

COMMONWEALTH OF THE BAHAMAS

2020/COM/lab/00061

IN THE SUPREME COURT

Commercial Law and Labour Division

BETWEEN

ZANE LIGHTBOURNE

Plaintiff

AND

THE BAHAMAS UNION OF TEACHERS

Defendant

Before: The Hon. Madam Justice Simone Fitzcharles

Appearances: Mr. Obie Ferguson Jr. KC with Mr. Keod Smith for the Plaintiff
Mr. Kahlil Parker KC with Ms. Lesley Brown for the Defendant

Hearing Date: 29 August 2023; 26 October 2023

JUDGMENT

FITZCHARLES, J.

1. This is an action brought in contract by the plaintiff, Zane Lightbourne against the defendant, The Bahamas Union of Teachers (“the Union”), in relation to two contracts of employment between the parties. In brief, the plaintiff seeks compensation for loss of a car allowance in the amount of \$11,683.59. Mr Lightbourne alleges the Union failed to pay him in accordance with Union policy or custom for using his motor car to perform Union business. He contends this was in breach of his contractual appointment as acting President of the Union.
2. The Union defends the action on the grounds that:

- (1) the contracts of employment are null and void by reason that they were created ultra vires the Constitution of the Union;
- (2) the plaintiff was not entitled to a vehicle or vehicle allowance pursuant to any of the governing documents of the Union; and
- (3) the plaintiff acquiesced to not having a vehicle or vehicle allowance and made his subsequent claim for these items too late.

Background

3. The plaintiff was at all material times the Union's duly elected Vice President, having been elected to office in 2013.
4. The defendant is and was at all material times a trade union duly registered under the Industrial Relations Act, Chapter 321 (as amended) of the Statute Laws of the Commonwealth of The Bahamas to organise and look after the welfare of teachers in the Commonwealth of The Bahamas.
5. The material events in this case took place over a period of 17 months, namely December 2014 to February 2015 and April 2015 through June 2016, respectively. During these periods the Union's duly-elected President, Belinda Wilson, was suspended for two infractions – both alleged financial misdeeds ("the suspension period"). During the suspension period, the Executive Committee of the Union executed two contracts of employment dated 18 December 2014 and 1 January 2016, respectively, purportedly appointing the plaintiff on a full-time basis as the Union's "Acting President." By the contracts, the Union afforded Mr Lightbourne the same rights, privileges, and benefits of a duly elected President.
6. By Clause 8.1 of both contracts the Union agreed that:

8.0 Benefits

- 8.1 The President shall have access to and use of a motor car to assist in executing the Union's duties. The service & maintenance for said motor car shall be borne by the Union.

7. The Union is governed by its Constitution. The Constitution is superior to, but complemented by, the Governance Manual. Article 16 of the Governance Manual outlines provisions for the use of Union vehicles as follows:

16.0 Union Vehicles

- 16.1(a) The Union shall provide a car for the President's use.
- (b) An account shall be established at a service station for gasoline and other petroleum products.
 - (c) An account shall be established with an automobile repair and maintenance firm for repairs and maintenance.
 - (d) The President shall be the only signatory to these accounts.
 - (e) (i) In the event the President leaves the Island, the Vice President or an officer in charge shall have use of the car.
 - (ii) Charges for gasoline and repairs shall be requisitioned by purchase order.
- 16.2 (a) The Executive Committee shall approve a set of instructions for the use of Union Vehicles.
- (b) The authorized driver(s) shall be accountable to the Secretary General and Trustees for the proper use of such vehicle.

8. Mr. Lightbourne stated that Article 16 of the Governance Manual and Clause 8.1 of his contracts of employment entitled him to use of a vehicle. He submitted he ought to have received a vehicle from the Union for the period December 2014, January, April, May, June, July, August, September, October, November, December 2015, and January, February, March, April, May June 2016.

9. The plaintiff further alleged that as the Union failed to provide him with a car and this caused him to use his personal vehicle to carry out his added duties as "Acting President" of the defendant "at a personal cost" to him in the sum "of \$11,683.59." The plaintiff alleged as the Union did not provide him with a vehicle as contracted for, the Executive Committee promised he would receive an allowance for his use of his vehicle. He also submitted that it was the Union's policy or practice to pay officers who were entitled to the use of a vehicle a car allowance in the sum of \$687.29 per month if no vehicle was provided. The

Union, under the direction of Ms Wilson, failed or refused to pay the allowance to the plaintiff despite his written request for the same.

10. The defendant denies that it breached the purported contracts as alleged, and denies that the plaintiff's use of his personal vehicle cost him \$11,683.59. The Court accepts that the Union admits Mr Lightbourne used his personal vehicle.
11. On 18 December 2020, the plaintiff filed a Specially Indorsed Writ of Summons against the Union. On 22 June 2021, granted the plaintiff leave to amend his Specially Indorsed Writ of Summons. With the leave of Winder J (as he then was) the plaintiff filed an Amended Writ of Summons (specially indorsed) on 23 June 2021, and filed a Re-Amended Writ of Summons (specially indorsed) on 06 May 2022.
12. By the Re-Amended Writ of Summons, the plaintiff sought the following reliefs:-
 - (1) The sum of \$11,683.59 (as particularized under the heading 'Particulars of Special Damage' in the Statement of Claim);
 - (2) Interest pursuant to the Civil Procedure (Award of Interest) Act, Chapter 80; and
 - (3) Costs
13. The Union filed its Defence on 15 February 2021, and with leave, an Amended Defence on 12 August 2022.

Issues

14. Broadly, the Court must resolve three core issues, namely:
 - (1) whether there was a binding contract made between the Union by its Executive Committee and the plaintiff to appoint him as its "Acting President", with the right to use a Union vehicle to conduct the Union's business or in lieu thereof, be paid a vehicle allowance and,

(2) if so, whether the Union, by failing to provide the plaintiff with the use of a vehicle or vehicle allowance, breached its contractual obligation owed to him, entitling him to damages; or

(3) alternatively, whether the plaintiff's action is defeated by acquiescence, laches, and/or delay as contended by the Union.

Evidence

15. At the trial, each party provided one witness. The plaintiff, through the Witness Statement of Zane Lightbourne, filed on 10 March 2022, presented evidence on his behalf that stood as his evidence-in-chief ("the Lightbourne Witness Statement"). The Union through the Witness Statement of Belinda Wilson, filed on 08 September 2022, presented evidence that stood as its evidence-in-chief ("the Wilson Witness Statement").

16. The witnesses appeared at trial and gave testimony under oath. In evaluating the credibility of each witness, the Court paid regard to their evidence-in-chief, their evidence under cross-examination and other evidence provided. The Court, in a minute way, considered the demeanour of each witness in the witness box. To put it succinctly, the Court found each witness to be truthful and/or credible.

The Plaintiff's Evidence

17. In summary, the plaintiff, by the Lightbourne Witness Statement, recounted that on 18 December 2014, the Union's Executive Committee suspended its President, Belinda Wilson, and two other Executive Officers for alleged misappropriation of the Union's pension funds, approximately \$1.3 million. Ms. Wilson and the other two Executive Officers appealed the suspension to the Appeals Committee and won their respective appeals. Ms Wilson was returned briefly as President, for in March 2015, the Executive Committee again suspended her from the presidency after they discovered duplicate payments made to a contractor hired by the Union to perform construction work on one of the Union's buildings in Freeport, Grand Bahama, The Bahamas. This time, the

suspension of Ms Wilson was upheld by both the Appeals Committee and the Annual General Meeting. These facts were uncontested and are accepted by the Court.

18. Mr Lightbourne testified that during the suspension periods, from 18 December 2014 to March 2015 and April 2015 to 16 June 2016, the Executive Committee appointed him as "Acting President". The Union's President, Ms Wilson, who was on suspension, was instructed by the Executive Committee to return to the National Secretariat the vehicle and other items purchased by the Union for her use as President to carry out the Union's duties. Ms. Wilson did not comply and later reported the said vehicle stolen while in her possession. Mr Lightbourne testified that the Acting Treasurer told the Executive Officers that the Union was unable to purchase a new vehicle for the President at that time due to financial constraints. Further, there was no other vehicle available for his use as they were necessarily in use by other persons, e.g. the Union's messenger and Family Island officers. Therefore, the plaintiff was required to use his personal vehicle to carry out his duties as "Acting President" and to expend his funds in that regard for the Union's benefit over 17 months. The Court accepts these facts as true.
19. In his evidence, Mr. Lightbourne described his entry into the two contracts as "acting President" with the Defendant's Executive Committee. He stated that the contracts provided him inter alia with the same benefit as the President, for the use of a vehicle. He said that the Defendant's President breached clause 8.1 of the Contracts of Employment between the plaintiff and the Defendant by failing to provide him with the car purchased for the President's use. He used his personal vehicle while carrying out duties as the Defendant's "Acting President" at a personal cost to himself in the amount of \$11,683.59. The Court accepts that the Union was unable to provide Mr Lightbourne with a car and that he used his vehicle to carry out the presidential tasks for the Union.

20. By letter dated September 14th, 2020, (a little more than 4 years after the contracts ended) Mr. Lightbourne wrote to the Defendant's President, Wilson, requesting payment for a vehicle allowance in the amount of \$687.27 per month for 17 months. Ms. Wilson refused to pay the requested vehicle allowance in breach of [Clause] 8.1 of the Contracts of Employment between the Mr. Lightbourne and the Union. The Court accepts that Ms Wilson, in her capacity as President of the Union, refused to pay Mr Lightbourne a vehicle allowance.
21. The plaintiff testified that it was the practice to pay officers who were entitled to the use of a Union vehicle, a car allowance if no vehicle was allowed. To substantiate his position, Mr Lightbourne referred to a Summons filed in the Supreme Court on 14th October 2016 by which Ms Wilson claimed that the Union pay her the sum of \$7,560.00 representing the vehicle allowance during her suspension, which amounted to \$687.00 per month. The plaintiff submitted that his claim as particularized in the Statement of Claim mirrored the amount per month which President Wilson claimed as her loss of use of a vehicle each month. He also testified viva voce that the Union would sometimes pay officers an allowance of \$50 per day and that if he had claimed this rate, the claim would have exceeded the pleaded sum of \$11,683.59.
22. Consequently, Mr Lightbourne told the Court that the Union's President breached the terms of his appointment as "Acting President." He stated that the Union's failure to pay him the vehicle allowance for the period of "acting" without a vehicle caused him to suffer loss and damage in the sum of \$11,683.59 in respect of 17 months at 687.00 per month.

The Defendant's Evidence

23. In summary, by the Wilson Witness Statement, the defendant confirmed the content of its Amended Defence filed on 12 August 2022. Ms Wilson contended that the Union's Constitution does not speak to the role, and/or function of a purported "Acting President" and that Mr. Lightbourne remained at all material times the Union's Vice President. She stated that, by the Constitution of the

Union, it is only in the absence of the President and Vice President that an Executive Officer may be elected at an Executive Meeting to act as President until the next election.

24. The witness stated that the plaintiff being at all material times the Union's Vice President, he was capable and mandated to perform the duties of the President. Ms Wilson testified there was no scope or need for the Union's Executive Committee to appoint the plaintiff as the Union's purported "Acting President".
25. President Wilson testified that she was at all material times on the island, therefore the triggering event of the Governance Manual for another person to use the car designated for the President's use did not occur. Ms Wilson stated she had a right to use and enjoy the car in the absence of a valid decision by the Executive Committee or the AGM that she could not do so. The Court accepts as true Ms Wilson's statement that she was on the island during her suspension.
26. The witness stated that the plaintiff, holding himself out to be the "Acting President" at the time, and the then Executive Committee both failed and/or refused to pay the plaintiff the sum of \$11,683.59 he now claims years after the fact. Ms Wilson stated that since the plaintiff served the entire period without actioning and/or securing payment of a vehicle allowance, he consented to the non-payment of the allowance.
27. Ms Wilson pointed out that the contracts do not speak to the payment of a vehicle allowance in the absence of a vehicle or at all. The Union rejects the claim. While the Union admitted Mr Lightbourne used his personal vehicle during the suspension period, it denies that such use was "at a personal cost" to him "of \$11,683.59".
28. The Union, according to Ms Wilson, would be extremely prejudiced should the plaintiff now be allowed to claim, and/or receive payment of the said allowance years after completing the period of service in question. The witness stated that

Mr Lightbourne challenged for the substantive office of the Union's presidency at the Union's elections unsuccessfully. She contended he is now manufacturing a claim for payment of a vehicle allowance. At the trial, the defendant made plain its position that the plaintiff brought the action out of spite or malice because he lost his bid for the presidency of the Union. The Court does not accept that the plaintiff's claim is brought out of spite or malice. Moreover, the Court prefers the version of the facts given by Mr Lightbourne to the effect that he was promised, by the Executive Committee that appointed him, that he would be compensated for the use of his personal vehicle, which was used to the benefit of the Union.

29. Ms Wilson went on to testify that a vehicle purchased by the Union for the use of its President was stolen in March, A.D., 2015 and was not replaced by the Union until April, A.D., 2019. The defendant's insurers paid for the loss of the vehicle during the period when she was suspended, but the Union's Executive Committee, then chaired by the plaintiff, determined not to replace the President's car. The Court accepts these events as true. I further accept that the Executive Committee decided to defray other pressing financial obligations with the benefit payment from insurers for loss of the car, as stated by Mr Lightbourne.

30. The defendant testified that the Union at all material times also maintained a fleet of vehicles for its Officers' use as needed. During the period of the plaintiff's purported service as "Acting President", the defendant owned and maintained the following vehicles, which were available for Officers' use, including the plaintiff: a 2012 Kia Rio, VIN... 9572 (For use in Eleuthera); a 06 Toyota Corola, VIN... 9821 (For use in New Providence); and 08 Nissan Almera, VIN...7357 (For use in New Providence). The Court accepts the Union owned these vehicles enumerated by Ms Wilson. However, as to their availability at the time the plaintiff needed use of a car, the Court found Mr Lightbourne's evidence to be more compelling than that of Ms Wilson.

31. Further, by reason of questions raised by the Court, the defendant filed the Supplemental Affidavit of Belinda Wilson on 27 September 2023 by which Ms Wilson stated in part that there were 2 Annual General Meetings held between December 2014 and June 2016. The 68th AGM took place from 28 June 2015 and the 69th AGM was held from 25 June 2016. She also stated she saw no mention of a contract tabled for the plaintiff.

Submissions

The Plaintiff's Submissions

32. The Plaintiff's Counsel, Mr. Obie Ferguson Jr. KC, submitted that the Defendant's Constitution sets out its Rules and Regulations. The Governance Manual sets out the guidelines which govern the conduct of Executives, Branch Officers, District Stewards, Shop Stewards, and Assistant Shop Stewards in the execution of their duties.
33. The Plaintiff's Counsel further submitted that Rule 12.1 of the Defendant's Constitution assures that in the absence of the President the Vice President automatically assumes the role and responsibilities of the office of the President. In the absence of both the President and Vice President, the position is left void and someone else must "act" as president because the Vice President in the described scenario is not there to "act" in the President's stead.
34. The plaintiff's Counsel further submitted that the Executive Committee interpreted the Rules prescribed in the Constitution as such and offered the Vice President respective contracts with the exact terms and benefits as the President. By Rule 8.10, the Executive Committee is the competent authority to decide in this matter between Annual General Meetings. The Executive Committee shall interpret the rules where necessary and determine any point on which the rules are silent. The Executive Committee determined that the plaintiff should have all the remuneration and privileges conferred on the office of the President by contract,

rule, or article. The plaintiff's contract was not ultra vires the Constitution but consistent with it and how it was to be interpreted by the Executive Committee.

35. The plaintiff's Counsel argued that the post of Vice President is a part-time position in the Union. The responsibilities and duties of the President are voluminous and the position requires a full-time officer. The President was suspended and for the proper functioning of the organization, a full-time officer was needed. Naturally, because the duties of the President, in her absence, fell to the Vice President and there was a need for a full-time officer, the Executive Committee determined, consistent with their authority as per the rules, that they would offer the same contract to the Vice President and refer to him as the "Acting President". The contracts offered and agreed, were constitutional and sound in light of the circumstances at the time.

36. The plaintiff's Counsel submitted that at all material times, the President was serving a suspension and had lost the right to sign on the Union's account or drive the Union's car. Mr Ferguson KC argued that the President was uncooperative when the Executive Committee sent one of the Union's trustees to retrieve all of the defendant's property from her. Soon thereafter, Ms. Wilson reported the Union's car stolen as she was robbed at gunpoint. Counsel stated that the plaintiff had no access to the Union's car because it was stolen while in Ms Wilson's custody.

37. The plaintiff's Counsel further submitted that Mr. Lightbourne was told by the Executive Committee that he would be reimbursed or paid for any benefit denied as the defendant's finances required some adjustments. The Union's Treasurer was also suspended at the time and the Executive Committee had to proceed with caution to determine the state of the finances. Mr. Lightbourne was told to make sacrifices now and in due course he would be properly compensated. The plaintiff contended that the Executive Committee is bound by the decisions of the

Executive Committee serving at the material time, who acted congruous with their authority.

38. Mr. Ferguson KC also submitted that Mr. Lightbourne was abiding by a request from the Executive Committee to temporarily forego the use of a car provided by the Union and use his personal vehicle for which the Executive Committee promised he would be compensated later. The insurance payout, Counsel argued, could not replace the vehicle with a new model. The money from the insurance was needed to pay more urgent bills. The plaintiff agreed to the delay of payment not a denial of payment. The Nissan Almera was for the use of the messenger. The Toyota Corolla was for the use of other officers excluding the President and given to be used by Family Island officers and members, contended the plaintiff.

39. Mr. Ferguson KC concluded that the Union's defence is unsustainable as the Executive Committee, whose authority only succumbs to that of the Annual General Meeting, made a decision. In the premises, Mr. Lightbourne was entitled to the use of a vehicle to perform his duties, and in the absence of such he is entitled to compensation at the rate determined by the Union to be paid to the officers who use their own vehicles in the performance of their duties. Counsel submitted that the plaintiff's action ought to be allowed having regard to the evidence adduced and the defence of the Union should be dismissed with costs to the plaintiff, to be taxed if not agreed.

The Defendant's Submissions

40. The defendant's Counsel, Mr. Kahlil Parker KC, submitted that the Union relied on its Constitution and Governance Manual for their full force and effect. The plaintiff had neither a contractual nor constitutional entitlement to the use of any particular vehicle to be provided by the Union. The defendant's position was threefold, namely, (i) Mr. Lightbourne's purported Contracts of Employment with the Union, (are null and void and of no legal effect as they were made ultra vires the Constitution, (ii) the contracts and

the Union's Constitution are silent on the vehicle allowance claimed by the plaintiff so, the plaintiff had no constitutional right to the provision of a vehicle or vehicle allowance in the circumstances; and (iii) the plaintiff, on the facts and evidence before the Court, acquiesced to the lack of provision of a vehicle or vehicle allowance as he never made any such claim when he was in the purported "presidential" position to do so. Further, Mr. Lightbourne's protracted and contumelious delay in bringing his purported action herein, to the extreme prejudice of the Union and its members, has defeated any such rights as might have otherwise been vested in the plaintiff in that regard.

41. In arguing that the contracts between the parties were made ultra vires the Constitution Counsel for the Union relied upon the decision of **Rolled Steel Products (Holdings) Ltd. v British Steel Corporation and Others [1986] Ch. 246**. In that case, the Court of Appeal of England and Wales held that if an act is beyond the corporate capacity of a company, it cannot be ratified. In the present case, the Executive Committee of the Union having only such powers as have been granted to it by the Constitution, was not empowered to appoint an "Acting President, which position only arises in the absence of both the President and Vice President.
42. The Union further relied on the decision of **In Re Introductions Ltd. v National Provincial Bank Ltd. [1970] Ch. 1999**, where a company's main objective was to provide entertainment services and facilities for foreign visitors, the Court held that a decision taken by the company to borrow monies for pig breeding was ultra vires and void as it was outside the scope of the company's Memorandum of Association.
43. Mr Parker KC further submitted that the Vice President, according to the Constitution of the Union, automatically assumes the duties of the President once she is no longer able to carry out her duties. The role of "Acting President" could not properly be assigned to or contracted for between Mr. Lightbourne and the

Union's then Executive Committee. The defendant contended that the plaintiff was at all material times the defendant's duly elected Vice President and ought to have carried out his duties as such. An "Acting President", pursuant to the defendant's Constitution, is elected only once both the President and Vice President are unavailable. Mr. Lightbourne, being the Vice President at the material time, was ineligible to serve as "Acting President" during the suspension of the President. Counsel argued, the plaintiff cannot properly rely on the defendant's Constitution in support of an unconstitutional proposition.

44. The Defendant's Counsel also submitted that Mr. Lightbourne while serving in the purported role of "Acting President" and having all of the powers purportedly assigned to him, did not take any action for want of a vehicle or vehicle allowance. Furthermore, at all material times, he had access to three vehicles owned and maintained by the Union for its officers' use and did not make use of any of them. Mr. Parker KC contends that the plaintiff has now approached the Court four years later after the end of his "Acting Presidency" and failed bid for the president of the Union stating that he is owed money for something he did not action, did not need, and for which he suffered no actual loss or damage.
45. Counsel contended that the defendant would be greatly prejudiced if compelled to entertain and resist such late and stale actions. Acquiescence can have the effect of barring a person from enforcing his rights. The Union relied on the decision of **Sayers v Collyer [1881-85] All ER Rep 385** and an excerpt in **Halsbury Laws of England, Volume 47 (2021)** to support its position on acquiescence. It was submitted that the plaintiff, by his conduct and delay knowingly walked away from any right or entitlement he may have had to the sum claimed herein.
46. The defendant's Counsel concluded that the plaintiff had no constitutional or contractual entitlement to a vehicle or vehicle allowance as claimed herein, and having failed and/or refused to make any claim for payment of the purported

vehicle allowance during his purported "Acting Presidency" or within a reasonable time thereafter, this action ought to be dismissed with costs.

Law and Discussion

47. Generally, the Courts have been reluctant to interfere with the internal affairs of trade unions. However, when required, they have declared the decisions of executive officers of trade unions null and void and of no effect, particularly where such decisions were made in direct contravention of said trade unions' governing provisions. For example, in the Bahamian Court of Appeal decision of **Bahamas Hotel Catering and Allied Services Union, et al. v Registrar of Trade Union, Commonwealth of The Bahamas, et al.** [2010] 1 BHS J. No. 63, the Court of Appeal unanimously held that an election held in contravention of the respective trade union's Constitution was null and void and of no legal effect where it was found that the Executive Council possessed no authority to delegate its authority regarding election matters to the Secretary-General or any other person.

Issue 1: Validity of the Contracts

48. Apart from the Industrial Relations Act, the Union is governed by its internal rules and regulations contained in its Constitution or made thereunder. The Constitution sets out 19 rules providing for the affairs of the Union. This includes the ability to make policies and procedures for the enhanced good governance of the defendant, particularly, the Governance Manual.

49. The Governance Manual is meant to complement the Constitution and not contravene it, lest such conflicting provision in the Governance Manual be null and void and of no effect. The Governance Manual is "a set of guidelines, which ...govern the conduct of the Executives...[of the Union] in the execution of their duties." [See Governance Manual, Resolution of 65th Annual General Meeting at page 22, para 5].

50. The Introduction to the Governance Manual [page 24] provides in part:

“The policies and procedures set out below are intended to establish standards for the President, Executives, ...[and others] to follow while performing their various duties. Union employees have been guided by the B.U.T. Secretariat Policies and Procedures Manual for years while the leadership of the union has been observing undocumented traditions for decades. This document seeks to fill that void.

“The Bahamas Union of Teachers is destined to ascend to greater heights. Therefore it is critically essential that the President, Executives, Branch Officers and Shop Stewards ensure that their performances are in accordance with these guidelines. Kingsley Black, President.”

51. The Executives of the Union are required to adhere to the articles of the Governance Manual at peril of disciplinary action up to and including expulsion from the Union. [Article 19.1 and 19.6, Governance Manual]. The Governance Manual is therefore not an advisory, but rather a mandatory, part of the terms by which the Executive arm of the Union is expected to perform their functions.

52. While the Court is grateful for the authorities provided by the defendant's Counsel pertaining to the interpretation and/or construction of the defendant's Constitution, its view is that such authorities are not appropriate for the issue at hand. Those authorities deal with the interpretation of companies' memoranda of association. The rules of trade unions are uniquely construed. There have been numerous English and Bahamian authorities involving the interpretation of the rules of trade unions which explain that the rules of trade unions are not to be construed legalistically. Rather, they must be interpreted with a suitable degree of flexibility which reasonably captures the purpose and intention of the rules. One such authority is the decision of Klein J. in **Alexander Burrows Jr. and Others v John Pinder (In his Capacity as Director of Labour) and Others 2020/PUB/jrv/0003**. There, the Court referred to a passage from the dicta of Warner J in the English High Court decision of **Jacques v Amalgamated Union of Engineering Workers [1986] ICR 683 at 692**.

53. In particular, with respect to guiding principles on the construction of the rules of trade unions, Warner J stated:

“... the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with the court’s view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed.”

54. In **Jacques** (supra), the defendant trade union’s rules bestowed upon the national committee the authority to amend the rules which would be binding on all members. The authority expressed that the national committee could not abrogate the benefits of the members of the trade union unless there was a 40 per cent vote of the members affected by such benefits in favour of the abrogation. Following financial challenges, the national committee voted to abolish the 40 per cent vote requirement and subsequently passed a resolution abrogating benefits and preventing any new entrants to the superannuation fund. The required 40 per cent vote did not occur. The Court held that the purported amendment, abolishing the 40 per cent vote requirement, was null and void and of no effect. It was implicit in the rules that the defendant trade union could not abolish the 40 per cent vote requirement without the sanction of such a vote and the requirement was intended to protect the interests of the members. The Defendant trade union lacked the requisite authority to either abolish the requirement or to abrogate the members’ benefits. However, since the closure of the superannuation fund to new members would only affect existing members beneficially, that amendment to the rules was valid.

55. Those rules which speak to the general authority of the Annual General Meeting and the Executive Committee provide:

Rule 4.0 Constitution and Government

4.1 The Supreme authority of the Union shall be vested in the Annual General Meeting (AGM) of members, **and subject to that authority**, the Union shall be governed by the Executive Committee.

4.2. No act of the Executive Committee or the General Body at a duly constituted meeting shall be void by virtue of any procedural irregularity.

Rule 8.0 Executive Committee

- 8.1 The government of the Union in the periods between the Annual General Meeting and the conduct of its business shall be vested in the Executive Committee.
- 8.9 The decisions of the Executive shall be binding on all members of the Union **until such decisions are changed** at an Annual General Meeting or Special Called General Meeting.
- 8.10 Between meetings of the Annual General Meeting, **the Executive Committee shall** interpret the rules where necessary, and **determine any point on which the rules are silent.**
- 8.13 In addition to any express powers in these Rules provided, **the Executive Committee shall have the power generally to carry on the business of the Union...; and do such things and authorize such acts, including the payment of monies on behalf of the Union as they in the general interest of the Union may deem expedient...**

Rule 19.0 Governance

- 19.1 Policies and procedures designed to enhance good governance shall be established by the Annual General Meeting and shall be contained in the Governance Manual. **The Governance Manual is intended to complement the Constitution, therefore none of its policies and procedures may contravene the Constitution. Any policies or procedures found to be in contravention of the Constitution shall be deemed null and void and of no effect.** [Emphasis added].

56. The rules of Union's Constitution confer upon the Executive Committee broad authority to govern the Union, conduct its business, determine points on which the rules are silent, and to do all such things (including paying the Union's money) and authorize all acts which they deem expedient in the interest of the Union. This is subject only to the intervention or contrary decision of the Annual General Meeting. Save for if a change is made by the AGM there appears to be no fetter on the Executive Committee's powers to enter into any contract they deem necessary to look after the interests of the Union.

57. The Court, having regard to the mentioned authorities, the governing rules of the Union and other circumstances of the present action, is satisfied that the Union's Executive Committee possessed the requisite authority to enter into valid contractual agreements with Mr Lightbourne. In doing so, they appointed him as the Union's "Acting President" and authorised his use of "a motor car" to conduct the business of the Union in his acting position.

58. I take the issue of the Executive Committee's appointment of Mr Lightbourne as Acting President first. Subject to the Annual General Meeting, the Executive Committee was invested with the power to govern the Union. This is in accordance with Rules 4.1 and 8.1 of the Constitution. The Executive Committee's decisions bound all members of the Union until those decisions are changed by the AGM. There was no evidence that any AGM changed or sought to change the appointments of Mr Lightbourne once they had been executed by the Executive Committee.

59. Those provisions in the Constitution which speak to the issue of the circumstances in which the Union is authorized to have an acting president are set out as follows:

Rule 8.0 Executive Committee

8.4 In the event of the death, resignation or dismissal of a member of the Executive Committee, the vacancy shall be filled by secret ballot vote at the normal time of Union elections except in the case where the death, resignation or dismissal occurs six (6) months or less prior to a regularly scheduled election, whereby in this case the vacancy may be filled temporary by secret ballot vote by the Executive Committee. In every other case, a special election may be held.

...

Rule 12.0 Duties and Responsibilities of Executive Officers

12.1 The President shall be elected by secret ballot and shall serve for a period of three years. He shall be eligible for re-election. The President shall preside at all meetings of the Union and the Executive Committee. The President shall be responsible for the

proper conduct of business at all such meetings. He shall have a casting vote. He shall sign the minutes of each meeting at the time they are approved. He/she shall superintend the general administration of the affairs of the Union. In the normal course of business, and as the need arises the President shall consult with the Vice President, Secretary General and Treasurer on matters related to superintending and the general administration of the Union. He/she shall endeavour to secure the observation of these rules by all those concerned.

12.2 The Vice President shall be elected triennially by secret ballot vote and shall assist the President in the performance of his/her duties and in the absence of the President shall perform the duties of the office. He shall be eligible for re-election. In the absence of the President and Vice President at any Meeting a chairman shall be elected by the members to preside. In the event of the death, resignation or continuous absence of the President and Vice President an Executive Officer shall be elected at an Executive Meeting to act as President until the next election.

60. The much-rehearsed provisions under Rule 12.0 of the Constitution bear careful analysis in the context of all relevant provisions in both the Constitution and the Governance Manual. It has been argued by Counsel that this provision (Rule 12.2) which states that the Vice President “**in the absence of the President shall perform the duties of the office**” must mean the Vice President could only perform such duties in his capacity as Vice President. In other words, the argument is that the Vice President is not authorised to “act” as President. But one must hearken back to the demand of the law that the Court must interpret provisions of trade union rules, not literally or legalistically, but with appropriate flexibility, having in mind what those rules were intended to mean by their authors, and considering who would read them.

61. With those considerations in mind, the Court turns to Article 4.8 (a) and (b) of the Governance Manual – mandatory provisions for all Union Executives to follow - by the wish of the AGM which approved them. Article 4.8 provides:

4.0 LINE OF AUTHORITY

"4.8 (a) **In the absence of the President the Vice President shall act as President.** In the absence of the President and Vice President Rule 12(1) of the Constitution takes effect.

(b) **At no time shall the Union be left without at least an Acting President.** [Emphasis added].

62. In light of this provision, it can scarcely be disputed that the AGM expressed in Article 4.8(a) and (b) of the Governance Manual how the Union intends Rule 12.2 of the Constitution to work. Those documents are intended to be read together as the collective provisions to which the Union adheres, and by which its good governance and activities are conducted. The AGM intended that there be an acting President in the absence of the President, and the Vice President is the first in line who is called upon so to act. In the Court's view, the Vice President is not simply given the option to act as President, but is duty-bound and could be disciplined if he refused to become the Acting President. This is gleaned from Article 19.1 of the Governance Manual which provides:

"19.1 **Any Executive officer,** Branch Chairperson, Branch Officer, Shop Steward, Assistant Shop Steward or member **who breaches these policies and procedures shall be liable for disciplinary action.**"

63. The context of this difficulty in which the Union found itself is not to be ignored either. Normally Union suspensions could last up to 3 months, but the category of suspension imposed upon Ms Wilson far exceeded this period. In accordance with Article 19.6 of the Governance Manual, depending upon the severity of an officer's breach she could be suspended for a period not to exceed 3 months, or alternatively, suspended from membership for a period not to exceed 2 years, or expelled. Ms Wilson's suspension was for 17 months (adding the 2 periods together).

64. The Union would therefore have been in dire need for the Vice President to perform the President's duties and act as President as he was mandated to do by Article 4.8(a) of the Governance Manual read together with Rule 12.2 of the Constitution. It appears only if Mr Lightbourne was also "absent" could he avoid

the duty. In his testimony Mr Lightbourne also explained that the Union would have been in want of a full-time president because his position of Vice President was only part-time. Logically, this necessitated his change in status to a full-time acting president with concomitant compensation and benefits.

65. The Court sees no conflict between the Constitution (Rule 12.2) and the Governance Manual (4.8 (a) and (b)) in this regard. This is an interpretation which fairly and sensibly gives effect to the purpose and intendment of the Union's AGM. As such, the complementary relationship of one document to the other remains undisturbed in the Court's view.

66. I turn next to the Executive Committee's agreement to provide a vehicle for the use of the acting President. Again, the Executive Committee's decisions bound all members of the Union until those decisions are changed by the AGM. There was no evidence that the supreme authority of the Union changed or sought to change the Executive Committee's contractual obligation to afford Mr Lightbourne the use of a car to conduct business on behalf of the Union in his role as acting President. Apart from this, it seemed a fair and reasonable requirement by Mr Lightbourne to have the use of a vehicle to perform the extra duties, and it is clear the Executive Committee made the decision which was binding on the membership of the Union.

67. In my opinion, given the broad powers of the Executive Committee to make business and governance decisions for the interests of the membership of the Union, the Executive Committee's authority to offer him a car for conducting Union business in these circumstances would not have changed whether he was acting President or Vice President performing the President's duties. In this instance, nomenclature did not matter because the decision would have depended upon the Executive Committee's perception of the needs and interests of the Union in the exercise of their given powers at that time.

68. The defendant argued and put to the plaintiff that the Constitution is silent on the question what is to happen to the President's vehicle in the event she is suspended. The answer is that such silence would engage Rule 8.10 of the Constitution, which provides that between meetings of the Annual General Meeting, the Executive Committee shall determine any point on which the rules are silent. As such, that Committee acted in accordance with their constitutional powers, and there is no evidence an AGM toppled their decision.
69. Much reliance was put upon the point that the Vice President and any other Officer in charge were only entitled to the use of "the President's car" when said President "leaves the island" pursuant to Article 16(1)(e) of the Governance Manual. It was contended that such an event did not occur. Ms Wilson, at all material times, did not leave the island but was serving two suspensions. As such, the argument run by the defendant was that Mr Lightbourne could not have been legitimately authorised by the Executive Committee to use "the President's car".
70. Perhaps the Executive Committee had in mind that they would allow Mr Lightbourne to use the vehicle Ms Wilson had in her custody, since he was acting President. Perhaps they believed they had a right to the immediate relinquishment of that vehicle to their possession by the suspended Ms Wilson. (I make no finding on the issue whether Ms Wilson's suspension from performing the duties of office ineluctably carried with it a curtailment of the benefits she enjoyed as president, such as the Union's car).
71. The Court accepts that the Executive Committee had the requisite authority by the Constitution to make decisions which are binding on all members of the Union, and to authorise any acts which, in the general interest of the Union, they deemed expedient. They had the express authority under the Governance Manual to approve instructions for the use of Union vehicles. That Executive Committee entered into two agreements with Mr Lightbourne to the effect inter alia that he (interchangeably referred to as Acting President and President in the

two agreements) “**shall have access to and use of a motor car to assist in executing the Union’s duties. Service & maintenance for the said motor car shall be borne by the Union.**” [Emphasis added].

72. The vehicle in the hands of Ms Wilson was irrelevant because the Union contracted for Mr Lightbourne to have access to and use of “a motor car”. Further, in the Court’s view, Article 16(1)(e) of the Governance Manual is irrelevant for the purposes of the bargain struck with Mr Lightbourne. In its proper context, that Article only speaks to the use of **the car** that was lent to the President to carry out her duties. In contrast, there was no specification in his contracts as to which vehicle the plaintiff was to get. The Union therefore owed him the use of any motor car they could give him to perform his duties. As it turned out, they were unable to fulfil their contractual obligation in this regard.

73. The Court accepts the testimony that the vehicles on the island were otherwise engaged and not available for Mr Lightbourne’s use. While the plaintiff may have been able to take one of these vehicles, the Court got the impression that such action would be disruptive to the business of the Union, as the cars were already legitimately in use by others. If the Union wished to prove otherwise they ought to have called a witness who could give direct evidence or show some adequate evidence the cars were free for the plaintiff’s use.

74. The Union was in breach of their contract to provide the car. In that circumstance, they struck an oral agreement with Mr Lightbourne, which the Court accepts as true, to reimburse him for having to use his personal vehicle for that extended period of time he spent performing the President’s duties. The Court does not accept that Ms Wilson could sustainably deny the oral agreement arrived at between the then Executive Committee and Mr Lightbourne as she was not there to witness the events. Further, the defendant called no other witness who could give evidence of superior probative value.

75. It is plain from the contracts that the Executive Committee decided to give Mr Lightbourne the use of a vehicle, the service and maintenance of which they intended should be at the Union's cost. It is wholly reasonable that they attempted to remedy their inability to perform that part of the deal by at least agreeing to pay back funds the plaintiff had to expend personally for the benefit of the Union.

76. By Rule 8.13 of the Constitution the Executive Committee at all material times had the power to authorize any acts including the payment of monies on behalf of the Union as they would deem expedient in the general interest of the Union. This Court accepts the evidence of Mr Lightbourne that he broached the subject of getting compensation for having to expend funds to do the business of the Union by using his car to carry out the President's duties. I also accept that the Union orally agreed to pay an allowance as compensation for funds so expended by Mr Lightbourne.

77. The defendant took the point in pleadings and submissions that the contracts and the Constitution are silent as to any payment of a vehicle allowance. The Court accepts this is so, and again notes that in accordance with Rule 8.10 of the Constitution, between meetings of the Annual General Meeting, the Executive Committee shall determine any point on which the rules are silent. This gave the Executive Committee the authority (along with other express rules) to make the determination to give the plaintiff the vehicle allowance.

78. For the foregoing reasons, I do not accept that the contracts both written (as to the plaintiff's appointment to the post of acting President and use of the Union's car) and oral (as to the provision of an allowance to cover the cost of the plaintiff using his personal vehicle to perform Union business) are ultra vires the Constitution of the Union or null and void and of no effect. The agreements between the Union and Mr Lightbourne were valid and binding.

79. Notably, albeit the point as to ultra vires was strenuously argued, the defendant had not demonstrated its conviction by making a counterclaim to claw back any of the salary or benefits actually paid to the plaintiff under the contracts of employment. (That claim would now be statute-barred). If the contracts were indeed unconstitutional, null and void and of no effect, the Executive arm which makes that allegation would have had a duty to its members to seek to recover 'misspent finances'.

Issue 2: Breach of Contract and/or Damages

80. The Court has determined that the defendant's Executive Committee possessed the requisite authority to appoint the Plaintiff as "Acting President" and that the Contracts of Employment entered into between the Plaintiff and the Executive Committee were valid, and further that the Executive Committee orally agreed to compensate the plaintiff for having to utilize his personal car in doing Union business. Consequently, the plaintiff has satisfactorily discharged the burden, on a balance of probabilities, that the defendant has breached the oral agreement and is liable to compensate him for using his car. It is evident the Union never reimbursed Mr Lightbourne for using his personal car to perform the Union's work. He testified, and the Court accepts, that other executives of the Union agreed to the compensation but Ms Wilson, in her capacity as President, refused.

81. This leads to the enquiry as to quantum of loss claimed by the plaintiff. For several reasons the claim for the specific allowance of \$687.20 per month is not made out. It is apparent from the evidence there was no actual amount specified to be paid as the allowance by the Executive Committee as a part of the oral agreement. The plaintiff in testimony referred to two possible yardsticks for the allowance – the one he pleaded amounting to \$11,683.59 and another sum - \$50 per day he said was paid sometimes to others (which was not pleaded or proven).

82. Although the plaintiff has specifically pleaded and particularized his claim for special damages in the sum of \$11,683.59, he has not sufficiently demonstrated,

as claimed, that there was a custom, practice or policy of the defendant to pay that specific allowance to officers who were entitled to the use of, but did not receive, a car.

83. The law demands more to substantiate that the existence of a custom, practice or policy. The learned authors of Atkins Court Forms¹ in discussing circumstances in which a court would be willing to infer a custom or practice as a term in an employment contract, stated:

“Many day-to-day features of employment and the way things are done in the workplace, office or factory, are governed as much by long-held custom and practice as by express contractual terms. **To be legally recognised by the courts, a custom must be ‘notorious, certain and reasonable’, and a term will be implied by custom only if there is nothing in the express or necessarily implied terms of the contract to prevent such inclusion.** The facts on the basis of which a court is asked to find the existence of such a custom **must be proved on the balance of probabilities...**

“The real question in determining whether there is an enforceable custom is not the number of occasions on which an employer has adopted a particular practice or calculation, but **whether an intention to be bound contractually can be discerned from the policy as communicated by the employer.**”

84. The plaintiff appears to rely solely on a 14 October 2016 Summons application allegedly filed by the defendant’s President. Save that Ms Wilson admitted that she filed a summons in the Supreme Court, there is no evidence of the status of the summons or the true basis of the claim, or a determination thereof. Even if there were, the summons was merely a claim submitted by Ms Wilson to the Supreme Court, and this Court had no evidence that the claim was based upon a ‘notorious, certain and reasonable’ custom or practice to pay the amount claimed for not having use of a Union vehicle, if indeed such a claim was made.

85. It is noteworthy that in her testimony, Ms Wilson denied knowledge of a custom or practice of the Union to pay officers \$687.20 per month for loss of use of a

¹ Employment Vol 18(2), The Contract of Employment, 19. Custom and Practice.

vehicle. Specifically, she stated she is “not aware of any allowance paid by the Bahamas Union of Teachers to any officers for the use of any vehicle...Nor for the non-use of a vehicle.” When questioned as to whether her pleading contained such a claim she said she could not recall.

86. I accept Mr Lightbourne was motivated to claim, by his Counsel’s letter to Ms Wilson of 14 September 2020, the same amount he may have earlier seen in Ms Wilson’s summons filed 14 October 2016 (which summons was not produced as a part of the documentary evidence in this trial), and to subsequently base his claim in this action on that sum. But the argument the amount is derived from custom, practice or policy of the Union requires, at law, better proof. The custom should be shown to be widely-known and common knowledge in the Union. With the plaintiff stating different yardsticks for the calculation of the allowance, some equivocation became apparent as well. Moreover, the Court would not know how reasonable it was without some information about the plaintiff’s actual frequency of use of his car for Union business. None of this is borne out in the evidence before this Court, as I bear in mind the characterization given by the learned authors of **Harvey on Industrial Relations and Employment Law**² to the test of notoriety, certainty and reasonableness as “the high hurdle.” They also stated:

“It follows however that the court will not lightly find a custom. The custom asserted must be (in the traditional phrase) ‘reasonable, notorious and certain’: reasonable, in the sense of fair (*Devonald v Rosser & Sons* [1906] 2 KB 728); notorious, in the sense of well known—perhaps not universal, but at least the general rule rather than the exception (*Ropner & Co v Stoate Hosegood & Co* (1905) 92 LT 328); certain, in the sense of precise: *Devonald v Rosser*, and compare *Lister v Romford Ice...*”.

87. Apart from the claimed loss of \$11,683.59 which has not been founded, the plaintiff has not claimed or submitted evidence to prove he is owed any other sum by reason of having spent that money. The Court has no adequate evidence on which to assess the actual loss the plaintiff sustained in the circumstances. For example, there are no receipts or other documents showing the plaintiff’s

² 2024 Lexis Nexis para [35] – [37.01].

average expenditure per week or month for gasoline and/or vehicle maintenance during the period he acted as President of the Union. It is trite law that special damages need not only be pleaded and particularized but must also be proven. A claim for special damages is proven by cogent evidence.

88. The law on special damages was fortified in **Michelle Russell v Ethlyn Simms and Darren Smith 2008/CLE/gen/00440** wherein Barnett CJ (as he then was) stated at paragraphs 43 and 44—

43. It is now settled law that special damages must be pleaded and proven. The Court of Appeal in **Lubin v Major [No. 6 of 1990]** said:

“From the above reasoning, it is clear that what the learned Registrar is saying, correctly in our view is that a person who alleges special damages must prove the same. It is not in general sufficient for him merely to plead special damages and thereafter recite in oath the same facts, or give evidence in an affidavit without any supporting credible evidence aliunde, and sit back expecting the tribunal of fact to accept his evidence as true in its entirety, merely because the aforesaid evidence is not controverted, even though the particular damage in the sense of a loss having been incurred appears reasonably improbable and/or the money value attributed to the said loss or damage appears unlikely and/or unreasonable viewed in the context of the susceptibility of human beings in general to overestimate and exaggerate loss, damage and suffering without any intention whatsoever of being deliberately dishonest...”

44. Equally, Lord Goddard in **Carter v Hyde Park Ltd [1984]** –

“Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and so to speak, throw them at the head of the Court, saying: This I have lost, I ask you to give me these damages. They have to prove it.”

89. Mr. Lightbourne has adduced no adequate evidence to show actual loss he may have sustained for using his private car. This is a hindrance to the making of an award of damages by the Court whether special or general.

Issue 3: Acquiescence, Laches, and/or Delay

90. The Court is of the opinion that the Union's alternative defence of acquiescence, laches and/or delay is not sustainable as the facts do not support application of such defence in this case.

91. The learned authors of **Halsbury's Laws of England, Volume 47 (2021) at paragraph 253** explained, in depth, the meaning of the term acquiescence. They stated as follows –

"The term 'acquiescence' is, however, properly used where a person having a right and seeing another person about to commit, or in the course of committing, an act infringing that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed; a person so standing by cannot afterwards be heard to complain of the act."

92. Acquiescence is akin to an equitable bar arising from a person's lapse of time. Though acquiescence is a main element in laches, acquiescence, and laches are different. The difference between laches and acquiescence was adeptly explained by Lord Wensleydale in **Archbold v Scully (1861) 11 ER 769 at 778**. Lord Wensleydale said this –

"So far as laches is a defence, I take it that where there is a Statute of Limitations, the object of simple laches does not apply until the expiration of the time allowed by the statute. But acquiescence is a different thing; it means more than laches. If a party, who could object, lies by and knowingly permits another to incur an expense in doing the act under the belief that it would not be objected to, and some kind of permission may be said to be given to another to alter his condition, he may be said to acquiesce; but the fact, of simply neglecting to enforce an action for the period which the law permits him to delay, without losing his right, I conceive cannot be any equitable bar."

93. The Union relied on **Sayers (supra)** to support its position on acquiescence. Simply, on its assessment of the evidence the Court does not accept, as alleged by the defendant, that the plaintiff by conduct and delay knowingly abandoned

his right or entitlement to the compensation he claimed. Acquiescence, as such, is no bar to the plaintiff's remedy in the present case.

94. In summary, laches is not appropriate as Mr. Lightbourne's action was not statute-barred. Moreover, the Court is not satisfied that the plaintiff waived his right to the remedy sought, or by his words or conduct, put the Union in a position where it would not be reasonable for the plaintiff to assert his rights. Rather, the Union has delayed, and ultimately, wholly failed to tender the promised recompense to the plaintiff. Acquiescence is not apt for use (even if the defence were to be appropriately characterised as an equitable estoppel barring a legal remedy), because it was not sufficiently shown that the plaintiff represented he would accept, or stood by and allowed, the infringement of his rights. This is notwithstanding that the plaintiff may have been in the purported position at the time to provide himself with a vehicle or pay himself the purported vehicle allowance. The plaintiff asserted (and the Court has accepted) that he agreed to a request made by the Executive Committee to forego the provision of a vehicle and used his personal vehicle provided he would be compensated later. The plaintiff's actions could reasonably be construed as his having agreed to a delay in payment, but not a denial of payment. Further, no detriment or prejudice to the Union has been made out by the defendant.

Conclusion

95. Based on the foregoing reasons, evidence before the Court, and the applicable law, the plaintiff succeeds in establishing the liability of the Union in his action for breach of contract, but on the question of quantum, due to a lack of proof, the claim for the sum of \$11,683.59 is unsubstantiated. As liability is shown but the amount of the same is not proven, the Court has reflected on whether to maintain no award at all as to damages or whether there is an alternative. The learned authors of **McGregor on Damages**, 13th Edition at para 12-004 discussed a way forward in a situation where evidence is not sufficiently provided to enable the Court to make an assessment of damages as follows:

"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss or other remediable consequence. In the present case the problem is simply one of proof, one not of absence of loss but of absence of evidence of the amount of loss."

96. The course to award nominal damages in such a case has been followed time and again by courts. One of the latest examples in this jurisdiction is found in the judgment of Sir Ian Winder CJ in **Sandyport Homeowners' Association Limited v R Nathaniel Bain** [2023] 1 BHS J No. 138. There, the plaintiff failed to provide cogent evidence to assist the Court in assessing general damages for nuisance and trespass, although the plaintiff had succeeded in establishing liability of the defendant for those torts. His Lordship decided in those circumstances, that the appropriate course was to order nominal damages. Upon careful reflection on the circumstances of the case before this Court, I am minded to do the same.

97. In the circumstances, the Court orders that no award is made as to damages, save nominal damages assessed at \$1,700.00. With respect to costs, given the outcome of the case, I order that each party shall bear its own costs.

Dated 27 March 2024



Simone I Fitzcharles

Justice