**IN THE COURT OF APPEAL**
**ON APPEAL FROM THE HIGH COURT**

**CIVIL APPEAL NO: ABU 21 OF 2014**
**High Court HBC 30 of 2014**

**BETWEEN** : **DIGICEL (FIJI) LIMITED**

*Appellant*

**AND** : **FIJI RUGBY UNION**

*1st Respondent*

**VODAFONE FIJI LIMITED**

*2nd Respondent*

**Coram** : **Calanchini P**
**Chandra JA**
**Almeida Guneratne JA**

**Counsel** : **Mr. M. Varitimos, Mr. J. Turner and Ms. M. Muir for the Appellant**

**Mr. N. Lajendra for the 1st Respondent**

**Mr. S. P. Sharma and Mr. K. Naidu for the 2nd Respondent**

**Date of Hearing** : **13 May 2015**

**Date of Judgment** : **12 June 2015**

# JUDGMENT

**Calanchini P**

[1] I have read the joint judgment of Chandra and Guneratne JJA and agree that the appeal should be dismissed.

**Chandra and Guneratne JJA**

[2] The Appellant had entered into a Sponsorship Agreement with the 1st Respondent on or about 14 August 2009 in respect of the Fiji National Rugby Sevens Team commencing on 1st November 2009 and expiring on 1st November 2013. Thereafter on or about 17 September 2009 by a Deed of Variation entered into between them, Clauses 13 and 14 of the Agreement were varied. On or about 6 November 2009 they also entered into a Sponsorship Agreement in respect of FRU's Major Provincial Rugby Competition known as Digicel Cup Tournament which sponsorship was to expire on 31 December 2013.

[3] After 31 December 2013 the 1st Respondent had called for Expressions of Interest by advertising in the public media and had received proposals from others for sponsorship. The 1st Respondent had in terms of their agreement forwarded the best proposal to the Appellant for their response.

[4] On 31 January 2014 the Appellant commenced proceedings in the High Court of Suva by filing a writ of summons and statement of claim, Ex-parte notice of motion for interim injunction and an affidavit of Maurice McCarthy, Chief Executive Officers of the Appellant Company.

[5] The learned High Court Judge to whom the matter was referred to on 3 February 2014 had directed the Registry to list the motion for inter-partes hearing on 7 February 2014.

[6] At the request of the Appellant's Solicitors, the learned Judge had listed the motion for hearing on 6 February 2014, and on Appellant's Counsel's application had granted leave to the Appellant to amend the Notice of Motion and had directed the parties to file affidavits and submissions and listed the hearing into the application regarding the injunction for the 13 February.

[7] On 10 February 2014 the 2nd Respondent who had entered into a Sponsorship Agreement with the 1st Respondent on the 2 February 2014 had made an application by way of Summons for an order that it be granted leave to intervene and be joined as a Defendant solely for the purpose of determination of the Appellant's amended notice of motion filed on 7 February 2014.

[8] The application for interim injunction was fixed to be heard on 25 February 2014 and all parties filed their submissions and made oral submissions on that day.

[9] The learned High Court Judge by his Ruling dated 13 March 2014 made the following orders:-

(i) Application for Interlocutory Injunction by the Plaintiff by way of Amended Notice of Motion dated 7th February 2014 is refused and accordingly Plaintiff's amended notice of motion dated 7 February 2014 is dismissed and struck out;

(ii) Plaintiff is to pay both Defendants' costs in the sum of $2,000.00 each;

(iii) Digicel and FRU are to attend to pre-trial matters by 25th April 2014;

(iv) Substantive matter be listed for mention on 28th April 2014 at 9.30 a.m.

[10] The Appellant by Notice of Appeal dated 1st April 2014 appealed against the said Ruling of the learned High Court Judge setting out the following grounds which are summarized as follows:

1. That the Discretion had been wrongly exercised;

2. That Damages are not an adequate remedy;

3. That the balance of convenience favoured the Appellant;

4. That the Status Quo favoured the Appellant and not the Respondents.

[11] The Appellant sought the following orders by setting out the above grounds of appeal:

1. The Appeal be allowed;

2. The Orders made by his Lordship (at paragraph 4.0(i) and 4.0(ii) of the Decision), be set aside;

3. The First Respondent and its directors, servants and agents be restrained as from the date of the Order of this Honourable Court from further performing, Implementing, announcing, displaying, advertising (including but not limited to allowing Fiji 7's players to appear in commercials, advertisements or on billboards), amending, varying and or further concluding sponsorship agreements (including the sponsorship agreement concluded between the First and Second Respondent on or about 2 February 2014) with all or any of Vodafone Fiji Limited, Fiji Airways, CJ Patel and/or Fijian Holdings Limited (hereinafter referred to as the "Vodafone Consortium") or any third party, for the sponsorship of the Fiji 7's team and/or the National Provincial Championship for Senior and U20 (known as the "Digicel Cup") until the final determination of the action by the High Court of Fiji in Civil Action No HBC 30 of 2014 or further order;

4. The First Respondent and its directors, servants and agents be restrained from outfitting the Fiji 7s team with jerseys or any other gear or articles of clothing displaying the logos and/or names, including trade names or shortened names, of

all or any of the members of the Vodafone Consortium or any other third party until final determination of the action by the High Court of Fiji in Civil Action No HBC 30 of 2014 or further order;

5. The Appellant be granted such further or other relief as this Honourable Court may think just in the circumstances;

The First and Second Respondents pay the Appellant's costs of and incidental to this Appeal and the Amended Notice of Motion filed on 7 February 2014 in Civil Action No HBC 30 of 2014.

**The Nature of the Relief which was sought by way of the Interim Injunction**

[12] The Amended Statement of Claim dated 7 February 2014 averred thus:

> *"(a) RESTRAINING ORDER: An order restraining the Defendant and/or its directors, servants and agents from performing, implementing, announcing, displaying, advertising [including but not limited to allowing Fiji 7s players to appear in commercials, advertisements or on billboards, amending, varying and or further concluding sponsorship agreements with Vodafone Fiji Limited, Fiji Airways, CJ Patel and or Fijian Holdings Limited [hereinafter referred to as the "Vodafone Consortium"] or any third party, for the sponsorship of the Fiji 7's team and or the National Provincial Championship for Senior and U20 (currently called the Digicel Cup) until final determination of the matter or further order of this Honourable Court;*
>
> *(b) RESTRAINING ORDER: An order restraining the Defendant and/or its directors, servants and agents from outfitting the Fiji 7's team with jerseys or any other gear or articles of clothing displaying the logos and or names, including trade names or shortened names, of the members of the Vodafone Consortium or any other third party;*

[13] The activities complained of and sought to be restrained as at 7 February 2014 were ongoing even at that point of time in consequence of the Vodafone Agreement of 2 February 2014 with the 1st Respondent which had been entered into by then.

[14] What would have been the practical effect had the Court granted the injunction?

[15] This brings into focus the need to examine the criteria of balance of convenience and status quo in the context of the instant case.

[16] In that regard a consideration of Lord Diplock's statement in **American Cyanamid Co. v Ethicon Ltd** (1975) 1 All ER 504 would be appropriate wherein His Lordship had stated thus:

> *"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one need against another and determine where "the balance of convenience lies."*

[17] Applying that judicial thinking to the facts of the instant case as recounted at paragraph 13 above, even if the Appellant is able at the trial to establish that the 1st Respondent's acts amounted to a breach of the alleged agreement it says it had with the 1st Respondent, clearly the balance of convenience lay on the side of the 1st Respondent and the Status Quo as at 7 February 2014 had to be maintained.

**The Rights of the 2nd Respondent**

[18] There is another aspect which the Court was obliged to look at, that is, the rights of the 2nd Respondent.

[19] Learned Counsel for the Appellant stressed on the fact that, before the 2nd Respondent entered into the agreement of 2 February 2014, the 2nd Respondent had been put on notice of the Appellant's Agreement with the 1st Respondent. In that regard our attention was drawn to a letter dated 20 January 2014 which the Appellant had followed by its letters dated 22 January, 28 January and 29 January, 2014.

**The Issue of Negative Covenants**

[20] This may be a convenient stage to deal with the Appellant's reliance on what Counsel submitted as being negative covenants contained in its Agreement which he submitted as being capable of enforcement by way of interim injunction it sought. The said covenants are in Clause 13.7 of the Variation Agreement:

> *"13.7 Notwithstanding any other clause of this Deed of Variation and or the Sponsorship Agreement the Parties agree that if at any time prior to 1 February 2014, the FRU proposes to enter into any memorandum of understanding, arrangement, agreement or otherwise with any Third Party, including a Competitor, in relation to the grant of Rights, either individually or collective, or any similar rights the following terms apply:*
>
> *13.7.1* ***Right of Notification***
>
> *The FRU shall notify Digicel in accordance with the notification procedure in clause 20 of the Sponsorship Agreement, of the terms of any proposed memorandum of understanding, arrangement, agreement or otherwise with a Third Party, which terms shall include but shall not be*

*limited to, rights to be granted to and by FRU (the Proposed Sponsorship Terms'). Such notice must contain full disclosure of the Proposed Sponsorship Terms and include any change made in the Proposed Sponsorship Terms during the option period in clause 13.7.2.*

*13.7.2* ***Option to Match***

*The FRU shall grant Digicel an option to enter into a memorandum of understanding, agreement, arrangement, agreement or otherwise with FRU on terms equivalent to or better than the Proposed Sponsorship Terms, such option to be valid for 30 days from the time the notice to Digicel of the Proposed Sponsorship Terms is left at Digicel's address in accordance with clause 20 of the Sponsorship Agreement.*

*13.7.3* ***Deemed Matching***

*It is agreed that Digicel shall be deemed to have matched the Proposed Sponsorship Terms if the financial and other material terms of the deal proposed by Digicel are the same as or better than the Proposed Sponsorship Terms.*

*13.7.4* ***Digicel has the right to match subsequent proposed sponsorship terms***

*If Digicel is offered and does not take up the option to match under clauses 13.7.2 and 13.7.3 above, FRU must not proceed at any time with memorandum of understanding, arrangement, agreement, or otherwise containing Proposed Sponsorship Terms that are less favourable than the Proposed Sponsorship Terms contained in the original proposed agreement without providing Digicel with notice, an offer to match and the right with respect to deemed matching contained in clauses 13.7.1 – 13.7.3 above."*

[21] Much argument revolved round what was submitted as being the Rule in **Doherty v. Allman** (1873) 3 App, Cases 709 followed in **A.G. v Barker** [1990] 3 All ER 257. The

Appellant relied on several other precedents as well. (*vide*: at paragraphs [120] to [132] of the written submissions dated 2 April, 2015).

[22] Although the proposition that negative covenants contained in an agreement are enforceable by injunction *usually*, this Rule is subject to several exceptions which are discernible from the authorities cited on behalf of the parties, some of which are implied in **Doherty's** case and **A.G. v Barker** (supra).

[23] These exceptions may be enumerated thus:

(i) To render or receive personal service, the exception to the exception being the rule in **Lumley v. Wagner** [1852] Eng R 593 re : "special services".

(ii) A stipulation in contracts of sale of chattels or goods;

(iii) A stipulation which requires the Court to supervise its performance;

(iv) The effect which enforcement will have on the relationship of the parties;

(v) The character of the order required to enforce the stipulation;

(vi) Other discretionary reasons.

[24] Assuming the Covenants in the "Digicel Contract" are negative in nature, the exceptions (iv) to (vi) above to the rule that mandatory injunctions lie to enforce them would be applicable in the context of the facts and circumstances of the present case.

[25] Furthermore, the enforcement of the covenants in question would have had the practical effect of compelling the 1st defendant (FRU) to perform its alleged positive obligations under the purported contract.

[26] We derived support for that proposition from the English Court of Appeal decision in **Warren v. Mendy** [1989] 3 All ER 103, cited with approval by the Supreme Court of New South Wales in **Network Ten Pty Limited v. Seven Network (Operations) Ltd.** [2014] NSW SC 274 at para. 250.

[27] It would be necessary to consider whether the aforesaid covenants in fact constitute negative covenants as submitted by Counsel for the Appellant.

[28] The following factors appear to militate against that, viz:

(i) As the evidence (through affidavits and correspondence) shows the initial contract which Digicel had with the Fiji Rugby Union from 2009 to 2013 had come to an end and what was in issue was a renewal of that contract or 'entering into a new contract'.

(ii) If the Court was to regard the relevant negotiations between the Fiji Rugby Union and Digicel as a renewal of that initial contract, then there had to be clear evidence that, Digicel had matched the Vodafone or any other competing offer.

Had the Appellant done that?

[29] At this point, it would be pertinent to refer to an affidavit dated 25 February, 2014 sworn to by the Chief Executive Officer of the Appellant's Company. (*vide*: pp. 1116 to 1118, Vol. 4 of the Record of the Court of Appeal).

[30] Besides other averments contained in the said affidavit constituting an undertaking given to Court by the deponent, at paragraph 5 it deposes thus:

*Upon the fulfilment of the foregoing condition I hereby personally undertake to the Court on the basis that the Court grants the interim relief sought in the Plaintiff's Amended Notice of Motion, with such amendments as the Court may think fit, as follows:*

*(a) I shall personally procure that the Plaintiff will within five working days of the fulfilment of the condition in paragraph 4 and the grant of interim injunctive relief by the Court, whichever date is the later, match the financial terms (both in cash and in kind) of the Vodafone Consortium Sponsorship Offer (and will so confirm in writing pursuant to this paragraph if called upon to do so) such that the Plaintiff will sponsor the Rugby Assets of the First Defendant on the same terms and conditions as are contained in the Vodafone Consortium Sponsorship Agreement;*

*(b) The terms of this Undertaking shall continue in force for the duration of any order of this Honourable Court granting interim injunctive relief to the Plaintiff and this Undertaking shall cease to be of any further force and effect upon the discharge or expiry of any such orders for interim injunctive relief.?*

[31] As the learned Judge observed, that affidavit had been filed in support of the stand the Appellant had taken in emphasising that it will be content with a limited injunction for a period of three months only (at paragraph 3.57 of the Judgment) to enable the Appellant to put the clock back as it were as is clear from the averments contained in the affidavit.

[32] Be that as it may, what is significant are the words 'I shall personally procure that the plaintiff will within five working days of the fulfillment of the condition in paragraph 4 and the grant of the interim injunctive relief by the Court, whichever date is the later, match the financial terms (both in cash and in kind) of the Vodafone Consortium Sponsorship offer (and will so confirm in writing ... ...).

[33] The said affidavit is dated 25 February, 2014.

[34] Thus, it would appear that, even as at that date, there was an uncertainty as to whether the Appellant had matched the Vodafone offer.

[35] The aforequoted factual content shows the equivocality of the issue. The said content could be construed either way, that there was no *prima facie* evidence that, Digicel had matched the Vodafone offer as the 2nd Respondent has contended, and at the same time the said content could be construed to say that, there was *prima facie* evidence that Digicel had matched the Vodafone offer. But, certainly it does not justify a view that, that evidence is unequivocal to have the interim injunction granted that was sought as a matter of course.

[36] Thus, the resulting position is that, further evidence would be required to be led to resolve that issue. This could have been done only at the trial.

[37] Whether Digicel had matched the Vodafone offer or not, (that being a condition precedent for the negative covenants to have taken effect), there was no subsisting negative covenant that could have been enforced by way of an interim injunction.

[38] It is in the background of facts as articulated above that, the situation of the 2nd Respondent must be considered.

[39] The Appellant is seeking to enforce those purported negative covenants. But FRU has entered into a contract with Vodafone. How can FRU implement two contracts which are at variance with one another with two different contracting parties?

[40] Whether Vodafone was aware or not of any subsisting contract between Digicel or FRU there was nothing to prevent them in equity or law in entering into a contract with FRU. Once it had done that, it was in the shoes of a third party outside the contractual relationship between Digicel and FRU.

[41] As held in **Pacific Transport Company Ltd v. Latchan Express Services Ltd** [1997] FJHC 264 –

> *"....a contract cannot confer rights or impose obligations on strangers to it, that is, persons who are not parties to it...."*

[42] Consequently, even assuming that the covenants in the 'Digicel Contract' constitute 'negative covenants', the Doherty Rule cannot find application in the context of the present case.

**Alleged Negative Covenants and their Enforcement vs Final Relief**

[43] Another aspect that has to be considered is whether the interim injunction sought could have been granted inasmuch as, had it been granted, the Appellant would have in effect obtained the final relief it was seeking by way of specific performance as prayed for in prayer (a) of the Amended Statement of Claim. The prayers seeking the enforcement of the purported "negative covenants" are to a like effect.

[44] Had the interim injunction been granted to the Appellant, the case would in effect have been virtually brought to an end since that would have compelled the 1st Respondent to renew the contract it had with the Appellant and further prevented it from acting and continuing with its contract with the 2nd Respondent. (*vide*: **Wakaya v. Chambers** [2012] FJHC 9).

[45] In **Ba Town Council v Fiji Broadcasting Commission** (1976) 22 FLR 91 an interlocutory injunction had been sought to prevent press and radio publishing and broadcasting any information regarding a soccer tournament held at the Govind Park, Ba. The alleged right was not only to prevent media entering the park but also to effect a total ban on the publishing of all football information.

[46] The Court said thus:

> *"It is not the practice of the Court to grant interlocutory injunctions which will have the practical effect of granting the sole relief claimed"* (per Kermode J).

**No Relief Claimed against the 2nd Respondent**

[47] As noted earlier learned Counsel for the Appellant stressed the fact that by letter dated 20 January 2014 the 2nd Respondent had been put on notice that, there was a subsisting agreement between the Appellant and 1st Respondent.

[48] The 2nd Respondent was made a party to the action on the 2nd Respondent making an application to intervene. This was after the agreement had been finalized on 2 February 2014 with the 1st Respondent.

[49] Even in the amended statement of claim which was filed on 7th February 2014 no relief was claimed against the 2nd Respondent.

[50] In the Appellant's Notice and Grounds of Appeal dated 1 April 2014, no relief is claimed against the 2nd Respondent.

[51] Apart from that, according to ground 3 in the said Notice of Appeal, the Appellant is seeking to restrain the 1st Respondent from further concluding sponsorship, in spite of the fact that an agreement had been concluded between the 1st Respondent and the 2nd Respondent on 2nd February 2014.

[52] The same reasoning would apply to Ground 4 in the Notice of Appeal.

[53] Should this Court grant the reliefs sought in appeal, nevertheless the ongoing agreement between the 1st and 2nd Respondents would still remain. The Appellant did not seek to have that agreement struck out in the High Court.

[54] Accordingly, to grant the said reliefs, in any event, would not serve the cause of the Appellant.

**Exercise of Discretion by the Learned High Court Judge - Tests Applied in Regard to Applications for Interim Injunctions**

[55] The several tests applied in regard to applications for interim injunctions viz: The balance of Convenience and Preservation of the Status Quo, damages as being an adequate

remedy, seriousness of the question to be tried have been dealt with exhaustively by the learned High Court Judge in the light of several authorities.

[56] Learned Counsel for the Appellant laid stress on the following observation made by the learned High court Judge. Viz:

> *"3.36 After careful analysis of the evidence provided to Court in the Affidavits filed I am of the view that there are serious questions to be tried and at least the two questions that need to be tried are:*
>
> *(i) Did Fiji Rugby Union breach the provisions in the Agreement relating to option granted to Digicel to match any proposed sponsorship; and*
> *(ii) If so, can the breach be remedied by an Order for Specific Performance of those provisions."*

[57] But in the same breadth the learned High Court Judge proceeded to observe thus:

> *"3.37 Also I am of the view that the issue which needs to be tried even though it was not raised by Counsel for FRU is that whether the condition in Digicel's letter dated 29 January 2014 that "FRU exclude any sponsor that operates in the telecommunication brand sector" from sponsoring Fiji International Seven Tournament and Deans Trophy makes the offer conditional. Paragraph 3.27 of this ruling refers.*
>
> *If so, then it may be argued that Digicel has not matched Vodafone Consortium's offer.*
>
> *I must make it clear that I am not determining this issue in this ruling and will need to hear submissions on this issue if it is ever raised."*

[58] Consequently, even if one were to regard the Judge's observation as a finding (at paragraph 3.36) the same stood qualified in paragraph 3.37.

[59] In any event, whether there is a serious question to be tried or not cannot be decided in a vacuum. That question is necessarily interwoven with the other requisites for the grant or refusal of an interim injunction which the learned Judge analyzed in detail in the light of Judicial precedents, particularly, **Series 5 Software v. Clark** [1996] 1 ALL ER 853, **Klissers Farmhouse Bakeries Ltd v. Harvest Bakeries Ltd** [1985] 2NZLR 129.

[60] The learned High Court Judge had accordingly been right to exercise his discretion in refusing to grant the injunction.

**Function of the Appellate Court**

[61] As has been observed by Lord Diplock in **Hadmor Productions Ltd & Others v Hamilton and Others** [1982] 1 All ER 1042, the function of an Appellate Court against the grant or refusal of an interlocutory injunction is a limited one, which is initially to review the lower Court's decision only and not to exercise an independent discretion of its own unless the lower Court's decision is so aberrant.

[62] That was a case where evidence which had been available at the hearing before the lower Court had not been placed before it but was sought to be placed at the appeal stage in order to demonstrate that the facts disclosed by it invalidated the reasons given by the lower court in exercising its discretion.

[63] His Lordship, Lord Diplock observed that, only if such fresh evidence disclosed facts which may tend to invalidate the reasons given by the lower Court that the Appellate Court is "entitled to treat the fresh evidence as constituting in itself a ground for exercising an original discretion of its own to grant or withhold the interlocutory relief" (at p.1046 (supra).

[64] Insofar as the instant case is concerned there is no question of considering any fresh evidence.

[65] However, learned Counsel for the 2nd Respondent has invited us to take judicial notice of certain facts. These facts are contained in the written submissions of the 2nd Respondent of 4 May 2015 which are as follows:

> *"24. Sponsorship Agreement between FRU/Vodafone has been in force since 2nd February 2014 and acted upon by the parties, including the consortium parties for a period in excess of 15 months. During this time, the Court would take judicial notice that several important Rugby tournaments have taken place under the auspices of World Rugby including the forthcoming World Cup Fifteens Rugby Tournament scheduled in England in September 2015 and the Olympic Games in 2016 in Rio. These are, with respect similar to the considerations legitimately taken into account by the Learned Judge at page 27 of his Judgment, paragraph (xiv).*
>
> *25. It is respectfully submitted that the Court below correctly held that the injunction sought by Digicel gags FRU from competitive offers for sponsorship. The Court correctly held that the injunction if granted would offend the public policy on promoting competition in commerce and more importantly, it would infringe the Commerce Commission Decree 2010.*
>
> *26. The learned Judge at paragraph 3.73 of his Judgment record the factors of His Lordship took into account in assessing the balance of convenience. These are numbered (i) – (xv) and demonstrate the extensive range of relevant factors that his Lordship took into account, as he was properly entitled to as a matter of judicial discretion.*

27. *Furthermore, the Court properly and correctly noted that granting the injunction would mean leaving FRU and the idolized National Sevens Team with no sponsor, and such a situation will be catastrophic for the national sport of rugby in Fiji."*

**The Doctrine of Judicial Notice**

[66] Judicial Notice of facts no doubt is a substitute for evidence.

[67] Archbold in Criminal Pleading, Evidence and Practice, 2011:

(Sweet & Maxwell) cites with approval the principle relating to judicial notice as stated in **Mullen v. Hackney** L.B.C. [1997] 1 W.L.R.. 1103, CA (Civ. Div) thus:

> *"Courts may take judicial notice of matters which are so notorious, or clearly established, or susceptible of demonstration by reference to a readily obtainable and authoritative source that evidence of their existence is unnecessary' and local courts are not merely permitted to use their local knowledge, but are to be regarded as fulfilling a constitutional function if they do so."*
> (Archbold, at p.1365 (supra)

[68] Indeed, the facts so recounted on behalf of the 2nd Respondent are so notorious that, judicial notice can be taken of them at a time when the Fiji Rugby 7's Team is (crest of a triumphant wave) enjoying success.

[69] The aforesaid facts rather than invalidating provide additional support for the reasons adduced by the learned High Court Judge for refusing the interlocutory injunction.

[70] It is an established proposition of law that, the object of injunctions is to preserve matters in *status quo* pending the trial of matters in dispute.

[71] The sequence of events and other matters impacting on the present appeal which have been recounted and highlighted above show how that object cannot be achieved in the present case of the Appellant.

**Conclusion**

[72] For the reasons set out above the appeal of the Appellant is dismissed.

[73] We thank all Counsel for their valuable submissions and well researched written submissions which were invaluable to Court in arriving at its final decision.

**Orders of Court**

(i) The appeal of the Appellant is dismissed;
(ii) The Appellant shall pay costs in a sum of $4000 to each Respondent.

**Hon. Justice W. Calanchini**
**PRESIDENT, COURT OF APPEAL**

**Hon. Justice S. Chandra**
**JUSTICE OF APPEAL**

**Hon. Justice A. Guneratne**
**JUSTICE OF APPEAL**