IN THE COURT OF APPEAL OF BELIZE AD 2018

CIVIL APPEAL NO 12 of 2013

KAREN ACOSTA LONGSWORTH Appellant

v

BAY TRUST CORPORATE SERVICES LIMITED Respondent

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Mr Justice Awich	Justice of Appeal

DA Barrow SC and N Barrow for the appellant.
RR Williams SC and JA Ellis Bradley for the respondent.

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16 March 2015 and 18 September 2018.

SIR MANUEL SOSA P

[1] I concur in the reasons for judgment given, and the orders proposed, in the judgment of Awich JA, which I have read in draft.

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SIR MANUEL SOSA P

MORRISON JA

[2] I have had the privilege of reading in draft the judgment prepared by my learned brother Awich JA in this matter. I agree entirely with his reasoning and conclusion that Arana J ('the learned trial judge') erred in (i) denying the appellant a remedy on her claim for wrongful dismissal on the ground that the respondent company did dismiss her; (ii) giving judgment for the respondent against the appellant in the sum of $214,000.00 on its counterclaim; and (iii) awarding costs to the respondent. I add a few words of my own only because we are disagreeing with the decision of the learned trial judge.

[3] The learned trial judge found that, contrary to the respondent's pleaded case, the actions of Mr Wilson in 're-designating' the appellant's status within the company were sufficient in law to amount to constructive dismissal. Awich JA has found that she was entitled to make that finding on the evidence. I am fully in agreement with both learned judges on this, considering as I do that no other finding was reasonably open to the learned trial judge on the evidence in the case.

[4] But, despite this clear finding, the learned trial judge considered (at para 14) that Mr Wilson's actions amounted to no more than "a proposal for a re-designation from a majority shareholder [which] cannot be attributed to an action by the Defendant Company against whom this claim has been brought". In support of this position, the learned trial judge referred to the provision in article 80 of the Articles of Association of the respondent company that "[e]very Managing Director shall be liable to be dismissed or removed by the Board of Directors, ..."

[5] Accordingly, the learned trial judge went on to conclude (at para 15) that the appellant "acted prematurely in walking away from her job after this proposed redesignation was put to her by Mr Wilson". On this basis, the learned trial judge found that the appellant had abandoned her job and that the respondent company was therefore not liable to her. The learned trial judge then proceeded to give judgment for the respondent company on the counterclaim.

[6] Given the learned trial judge's very clear finding (on, if I may say so, very clear evidence) that the appellant had been constructively dismissed, I found this to be a startling conclusion. So much so, that I was initially inclined to think that the appeal should be allowed on the basis of the **Re Duomatic** principle (**Re Duomatic Ltd** [1969] 2 Ch 365), which is the principal basis put forward by Mr Barrow SC in support of the appeal. But I have subsequently come to doubt whether that is a tenable approach, given the fact that the appellant's pleaded case was that she was dismissed by the respondent's email dated 16 July 2011, re-designating her status, and not by some kind of implied resolution of the board arising out of the meeting between the appellant and Mr Wilson on 18 July 2011. To go the **Re Duomatic** route now, therefore, would necessarily involve re-ordering the facts of the case to give the appellant a remedy on a basis not pleaded by her.

[7] This therefore led me to consider whether some other basis might not be found to support the appellant's case, given my clear view, based on the now concurrent findings of fact on constructive dismissal, that the justice of the case is plainly in her favour. In further written submissions dated 13 February 2018 (submitted at the invitation of the court), Messrs Barrow & Williams for the respondent contended that the learned trial judge's conclusion was unassailable, given the well-known company law principles of attribution. In this regard, Messrs Barrow & Williams relied on the decision of the House of Lords in **Meridian Global Funds Management Asia Ltd v Securities Commission** [1995] 2 AC 500. In that case, Lord Hoffmann referred (at page 506) to it being "a necessary part of corporate personality that there should be rules by which acts are attributed to the company". Describing these rules as "rules of attribution", Lord Hoffmann went on the say the following:

> "The company's primary rules of attribution will generally be found in its constitution, typically the articles of association … There are also primary rules of attribution which are not expressly stated in the articles but implied by company law, such as
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> > 'the unanimous decision of all the shareholders in a solvent company about anything which the company under its memorandum of association

> has power to do shall be the decision of the company': see *Multinational Gas and Petrochemical Gas and Petrochemical Services Ltd* [1983] Ch 258

> These primary rules of attribution are obviously not enough to enable a company to go out into the world and do business. Not every act on behalf of a company could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The company therefore builds upon the primary rules of attribution by using general rules of attribution which are equally applicable to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the company's primary rules of attribution, count as the acts of the company. And having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract or vicarious liability in tort."

[8] In this case, the respondent submits, it is the primary rule of attribution stated in article 80 which applies and therefore, in the absence of a resolution of the board of the company, nothing done by Mr Wilson can be taken to be an act of the respondent.

[9] On the other hand, in their further written submissions filed on 28 January 2018 on behalf of the appellant, Messrs Barrow & Co referred to the more recent decision of the United Kingdom Supreme Court in **Jetivia SA & anr v Bilta Limited (in liquidation) & ors** [2015] UKSC 23. In his brief concurrence in that case, Lord Neuberger observed (at paragraph 9) that "whether or not it is appropriate to attribute an action by, or a state of mind of, a company director or agent to the company or the agent's principal in relation to a particular claim against the company or the principal must depend on the nature and factual context of the claim in question" (see also the judgment of Lord Mance at paragraph 41). And (at paragraph 205) Lords Toulson and Hodge observed (in a joint judgment) that "where a third party makes a claim against the company, the rules of agency will normally suffice to attribute to the company not only the act of the director or employee but also his or her state of mind, where relevant".

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[10] So, while rules of attribution are of critical importance whenever it is sought to fix a company with liability for the acts of its servants or agents, the nature of the claim and the context in which it arises must always be kept in mind. In my respectful view, while article 80 is obviously applicable to cases of express acts of dismissal by a company, there is no reason to expand its area of operation beyond that. Indeed, it seems to me that to do that would be to hold that a company with an article to the same effect of article 80 could in no circumstance be liable for constructive dismissal, that is, a dismissal that is to be implied from the circumstances of the case, rather than one attributable to the express act of the board of directors.

[11] In this case, there can be no question that Mr Wilson acted at all times in his capacity as a director and chairman of the respondent. Nor is there any issue that, in acting as he did towards the appellant (that is, in re-designating her position), he was acting within the scope of his authority. Accordingly, by the operation of the principles of agency, his actions would ordinarily be taken to be the actions of the respondent.

[12] It follows from this, in my view, that it was open to the learned trial judge to have found that, in keeping with her pleaded case, the appellant was in fact constructively dismissed by the respondent on 16 July 2011, when Mr Wilson, acting in his capacity as director/chairman, purported to re-designate her. On this basis, I would therefore allow the appeal and enter judgment for the appellant in the amount claimed by her. It naturally follows from this that I would also set aside the judgment in favour of the respondent on the counterclaim, as well as the order for costs in the court below against the appellant. I would award costs here and in the court below to the appellant, such costs to be taxed if not sooner agreed.

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MORRISON JA

AWICH JA

[13] This appeal is against the judgment dated 18 February 2013, of the learned trial judge, Arana J, sitting in the Supreme Court, the trial court. In her judgment, Arana J decided that, Ms. Karen Acosta Longsworth, the claimant, and now the appellant, had not been wrongfully dismissed from her post as the managing director of Bay Trust Corporation Services Limited, the defendant, now the respondent, by the company, rather she abandoned her employment. Accordingly, the judge proceeded to hold that, Ms. Acosta Longsworth breached her contract of employment. The judge dismissed the claim of Ms. Acosta Longsworth and granted the counterclaim of the company. Arana J then proceeded to make an order that, Ms. Acosta Longsworth pay $214,000.00 damages to Bay Trust Corporate Services Limited, and pay the costs of the proceedings. Acosta Longsworth has appealed against the judgment, that is, against the order for damages and costs.

[14] My respectful conclusion is that, the appeal should be allowed to the extent that, Arana J erred in deciding that, the appellant was not dismissed by the respondent company; and erred in granting the counterclaim and making the order that, the appellant pay $214,000.00 damages and costs to the respondent. The orders that I would make would be: (1) the appeal is allowed, and the order of the trial judge dismissing the claim of the appellant is set aside; (2) the counterclaim is dismissed and the order granting the counterclaim is set aside; (3) the order for damages and costs against the appellant is set aside; (4) the respondent shall pay $476,000.00 in damages with interest at 6% per annum from the date on which the claim was filed, to the appellant; (5) the respondent shall pay the costs of the appeal and of the trial in the Supreme Court. The order for costs is provisional; it shall become final after seven days, unless an application for a different order is made within the seven days.

The Facts

[15] The appellant is Karen Acosta Longsworth. She was the claimant in the trial in the Supreme Court. The sole respondent is Bay Trust Corporate Services Limited, it was the

sole defendant in the trial. I shall refer to it as BTCSL, the acronym used by the parties and the trial judge, or simply as the company or respondent.

[16] BTCSL was incorporated a limited liability company in Belize on 1 February 2002, under the Companies Act, Cap. 250. The subscribers to the Memorandum of Association and Articles of Association were one, Glen Wilson, and Karen Acosta Longsworth. They subscribed one share of $1.00 each. They were two of the first three directors of the company. There is no certificate of incorporation in the record, but the Memorandum of Association and Articles of Association were included. The name of the company was stated in the Memorandum of Association as, "BAY TRUST CORPORATE SERVICES LIMITED (formerly BAY TRUST INTERNATIONAL LIMITED)". The business objects of the company included: carrying on the business of a provider of international financial services, and of a registered agent of foreign companies, including registering foreign companies and acting as a director of the companies.

[17] BTCSL had been promoted from a business known as Bay Trust International Limited - BTIL. There is no certificate of incorporation and no Memorandum of Association and Articles of Association of that company in the record. By law, a certificate of incorporation issued by the Registrar of Companies is, "conclusive evidence … that, an association is a company authorized to be registered and duly registered under the Companies Act" – see **s. 17(1) of the Act**. Lack of conclusive evidence proving incorporation of BTIL and of BTCSL is not important in deciding this appeal. Further, although BTIL has been mentioned several times in the evidence and in the judgment of Arana J, it is irrelevant in deciding the appeal.

[18] When the disagreement, the subject of the claim in this appeal case arose in 2010, one Wilson and his trustees, including the appellant, owned 70% of the shares in BTCSL, and the appellant in her own right owned 30%. There were five directors, namely: Glen Wilson, Karen Acosta Longsworth, Tricia Saunders, Gina Sutherland and Floyd Sutherland. In May 2011, at a general meeting, the last three directors either resigned or were removed from the office of director. Also the trustees, including Acosta Longsworth, who held shares on trust for Wilson returned them to him. From then Mr. Wilson held 70% of the shares directly. More shares were issued, but Wilson and Acosta Longsworth,

the only shareholders, acquired them, and maintained the shareholding ratio of 70% to 30%. Mr. Wilson became or continued as the chairman of the board of directors. Ms. Acosta Longsworth was the only other director since.

[19] Initially Mr. Wilson lived in France and in Switzerland, where he carried on the same, or similar or related businesses, and travelled to Belize every three months. He moved to Belize in 2008 and worked as, "a consultant", to BTCSL. Ms. Acosta Longsworth, started to work as a manager for BTIL in Belize. Later she managed the businesses of BTIL and BTCSL together in Belize. She stated that, she did so under an unwritten contract of service, and then under a written contract dated 28 January 2002, between herself and BTIL, the precursor to BTCSL; and then under a, "further contract" with BTCSL, which was agreed to have commenced on 3 January, 2011. That further contract was also a written contract. The further contract recorded that, Ms. Acosta Longsworth was then the managing director of BTCSL; her job description was stated; her salary and other items of remuneration were also stated. She was employed for an initial period of five years from 3 January 2011, and thereafter she would be employed from year to year. Both parties were authorised to give six months notice of termination of the contract of employment.

[20] From March 2010, the working relationship between Mr. Wilson and the appellant, which had been very good, deteriorated. The appellant stated that, upon informing Mr. Wilson that she was pregnant, he began to disagree with her about everything in running the company, and started to involve himself in the day to day business of the company. He required her to report to, "the board of directors" on the day to day running of the company and instructed her to copy all emails to him. Mr. Wilson denied the reason for the state of affairs.

[21] In early February, 2011 when Ms. Acosta Longsworth was on maternity leave, Mr. Wilson formulated changes in the management of the company in a document entitled: "The Future of Bay Trust". He was to become director of finance. He sent a copy to Ms. Acosta Longsworth. She then sought a meeting and met with Mr. Wilson. Among other things, he asked her to justify why she should return to work for the company. She said, that is when she decided to secure her position in writing in the contract of employment

in which the date of commencement was back-dated to 3 January 2011, in order to include in the contract that part of the period of prior employment in the post of managing director.

[22] On 10 February, 2011 at 3.30 p.m. Mr. Wilson again informed Ms. Acosta Longsworth in an email and a document entitled, "Vision For the Future", that he had changed his "designation from President to Chairman, and Director of Finance", in order that he, as the majority shareholder, would be able to control his investment. In the document the position of Ms. Acosta Longsworth was still described as, "Managing Director of BTCSL and BTIL". She was to report to the chairman, Mr. Wilson. Her job description was stated under seven headings. At 8.33 p.m. that day she replied: "It is my sincere hope that these changes will facilitate the type of enabling environment that will support the mutual rebuilding of our business relationship …" The exchange of emails continued unabated.

[23] On 16 July, 2011 Mr. Wilson sent yet another email to Ms. Acosta Longsworth to which he attached another document entitled: "The Way Forward". In the email he stated that, he was taking over management of the company forthwith, Ms. Acosta Longsworth would remain a director. But in the document itself Mr. Wilson stated among other things, that the designation of Ms. Acosta Longsworth changed to, "General Manager Trust", she would become part of the Trust department. As managing director she had been responsible for all the five departments of the company.

[24] The appellant objected to the change in her job title and job description, and to the reorganization. She questioned Mr. Wilson's authority to take over the management of the company, and asked him, "to confirm if he was demoting her".

[25] On 18 July, 2011 Ms. Acosta Longsworth went to Mr. Wilson's office to discuss the, "proposed change". She told him that she felt it was a breach of the contract of service because he basically took away all the duties of a managing director from her and reassigned her to work in the Trust Department only. Mr. Wilson responded that, her position of managing director had not been confirmed at the recent annual general meeting, and that, his action was not a breach of the contract, he was entitled to make

the changes. The appellant enquired if Mr. Wilson had consulted an attorney. He replied that he had been advised by a labour consultant.

[26] The disagreement was not resolved. The appellant left Mr. Wilson's office informing him that she would consult an attorney. She did not return to Mr. Wilson. She never reported back to her employment at BTCSL. The employees who headed the various departments also left their employment. The appellant has since established her own business, carrying on business activities of the same nature as the business of BTCSL.

The Claim, Defence and Counterclaim.

[27] The appellant claimant claimed in the Supreme Court, the trial court, that, Mr. Wilson who was the chairman of the board of directors of the respondent company, and who acted on behalf of the respondent defendant, by his actions, "wrongfully terminated the claimant's employment as the managing director before the expiration of the time definitely specified in the agreement …", and so the respondent defendant was liable to the appellant claimant. The claim was stated to have been made under s. 39(1) of the Labour (Amendment) Act, 2011. The relief she claimed was $476,000.00 damages for the remaining period of the contract of service. She also claimed interest and costs.

[28] The defence of the respondent defendant was that, the employment of the appellant was never terminated; and that, when the appellant claimant left Wilson's office on 18 July, 2011 and never returned to work, she abandoned her employment, and thereby terminated it without giving notice, and breached her contract of employment. A further defence was that, the work performance by the appellant claimant warranted dismissal of the appellant claimant, although she was not dismissed.

[29] The defence was largely based on one significant variance in the material fact, namely: whereas the appellant stated that, the working relationship in the company became strained after she had told Mr. Wilson that she was pregnant, Mr. Wilson who testified for the respondent company, stated that, when the appellant was on maternity leave in November 2010 to February 2011 he, "identified several areas of deficiencies", in, "the work flows and systems". He explained the expressions to mean, "lack of

oversight and follow-up", and, "large amount of outstanding funds". He said that, he took action to correct the deficiencies by giving instructions to the appellant, which she objected to. He issued the documents, Vision For The Future and The Way Forward, to solve the problem. He also questioned a charge of $700.00 on the company's credit card, and questioned the authorization by which the appellant had taken the company's vehicle on visits outside Belize. The respondent defendant contended that, the above were sufficient grounds for the respondent to dismiss the appellant, but the respondent chose not to.

[30] The respondent defendant then counterclaimed damages in the sum of $214,000.00, representing one-half of the total salary of the appellant for the period of employment left under the contract. The counterclaim was stated to have been made also under s. 39(1) of the Labour (Amendment) Act, 2011. The respondent defendant further counterclaimed in the alternative, that the appellant should have brought her claim under the Labour Act. The appellant claimant in fact stated that much in the claim.

The Grounds of Appeal

[31] The grounds of appeal in the notice of appeal were the following:

> "3. Grounds of Appeal:
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> 1) The learned trial judge misled herself and erred in law in holding (at paragraph [15] Judgment, p. 16) that a resolution of the Board of Directors of the Respondent was required by Clause 79 to 82 of the Articles of Association of the Respondent to dismiss the Appellant.
>
> 2) The learned trial judge misdirected herself and erred in law, finding (at paragraph [15] Judgment, p. 18) that the Appellant acted prematurely in walking away from her job when she did.

3) The learned trial judge misdirected herself and erred in law in failing to give any or any proper consideration or weight to the significance of the uncontested evidence that:

   a) the Appellant and Mr. Wilson were the only two directors of the Respondent at the time of the "proposed redesignation";

   b) Mr. Wilson was the Chairman of the Board with a casting vote in the event of a deadlock at the time of the "proposed redesignation"; and

   c) the only two directors of the Respondent met and discussed the "proposed redesignation" by the Chairman of the Board and the position of the Chairman of the Board prevailed at the end of the meeting.

4) The decision of the learned trial judge is against the weight of the evidence.

The Appellant seeks an Order that the decision of the Honourable Madam Justice Arana made on the 29th February, 2013 be reversed and that the claims of the Appellant as sought in the claim form of 19th July, 2011 be granted as prayed."

Determination

G*round 4: that the decision of the trial judge is against the weight of evidence.*

[32] There is no merit whatsoever in this ground. The appellant in her own written submission at paragraph 2, stated that, the judge made the correct findings of fact on the evidence. Attorneys for the appellant stated: "There were clear findings of facts by the judge, and they are not in dispute." Having reviewed the record of the proceedings, I confirm that statement as correct. The facts disclosed in the evidence led for each party and relied on by each were common facts. Learned counsel for the appellant did not

point out to this Court any finding of fact made by the trial judge, that this Court, having regard to the evidence, could properly interfere with on appeal.

[33] The purpose of appeal proceedings is for an appellate court to determine whether the judgment or decision of the trial judge, particularly the order made by the judge, is wrong on a question of law, or unjust because of irregularity or other cause, and to correct the error or rectify the injustice, if warranted. Accordingly, the proceedings of an appellate court are by way of a review of the proceedings and the order made in the court below. The proceedings of the appellate court are not a retrial of the case, not a retrial of the facts.

[34] So, a finding of fact from conflicting evidence by a trial judge is not usually interfered with by an appellate court, which usually defers to the opinion of the trial judge – see **SS Hontestroom v SS Sagaporack [1927] AC 37, HL**, and also **Powell v Streatham Manor Nursing Home [1935] AC 243, HL**. But there are accepted exceptions to the general rule. Examples, of circumstances that have been accepted as exceptions are: when the judge misunderstood the evidence (the facts); when the judge applied the wrong principle in arriving at the facts; and when the judge drew an absurd inference from the primary facts that have been proved, or an inference which is demonstrably impossible or so improbable, that it cannot be reasonably accepted – see **Re A Solicitor [1945] 1 All ER 445**. It is not usually sufficient to show that there was an alternative inference. The appellant in this appeal has not identified any finding of fact that falls within those exceptions, or any that this Court may consider accepting as an exception to the general rule that, an appellate court does not usually interfere with a finding of fact made by a trial judge or a tribunal.

[35] Regarding the decisions on questions of law made by the trial judge, it is my view that, they were not entirely erroneous, having regard to the unusual set of facts of this case, which raised a very difficult question as to whether the actions taken by Mr. Wilson could be deemed to be the actions of the respondent company. Mr. Wilson had been taking action in a great number of affairs of the company without recourse to resolutions by the board of directors; and Ms. Acosta Longsworth, the only other director and only other shareholder, had raised no objection until Mr. Wilson sought to dismiss her. From

then on, because of the sharp disagreement that arose between them, a meeting of the two directors who were also all the shareholders, could not be held, either by the chairman Mr. Wilson calling it, or by the only other shareholder, Ms. Acosta Longsworth, requisitioning an extraordinary general meeting. I shall examine each relevant point of law.

The primary complaint: constructive Dismissal.

[36] It is convenient to commence the examination of the points of law by examining the issue in the primary complaint that, the appellant was wrongfully dismissed. That issue is whether there was any act of dismissal. In the trial court the appellant claimant relied on constructive dismissal. The first question to pose is: what did the trial judge understand to be the principle of constructive dismissal, and did she err? The judge applied what she understood to be the principle of constructive dismissal to the acts of Mr. Wilson and concluded that, the acts were acts of constructive dismissal, but the judge proceeded to hold that, the respondent company was not liable for them because the acts were not the acts of the respondent company.

[37] Learned counsel Mr. Denys Barrow SC, for the appellant, submitted that, the judge failed to give proper consideration or weight to the evidence that, Mr. Wilson and the appellant were the only directors and the only shareholders, had the judge properly considered the evidence, she would have concluded that the acts of Mr. Wilson were the acts of the respondent company, and held the respondent company liable for wrongful dismissal of the appellant by constructive dismissal. Pursuant to the submission, Mr. Barrow argued that, according to the evidence, there had been a meeting of the board of directors on 18 July, 2011 in Mr. Wilson's office at which a resolution was passed authorising the actions taken by Mr. Wilson dismissing the appellant, and so the respondent company was liable for the dismissal. He also submitted that, according to **Duomatic principle**, a resolution of the board was not required.

[38] Learned counsel Mr. Rodwell Williams SC, for the respondent, submitted that, the evidence proved that there had not been a meeting of the board, and no resolution of the board was passed; in any case, the meeting would have been inquorate when the appellant left the office of Mr. Wilson. Pursuant to his submission, Mr. Williams argued

that, on the evidence, the **Duomatic** principle could not apply, there was no assent of the two directors who were all the shareholders there were; accordingly the trial judge decided correctly that, the acts of Mr. Wilson were not acts of the respondent company, and so the respondent was not liable for the acts of Mr. Wilson.

[39] In my view, the learned trial judge concluded correctly that, the acts of Mr. Wilson were acts of constructive dismissal, but incorrectly that, the respondent company was not liable for the dismissal of the appellant; and that was, despite the fact that the acts of Mr. Wilson created a *de facto* state of dismissal, and when due to differences between the two directors, the only shareholders, a board meeting or a general meeting of the shareholders, members, could not be held, and the business of the respondent company to be run by its legal organs, came to a standstill. Further, despite the fact that the evidence proved that in practice Mr. Wilson was the directing mind and will of the respondent company, and directed and controlled its affairs.

[40] In support of my view, first I note right away that, the reply by the respondent to the grounds of appeal did not include a contention that, the trial judge erred when she held, as a matter of law, that the acts of Mr. Wilson would be acts of constructive dismissal. The respondent simply contested the appeal on the footing that, the acts of Mr. Wilson were not acts of the respondent, and accordingly the respondent could not be held liable for acts of someone else, Mr. Wilson. In the circumstances, the respondent must be taken to have accepted the conclusion of law by the trial judge that, the acts of Mr. Wilson would be acts of constructive dismissal.

[41] I proceed to explain my view on the merit. When the principle by which constructive dismissal is determined is applied to the facts of this case, the conclusion must be that, the acts of Mr. Wilson were acts that constituted constructive dismissal. I commence my examination by posing the question: based on the facts, was the conclusion by the judge that, the acts of Mr. Wilson would constitute dismissal, erroneous? If the answer is that the judge erred, then this Court need not go any further, the appeal will be dismissed on the basis that dismissal never occurred at all, even by the acts of Mr. Wilson.

[42] In Belize the principle upon which the court decides that an employee has been constructively dismissed has been legislated in s. 42A of the Labour Act, Cap. 297, which provides:

> "42A. (1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.
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> (2) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for the purposes of this Act."

[43] The provisions of the section were derived from the principle of the common law. Whenever it becomes necessary to expound on the provisions, the principle of the common law is applied, but only so far as it is consistent with the provisions of s. 42A of the Act.

[44] The principle of the common law regarding constructive dismissal is that: constructive dismissal is termination of a contract of employment by an employee because his employer has shown that he does not intend to be bound by some essential term of the contract, including the implied term of mutual trust and confidence – see **Western Excavating (ECC) Ltd v Sharp [1978] QB 761**. That is consistent with the statutory provision in Belize that, the employer, by his, "conduct, has made it unreasonable to expect the worker to continue the employment relationship".

[45] So, what were the facts that proved or did not prove that, it was unreasonable to expect Ms. Acosta Longsworth to continue the employment relationship; or that proved or did not prove that, Ms. Acosta Longsworth terminated her employment because the employer had shown that he would no longer be bound by an essential term of the contract of employment?

[46] Two material facts were these. Mr. Wilson stripped Ms. Acosta Longsworth of her post of managing director and replaced the post with that of manager of Trust Department, a lesser and different post. He also changed her job description to the job description of

manager of the Trust Department only. All that came a mere 6 months and 15 days into the five year term of the contract of service that commenced on 3 January 2011. Those were acts that showed that, Mr. Wilson, if he rightfully represented the employer, the respondent company, then the employer intended to show to the appellant, the employee, that the employer intended not to be bound by an essential term of the contract commencing on 3 January 2011 anymore. It would also be concluded that, the respondent breached a fundamental term of the contract by the actions of Mr. Wilson. The actions of Mr. Wilson would have been a clear manifestation of an intention by the respondent company not to be bound anymore by the contract of employment, even a clear direct cancellation of the contract, a breach of it.

[47] The post offered and held by Acosta Longsworth, and the job description were very important and essential terms of the contract between the employer and employee. The post and job description could not be unilaterally withdrawn from the contract without intending to rescind it. It would be unreasonable to expect the employee, the appellant, to continue the employment relationship after the cancellation of those terms of the contract. In the circumstances, the appellant would not be regarded as having abandoned her employment. She would be regarded as having been constructively dismissed, that is, “unfairly dismissed by the employer”, in the words of the **Labour Act, Cap. 297**.

[48] I must, however, point out here that, if a meeting of the board of directors of the respondent company had been duly notified and convened, and a resolution of the board passed curtailing the duties of the appellant as the managing director, the respondent might have successfully resisted a claim of constructive dismissal founded on curtailing the appellant’s duties. Articles 79 and 82 of the Articles of Association of the respondent company authorise appointment of a managing director or directors, and expanding or curtailing their duties and powers. The law recognises that where Articles of Association of a company authorise, directors of a company may assign all or any of their powers and duties to one or some of their number and may withdraw or limit the powers and duties. A case to the point is: **Harold Holdworth & Co. (Wakefield) Ltd. v Caddies [1955] 1**

WLR 352 (HL). The difficult question might have been the fact that the appellant's post itself was changed from managing director to manager of Trust Department.

[49] Articles 79 and 82 of the respondent company provide as follows:

> MANAGING DIRECTORS
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> 79 The Directors may from time to time appoint one or more of their number to be a Managing Director or Managing Directors of the Company, and may fix his or their remuneration either by way of salary or commission, or by conferring a right to participate in the profits of the Company or by a combination of two or more to those modes.
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> …
>
> 82. The Directors may from time to time entrust to and offer upon a Managing Director all or any of the powers of the Directors (not including the power to borrow money or issue debentures) that they may think fit. But the exercise of all powers by the Managing Director shall be subject to all such restrictions as the Directors may from time to time make and impose, and the said powers may at any time be withdrawn, revoked or varied.

[50] There were also other conduct of Mr. Wilson which could be regarded as manifesting an intention not to be bound by the contract of employment, and which were harmful, even destructive to the employer and employee relationship. Mr. Wilson, by his acts, breached the implied terms of mutual trust and confidence. He had no courtesy at all towards the appellant. His language was coarse. He had no civility at the workplace. The trial judge noted it; she stated at page 1096 of the record: *"I find that Mrs. Longsworth acted prematurely in walking away from her job after this proposed redesignation was put to her by Mr. Wilson. I am certainly not saying that she had to stay there indefinitely and tolerate an increasingly hostile, disrespectful and abusive atmosphere."* On the other hand, the judge stated positive things about Mrs. Acosta Longsworth at page 1084 in these words: *"Mrs. Longsworth as managing director of the company who, while her commitment to striving towards the financial success of the company was undeniable, sought to nurture the staff in the belief that a happy well-funded staff with sufficient resources to accomplish their tasks will be motivated to work harder and in turn yield greater productivity for the company."* Moreover, the fact that the supervisors of the

departments of the respondent company also left the employment *en masse* was a vote of no confidence, no trust in Mr. Wilson.

[51] Arana J adopted the principle of the common law as applied in the Canadian case: **Faber v Royal Trust Co [1997] 1S.C.R. 846**. In the case, emphasis was laid on the acts of the employer which would unilaterally change substantially the essential terms of the employee's contract of employment. In this case on appeal, Arana J held that, the changes made by Mr. Wilson to the post and job description of the appellant, Ms. Acosta Longsworth, changed substantially the essential terms of the contract of service of Ms. Acosta Longsworth, and should be regarded as acts of constructive dismissal. I agree.

[52] The change to those terms of the contract of service indicated that, the contract would no longer be adhered to. In the circumstances, it was unreasonable to expect Ms. Acosta Longsworth to continue the employment relationship. The judge understood the principle of constructive dismissal correctly. She also understood the evidence correctly, based on the numerous emails that she examined. I accept the conclusion by Arana J, drawn from the evidence, that the acts of Mr. Wilson were acts that would constitute constructive dismissal.

The grounds of appeal 3(1), 3(2), 3(3)(a), 3(3)(b) and 3(3)(c)

(Was the action taken by Wilson the action of the respondent?)

[53] I may now ask the question: can the wrongful acts of Mr. Wilson, that would constitute constructive dismissal, be taken to be the acts of the respondent company? The answer lies in examining the issues raised in the rest of the grounds of appeal at paragraphs 3(1) 3(2), 3(3)(a), (b) and (c).

[54] The grounds of appeal all concern the single crucial question, whether on the set of facts of this case, the acts of constructive dismissal by Mr. Wilson who was the chairman of the board of directors of the respondent company, and who in practice was allowed to, and controlled the affairs of the respondent company, may in law, be deemed the acts of the respondent company dismissing the appellant constructively, so that the respondent may be held liable.

[55] I have to repeat here that, the trial judge held that, the acts of Mr. Wilson were not acts of the respondent company, and accordingly, the respondent did not dismiss the appellant, the respondent was not liable for the acts of Mr. Wilson. The reason given by the judge was that, the respondent, a corporation, could only act by passing a resolution, and the respondent company had not passed a resolution authorising the action taken by Mr. Wilson dismissing the appellant. At page 1097 of the record of proceedings the judge stated: *"The contract clearly states the Employer is BTCSL, and the Employee is Mrs. Longsworth. A resolution had to be passed before any such change could take place … The company carries out its actions through its resolution in general meetings and extraordinary meetings."* In the last sentence, the judge omitted the resolution of the board of directors; it is of no consequence in this appeal.

[56] I also repeat that, learned counsel Mr. Denys Barrow SC, made two submissions on behalf of the appellant, on these grounds of appeal. The first was that, "the only two directors met informally to discuss and decide on the appellant's dismissal…" and "the dominant director", by a casting vote, had the resolution to dismiss the appellant passed. Counsel cited: **In Re Duomatic Ltd. [1968] 2 Ch. 365**; **Cane v Jones [1981] 1 All ER 533**; **Smith v Paringa Mines Ltd. [1906] 2 Ch. 193**; the judgment of this Court in **Sagis Investment v Krem Radio – Civil Appeal No. 13 of 2008**; and other cases.

[57] The second submission by Mr. Barrow was apparently made in the alternative. It was that, "a resolution of the board of directors of the respondent company was not required by articles 78 to 82 of the Articles of Association of the respondent, to dismiss the appellant". In other words, a resolution of the board of directors of the respondent company was not required for Mr. Wilson to carry out the acts that constituted constructive dismissal, for the acts to be regarded as the acts of the respondent company. Counsel argued that, his submission was based on **Duomatic principle** which was derived from **In re Duomatic Ltd [No. 00601 of 1968] [1969] 2 Ch 365**. Counsel cited the cases he had cited for the first submission, and also **Liberal Catholic Church Corporation Ltd v Palmer and Another [2005] All ER (D) 353** and **Wright and Another v Atlas Wright (Europe) Ltd. [1999] 2 BCLC 301**.

[58] Mr. Barrow argued that, "[i]t is a basic principle of company law that, all corporators of a company acting together could do anything which is *intra vires* the company". Counsel relied on the dictum of Buckley J in **Re Duomatic Ltd** at page 168, namely: *"[t]he fact that they did not take that formal step but that they nevertheless did apply their minds to the question of whether the drawings by Mr. Elvins and Mr. Hanly should be approved as being on account of remuneration payable to them as directors, seems to lead to the conclusion that I ought to regard their consent as being tantamount to a resolution of a general meeting of the company. In other words, I proceed upon the basis that where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be."*

[59] In my view, by relying on the **Duomatic principle**, Mr. Barrow acknowledged that, generally a corporation acts by a resolution of the board of directors, and that, a resolution of the board would normally be required signifying the action of a company dismissing a managing director from office. But Mr. Barrow argued that, in the circumstances of this case, the law permits that, the formalities of giving due notice of a meeting of the board, tabling a motion and taking a vote at a meeting of the board would be dispensed with.

[60] I reject completely the submission that, the **Duomatic principle** can be applied to this case so that the requirement for a resolution of the board of directors is excused. For reason, I point to no further than the same passage in the judgment of Buckley J in **Re Duomatic Ltd.**, recited by Mr. Barrow. The key element there was the ***assent of all the shareholders***. In this case, the appellant's complaint to Mr. Wilson in the discussion in his office on 18 July, 2011 was that, Mr. Wilson had no power to dismiss her, how could there have been, during that discussion, any assent by her for her dismissal? **Sagis Investments Limited** case and the others cited also had as their bases, approval in the form of acquiescence, assent, consent or agreement of all the shareholders.

[61] I accept the submission by Mr. Williams that, the **Re Duomatic principle** cannot apply to this case. In my view, Arana J was right in deciding that, a resolution of the board of directors was [generally] required in order that the acts of Mr. Wilson would be taken

as the acts of the respondent company. But the evidence was that, a meeting of the board or of the shareholders was made impossible by the attitude of Mr. Wilson and Ms. Acosta Longsworth. That, however, was not the end of the case, in my view.

[62] I also reject the submission that, what took place on 18 July 2011 in the office of Mr. Wilson was a meeting of Mr. Wilson and Ms. Acosta Longsworth. It was a mere confrontation, uninvited by Mr. Wilson. He or anyone else did not send any notice of a board meeting or members general meeting for that day to the appellant. The appellant did not walk into the office intending to attend a board meeting or general shareholders meeting. During the confrontation Mr. Wilson did not propose or utter a word about a resolution. In his own testimony Mr. Wilson did not regard the occasion as a meeting of the board of directors, or a general meeting of the shareholders. There was no semblance of a meeting whatsoever.

[63] Whether there has been a meeting of a board of directors or of shareholders is a matter of proof objectively by evidence. In **Barron v Potter**, the chairman Mr. Potter, perhaps realized that, the confrontation with Mr. Barron at a railway station where Mr. Potter proposed a motion to fill directors vacancies with persons he named, and carried it, was not good enough. The following day he went to the headquarters office where an extraordinary general meeting was to be held. He met Mr. Barron there before the extraordinary general meeting commenced, and he (Mr. Potter) proposed the same motion and carried it. Warrington J held that, there was no meeting of the board of directors. At page 901 he stated:

> ***"What then took place is said to have been a directors' meeting at which a valid appointment was made of the three additional directors proposed by Mr. Potter. The answer, in my opinion, is that there was no directors' meeting at all for the reason that Mr. Canon Barron to the knowledge of Mr. Potter insisted all along that he would not attend any directors' meeting with Mr. Potter or discuss the affairs of the company with him, and it is not enough that one of two directors should say: "This is a directors' meeting", while the other says it is not. Of course if directors are willing to hold a meeting they may do***

so under any circumstances, but one of them cannot be made to attend the board meeting or to convert a casual meeting into a board meeting, and in the present case I do not see how the meeting in question can be treated as a board meeting. In my opinion therefore the true conclusion is that there was no board meeting, but that Canon Barron came with the deliberate intention of not attending a board meeting. If he had received the notice sent to him by Mr. Potter summoning him to a board meeting, different considerations might have arisen, but he had not received it and came with the fixed intention of not attending any such meeting."

[64] **Neal David Schofield v Lee Niel Scofield and Others [2011] EWCA Civ. 154** and **Rolfe and Another v Rolfe and Another [2010] EWHC 244 (Ch.)** are to the same result.

[65] In **Schofield**, the appellant was the father of one of the respondents, Lee Schofield. The appellant appealed on the ground that, the trial judge erred in not holding that, the meeting held at his solicitors' office on 2 October 2009, attended by the son and him was effective in removing his son from the office of the sole director and appointing the appellant the sole director. It was submitted on his behalf that, although the meeting was not called with the 14 days notice required by the Companies Act, all the shareholders agreed to treat the meeting as valid or are to be regarded as having agreed. He relied on **Re Duomatic**.

[66] The facts were these. The appellant was the father of Lee Schofield, one of the respondents. Lee was the sole director of the company, Avenue Road Development Limited - ARDL. The Appellant and his divorced wife, through another company, Reggiesco, registered in Belize, owned 99.9% shares, and the son 0.1% shares in ARDL. The appellant father desired to remove his son and be appointed the sole director. By his solicitors, the father, claiming to represent Reggiesco, gave notice requisitioning an extraordinary general meeting on 2 October 2009 for that purpose. The son objected to the extraordinary general meeting on the grounds that, the notice was shorter than required under the Companies Act, and that, the father did not have authority to represent

Reggiesco, the majority shareholder. Nevertheless, the son attended the meeting at the office of the appellant's solicitors. He proposed an adjournment to a date when the annual general meeting was due. The appellant outvoted the son. The appellant proposed the removal of the son as the sole director and appointment of himself as the sole director. The son opposed it, but the appellant outvoted the son. The trial judge held that, the meeting and the resolution removing the son was invalid, and refused to grant a declaratory order that, the son was removed and the appellant was appointed the sole director at the meeting on 2 October 2009.

[67] On appeal, the Court of Appeal (England) dismissed the appeal. Lord Justice Etherton, having discussed case precedent, stated as follows at paragraph 32:

> ***"32. What all the authorities show is that the Appellant must establish an agreement by Lee to treat the meeting as valid and effective, notwithstanding the lack of the required period of notice. Lee's agreement could be expressed or by implication, verbal or by conduct, given at the time or later, but nothing short of unqualified agreement, objectively established, will suffice. The need for an objective assessment was well put by Newey J in the recent case of Rolfe v Rolfe [2010] EWHC 244 (Ch) at [41], as follows:***
>
> > ***'…I do not accept that a shareholder's mere internal decision can of itself constitute assent for Duomatic purposes. I was not referred to any authority in which it had been decided that a mere internal decision would suffice. Further, for a mere internal decision, unaccompanied by outward manifestation or acquiescence, to be enough would, as it seems to me, give rise to unacceptable uncertainty and potentially, provide opportunities for abuse … In my judgment, there must be material from which an observer could discern or (as in the case of acquiescence) infer assent. The law***

> ***applies an objective test in other contexts: for example, when determining whether a contract has been formed. An objective approach must, I think, also have a role with the Duomatic principle.' "***

[68] In this appeal I have determined that, there had been no meeting of the board of directors of the respondent company authorising the acts of Mr. Wilson, and I have concluded that, the **Duomatic principle** cannot come to the aid of the appellant. Does that mean that the respondent company is not liable for the acts of dismissal carried out by Mr. Wilson? My answer is, not so.

[69] The rule that a company registered under the Companies Act acts by a resolution of its board of directors, that is, by the collective decision of its directors, or a resolution of the general meeting of members, is often moderated by the court deeming an act of a director, a manager or other official or appointee to be the act of the company itself. This is based on the recognition that a corporation, though a legal person, has no mind and soul of its own; its affairs are conducted by a natural person or persons. Often a person who may be a director or other official or an appointee acts, without a resolution of the company, in a way that indicates that he is the directing and controlling mind of the corporation, "the directing mind and will," and has the management and control of the company, so the court will attribute his act to the corporation.

[70] This deeming of an act of an official to be the act of the corporation has been described as, "attribution". The rule regarding attribution operates apart from the rules regarding agency and regarding vicarious liability. It is aimed at the proper identification of the official who may be accepted as acting in a way that shows he is the directing and controlling mind of the corporation, "the directing mind and will" for the matter at issue, and at the identification of the act, including wrongful act, in various circumstances. As expected, the rule has been, and continue to be gradually developed. Notable cases in which the rule of attribution of an act to a company is considered to have developed are: **Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd. [1915] A.C. 705 (HL); H.L. Bolton & Co v. T.J. Graham; El Ajou v. Dollar Land Holdings Plc [1994]2 All E.R. 685**

CA; and **Meridian Global Funds Management Asia Ltd. v. Securities Commission [1995] 2 A.C. 500 PC**.

[71] In **Lennard's Carrying Co Ltd,** the facts were these: A ship and her cargo were lost owing to unseaworthiness. The owners of the ship were a limited company. The managers of that company were another limited company, whose managing director, Mr. Lennard, managed the ship on behalf of the owners. He knew, or ought to have known, of the ship's unseaworthiness, but took no steps to prevent the ship from putting to sea. The purchasers of the cargo and endorsees of the bills of lading sued the owners of the ship for their loss. Under section 502 of the British Merchant Shipping Act, then in force, the owner of a sea-going ship was not liable to make good "any loss or damage happening without his fault". The owners of the ship sought to bring themselves within this exemption, claiming that they were not liable for Mr. Lennard's fault. The trial judge found for the plaintiffs, and this was confirmed on appeal by the Court of Appeal, and on further appeal by the House of Lords.

[72] In his speech Viscount Haldane stated the law by which an act of a person who directs and controls a corporation, the person who is, "the directing mind and will", of the corporation, attaches to the corporation itself in these words:

> ***"… Now, My Lords, did what happened take place without the actual fault or privity of the owners of the ship who were the appellants? My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself, or it may be, and in some companies it is so, that that person has an authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company, and can only be removed by the***

general meeting of the company. My Lords, whatever is not known about Mr. Lennard's position, this is known for certain, Mr. Lennard took the active part in the management of this ship on behalf of the owners, and Mr. Lennard, as I have said, was registered as the person designated for this purpose in the ship's register. … For if Mr. Lennard was the directing mind of the company, then his action must, unless a corporation is not to be liable at all, have been an action which was the action of the company itself within the meaning of section 502 …"

[73] In **H. L. Bolton & Co,** the facts were these. Under the Landlord and Tenant Act, the plaintiffs, tenants of certain business premises, were entitled to a renewal of their tenancy unless the landlords intended to occupy these premises themselves for the purposes of their business. The question was whether the defendant company had effectively formed this intention … The directors of the defendant company caused notice to vacate to be given to the tenants, but there had been no formal meeting of the board and no formal resolution to occupy the land for the purposes of their business. The plaintiffs claimed that under these circumstances the defendant company as the landlords of the premises in question had not formed the intention to occupy the premises themselves and that, in consequence, the plaintiffs were entitled to a new tenancy. The court decided in favour of the defendant company.

[74] The Court of Appeal (England) held that, the intention of some of the directors to take back the leased land for the landlords' own business, though indicated informally, and though a resolution was not passed to that effect, must be taken as the intention of the landlords' company. In his judgment to which the other Lord Justices concurred, Denning LJ explained the law in the same metaphor as Viscount Haldane did in **Lennard's Carrying Co Ltd** case. Denning LJ at page 811 first stated the issue as follows:

> ***"The second question is whether the landlords have proved the necessary intention to occupy the holding for their own purposes. This point arises because the landlords are a limited company. Mr. Albery says that there was no meeting of any board of directors to***

> ***express the landlords' intention, and that therefore the landlords – the company – cannot say that it has the necessary intention … Mr. Albery says there must at least be a board meeting. In view of the recent decision in this court in Austin Reed Ltd. v. Royal assurance Co. Ltd., he has to concede that the decision of the board need not formally be recorded in a minute, but he says that, even though not formally recorded, there must be a board meeting by which there is a collective decision, and it is not sufficient that individual directors should individually be of one mind. The judge rejected that contention …"***

[75] Denning LJ then answered the question in these metaphorical words:

> ***"So the judge has found that this company, through its managers, intend to occupy the premises for their own purposes. Mr. Albery contests this finding, and he has referred us to cases decided in the last century; but I must say that the law on this matter and the approach to it have developed very considerably since then. A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's judgment in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum co. Ltd. So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will***

render the company itself guilty. That is shown by Rex v. I.C.R. Haulage Ltd., to which we were referred …

So here the intention of the company can be derived from the intention of its officers and agents. Whether their intention is the company's intention depends on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case. Approaching the matter in that way, I think, although there was no board meeting, nevertheless, having regard to the standing of these directors in control of the business of the company, having regard to the other facts and circumstances which we know, whereby plans had been prepared and much work done, it seems to me that the judge was entitled to infer that the intention of the company was to occupy the holding for their own purposes… I am of opinion, therefore, that the judge's decision on this point was right."

[76] In **Meridian Global Funds**, the House of Lords, in the speech of Lord Hoffman, expanded the rule regarding attribution of an act, a wrongful act in the case, to a corporation beyond the acts of directors, managers and senior officials. The question to pose, he stated, was: who is the controller of the company as a matter of construction? So, the court is to look at who has the management and control of the company in regard to the subject matter.

[77] When the law as stated in **Lennard's Carrying Co Ltd**, in **H. L. Bolton & Co;** and in **Meridian Global Funds** is applied to the facts of this appeal case, the conclusion, in my view, must be that, Mr. Wilson had the management and control of the respondent company; he was the directing and controlling mind and will of the respondent company, and the wrongful acts of Mr. Wilson must be attributed to the respondent company. The wrongful acts became the acts of the respondent company. They were acts of constructive dismissal for which the respondent is liable to the appellant. I would allow the appeal.

[78] The appellant claimant claimed in the trial court damages in the sum of $476,000.00. Although liability was contested, the sum for damages was not. In this Court the appellant repeated her claim and asked for the same sum. The respondent did not contest the sum. I would award damages to the appellant in the sum of $476,000.00, with interest at 6% per annum from the date on which the claim was filed until payment. I would also grant costs of the appeal and costs in the Supreme Court to the appellant, to be agreed or taxed. The order for costs is provisional, and will become final in seven days unless an application is made within the seven days for a different order.

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AWICH JA