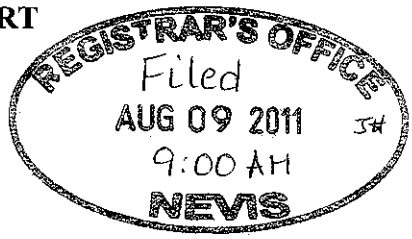
IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ST.CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)



CLAIM NO. NEVHCV2010/0091

BETWEEN:

	J. BRADLEY HALL	**Claimant/Respondent**
	and	
(1)	**PRUDENTIAL TRUSTEE COMPANY LIMITED**	**1st Defendant/Applicant**
(2)	**ANDREW BICKERTON as Receiver of AMAZING GLOBAL TECHNOLOGIES LTD**	**2nd Defendant**

Appearances: Miss. Kurlyn Merchant and Miss. Deidre Williams for the Claimant

Mr. Peter Arden Q.C. for the 1st named Defendant
Mr. Gerhard Wallbank with him

Mr. Carrington for the 2nd Defendant and Miss. Sonia Parry with him

2011 March 30, 31, August 9

JUDGMENT

[1] **REDHEAD, J. (Ag)** – The Claimant J. Bradley Hall in this suit claims that he is the 100 percent holder of all the shares in:

(a) Amazing Technologies (North America) Inc.

(b) Amazing Technologies (Latin America)

(c) Amazing Technologies (Europe)

(d) Amazing Technologies (Asia Pacific)

The above named companies are all registered in Nevis and are subsidiaries of Amazing Global Technologies Limited, a company incorporated in Gurnsey.

[2] The Claimant also claims that he was the founder and major shareholder of Amazing Global Technologies Limited. The first named Defendant is a Corporation which provides International Corporate Trustee Services.

[3] The second named Defendant was appointed Receiver of Amazing Global Technologies Limited (AGTL) by the Court, pursuant to an ex-parte Application brought by the first named Defendant.

[4] In the skeleton argument of Mr. Arden Q.C. he refers to the operating memorandum hereunder which described AGTL as not an empty shell but the top holding company of a group of companies which included operating companies. AGTL at the head of the Corporate Structure with its interest in the operating companies being held by wholly owned intermediate holding Companies these are the Nevis Companies.

[5] As such, AGTL has incurred significant liabilities in connection with the operating companies. AGTL sought to raise finance from outside investors. AGTL's intention was to raise $25-$30 million through convertible loan notes which envisaged a debenture

which contained fixed and floating charges, including specific charges over operating companies and other subsidiaries.

[6] This debenture was held by security trustee, who was appointed by the Noteholders pursuant to the terms of the Security Trust Deed approved by the Noteholders. The notes were held on the conditions, set out in the Form of Notes. The conditions are binding on AGTL.

[7] Learned Queen's Counsel for 1st named defendant in his skeleton arguments pointed to the fact that the Deed contains choice of law clause in favour of English Law and an exclusion jurisdiction clause, in favour of English Courts. The conditions contain agreement as to matters such as:-

i. Interest, which was to be paid quarterly in arrears at a fixed rate of 9% per annum.
ii. The setting up of secure deposit account, into which is to be paid and amount equivalent to 6 months interest.
iii. Redemption by 30th November 2009, or earlier in the event of a redemption Notice.
iv. Conditions to be satisfied by AGTL... They include the entry into a Security Trust Deed, the establishment of the loan note security in favour of the security trustee and the establishment of security deposit account.

[8] By the end of 2007, it became apparent that AGTL would have difficulties in meeting its interest payments obligations, specifically, the interest payments due on 31st December 2007.

[9] In his submission Learned Queen's Counsel contended that the Noteholders pressed for completion of the security documentation which AGTL had promised and which it remained obliged to provide. Mr. Hall finally agreed that documentation should be completed, by the execution of the Noteholders of a security trustee of their choice.

[10] The security documentation was completed on 2 April 2008. It comprised a Security Trust Deed in standard form executed by the Noteholders and pursuant to which they appointed Prudential as the Security Trustee, together with a debenture which had been provided by AGTL's solicitors.

[11] In my view, I thought that it was useful to provide this background in order to indicate Prudential's involvement in the matter.

[12] Learned Queen's Counsel in his written submission on behalf of Prudential pointed out that throughout, at least the latter half of 2007 and the first half of 2008, the financial position of AGTL became increasingly precarious. AGTL failed to make interest payments to the Noteholders due on 31st December 2007 and 31st March 2008. As a consequence, the Noteholders became entitled – through Prudential as their security trustee - to call in the full amount then outstanding under the loan notes to enforce their security.

[13] Under the terms of the notes, the Noteholders were entitled, among other things, to accelerate the date on which the principal sum became due. Prudential as Security Trustee served the requisite notice on AGTL on 24th June 2008.

[14] As a consequence, AGTL was liable, as of 24th June 2008 to repay the full amount of the notes and other payments in arrears. On 27th June 2008, Prudential Trust Company Ltd, the first named defendant, herein brought an ex-parte Application in the High Court, Nevis (no. 73/2008) seeking the appointment of a Receiver over AGTL. The application was granted by the Honourable Madam Justice Leigertwood-Octave. Mr. Andrew Bickerton, the 2nd named defendant was appointed as Receiver over the assets of AGTL.

[15] AGTL appealed. The Court of Appeal on 4th May 2009 allowed the appeal with costs to the Appellant and set aside the Order that was made on 27th June 2009. The Court of Appeal also held that the result was the end of the Claim and the falling away of all of the Ancillary Orders i.e. the Order Appointing the 2nd named Defendant as Receiver of the Assets of AGTL.

[16] On 9th December 2010 J. Bradley Hall claiming to be Founder, Major Shareholder, Director and Officer of AGTL and former Director, Officer and the only Shareholder of the four Nevis subsidiaries filed a claim against Prudential Trustee Company Limited and Andrew Bickerton, the Court appointed Receiver.

[17] In this suit he is claiming inter alia:

(1) The release and repayment of US$5000.00 in costs paid by (him) J. Bradley Hall in the abovementioned claims.

(2) US$250,000.00 in assessed legal costs in relation to the above mentioned claims.

(3) General and Special Damages for damage and loss caused as a result of the above mentioned claims.

[18] In his Particulars of Damage and Loss, J. Bradley Hall claims as follows,

1. "By reason of the matters... arising specifically as a result of Claim No. NEVHCV2008/0073 more particularly the Order dated 27th June 2008 resulting in the appointment of the Receiver who has led to the Company into liquidation, J. Bradley Hall has suffered excessive loss as Founder and Majority Shareholder of Amazing Global Technology Limited, a company with a previous equity worth approximately US$140,000,000.00 to US$193,000,000.00 and the "4 Hall/Nevis Companies". Mr. J. Bradley Hall has additionally approximately US$1,400,000.00 of debt that was due to him.

2. Approximately US$301,000,000.00 worth of assets of "4 Hall/Nevis Companies" has been stolen or rendered worthless as a direct result of the actions of the 1st and 2nd Defendants.

3. Mr. J. Bradley Hall as Founder and Majority Shareholder of Amazing Global Technologies Limited and the "4 Hall/Nevis

Companies" has loss approximately US$5,000,000.00 worth of investments due to damage to his reputation rendering him unable to raise any capital for projects to generate income.

4. Mr. J. Bradley Hall as Founder and Majority Shareholder of Amazing Global Technologies Limited and only shareholder of the 4 Hall/Nevis Companies has suffered loss in compensation bonuses and accrued interest on preferred shares and expenses owed to him which he could not receive due to actions taken in pursuit of the June 27th 2008 Order".

[19] I make the observation that the way Claim no. 1 above is framed i.e. "By reason of the matters aforesaid, arising specifically as a result of the Claim No. NEVHCV2008/0073 and more particularly the Order dated 27th June 2008 resulting in the appointment of the Receiver". This to my mind stops just short of naming the Learned Trial Judge or the Court for that matter as a party to the Claim.

[20] It is well settled Law that an Order made by the Court is binding until and unless set aside (Isaac v Robertson[1]). Mr. J. Bradley Hall has also claimed damages as a result of severe mental anguish for which he was medically treated and for stress as a result, as he says, he was unable to work for two years.

[21] He therefore claims Damages, including aggravated damages. Mr. J. Bradley Hall also claims Special Damages. He has particularized his Special Damages as follows:-

[1] 43 W.I.R. 126

(a) Loss of earnings at US$67,000.00 a month, (including guaranteed bonus) for the period July 2008 to May 26 2009 and/or - US$670,000.00.

Loss of reimbursable expenses that was due at the time of Prudential's action - US$414,000.00.

(b) Assessed legal costs from HCVAP2008/0008 - US$250,000.00.

Amount personally paid to counsel for security for costs in Claim HCVAP2008/0008 – US$30,000.00.

Costs that was paid to the Defendant - US$5000.00.

Total Special Damages - US$1,369,000.00.

[22] On 7th January, 2011 the first named Defendant Filed an Amended Notice of Application that these proceedings be stayed permanently or dismissed on the grounds that Nevis is not the appropriate forum for the determination of this Claim and/or alternatively, and without prejudice to the first grounds of the Application that these proceedings are oppressive and vexatious in that they have no reasonable prospects of success.

[23] On 14th March 2011 the second named Defendant Andrew Bickerton filed a Notice of Application, seeking the following orders:

(1) That the Statement of Case herein of the Claimant be struck out and the Claim be accordingly dismissed as against the second named Defendant pursuant to Civil Procedure Rules 2000 part 26.3 [1] [b].

(2) Alternatively that Summary Judgment be granted pursuant to Civil Procedure Rules 2000 15.2 (a) in favour of the second named

Defendant against the Claimant on the Claim. That is the Claimant has no real prospect of succeeding on the Claim.

(3) Costs of the Application in the proceedings be paid by the Claimant to the second Defendant.

[24] The grounds of the Application of the second named defendant are inter alia:-

1. As to all the reliefs sought in the Claim Form: in his capacity as Shareholder and former Director of (AGTL) (in liquidation) (the "Company"), the Claimant has no standing to make the Claim filed herein for general and special damages on the following bases:

   (a) The Company is the proper Claimant for any such Claim;
   (b) Any loss suffered by the Claimant is purely reflective of the loss, if any, by the Company which is not recoverable by the Shareholder;
   (c) As the Company is currently in liquidation and was in liquidation at the time of the commencement of these proceedings, the Claimant has no standing qua former Director/Officer to seek such relief.
   (d) The averments in the Statement of Claim do not show any loss arising to the Claimant as qua Director/Officer of the Companies.

2. As to reliefs 1 and 2 of the Claim Form and without prejudice to the generality of grounds herein, the second named defendant was not a party to the proceedings NEVHCV2008/0073 or HCVAP2008/0008 in which costs were awarded for or against the

Company for Security for costs and was paid on behalf of the Company.

[25] Mr. Carrington, Learned Counsel for the 2nd named Defendant in his skeleton submission argued that the lynchpin of the Claimant's case appears to be his pleading at paragraph 10 of the Amended Statement of Claim in which he states:

> "At the time the said Order was made, the shares of all the..... Companies described as "the Nevis Subsidiaries" were registered to J. Bradley Hall who was also Founder, Director and Officer of the said Companies. None of the shares were registered in AGTL. The shares were rather 100% owned and controlled by Mr. J. Bradley Hall. "

[26] Learned Queen's Counsel in his skeleton arguments submitted that even if it were not an abuse of process, Mr. Hall's contention that he is owner of the Nevis Companies does not assist him for the following reasons. Although this contention concerns the ownership of shares in companies incorporated in Nevis, the fact and matters relevant to the issue have no connection with Nevis. It remains the case, therefore, that the Nevis Court is not an appropriate forum for the determination of the issue.

[27] Even if Mr. Hall was correct it would not give him the locus to bring the claim against Prudential. Mr. Hall would not have no locus to bring those claims simply because he was a shareholder of the Nevis Companies. The claims whatever they might be, would have to

be brought by the Nevis Companies. So argued Learned Queen's Counsel in his submissions on behalf of Prudential.

[28] In his Skeleton Submission Mr. Carrington pointed to a myriad of instances and circumstances which point the other way. These are as follows:

Mr. Petroule in his affidavit swore[2]:-

(1) The Claimant executed on the 18th November 2006 transfers of his shareholding in each of these subsidiaries to the Company which transfers were ratified by the Company after its incorporation.

(2) The Claimant represented in the Offering Memorandum to its lenders with clear intention that they should act in reliance on such representation, that the Nevis Subsidiaries are Subsidiaries of the Company. This representation resulted in the lenders taking the shares in these companies as security for loans to the Company.

(3) The Claimant in proceedings NEVHCV2008/0073 in an Application to resist the Application for Security for Costs represented to the Court that the four Nevis Subsidiaries were subsidiaries of the Company AGTL.

(4) The Claimant made an offer to purchase the 4 Nevis Subsidiaries from the liquidators of the Company.

[2] Paragraph 133-148

(5) The Claimant never asserted ownership of the Nevis Subsidiaries during the course of the liquidation of the Company, AGTL, in Gurnsey even though he was in communications with the liquidators.

(6) The Claimant did not accept an invitation to join in or oppose proceedings in Gurnsey to approve the sale by the liquidators of the Nevis Subsidiaries.
The Nevis Subsidiaries are now in the process of being sold by the Company, AGTL, to the Secured Creditors with the approval of the Guernsey Court[3].

(7) The Court of Appeal in HCVAP2008/0008 made a finding that the Nevis Subsidiaries were Subsidiaries of the Company.

[29] In addition Mr. Athanasiou Petrou Head of Corporate Trust at Prudential, the first named Defendant deposed in an affidavit filed on 1st March 2011 swore that in or about 2006 AGTL in a fundraising exercise for the purpose of raising loans totaling US$31.5 million on or about 6 December 2006, AGTL published or caused to be published an offering memorandum (OM). The OM represented that the funds loaned would be used to finance AGTL's obligations on Promissory Notes relating to the purchase of certain operating Companies.

[30] OM represented that AGTL had five wholly owned Subsidiaries which, in turn would become the Intermediary Holding Companies that would own the shares of the operating

[3] See Affidavit of Mr. Petrou para. 112

Companies upon the purchase of the same. Four of these wholly owned Subsidiaries were stated to have been incorporated in Nevis (the Nevis Subsidiaries).

[31] The Claimant in his Amended Statement of Claim filed in December 2011 (the date is illegible) now asserts that the 4 Nevis Subsidiaries are wholly owned (100 per cent) by him. This, in my view, is a most extraordinary and serious position for him to adopt, particularly in light of 28(2) above.

[32] I make the observation that when the Claimant filed his original Statement of Claim in July 2010 (the one which was amended), he stated therein quite clearly: "The Claimant J. Bradley Hall in his capacity as Founder and Major Shareholder of Amazing Global Technologies Limited with 4 Subsidiary Companies incorporated in Nevis".

[33] Moreover, as Learned Queen's Counsel submitted at various places in the OM, the directors (who are especially identified and include Mr. Hall) expressly take responsibility for the accuracy and completeness of its contents (See AAP2/1/4P73).

[34] What has changed? There is no evidence of any change of the status of these Companies from July 2010 to December 2011 for the Claimant to now assert and refer to them as the "4 Hall/Nevis Companies".

[35] Mr. Carrington, Learned Counsel for the second named Defendant contended that the Claimant's mere assertions of ownership of the four Nevis subsidiaries should be rejected.

[36] Learned Counsel for the Claimant in their Skeleton Arguments submitted that at the time of the Order all shares in the Nevis Companies were 100 per cent owned by J. Bradley Hall, a fact which the second Defendant acknowledged in his 2nd Receiver's Report when he stated that he was unable to locate Share Certificates to AGTL for any of the Companies.

[37] In their written submissions Learned Counsel on behalf of the Claimant also argued that there were no recordings in the Corporate Records for any of the said Companies for Share Transfers to AGTL.

[38] I have the greatest difficulty in comprehending that when the 2nd Defendant said in his report that he was unable to locate the Share Certificates to AGTL or that there were no recordings in the Corporate Records for any of the share transfers to AGTL, that this is an acknowledgment by the 2nd Defendant that the Claimant owns 100 per cent of the shares in the Nevis Subsidiaries.

[39] Learned Counsel for the Claimant contended that despite this (acknowledgment that the Claimant owns a 100 per cent share in Nevis Companies) the Receiver appointed himself as director of each of the Nevis Companies replacing the Registered Agent Daniel, Brantley and Associates with AMT Trustees Nevis Limited.

[40] The second Defendant was appointed Receiver over the assets of AGTL. Paragraph 3(J) of the Order appointing Mr. Bickerton as Receiver is worthy of note. This provides as follows:

> "To take complete sole control and exclusive control of all the issued shares of (and Share Certificates of) the Nevis Subsidiaries and any other shares held or controlled by the Company in any Companies which are its Subsidiaries which comprise property (together "the subsidiary companies") and to exercise all the voting and other rights attaching to those shares and to pass or procure the passing of written resolutions removing the present Directors of the Subsidiary Companies or any of them and appointing new Directors in their stead in accordance with their respective applicable corporate governance provisions".

[41] In my considered opinion having examined all the actions taken by the Receiver up to the 4th of May 2009 they were legitimate as they were within the terms of the Order of 27th June 2008.

[42] The Order made in favour of Prudential Trustee Company Limited on 27th June, 2008 was challenged by AGTL in the Court of Appeal, on 13th January 2009. On the 4th May 2009, the Court of Appeal allowed the appeal of the order of the Learned Trial Judge permitting service out of the jurisdiction.

[43] Learned Queen's Counsel in his submission argued that AGTL through Mr. Bickerton contended that the Nevis Court was not the proper forum for the determination of issues relating to the loan and security documentation and by the judgment delivered on 4th May

2009, the Court of Appeal agreed. By parity of reasoning, the Nevis Court is not a convenient forum for the determination of this claim against Prudential. I agree entirely with this submission.

[44] The Court of Appeal also held that 'such a finding would result in the end of the Claim and the falling away of all of the Ancillary matter". This in my opinion sounded the death knell of the Receivership Order made by the Learned Trial Judge on 27th June 2008.

[45] Learned Counsel for the Claimant in their Skeleton Arguments contended that despite the Claim being dismissed on appeal, the second named Defendant never returned the Company to its position prior to the Order and did not cancel any of the transactions made pursuant to that Order.

[46] I address the last point first. Learned Counsel did not say or indicate how and by what means the Orders made prior to 4th May should be cancelled. As in my judgment any Order pronounced by the Court is valid and unless set aside[4]. It follows, therefore, in my view, that any Orders made pursuant to that judgment must also be valid until they are set aside.

[47] Learned Queen's Counsel observed that Mr. Hall has persistently complained that Mr. Bickerton remained in control of the Nevis Companies despite the cessation of the receivership. Learned Queen's Counsel argued that in a sense he is right; but Mr.

[4] Isaac and Robertson

Bickerton has done so, in his capacity, not as the Court appointed Receiver, but because the AGTL's liquidators appointed him to that position.

[48] Learned Counsel for the 2nd named Respondent in his Skeleton Arguments contended that the Receiver was given powers by the Order of 27th June 2008 to secure the property of the Company and to procure the passing of resolutions to remove the current director of the subsidiaries and to appoint new Directors in their stead.

[49] During the course of the receivership, the Receiver exercised the above power by causing new Share Certificates to bearer to be issued in respect of the Nevis Subsidiaries as the Share Certificates could not be found and the Claimant refused to co-operate with him in this or any regard. In fact rather than corporating with the Receiver, Mr. Hall sought to put obstacles in the way of the Receiver in order to hinder the Receiver's work. The second named Defendant also voted those shares and appointed himself as Director of each of the Subsidiaries.

[50] Learned Counsel, Mr. Carrington, rightly contended that the Order of Court of 4th May 2009 effectively brought those proceedings to an end. However, the Company [AGTL] was placed into liquidation by an Order of the Court of Guernsey (the place of incorporation of the Company) dated 26th May 2009 and the Joint Liquidators during the course of the liquidation reappointed Mr. Bickerton as the Director of each of the Nevis Subsidiaries.

[51] From the time of the Court of Appeal decision on the 4th of May to the reappointment by the liquidators of the 2nd named Defendant, there is no evidence in the intervening 22 days that the 2nd named Defendant did anything as Receiver.

[52] Moreover, Learned Counsel for Claimant contended in their submissions that the 2nd Defendant did not resign as Receiver and is still in control of all Companies formerly owned by the Claimant is to lose sight of the fact that the 2nd named Defendant was reappointed by the Joint Liquidators as Director of each of the Companies.

[53] The Claimant makes claim for the delivery up of Share Certificates. Learned Counsel for the Second Defendant rightly submitted in his Skeleton Arguments that the Claimant has no standing to demand the bearer shares for the Nevis Subsidiaries or for the removal of the Receiver unless he is asserting that he is the Shareholder of these companies and is entitled to hold the certificates.

[54] From the uncontroverted and unimpeachable evidence of Mr. Petroule (referred to above) he is not, because on 18th November 2006 he transferred his shareholding in each of the subsidiaries to the Company.

[55] These transfers were ratified by the Company after incorporation. I agree with Mr. Carrington in his submission that the Claimant's mere assertions of ownership of the Nevis subsidiaries are fanciful and not realistic. In fact, in all his dealings, his correspondence, his emails to other parties, as pointed out by Learned Queen's Counsel

prior to his amended Statement of Claim, he acknowledged, accepted and represented the Nevis Companies as subsidiaries of AGTL.

[56] Again as pointed out by Learned Queen's Counsel in his written submissions on 18th September 2008, AGTL filed an application in the High Court seeking declarations that Mr. Bickerton had (a) no authority to remove directors of AGTL or any other members of the Amazing group or (b) to appoint various persons as his agents. Mr. Arden, Learned Q.C. submitted that it is absolutely clear that the application proceeded on the basis that the Nevis Companies are wholly owned subsidiaries of AGTL.

[57] Finally Learned Queen's Counsel submitted that Mr. Hall did not at any time say that the Nevis Companies belonged to him. If they did, he would have said so in support of his various applications and appeals. Not only did he not make this allegation; he caused AGTL to make applications on grounds which are consistent only with AGTL being the true owner of the Nevis Subsidiaries.

[58] On 8th December 2008 in the application for Security for Costs, Mr. Hall positively contended (paragraph 7 of his affidavit) that the Nevis Companies did belong to AGTL. He swore,

> ".....establishes that the Appellant [AGTL] has assets within the jurisdiction, namely shares which it directly holds in four Nevis entities and it follows that any order of the Court [against AGTL] can be enforced in Nevis against such assets".

[59] The Claimant has not shown that the Receiver appointed by Court did anything contrary to or outside of the Order of 27th June 2008.

[60] Although in his Amended Claim Form and Statement of Claim there is an allegation of fraud against Prudential and Mr. Bickerton with no shred of evidence to support this serious allegation. I agree with Learned Queen's Counsel's Submission that it is trite law that fraud should be clearly pleaded and established by cogent evidence commensurate with the gravity of allegation. See **(Merkel Insurance Company v Huggins)**[5]

[61] The first named Defendant seeks a Permanent Stay or a Dismissal of the Proceedings, filed by the Claimant on the following grounds:

(a) that the Court should decline to exercise whatever jurisdiction it has over the subject matter of the claims because it is not the convenient forum for disposal of the claims, and/or alternatively;

(b) that these proceedings are oppressive, vexatious and are an abuse of the process and/or alternatively;

(c) that these proceedings have no or no reasonable prospect of success.

[62] On 27th June, 2008 an ex-parte Application was made by Prudential Trustee Company Limited for an Order Appointing a Receiver over the assets of AGTL. Prudential was the trustee for many of the Noteholders who advanced loans to AGTL.

[5] [2009] EWCA Civil 790

[63] AGTL was unable to meet the obligation under the Loan Agreements. As a result Prudential brought the Application on 27th June 2008, the Order was granted and Mr. Bickerton was appointed Receiver.

[64] The Court of Appeal made an Order for Costs to the Appellant to be assessed if not agreed. The assessed legal costs in the appeal was $250,000.00. The Claimant in his amended Statement of Claim is claiming that amount under the Particulars of Special Damages. He is also claiming the sum of $5000 as "Costs that was paid to the Defendants." I supposed this was the Costs Ordered in 73 of 2008 i.e. "The Costs of this Order shall be borne by the First Respondent/Intended Defendants". If this is so, it is costs paid "by" the Defendant and not to the Defendants.

[65] On 30th May 2008, the Respondent, Prudential made an Application, that AGTL the Appellant should provide security for costs in order for AGTL to prosecute the appeal. The Application was granted and an Order for Security for Costs was made in the sum of $30,000.00 to be paid by AGTL. It is that sum that the Claimant is claiming under his particulars of Special Damages.

[66] Learned Counsel for the Claimant in his written submission argued:

> "As such, whether or not a party to NEVHCV2008/0073, Mr. Hall has sufficient connection and has standing to bring a Claim for Damages based on the undertaking".

[67] I wish to make it abundantly clear as it is obvious that the Claimant, J. Bradley Hall was not a party to the appeal or the proceedings brought by Prudential against AGTL in the Application for the Appointment of the Receiver.

[68] I would have thought that the Orders made on 4th May 2008 by the Court of Appeal in Civil Appeal no. 0008/2008, do not touch and concern the Claimant. However, the Learned Counsel for the Claimant in their written submissions, contended that the Claim was dismissed on appeal where the Court held that it did not have jurisdiction to hear the Claim concerning the Trust Deed which was not governed by the Courts in Nevis or had any connection with Nevis; a fact which the First Defendant knew. Even if the first defendant knew that, in my view that does not invest J. Bradley Hall with a right to recover costs when he was not a party to the proceedings.

[69] Learned Counsel for the Claimant went on to make this submission:

> "By the Order of June 27th 2008 the 1st Defendant (i.e. Prudential) undertook to abide by any Order the Court may make as to damages in case the Court shall hereafter be of that any person, whether or not a Party (the Claimant emphasized those words) shall have sustained damage by reason of the Order which the then Applicant/Intended Claimant Prudential Trustee Company ought to pay."

[70] Learned Counsel, on behalf of the Claimant contended that it is J. Bradley Hall's Claim that he personally suffered extensive damage due to the acts of the 1st and 2nd Defendant from the Order of 27th June 2008.

[71] As such, the Claimant ought to be compensated based on the undertaking made by the first named Defendant. In my considered opinion an undertaking is given to the Court. In this case the undertaking was given to the Court in favour of the first named Defendant Prudential that the costs, if any, would be paid to the Appellant AGTL.

[72] The undertaking, in my view, could be enforced against the party to the undertaking. In this case, it is AGTL and not the Claimant that made the undertaking to pay the costs. So even if the Claimant paid the sum as a consequence of the undertaking, he has no locus standi. The Company, AGTL is vested with the authority to bring the Claims.

[73] On the issue of forum non-conveniens, Learned Counsel for the Claimant submits as follows:

> "The appointment of the 2nd Defendant was made by virtue of an Order of this Court. The Court of Appeal's decision which followed, causing the said order to be deemed null and void was made by the Court of Appeal for this jurisdiction. The 2nd Defendant in his own affidavit at paragraph 6 stated that he "filed all reports with the High Court of Justice, Nevis which sanctioned all actions that I have undertaken".

[74] I do not understand how this could be relevant to defeat the argument that Nevis is not the proper forum for the trial of this action; when in fact the Court of Appeal set aside the appointment of the Receiver, in effect on the ground of forum non-conveniens.

[75] In the Skeleton Arguments, Learned Counsel for the Claimant argued that the Claimant is not asking the Court to decide on the validity or even consider the alleged Security

Documents, Trust Deeds, Loan Notes or debenture which the Defendants have seemingly placed as the basis of their application. Learned Counsel further argued that as such, there is no requirement for witnesses or even notification of any person who is alleged to be a party to the Trust Deed.

[76] Learned Counsel for the Claimant then referred to a passage in *Spiliada Maritime Corporation v. Cansules Ltd*[6]. Lord Goff at page 476 says:

> "….. The basic principle is that a stay will only be granted on the ground of forum non-conveniens where the Court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice".

[77] Learned Counsel for the Claimant submitted that, "the Claim is for damages pursuant to an Order in these Courts, governed by the laws of St. Kitts and Nevis. The actions of the Receiver and Prudential were made pursuant to that Order. The Transfer of Shares was done to Companies pursuant to that said Order, Companies incorporated and holding registered office in Nevis. The Claim by extension all ancillary relief, in particular the Appointment of the Receiver were (sic) dismissed by the Eastern Caribbean Court of Appeal. All Courts being governed by the laws of St. Kitts and Nevis".

[78] Learned Counsel in their written submission then went on to submit – The Court of Nevis is therefore the "natural forum" for such a claim. It does not follow that because "all

[6] (1987) 1 AC. 461

Courts being governed by the Laws of St. Kitts and Nevis (whatever that means) that Nevis is the natural forum for the trial of this action.

[79] Learned Counsel for the Claimant contended that it will be near impossible for the Claimant to enforce this Judgment in any other jurisdiction and an Order stating that the Claim ought to be brought in another jurisdiction will cause much injustice to the Claimant.

[80] Learned Counsel for the second named Defendant with reference to the Claims for the $30,000.00 paid by way of security for cost, the payment of assessed costs in the Appeal; $250,000.00 payment of assessed costs, contended that it appears that there has not been any assessment of these costs to date. He argued that it follows that a Claim cannot be maintained for a specific sum in respect of such costs. I agree with this submission.

[81] Mr. Carrington further contended that these are sums payable to the Company in such case that the proper Claimant for such relief must be the Company and not the Shareholder. *Prudential Assurance Co. v. Newman Industries*[7]. He submitted that as the Company is in liquidation, it can only act by its liquidators and not by its former Directors or Officers whose authority is terminated at the commencement of the liquidation.

[82] The Claimant alleges that he has suffered loss in his capacity as a Shareholder and in his individual capacity. The first observation I make is that the Claimant in his own

[7] [1982] and 2002

pleadings alleges that he is not currently a Shareholder of the Nevis Subsidiaries and AGTL in liquidation.

[83] The Claimant in his particulars of loss alleges that he has incurred loss (See above). This includes loss of equity of the Company, loss of assets of the Subsidiaries, loss of compensation bonuses and interest on his shares in the Company and Subsidiaries.

[84] Learned Counsel, Mr. Carrington submitted that the Claim is misconceived as the Claimant cannot maintain a Claim which is merely reflective of the loss that may have been suffered by the Company (See Prudential Supra).

[85] Learned Counsel for the Claimant in their written submissions referred to *Johnson v. Gore Wood v. Co.* (a firm)[8]. They submitted in looking at the Claimant's Amended Statement of Claim, it clearly sets out damages which have been personally suffered by the Claimant, damages to which the Company AGTL has no claim.

[86] Learned Counsel for the Claimant in their written submissions argued that when a company suffers loss by a breach of duty to it, a shareholder suffers loss separate and distinct from that suffered by the Company caused by a breach of the duty independently owed to the shareholder each may sue to recover the loss caused to it but neither may recover loss caused to the other by breach of the duty owed to that other.

[8] [2002] 2 A.C.L

[87] In the case at bar which is the duty owed to AGTL? When did that breach of duty occur which caused the company to suffer loss? The Claimant is claiming damages for loss primarily as a result of the appointment of the Receiver.

[88] The personal damages suffered as alleged by the Claimant's is mental anguish and stress, Mr. Carrington submitted, that there is no authority for the proposition that damages for mental anguish are recoverable by a Shareholder from the Receiver of a Company in which he holds shares.

[89] Finally, Learned Counsel, Mr. Carrington submitted that even if the Claimant can maintain personal Claims for loss arising from the making of the Receivership Order what he really seeks to do is invoke the jurisdiction of the Court to enforce a cross undertaking in damages.

[90] He argued that the enforcement of a cross undertaking does not give rise to an action in itself – *Cheltenham & Gloucester Building Society v. Ricketts*[9]. Mr. Carrington submitted that there must first be the exercise of the discretion of the Court that discharged the Order to determine whether the undertaking is to be enforced. No Application was made to the Court of Appeal for such an Order.

[91] Mr. Carrington contended that the usual practice is that the determination of whether the undertaking is to be enforced is made in the same proceedings as that which the Order

[9] [1993] 1 WLR 1545

was discharged. It is therefore not open to the Claimant to seek to enforce the undertaking in completely new proceedings. I agree.

[92] On the issue of abuse of process Mr. Arden Q.C. in his submissions submitted that the Claim concerning the ownership of the Nevis Companies is having regard to the background of these proceedings, extraordinary. It is plainly inconsistent with the representations made by Mr. Hall as to the structure of Amazing Companies with parties with whom AGTL has dealt. On this ground alone the Claim in this regard ought not to be permitted to proceed.

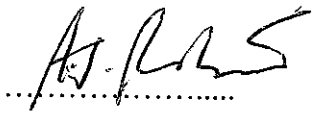
[93] In what Mr. Hall now claims is completely inconsistent with the position which he caused AGTL to take in the first Nevis proceedings and the evidence which he gave in his affidavit sworn on 8th December, 2008. Learned Queen's Counsel argued that this goes far beyond the usual form of abuse of process, where it is suggested that a Claim ought to have been made in earlier proceedings, or that a Claim is a collateral attack on a decision by a Court of competent jurisdiction. This involves Mr. Hall running a case wholly inconsistent with one which he has previously run. It is a clear abuse of process and which the Nevis Court ought not to permit. I agree entirely with this argument.

[94] In light of the foregoing it is hereby Ordered that the proceedings brought by the Claimant against the first named Defendant is hereby dismissed in that the proceedings are oppressive, vexatious and are an abuse of the process of the Court. The Claims

brought against the second Defendant is hereby struck out, they have no reasonable prospect of success.

[95] Costs to the First and Second Defendants on a prescribed costs basis.

Albert Redhead



High Court Judge