

BRITISH VIRGIN ISLANDS COURT OF APPEAL

The Castries Constituency Council -v- Lambert Nelson SLUHCVAP 2014/0016

INTERLOCUTORY APPEAL - EXERCISE OF JUDGE'S DISCRETION - WHETHER DISCRETION PROPERLY EXERCISED - ORDER FOR INTERIM PAYMENT - RULE 17.6(1) OF THE CIVIL PROCEDURE RULES, 2000 ("CPR") - WHETHER CLAIMANT ADMITTED LIABILITY - WHETHER JUDGMENT WOULD BE OBTAINED AGAINST CLAIMANT

This was an Appeal by the Castries Constituency Council (the "Council") against the decision of the Court below ordering it to make an interim payment to the Respondent and its findings of fraud against the Council. The Respondent was a various time employed in the public service and eventually took up a permanent position with the Council. The dispute between the Council and the Respondent essentially revolves around the former's decision not to add his tenure in public service to his period of employment for the purpose the computation of his retirement benefits.

In allowing the Appeal the Court of Appeal applying *Ecedro Thomas -v- Augustine Stoult et al* BVIHCVAP1993/0001, held that an allegation of fraud must be specifically pleaded and particularised and, that the mere averment of fraud in general terms was not sufficient and that in order to satisfactorily plead fraud, the Claimant must be able to identify specific facts and conduct supporting the Application. The Court held that fraud had not been pleaded nor asserted and it was therefore not open to the Judge to make a finding in relation to such.

The Court of Appeal also held that the interim payment procedure was not suited to cases of serious disputes on issues of fact and law and for a claimant to meet the requirements for an order for interim payment under Rule 17.6(1)(a) or (d) the Defendant must have admitted liable to pay damages or the Court must be satisfied that the Claimant was likely to obtain

Judgment based on more than the making out of a *prima facie* case and that the balance of proof while not to the criminal standard was high. (*Joseph Pinder -v- Trishel Wetherill* ANUHCVAP2011/0041 (delivered 5 June 2012, unreported) at paras. 5 – 6 applied)

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.