

UGANDA / JUDGMENT

**Threeways Shipping Services Group Ltd
& Anor v Standard Chatered Bank (U) Ltd
(Miscellaneous Application No. 1226 of
2016) [2017] UGCommC 55 (21 April 2017)
[2017] UGCommC 55**

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Miscellaneous Application No. 1226 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 1226 OF 2016

(ARISING FROM CIVIL SUIT NO. 977 OF 2016)

1. **THREEWAYS SHIPPING SERVICES GROUP LTD.**
2. **BRO. GROUP LIMITED:..... APPLICANTS**

VERSUS

STANDARD CHARTERED BANK(U) LTD:..... RESPONDENT**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI****R U L I N G:**

The Applicant Threeways Shipping Services (Group) Ltd filed this Application against the Respondent Standard Chartered Bank seeking;

1. A temporary injunction restraining, preventing and stopping the Respondent, its agents, servants, employees or any one acting under its authority or direction from the enforcement of security documents and instruments issued by way of legal mortgages, debentures, charges and guarantees under the facility letter of 14th March 2016.

2. Temporary injunction restraining the Respondent or its Receiver and manager or any appointed by it, from advertising or offering for sale or selling the movable and immovable property listed in the legal mortgage, debenture, charge and guarantee instrument.
3. Preservation of the Applicants properties charged under the facility letter of 14th March 2016.

The Application is grounded on the following;

1. The Respondent misled the Applicant in believing that they were going to release the funding as agreed in the Facility letter.
2. That the Applicant placed reliance on that misrepresentation and resolved to surrender its titles comprised in Plots 1-5 Mpanga Link to the Respondent to use as security to cover the term loan granted as the Facility.
3. That the same misrepresentation also misled the Applicant to execute a Power of Attorney to the 1st Applicant who mortgaged the property as security leading to the execution of a legal mortgage intended to secure all the 1st Applicant's indebtedness.
4. Lastly that because of the unfulfilled contract/ agreement the 1st Applicant failed to turn the company into a going concern and was therefore unable to meet its loan obligations.

The Respondents in Reply contended that the restructuring did not affect the existing position. They declined the action of the 1st Applicant in mortgaging its property. That their failure in turning around the company to a going concern could not be blamed upon the failure to release the US \$ 1,500,000/=.

From the pleadings and communication, it is clear that the purpose of the US \$ 1,500,000/= was to turn around the company to a going concern.

In their letter dated 15th March 2016 to the Respondents the Applicants reacting to the restructuring proposal wrote as follows;

*"*We are in receipt of your restructuring proposal as proposed by the bank that eventually suspended earlier financial facilities in place with us. We shall note that the new facility is devoid of one particular request pertaining to bridge financing amount of USD 1,500,000 which we included in our requests dated 9th March 2016 and that of 10th March 2016. In both communications we explained the importance of securing the additional amount to the continuity of this business as a going concern."**

On the 10th March 2016 while forwarding the titles, the Applicants wrote in part;

"Also note we are pledging these to you on the basis of the rescheduling arrangements we are presently pursuing and also anticipating USD 1,500,000 bridge financing as equity release from the same letter."

On the 23rd March 2016 the Respondents wrote;

“We are in the process of drawing on the short term loan (approval for restructure of past due loans), for regularization of your account. Please provide formal letter requesting for draw down on the loan.....”

On 14th March 2016 the parties signed the facility letter in which the Applicant provided the spousal consent. The Applicant contends that this Facility was frustrated by the Respondents.

The foregoing is in dispute and forms the basis of the suit. It's in the suit that the Applicant has to show firstly that the Respondent misrepresented that an additional 1,500,000 USD would be availed and secondly that failure to decline to release the sums complained of was a breach of the contract which led to a collapse of their business.

For the above reasons, court is in the view that the suit would be moot if the sales took place.

In the premises an injunction would be appropriate.

This court is aware that the money belongs to depositors and so an injunction that remained for long would be injurious to them. For that reason the injunction would be in place for only 90 days long enough for the parties to go through mediation, failure of a settlement the matter would be fast trucked through a hearing.

The sum total is that a prayer for a temporary injunction is granted. The Respondent or their representatives in whatever form are ordered to stay all or any step towards the realization of the mortgage until the matter is disposed.

This injunction expires on the 90th day from the date of this ruling or until further orders to the contrary.

.....

David K. Wangutusi

JUDGE

Date: 21st April 2017

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