

IN THE COURT OF APPEAL OF BELIZE A.D. 2018

CIVIL APPLICATION NO. 2 of 2017

**MINERVA SERVICES LTD**

**Applicant/Claimant**

**BAY TRUST INTERNATIONAL LIMITED  
(Trustee of the Riverside Healthcare Limited  
Remuneration Trust, Dukeries Healthcare  
Limited Remuneration Trust, Allen Paul  
Levack Remuneration Trust, Allev Limited  
Remuneration Trust, Jogra Limited  
Remuneration Trust)**

**Respondent/Defendant**

BEFORE:

The Hon Mr Justice Awich  
The Hon Madam Justice Hafiz Bertram  
The Hon Mr Justice Ducille

Justice of Appeal  
Justice of Appeal  
Justice of Appeal

—  
M. Marin-Young SC along with A. Jenkins for the applicant  
L. Shoman SC for the respondent

14 March 2018 and 22 June 2018

**AWICH JA**

**[1]** I concur in the judgment prepared by Hafiz Bertram JA, to which I made only minor suggestions. The order proposed by Hafiz-Bertram JA becomes the order of the Court.

[2] I would like to mention that, the claim would also fail to establish a *prima facie* case on the ground that, Minerva Services Limited (British Virgin Island) was admittedly liquidated. It meant that, Minerva (BVI) was wound up, dissolved, dead. It would not transfer any “business and title,” or any right to Minerva Services Limited (Belize). So, Minerva (Belize) could not have had any right or claim of Minerva (BVI) transferred to it. Minerva (Belize) had no *locus standi* to claim any remuneration that may have been due to Minerva (BVI) before the liquidation. The claim, if there was, ended with the liquidation, the winding up. Liquidation, also known as winding up, is the process by which assets of a company are realized for the benefit of its creditors. Where no *prima facie* case can be identified in a claim which had been struck out by a trial judge, this Court cannot grant leave to appeal against the order made by the trial judge.

[3] It was said that Minerva was, “restored on the register”. The question would be: How was that possible? Restoration on the Register of Companies is only possible if a company has been struck out by the Registrar of Companies for non-compliance with requirements under the Companies Act. Minerva (Belize) is its own *persona*.

[4] Baxendale Walker LLP was said to have been an authorized agent of Minerva (BVI) for the collection of monies due to Minerva (BVI). Baxendale could not have continued as agent after Minerva (BVI) was liquidated. Moreover, Baxendale Walker LLP was also said to have been liquidated. As a partnership, it meant it was dissolved, terminated, as a partnership business. Buckingham could not be, “the successor in title and business of Baxendale Walker LLP in February 2016.” The two entities could not have *locus standi* in the claim brought in the Supreme Court of Belize.

---

SAMUEL L. AWICH JA

## **HAFIZ-BERTRAM JA**

### **Introduction**

[5] On 14 March 2018, this Court heard an application for leave to appeal the judgment of Abel J made on 3 April 2017. The order was perfected on 30 May 2017. The trial judge struck out the claim of the applicant, Minerva Services Limited (“Minerva”) and granted summary judgment in favour of the respondent, Bay Trust International Limited (“Bay Trust”). Abel J also dismissed the application made by Minerva for a joinder of two parties as claimants.

[6] By an order entered on 28 July 2017, Minerva’s application to the trial judge for leave to appeal his interlocutory judgment was refused and Bay Trust was granted costs to be assessed. This led to a fresh application before this Court for leave to appeal. The Court after hearing oral arguments by the parties reserved its judgment.

### **Brief background**

[7] On 18 October 2016, Minerva filed claim no. 583 of 2016, claiming the sum of £7,292,873.00. On 27 January 2017, the claim was amended with permission from the court. An application was made to add two parties, ‘Minerva Services Limited (Belize)’ and ‘Buckingham Wealth Ltd’ (‘Buckingham’) as claimants which was refused by the trial judge. The reliefs claimed were: (a) a declaration that £7,292,873.00 is held by Bay Trust in trust for Minerva; (b) an order that Bay Trust pays over to Minerva £7,292,873.00; (c) Interest and cost.

[8] In the amended claim, it showed that Minerva and the proposed second claimant, Minerva (Belize) provide wealth management advisory services to Bay Trust. Minerva (Belize) was the successor in title and business, to Minerva upon its incorporation in July 2013. Buckingham, the proposed third claimant, was the successor in title and business to Baxendale Walker LLP upon the liquidation of Baxendale Walker LLP in February 2016. At paragraph 3 of the amended claim, it is stated that all three claimants are joined in the claim to ensure that the liquidation of

Minerva, (which has been restored on the register in BVI), upon succession in title and business of Minerva (Belize) does not avail Bay Trust to aver that there is no claimant with a proper title to sue. The proposed second and third claimants do not appear in the heading since that application for joinder was refused by the trial judge.

**[9]** Bay Trust is a company incorporated in Belize and is the sole trustee of five trusts (“the Trusts”) stated in the title of the claim. The trusts were established using wealth planning technology owned by Minerva.

**[10]** Minerva offered for a fee and the Trusts availed themselves of certain tax efficient schemes offered by Minerva. The Trusts were established to put into effect the tax efficient schemes known as Business Asset Plan Arrangements (“the BAPA”). At paragraph 8 of the amended claim, it is stated that the Trusts were to be recipients of certain “Remuneration Trust Arrangements” and the fee arrangement for Minerva were to be calculated in respect of the value of the assets and remuneration protected by the tax efficient schemes established through the establishment of the Trusts.

**[11]** Minerva authorised Baxendale to act as its collection agent for monies due under the Remuneration Trust Arrangements. It was claimed that when Minerva (Belize) succeeded in business and title to Minerva, the authority was continued by Minerva Belize (‘Collection Arrangements’). It was further claimed that Bay Trusts had knowledge of these matters because: (a) Bay Trusts was also the corporate director of Minerva from 3 December 2012 to July 2013, and in that capacity continued the authorisation of the collection arrangements; (b) Bay Trusts paid out of the Trusts, fees authorised and notified as pleaded in this claim; and (c) Bay Trusts paid out of the trusts after 29 July 2013, further fees authorised and notified in the manner pleaded.

**[12]** At paragraph 11, it was pleaded that Minerva (Belize) is entitled to sue in this action and/ or Buckingham is entitled to sue in this action. As such Bay Trusts by its knowledge and actions before and after the date of incorporation of Minerva Belize, is estopped from pleading that all or any of the claimants has no title to sue in this action.

**[13]** It was claimed at paragraph 12 that the Trust Deeds, except Riverside Trust and the Dukeries Trust which were amended to remove the word “exclusive” at Clause 3.3, are in very similar terms and all provided the following clauses:

“The Firm” means the firm of Baxendale Walker, LLP whose principal office is at 4<sup>th</sup> Floor, Warwick House, 25 Buckingham Palace Road, London SW1W 0PP .

“Service Fee” means any fee which is properly payable out of the Trust Funds in respect of professional, investment or other services provided to the Trustee in respect of the Trusts of this Deed;

**[14]** At paragraph 13, it was pleaded that the Levak Trust, the Riverside Trust and the Dukeries Trust and Clause 3.4 of the Allev Trust and the Jogra Trust state:

“The Firm shall have the exclusive power (which shall be a fiduciary power) to authorise, instruct and oblige the Trustee from time to time to discharge any invoice in respect of any Service Fee and such power shall be exercisable by notice in writing by fax or post from a Partner or Principal in the Firm to the Trustees and the opinion of such Partner or Principal as to whether a fee constitutes a service Fee shall be conclusive.” (emphasis added)

**[15]** Under the heading of ‘Constructive Trust’ it was pleaded that the Trust Deeds expressly provided for the payment by the trusts of service fees. That by Clause 3.3/3.4 of the Trusts, Baxendale Walker LLP is given exclusive power to authorize the payment of invoices and the trustee is obliged to discharge any invoice authorised by the firm. Further, since 2010, a total of 54,940,000.00 pounds in cash and real property contributions have been made to the trusts. At paragraph 17, it was claimed that the Minerva BVI invoice dated 1 January 2016 which was issued to Bay Trust for the payment of 7,723,248 pounds represented 14% of the contributions made to the trust as

service fees. It was claimed that in breach of the trusts, Bay Trust failed to pay Minerva's invoice for the service fee.

**[16]** In an amended defence, Bay Trust denied that either of the claimants have proper title to sue. Further, that Minerva was struck off the register in BVI. It also denied that any monies were due to Minerva or any of the other proposed claimants under the Remuneration Trust Arrangements and/or Business Asset Plan Arrangements.

**[17]** Bay Trusts stated that the Trust Deeds are all subject to English Law by Clause 8.1 which states that the "*Deed shall be governed by and construed by in accordance with the law of England.*" Further, the trust deeds are irrelevant and cannot support a claim by either of the claimants since (a) Minerva and the other claimants are neither a party to any of the trust deeds nor a beneficiary under any of them or otherwise able to enforce or rely on the terms of the trust deeds; (b) the effect of clause 3.3 and 3.4 of the Trusts is not to give the claimants any rights but to offer some protection to Bay Trust as trustee should beneficiaries of the trusts make allegations against it for breach of trust in the event that the service fees are paid by Bay Trusts.

**[18]** Minerva in its reply accepted that it was struck off the register of companies in the British Virgin Islands, but claimed that Minerva Belize is the successor in title and business to Minerva upon its incorporation on 29 July 2013. Further the rights and liabilities of Minerva were assigned to Minerva Belize. Minerva averred that itself and Minerva Belize provided wealth management advisory services in establishing the Trusts. As such the claimants are proper parties to the claim and have entitlement to sue.

**[19]** At paragraph 9 of the amended defence, the claimants stated that they are not suing as parties to the Trust Deeds or as beneficiaries. The claim is for breach of constructive trusts which arose by operation of the clause in the Trust Deeds, which empowered Baxendale Walker LLP to instruct and oblige the Trustee to discharge any invoice, and also by the operation of the clause whereby the opinion of Baxendale's

partner or principal that service fee is due was conclusive. As such, Bay Trust held the sum itemized in the invoice on trust for the first and second claimants.

**[20]** Minerva pleaded that the Trust Deeds expressly provide that the opinion of a partner or principal in the firm as to whether a fee constituted a service fee shall be conclusive. The invoice issued and the letter of 15 January 2016 by Baxendale was therefore conclusive.

**[21]** On 3 April 2017, Abel J heard Minerva BVI's application to join Minerva Services Ltd (Belize) and Buckingham Wealth Ltd as additional claimants. The application was refused by the trial judge.

*Bay Trust application for strike out and/or summary judgment*

**[22]** Bay Trust by an application dated 13 December 2016, made an application to strike out the claim and in the alternative for summary judgment, pursuant to Parts 11, 15, and 26 of the Supreme Court (Civil Procedure) Rules 2005, and under the court's inherent jurisdiction for the following orders:

“1. That the Court, in the exercise of its discretion under Rule 26.3 (1) (b) and (c) and/or under its inherent jurisdiction strike out the statement of case of the Claimant/Respondent on the grounds that the statement of case is an abuse of the process of the court and/or the statement of case discloses no reasonable grounds for bringing the claim;

2. In the alternative, that the Court, in exercise of its discretion under Rule 15.2 and/or under its inherent jurisdiction, enter summary judgment for the Defendant/Applicant and dismiss the claim of the Claimant/Respondent as having no reasonable prospect of success;

## Grounds of application for striking out

[23] The grounds of the application of Bay Trust are:

1. that the statement of case is an abuse of the process of the court on the basis that the company by the name of “Minerva Services Ltd” which was incorporated in the British Virgin Islands had been struck off the register of the companies on 1 November 2014.
2. The statement of case of Minerva discloses no reasonable grounds for bringing the claim because the statement of claim will fail as a matter of law because the contents of the claim is defective.
3. For reasons set out in the affidavit of Carlos Caldeira, Minerva has no real prospect of success in the claim on the basis that:
  - a) There is no contractual or trust relationship between the parties and no cause of action on which Minerva can rely in the claim;
  - b) Minerva is neither a beneficiary of any of the named trusts, nor does Bay Trust as trustee owe any duty to Minerva;
  - c) Minerva is not able to rely on clause 3.3 of the trust deeds because the effect of those clauses is not to give any rights to Minerva;
  - d) In a case filed in the English courts, claim number C10CL006, having substantially the same facts, it is claimed by Paul Baxendale Walker that by an agreement, Minerva “unconditionally, irrevocably and absolutely” assigned all its “rights, title, interest and benefit” to the “*litigation rights of the assignor against Paul Levack in respect of any money due to any assignor for any reason.*” Minerva therefore, has no interest in the claim;
  - e) The trusts named in this claim are all expressly subject to English law by clause 8.1 of each trust deed thereof which states that the “*Deed shall be governed by and construed in accordance with the law of England.*”



*Order by trial judge*

**[24]** On 3 April 2017, the trial judge heard the application by Bay Trust. By an order dated 30 May 2017, the judge ordered that:

1. “The Claimant’s statement of case discloses no reasonable grounds for bringing the claim; and
2. That the Claimant’s claim has no reasonable prospect of success;
3. That the Claimant’s Claim be dismissed with costs to be paid to the Defendant by the Claimant as agreed or assessed;
4. That the Court, in the exercise of its discretion under Rule 26.3 (1) (b) and (c) and under its inherent jurisdiction, strikes out the Claimant’s Claim and under Rule 15.2 and under its inherent jurisdiction grants summary judgment to the Defendant so that the claim is dismissed with costs to be agreed or assessed;
5. The Application made by the Claimant to add Parties is refused with costs to be paid by the Claimant to the Defendant as agreed or to be assessed;”

**Application for leave before the trial judge**

**[25]** An application by Minerva for leave before the lower court to appeal the judgment of the trial judge striking out the claim, granting summary judgment and refusal to join Minerva (Belize) and Buckingham, was refused.

**Fresh application for leave to appeal by Minerva to this Court**

**[26]** By a notice of motion dated 1 August 2017, Minerva made an application to this Court for (a) an order granting extension of time to apply for leave to appeal (if necessary); (b) an order granting leave to appeal against the oral decision of Abel J made on 3 April 2017 and perfected on 30 May 2017; and (c) costs to be determined on outcome of appeal. The application is supported by the sixth affidavit of Mr. David Jenkins.

## Grounds of application by Minerva for leave before the Court of Appeal

[27] The grounds of the application are:

1. The court made *prima facie* errors in law and in fact as follows:

- (a) The trial judge erred in law when he struck out Minerva's claim on the basis of deficient pleadings, as it nonetheless found that the claim was essentially one in trust;
- (b) The judge failed to consider the applicable law on pleadings as there is no need for extensive pleadings since witness statements are now exchanged;
- (c) The judge failed to find that the pleadings fulfilled its intended purpose since Bay Trust knew that the claim was made in constructive trust and defended the claim as such;
- (d) The judge erred when he found that there was no equitable assignment because of lack of evidence. The judge failed to consider the evidence that the proposed, second claimant, Minerva Belize had continued to operate and manage the business of Minerva and that an equitable assignment could be effected by words or conduct;
- (e) The judge erred when he dismissed the application for joinder and granted summary judgment in favour of Bay Trust on the basis that there was no equitable assignment;
- (f) The judge erred when he struck out the claim and granted summary judgment as he failed to consider that even if there was no equitable assignment, Minerva had been restored to the register of Companies in the British Virgin Islands, and as such was deemed to never have been struck off.

2. There are arguable grounds of appeal with real prospects of success.

## **Test for the granting of leave to appeal**

[28] Both senior counsel, Mrs. Marin-Young and Ms Shoman have correctly stated the test for leave to appeal in their written submissions. The Court was referred to *The Prime Minister and Minister of Finance et anor v Albert Vellos et al*, Civil Appeal No. 11 of 2008; *Wang v Atlantic Insurance Co. Ltd*, Supreme Court Action No. 114 of 1998; and *Belize Telemedia Limited v Belize Telecoms v Attorney General*, Civil Appeal No. 23 of 2008.

[29] In *Prime Minister & Minister of Finance v Vellos*, Civil Appeal No. 11 of 2008 (unreported) dated 14 March 2008, this Court approved *James Wang v Atlantic Insurance Co. Ltd.*, Action No. 114 of 1998, in which the Supreme Court of Belize considered the issue of leave to appeal to the Court of Appeal. The Court in the *Vellos* judgment said that the judgment of *Wang* set out the circumstances in which such leave would be granted and the view therein had never been doubted or called into question. In *Wang*, a judgment of Sosa J, (as he was then), the court adopted the circumstances in which the Court of Appeal in England would grant such leave. Sosa J stated that, “.... “Circumstances in which leave will be granted” appearing in The Supreme Court Practice 1991, Volume 1, page 964, at paragraph 59/14/7, leave will be granted by the English Court of Appeal in three categories of case, viz.:

1. where they see a *prima facie* case that an error has been made;
2. where the question is one of general principle, decided for the first time; and
3. where the question is one of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage.”

## **Whether there were *prima facie* errors in the oral judgment of Abel J**

[30] Grounds 1, 2 and 3 by Minerva for leave to appeal to this Court concern the issues of deficiency of the pleadings. These grounds are inextricably linked and will

be discussed together. The findings of Abel J were that the claim by Minerva was badly pleaded and that it had ample opportunity to rectify the deficiency but failed to do so.

#### *Arguments of Minerva*

**[31]** Learned senior counsel, Mrs Marin-Young submitted that the pleadings set out all the facts on which it sought to rely to pursue its claim in trust. Senior counsel referred to paragraphs 14 to 20 of the amended statement of claim. She submitted that Minerva's case was about a remedial constructive trust imposed automatically by reason of breach of a bare trust and has nothing to do with any "common intention constructive trust." (The arguments before the court below show otherwise). Counsel contended that the trial judge erred *in limine* in his ruling that "common intention" and "unconscionability" was a necessary element of the constructive trust that was pleaded. Further, counsel argued that Minerva pleaded that Bay Trust stands possessed of the "service fees" as bare trustee for Minerva by operation of law, that is, by reason of the express terms of the Trust.

#### *Arguments of Bay Trust*

**[32]** Senior counsel, Ms. Shoman submitted that the trial judge was correct to find that Minerva pleadings were defective since the amended statement of case failed to achieve the fundamental function of a pleading which is to set out a case of a party and the facts relied upon. Senior counsel relied on rule 8.7 of the Supreme Court (Civil Procedure) Rules 2005, which states that, "*The Claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.*" Ms Shoman relied on the *Eastern Caribbean Flour Mills Ltd v Boyea* VC 2007 CA 1 and *Mc Philemy v Times Newspapers Ltd*. [1993] 3 All ER 775.

**[33]** Senior counsel, Ms Shoman submitted that the trial judge was correct to strike out/ grant summary judgment against Minerva because it disclosed no reasonable grounds for bringing the claim. She argued that paragraphs 17 and 18 of the amended statement of case plead the issuance by Minerva to Bay Trust of an invoice dated 1

January 2016 in the sum of 7.7 million pounds and a letter to Bay Trust containing an instruction by the firm to pay that invoice and an opinion of a partner or principal of the firm. Ms. Shoman submitted that this is the only factual basis for the allegation that “the amount payable pursuant to the Claimant’s invoice became indisputable and payable to the Claimant,” but that this is insufficient.

**[34]** In relation to the legal basis of the claim, Ms Shoman argued that clause 3.3 of the Trust deeds cannot be sustained for several reasons: (a) There was no underlying entitlement to payment on the part of Minerva nor any underlying payment obligation owed to it. A service fee is only generated by services which are provided to and accepted by the Trustee. Clause 3.3 empowers the firm to oblige the trustee to “discharge” the invoice. However, without an underlying contractual or quasi-contractual obligation on the part of the Trustee there is no obligation which the trustee can be instructed to discharge. (b) Clause 3.3 does not create any obligation which is owed to Minerva since an obligation is owed to the beneficiaries and not to the person raising the invoice.

(c) The decision of a partner of the firm is not conclusive or decisive. The Partner cannot conclusively determine that a fee of any amount is due without justification. Further, clause 3.3 does not purport to confer on the firm or a partner or principal the power to determine the quantum of a service fee but to give an opinion that a fee is a service fee. and (d) There is no invoice or opinion in respect of the sum of 7.2 million pounds claimed since in the amended statement of claim, it is claimed that the invoice, the firm’s instruction and the partner’s or principal’s opinion all related to the sum of 7.7 million. Thereafter, it was pleaded that the invoice for 7.7 million was erroneous as the amount is 7.2 million. Yet, there is no invoice or instruction for the latter amount claimed.

### *Discussion*

**[35]** The applicable principle is that leave would be granted if there is a *prima facie* case that an error had been made by the court. The claim before its amendment was a claim for monies due and owing. The amended claim was pleaded in terms of breach

of trust. Minerva had accepted before the trial judge that it is not claiming as beneficiaries under the Trust Deed. Mrs. Marin Young argued that Minerva has a beneficial interest in a portion of the Trust Fund and that Clauses 3.3 and 3.4 set out the terms upon which the funds are to be held in trust for Minerva. Abel J was not satisfied with the pleadings, as it was his view, that there was no basis for the claim in trust. The trial judge having looked at the pleadings stated (at page 162 of the transcript) that “*the claim is pleaded in terms of breach of trust and not contract,*” and he further stated that it was not established to the satisfaction of the court, “even at this stage, *the basis of the claim in trust, more specifically in constructive trust or even any express trust.*”

[36] In relation to the law on constructive trust, the trial judge relied on the authorities cited by senior counsel, Mrs Marin Young, that is: (i) *Underhill and Hayton Law of Trusts*; (ii) *Lloyd’s Bank Plc v Rosset* and (iii) *Robert Lee & Ors v Clarke Osborne & Ors*. In his oral decision, he said that Minerva relied on the authority of *Lloyd’s Bank* and noted that on the basis of that case, the question that had to be determined by the court was “*whether the parties had entered into an agreement, made an arrangement, reached an understanding or formed a common intention that the beneficial interest in the property would be jointly owned.*” He noted that in the case at hand, it would be the subject matter of the fees which are being claimed (£7,292,873.00) and this is opposed to having a claim for the sum of monies in question, which he viewed as a significant difference. The trial judge said that one would give a **beneficial interest in the trust property**, whereas the other would give rise to a **claim against the properties being held in trust by the trustees**.

[37] In the view of Abel J, the pleadings were defective as a claim in constructive trust. He stated that the pleadings ought to have “expressly stated, brought itself within the basis on which the constructive trust is said to have arisen and not leave it to the court to speculate or imagine and/or to infer any arrangements that could possibly give rise to such a constructive trust.”

[38] Further, he stated that Bay Trust was not in a good position in relation to responding to the claim because it was framed in general terms, “*wholly lacking in any kind of particularity and without specifically pleading the unconscionability of the arrangement were the court not to grant a constructive trust.*” The learned judge further stated that it should have been expressly pleaded that a “*constructive trust had arisen, how it had arisen, why it had arisen and what are the facts and matters on which the claimants are relying to justify the court’s finding that there is such a constructive trust.*” As a result of these shortcomings, the trial judge struck out the claim of Minerva as providing no reasonable cause of action.

[39] In my opinion, the argument by Minerva that the trial judge made *prima facie* errors in law and fact, should be rejected. The authorities relied upon by Mrs Marin Young before Abel J to argue her case show that there must be a common intention constructive trust for there to be a beneficial interest in the trust property. Mrs. Young in the court below was asked by Abel J, “*which principles of constructive trust are you saying applies to this case?*” Learned counsel responded that, “*The principle of constructive trust we say is a **common intention constructive trust** and we also plea **remedial constructive trust**...*” Counsel stated that the remedial constructive trust was in the alternative but made no arguments before the court on that aspect of the case. Mrs. Marin Young referred the judge to *Underhill and Hayton Law of Trusts* and read for the court an extract as follows:

“A constructive trust may be imposed on property, such as a house in M’s name that is occupied by M and W as a shared family home, to give effect to M and W’s expressed or inferred (but not imputed) **common intention** (whether at the time of the purchase or subsequently) that W should have a **beneficial interest therein**, so leading W to act to her detriment in reliance on that intention, so making it **unconscionable** to allow M to deny W any interest by pleading lack of the necessary written formalities for a valid declaration of trust.”

[40] Learned counsel also referred the judge to *Lloyd’s Bank Plc v Rosset*, where the English court stated that the question to be determined is whether the parties had

entered into an agreement, made an arrangement, reached an understanding or formed a common intention that a beneficial interest in property would be jointly owned.

[41] Mrs Marin informed the court that constructive trusts also arise in a business setting and referred the court to the case of *Robert Lee* which she argued was similar to the case at hand. Counsel read a summary of the facts for the court which show that the parties had entered into arrangements or a joint venture for a management buyout of a company. The defendant failed to fulfil those arrangements and a claim was brought against them in constructive trust alleging that there was a **common intention constructive trust** which was founded upon an entitlement to reward for work done, the reward being 25.5% shareholding in the company.

[42] Abel J had no difficulty with the authorities relied upon by senior counsel, Mrs Marin Young. He had a difficulty with the pleadings itself. He informed counsel that when constructive trust is pleaded, it has to be stated that there was a common intention and “*you say what the common intention was .. you would set out ..which is basically an understanding or agreement that the parties would have a beneficial interest in the property.*”

[43] Senior counsel also took the trial judge through the pleadings and contended that Minerva is claiming a beneficial interest in a portion of the Trust Fund and that Clauses 3.3 and 3.4 of the Trust Deed set out the terms upon which the funds are to be held in trust for Minerva. In my view, it was not the duty of the court to interpret clauses 3.3 and 3.4 of the Trust Deed at that stage of the proceeding. Abel J correctly applied the law to the pleadings that was before him, which were clearly deficient. In my opinion, no errors were made by the trial judge in law and fact and as such he was correct in striking out the claim as providing no reasonable cause of action.



## **No realistic prospect of success on appeal**

**[44]** It would be a waste of judicial time to embark on a discussion, on the other grounds, for leave to appeal the decision of the trial judge. The deficiency of the pleadings is sufficient to dismiss the application for leave to appeal and order costs in favour of Bay Trust. In my opinion, there would be no realistic prospect of success in the appeal by Minerva. See *Belize Telemedia Ltd. v Attorney General et al*, Civil Appeal No. 23 of 2008, in which this Court accepted *Practice Note (Court of Appeal: procedure)* [1999] 1 All ER 186, where Lord Woolf MR set out the practice in relation to applications for leave to appeal. At paragraph 10 of the Directions, page 187, he states:

“...The general rule applied by the Court of Appeal, and thus the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court. Examples are where a case raises questions of great public interest or questions of general policy..”

**[45]** Mrs Marin Young contended that there are arguable grounds of appeal with real prospects of success. It has been shown that the pleadings are deficient as there is nothing to show a common intention constructive trust between the parties that Minerva would have a beneficial interest in the trust property. As a consequence, Minerva has no realistic prospects of success on appeal.

**Disposition**

**[46]** I would propose the following order:

- (1) The application by Minerva Services Ltd. for leave to appeal the decision of Abel J dated 3 April 2017, is refused.
- (2) Bay Trusts is granted costs of this application to be agreed or assessed.

---

HAFIZ BERTRAM JA

**[47]** I have read the draft judgment of Hafiz-Bertram J. A. and comments of Awich J.A. and agree with the reasoning and disposition.

---

DUCILLE JA