

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CIVIL DIVISION

3 CAUSE NO G 216 OF 2016

4  
5 BETWEEN:

6  
7 ROLANDO HYDES AND DAWN HYDES  
8 TRADING AS GREEN VALLEY NURSERY

9 Plaintiffs

10 AND:

11  
12 1. EMPIRE DEVELOPMENT COMPANY LIMITED

13 1<sup>st</sup> Defendant

14  
15 2. LEWIS EBANKS

16 2<sup>nd</sup> Defendant

17 IN CHAMBERS

18  
19 Appearances:

20 Mr. Phillip Ebanks, Attorney at Law on behalf of the  
21 Plaintiffs

22 Mr. Lewis Ebanks, Director, for the 1<sup>st</sup> Defendant and  
23 in person

24 Before:

25 Hon. Justice Marlene I. Carter Actg.

26 Date of Hearing:

27 17<sup>th</sup> November 2017



28  
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30  
31 **HEADNOTE**

32 *Civil Division – Agreement for provision of services*  
33 *– Liability of Defendants – Liability of Operator/Director of a Company*  
34 *– Piercing the Corporate veil*  
35  
36  
37

38 **JUDGMENT**  
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- 1 1. The Plaintiffs are the owners of a plant and nursery business. The 1<sup>st</sup> Defendant is a real  
2 estate development company, and the 2<sup>nd</sup> Defendant is sued in his capacity as the sole  
3 director and shareholder of the 1<sup>st</sup> Defendant. It is accepted by the parties that the 2<sup>nd</sup>  
4 Defendant was at all material times the operator of the 1<sup>st</sup> Defendant.  
5
- 6 2. The Plaintiffs allege that during the period 25<sup>th</sup> November 2014 and November 2015 that  
7 Green Thumb Nursery provided plants and nursery services to the Defendants at their  
8 request. The Plaintiffs state that they invoiced the Defendants for the work done. The  
9 Plaintiffs' claim arises from the alleged non-payment of invoices that were issued during  
10 this period, which the Plaintiffs claim resulted in an outstanding balance due to the  
11 Plaintiffs of CI\$21,754.30.  
12
- 13 3. The Writ of Summons filed herein sets out that the Plaintiffs wrote to the Defendants  
14 through their attorneys requesting payment of the outstanding sums. There was a course of  
15 correspondence between attorneys for the Plaintiff and the 2<sup>nd</sup> Defendant and a demand  
16 made for payment of the outstanding balance. However, it remains that the entire figure is  
17 still outstanding, and the Plaintiffs now seek, by this claim, payment of the debt, interest,  
18 and costs.  
19
- 20 4. The Defendants filed a defence in this matter on the 15<sup>th</sup> of March 2017 in which they deny  
21 that the Plaintiffs were entitled to any of the relief claimed. The Defendants alleged that no  
22 plant and nursery services were provided to the 2<sup>nd</sup> Defendant as claimed and that  
23 substantial portions of the plant and nursery services that were provided by the Plaintiffs  
24 and for which invoices that form part of the instant claim were issued, were for the benefit  
25 of a company that was not added as a defendant in the proceedings.  
26



1 5. There were three witnesses at trial, for the Plaintiffs, Rolando Hydes and his wife Dawn  
2 Hydes, and Lewis Ebanks on behalf of both Defendants. It was agreed that the affidavits  
3 of the witnesses filed in support of their case would stand as the evidence-in-chief of the  
4 respective witnesses.

5  
6 6. Oral closing submissions were made by attorney for the Plaintiffs and Mr. Lewis Ebanks  
7 for the defendants. Mr. Lewis Ebanks also asked the court to consider “notes”<sup>1</sup> on behalf  
8 of each defendant that had been submitted prior to the start of the trial as part of the closing  
9 submissions of the Defendants.

10  
11 7. There are two main issues which arise for this court’s consideration:

- 12 (1) Whether the 2<sup>nd</sup> Defendant was properly joined as a party on this claim, and  
13  
14 (2) Whether the defendants were liable to the Plaintiffs for the amount of the debt  
15 claimed, together with interest and costs.  
16

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<sup>1</sup> Notes for trial filed by the Defendants on the 15<sup>th</sup> November 2017

1                                    *IS THE 2<sup>ND</sup> DEFENDANT PROPERLY JOINED AS A PARTY IN THESE PROCEEDINGS?*

2  
3    8.    For the 2<sup>nd</sup> Defendant it was argued that the court should find that there was no legal claim  
4           or basis for a claim against him directly. The 2<sup>nd</sup> Defendant contends that he has no legal  
5           liability to the Plaintiffs by dint only of his being the sole director of the First Defendant,  
6           that there is no contract pleaded against him in his personal capacity. The 2<sup>nd</sup> Defendant  
7           therefore questioned the basis upon which he had been joined in the claim.

8  
9    9.    The 2<sup>nd</sup> Defendant's arguments were as follows:

10           (i)    There is a wealth of case law to show that the corporate veil cannot and should not  
11           be lifted easily.

12  
13  
14           (ii)    The Plaintiffs have failed to set out any of the grounds or the evidential or other  
15           basis on which the sums claimed are pursued as against the 2<sup>nd</sup> Defendant. There  
16           is no basis set out to lift the corporate veil and particularly no allegation of fraud or  
17           dishonesty or serious misconduct of any kind is set out – there is not even any  
18           mention of lifting the corporate veil in the pleaded case;

19           (iii)    The claim, in any event, fails to distinguish what sums are claimed against which  
20           Defendant which means that if the claims fail as against the 1<sup>st</sup> Defendant they  
21           should automatically fail against the 2<sup>nd</sup> Defendant;

22  
23           (iv)    In relation to the 2<sup>nd</sup> Defendant, the claims should be struck out in any case as  
24           having no basis in law and not being pleaded in any clear basis anyway.  
25



1 10. The capacity of the parties was addressed in this way in the pleadings. Paragraph 2 of the  
2 Writ of Summons was as follows:

3  
4 *“The 1<sup>st</sup> Defendant is a company incorporated in the Cayman Islands*  
5 *dealing in the development of real-estate properties. The 2<sup>nd</sup> Defendant,*  
6 *the sole director and shareholder of the 1<sup>st</sup> Defendant and was at material*  
7 *times the operator or the 1<sup>st</sup> Defendant. The business postal address of P*  
8 *O Box 1009, Grand Cayman, KY1-1001 was the billing address of the 1<sup>st</sup>*  
9 *and 2<sup>nd</sup> Defendants. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are collectively referred to*  
10 *herein as “the Defendants”.”*

11  
12 11. In response to these particulars, the defence stated at Paragraph 3:

13  
14 *“...it is admitted that the 2<sup>nd</sup> Defendant was at all material times the*  
15 *operator of the 1<sup>st</sup> Defendant insofar as the 2<sup>nd</sup> Defendant understands this*  
16 *to mean that he was acting in his capacity as sole-director of the 1<sup>st</sup>*  
17 *Defendant. It is denied that the 2<sup>nd</sup> Defendant is the sole-shareholder of the*  
18 *1<sup>st</sup> Defendant.”*

19  
20 12. The Plaintiffs reply was as follows:

21  
22 *“The Plaintiff asserts that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant is well aware of the*  
23 *Plaintiff’s business having contracted with them to provide services which*  
24 *form the basis of this action.”*

25  
26 13. In his evidence-in-chief, Mr. Ebanks stated that:



1           *“Also, any plant and nursery services provided to the Snug Harbour Villas*  
2           *and Hilton Estates projects, to which the Plaintiffs is strictly put to proof*  
3           *of would have been requested in my capacity as director of Mirage and*  
4           *Empire respectively, and I reject any assertion by the Plaintiff that I am*  
5           *personally liable for the plants and nursery services provided to Mirage*  
6           *and Empire. I am, for the reasons set out in the above two paragraphs, of*  
7           *the opinion that I have been incorrectly added as a Defendant in my*  
8           *personal capacity to these proceedings and believe that my addition as a*  
9           *Defendant was done for the sole purpose of pressuring me personally.”*

10  
11   14.    It is clear that the Plaintiffs recognised the role of the 2<sup>nd</sup> Defendant as it related to the 1<sup>st</sup>  
12           Defendant. An examination of the evidence of the Plaintiffs makes this quite apparent. In  
13           his evidence-in-chief Rolando Hydes gave evidence that:

14  
15           *“We were approached by Lewis Ebanks acting on behalf of Empire*  
16           *Development Company Limited (“Empire”) to provide plants and*  
17           *gardening/landscaping services to him and Empire in connection with*  
18           *developments which Lewis was undertaking in the Islands.”<sup>i</sup>*

19  
20   15.    Other aspects of his evidence are also relevant:

21  
22           *“From approximately 15 December 2008 to 16 November 2015, we*  
23           *supplied plants and gardening services to him and to Empire Development*  
24           *through him. When Lewis corresponded with us he did so either through*  
25           *his name, signing emails and letters as such, or on headed notepaper or*  
26           *headed email correspondence headed with the name of Empire*  
27           *Development Company. With that in mind the contract that we, as the*  
28           *Company, had to supply plant and gardening services, was with either*  
29           *Lewis Ebanks or Empire Development Company, of which he represented*  
30           *to us that he was the sole director of.*



1            *If Lewis Ebanks or Empire Development Company then used our plants or*  
2            *directed our services to properties or locations owned by other companies*  
3            *I am not aware of that occurring. I did not receive any correspondence*  
4            *from either Lewis Ebanks or Empire Development Company in which it*  
5            *was signed by either another party or another company or gave any*  
6            *indication that the plants and/or gardening services were being supplied to*  
7            *anyone other than Lewis Ebanks or Empire Development Company.”*

8  
9            *“Whenever plant or gardening services would be supplied, Dawn or I*  
10           *would be told to issue the invoices to Empire Development Company,*  
11           *Lewis Ebanks, P.O. Box 1009, Grand Cayman, KY1-1001.”*

12  
13           *“On or about the 6<sup>th</sup> November 2015, I met with Lewis Ebanks to discuss the*  
14           *outstanding debt and other matters related to other monies that he owed Dawn*  
15           *and I through his Company, Empire Development. We met in Camana Bay.*  
16           *During the conversation he accepted he owed us the amount outstanding above*  
17           *and he said he would pay shortly.”*

18  
19        16.    For the Plaintiffs it was asserted that the Defendants named in the action were both proper  
20           parties to the contract based upon the evidence. Counsel for the Plaintiffs submitted that  
21           the Court should look to the normal business relationship between the parties and to the  
22           way in which the business was conducted between them. He asked the Court to find that  
23           the authorities submitted by Mr. Ebanks were not relevant and that there was never a denial  
24           by Mr. Ebanks that he was not liable for the payments prior to the commencement of the  
25           instant action.



1 *THE LAW*

2  
3 17. It is trite law that a company is a separate legal entity as distinct from its members so that it  
4 is separate at law from its shareholders and directors. Where the liability of the members is  
5 limited, they cannot be held liable for the company's debts.<sup>2</sup> A director is not personally  
6 liable for contracts which may bind the company for whom he acts as agent. The  
7 circumstances in which a director can be held personally responsible for a company's debts  
8 and liabilities are limited and generally arises in instances where the director has acted  
9 improperly and not in the best interests of the company.

10  
11 18. *Prest v Petrodel Resources Limited and others*<sup>3</sup> is often cited as the main authority on  
12 piercing of the corporate veil. In *Prest* Lord Sumption stated as follows:

13 *"Subject to very limited exceptions, most of which are statutory, a company*  
14 *is a legal entity distinct from its shareholders. It has rights and liabilities*  
15 *of its own which are distinct from those of its shareholders. Its property is*  
16 *its own, and not that of its shareholders. In Salomon v A Salomon and Co*  
17 *Ltd [1897] AC 22, the House of Lords held that these principles applied as*  
18 *much to a company that was wholly owned and controlled by one man as*  
19 *to any other company."*

20  
21 *"The separate personality and property of a company is sometimes*  
22 *described as a fiction, and in a sense it is. But the fiction is the whole*  
23 *foundation of English company and insolvency law. ...In my view, the*  
24 *principle that the court may be justified in piercing the corporate veil if a*  
25 *company's separate legal personality is being abused for the purpose of*  
26 *some relevant wrongdoing is well established in the authorities. ...I think*  
27 *that the recognition of a limited power to pierce the corporate veil in*  
28 *carefully defined circumstances is necessary if the law is not to be*  
29 *disarmed in the face of abuse. The difficulty is to identify what is a*  
30 *relevant wrongdoing."*

31  
32  
33 19. After identifying two distinct principles the Learned Judge went on to define these:

34  
35 *"The concealment principle is legally banal and does not involve piercing*  
36 *the corporate veil at all. It is that the interposition of a company or*

<sup>2</sup> Salomon v Salomon & Company [1897] AC 22

<sup>3</sup> [2013] UKSC 34



1                    *perhaps several companies so as to conceal the identity of the real actors*  
2                    *will not deter the courts from identifying them, assuming that their identity*  
3                    *is legally relevant.”*  
4

5                    The Learned Judge continued went on:  
6

7                    *“...The evasion principle is different. It is that the court may disregard the*  
8                    *corporate veil if there is a legal right against the person in control of it*  
9                    *which exists independently of the company’s involvement, and a company*  
10                   *is interposed so that the separate legal personality of the company will*  
11                   *defeat the right or frustrate its enforcement.”*  
12

13  
14                   20.    In *Dave Persad v Anirudh Singh*<sup>4</sup> the Privy Council was faced with a question of whether  
15                   the appellant was liable to the claimant for sums due under a lease which the claimant had  
16                   granted to a company, Chicken Hawaii (Trinidad) Ltd. (“CHTL”). The facts of that case  
17                   are that the claimant negotiated with the appellant for the lease of certain premises. The  
18                   lease was prepared by the appellant and it named the lessor as the claimant and the Lessee  
19                   as CHTL. The court accepted that there had been no mention of CHTL during the  
20                   negotiations and the inclusion of the company as lessee was neither questioned nor  
21                   challenged by Mr. Singh at the time of execution. Two years later Mr. Singh issued  
22                   proceedings for possession and arrears of rent as well as damages for breach of contract.  
23                   CHTL and the appellant were named as defendants. Judgment was given against both  
24                   defendants in the High Court and the Court of Appeal.  
25  
26  
27  
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<sup>4</sup> (Trinidad & Tobago) [2017] UKPC 32

1 21. The Privy Council noted that the lower courts had justified their conclusions as to the  
2 liability of both defendants on the basis that CHTL was only formed after discussions as to  
3 the level of rent for the leased premises, that the appellant did not draw the identity of  
4 CHTL or even its existence to Mr. Singh's attention before the lease was sent to be  
5 executed and that the appellant took possession of the leased premises personally from the  
6 start. However, their Lordships did not agree that piercing the corporate veil was justified  
7 in those circumstances. The Board referred to the decisions of the Supreme Court in *VTB*  
8 *Capital Plc v Nutritek International Corpn*<sup>5</sup> and in *Prest*. Lord Neuberger agreed with the  
9 explanation advanced by Lord Sumption in *Prest* that piercing the corporate veil can be  
10 justified only where:

11  
12 *"...a person is under an existing legal obligation or liability or subject to an*  
13 *existing legal restriction which he deliberately evades or whose enforcement he*  
14 *deliberately frustrates by interposing a company under his control"*  
15  
16

17 22. While reiterating that the piercing of the veil is only justified in very rare circumstances,  
18 the Court found on the facts that Mr. Singh:

19  
20 *"...cannot get near establishing any evasive or frustrating action on the part of*  
21 *Mr. Persad."*  
22  
23

24 23. Further the court referred to *Salomon v A Salomon and Co. Ltd*<sup>6</sup> and reiterated:  
25  
26  
27  
28  
29

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<sup>5</sup> [2012] 2 Lloyd's Rep. 313

<sup>6</sup> [1897] AC 22



1                    *“That case also exposes the fallacy of the notion that the court can pierce*  
2                    *the veil where the purpose of an individual interposing a company into a*  
3                    *transaction was to enable the individual who owned or controlled the*  
4                    *company to avoid personal liability. One of the reasons that an individual*  
5                    *... will take advantage of limited liability is to avoid personal liability if*  
6                    *things go wrong. ...If such a factor justified piercing the veil of*  
7                    *incorporation, it would make something of a mockery of limited liability*  
8                    *both in principle and in practice.”*<sup>7</sup>  
9

10  
11                    **THE COURT’S CONCLUSIONS**  
12

13        24.        This Court finds that the circumstances of this case do not lend themselves to a finding of  
14                    any attempt at concealment or evasion on the part of the 2<sup>nd</sup> Defendant so as to invite the  
15                    court to pierce the corporate veil. They do not arise on the evidence. Instead this is a case  
16                    in which the Plaintiffs, because of the manner in which they invoiced the 1<sup>st</sup> Defendant for  
17                    the work done, has unwittingly joined the 2<sup>nd</sup> Defendant to the action seemingly without  
18                    fully appreciating the effect of the 1<sup>st</sup> Defendant being a separate legal entity from the 2<sup>nd</sup>  
19                    Defendant, its director and operator. There was no proper appreciation that their having  
20                    entered into an agreement with the 1<sup>st</sup> Defendant for the provision of gardening services,  
21                    that they could not thereby impute liability to the 2<sup>nd</sup> Defendant, who, as the director of 1<sup>st</sup>  
22                    Defendant, was acting only as its agent, solely on that basis.  
23  
24  
25  
26  
27  
28  
29



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<sup>7</sup> Per Lord Neuberger at Paragraph 20

1 25. The Plaintiffs averred that “*the 2<sup>nd</sup> Defendant is sued in his capacity as the sole director*  
2 *and shareholder of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant was at all material times the*  
3 *operator of the 1<sup>st</sup> Defendant.*” The 2<sup>nd</sup> Defendant is not liable, without more, for the debts  
4 of the 1<sup>st</sup> Defendants in any of those roles. The Plaintiffs have led no evidence that the 2<sup>nd</sup>  
5 Defendant should be held personally liable for the debts of the Company and I find that he  
6 is not so liable. The 2<sup>nd</sup> Defendant has been improperly joined in these proceedings and I  
7 dismiss the claim against him.

8  
9 ***ARE THE DEFENDANTS LIABLE AS CLAIMED?***

10  
11 26. In light of my findings on the first issue, I will go on to consider the liability of the 1<sup>st</sup>  
12 Defendant only.

13  
14 27. For the avoidance of doubt the 2<sup>nd</sup> Defendant is referred to as Mr. Ebanks for the balance  
15 of this judgment.

16  
17 28. I will consider the actions, evidence and submissions from Mr. Ebanks solely as agent of  
18 the 1<sup>st</sup> Defendant.



1  
2  
3 *THE EVIDENCE OF ROLANDO HYDES*

4 29. Mr. Hydes is a director of the Green Valley Nursery together with his wife. Mr. Hydes in  
5 his evidence described the relationship between himself and Mr. Ebanks. He stated that  
6 they had gone to school together from primary school. That they were childhood friends  
7 and that Mr. Ebanks had been the best man at his wedding and was the godfather to one of  
8 his grandchildren. Mr. Hydes described that his company extended credit to the 1<sup>st</sup>  
9 Defendant and Mr. Ebanks and that Mr. Ebanks always paid on a monthly basis. He stated  
10 that the 1<sup>st</sup> Defendant and Mr. Ebanks never disputed the invoices that his company would  
11 issue for works done, neither had he made any claim that invoices were wrongly issued.  
12 Specifically, with regard to the amounts which form the basis of the Plaintiffs' claim, Mr.  
Hydes stated:

13 *“When I raised the sum total of the outstanding monies he never disputed*  
14 *they were incorrect. He never disputed that wrong plants were delivered*  
15 *or anything to do with the orders at any point before litigation*  
16 *progressed.”*

17  
18 30. In his evidence in chief he further stated:

19  
20 *“We were approached by Lewis Ebanks acting for Empire Development*  
21 *Company Limited (“Empire”) to provide plants and*  
22 *gardening/landscaping services to him and him and Empire in connection*  
23 *with developments which Lewis was undertaking in the Islands.”*

24  
25 *“I did not receive any correspondence from either Lewis Ebanks or Empire*  
26 *Development Company in which it was signed by either another party or*  
27 *another company or gave any indication that the plants and/or gardening*  
28 *services were being supplied to anyone other than Lewis Ebanks or*  
29 *Empire Development Company.”*  
30



1                   *“Whenever plant or gardening services would be supplied, Dawn or I*  
2                   *would be told to issue the invoice to Empire Development Company, Lewis*  
3                   *Ebanks, P.O. Box 1009, Grand Cayman, KY1-1001.”*  
4

5 31. Mr. Hydes further stated that after a demand for payment of the alleged debt was made,  
6 that Mr. Ebanks wrote to him stating that he expected to have the debt settled in November  
7 or December 2015. Also, that he met with Mr. Ebanks on the 6<sup>th</sup> November 2015 to  
8 discuss the outstanding debt. He states that during the conversation, Mr. Ebanks accepted  
9 that he owed the amount outstanding and said the he would pay shortly. Mr. Hydes  
10 detailed other attempts made to recover the monies and also that Mr. Ebanks would always  
11 assert that he would shortly make the payments on the outstanding debt.  
12

13 32. Under cross-examination by Mr. Ebanks the Plaintiff maintained that the amounts were  
14 never disputed although he did concede that it was his wife the 2<sup>nd</sup> Plaintiff who did the  
15 invoicing for the Green Valley Nursery.  
16

17 33. Mrs. Hydes also gave evidence in chief, which did not differ from that given by her  
18 husband. In cross-examination Mr. Ebanks questioned her about a discrepancy on an  
19 invoice which involved another company, namely Mirage Development Ltd. Mrs. Hydes  
20 admitted that there had been a discrepancy in the invoicing for Mirage Development on  
21 one occasion. However, Mrs. Hydes stated clearly in re-examination that the two invoices  
22 which related to Mirage Development were no part of the instant claim.  
23



1 34. Mr. Ebanks' witness statement was accepted as his evidence-in-chief on behalf of the  
2 Defendant. In his evidence-in-chief, Mr. Ebanks asserted that both Empire Development  
3 Ltd and Mirage Development Ltd were the relevant companies associated with the instant  
4 matter. He asserted:

5  
6 *“Time was not of the essence in any alleged contractual agreement between*  
7 *the parties. Empire, Mirage and me personally were the Plaintiff's largest*  
8 *clients and continued to critically support their nursery for many years.*  
9 *Though the years an understanding between the parties developed*  
10 *whereby costs for plants and nursery services, which are usually*  
11 *completed at the end stage of a real estate development, will occasionally*  
12 *be paid once the net sales proceeds are received after closing on the*  
13 *properties. This is further supported by a failure on any of the invoices*  
14 *appended to the Plaintiff's Statement of Claim (the “invoices”) to reflect a*  
15 *due date for payment.*

16  
17 *The Plaintiff has failed to properly particularize the invoices. There is an*  
18 *intermingling of alleged plant and nursery services provided for the Hilton*  
19 *Estates project, The Snug Harbour Villas Project and to my personal*  
20 *house as well as my mother's house (the latter two which are located in*  
21 *the district of Spotts on the islands of Grand Cayman). Additionally, when*  
22 *added up, the total amount owing according to the invoices differs from*  
23 *the amount claimed by the Plaintiff in its Statement of Claim, thus creating*  
24 *uncertainty as to what is in fact being claimed by the Plaintiff and which*  
25 *invoices it is relying upon in support of its claim.*

26  
27 *Also, I am of the opinion that, because the Plaintiff's failed to keep a*  
28 *separation between the Hilton Estates and the Snug Harbour Villas*  
29 *projects, and my and my mother's personal houses on its invoices, only*  
30 *rendering invoices to Empire for the all alleged plants and services*  
31 *provided, the Plaintiff has in fact conjoined multiple causes of action to*  
32 *artificially inflate the total amount claimed, thereby causing this matter to*  
33 *fall outside of the scope triable by the Summary Court.*



1  
2  
3 *Because of the intermingling of various causes of action combined with the*  
4 *understanding between the parties to these proceedings that payment is*  
5 *stayed until the completion of the real estate developments, I am also of*  
6 *the opinion that the Plaintiff's potential claims have not yet crystallized*  
7 *and that these proceedings are premature.”.*  
8

9 35. Additionally, on behalf of the 1<sup>st</sup> Defendant the Court was invited to dismiss the Plaintiffs’  
10 claim as they had failed to provide “*an accurate amount for their claim, or by whom the*  
11 *amounts were owed and under which agreement or project.*”<sup>8</sup> The notes for trial on behalf  
12 on the 1<sup>st</sup> Defendant therefore states that the amount of the claim brought by the Plaintiffs  
13 included invoices that relate to deliveries to Snug Harbour for the Mirage Development Ltd  
14 Project and not to Hilton Estates for the Empire Development Ltd project, the verbal  
15 agreement being for deliveries to Hilton Estates.  
16

17 36. The 1<sup>st</sup> Defendant submits that the total of these non-associated invoices was in the amount  
18 of CI\$6,826.72. The 1<sup>st</sup> Defendant further contends that the Plaintiffs would have known  
19 that the non-associated invoices were for work done for an entity entirely separate from the  
20 Defendants.  
21

22 37. Mr. Ebanks was cross-examined by counsel for the Plaintiffs. He agreed that there was a  
23 personal element to his dealings with Green Valley because of his relationship with the  
24 Hydes. In reply to counsel Mr. Ebanks denied that the Plaintiffs could have been relying  
25 on any assurances for payment made by him of the amounts now due on the instant claim.

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<sup>8</sup> As set out in the 1<sup>st</sup> Defendant’s “Note for Trial on Behalf of the First Defendant”



1 Mr. Ebanks was shown a letter by counsel in which he had made certain statements  
2 regarding payment of the outstanding invoices.

3  
4 38. He admitted that he intended to make good on the outstanding monies but added that the  
5 paragraph following the penultimate paragraph meant that he was not speaking directly to  
6 the amounts being claimed, as at the juncture where he wrote the letter he was not sure that  
7 the amounts being claimed were correct.

8  
9 39. Mr. Ebanks admitted that he never indicated to the Plaintiffs that the invoices under  
10 consideration in this case were incorrect or needed to be clarified as he states that “*That*  
11 *would have been done upon readiness for payment as it always was.*” Interestingly, when  
12 pushed on the cross-examination, he went on to explain that with regard to “*readiness for*  
13 *payment*” that: “*it would be improper for me to speculate or to guess when that would have*  
14 *been.*”

15 **THE COURT’S CONCLUSION**

16  
17 40. The outstanding invoices are not in dispute, except to the extent that the 1<sup>st</sup> Defendant  
18 alleges that some of the outstanding invoices are in respect of deliveries relating to Mirage  
19 Development Ltd and therefore that any such invoices included in the amount claimed by  
20 the Plaintiff, are not properly part of the instant claim. This Court has viewed all of the  
21 invoices which form the basis of the Plaintiffs’ claim. They are all billed in the name of  
22 Empire Development Ltd and Lewis Ebanks. The invoices evidence sufficient particularity  
23 to enable the Defendant to understand the specifics of the claim and as well to enable this  
24 Court to determine whether the amounts claimed by the Plaintiffs represent what was billed  
25 for the services that the Plaintiffs contend that they rendered to the 1<sup>st</sup> Defendant.



1 41. Mirage Development Ltd does not appear on any of the invoices. There are notations that  
2 suggest that some of the services took place at Snug Harbour,<sup>9</sup> however the fact that the 1<sup>st</sup>  
3 Defendant never disputed that the services provided at that location were not provided for  
4 the benefit of Empire Development, is detrimental to his defence at trial. The Plaintiffs  
5 freely admit that they also provided services to Mirage Development. I believe their  
6 evidence that the services provided as evidenced by the invoices attached to their claim  
7 were provided to Empire Development at the locations indicated therein. I reject the  
8 arguments advanced on behalf of the 1<sup>st</sup> Defendant that there were any “*non-associated*  
9 *invoices*” included in the Plaintiffs’ claim.

10  
11 42. The 1<sup>st</sup> Defendant’s next point of contention is focused on the history of being able to  
12 dispute matters on the invoices. That has not been questioned or denied by the Plaintiffs.  
13 It is clear on the evidence that the Defendant has never, in relation to the invoices which  
14 form the subject matter of the claim, indicated to the Plaintiffs that they wished to dispute  
15 the invoices in part or at all or that this was the reason for non-payment. I accept the  
16 evidence of the Plaintiff on this point.

17  
18 43. I accept the Plaintiffs’ evidence that the arrangement was for a monthly payment of  
19 invoices and for a line of credit being extended thereafter. Mr. Ebanks simply states that  
20 the payments would be made upon closings and his being able to retain a net profit.

21  
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23  
24  

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<sup>9</sup> See Invoices # 666, 668, 664 and 589



1 44. There is no doubt in this Court's mind that the 1<sup>st</sup> Defendant is liable to pay the outstanding  
2 sum. Whether or not there were discrepancies on the invoices does not remove the legal  
3 obligation to pay any valid invoices for services rendered, once account has been taken of  
4 such discrepancies. The 1<sup>st</sup> Defendant could not point to any discrepancies on the invoices  
5 in this case. Mr. Ebanks did not suggest to either of the Plaintiffs any particular  
6 discrepancies and I find that there are no discrepancies for my consideration.

7

8 45. I also believe the Plaintiffs that the 1<sup>st</sup> Defendant has never questioned the invoices for the  
9 services provided that form the basis of the claim in this case, before the claim was filed.  
10 Mr. Ebanks' position before this point was to simply state that he was not in a position to  
11 pay them at the time that the Plaintiffs made their demand for payment, and that the  
12 Plaintiffs should have realised from previous dealings that he would have paid them, and  
13 therefore there was no need to bring the present action. That reasoning may work well for  
14 the 1<sup>st</sup> Defendant, but it does not for the Plaintiffs who are entitled to payment for their  
15 services.

16

17 46. It appears to this Court that it is the time for payment that the 1<sup>st</sup> Defendant disputes. In his  
18 witness statement which was introduced as his evidence-in-chief in this matter, Mr. Ebanks  
19 expressed that: "*time was not of the essence in any alleged contractual agreement between*  
20 *the parties.*"<sup>10</sup> All of the evidence points to this not being the case. The evidence of  
21 demands for payment, the meetings of the parties to discuss these and the assurances given  
22 all contradict Mr. Ebanks on this point.

23  
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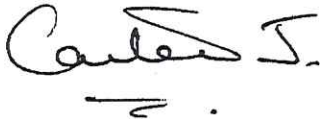
<sup>10</sup> See paragraph 9 of the Witness Statement of Lewis Ebanks



*THE COURT'S ORDER*

- 1
- 2
- 3 (1) The 1<sup>st</sup> Defendant is liable to the Plaintiffs in the sum of \$21,754.30.
- 4
- 5 (2) The Plaintiffs are entitled to their costs on the standard basis to be taxed if not
- 6 agreed.
- 7
- 8
- 9 (3) The Plaintiffs are entitled to interest from the date of filing of the writ of summons
- 10 until the amount to which they are entitled at a. above has been paid in full.
- 11
- 12 (4) The claim against the 2<sup>nd</sup> Defendant is dismissed.
- 13
- 14 (5) The Plaintiffs shall pay the 2<sup>nd</sup> Defendant's costs to be taxed if not agreed.
- 15
- 16

17 Dated this the 6<sup>th</sup> April 2018



18  
19 Carter J (Actg.)  
20 Acting Judge of the Grand Court

