**IN THE SUPREME COURT OF BELIZE, A.D. 2017**

**CLAIM NO. 129 OF 2005**

**BETWEEN:**

**WESTERN DEVELOPMENT LIMITED** **Claimant**

**AND**

**THE ATTORNEY GENERAL** **Defendant**

BEFORE: Hon. Chief Justice Benjamin.

Appearances: Mr. Eamon Courtenay, SC for the Claimant.
Ms. Magalie Perdomo, Senior Crown Counsel for the Defendant.

**JUDGMENT**

[1] This Claim involved the construction and interpretation of an agreement signed by the Claimant as contractor and the Ministry of Finance of the Government of Belize dated June 21, 1999 as amended by an agreement dated August 3, 1999. The Claimant seeks damages for the breach of the said agreement which is stated to be for the reclamation and certain infrastructural works to be done on 260 acres of land at or near Mile 3 on the Western Highway, Belize City for the purpose of building homes for Belizeans. The Defendant disputed that there was a binding contract between the parties.

[2] The issue for determination of the Court are:

(a) Was there a binding contract concluded between the parties capable of performance?

(b) If yes, was there a breach of the agreement by the Defendant?

(c) If the Defendant breached the agreement, what is the appropriate remedy by way of award for damages?

BACKGROUND

[3] It is useful to set out the agreement of June 21, 1999 ("the Agreement") in its entirety.

> "THIS AGREEMENT is made June 21st 1999 BETWEEN the Ministry of Finance, Government of Belize (hereinafter called "the employer") of the one part AND Western Development Ltd. located at 4 Miles Northern Highway, Belize City (hereinafter called "the contractor") of the other part.
>
> WHEREAS the employer is desirous of having certain works done, viz.; the reclaiming and related infrastructure works done on 260 acres of land so as to build needed homes for Belizeans;
>
> NOW THIS AGREEMENT WITNESSETH as follows:
>
> Government shall issue in due course to Western Development Ltd. freehold title for 260 acres of land at or near Mile 3 on the Western Highway, Belize City.
>
> Government of Belize will on a cost recovery basis a minimum of BZ 2 million dollars to Western Development Ltd.
>
> Western Development Ltd. will dredge and reclaim the 260 acres of land at or near Mile 3 Western Highway, Belize City.
>
> Western Development Ltd. will in addition ...
>
> Western Development Ltd. will survey the 260 acres of land into ...
>
> Western Development Ltd. will sell to the general public to be agreed with the Government of Belize, parcels of land in the sub-division."

The Agreement was signed by Mr. Joseph Waight, the acting Financial Secretary, on behalf of the Ministry of Finance and signed and sealed by Mr. William Lindo as Director of the Claimant company, Western Development Ltd.

[4] On August 3, 1999, the parties (the Claimant then incorrectly styled "Western Development Company Limited") signed an "AMENDMENT AGREEMENT" which was executed in similar fashion to the Agreement by an addition clause. After reciting the existence of the Agreement (referred to as "the Principal Agreement") and the mutual agreement of the parties to amend the Agreement, the following new clause was added as Clause 7:

> "7. Western Development Company Limited (the contractor) unconditionally and irrevocably agrees and authorises that the Government of Belize (the employer) shall deduct the sum of US $371,180.00 from the proceeds of works to be undertaken by Western Development Company towards the performance of this contract in order to cover certain financing costs. These sums shall be assigned in Belize dollars to Atlantic Bank Limited to defray the following:
>
> (i) an initial deposit by Western Development Limited of US $57,236.00 to the firm of IMS Inc. of USA to meet a 20% deposit towards the cost of a Model 5012 Dredge;
>
> (ii) the cost of a Letter of Credit in the amount of US $228,944.00 to be open by Western Development Limited in favour of IMS Inc. of USA to meet the remaining 80% cost of the Model 5012 Dredge; and
>
> (iii) an advance to Western Development Limited of US $85,000.00 to meet the cost of additional equipment needed for the project."

The Amended Agreement was preceded by a letter of June 18, 1999 to Hon. Ralph Fonseca, then a Minister of Government, from the Claimant seeking a letter to its Bankers, Atlantic Bank Ltd. requesting a letter stated that the Government would refund the Bank for a Letter of Credit in favour of IMS Inc. for a 5012 Dredge subject to certain stated conditions.

[5] In a memorandum dated June 23, 1999 written by the Financial Secretary to the said Minister, he made reference to a Letter of Comfort to Atlantic Bank in favour of the Claimant. He further wrote:

> "With regard to the land reclamation contract, as requested I have executed the attached Agreement with Western Development Limited which provides a framework for the issue, in the future, of title to some 260 acres of land at Mile 3 on the Western Highway and for an advance of $2.0 million to Western Development Limited for the land reclamation project. It is understood that the detailed specifications of the project will be set out in a formal contract to be executed between Western Development Limited and the Government of Belize in the near future."

The Financial Secretary wrote a further note dated August 2, 1999 to the said Minister indicating that the Bank was requesting that the Letter of Comfort dated July 12, 1999 be amended by deleting the paragraph which stated that "payment for the Letter of Credit will be made in the context of a comprehensive contract to be signed between Government of Belize and Western Development Limited." Mr. Waight went on to make the following observation:

> "If this condition is removed it could expose Government to having to pay for the dredge up-front in the event that the comprehensive contract has not been finalized by the time the Letter of Credit is drawn."

[6] On August 3, 1999, the Claimant executed a bond in favour of the Government to cover the financing costs to be advanced to the Claimant and indemnifying the Government of Belize to the extent of such liability. The document recited the existence of "a signed preliminary agreement on 21st June 1999 as further amended on 3rd August, 1999" to undertake certain works. The exchanges resulted in another Letter of Comfort dated August 13, 1999 to the Bank indicating the willingness of the Government to assign certain advances and payment arising from the Agreement to the Bank to cover the financing costs related to the acquisition of a Model 5012 Dredge. Further letters of similar intent were issued by the Government to the Bank on February 21, 2000. There followed correspondence for the execution of security documents

including a Pledge Agreement and a Performance Bond to achieve the settlement of the Letter of Credit to facilitate the release of the dredge.

[7] The Pledge Agreement was dated March 2000 and was signed by the Claimant in favour of the Government pledging the Model 5012 Dredge as collateral for the settling of the Letter of Credit to the Bank. The said Pledge Agreement recited the following:

> "WHEREAS
>
> (1) The Government of Belize (GOB) entered into an agreement dated 21 June 1999 with the Pledgor, as amended by the agreement dated 3 August 1999, for the reclamation and development of a parcel of land near Mile 3 on the Western Highway;
>
> (2) GOB and the Pledgor intend to enter into a comprehensive agreement detailing the works to be carried out by the Pledgor under the aforementioned agreement."

[8] The Defendant submitted a further AMENDMENT AGREEMENT bearing the date of February 14, 2000 and which set out detailed conditions for the performance of the Agreement, together with specifications and a payment schedule. The Agreement was never signed by the Government although it was signed by the Claimant's representative, Mr. William Lindo, who told the Court that he was asked to do so by Mr. Gandhi.

[9] On May 15, 2000, the Claimant entered into a contract with the Government to carry out dredging and land reclamation works at the Belizean Beach area along the Western Highway, Belize City. The contract contained provisions identifying the scope of works and as to payment among other detailed conditions. These works were satisfactorily completed. There followed an agreement dated April 30, 2001 between the Government and the Claimant for the dredging of the Burton Canal and its entrances. Here again, the contract provided for the scope of works, the contract price and payment thereof among other detailed conditions. This contract was also completed as per contract. The stark fact emerging from the foregoing was that at the

time the Agreement was signed the Claimant did not own a dredge which was a requirement to carry out the reclamation works.

[10] At paragraph 8 of its Statement of Claim, the Claimant averred that the expenditure and revenue to be realized under the agreement was estimated and delivered to the Financial Secretary. These matters were set out in six clauses which were never incorporated into a written document signed by the parties. Mr. William Lindo told the Court that the clauses were agreed to by Hon. Minister Fonseca. The Defence pleaded that the clauses did not form part of the Agreement and that the same were unilaterally prepared by the Claimant.

[11] By a letter of January 31, 2001, the Claimant wrote to the then Hon. Prime Minister referring to the Agreement and seeking his intervention in having the same implemented. This was followed up by a letter of July 16, 2001 to Hon. Minister Fonseca referencing the Agreement and the Amendment Agreement putting the Government on notice to perform the Agreement immediately. The said letter also detailed wages, interest, insurance and maintenance incurred because of the delay in performing the Agreement. A demand of $20,667,567.00 was made as damages payable by the Government. A further letter of demand dated July 31, 2001 was written to the said Minister seeking payment of the sum of $20,715,707.00 within 14 days.

[12] On June 20, 2005, the Claim was filed with Statement of Claim seeking damages for breach of the Agreement as amended by the Amended Agreement in the sum of $59,911,361.00 together with fees, costs and interest. In the Defence filed on July 14, 2005, the Claim was disputed on the basis that the Agreement was "a general Agreement which was incapable of performance without more, and which both parties thereto understood would be amended or supplemented to provide for the specific requirements of the task involved". It was averred that the only amendment to the Agreement was the agreement of August 3, 1999 by which the Government agreed to assist the Claimant to obtain certain equipment for its business. It was further asserted that there was no consideration flowing from the Claimant in any of the 1999 agreements. It was denied that the Government made to the Claimant any representations upon which he acted to his detriment.

[13] The Claimant filed a somewhat prolix Reply to the Defence. Paragraph 1 encapsulated its response by averring as follows:

> "The Agreement is not a general agreement. It specifically referred to reclamation of land for the purpose of building homes for Belizeans. The agreement was capable of performance, except for the default of the defendant, which frustrated the performance of the agreement by the Claimant. It was never the undertaking by either of the parties that the agreement would be amended or supplemented to provide specific requirements of the task or an agreement. The agreement as amended speaks for itself."

THE EVIDENCE

[14] The Claimant adduced five witnesses including its Managing Director, Mr. William Lindo, who was the only one cross-examined. His witness statement detailed the signing of the Agreement and the Amended Agreement, the latter being necessitated because, as he was told by the then Solicitor General, and Mr. Waight, that it was necessary to allow for Government to deduct from the proceeds of the works to pay for the dredge. He went on to explain the method of "cost recovery". Details were provided of the financial arrangements with the Bank for a Letter of Credit for the acquisition of the dredge and the subsequent assumption of the loan by the Development Finance Corporation. Mr. Lindo went on to chronicle the arrangements for the Claimant to be awarded a contract to dredge the Belizean Beach which was successfully completed.

[15] In the witness statement of Mr. Lindo, he said that Mr. Gandhi told him that his office would prepare the legal work and that the Claimant should hire the land surveyor. To this end, Mr. Kenneth Gillett, licensed land surveyor, was hired to survey and conduct title searches in respect of the 260-acre parcel of land. Reference was made to correspondence with the then former Prime Minister including the letter of January 31, 2001 and to the letters of demand to Minister Fonseca. The remainder of the witness statement dealt with contracts awarded to other entities for dredging works.

[16] Learned Senior Crown Counsel focused her cross-examination of Mr. Lindo upon the specific terms of the Agreement, the Amended Agreement and the Pledge Agreement. The witness agreed that the Agreement provided that title to the 260 acres of land at or near Mile 3 on the Western Highway was to be issued to the Claimant "in due course" and that no time factor for the performance of the Agreement was provided for. He further agreed that there was no specificity as to the description of the land and no provision for a contract price in either document. Mr. Lindo admitted to submitting two more documents to amend the Agreement but these were never signed. In fact, he said the Government refused to sign them. One such document bore the date of February 14, 2000 and which Mr. Lindo claimed to have been prepared by Mr. Gandhi who asked him to sign it which he did. The said document, which was alluded to previously, purported to amend the Agreement to include conditions and provisions for payment and specifications.

[17] Mr. Lindo denied that he was aware that the Agreement was not a binding document. For comparison, he was shown the contracts for the dredging of the Belizean Beach and Burton Canal and he noted the contracts included all the required details as to scope of works and payment. He was also taken to the Pledge Agreement and noted the reference to an intention to enter into a "Comprehensive agreement". As to the estimated expenditure and revenue set out in paragraph 8 of the Statement of Claim, Mr. Lindo accepted that these Clauses did not appear in the Agreement but he insisted that they were included in a letter to Mr. Waight and that they were agreed to by the Hon. Minister though not by the parties.

[18] Mr. Cecil Wilford Arnold, a certified Surveyor, was presented as a witness for the Claimant. He stated in his witness statement that he was District Lands and Survey Officer for the Belize District at the time Stuart Estate, an area bordering Fabers Road and the Western Highway, was acquired by Government. He estimated the area to be approximately 260 acres. This evidence did little to advance the Claim.

[19] The witness statement of Jacob Tiechroeb of Tiechroeb & Sons Limited stated that his company had performed certain works for a named European company at a site at or near Mile 3 on the Western Highway. Here again, the evidence was of little value.

The witness statement of Sandra Bedran as General Manager of Atlantic Bank Ltd. served to exhibit the Letter of Comfort of August 13, 1999 from the Government of Belize and to confirm the approval of the Letter of Credit for the Claimant to purchase the dredge. Mr. Celso Rodriguez, the Credit Manager of the Bank gave a witness statement confirming the issuance of Letters of Credit to the Claimant on September 27, 1999 after the dredge had arrived in Belize.

[20] Mr. Kenneth Gillett, a certified Land Surveyor, signed a witness statement which was accepted into evidence along with the other witness statements. He stated that in 2000, he conducted a search in respect of 260 acres which he described as the subject matter of the Agreement. His work was commissioned by the Claimant and his report containing his findings were exhibited to his witness statement.

[21] The sole witness for the Defendant was Mr. Joseph Waight, Financial Secretary in the Ministry of Finance of the Government of Belize, a post he held at all material times in this matter involving the Government and the Claimant. As previously iterated, he stated that he signed the Agreement, for which he said that no consideration was provided. He also said that he signed the Amended Agreement. He stipulated that the Agreement and the Amended Agreement "lacked crucial details as to practical conditions, specifications, payment schedules, etc." He further said the Agreement was incapable of immediate performance as the Claimant did not own a dredge.

[22] Mr. Waight exhibited his memorandum to Hon. Minister Fonseca, in which he pointed out that the Agreement was a 'framework' and a formal contract would have to be executed to address specifications of the Project. He further admitted receiving the Draft Amendment Agreement of February 14, 2000 from the Claimant but he said that it was never signed by the Government. The witness statement referred to correspondence and documentation relating to the acquisition of the dredge by the Claimant and spoke to other events. It was pointed out that in a letter to the Bank of February 24, 2000, it was stated that the Government was "in the process of preparing a comprehensive contract to be executed with Western Development Limited" and also that a similar expression of intent was made in the Pledge Agreement of March 3, 2000.

[23] Learned Senior Counsel cross-examined Mr. Waight. He admitted that he signed the Agreement, was intended to be a binding agreement and that it was not described as a framework agreement. He accepted that the obligations of Government were to issue freehold title to the Claimant for 260 acres of land at or near Mile 3 on the Western Highway and that the sum of BZ $2 million was to be advanced on a cost recovery basis. Mr. Waight agreed that he wrote letters of comfort to the Bank consistent with the signing of the Amended Agreement. He denied knowledge of Government preparing a further amendment to the contract. He went on to accept the truth of the letter of February 24, 2000 to the Bank's Sandra Bedran.

[24] The witness was asked to explain why the 260 acres of land were not transferred to the Claimant. He explained that there were concerns as to the Claimant's capacity and ability to carry out the works. He ascribed the same reasons for the Government not advancing the $2 million.

[25] In his re-examination he gave the following explanation for his memorandum of June 23, 1999 to the Hon. Minister setting out his understanding that a formal contract ought to be executed. He responded to the Court in this way:

> "The original agreement dated June 21, 1999 set out broad heads/items/obligations by both parties but absent many things including the matter of the price of the land to be issued, the cost recovery mechanisms, the schedule and timing of the works and the repayment terms and conditions of the advanced sum. And therefore two days after signing the agreement of June 21, 1999, I brought to the attention of the Minister that a formal contract would have to be executed."

THE LAW

[26] It is fundamental to the law of contract that parties must be *ad idem* as to what is agreed. In its ideal state, a contract ought to include all the matters which the parties think are necessary to constitute a contract. The Court is empowered at common law to objectively assess the effect of what was said, and not said but is not to be concerned with the subjective unspoken intentions of the parties (see: **Hussey v Horne Payne**

**(1879) 4 App Cas 311** at p. 323; **Stover v Manchester City Council [1974] 1 WLR 1403** at p. 1408H; and **Harmony Shipping v Saudi-Europe Line (the Good Helmsman) [1981] 1 Lloyd's Rep 377** at p. 44). The terms of the contract are to be decided by the parties as between them. The matter was put thus in **Pagnan v Feed Products [1987] 2 Lloyd's Rep. 620** at p. 611:

> "The parties are to be regarded as the masters of their contractual fate. It is their intentions which matter and to which the Court must strive to give effect."

The contract must include all such terms as are essential to allow the contract "to be workable as a matter of commercial common sense" (**Trollop and Colls v Atomic Power Constructions [1963] 1 WLR 333** at p. 337. It is not open to the Court to imply a term which the parties have failed to agree on and which is essential to the performance of the agreement. Megaw, J in **Trollop and Colls** expressed it in these words (at p. 341):

> "I do not think that a term such as this can be implied simply for the purpose of upholding the existence of a contract, unless it can clearly be seen that it conforms with what the parties truly intended and with what they would have accepted as a matter of course had the question been raised in the course of the negotiations or at the moment of making the supposed contract."

[27] Learned Senior Counsel for the Claimant cited the case of **Branca v Cobarro [1947] KB 854**. In that case the Court of Appeal upheld as a concluded agreement, an agreement to sell a mushroom farm, in respect of which a deposit was paid. It was stated that: "This is a provisional agreement until a fully legalized agreement, drawn up by a solicitor and embodying all the conditions herewith stated, is signed. Lord Greene, MR reasoned as follows:

> "An agreement which is only to last until it is replaced by a formal document containing the same terms and drawn up by a solicitor could, I should have thought, be described by no more apt word than the word

"provisional". When the word "provisional" is linked up with the word "until" the whole thing seems to fall into shape. My reading of this document is that both parties were determined to hold themselves and one another bound. They realized the desirability of a formal document, as many contracting parties do, but were determined that there should be no escape for either of them in that interim period between the signing of this document and the signature of the formal agreement, and they have used words which are exactly apt to produce that result and do not, in my opinion, suggest that the fully legalized agreement is in any sense to be a condition to be fulfilled before the parties are bound."

This case was decided on the wording of the document.

[28] Also relied upon was the case of **First Energy (UK) Ltd v Hungarian International Bank Ltd [1993] 2 Lloyd's Rep 194**, where the Court of Appeal was concerned with whether there was a binding agreement contained in a letter offering credit facilities. The letter was held to be an unconditional and firm offer as it contained all the essentials of a binding contract and such offer had been accepted.

[29] On behalf of the Defendant, learned Senior Crown Counsel referred to the dictum of Liverpool, JA in **Boggess et al v Badder Hassan (1991) 46 WIR 72** at p. 85 where he stated:

"It is a well-established rule that parties make their own contract, and this means that they must agree on its terms. If therefore the terms are unsettled or indefinite, the contract cannot be upheld. For although the courts always seek to implement the intentions of parties, they will not make a contract for them in order to do so. On the other hand, it must be emphasized that the courts seek to uphold bargains whenever possible; and the principles which govern their approach are succinctly stated by Lord Wright in **Hillas & Co Ltd v Arcos Ltd (1932) 147 LT 503** at p. 514 in the following words:

"Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, verba ita sunt intelligenda, ut res magis valeat quam pereat. That maxim, however, does not mean that the court is to make a contract for the parties or to go outside the words they have used, except in so far as there are appropriate implications of law."

[30] I do agree with learned Senior Crown Counsel that the case of **Branca v Cobarro** and **First Energy (UK) Ltd v Hungarian International Bank Ltd** both dealt with situations where the documents construed contained all the essential elements of the contract. In the former case, the Court of Appeal held that the wording employed pointed to a binding contract being concluded notwithstanding the use of the word "provisional". In the **First Energy** case, the Court of Appeal found that a reasonable businessman placed in the same objective setting, would have read the facilities letter as being an unconditional and firm offer as it contained all the essential for the conclusion of a binding contract.

[31] The Defendant further referred to the case of **Courtney and Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd et al [1975] 1 All ER 716**. Lord Denning, MR held that there could not be a binding contract for the reason that there was no agreement on the price nor was there any method by which the price was to be calculated.

IS THERE A BINDING AGREEMENT BETWEEN THE PARTIES CAPABLE OF BEING PERFORMED?

[32] The main documents to be construed are the Agreement and the Amended Agreement. The latter document is of minimal assistance as it merely served to add a clause to provide for the financing of a dredge, although it highlighted the fact that the

Claimant was not equipped to perform the contract. The Agreement recited that the Government was desirous of having 260 acres of land reclaimed and infrastructural works done thereon for the purpose of building homes for Belizeans. The six clauses dealt with the following matters:

(1) The obligations of the Government to:

(a) issue to the Claimant freehold title for 260 acres of land at or near Mile 3 on the Western Highway, Belize City; and

(b) advance a minimum of BZ $2 million to the Defendant on a cost recovery basis.

(2) The obligations of the Claimant to:

(a) dredge and reclaim the 260 acres of land at or near Mile 3 Western Highway, Belize City;

(b) build and install earthen drains, stone surface roads, plastic culverts and water drains in the sub-division;

(c) survey the 260 acres into 1200 parcels of land including spaces for parks, roads, a shopping plaza, schools and churches; and

(d) sell the parcels of land to the general public at prices to be agreed with the Government of Belize.

It can be seen at once that the 260 acres of land was only identified by an approximate location and its imprecise description was further emphasized by the Agreement recognizing the need for a survey to be carried out. Indeed, the evidence of Mr. Gillett was that he carried out such a survey commissioned by the Claimant.

[33] The sum to be advanced by Government was not precisely stated nor was the method of cost recovery and the time frame therefor stipulated. Further, this being a contract to sell house lots among other matters, there was no agreement as to the price or sums to be paid by the Claimant. The sixth Clause provided that the prices of the

parcels of land were to be agreed and no mechanism was put in place to calculate the prices.

[34] The Financial Secretary wrote to the Hon. Minister two days after the Agreement was signed by him on behalf of the Government pointing out that the Agreement provided a 'framework' for the future and stating his understanding that the detailed specifications would be the subject of a formal contract to be executed between the parties in the near future. Significantly, the Claimant also recognised that the Agreement was incomplete and needed additional details as he signed and submitted a Draft Agreement on February 14, 2000. Plainly, the Claimant was the person initiating this document as the Financial Secretary, who was the official signatory of the Government did not sign it. It was not difficult to surmise that he had no instructions or authority to do so.

[35] In his dealings, Mr. Waight was consistent in asserting that there was need for a comprehensive agreement. This was evidenced by the Pledge Agreement on March 3, 2000 in which the second clause stated that the parties intended to enter into a comprehensive agreement detailing the works to be carried out by the Pledgor under the 1999 Agreement. Also, in a memorandum to the Hon. Minister on August 2, 1999, Mr. Waight again cautioned that the paragraph in the Letter of Comfort, indicating that a comprehensive contract was to be signed between the parties ought not to be deleted, otherwise liability could be incurred by Government in the absence of such comprehensive agreement. It is fair to say that the Financial Secretary was seeking approval to proceed to entering into a comprehensive agreement.

[36] Reflective of Mr. Waight's position was the letter of February 24, 2000 to Sandra Bedran of Atlantic Bank. The letter included the following: "The Government of Belize is in the process of preparing a comprehensive contract to be executed with Western Development Limited. This contract will specify, inter alia, the works to be performed together with a timetable for completion of such works." Such a comprehensive contract was signed and submitted by the Claimant on February 14, 2000 with annexes covering conditions, specifications as to works and payment schedule.

[37] Viewed from the perspective of both parties, the terms of the Agreement were not fully settled and lacked such detail as to allow for performance. The parties did not advance to the stage of executing a comprehensive contract setting out the exact works to be performed, a timetable for performance of obligations and for completion and a schedule for payment. In sum, the Amended Agreement was uncertain and not capable of creating a binding and enforceable contract. I therefore conclude that there was no binding agreement between the parties that was capable of performance. It follows that there could not be any breach of the Agreement. The remaining two issues therefore do not require determination by the Court.

ORDER

[38] It is ordered that the Claim stand dismissed. The Defendant is entitled to costs. I adopt the suggestion by learned Senior Counsel that costs be set at $15,000.00 and I so order.

**DATED this 22nd day of September 2017.**

**KENNETH A. BENJAMIN**
**Chief Justice**