately summarizes the effect of the agreement. The ramification of this is that Mr Brian Reynolds acted unreasonably when rejecting the shares offered. There was, in other words, no repudiatory breach by the Claimant giving rise to a right to accept a repudiatory breach or to terminate. This is because at all material times Mr Brian Reynolds enjoyed the rights contemplated by the agreement and because the offer of shares, as a means to permit his enjoyment of those rights, was reasonable in the circumstances. There was no fundamental breach of contract amounting to repudiation. On the contrary, the Claimant seemed consistently to be making good faith efforts to perform its obligations thereunder. It necessarily follows that Mr Brian Reynolds breached the Right of First Refusal Agreement by transferring the Reynolds Land to the 2nd Defendant without first offering it to Round Hill.

[20] Secondly, and if the above stated conclusion is wrong, the question arises whether the exchange of emails demonstrates clear and unequivocal repudiation/termination by Mr Brian Reynolds. I do not think they do. He prevaricates and the email of the 6th and 7th February 2021 indicated he was still engaged in the dialogue about voting rights. This could only be on the basis that the contract was still alive. The email of the 25th June 2022 para 16 (u) above,

does not effect a repudiation but rather erroneously assumes that there had already been an effective termination/repudiation. It is clear from the Claimant's response that they did not accept Mr Reynolds' actions as repudiatory and at all material times treated the contract as in force, see exhibit 1 page 349.

The Easement Agreement

[21] The main issue here is whether this agreement was frustrated due to the destruction of the walkway and/or whether the agreement is still enforceable. The decision of the House of Lords in **National Carriers Ltd v Panalpina (Northern) Ltd [1981] 1 All ER 161** explains the doctrine of frustration as per Lord Simon of Glaisdale at page 175:

> ***"Frustration of a contract takes place when there supervenes an event (without default of either party and for which the contract makes no sufficient provision) which so significantly changes the nature (not merely the expense or onerousness) of the outstanding contractual rights and/or obligations from what the parties could reasonably have contemplated at the time of its execution that it would be unjust to hold them to the literal sense of its stipulations in the new circumstances; in such case the law declares both parties to be discharged from further performance."***

Defendants' counsel argued that deviation away from an easement is not permissible even if the alternate route is over land owned by the grantor of the easement, see **Vol 87 Hals (2022) para 888** and **Taylor v Whitehead [1775-1802] Aller Rep 332**. This principle is unhelpful on the facts of the case before me.

[22] Mr Brian Reynolds granted the Claimant and its guests a right of way across the Reynolds Land to access the Welcome Wharf Land. On the 9th January 2021 part of the walkway collapsed into the sea. On the 11th January 2021 Mr Brian Reynolds identified and proposed an alternative route which could be used by the Claimant,

see exhibit 1 page 291. A path had to be constructed across it and the work for this was completed by early February of that year. Mr Brian Reynolds later issued a “Notice of Walkway Conditions” which described the walkway as a temporary alternative until a permanent replacement was achieved, see exhibit 1 page 316. Unlike the factual situation in the authority cited there was no objection to the alternate route. In fact, it was proposed by Mr. Reynolds and expenditure encouraged on its creation.

[23] It is evident therefore that this agreement was not frustrated. The purpose of the walkway, described in the Agreement for Right of Way, was as a means to traverse the Reynolds Land in order to access the Welcome Wharf facilities. The new accessway accomplished that. The alternate route cannot be considered to have so significantly changed the nature of the agreement as to evidence a frustration of the contract. Mr Brian Reynold’s conduct in offering an alternative until the original walkway was reconstructed demonstrates that he considered that the contract could be fulfilled. The Agreement for Right of Way, I find, remains valid and enforceable.

The Supplementary Agreement

[24] This agreement supports the agreements granting a right of way as well as that granting the right of first refusal. The Claimant, in this supplemental agreement, granted Mr Brian Reynolds several additional rights and privileges one of which by clause 2.4 required the Claimant to give notice to Mr Brian Reynolds in the event of construction on or other disturbances at Welcome Wharf, and to permit him to use Suite 83B or provide equivalent accommodation. He was also granted hotel membership rights. The company secretary for the Claimant, Mrs. Andrea Scott, gave evidence that she had personally notified Mr Brian Reynolds and arranged his relocation on some occasions, see paragraphs 27 and 28 of the witness statement of Andrea Scott filed 30th September 2024. A witness for the 2nd Defendant, Mr James Reynolds, however, in his witness statement filed on the 16th October 2024 stated that there instances when neither notice nor

accommodation was provided. He pointed to an email dated the 20th January 2019 in which his father, Brian Reynolds, wrote (in the third person) to the Claimant as follows:

> *"Concern 5 – Relocation: RHDL construction at Welcome Wharf will require relocation under the Supplementary Agreement and the MD refused that citing Hotel closure when Brian requested it prior to the last waterfront project two years ago. That resulted in harm to Brian's health from the stress created by the construction disturbances so close by his home."* (see exhibit 1 page 253)

This evidence went uncontested. Immediately following this statement however, Mr Brian Reynolds goes on to say,

> *"Remedy: If there is to be any more disturbance affecting Brian, then Managing Director to plan early with Brian a relocation strategy that works for us all. (I appreciate the efforts made last year which went smoothly:)"*

This follow up indicates that despite the alleged breach, there were instances where this clause was honored and that Mr Brian Reynolds continued to consider the contract valid.

[25] A clear reading of Clause 2.5 shows that Mr Brian Reynolds was entitled to beach membership, and the rights accompanying that. It is not disputed that a beach membership discount is 25% and a shareholder discount is 50%. The Claimant company may have been within its rights to revoke the 50% discount reserved for shareholders when Mr Brian Reynolds ceased being a shareholder. In fact, the Claimant restored the shareholder discount for Mr. Reynolds and his family despite him no longer being a shareholder, see exhibit 1 page 229, wherein Josef

Forstmayr ordered the Round Hill staff to apply the shareholder discount. This agreement cannot be considered repudiated as Mr Brian Reynolds still enjoyed the benefits of the contract up until his passing.

West Rock Agreement

[26] This matter is relatively simple to determine. The Defendants posit that the First Refusal Agreement, along with all the others, had been lawfully repudiated prior to Mr Brian Reynolds' passing. I have already indicated that this was not so. The agreement to buy West Rock came about when the Claimant exercised its right of first refusal, albeit after some delay and hesitance. The trail of correspondence ultimately resulting in a signed agreement is found in exhibit 1 at pages 45,47,49 50,55,86,125 and 136. The suggestion, by the 2nd Defendant, that this is an agreement unrelated to the right of first refusal, is not supported by the correspondence. Whether or not it is, however, the question now is whether the agreement to purchase that part of the Reynolds Land, known as West Rock, is valid and enforceable.

[27] The purchase price in the agreement for sale is US$400,000 and it is not disputed that the Claimant has to date paid US$300,000 of that amount. In the 2nd Defendant's Defence, filed the 28th June 2024, the assertion is made that *"despite the 2nd Defendant obtaining sub-division approval on February 19, 2017, and a pre-checked plan on October 10, 2021, the Claimant has failed, neglected and/or refused to complete payment of the balance purchase price within the stipulated timeframe of 30 days, pursuant to the terms of the Agreement for Sale."* This was rebutted by the Claimant's counsel as attention was drawn to the fact that completion was on payment of the balance by Round Hill *"in exchange for the duplicate Certificate of Title for the said property duly endorsed in the name of the Purchaser or its Nominee(s) as the registered proprietor."* It was submitted that Mr Brian Reynolds was never in a position to complete the sale as he had not obtained a separate title for the West Rock property.

[28] Evidence was given that despite the deceased having previously obtained a subdivision approval and a pre-checked plan, exhibit 2 page 45, a land slippage in early 2021 meant that a new subdivision approval needed to be done, see examination in chief of Andrea Scott,

> *"Q: And finally, paragraph 48. So, this now is dealing with West Rock, the sale of part of the property. In paragraph 48 Mr. Reynolds says that "the subdivision of the approval of lands was granted in 2017 and a precheck plan was issued in 2021". Did anything happen between those two (2) dates?*
>
> *A: Yes, between the issuing of subdivision approval and the issuing of the prechecked plan, the pathway to the Spa collapsed. So,*
>
> *Mr Reynolds had reached…*
>
> *Judge: Hold on. Hold on. "The pathway collapsed"*
>
> *A: So, Mr. Reynolds reached out to me and…*
>
> *Q: Okay. Before we get to there. Did that affect these plans?*
>
> *A: Yes, it affected the diagram.*
>
> *Q: Why? Why did it?*
>
> *A: Because what had collapsed was a part of the drawing that was approved.*
>
> *Q: Okay. Continue.*
>
> *A: And because of that Mr. Reynolds…*
>
> *Q: I am sorry.*
>
> *Judge: Yes*
>
> *A: …reached out and asked if I could get the surveyor to come back and to resurvey over*

the diagram, between that time Mr. Reynolds fell ill and then nothing happened thereafter."

This is corroborated by an email exchange dated November 5, 2021 and December 8, 2021 between Andrea Scott and Brian Reynolds, respectively, see exhibit 1 pages 335 & 336.

[29] It is evident that the Claimant is not in breach of the West Rock Agreement. Subject to there being any other equitable considerations an order for specific performance is appropriate.

Enforceability of agreements

[30] The last major issue concerns the enforceability of the contracts against these Defendants. This issue as regards the 1st Defendant, the Administrator-General of Jamaica, is straightforward. **Section 21** of the **Administrator-General's Act** provides as follows,

> **"21. Subject to this Act, the rights, duties, powers, and liabilities of the AdministratorGeneral, in applying for obtaining letters of administration or letters testamentary, and in acting as administrator or executor, shall be the same in all respects as under similar circumstances the rights, duties, powers, and liabilities of private persons applying for and obtaining letters of administration or letters testamentary, or acting as administrators or executors would have been if this Act had not passed."**

This indicates that the contracts, having been binding on the deceased, will also be binding and enforceable on the Administrator-General. The Defendants

submitted that Mr Brian Reynolds' obligations terminated on his death. No authority was cited in support for this proposition of law. These were signed contracts in respect of which consideration passed between the parties and which contemplated continuing obligations. There is nothing to suggest that the death of Mr Brian Reynolds terminated the agreements. Indeed, given the contractual terms, and the context, the inference must be that the contracts do not terminate on his death.

[31] As regards the 2nd Defendant, the question arises whether this is an appropriate case for the corporate veil to be pierced. In **Prest v Petrodel Resources Limited [2013] UKSC 34** Lord Sumption in a judgment delivered on 12th June 2013, with which the other six judges on the panel agreed, stated at para.35:

> ***"I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. Like Munby J in Ben Hashem, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course……But the recognition of a small residual category of cases where the***

> ***abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy. ”***

Halsbury’s Laws of England, Volume 14 (2023), 5th Edition at paragraph 121 states:

> **“A company is a legal entity that is separate from, and distinct from, the individual members of the company. This is also the position within a group of companies where the fundamental principle is that each company in a group (a relatively modern concept) is a separate legal entity possessed of separate legal rights and liabilities. There may, however, be cases where the wording of a particular statute or contract justifies the treatment of parent and subsidiary as one company, at least for some purposes; or where the court will 'pierce' (or 'lift') 'the corporate veil'. The doctrine of piercing the corporate veil should only be invoked where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.**
>
> **The court will go behind the status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents,**

directing and controlling the activities of the company. The device of a corporate structure will often have been used to evade limitations imposed on conduct by law and rights of relief which third parties already possess against a defendant, so justifying the court's 'piercing' (or 'lifting') the veil. Where, however, this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced"

[32] The argument in favor of piercing the corporate veil with regard to the 2nd Defendant lies in the fact that Mr Brian Reynolds was the sole shareholder at the time of his death. The Claimant submits that he interposed the 2nd Defendant in an effort to evade his obligations under the agreements. Reference is made to:

i. The terms of the Joint Venture Agreement dated 30th June 2019, with John Byles (see exhibit 1 page 267);

ii. The transactions by which Mr. Byles surrendered his shares in the 2nd Defendant, resulting in Mr. Reynolds becoming the sole shareholder; and

iii. Mr Brian Reynolds' failure to disclose the transfer to the 2nd Defendant.

The Claimant cites clause 7(a) of the Joint Venture Agreement, between Mr Reynolds and Mr Byles, in which the parties agreed to subject the Reynolds Land to a development project, and confirmed that the 2nd Defendant would handle its development and operation, and in which Mr Brian Reynolds and Mr Byles agreed to jointly own the 2nd Defendant.

[33] The Claimant notes that the 2nd Defendant was incorporated on October 16, 2019, and that by October 17, 2020, Mr Brian Reynolds and Mr Byles each held 50 million shares, consistent with an agreement to own the company equally, see exhibit 1 page 267. However, on the 4th April 2021, Mr Byles surrendered all of his shares, and Mr Brian Reynolds surrendered all but two of his own, this resulted in Mr Brian Reynolds becoming the sole shareholder of the 2nd Defendant, see exhibit 1 page 326. The Reynolds Land was subsequently transferred to the 2nd Defendant on the 5th August 2022 without notice to Round Hill, see exhibit 1 page 6. The Claimant contends that no credible commercial explanation has been provided for the surrender of the shares or the transfer of land. I tend to agree. When asked in cross examination Mr Byles' response was unconvincing. He did not adequately explain either his surrender of shares or Mr Reynolds' transfer of land to the 2nd Defendant.

[34] The Claimant was made aware that Mr Brian Reynolds and Mr John Byles intended a joint venture on the Reynolds Land, see exhibit 1 pages 3, 12 and 14.
The minutes of that meeting show clearly that the Claimant's shareholders had serious reservations about the planned development. Both Mr Creamer and Mrs. Scott gave evidence that the Joint Venture Agreement was not shown to them until these proceedings began. See the evidence of Mr Creamer,

> *"Q: In Paragraph 10 of Mr Byles' Witness Statement he said, "Brian had decided to move forward". And he refers to their Joint Venture Agreement dated 2019. When did you first see that Joint Venture Agreement?*
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> *A: I did not see it until it was shown to us by our counsel in October of 2024."*

And the evidence of Mrs. Scott,

"Q: So, I am still on page 19 in Mr Byles' Witness Statement. In Mr Byles' Witness Statement, at Paragraph 10, he refers to a Joint Venture Agreement. Have you ever seen that document?

A: I saw the JVA when it was presented to me in October, by the Company's counsel.

Q: October of what year?

A: October 2024."

This evidence went uncontested. It is also clear that the transfer of the property to the 2nd Defendant was effected without notice to the Claimant. Exhibit 2 page 15 is an email from the Claimant's chairman to their attorney at law reporting on a conversation with Mr Byles. It demonstrates the basis of the disquiet about a planned development and the Claimant's objection to any transfer or mortgage of the land.

[35] The 2nd Defendant, on the other hand, contends that the transfer of the property in August 2022, the same month of Mr Brian Reynolds' death, is more likely attributable to estate planning than an intention to avoid contractual obligations. Particularly as he considered those obligations already extinguished. It cannot, they say, be credibly argued that he intended to deliberately frustrate an existing legal obligation when he considered the obligations to the Claimant as already at an end and was of the view that they were neither valid nor enforceable.

[36] I do not, on the totality of the evidence before me, find the 2nd Defendant's submissions persuasive. Surely, had estate planning or some such motivation inspired the transfer of land to the 2nd Defendant a more broad-based family centered holding of shares would be expected. I find that Mr Brian Reynold's conduct in relation to the formation of, surrender of shares in, and transfer of land to, the 2nd Defendant, was an attempt to avoid obligations under the agreements.

It may indeed reflect his own doubts as to, whether they had been lawfully terminated and hence, possible enforcement against himself. Even if he was of the erroneous view that his contractual obligations were at an end a court of equity will, in the circumstances of this case, enforce them. His conduct, in deliberately placing the land out of reach, is no less so because he was of the view the Claimant treated him unfairly. The act of consciously transferring the land, to make enforcement impossible, satisfies a requirement set out in paragraph 31 above and allows the corporate veil to be pierced. Mr. Hylton KC argued in the alternative for a resulting trust. Had it been necessary I would have declared that the 2nd Defendant held the land under a resulting, implied or constructive trust (and as a great judge once said for present purposes it matters not which it is) to give effect to the Claimant's remedy. However, as the settlor (Mr. Reynolds) is deceased the likely complications make it appropriate, in this case, to pierce the corporate veil and order the 2nd Defendant to abide the contracts.

[37] The Defendants contend that laches ought to prevent an order for specific performance of the West Rock agreement. They point to the passage of time between exercise of option (2013), grant of subdivision approval (2017) and collapse of a part of the land (2021). Equity, their counsel submits, should not reward a litigant after such delay. Generally, that is so, but in this case the Claimant has paid more than 50% of the purchase price. This has not been returned nor has there been a tender of the amount. Furthermore, the contractual obligation to produce title is on the vendor and the uncontradicted evidence is Mr. Brian Reynolds never did so. The documentary evidence is that he had always, and continued until the eve of his death, endeavored to complete the subdivision or otherwise obtain the splinter title necessary for completion of the contract, see exhibit 1 page 321. In these circumstances equity will not deprive the Claimant of its remedy.

[38] The 2nd Defendant's counsel urged a few other points of law. These I will treat with more briefly. It was submitted that there is no basis for an injunction to prevent a

mortgage of the property as the contracts do not speak to that. This is true and the injunctive relief will abide that which Mr Brian Reynolds agreed upon. It was also argued that as Beaches Resorts was also a party to the Agreement for Grant of Rights the Claimant alone could not have it enforced. In other words, Beaches Resorts are a necessary Claimant in this action. I disagree and do not find that the authority cited establishes such a principle. In this case, the rights were separate although the agreement was entered into jointly. It would make no sense to deprive the Claimant of a hearing for an alleged breach which impacted its guests because Beaches did not feel inclined to sue or had suffered no loss or because their guests were not impacted. Furthermore, one would have expected such a point to be taken in limine, if not at case management, but not in closing submissions. The Defendants' counsel argued that an order for enforcement may be impossible to enforce as it is unclear who will exercise the voting or other rights hitherto enjoyed by Mr. Reynolds. That is a question to be answered by those administering the estate. I see nothing on the facts of this case to preclude orders for specific performance and injunctive relief.

Declarations and Orders

[39] In the result and for the reasons stated there is judgment as follows:

1) It is declared that the following agreements are valid and binding on the Defendants:

i. Agreement for Right of First Refusal between Round Hill Developments Limited and Brian Reynolds dated January 31, 2007;

ii. Agreement for Grant of Rights between Round Hill Developments Limited, Beaches Resorts Limited and Brian Reynolds dated January 31, 2007;

iii. Supplementary Agreement between Round Hill Developments Limited and Brian Reynolds dated January 31, 2007; and

iv. Agreement for Sale between Round Hill Developments Limited and Brian Reynolds

dated September 3, 2013 for the purchase of a portion of the lands registered at Volume 1417 Folio 216 of the Register Book of Titles known as “West Rock” and described in Survey Diagram PE: 432915 prepared by Grantley Kindness & Associates as “Lot A4”

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2) Specific Performance of the West Rock Agreement is ordered against the 2nd Defendant. In this regard the parties are invited to agree a draft minute of order reflecting details of this order for specific performance. If unable or unwilling to agree, each party is at liberty to submit for the consideration of this court a draft minute of order for specific performance on or before the 12th January 2026. I will thereafter, whether or not any Draft Minute of Order is submitted, issue a detailed order for specific performance.

3) The 1st and 2nd Defendants are restrained whether by themselves, their servants and/or agents or otherwise howsoever, from:

   i. Selling, transferring, or otherwise disposing of or conveying the land comprised in certificate of title registered at Volume 1417 Folio 216 of the Register Book of Titles without first complying with the terms of the First Refusal Agreement, save and except to facilitate specific performance of the West Rock Agreement; and

   ii. Denying, obstructing or otherwise interfering with the Claimant’s exercise of its right of way across the land comprised

in certificate of title registered at Volume 1417 Folio 216 of the Register Book of Titles.

4) The 1st Defendant is restrained from transferring or otherwise dealing with the shares in the 2nd Defendant unless and until the Defendants have complied with the obligations under the Agreement for Right of First Refusal, the Agreement for Grant of Rights and the West Rock Agreement.

5) Liberty to Apply

6) Costs to the Claimant against the 1st and 2nd Defendants to be taxed if not agreed. The costs against the 1st Defendant are to be paid by the estate as, although adopting a more or less neutral stance, the 1st Defendant never conceded any point of law or of fact.

David Batts
Puisne Judge.