Neutral Citation Number: [2025] CA (Bda) 12 Civ

Civil Appeal No. 7 of 2021

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. JUSTICE LARRY MUSSENDEN
CASE NUMBER 2020: No. 237

Dame Lois Browne Evans Building
Hamilton, Bermuda HM 12

Date: 8/5/2025

Before:

THE PRESIDENT, THE RT HON SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL THE HON ELIZABETH GLOSTER
and
JUSTICE OF APPEAL THE RT HON GEOFFREY BELL

- -

Between:

BERMUDA HEALTH COUNCIL

Appellant

- and -

(1) DR. JAY JAY SOARES

First Respondent

(2) THE HAMILTON MEDICAL CENTER LTD.

Second Respondent

Appearances:
Ben Adamson, Conyers, for the Appellant
Kyle Masters, Carey Olsen, for the Respondents

Date of Submissions: 22 & 25 September 2023
Date of Judgment: 8 May 2025

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JUDGMENT IN RELATION TO COSTS

GLOSTER JA:

Introductory

1. This is the ruling of the Court in relation to the costs of this matter following an appeal to this Court from the judgment of Mr Justice Mussenden (as he then was) dated 8 April 2021 ("the Judgment") and two subsequent interlocutory rulings of this Court.

2. The appeal was brought by the Bermuda Health Council ("the Appellant") against a decision of the Supreme Court on the application of Dr Jay Jay Soares ("Dr Soares") and The Hamilton Medical Centre Limited ("HMC"), (together "the Respondents") for judicial review of the Appellant's decision, made pursuant to its powers under the Health Insurance Act 1970, its Regulations and the Bermuda Health Council Act 2004, in connection with the Respondents' application made in June 2019 for approval to provide services that are included as standard health benefits ("the SHB Application"). The Supreme Court ruled against the Appellant, finding that the decision of the Appellant's Appeal Committee (the "Appeal Committee") was flawed in a number of ways, including on the ground that it was procedurally unfair in light of the involvement of Dr Ricky Brathwaite (see Supreme Court Judgment at [79]).

3. The Respondents filed a further SHB application in June 2020, for consideration by the Appellant. However, the Appellant had not considered the Respondents' June 2020 application before the hearing of the appeal in November 2021.

4. Having heard the appeal on 12 November 2021, the Court delivered the following interlocutory ruling ex tempore on 19 November 2021 ("the November 2021 Ruling"):

> *"SIR CHRISTOPHER CLARKE, PRESIDENT:*
> *1. This is an interlocutory ruling by the Court after hearing the appeal in this matter.*
> *2. We have reached three preliminary conclusions. They are:*
> *(i) that the SHB Review Committee was not in error in treating the application as a Mid-Year application, and the September 2020 Appeal Panel was not in error in upholding that decision for that reason;*
> *(ii) that the decision of that Panel cannot stand because, based on Dr Brathwaite's own evidence as to his participation at all stages of the proceedings from the original Technical and SHB Committees up to and including the July and September 2020 Appeal Panels, and in all the circumstances, "the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that [the September 2020 Appeal Panel] was biased"; see per Lord Hodge in Porter v Magill [2001] UKHL 67 , at paragraph 103; approved by the Supreme Court in Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd at [2020] UKSC 48 at paragraph 52; see also Lord Phillips of Worth Matravers MR in Re Medicaments and Related Classes Goods (No. 2) [2001] 1 WLR 700, 726 para 83;*

(iii) that, nonetheless, it was not appropriate for Mussenden J to take it upon himself to substitute his own decision for that of the September 2020 Appeal Panel.

3. In the light of those conclusions, taken by themselves (and irrespective of, and without prejudice to, any further conclusions which the Court might reach), given that:

(i) the order made by the judge at para 133(c) of the judgment reversing the September 2020 Appeal Decision and approving the application dated 6 March 2019 cannot stand; and

(ii) the September 2020 Appeal Panel Decision also cannot stand,

this Court will need in due course to make orders and/or give directions as to:

(a) how, in all the circumstances, this appeal is to be disposed of;

(b) what, if any, relief is to be given to Dr Soares /HMC; and

(c) what, if any, directions are to be given by this Court as to the future conduct of Dr Soares' /HMC's applications.

4. We do not, however, propose to make such orders and/or give such directions at the present time. In our judgment, the course that should now be followed is for this appeal to be adjourned sine die pending consideration by the BHC of the extant Full Year application made by Dr Soares /HMC on 30 June 2020. That would mean the BHC considering it as a Full Year application (which does not, therefore, need to satisfy the Mid-Year conditions) on the footing that Dr Soares and the HMC are not Incumbent Providers. Necessarily, they cannot fall to be treated as Incumbent Providers if the footing on which they became such, namely the decision of Mussenden J, cannot stand even though that decision has not yet been formally set aside.

5. In our judgment this is the correct course for a number of reasons. The tortuous history of the various applications needs to come to an end. The best way of proceeding towards that end is for the Full Year application to be properly considered as such. If that is done, and the application is granted, there will, we understand, be no problem arising from the fact that the application relates to the year 2021/2022, which is not that far from expiration, since, if it is granted, the BHC will, under its current policy, treat Dr Soares/HMC as an Incumbent Provider whose status will remain that for the 2022/2023 year. If the application fails, it will have failed after consideration of a Full-Year application. If, on the other hand, we were immediately to set aside para 133 (c) of the judgment (rather than stating, as we have, that it falls to be set aside, as, in due course, it will be), Dr Soares/HMC would find themselves in the position where they cannot lawfully provide the Imaging Services as an SHB in circumstances where they might then find that, when the BHC gets round to considering the extant Full-Year application Soares/HMC is entitled to do so. This is not a satisfactory method of proceeding, particularly in the light of the past history of this case.

6. When, or at any rate not before, the BHC has reached its decision on the Full Year Application, the Appeal will be restored for hearing and this Court will decide exactly what order to make. That will involve setting aside the judge's substitution of his own view. What is to be done in relation to the decision of the September 2020 Appeal Panel will be a matter for decision by this Court.

> *7. We shall deliver a judgment giving our reasons for reaching the conclusions to which I have referred, and dealing with other matters, in due course after the appeal has been restored for further hearing."*

5. After delays which we were informed were connected to illness (amongst other things), the ad hoc committee appointed to consider the Respondents' June 2020 SHB Application ("the Ad hoc Committee"), heard representations from the Respondents on 4 May 2023. On 2 June 2023 the Ad hoc Committee delivered its recommendation to the Appellant, recommending that the Respondents be approved to provide services under the standard health benefit.

6. In the meantime, the Court had fixed a case management hearing for 8 June 2023 so that it could be updated about the state of the applications and, in particular, to consider what was to happen in relation to the outstanding proceedings.

7. On 6 June 2023, the Respondents' lawyers, Carey Olsen Bermuda Limited, filed a report with the Court explaining "*what has or has not been happening since this matter was last before the Court*" and including a detailed chronology.

8. Following other emails from the respective parties updating the Court, on 7 June 2023 the Court issued the following directions by email to the parties ("the 7 June 2023 Directions"), vacating the directions hearing:

> *"In the light of the recent emails from the parties, we understand that the agreed position is as follows: that, following the Court of Appeal adjournment of the case in November 2021, the application for approval, on a full year basis, was considered by a Heath Technology Review Committee on 27 January 2022; that the application was then referred to a Standard Health Benefit Committee in the Spring of 2022 and, after multiple adjournments, a hearing took place in May 2023; that a recommendation was issued by the SHB Committee dated 30 May 2023, recommending approval of the application; and that this recommendation is to be considered by the Council's board of directors at their next board meeting, which is scheduled for 6th July 2023.*
> *The parties have, in an agreed email from Conyers dated 7 June at 12:31pm, suggested to the Court:*
> *"In light of the recent recommendation by the Council's committee, which now needs to be considered by the Council's board (which is meeting on 6 July), the parties respectfully suggest that,*
> *1. The Court defer handing down its ruling until after 6 July, to allow the Council to make its ultimate decision. The parties will write to the Court (again on a joint basis) as soon as this is done.*
> *2. Upon circulating its Ruling, the Court invite submissions in writing on costs or the appropriate terms of the resulting order. Such submissions to be filed by both parties within 21 days.*
> *3. The parties provide written submissions on those points and the Court provide any necessary rulings on such consequential matters in due course.*
> *It may be that, in light of the above, there is no need for a hearing tomorrow. We look forward to hearing from the Court in due course".*

> *In the circumstances the Court is content not to hold the directions hearing tomorrow pending the decision by the Council's board of directors and that hearing will be vacated. However, the Court is not prepared to follow the parties' suggested procedure in other respects. The Court directs as follows:*
> *1. If the board does not approve Dr Soares' application contrary to the recommendation the SHB Committee, then this court will, without more, reinstate the proceedings as currently adjourned and will direct submissions to be provided in writing as to the correct way forward within 14 days of such decision.*
> *2. In the event that the board does indeed approve Dr Soares' application as recommended by the SHB Committee:*
> *a. the Court expects the parties to agree a sensible resolution of the costs of the earlier proceedings and to inform the Court of such agreement within 14 days;*
> *b. in the absence of any such agreement in relation to costs, the Court directs that submissions are to be filed within 14 days of such decision and that it will decide the issue of costs on the papers; and*
> *c. the Court does not intend to give any further ruling beyond the ruling dated 24 November 2021 delivered on the adjournment, a transcribed copy of which is attached."*

9. On 9 August 2023 Conyers Dill & Pearman informed the Respondents' lawyers, Carey Olsen, and also the Court, that the Respondents' application for approval had been approved by the Appellant. Accordingly, from that date the Respondents were authorised to provide the requisite services under the standard health benefit.

10. Although the 7 June 2023 Directions stated that the Court expected the parties to agree a sensible resolution of the costs and disposition of the earlier proceedings and to inform the Court of such agreement within 14 days, the parties were unable to do so. Accordingly on 22 September 2023 the Appellant filed its submissions on costs and on 25 September 2023, the Respondents did so.

11. As a result of administrative and technical problems within the Court, and difficulties in accessing transcripts of the November 2021 Ruling and the 7 June 2023 Directions, it was only shortly before the November 2024 Session of the Court, that the members of the Court had full access to the relevant orders, directions and the parties' submissions in relation to costs and the appropriate order to be made; accordingly it was only at that time that the members of the Court were able to deliberate in relation to the issues involved. It is against that background that this judgment has been delayed.

12. The respective submissions of the parties in relation to costs and the appropriate order that the Court should make may be summarised as follows.

The Appellant's submissions

13. The Appellant submits that:

    (a) The Council's appeal was successful: the appeal has been allowed in part.

(b) This litigation has been revealed as entirely academic. The Council has approved the Respondents' full year application. The Respondents' argument (in this litigation) that its mid-year application was in reality a full year application was both wrong and led to enormous waste of time and costs.

(c) The parties should move on and cease taking up court time and resources.

(d) The appropriate order, as regards to costs, is that there should be no order as to costs either on appeal or below.

14. In support of this submission, the Appellant advances the following reasoning:

(a) The Council won the appeal. It achieved substantial success.

(b) First, the most important aspect of the Supreme Court Order dated 8 April 2021 ("the Order"), certainly from the perspective of a regulator, was the Order by which the Supreme Court itself granted approval of HMC's application. This aspect of the Order has been overturned.

(c) Second, the Supreme Court had given permission, pursuant to paragraph 4 of the Order, for HMC to pursue damages against the Council for lost revenue, which HMC was actively pursuing. Again, this aspect has been overturned.

(d) Third, the Court of Appeal ruled that Mussenden J was wrong to find that the decision of the Council was irrational. The arguments on rationality took up most of the time on the appeal (and below) and were of particular importance to any regulator.

(e) Having thus achieved substantial success, the Council is entitled to all its costs of the appeal.

(f) That would leave the issue of the costs below. Paragraph 1 of the Order (which quashed the Council's decision not to allow the internal appeal) was upheld by the Court of Appeal - should this result in HMC receiving all, or some, of its costs below?

(g) This would be an odd result in circumstances where:

(i) The majority of the argument, and costs, were focused both on appeal and below on the issues of rationality, which were unsuccessful;

(ii) As regards bias, the Court of Appeal upheld the bias point but on narrow grounds, namely the presence of Dr Brathwaite. The time and costs devoted to this issue was extremely small in comparison with the other arguments. (The paragraphs dealing with Dr Brathwaite's attendance at the appeal panel take up a small fraction, far less than 10%, of the skeleton arguments.)

(iii) The quashing of the appeal panel decision would (putting aside the ultimate decision on the full year application) have been an academic

victory. The remedy would have been remission to the same committee, absent Dr Brathwaite (who was non-voting). Since HMC could not demonstrate budget neutrality, which was a requirement for the mid-year, the outcome would have been the same.

(h) In the circumstances, it is submitted that the just outcome is the simplest one and the appropriate order on appeal should be:

(i) The appeal against the Order allowed in part.

(ii) No order as to costs both on the appeal and below.

The Respondents' submissions

15. The Respondents submit in summary as follows:

(a) Before the appeal was heard in November 2021, the Respondents filed an application in June 2020 for consideration. The June 2020 application fell to be considered on a 'full year' basis. The June 2020 application had not been considered by the Appellant before the hearing of the Appeal in November 2021 (although according to the Appellant's own policy, this appeal should have been considered before then).

(b) There was on any basis considerable delay. The ad hoc committee appointed to consider the Respondents' June 2020 application for approval under the Standard Health Benefit (Ad hoc Committee), heard representations from the Respondents on 4 May 2023. The delay between the formation of the committee and the date of the meeting was multifactorial and largely outside of the control of the Respondents. These factors included: illness on the part of the First Respondent, non-appearance of committee members and the need to coordinate the calendars of counsel for the parties, the Ad hoc Committee consisting of 4 members in the end, and the Respondents' expert who attended and made representations (no doubt a challenging task for the Chairman).

(c) The November 2021 Ruling records the salient conclusions of the Court, as follows:

(i) That the SHB Review Committee was not in error in treating the application as a mid-year application and the September 2020 Appeal Panel was not in error in upholding that decision for that reason;

(ii) That the decision of that panel could not stand because, based on Dr Brathwaite's own evidence as to his participation at all stages of the proceedings from the original, technical and SHB committees up to and including the July and September 2020 Appeal Panels and in all the circumstances "*the fair- minded and informed observer having considered the facts would conclude that there was a real possibility that the September 2020 Appeal Panel was biased",* [..];

(iii) That nonetheless it was not appropriate for Mr. Justice Mussenden to take it upon himself to substitute his own decision for that of the September 2020 Appeal Panel.

(d) The Court has made declarations about the decision of the SHB Review Committee, the Appeal Panel's decision (see above), and the decision of the Judge to substitute his own decision for that of the Appeal Panel (see above) and it has made an order, that the decision of the Appeal Panel be quashed (see above).

(e) On 2 June 2023 the Ad hoc Committee delivered its recommendation to the Appellant, recommending that the Respondents be approved to provide services under the Standard Health Benefit. The Appellant confirmed that it had accepted this recommendation on 9 August 2023.

(f) This Court's decision in *First Atlantic Commerce Ltd. v Bank of Bermuda Limited* [2009] Bda LR 18 ("*FAC*"), and the Supreme Court decision of *Binns v* Burrows [2012] Bda L.R. 3 (which applied *FAC*) provide a helpful overview of the law on the issue of costs. The following principles are relevant to this matter:

(i) The issue of costs remains in the discretion of the Court. Its task is to apply the fundamental guiding principle' set out at Order 62 of the Rules of the Supreme Court 1 985 (RSC), which provides:

> *"If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the cost." (FAC at [6])*

(ii) "Unless the Court or the parties have identified discrete issues for determination at the trial of a Bermudian action, the Court's duty in awarding costs will generally be to:

a. determine which party has in common sense or "real life" terms succeeded;

b. award the successful party its/his costs; and

c. consider whether those costs should be proportionately reduced because e.g. they were unreasonably incurred or there is some other compelling reason to depart from the usual rule that costs follow the event."" (Burrows at [6])

(iii) The question of success in real life terms is not a technical term but a result in real life, and the question as to who succeeded is a matter for the exercise of common sense (FAC at [26]).

(g) The Interlocutory Ruling maintained the relief granted to the Respondents by the Supreme Court. The Appeal Committee's decision has been quashed. It is respectfully submitted that, whatever victory was achieved by the Appellant, the real life, common sense, outcome was in favour of the Respondents, without question.

(h) It is accepted that the Court made declarations that it was not appropriate for the Judge to replace his own decision with that of the September 2020 Appeal Panel and that on the narrow aspect of the Judge's decision relating to the decision to treat the mid-year application as full year application. But there have been no orders made on these matters. The question, of course, is who was successful in real life terms. The Appellant filed the appeal with a view to setting aside the Judge's finding that the 2020 Appeal panel was wrong. This objective was not achieved. The Appellant could not have achieved success in real life terms in the circumstances.

(i) Applying *FAC* and *Burrows*, and the ordinary rule under Order 62 of the RSC, the Respondent should be awarded its costs both here and below.

(j) Even if the Court were of the view that the usual rule should not apply, the Respondents' submission is that there is *'good reason'* in light of the circumstances in the case, for the discretion of the Court to be exercised in favour of the Respondents. *FAC* is good authority for the Court to make a finding - in unusual circumstances - that awards a party a proportion of their costs.

(k) By adjourning the appeal *sine die* pending the determination of the 2020 SHB Application, but allowing the Respondents' SHB status to continue during the intervening period, in addition to forcing the Appellants to consider the June 2020 SHB Application (a thing they were reluctant to do prior), the Court also provided an unusual 'bridge' mechanism for the benefit of the Respondent and required the Appellant to make a decision it has been putting off for the better part of 2 years for no good reason.

(l) The Court's decision here was in recognition of the 'tortuous history' of the matter (per the November 2021 Ruling). It is submitted that some of the key historical facts as at the date of the hearing of the appeal that the court no doubt had in mind when acknowledging the difficult road to appeal are:

    (i) The 2019 SHB Application had been under consideration for 2 years before the Supreme Court decision. This was a process that is usually completed is less than 1 year.

    (ii) The SHB Application was rejected by the Appellant and, then, the subject of 2 non-statutory appeals (owing solely to the misbehaviour of the Appellant).

    (iii) The Supreme Court action was a judicial review necessitated by, inter alia, the procedural unfairness visited on the non-statutory appeal

process, precipitated by the Appellant. This behaviour was ultimately found to be inappropriate by this Court.

(m) In addition to the history, there remains a practical feature of this appeal which warrants closer consideration when determining the issue of costs. The June SHB 2020 Application had not been considered by the Appellant despite there being a policy imperative that it should have been. Further, it was abundantly clear that consideration of the June 2020 SHB Application had the potential to cut through the morass created by the appeal. Through no fault of its own, the Respondents were put to the costs of an appeal when a fair (and reasonable) path to a remedy via the consideration of the June 2020 SHB Application was being ignored by the Appellant.

(n) As it happens, the consideration of the June 2020 Application had the effect of resolving the SHB issues. Naturally, the Court is not required to take this (post appeal) fact into account when considering costs. But it is noted for the record.

(o) It is submitted that these facts are relevant to the 'good reason' question posed by Order 62. When reviewed in this context, there is 'good reason' even if the Court considered that the Appellants were successful, to depart from the ordinary rule and award the Respondents a significant portion of their costs, in line with the 'real world' level of success achieved, namely, an order setting aside the decision of the 2020 Appeal Panel and a 'bridge' to allow the June 2020 SHB Application to be considered.

(p) In all the circumstances, the decision of the 2020 Appeal Panel must be set aside. A decision tainted by procedural unfairness cannot stand. The Court has, fairly, made declarations with respect to the Judges' decision at [133(c)] of the Judgment and concerning the decision to treat the 2019 SHB Application as a full-year application. These declarations can fairly be recorded. With respect to the balance of the grounds of Appeal (i.e. those that have not been the subject of the interlocutory ruling) the Respondents' submission is that the Court is entitled to make no ruling in respect of these given that the core of the issues have been resolved. A copy of a draft order reflecting this position is annexed to these submissions for the consideration of the Court.

Discussion and determination

16. We have carefully considered the respective submissions of the Appellant and the Respondents.

17. In our judgment, the reality is that the Appellant spent far too long in considering the Respondent's original application and its further June SHB 2020 Application. However, although this Court disagreed with Mussenden J in certain respects, and held that the order made by the judge at para 133(c) of the Judgment reversing the September 2020 Appeal Decision and approving the application dated 6 March 2019 could not stand, the most important aspect of this Court's decision, as set out in the November 2021 Ruling, was that the September 2020 Appeal Panel Decision could not stand because, based on Dr Brathwaite's own evidence as to his participation at all stages of

the proceedings from the original Technical and SHB Committees up to and including the July and September 2020 Appeal Panels, and in all the circumstances, "*the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that [the September 2020 Appeal Panel] was biased*"; see per Lord Hodge in *Porter v Magill* [2001] UKHL 67 , at paragraph 103; approved by the Supreme Court in *Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd* at [2020] UKSC 48 at paragraph 52; see also Lord Phillips of Worth Matravers MR in *Re Medicaments and Related Classes Goods (No. 2*) [2001] 1 WLR 700, 726 para 83.

18. This Court found in favour of the Appellant, in respect of two matters, namely:

(a) that the SHB Review Committee was not in error in treating the application as a Mid-Year application, and the September 2020 Appeal Panel was not in error in upholding that decision for that reason;

(b) that it was not appropriate for Mussenden J to take it upon himself to substitute his own decision for that of the September 2020 Appeal Panel and grant approval of the application.

Whilst these are important matters, they do not justify the characterisation of the November 2021 Ruling as a "win" for the Appellant on the appeal, irrespective of this Court's implicit ruling as to rationality.

19. The outcome of the November 2021 Ruling was that the Court considered:

(a) that the decision could not stand in circumstances where there was appearance of bias, on the basis of procedural unfairness due to Dr Braithwaite's participation at all stages of the proceedings;

(b) that the practicalities of the situation made it more appropriate for the Appellant to decide the application on the basis of the Respondents' June 2020 application for approval, rather than for the parties to engage in sterile litigation; and

(c) that was particularly so in circumstances where the Appellant had clearly delayed consideration of the Respondents' application.

20. Moreover, the Court considers that is entitled to take into account the subsequent post-hearing fact that the Appellant, when it finally came to consider the Respondents' application, approved it.

21. In all the circumstances, and giving due regard to the fact that, in accordance with the November 2021 Ruling, the Court considered that the Respondents were unsuccessful on certain issues, in our judgment the appropriate order is that the Appellant should pay the Respondents 75% of their costs on the standard basis both of the Appeal and of the costs below, to be taxed if not agreed.

22. Accordingly, the order which the Court proposes to make is the following:

"**UPON** the Court's interlocutory ruling dated 21 November 2021 finding that:

(i) the Appellant's Standard Health Benefit Review Committee ("SHB Committee") was not in error in treating the application as a mid-year application and the Appellant's September 2020 Appeal Panel ("Appeal Panel") was not in error in upholding the SHB Committee's decision for that reason;

(ii) the decision of Appeal Panel be set aside on the basis of procedural unfairness due to Dr Ricky Brathwaite's participation at all stages of the proceedings from the original, technical and SHB committees up to and including the Appeal Panel;

(iii) the finding of the Judge at paragraph 133(c) substituting his own decision for that of the September 2020 Appeal Panel was inappropriate.

AND UPON the Appeal being restored for hearing following the outcome of the Appellant's consideration of the Respondents' application for approval to provide services pursuant to the Standard Health Benefit dated 30 June 2020

AND UPON considering submissions on behalf of the Appellant and the Respondent on the issue of costs and the terms of this Order

IT IS ORDERED that:

1. The Appeal is allowed in part.

2. The Decision of the Appeal Panel be quashed on the grounds of procedural unfairness.

3. The Decision of the Judge to reverse the decisions of the SHB Committee dated 6 July and 29 September 2020 and approve the Respondents' application to provide the medical services applied for in its application dated 6 March 2019 under the Standard Health Benefit with immediate effect is set aside.

4. The Court makes no findings in respect of the Appellant's other Grounds of Appeal.

5. The Appellants are to pay 75% of the Respondents' costs here and below on a standard basis to be taxed if not agreed and a certificate for two counsel for the Respondents."

BELL JA

23. I agree.

CLARKE P

24. I, also, agree.